

**COMMUNITY AFFAIRS**

**NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY**

**Low Income Housing Tax Credit Qualified Allocation Plan**

**Proposed Amendments: N.J.A.C. 5:80-33.2 through 33.9, 33.12, 33.15, 33.16, 33.17, 33.19, 33.21, and 33.32**

Authorized By: New Jersey Housing and Mortgage Finance Agency, Anthony L. Marchetta,  
Executive Director.

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

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

Proposal Number: PRN 2016-161.

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

Wednesday, October 26, 2016 at 10:00 A.M.

New Jersey Housing and Mortgage Finance Agency

637 South Clinton Avenue

Trenton, New Jersey 08611

Please call the Division of Tax Credit Services at (609) 278-7629 if you would like to be included on the list of speakers.

Submit comments by December 2, 2016 to:

Anne Hamlin

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The agency proposal follows:

### **Summary**

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

As mandated by Section 42(m)(1)(B) of the IRC, each state housing credit agency must create a qualified allocation plan (QAP) that sets forth the selection criteria to be utilized to allocate tax credits to eligible applicants. This plan must be approved by the governmental unit of which such agency is a part. N.J.A.C. 5:80-33.1 through 33.40 constitutes the QAP for the State.

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

The Agency proposes to amend the QAP as follows:

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

It is proposed to either amend or introduce as new terms the following:

1. “Brownfield site” is proposed to be amended to include the documentation that is required to be submitted by applicants as evidence of inclusion in a Brownfield site.

2. “Density bonus” is proposed to be amended by insertion of the word “developers” to clarify that it is developers, not “housing,” that benefit from a density bonus.

3. "Developer fee" or "development fee" is proposed to be amended to reduce the permitted developer fee for building acquisition costs from eight percent to four percent, which mirrors a similar change made to the Agency’s Multifamily Underwriting Guidelines as approved by the Agency Board in November 2014. It is also proposed to delete the limitation of the non-deferred amount of the developer fee to four percent, which limitation is no longer necessary due to the reduction in the permitted percentage, and to add a sentence explaining the meaning of the term “related party” as used in the definition.

4. “Hackensack Meadowlands District” is proposed to be added as a defined term to designate land subject to the jurisdiction of the New Jersey Sports and Exposition Authority (NJSEA).

5. “Individuals with physical disabilities” is proposed to be amended to delete “with adult onset” as a requirement of a qualifying physical condition. This proposed amendment will result in broadening eligibility as a special needs individual to include those who were born with or developed a qualifying physical condition in childhood, as well as those who were afflicted as adults.

6. “Meadowlands Commission” is proposed to be deleted since that commission was dissolved effective February 5, 2015, by section 6 of the Hackensack Meadowlands Agency Consolidation Act, N.J.S.A. 5:10A-6.

7. “Neighborhood Revitalization Plan” is proposed to be added as a defined term to express the meaning of the term as used in the definition of “redevelopment project” and as proposed to be incorporated into amendments at N.J.A.C. 5:80-33.4(a)1 and 33.5(a)1, as delineating one of several sites within which a project’s location will satisfy the concerted community revitalization plan component requirement set forth therein. As stated in the proposed definition, the program is further defined at N.J.A.C. 5:47-3.

8. “Public transportation” is proposed to be added as a defined term to designate those transit opportunities that qualify under the point system at N.J.A.C. 5:80-33.15(a)14ii.

9. “Qualified nonprofit organization” is proposed to be amended by substituting the word “comprising” for “who comprise” in the second paragraph, and substituting the phrases “[w]hen the project is placed” and “provide a written legal opinion attesting” for “[a]t the point the project places” and “submit an attorney opinion letter which states,” respectively, in the last paragraph.

10. “Ready to grow area” is proposed to be amended as follows: the phrase “through the presence of water supply and wastewater infrastructure to serve the project” is to be rewritten as “through documentation that adequate water supply and wastewater infrastructure are available to serve the project” in the first paragraph; and subparagraph 2vi is to be rewritten from “Is located within an area identified for development and/or redevelopment within the ‘Land Use Plan Map of the Meadowlands District Master Plan’ and the ‘Hackensack Meadowlands District Official Zoning Map’ as amended and supplemented by the Meadowlands Commission” to “Is

located within an area identified for development and/or redevelopment within the Hackensack Meadowlands District as shown on the Hackensack Meadowlands District Official Zoning Map, as amended and supplemented by the NJSEA.”

11. “Redevelopment project” is proposed to be amended to clarify that in non-smart-growth areas only, a majority of the site must be or have previously been covered by structures, as that term is defined in the Municipal Land Use Law at N.J.S.A. 40:55D-7, in order to qualify as a redevelopment project. This clarification would eliminate farm land or undeveloped parcels from eligibility.

12. “Smart growth areas” is proposed to be amended by adding a sentence describing the nature of a compact form of development and deleting the second paragraph that discusses Planning Areas and Centers and provides information about the State Development and Redevelopment Plan.

13. “Social services plan” is proposed to be amended at paragraph 1 to require that a social services coordinator be available for a minimum of five hours per week for projects that have set aside five percent of the units for supportive housing units.

14. “Supportive housing population needs analysis” is proposed to be amended to clarify that the needs analysis, which states the current and projected need and demand for housing for the targeted supportive housing population(s), be completed by the applicant and/or social service provider. This analysis has previously been submitted by market study analysts, who typically do not have access to the data necessary to conduct such an analysis.

15. “Transit village” is proposed to be amended as follows: (i) the first sentence is to be rewritten to more objectively state that a transit village is a community served by bus, train, light rail, or ferry that has been so designated by the State’s Transit Village Task Force (Task

Force) pursuant to criteria available on the Department of Transportation’s website rather than, as currently stated, a community with a bus, train, light rail, or ferry station that has developed a plan to achieve its goals; (ii) the second sentence is to be rewritten to state that the transit village program is designed to spur, among other things, private-sector investment using access to transit as an asset, rather than, as currently stated, private sector investment around passenger rail stations; (iii) the third sentence is to be rewritten to state that the New Jersey Department of Transportation coordinates the Task Force composed of various State agencies, which review municipal applications and make recommendations rather than, as currently stated, coordinates a task force of different State agencies to review applications and make recommendations; and (iv) the fourth sentence is proposed to be rewritten to eliminate as redundant (given the proposed amendment of the first sentence) the requirement that it be the Task Force that designates a transit village.

16. “Uncorrected noncompliance” is proposed to be rewritten to clarify its applicability to both the eligibility requirements and the point category, as well as the deadlines for correction.

#### **N.J.A.C. 5:80-33.3 Application cycles**

The Agency proposes to amend N.J.A.C. 5:80-33.3, Application cycles, to correctly identify the following newspapers: the name of the Bridgeton Evening News has been changed to the South Jersey Times; and The Times is more accurately identified as The Times of Trenton.

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

The Agency proposes to amend N.J.A.C. 5:80-33.4, Family Cycle, as follows:

1. At N.J.A.C. 5:80-33.4(a), the QAP currently states that the Family Cycle is to receive a minimum of 50 percent of the “available tax credit authority attributable to a particular calendar

year.” The Agency proposes to replace the quoted phrase with “total credits awarded in the Family, Senior, and Supportive Housing Cycles” to clarify the amount of credits to which the minimum percentage applies.

2. Also at N.J.A.C. 5:80-33.4(a), the cap on total development costs per residential unit provision is proposed to be amended to include an additional permitted exclusion for community center or social service space of up to \$10,000 per residential unit and a maximum of \$400,000. This exclusion is intended to incentivize applicants to include space for social services/support facilities and would be subject to third-party cost certification.

3. At N.J.A.C. 5:80-33.4(a)1, the HOPE VI/Choice Neighborhood set aside, under which the first reservation of the Family Cycle credits is awarded to the highest-ranking project that meets the specified criteria, is proposed to be amended to more specifically identify and expand the type, and consequently, the number, of concerted revitalization plans that are eligible. The set aside satisfies the IRC requirement that the QAP give preference to projects that are located within a Qualified Census Tract (QCT) and that contribute to a concerted community revitalization plan; the proposed amendments set forth those characteristics, evidence of which will satisfy the “contribut[ion] to a concerted community revitalization plan” requirement. The eligibility requirements for this set aside are also proposed to be clarified to require that the project be fully located not only within a QCT, but also within a Targeted Urban Municipality (TUM).

4. At N.J.A.C. 5:80-33.4(b), amendments are proposed to reflect the recodification of N.J.A.C. 5:80-33.15(a)16, 18, and 19 as paragraphs (a)15, 17, and 18, respectively.

5. At N.J.A.C. 5:80-33.4(c), the QAP, in order to ensure the equitable distribution of tax credit awards throughout the State, currently limits the number of awards to two per year from

the same municipality. This limit is proposed to be increased to three projects per year for municipalities with more than 100,000 residents (based on U.S. Department of the Census data) to recognize that municipalities with the largest populations may have a greater need for affordable housing. As of the most recent Census, this proposed amendment would affect six municipalities. Also at N.J.A.C. 5:80-33.4(c), in order to ensure the equitable distribution of tax credit awards among developers, it is proposed to reinstate the limit on awards per developer/general partner/managing member to three per year; institution of this proposed limitation would also address potential capacity issues for developers and better enable them to successfully manage their pipelines of projects.

6. The Agency proposes to amend N.J.A.C. 5:80-33.4(d) to state that approximately 40, but not less than 35, percent of the credits in the Family Cycle shall be awarded to projects in TUMs. This proposed amendment would permit more flexibility to meet the intention of the 40-percent requirement; previously, this subsection was interpreted to require that no less than 40 percent of available credits could be allocated to projects in TUMs, which resulted at times in percentages closer to 50 percent.

#### **N.J.A.C 5:80-33.5 Senior Cycle**

The Agency proposes to amend N.J.A.C. 5:80-33.5, Senior Cycle, as follows:

1. At N.J.A.C. 5:80-33.5(a), the QAP currently states that the Senior Cycle is to receive a minimum of 20 percent of the “available tax credit authority attributable to a particular calendar year.” The Agency proposes to replace the quoted phrase with “total credits awarded in the Family, Senior, and Supportive Housing Cycles” to clarify the amount of credits to which the minimum percentage applies.

2. At N.J.A.C. 5:80-33.5(a), the cap on total development costs per residential unit is proposed to be amended to include an additional permitted exclusion for community center or social service space of up to \$10,000 per residential unit and a maximum of \$400,000. This exclusion is intended to incentivize applicants to include space for social services/support facilities and would be subject to third-party cost certification.

3. At N.J.A.C. 5:80-33.5(a)1, the HOPE VI/Choice Neighborhood set aside, under which the first reservation of the Senior Cycle credits is awarded to the highest-ranking project that meets the specified criteria, is proposed to be amended to more specifically identify and expand the type, and consequently, the number, of concerted revitalization plans that are eligible. The set aside satisfies the IRC requirement that the QAP give preference to projects that are located within a QCT and that contribute to a concerted community revitalization plan; the proposed amendments set forth those characteristics, evidence of which will satisfy the “contribut[ion] to a concerted community revitalization plan” requirement. The eligibility requirements for this set aside are also proposed to be clarified to require that the project be fully located not only within a QCT, but also within a TUM.

4. At N.J.A.C. 5:80-33.5(b), amendments are proposed to reflect the recodification of N.J.A.C. 5:80-33.15(a)16, 18, and 19 as paragraphs (a)15, 17, and 18, respectively.

5. At N.J.A.C. 5:80-33.5(c), the QAP, in order to ensure the equitable distribution of tax credit awards throughout the State, currently limits the number of awards to two per year from the same municipality. This limit is proposed to be increased to three projects per year for municipalities with more than 100,000 residents (based on U.S. Department of the Census data) to recognize that municipalities with the largest populations may have a greater need for affordable housing. As of the most recent Census data, this proposed amendment would affect

six municipalities. Also at N.J.A.C. 5:80-33.5(c), in order to ensure the equitable distribution of tax credit awards among developers, it is proposed to reinstate the limit on awards per developer/general partner/managing member to three per year; institution of this proposed limitation would also address potential capacity issues for developers and better enable them to successfully manage their pipelines of projects.

6. The Agency proposes to amend N.J.A.C. 5:80-33.5(d) to state that approximately 40, but not less than 35, percent of the credits in the Senior Cycle shall be awarded to projects in TUMs. This proposed amendment would permit more flexibility to meet the intention of the 40 percent requirement; previously, this subsection was interpreted to require that no less than 40 percent of available credits could be allocated to projects in TUMs, which resulted at times in percentages closer to 50 percent.

#### **N.J.A.C 5:80-33.6 Supportive Housing Cycle**

The Agency proposes to amend N.J.A.C. 5:80-33.6, Supportive Housing Cycle, as follows:

1. At N.J.A.C. 5:80-33.6(a), the QAP currently states that the Supportive Housing Cycle is to receive a minimum of 12.5 percent of the “available tax credit authority attributable to a particular calendar year.” The Agency proposes to replace the quoted phrase with “total credits awarded in the Family, Senior, and Supportive Housing Cycles” to clarify the amount of credits to which the minimum percentage applies.

2. At N.J.A.C. 5:80-33.6(a), the maximum allocation of credits in the Supportive Housing Cycle is proposed to be increased to \$1,400,000 from \$1,200,000 to encourage larger projects with integrated housing (that is, projects with less than 100 percent supportive housing).

3. At N.J.A.C. 5:80-33.6(a), the cap on total development costs per residential unit is proposed to be amended to include an additional permitted exclusion for community center or

social service space of up to \$10,000 per residential unit and a maximum of \$400,000. This exclusion is intended to incentivize applicants to include space for social services/support facilities and would be subject to third-party cost certification.

4. At N.J.A.C. 5:80-33.6(b), in order to ensure the equitable distribution of tax credit awards among developers, it is proposed to reinstate the limit on awards per developer/general partner/managing member to three per year; institution of this proposed limitation would also address potential capacity issues for developers and better enable them to successfully manage their pipelines of projects.

5. At N.J.A.C. 5:80-33.6(c), amendments are proposed to reflect the recodification of N.J.A.C. 5:80-33.15(a)16, 18, and 19 as paragraphs (a)15, 17, and 18, respectively.

6. The Agency proposes to amend N.J.A.C. 5:80-33.6(d) to state that approximately 40, but not less than 35, percent of the credits in the Supportive Housing Cycle shall be awarded to projects in TUMs. This proposed amendment would permit more flexibility to meet the intention of the 40 percent requirement; previously, this subsection was interpreted to require that no less than 40 percent of available credits could be allocated to projects in TUMs, which resulted at times in percentages closer to 50 percent.

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

The Agency proposes to amend N.J.A.C. 5:80-33.7, Final Cycle, as follows:

1. At N.J.A.C. 5:80-33.7(a), the cap on total development costs per residential unit is proposed to be amended to include an additional permitted exclusion for community center or social service space of up to \$10,000 per residential unit and a maximum of \$400,000. This exclusion is intended to incentivize applicants to include space for social services/support facilities and would be subject to third-party cost certification.

2. At N.J.A.C. 5:80-33.7(b), the QAP, in order to ensure the equitable distribution of tax credit awards throughout the State, currently limits the number of awards to two per year from the same municipality. This limit is proposed to be increased to three projects per year for municipalities with more than 100,000 residents (based on U.S. Department of the Census data) to recognize that municipalities with the largest populations may have a greater need for affordable housing. As of the most recent Census, this proposed amendment would affect six municipalities. Also at N.J.A.C. 5:80-33.7(b), in order to ensure the equitable distribution of tax credit awards among developers, it is proposed to reinstate the limit on awards per developer/general partner/managing member to three per year; institution of this proposed limitation would also address potential capacity issues for developers and better enable them to successfully manage their pipelines of projects.

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

The Agency proposes to amend N.J.A.C. 5:80-33.8, Reserve, as follows:

1. At N.J.A.C. 5:80-33.8(a), it is proposed to substitute the word “or” for the word “and” in the first sentence to clarify that projects can submit a reapplication for credits from the Reserve if they need credits because of either technical errors or severe hardship; eligible projects need not meet both requirements.

2. It is proposed to amend the fifth sentence of paragraph (a)1 by substituting the word “may” for the word “shall” to indicate that issuance of a supplemental award from the Reserve to the highest-ranking, partially funded eligible projects from the Senior and Supportive Housing Cycles is optional with NJHMFA.

3. The caps on total development costs per residential unit in paragraphs (a)2 and 3 are proposed to be amended to include an additional permitted exclusion for community center or

social service space of up to \$10,000 per residential unit and a maximum of \$400,000. These exclusions are intended to incentivize applicants to include space for social services/support facilities and would be subject to third-party cost certification.

4. It is proposed to amend the reference to “the tiebreaker at N.J.A.C. 5:80-33.19(a)1iii” in paragraph (a)3 to “the tiebreaker at N.J.A.C. 5:80-33.19(a)1ii” to accurately cite to the intended tiebreaker provision, which is proposed to be recodified from N.J.A.C. 5:80-33.19(a)1iii to N.J.A.C. 5:80-33.19(a)1ii.

5. It is proposed to add a new paragraph (a)4 to provide that the Tax Credit Committee (Committee) as designated at N.J.A.C. 5:80-33.22(a) may, at its sole discretion, award any one additional nine-percent application from either the Family, Senior, or Supportive Housing Cycle that would otherwise not rank sufficiently high to be funded. To be eligible for this award, applications must (i) score within five points, including applicable cure points, of the lowest-scoring awarded project in their respective cycle; (ii) meet the criteria set forth at N.J.A.C. 5:80-33.12; (iii) not be defined as “substantially incomplete”; and (iv) satisfy at least one of the following criteria: (1) represent a regional or geographic location that has received limited affordable housing resources; (2) leverage substantial financial resources from the Federal government or from other non-Agency funding sources; (3) affirmatively further the purposes and policies of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968) or contribute to a municipal fair share housing development plan; (4) respond to an urgent housing need or an underserved population; or (5) meet other critical State housing policy directives, goals, or priorities. Proposed N.J.A.C. 5:80-33.8(a)4 also provides that the Committee shall publish a written explanation of the criteria under which any award is made and that any such award is entirely discretionary with the Committee and may not be given out in any given funding round.

### **N.J.A.C. 5:80-33.9 Volume cap credits**

The Agency proposes to amend N.J.A.C. 5:80-33.9, Volume cap credits, as follows:

1. At N.J.A.C. 5:80-33.9(a)4, amendments are proposed to reflect the recodification of N.J.A.C. 5:80-33.15(a)16, 18, and 19 as paragraphs (a)15, 17, and 18, respectively.

2. At N.J.A.C. 5:80-33.9(b), the Agency proposes to amend the first sentence by incorporating the provisions of N.J.S.A. 52:27D-321.1, to clarify that in addition to projects that have received a density bonus, mixed-income or mixed-use projects that are part of a municipal fair share housing development plan or a court-approved judgment of repose or compliance are not eligible for tax credits unless the required economic analysis demonstrates that the market-rate residential or commercial units cannot internally subsidize the affordable units and the affordable units are developed contemporaneously with the commercial or market-rate residential units. Additionally, the Agency proposes to amend the second sentence by replacing the word “adopt” with “apply” to clarify that the Agency will apply, not formally adopt, the standards of the New Jersey Department of Community Affairs (DCA) for similar types of projects seeking Balanced Housing Program funds in evaluating the criteria.

3. At N.J.A.C. 5:80-33.9(c), the Agency proposes amendments to more clearly specify those applicants who are deemed ineligible for tax credits for a period of seven years due to foreclosure and to expand the category of participants to include a property manager or principal. Additionally, it is proposed to provide a three-year period of ineligibility – as opposed to the current seven-year period of ineligibility – for applicants that have a general partner, voting member, property manager, developer, principal, or a related party of any of the foregoing who owned or managed any interest in an LIHTC project that the Tax Credit Committee determined exhibits a pattern of uncorrected noncompliance.

### **N.J.A.C. 5:80-33.11 Cycle deadlines**

The Agency proposes to amend N.J.A.C. 5:80-33.11(f) to reflect the proposed deletion of existing N.J.A.C. 5:80-33.15(a)15 and the recodification of N.J.A.C. 5:80-33.15(a)16, 18, and 19 as paragraphs (a)15, 17, and 18, respectively.

### **N.J.A.C. 5:80-33.12 Application to a cycle/eligibility requirements**

The Agency proposes to amend N.J.A.C. 5:80-33.12, Application to a cycle/eligibility requirements, as follows:

1. The Agency proposes to amend the first sentence of N.J.A.C. 5:80-33.12(a), similarly to the proposed amendment at N.J.A.C. 5:80-33.9(b) discussed above, by incorporating the provisions of N.J.S.A. 52:27D-321.1, to clarify that in addition to projects that have received a density bonus, mixed-income or mixed-use projects that are part of a municipal fair share housing development plan or a court-approved judgment of repose or compliance are not eligible for tax credits unless the required economic analysis demonstrates that the market-rate residential or commercial units cannot internally subsidize the affordable units and the affordable units are developed contemporaneously with the commercial or market-rate residential units. Additionally, the Agency proposes to amend the second sentence by replacing the word “adopt” with “apply” to clarify that the Agency will apply, not formally adopt, the standards of DCA for similar types of projects seeking Balanced Housing Program funds in evaluating the criteria.

2. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)1iv regarding market study submission requirements to stipulate that only one update to the market study is permitted due to potential changes in project attributes and market area demographics and that both the original market study and, if applicable, the update must be included in the application submission. A

market study that requires more than one update should be reviewed and reissued as a stand-alone report.

3. The Agency proposes to amend the submission requirements for municipal affordable housing trust funds at N.J.A.C. 5:80-33.12(c)6x, to reflect that the court system is now responsible for overseeing municipal fair share compliance. See *In re Adoption of N.J.A.C. 5:96 & 5:97 by the New Jersey Council on Affordable Housing*, 221 N.J. 1 (2015) (*Mount Laurel IV*).

4. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)8 to require Energy Star 3.0 (Tier 2) or Energy Star Multifamily High Rise Program Certification, rather than *ENERGY*Efficient Homes (Tier I), as the threshold requirement for all applications. Tier I represents no additional efficiency measures beyond those required by the residential building code and is deemed to be outdated.

5. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)10, regarding acquisition tax credits to stipulate that the acquisition values utilized to calculate such credits are limited to the appraised value or purchase price or lease fee, whichever is less. This change mirrors a similar change made to the Multifamily Underwriting Guidelines that were recently approved by the Agency Board. Additionally, it is proposed to insert a statement that the appraised values may be subject to third-party review due to recent appraisals that have aggressive assumptions not supported by market conditions in order to artificially inflate the amount of acquisition credits for which a project is eligible.

6. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)14ii to correct a typographical error that resulted in a double “A” at the beginning of the subparagraph and to clarify that the supportive housing marketing plan must “provide evidence” (“evidence” as a noun), not

“evidence” (as a verb), that organizations used for referrals have experience serving the target population and can be a source for referrals.

7. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)14iv by adding the phrase “if applicable” to reflect that not all applications with supportive housing units will be required to submit a social services plan, such as those with funding from the Division of Developmental Disabilities (DDD) or the Division of Mental Health and Addiction Services (DMHAS).

8. The Agency proposes to add new N.J.A.C. 5:80-33.12(c)18 to preclude applicants that have a general partner, voting member, property manager, developer, principal, or a related party of any of the foregoing who owned or managed any interest in an LIHTC project when title was foreclosed thereon by entry of judgment or deed in lieu of foreclosure from eligibility for tax credits for a period of seven years, and preclude applicants that have a general partner, voting member, property manager, developer, principal, or a related party of any of the foregoing who owned or managed any interest in an LIHTC project that the Committee determined exhibits a pattern of uncorrected noncompliance from eligibility for tax credits for a period of three years from the date all issues of noncompliance are deemed by the Committee to have been corrected.

**N.J.A.C. 5:80-33.15 Point system for the Family Cycle**

The Agency proposes to amend N.J.A.C. 5:80-33.15, Point system for the Family Cycle, as follows:

1. At N.J.A.C. 5:80-33.15(a)1, the point system currently awards 20 points for family projects located outside of a QCT and 15 points for family projects located within a QCT. The Agency proposes to amend subparagraphs (a)1i and ii to change the criteria utilized from QCTs to TUMs in order to correspond to the QAP definition of “urban” locations at N.J.A.C. 5:80-33.15(a)25.

2. At N.J.A.C. 5:80-33.15(a)4, the point system for the municipal, county, and public housing authority (PHA) support category currently provides that applicants can receive up to five points by selecting the options in (a)4i and ii or the options in (a)4i and iii. The Agency proposes to amend the point system by: (i) eliminating the county and PHA categories; (ii) providing at N.J.A.C. 5:80-33.15(a)4i that projects that receive a fixed rate tax abatement for a 15-year term with a rate of no more than five percent (as opposed to the current 10-percent cap) shall receive five points and projects that receive a fixed rate tax abatement for a 15-year term with a rate greater than five percent but equal to or less than 10 percent shall receive four points; (iii) deleting subparagraphs (a)4ii and iii as unnecessary; (iv) deleting subparagraph (a)4v, which incentivizes municipal, county, or PHA financial contributions or contributions of land for nominal consideration, because the Agency believes this point category unfairly penalizes municipalities and projects that do not have those resources; and (v) recodifying subparagraph (a)4iv as ii, and deleting from that subparagraph the reference to subparagraphs (a)4ii or iii, which are proposed for deletion.

3. The Agency proposes to amend the point category at N.J.A.C. 5:80-33.15(a)7 regarding land use to award two points to projects located within a ready to grow area, as that term is defined at N.J.A.C. 5:80-33.2. Currently, projects located within a ready to grow area and also located within a transit village, urban transit hub, Main Street Designated District, or Designated Center, or a redevelopment project are awarded five points. Those additional planning areas (transit village, urban transit hub, Main Street Designated District, Designated Center, and redevelopment project) are proposed to be relocated to the Family and Senior set-aside criteria under N.J.A.C. 5:80-33.4(a)1 and 33.5(a)1, respectively, and the site selection points under N.J.A.C. 5:80-33.15(a)11. As currently written, this point category unfairly penalizes projects

located outside of those planning areas by requiring additional actions by the municipality to declare areas to be in need of redevelopment or rehabilitation in order to qualify for the points.

4. At N.J.A.C. 5:80-33.15(a)8x, the Agency proposes to amend the emergency unit amenity eligible for two points from emergency pull cords to emergency panic or call buttons, necklaces, or bracelets for all residents in senior projects only. This is based on feedback from senior tenants that pull cords are typically only installed in bathrooms and are less useful than the other options proposed.

5. At N.J.A.C. 5:80-33.15(a)9v, the Agency proposes to amend the average interior size point category for two-bedroom units from the existing 800 square feet to 875 square feet to incentivize a larger unit size than the minimum required in the Agency's Multifamily Underwriting Guidelines.

6. At N.J.A.C. 5:80-33.15(a)11, the Agency proposes to amend the positive land use site selection category by adding (a)11ii(16) and i(17) to include projects that meet, respectively, the definition of a brownfield site or a redevelopment project for two points each, as those project attributes are more appropriately grouped with other positive land uses rather than as point categories.

7. The Agency proposes to amend subparagraph ii of N.J.A.C. 5:80-33.15(a)13, regarding energy efficiency options to reflect the newly proposed threshold requirement to meet ENERGY STAR Version 3.0 (Tier 2) and include new options to satisfy this four-point category. Specifically, the Agency proposes to delete current sub-subparagraphs (a)13ii(1) through (7) and replace them with new sub-subparagraphs (a)13ii(1) through (6), to provide four points for Enterprise Green Communities, Mandatory + 35 optional points or higher; Leadership in Energy and Environmental Design (LEED), Silver or higher; National Green Building Standard

(NGBS), Silver or higher; Climate Choice Homes Program/Energy Star Tier 3 participation; Living Building Challenge; or Passive House. Additionally, it is proposed, as new subparagraph (a)13iii to provide options for applicants to meet a lower energy standard for three points by Enterprise Green Communities, Mandatory; LEED, Bronze; or NGBS.

8. The Agency proposes to remove brownfield sites from subparagraph (a)14i of the point category at N.J.A.C. 5:80-33.15(a)14 and include them instead in the positive land use site selection options at N.J.A.C. 5:80-33.15(a)11i. Also, the Agency proposes to reduce the points available in this category from two to one.

9. The Agency proposes to update the two-point category regarding proficient schools in subparagraph (a)14iii, to replace the reference to the NJ ASK 4 with a 40 percent or more standard of students either meeting or exceeding expectations on the Grade 4 Partnership for Assessment of Readiness for College and Careers (PARCC) assessment in both math and language arts, which was first administered during the 2014-2015 school year.

10. The Agency proposes to add N.J.A.C. 5:80-33.15(a)14v, to provide one point for projects located outside of a TUM that satisfy a municipal affordable housing obligation and are part of a court-approved municipal fair share housing development plan.

11. Because it is proposed to make the point category at existing N.J.A.C. 5:80-33.15(a)15, regarding applicants that have a general partner, voting member, property manager, developer, principal, or a related party of any of the foregoing who owned or managed any interest in an LIHTC project when title was foreclosed thereon by entry of judgment or deed in lieu of foreclosure, an eligibility requirement at proposed N.J.A.C. 5:80-33.12(c)18, it is proposed to delete this point category and recodify each of the succeeding point categories accordingly.

12. At recodified N.J.A.C. 5:80-33.15(a)20, the Agency proposes to amend subparagraph (a)20ii of the two-point option for supportive housing units for those leaving institutions under the decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999) to replace the term “disabled individuals” with the more inclusive and accurate phrase “individuals with disabilities” and to include units set aside for individuals with disabilities who are “at risk of institutionalization,” as well as those leaving institutions, to correspond to the definition utilized in the Agency’s Section 811 Project Rental Assistance program.

13. The Agency proposes to include a new point category at N.J.A.C. 5:80-33.15(a)24, to award a sliding scale of points based on municipal poverty rate according to United States Department of the Census data. For “suburban” projects (those not located within a TUM), the point system is proposed to be based on the median poverty rate (6.00 percent) and the State average poverty rate (10.7 percent). For “urban” projects (those that are located within a TUM), the point system is proposed to be based on the median poverty rate of urban municipalities only (17.00 percent). The addition of this point category is intended to further the State goal of de-concentrating poverty and encouraging affordable housing options in areas where such options typically have been scarce. The following poverty rates and corresponding point scores are proposed:

1. Suburban (Non-TUM)
  - i. 6.00 percent or less (median poverty rate) – three points;
  - ii. 6.01 percent to 10.7 percent (higher than the median poverty rate, but lower than the State average poverty rate) – two points; and
  - iii. Greater than 10.7 percent (greater than the State average) – one point.
2. Urban (TUM)

- i. 17.0 percent or less (less than the median poverty rate in TUMs) – two points; and
- ii. Over 17.00 percent (greater than the median poverty rate in TUMs) – one point.

**N.J.A.C. 5:80-33.16 Point system for the Senior Cycle**

The Agency proposes to amend N.J.A.C. 5:80-33.16, Point system for the Senior Cycle, to exclude the proposed Family Cycle point category at N.J.A.C. 5:80-33.15(a)14v, concerning municipal fair share development plans and to include in lieu of the proficient schools point category at N.J.A.C. 5:80-33.15(a)14iii, an additional option in the higher opportunity point section (jobs, transit); because senior citizens generally do not have school-age children, the proficient schools point category is appropriate only in the Family Cycle. A maximum of six points are proposed in this category, with four options at two points each; therefore, a project would only need to qualify for three options for the maximum available points. Currently, there are only three options with a maximum score of four points. The Agency proposes to include a fourth two-point option for municipalities with less than 25 percent renter-occupied housing and in which more than 25 percent of the population is age 55 or older according to U.S. Department of the Census data. This would prioritize projects in municipalities that have both a need for rental housing and an aging-in-place population.

In 2015, the Senior Cycle was the most competitive cycle, with 17 of 19 applicants receiving a perfect score, thus creating an over-reliance on the tiebreaker (which is the least amount of tax credits requested per unit). Due to the potential consequence of creating an over-reliance on lowering construction costs – possibly at the expense of quality of construction – in order to be

competitive in the tiebreaker, the Agency is proposing this additional point category to further differentiate between applicants without having to resort to the tiebreaker.

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

The Agency proposes to amend N.J.A.C. 5:80-33.17, Point system for the Supportive Housing Cycle, as follows:

1. At N.J.A.C. 5:80-33.17(a), the Agency proposes amendments to exclude the Family Cycle point category at N.J.A.C. 5:80-33.15(a)14v, concerning municipal fair share development plans from inclusion in the Supportive Housing Cycle point system and to reflect the proposed recodification of N.J.A.C. 5:80-33.15(a)21 as (a)20.

2. The Agency proposes an amendment at N.J.A.C. 5:80-33.17(b)1i(3), to clarify that “detailed eligibility and ineligibility criteria for tenant selection and screening” refers to those criteria that disqualify a prospective tenant.

3. The Agency proposes amendments at N.J.A.C. 5:80-33.17(b)2 to provide examples (GED preparation; local community college) of the types of educational opportunities that will qualify for the education point in this category and to specify that the education and/or employment service provider must have experience in providing the services to the target population, not merely in providing services to the population at-large.

4. The Agency proposes to amend the percentage of the non-profit ownership point category at N.J.A.C. 5:80-33.17(b)5 to award two points for a 100 percent non-profit ownership interest and one point for a 50 percent or greater interest. This amendment is proposed to give additional consideration to non-profit partners that are able to meet the stringent balance sheet and financial capacity requirements of tax credit syndicators.

#### **5:80-33.19 Tiebreaker system**

The Agency proposes to delete the tiebreaker for the HOPE VI/Choice Neighborhood set aside at N.J.A.C. 5:80-33.19(a)1i due to the proposed amendment of that set aside; accordingly, the Agency proposes to recodify subparagraphs (a)1ii through iv as (a)1i through iii.. Tie-score applications will continue to utilize the tiebreakers currently in place (least amount of tax credits per unit or bedroom).

#### **N.J.A.C. 5:80-33.21 Application needs analysis**

The Agency proposes to amend subsection (c) of N.J.A.C. 5:80-33.21, Application needs analysis, to reflect recent Federal legislation (the Protecting Americans from Tax Hikes Act of 2015) that permanently sets the tax credit percentage at nine percent for nine percent tax-credit projects. It is correspondingly proposed to delete the reference to the prior enactment (the Housing and Economic Recovery Act of 2008, Pub. L. 110-289 (HR 3221)) and to delete, as unnecessary, language regarding the provision of notice of the floating tax credit percentage due to this Federal legislation.

#### **5:80-33.32 Compliance monitoring**

The Agency proposes to amend N.J.A.C. 5:80-33.32, Compliance monitoring, by adding new paragraphs (f)15 and 16, to require two additional certifications to be submitted annually by an owner (called The Owner's Certificate of Continuing Program Compliance):

1. The Agency proposes to add paragraph (f)15, to require an owner to certify that the rent charged to each tenant did not increase by more than five percent, including due to changes in utility allowances. There are currently no regulations that limit the rent increases that can be imposed for tax credit projects. The Agency has received numerous recent complaints about rent increases, in particular due to changes in the utility allowance calculation; paragraph (f)15 is intended to address those complaints.

2. The Agency proposes to add paragraph (f)16 to require an owner to certify that the property management offices were open at least 20 hours a week. As with proposed new paragraph (f)15, the Agency has received numerous tenant complaints that some properties have no or limited office hours and management staff cannot be reached.

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

### **Social Impact**

In general, the proposed amendments are expected to: (i) more equitably distribute housing resources – and corresponding economic investment and job creation – across the State; (ii) increase affordable housing opportunities in areas of the State, where such opportunities have typically been scarce; (iii) discourage the concentration of poverty; and (iv) limit potential financial hardships on tenants of tax-credit-financed housing units.

The proposed amendment of the definition of “social services plan” at N.J.A.C. 5:80-33.2 to include a requirement that projects that have set aside five percent of the units as supportive housing units have a social service coordinator dedicated to the project for no less than five hours a week is expected to help ensure that special needs tenants at all tax-credit projects are linked to the specific supportive services they need to continue living independently in a project. While the definition provides that projects wholly or primarily comprised of supportive housing units should have a coordinator dedicated for 20 hours a week, there is currently no requirement or guidance in the QAP as to a specific minimum number of hours that projects with only five

percent supportive housing units must have; the proposed amendment is intended to remedy that omission.

The proposed amendments at N.J.A.C. 5:80-33.4(a), 33.5(a), 33.6(a), 33.7(a), and 33.8(a) that would allow up to \$10,000 per unit and a maximum of \$400,000 for community center or social service space to be excluded from the cost cap for projects competing in, respectively, the Family, Senior, Supportive Housing, and Final Cycles, and the Reserve are intended and expected to reduce the impact of the cost cap as an economic disincentive for applicants wishing to include space for these facilities, which benefit the day-to-day lives of tenants who reside in tax-credit-financed projects.

The proposed amendments at N.J.A.C. 5:80-33.4(c), 33.5(c), and 33.7(b) to increase from two to three the number of tax-credit projects competing in, respectively, the Family, Senior, and Final Cycles that may be awarded in municipalities with a population in excess of 100,000 recognize the greater need of the State's larger municipalities for affordable housing and are intended to help meet that need. These proposed amendments also further the Agency's statutory mission of assisting in the revitalization of the State's urban areas.

The proposed amendments at N.J.A.C. 5:80-33.4(c), 33.5(c), 33.6(b), and 33.7(b) to reinstate the previous limit on awards to developers/general partners/managing members competing in, respectively, the Family, Senior, Supportive Housing, and Final Cycles to three per year are intended to more equitably distribute tax credit awards among developers and to address potential capacity issues for developers in managing their pipelines of projects and applications for tax credit awards, with the goal of improving the quality and efficiency of, and services at, tax-credit-financed projects.

The proposed amendment at N.J.A.C. 5:80-33.6(a) to increase the maximum annual allocation of tax credits to projects competing in the Supportive Housing Cycle from \$1,200,000 to \$1,400,000 is anticipated to result in more supportive housing projects and/or units being developed for the underserved supportive-housing-needs population.

Proposed new N.J.A.C. 5:80-33.8(a)4, which authorizes the Committee, at its discretion, to award from the Reserve one additional nine percent application from either the Family, Senior, or Supportive Housing Cycle that would otherwise not rank sufficiently high to be funded is expected to have a positive social impact in that any project funded will have to satisfy at least one of the salutary criteria set forth at subparagraphs (a)4i through v (that is, represent a regional or geographic location that has received limited affordable housing resources; leverage substantial financial resources from the Federal government or other non-Agency funding sources; affirmatively further the purposes and policies of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968) or contribute to a municipal fair share housing development plan; respond to an urgent housing need or an underserved population; or meet other critical State housing policy directives, goals, or priorities).

The proposed amendments at N.J.A.C. 5:80-33.9(c), to expand the category of persons subject to the rule to include property managers and principals, is expected to broaden the reach of the rule and to further improve the efficiency of projects wholly or partially financed through the State's allotment of low-income housing tax credits by including those persons, and entities with which they are affiliated, in the seven-year period of ineligibility for those who have mismanaged or inefficiently managed tax-credit projects. Similarly, the proposed addition to the rule that would impose a three-year period of ineligibility for applicants that have a general partner, voting member, property manager, developer, principal, or a related party who owned or

managed any interest in a tax-credit project that the Committee determined exhibits a pattern of uncorrected noncompliance is expected to improve the efficiency of such projects.

The proposed amendments at N.J.A.C. 5:80-33.15(a)8x to delete pull cords, but to add a panic button, necklace, or bracelet for all residents in senior projects to qualify for points in the unit amenities point category is expected to improve safety for senior citizens residing at tax-credit financed projects. The amendments are proposed in response to feedback received from senior tenants that pull cords are typically installed only in bathrooms and are less utile than the other devices; thus, the amendments respond to a need expressed by those tenants most directly impacted by the rule.

The proposed amendment at N.J.A.C. 5:80-33.15(a)11i to award two points for projects fully located within a brownfield site and two points for being a redevelopment project is expected to more efficiently discourage sprawl – and concomitantly preserve the State’s dwindling supply of open space – by promoting the use of brownfield sites and existing structures in the development of tax-credit financed projects.

Proposed new N.J.A.C. 5:80-33.15(a)24, which awards points on a sliding scale based on a project’s location within or outside of a municipality defined as a TUM and on the poverty rate of that municipality, is expected to both increase affordable housing opportunities in areas of the State where such opportunities have typically been scarce and discourage the concentration of poverty in the State. The sliding-scale point system incentivizes tax-credit project development in non-urban municipalities with low rates of poverty.

The proposed amendment at N.J.A.C. 5:80-33.16 to replace the excluded point category at N.J.A.C. 5:80-33.15(a)14iii concerning proficient schools from the point system for the Senior Cycle with a provision that would award two points to projects located within municipalities

with 25 percent or less renter-occupied housing units and 25 percent or more of its citizenry aged 55 years or older is expected to encourage the de-concentration of affordable rental housing for senior citizens in the State, while helping to meet the unfilled need for such housing in municipalities with a significant percentage of senior citizens.

The proposed amendments at N.J.A.C. 5:80-33.17(b)2 to: (i) specify “GED preparation” and “local community college” as examples of the types of educational opportunities for tenants of supportive housing units that will qualify for the points available in this point category; and (ii) require that the identified education and/or employment service provider have experience providing the service to the targeted population are expected to improve opportunities for supportive housing tenants to obtain meaningful education and employment assistance. As currently worded, the paragraph lacks specificity and allows points to be awarded for the availability of courses and employment counseling that do not truly benefit the targeted tenant population(s).

Proposed new N.J.A.C. 5:80-33.32(f)16, requiring project owners to certify annually that the property management office had office hours of at least 20 hours a week is expected to improve management-tenant relations and assist tenants of tax-credit-financed projects in communicating with management regarding issues of concern to them. The Agency believes the 20-hour-per-week requirement is reasonable and vital to allow tenants access to management.

### **Economic Impact**

The proposed amendments at N.J.A.C. 5:80-33.4(a), 33.5(a), 33.6(a), 33.7(a), and 33.8(a) that would allow up to \$10,000 per unit and a maximum of \$400,000 for community center or social service space to be excluded from the cost cap for projects competing in, respectively, the

Family, Senior, Supportive Housing, and Final Cycles and the Reserve are intended and expected to reduce the impact of the cost cap as an economic disincentive for applicants wishing to include space for these facilities.

The proposed amendments at N.J.A.C. 5:80-33.9(c) to expand the category of persons subject to the rule to include property managers and principals and the proposed addition to the rule that would impose a three-year period of ineligibility for applicants that have a general partner, voting member, property manager, developer, principal, or a related party who owned or managed any interest in a tax-credit project that the Committee determined exhibits a pattern of uncorrected noncompliance are necessarily expected to have a negative economic impact on those individuals who will be subjected to the rule's seven- or three-year period of ineligibility because those individuals, and projects with which they are affiliated, will be ineligible during that time period from participation in the tax-credit program. Globally, however, the proposed amendments are expected to promote the more efficient use of low-income housing tax credits allotted to the State.

The proposed amendment at N.J.A.C. 5:80-33.12(c)8 to require successful participation in the New Jersey Clean Energy Program's NJ ENERGY STAR Certified Homes Program Version 3.0 (Tier 2) or ENERGY STAR Multifamily High Rise Program, rather than the current requirement of participation in the NJ *ENERGY* Efficient Homes Program, is expected to result in energy savings of approximately 15 percent at projects financed with low-income housing tax credits. Buildings that satisfy only the current Tier 1 NJ *ENERGY* Efficient Homes Program standard are not eligible to earn the ENERGY STAR label or to be marketed as ENERGY-STAR qualified, whereas buildings that satisfy the proposed Tier 2 ENERGY STAR Homes Version 3.0 standard are.

The Agency has proposed substantial amendments to the green building options point category at N.J.A.C. 5:80-33.15(a)13ii. In general, those proposed amendments reflect major increases in energy efficiency requirements dictated by the 2015 International Energy Conservation Code (IECC) as compared with the 2009 IECC, upon which the current provisions are based. The IECC is a model code established by the International Code Council in 2000, that sets minimum design and construction standards for energy-efficient buildings; it was updated in 2006, 2009, 2012, and most recently in 2015. The New Jersey Office of Clean Energy (“NJOCE”) in the Bureau of Public Utilities recently implemented substantial changes to the State’s Clean Energy Program in response to the 2012 and 2015 updates to the IECC. As a result of those updates, NJOCE’s *ENERGY* Efficient Homes (Tier 1) level, upon which the current version of N.J.A.C. 5:80-33.15(a)13ii is based, does not meet Federal Environmental Protection Agency (EPA) *ENERGY* STAR standards and is essentially obsolete (although homes built in accordance with this level do save an estimated 15 percent more energy than homes built to the baseline 2006 energy code standard). Therefore, the proposed amendments at N.J.A.C. 5:80-33.15(a)13ii incorporate the Clean Energy Program’s *ENERGY* STAR Homes (Tier 2) specifications, which are the current certified level of the State and meet the EPA’s version 3.0 requirements; homes built to these specifications are designed to save a minimum of 15 percent over the baseline code, but these savings could be greater. It is anticipated that low-income housing tax credit applicants will not experience great difficulty in complying with *ENERGY* STAR Version 3.0 (and, it is believed, an updated *ENERGY* STAR Version 3.1 beginning on or after April 1, 2017) standards, both because the *ENERGY* STAR program allows for tradeoffs among the various design components and because most applicants are familiar with the

progression of standards through prior applications for tax-credit or mortgage financing with the Agency.

The proposed new rule at N.J.A.C. 5:80-33.32(f)15 requiring project owners to certify that during the preceding 12-month period the rent charged to each existing tenant did not increase by more than five percent annually is intended and expected to assist tenants to both afford and budget for their rental payments. The Agency has received complaints from tenants of tax-credit-financed projects who received large rent increases after a period of nominal or no increases; the proposed new rule is intended to assist tenants by effectively prohibiting that practice and encouraging smaller increases over an extended period of time. There is not expected to be an undue financial impact on project owners as a result of the new rule because they will still be able to increase rents up to the maximum rent allowed, but will have to do so incrementally.

The Agency believes that proposed new N.J.A.C. 5:80-33.32(f)16, requiring project owners to certify annually that the property management office had office hours of at least 20 hours a week, is reasonable and vital to allow tenants access to management; the increased cost, if any, of maintaining such minimum number of office hours is deemed to be an essential element of doing business as an affordable housing project.

### **Federal Standards Analysis**

With regard to affordability requirements, the IRC sets forth minimum standards for low-income housing tax credits. Tax Credit affordability requirements are set forth in Sections 42(g)(1)(A) and 42(g)(1)(B) of the IRC, pursuant to which a housing sponsor elects a minimum

set-aside of either: (i) 20 percent or more of the residential units being both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income; or (ii) 40 percent or more of the residential units being both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income. Affordability must be maintained for an initial compliance period of a minimum of 15 years, 26 U.S.C. § 42(i)(1), and is also subject to an extended use period of an additional 15 years beyond the compliance period, 26 U.S.C. § 42(h)(6)(D). Housing sponsors, in order to maximize tax credit allocations, often elect to place affordability controls on all units within a project. None of the proposed amendments deviate from those standards.

The IRC, at Section 42(g)(2), sets forth rent-restriction requirements for tax-credit units. In general, gross rent (as defined at Section 42(g)(2)(B) of the Code) may not exceed 30 percent of tenant income. The IRC, however, does not impose any restrictions on the amount or percentage of annual or other periodic rent increases. Thus, proposed new N.J.A.C. 5:80-33.32(f)15, requiring project owners to certify that during the preceding 12-month period the rent charged to each existing tenant did not increase by more than five percent annually, may be considered to exceed Federal standards. However, the Agency, as further explained in the Economic [sic: Social] Impact statement above, believes the proposed rule is warranted in order to protect tenants in State tax-credit-financed projects from excessive, sporadic rent increases. The IRC sets forth only minimum standards; individual states are permitted to impose more restrictive requirements in their policies.

Other than as set forth above, the proposed amendments do not contain any standards or requirements that exceed the standards or requirements imposed by applicable Federal law (26 U.S.C. § 42 and the regulations promulgated thereunder at 36 CFR 1.42 et seq.).

### **Jobs Impact**

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

### **Agriculture Industry Impact**

The proposed amendments are not expected to have any impact on the agriculture industry in the State.

### **Regulatory Flexibility Analysis**

The proposed amendments will apply primarily to project developers and managing agents of such projects, most of which are small businesses as defined in section 2 of the Regulatory Flexibility Act, N.J.S.A. 52:14B-17.

The Agency does not anticipate that there will be any adverse economic impact on small businesses of different types and different sizes as a result of the proposed amendments. The IRC mandates certain minimum requirements for low-income housing tax-credit financed projects, from which no deviations are permitted. Further, the Agency has a statutory obligation

to “[s]timulate the construction, rehabilitation and improvement of **adequate and affordable** housing in the State.” N.J.S.A. 55:14K-2e(2) (emphasis added). Therefore, the Agency deems it prudent to require that all applicants, awardees, managing agents, and related parties and individuals be held to the same standards, including, without limitation, the same compliance and reporting requirements and timetables, without exemption or exception; where extraordinary circumstances are present, the Agency’s waiver provisions may be availed of. Any reporting, recordkeeping, and compliance requirements are discussed in the Summary above, as are any need for professional services.

### **Housing Affordability Impact Analysis**

The LIHTC program promotes the construction and rehabilitation, and, therefore, preserves and augments the supply, of affordable housing in the State. Each year, the Agency funds approximately 1,000 units of newly constructed or significantly rehabilitated rental housing under the QAP; the Agency expects to fund a similar number of affordable rental units this year. Units financed under the tax credit program serve residents earning no more than 60 percent of area median gross income. Thus, the proposed amendments are expected to impact globally approximately 1,000 units of new or rehabilitated rental housing serving low- and moderate-income tenants; the overwhelming majority of such units are contained in multifamily structures.

The rulemaking includes, at proposed new N.J.A.C. 5:80-33.32(f)15, an additional owner-certification requirement to attest that the rent charged to each existing tenant did not increase by more than five percent annually, including due to changes in utility allowance calculations. There are currently no tax credit regulations that monitor rent increases for tenants under Section

42 of the IRC; regulations only govern the maximum rent that can be charged. The Agency believes that rent increases should be limited to no more than five percent annually and, if necessary, should be phased in to reduce any financial hardship to tenants.

### **Smart Growth Development Impact Analysis**

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

As indicated in the Housing Affordability Impact Analysis above, the proposed amendments are expected to impact approximately 1,000 prospective new or rehabilitated rental housing units, the vast majority of which will be in multifamily housing structures. Additionally, certain of the proposed amendments will apply to the approximately 43,000 existing tax-credit units in the State, most of which are also in multifamily structures.

The Agency proposes to amend the first set-aside in the Family Cycle at N.J.A.C. 5:80-33.4(a)1 and the Senior Cycle at N.J.A.C. 5:80-33.5(a)1 to increase the number and type of urban projects that are eligible to compete in the respective Cycles, providing additional opportunities to direct growth and development into appropriate areas of the State. These set-asides are expected to encourage development in such areas that contribute to a concerted community revitalization plan, which is required under Section 42 of the Code. Eligible projects must be located within both a QCT and a TUM and also one of the following areas: Neighborhood Revitalization Plan, HOPE VI, Choice Neighborhood, transit village, urban transit hub, Main Street Designated District, Designated Center, or meet the definition of a

redevelopment project. The set-asides help satisfy the 40 percent allocation of credits for urban (TUM) projects.

The Agency proposes to amend the definition of “redevelopment project” at N.J.A.C. 5:80-33.2 by clarifying that redevelopment areas and areas in need of rehabilitation in non-smart growth areas must be, or have been, previously developed. This change seeks to eliminate farmland and previously undeveloped land from being considered a redevelopment area in furtherance of the State’s smart growth policy.

The Agency proposes to amend the point category for projects located within a ready to grow area at N.J.A.C. 5:80-33.15(a)7 to reduce from five points to two points and eliminate the two-prong requirement. In order to be eligible for the two points, projects would still be required to meet the ready to grow area definition, which is a smart growth area or alternatively, an area suitable for growth established by the presence of water and wastewater infrastructure. The elimination of the two-prong requirement, which previously required a project to be located within a ready to grow area and also a transit village, urban transit hub, Main Street Designated District, or a Designated Center, or meet the definition of a redevelopment project, is expected to increase areas of the State that are eligible for tax-credit projects. This point category currently unfairly penalizes projects located outside of those planning areas, which are largely found in urban municipalities, by requiring additional actions by municipalities to declare areas in need of redevelopment or rehabilitation in order to qualify for these points. As a solution, those additional planning areas, which are rightly prioritized for growth, have been added to the urban QCT set-asides in the Family and Senior Cycles. This change has been made as a result of multiple comments from municipalities and developers regarding the time, effort, and cost involved in declaring redevelopment areas in order to be competitive.

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

SUBCHAPTER 33. LOW INCOME HOUSING TAX CREDIT QUALIFIED ALLOCATION  
PLAN

5:80-33.2 Definitions

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

...

“Brownfield site” means, pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq., “any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant.” [For the purposes of this subchapter, the proposed redevelopment for the site under consideration may also have an approved New Jersey Department of Environmental Protection Remedial Action Work Plan.] **As evidence, applicants shall submit a Remedial Action Work Plan or Response Action Outcome (RAO) approved by the New Jersey Department of Environmental Protection (DEP) or its designee (a Licensed Site Remediation Professional or LSRP) or a No Further Action (NFA) letter issued by the DEP within the past 10 years. The NFA shall be for an unrestricted use or, if it is for a limited**

**restricted use, the applicant shall provide confirmation from an LSRP that the proposed development may still be constructed consistent with the limited use.**

...

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

...

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

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

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

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

i. – iii. (No change.)

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

A developer fee of up to [8.00] **4.00** percent shall be permitted for building acquisition costs[; however, the non-deferred amount of this portion of the developer fee shall not exceed four percent of the acquisition amount]. The cost of acquiring a building shall not be allowed in

the calculation of the developer fee if the acquisition is between related parties. **A related party, as used in this definition, means a relationship between parties when there is a spousal or family relationship, parent-subsidary relationship, or where owners, officers, directors, partners, stockholders, or members of one business entity hold a 10 percent or more interest in the other business entity.**

...

**“Hackensack Meadowlands District” means land subject to the jurisdiction of the New Jersey Sports and Exposition Authority (NJSEA) pursuant to the Hackensack Meadowlands Agency Consolidation Act, N.J.S.A. 5:10A-1 et seq.**

...

“Individuals with physical disabilities” means any individual who, because of a physical condition [with adult onset], needs affordable housing with supportive services, including assistance with three or more activities of daily living (that is, bathing, dressing, using the toilet, eating, and getting in or out of a bed or chair), to live independently in community settings.

...

[“Meadowlands Commission” means the New Jersey Meadowlands Commission created by section 5 of the Hackensack Meadowlands Reclamation and Development Act, N.J.S.A. 13:17-5.]

...

**“Neighborhood Revitalization Plan” means a plan, as further defined at N.J.A.C. 5:47-3, for the preservation or revitalization of an eligible neighborhood.**

...

**“Public transportation” means any mode of transit with fixed fares and daily scheduled service with no seasonal interruption.**

...

“Qualified nonprofit organization” means, pursuant to Section 42(h)(5)(B) of the Code, an entity that owns an interest in the project (directly or through a partnership) and materially participates (within the meaning of Section 469(h) of the Code) in the development and operation of the project throughout the compliance period and is not affiliated with or controlled by a for-profit organization.

1. – 2. (No change.)

The nonprofit points are available exclusively to Section 501(c)(3) or (4) housing sponsors [who comprise] **comprising** at least 50 percent of the general partner interest in the final ownership entity (the limited partnership). Limited liability companies and limited liability partnerships are not eligible for the nonprofit points.

In order to qualify for the nonprofit points, the application shall include:

1.- 4. (No change.)

[At the point] **When** the project [places] **is placed** in service, the owner shall be required to [submit an attorney opinion letter which states] **provide a written legal opinion attesting** that neither the for-profit developer with a financial interest in the project nor any member of the investor limited partner is or has been a member of the qualified nonprofit organization’s board of directors.

“Ready to grow area” means an area that has the capacity for growth and has received recognition from the State of this capacity, either through a planning process or through [the

presence of] **documentation that adequate** water supply and wastewater infrastructure **are available** to serve the project. A project shall be considered to be in a ready to grow area if it is located within at least one of the areas designated in 1 and 2 below by the tax credit application deadline:

1. (No change.)

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

i. – v. (No change.)

vi. Is located within an area identified for development and/or redevelopment within the [“Land Use Plan Map of the Meadowlands District Master Plan” and] **Hackensack Meadowlands District as shown on the [“]Hackensack Meadowlands District Official Zoning Map[“], as amended and supplemented by the [Meadowlands Commission] NJSEA.**

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

**in the Municipal Land Use Law at N.J.S.A. 40:55D-7.** The project must further the goals and objectives of the approved plan.

...

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

[Planning Areas are large masses of land that share a common set of conditions, such as population density, infrastructure systems, level of development, or natural systems. Centers are compact forms of development that, compared to sprawl development, consume less land, deplete fewer natural resources, and are more efficient in the delivery of public services. For more information about the State Development and Redevelopment Plan (State Plan), contact the New Jersey Office for Planning Advocacy. The State Plan is not itself a regulation but a statement of State policy that has been adopted by the State Planning Commission pursuant to a statute to guide State, regional, and local agencies in the exercise of their statutory authority.]

For more information on whether a project is located within a smart growth area, visit the site evaluator website at [www.evaluator.nj.gov](http://www.evaluator.nj.gov) or contact NJHMFA.

...

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

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

2. – 5. (No change.)

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

...

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

1. – 6. (No change.)

...

“Transit village” means a community [with a] **served by** bus, train, light rail, or ferry [station] that has [developed a plan to achieve its goals] **been designated as such by the State’s Transit Village Task Force pursuant to criteria available at <http://www.state.nj.us/transportation/community/village/criteria.shtm>**. The transit village program is designed to spur economic development, urban revitalization, and private-sector investment [around passenger rail stations] **using access to transit as an asset**. The New Jersey Department of Transportation coordinates [a task force of different] **the Task Force composed of various** State agencies [to], **which** review **municipal** applications and make recommendations. Transit villages must be designated by the [Transit Village Task Force by the] tax credit application deadline.

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

1. – 4. (No change.)

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

#### 5:80-33.3 Application cycles

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

#### 5:80-33.4 Family Cycle

(a) Non-age restricted developments may apply to this cycle. Not less than 50 percent of the [available tax credit authority attributable to a particular calendar year] **total credits awarded in the Family, Senior, and Supportive Housing Cycles** will be available in the Family Cycle, and the maximum annual allocation of credits to any developments competing in this cycle is

\$1,750,000. Total development costs shall not exceed \$250,000 per unit for buildings of one to four residential stories, \$275,000 per unit for buildings with five or six residential stories, and \$300,000 per unit for buildings with over six residential stories, excluding capitalized permanent reserves, non-basis-eligible off-site improvements, **up to \$10,000 per unit and \$400,000 maximum for community center or social service space (subject to third-party cost certification)**, and required deferred developer fee, if any. If multiple tranches of this cycle are awarded, all set-asides for this cycle will be applicable to each tranche. Minimum rehab projects are not eligible to apply in this cycle. Unless market area demographics and/or financial feasibility demonstrate otherwise, all non-age-restricted projects (except minimum rehabilitation, preservation, and historic rehabilitation projects) must adhere to the following minimum bedroom distributions: the combined number of efficiency and one-bedroom tax credit units shall be no greater than 20.00 percent of the tax credit units; at least 30.00 percent of the tax credit units shall be two-bedroom units; and at least 20.00 percent of the tax credit units shall be three-bedroom units. There are two set-asides in the Family Cycle:

1. [HOPE VI/Choice Neighborhood] **Qualified Census Tract (QCT)** set-aside: The first reservation of credits from the Family Cycle shall be given to the highest-ranking [eligible application from a HOPE VI or Choice Neighborhood project with a majority of its units] **project that contributes to a concerted community revitalization plan and is fully located within both a Qualified Census Tract and a Targeted Urban Municipality (TUM). To satisfy the concerted community revitalization plan component, evidence shall be submitted that the project is located within a Neighborhood Revitalization Plan, HOPE VI Revitalization Plan, Choice Neighborhood, Transit Village, Urban Transit Hub, Main Street Designated District, or is a redevelopment project. If,**

because of lack of demand, this set-aside is not utilized, the credits shall be released into the Family Cycle for use by other eligible applications after satisfaction of any other set-aside, as applicable.

2. (No change.)

(b) Projects that receive negative points under N.J.A.C. 5:80-33.15[(a)16, 18 or 19]**(a)15, 17 or 18** shall not be eligible to compete in any set-aside.

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

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

#### 5:80-33.5 Senior Cycle

(a) Senior projects may apply to this cycle. Not less than 20 percent of the [available tax credit authority attributable to a particular calendar year] **total credits awarded in the Family, Senior, and Supportive Housing Cycles** will be available in the Senior Cycle, and the maximum annual allocation of credits to developments competing in this cycle is \$1,400,000. Total development costs shall not exceed \$250,000 per unit for buildings of one to four residential stories, \$275,000 per unit for buildings with five or six residential stories, and \$300,000 per unit for buildings with over six residential stories, excluding capitalized permanent reserves, non-basis eligible off-site improvements, **up to \$10,000 per unit and \$400,000 maximum for community center or social service space (subject to third-party cost certification)**, and required deferred developer fee, if any. If multiple tranches of this cycle are awarded, all set-asides for this cycle will be applicable to each tranche. Minimum rehab projects are not eligible to apply in this cycle. Unless market area demographics demonstrate otherwise, one-bedroom units should comprise at least 85 percent of the project. There is one set-aside in the Senior Cycle:

1. [HOPE VI/Choice Neighborhood] **Qualified Census Tract (QCT)** set-aside: The first reservation of credits from the Senior Cycle shall be given to the highest-ranking [eligible application from a HOPE VI or Choice Neighborhood project with a majority of its units] **project that contributes to a concerted community revitalization plan and is fully located within both a Qualified Census Tract and a Targeted Urban Municipality (TUM). To satisfy the concerted community revitalization plan component, evidence shall be submitted that the project is located within a Neighborhood Revitalization Plan, HOPE VI Revitalization Plan, Choice Neighborhood, Transit Village, Urban Transit Hub, Main Street Designated District, or is a redevelopment project.** If, because of lack of demand, this set-aside is not utilized, the credits shall be released into the Senior Cycle for use by other eligible applications.

(b) Projects [which] **that** receive negative points under N.J.A.C. 5:80-33.15[(a)16, 18 or 19]**(a)15, 17 or 18** shall not be eligible to compete in any set-aside.

(c) Reservations shall first be awarded to the highest-ranking eligible project qualifying for the aforementioned prioritized set-aside. Thereafter, reservations shall be awarded to the highest-ranking eligible projects. To [insure] **ensure** equitable distribution if there are both excess demand and multiple ranking eligible applications from a single municipality, NJHMFA shall fund no more than two projects per year from the same municipality **with a population of less than 100,000 and no more than three projects per year from the same municipality with a population of 100,000 or more based on the most recent American Community Survey Table DP05 (ACS Demographic and Housing Estimates), U.S. Department of the Census** (however, projects funded through the Supportive Housing Cycle will not be included in this count). **To ensure equitable distribution if there are both excess demand and multiple**

**ranking eligible applications from a single developer, NJHMFA shall fund no more than three projects per year from the same developer/general partner/managing member.**

Funding of projects shall be prioritized in the following manner: the highest ranking eligible project(s) in the Family Cycle, the Senior Cycle, and lastly, the Final Cycle. Projects that received an award of credits in a previous year that are now re-competing shall not be included in the totals for purposes of the equitable distribution provision described herein.

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

#### 5:80-33.6 Supportive Housing Cycle

(a) Supportive housing projects in which a minimum of 25.00 percent of the total project units are rented to individuals with special needs may apply to the Supportive Housing Cycle. There must be an executed agreement between the proposed owner entity and a supportive services provider that will submit a social services plan consistent with requirements of this subsection for the Supportive Housing Cycle and approved by NJHMFA. There will be not less than 12.5 percent of the [available tax credit authority attributable to a particular calendar year] **total credits awarded in the Family, Senior, and Supportive Housing Cycles** available in the Supportive Housing Cycle and the maximum annual allocation of credits to projects competing in this cycle is [\$1,200,000] **\$1,400,000**. Total development costs shall not exceed \$250,000 per

unit for buildings of one to four residential stories, \$275,000 per unit for buildings with five or six residential stories, and \$300,000 per unit for buildings with over six residential stories, excluding capitalized permanent reserves, non-basis-eligible off-site improvements, **up to \$10,000 per unit and \$400,000 maximum for community center or social service space (subject to third-party cost certification)**, and required deferred developer fee, if any.

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

(c) Projects [which] **that** receive negative points under N.J.A.C. 5:80-33.15[(a)16, 18 or 19]**(a)15, 17 or 18** shall not be eligible to compete in [a] **any** set-aside.

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

#### 5:80-33.7 Final Cycle

(a) All projects, including minimum rehab projects, may apply to this cycle. All credits not utilized under N.J.A.C. 5:80-33.4 through 33.6 and 33.8 (if any) shall be made available in the Final Cycle and the maximum annual allocation of credits to projects competing in this cycle is \$1,750,000. Total development costs shall not exceed \$250,000 per unit for buildings of one to

four residential stories, \$275,000 per unit for buildings with five or six residential stories, and \$300,000 per unit for buildings with over six residential stories, excluding capitalized permanent reserves, non-basis eligible off-site improvements, **up to \$10,000 per unit and \$400,000 maximum for community center or social service space (subject to third-party cost certification)**, and required deferred developer fee, if any. Unless market area demographics and/or financial feasibility demonstrate otherwise, all non-age-restricted projects (except minimum rehabilitation, preservation, and historic rehabilitation projects) must adhere to the following minimum bedroom distributions: the combined number of efficiency and one-bedroom tax credit units shall be no greater than 20.00 percent of the tax credit units; at least 30.00 percent of the tax credit units shall be two-bedroom units; and at least 20.00 percent of the tax credit units shall be three-bedroom units.

(b) If less than 10 percent of the ceiling has been awarded to qualified nonprofit organizations, then awards from the Final Cycle shall first be made to such organizations until not less than 10 percent of the credit ceiling has been awarded to such organizations. If the Federal nonprofit requirement as stated in 26 U.S.C. [§42(h)(5)(A)] **§ 42(h)(5)(A)** is satisfied, reservations shall be awarded to the highest-ranking eligible projects. To [insure] **ensure** equitable distribution if there are both excess demand and multiple ranking eligible applications from a single municipality, NJHMFA shall fund no more than two projects per year from the same municipality **with a population of less than 100,000 and no more than three projects per year from the same municipality with a population of 100,000 or more based on the most recent American Community Survey Table DP05 (ACS Demographic and Housing Estimates), U.S. Department of the Census** (however, projects funded through the Supportive Housing Cycle will not be included in this count). **To ensure equitable distribution if there are**

**both excess demand and multiple ranking eligible applications from a single developer, NJHMFA shall fund no more than three projects per year from the same developer/general partner/managing member.** Funding of projects shall be prioritized in the following manner: the highest ranking eligible project(s) in the Family Cycle, the Senior Cycle, and lastly, the Final Cycle. Projects that received an award of credits in a previous year that are now re-competing shall not be included in the totals for purposes of the equitable distribution provision described herein.

(c) (No change.)

#### 5:80-33.8 Reserve

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

1. Since NJHMFA does not award partial allocations, one of the purposes of the Reserve is to provide supplemental awards to eligible projects that can only be partially funded with the credits remaining in their respective cycles. Supplemental awards are given first to the highest-ranking, partially funded eligible project from the Family Cycle. NJHMFA then evaluates the highest-ranking, partially funded eligible projects from the Senior and Supportive Housing Cycles. The next supplemental awards shall be given to the project

which requires the least amount of credits from the Reserve to achieve the maximum eligible credit amount. Should sufficient credits exist in the Reserve, NJHMFA [shall] **may** give a supplemental award to the highest-ranking, partially funded eligible projects from both the Senior and Supportive Housing Cycles. Simultaneously, credits remaining from cycles that did not receive a supplemental award shall be deposited into the Reserve.

2. Hardship requests for additional credits from the Reserve are limited to \$100,000 per project. Total development costs shall not exceed \$250,000 per unit for buildings of one to four residential stories, \$275,000 per unit for buildings with five or six residential stories, and \$300,000 per unit for buildings with over six residential stories, excluding capitalized permanent reserves, non-basis eligible off-site improvements, **up to \$10,000 per unit and \$400,000 maximum for community center or social service space (subject to third-party cost certification)**, and required deferred developer fee, if any. Hardship requests must be documented to the satisfaction of NJHMFA and must demonstrate the existence of an unforeseen emergency situation where the completion of the project is jeopardized without an award of additional low-income housing tax credits. No more than one hardship award shall be approved with respect to a given project. Hardship applications to the Reserve are accepted on an ongoing basis until May 15. To apply to the Reserve for a hardship reservation of additional credit, applicants must follow the procedures at N.J.A.C. 5:80-33.13(a)1.

3. Approximately \$2,000,000 in credits shall be set aside for eligible family projects with up to a 55 percent affordability component. The project's market study at N.J.A.C. 5:80-33.12(c)1ii shall clearly demonstrate that the tax credit units provide a minimum 20 percent market advantage compared to comparable market rate units. Total development costs shall

not exceed \$250,000 per unit for buildings of one to four residential stories, \$275,000 per unit for buildings with five or six residential stories, and \$300,000 per unit for buildings with over six residential stories, excluding capitalized permanent reserves, non-basis eligible off-site improvements, **up to \$10,000 per unit and \$400,000 maximum for community center or social service space (subject to third-party cost certification)**, and required deferred developer fee, if any. Projects shall achieve a minimum of 65 percent of the maximum score under the ranking criteria established under N.J.A.C. 5:80-33.15. Should multiple projects be deemed eligible at the same Tax Credit Committee meeting, credits shall be awarded in accordance with the tiebreaker at N.J.A.C. 5:80-33.19[(a)liii](a)lii; however, NJHMFA shall fund at least one project in a Targeted Urban Municipality and one project not in a Targeted Urban Municipality, provided NJHMFA receives eligible applications from both areas. Mixed income applications to the Reserve are accepted until two months prior to the anticipated date that credits for the Family Cycle at N.J.A.C. 5:80-33.4 are to be awarded. Credits not awarded under this paragraph shall be deposited for use in the Family Cycle at N.J.A.C. 5:80-33.4.

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

- i. Have been scored by NJHMFA as being within five points, including any applicable cure points, of the lowest-scoring awarded project in its respective cycle;**
- ii. Meet the criteria set forth at N.J.A.C. 5:80-33.12;**
- iii. Not be “substantially incomplete”; and**
- iv. Satisfy at least one of the following:**
  - (1) Represent a regional or geographic location that has received limited affordable housing resources;**
  - (2) Leverage substantial financial resources from the Federal government or from other non-NJHMFA funding sources;**
  - (3) Affirmatively further the purposes and policies of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968) or contribute to a municipal fair share housing development plan;**
  - (4) Respond to an urgent housing need or an underserved population;**
- or**
- (5) Meet other critical State housing policy directives, goals, or priorities.**

5:80-33.9 Volume cap credits

(a) Projects financed by tax-exempt bonds that request tax credits pursuant to Section 42(h)(4) of the Code are required by Section 42(m)(1)(D) of the Code to satisfy the requirements for allocation of a housing credit dollar amount under the qualified allocation plan. Projects requesting tax credits entirely from volume cap do not have to compete and there are no cycle deadlines. However, complete applications shall be submitted at least one month before the tax-

exempt bonds are sold. The following information shall be included in order for the application to be deemed complete: all applicable sections of the application corresponding to eligibility requirements at N.J.A.C. 5:80-33.12; those sections of the application corresponding to the point categories for period of restriction, conversion to tenant ownership (if applicable), tax abatement (if applicable) and the negative point categories; and a sponsor certification and breakdown of costs and basis. A copy of the appraisal/market study required by the applicant's lender and/or syndicator may be submitted in lieu of the market study required at N.J.A.C. 5:80-33.12(c)1ii.

1. – 3. (No change.)

4. Projects that would have received negative points under N.J.A.C. 5:80-33.15[(a)16, 18 or 19]**(a)15, 17 or 18** shall not be issued tax credits until such items are corrected.

5. (No change.)

(b) [If a municipality has granted a density bonus to assist the low- or moderate-income units in a project, the project] **A mixed-income or mixed-use project that is part of a municipal fair share housing development plan or a court-approved judgment of repose or compliance, including, but not limited to, developments that have received a density bonus,** may not receive volume cap credits unless the applicant can conclusively demonstrate that the market rate residential or commercial units are unable to internally subsidize the affordable units [despite the density bonus] and the affordable units are developed contemporaneously with the commercial or market rate residential units. In evaluating these criteria, NJHMFA shall [adopt] **apply** the standards as promulgated by the DCA for similar types of projects seeking Balanced Housing funds. This subsection shall not be evaded by failing to apply all or any portion of the subsidy to the low- or moderate-income units, by diverting all or any portion of the subsidy to

other uses, or by using any other device in which all or any portion of the subsidy is not used to benefit low- or moderate-income housing.

(c) Applicants that have a general partner, voting member, **property manager**, developer, **principal**, or a related party **of any of the foregoing** who owned [a managing or controlling] **or managed any** interest in an LIHTC project when title was foreclosed thereon by entry of judgment or deed in lieu of foreclosure [or that has ongoing uncorrected issues of non-compliance] shall not be eligible for tax credits for a period of seven years from the date of entry of the judgment of foreclosure[,] **or** the date of the deed in lieu of foreclosure, [or the date all issues of non-compliance are deemed corrected by the Agency,] whichever shall have occurred [most recently] **first**. **Applicants that have a general partner, voting member, property manager, developer, principal, or a related party of any of the foregoing who owned or managed any interest in an LIHTC project that the Tax Credit Committee (Committee) determined exhibits a pattern of uncorrected noncompliance shall not be eligible for a period of three years from the date all issues of noncompliance are deemed by the Committee to have been corrected.**

#### 5:33.11 Cycle Deadlines

(a) – (e) (No change.)

(f) If an applicant fails to respond to NJHMFA's notification of curable defects within the 48-hour cure period, or if an applicant's response is non-responsive to the question asked, a negative inference shall be drawn. Failure to respond to an item in a cure letter will result in the denial of points if the questions is with respect to a point category; negative points if with respect

to the point categories at N.J.A.C. 5:80-33.15(a)15 to [19] **18**; or ineligibility if with respect to an eligibility requirement.

(g) (No change.)

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

(a) [If a municipality has granted a density bonus to assist the low- or moderate income units in a project, the project] **A mixed-income or mixed-use project that is part of a municipal fair share housing development plan or a court-approved judgment of repose or compliance, including, but not limited to, developments that have received a density bonus,** may not compete for tax credits (ceiling tax credits), unless the applicant can conclusively demonstrate that the market rate residential or commercial units are unable to internally subsidize the affordable units [despite the density bonus] and the affordable units are developed contemporaneously with the commercial or market rate residential units. In evaluating these criteria, NJHMFA shall [adopt] **apply** the standards as promulgated by the DCA for similar types of projects seeking Balanced Housing funds. This subsection shall not be evaded by failing to apply all or any portion of the subsidy to the low- or moderate-income units, by diverting all or any portion of the subsidy to other uses, or by using any other device by which all or any portion of the subsidy is not used to benefit low- or moderate-income housing. For example, if a site was originally zoned at four units per acre and a rezoning resulted in six units per acre with a 20 percent set-aside for low- and/or moderate-income units, then the site would be the recipient of a density bonus. If the developer built at six market units per acre, subdivided a portion of the acreage and donated that land to a for-profit or nonprofit developer, then the new owner may not compete for ceiling tax credits if the market rate residential units were able to

subsidize the affordable units. Alternatively, if on the same site the number of low- and moderate-income units is increased without a corresponding increase in density, then the additional affordable units would be eligible to compete for ceiling tax credits.

(b) (No change.)

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

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

i. – iii. (No change.)

iv. Updates of market studies more than six months old shall reflect a recent site visit by the market analyst, updated information on the comparable properties, and an analysis of any significant changes to the subject development. **Only one update to the market study is permitted. Applicants shall submit both the original market study and any applicable update in the application submission.**

2. – 5. (No change.)

6. All funding sources planned for the project shall be committed to the project. Commitments shall be firm and contain only conditions that are under the control of the applicant (that is, commitments cannot be conditioned on the availability of funds). The amount and all terms of the funding commitment shall be listed in the documentation provided under (c)6i through viii below. The amount and terms shall be used by NJHMFA

in its underwriting analysis. Commitment letters shall be countersigned/accepted in writing by the applicant. Expired commitments, letters of interest/intent, and term sheets do not qualify as commitments. To evidence commitments for funding sources, the following is required:

i. – ix. (No change.)

x. Municipal Affordable Housing Trust Funds: A copy of the current spending plan listing the project [which] **that** has been approved by the municipality and submitted to DCA **or the courts** by the application deadline shall be submitted in the application.

7. (No change.)

8. Successful participation in the New Jersey Clean Energy Program’s (NJCEP) NJ *[ENERGYEfficient]* **Energy Star Certified Homes Program Version 3.0 (Tier 2), Energy Star Multifamily High Rise Program**, or equivalent per the Guide to NJHMFA ENERGY STAR Equivalency Requirements (Guide), incorporated herein by reference as **the** subchapter Appendix, shall be required for all applications. All applicants shall comply with the requirements of the Guide. Applications shall include a copy of a signed contract between the applicant and a Home Energy Rating System (HERS) rater [(per NJCEP NJ *ENERGYEfficient* Homes Program guidelines)] and a signed letter of intent provided by NJHMFA, which states that the applicant has read the Guide and will comply with all requirements thereof. At the time a project places in service, owners shall submit to NJHMFA the [NJ *ENERGYEfficient* Homes] Certificates issued by the NJCEP (or equivalent) for each dwelling unit/building, as applicable, in the project.

9. (No change.)

10. Applicants requesting acquisition credits shall include an attorney's opinion regarding each building's eligibility for acquisition credits. **The acquisition value shall be the lesser of the appraised value or the purchase price or lease fee of the realty and any buildings and improvements thereon in the most recent arm's length transaction. The appraised value of the real estate may be considered if the arm's length transaction exceeds 10 years.** Applicants shall submit an appraisal not older than six months, **which may be subject to third-party review.** If acquisition credits are denied, the application shall still be considered for rehabilitation credits so long as the project remains feasible without the acquisition credit. NJHMFA reserves the right to require a capital needs assessment for any project seeking acquisition credits and/or an independent appraisal which conforms to the Uniform Standards of Professional Appraisal Practice (USPAP) for those projects that have land acquisition costs totaling over \$7,500 per unit.

11- 13. (No change.)

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

i. (No change.)

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

provided or a letter of support from the local/county Continuum of Care (CoC) is recommended.

iii. (No change.)

iv. Sources of funding and, **if applicable**, a social services plan that includes a detailed description of the scope of services to be provided to the individuals with special needs. If the social service provider is partnering with other community services, that relationship must be substantiated with executed letters of agreement detailing the services to be provided and the term thereof;

v. – vi. (No change.)

15. – 17. (No change.)

**18. Applicants that have a general partner, voting member, property manager, developer, principal, or a related party of any of the foregoing who owned or managed any interest in an LIHTC project when title was foreclosed thereon by entry of judgment or deed in lieu of foreclosure shall not be eligible for tax credits for a period of seven years from the date of entry of the judgment of foreclosure or deed in lieu of foreclosure, whichever shall have occurred first. Applicants that have a general partner, voting member, property manager, developer, principal, or a related party of any of the foregoing who owned or managed any interest in an LIHTC project that the Tax Credit Committee (Committee) determined exhibits a pattern of uncorrected noncompliance shall not be eligible for tax credits for a period of three years from the date all issues of noncompliance are deemed corrected by the Committee.**

5:80-33.15 Point system for the Family Cycle

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

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

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

ii. Projects located in [Qualified Census Tracts] a **TUM** shall be awarded 15 points[. To qualify for this point category, a majority of the units shall be located within a Qualified Census Tract]; or

iii. (No change.)

2. – 3. (No change.)

4. Applicants may [select the options in (a)4i and ii below, or the options in (a)4i and iii below,] **receive up to five points** for municipal[, county, and public housing authority (PHA)] support.

i. Projects that receive a fixed rate tax abatement for a 15-year term with a rate of no more than [10] **five percent** (inclusive of all fees) on the residential component shall receive five points. **Projects that receive a fixed rate tax abatement for a 15-year term with a rate greater than five percent but equal to or less than 10 percent (inclusive of all fees) on the residential component shall receive four points** or projects that receive a fixed rate tax abatement for a 15-year term with a rate on the residential component of more than 10 percent shall receive three points. If the specifics of the tax abatement (for example, percentage of rent roll, term) are not recited in the resolution/ordinance, the financial agreement to the tax abatement shall be included with the application. Proof of an applicant's tax-exempt nonprofit status is not sufficient to qualify for points for tax abatement. In order to receive points under this category, the resolution/ordinance approving the abatement shall be submitted and must cite the proper statutory authority. For projects receiving tax abatement under the New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., the first stage of the exemption period shall be for no less than 15 years. Only projects utilizing financing from NJHMFA may be granted abatement under N.J.S.A. 55:14K-37(b). For information regarding NJHMFA financing, please contact the NJHMFA Division of Multifamily Programs and Credit at (609) 278-7400.

[ii. Projects that receive municipal, county, Casino Reinvestment Development Authority (CRDA), or PHA support shall receive up to five points for the contribution (one point per percentage of total development costs, up to a maximum of five points).

iii. Projects that receive project-based rental assistance for at least 25 percent of the total units for a minimum term of 10 years shall receive three points.]

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

[v. For purposes of this point category, municipal, county, or PHA support means contribution of land for nominal consideration (\$100.00 per parcel or less) or a discounted rate, or monetary contribution to the project (for example, HOME, RCA, CDBG, UDAG, or other non-amortizing, cash flow repayment, subordinate debt). Evidence of support shall be in the form of an authorized resolution or ordinance from the appropriate authority, and all steps necessary to make the resolution or ordinance legally binding shall have been completed. As evidence of the fair market value of a land contribution, the application shall include an appraisal (not older than six months) certified to NJHMFA, conducted by an NJHMFA-approved appraiser stating the “as is” value of contributed land. The acquisition price shall then be subtracted from the land value in order to determine the amount of the contribution for point purposes. The tax escrow shall equal the two-year amount reflected in the cash flow pro forma, and shall be confirmed by the municipality prior to the application deadline as the anticipated tax assessment when the project is completed.]

5. – 6. (No change.)

7. Projects located within [both] a ready to grow area [and any of a transit village, an urban transit hub, a Main Street Designated District, or a Designated Center, or redevelopment projects located within a ready to grow area] shall be awarded [five] **two** points.

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

i. - ix. (No change.)

x. Emergency [pull cords/call button—senior] **panic/call button, necklace, or bracelet for all residents—senior** projects only;

xi. – xiv. (No change.)

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

from NJHMFA. It is incumbent upon the applicant to demonstrate how each substitute amenity provides a comparable benefit to the tenants as those amenities listed below.

i. – iv. (No change.)

v. Average interior unit sizes of 500 square feet for efficiencies, 650 square feet for one bedroom, [800] **875** square feet for two bedrooms, 1,100 square feet for three bedrooms, and 1,200 square feet for four bedrooms; and

vi. (No change.)

10. (No change.)

11. Applications may receive up to a maximum of six points for the following (to be eligible for points in this category, proximity to the [following] locations **in (a)11i(1) through (15) below** shall be addressed in the market analysis as required at N.J.A.C. 5:80-33.12(c)1). At a minimum, structures must have building permits issued and be under construction to qualify:

i. Unless otherwise indicated, projects located within one-half mile of the positive land uses **in (a)11i(1) through (15) below or, with respect to (a)11i(16) and (17) below only, inclusion within the defined categories**, shall receive two points [for proximity to each of the following]. Multiple points shall not be awarded for proximity to multiple positive land uses of the same category (that is, a project located within one-half mile of two supermarkets will receive two points, not four points):

(1) – (13) (No change.)

(14) Post office, city hall, county courthouse; [and]

(15) Fire/police station[.];

**(16) Location within a brownfield site; and**

**(17) A redevelopment project.**

ii. – iii. (No change.)

12. (No change.)

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

i. (No change.)

ii. Applicants may select one of the following green building options and receive four points:

[(1) Incorporation of a solar hot water or water retainage and reuse system. The solar hot water equipment must be designed and installed to meet 100 percent of hot water demands for common area need. The water retainage and reuse system must be designed and installed to meet 100 percent of non-potable common area demands (that is, all toilet flushing and landscaping needs). In order to qualify for these points, the application shall include a copy of the completed and signed letter of intent from the developer to NJHMFA. At the time a project places in service, the proposed system must be installed and it shall be inspected by NJHMFA.

(2) Successful participation in the New Jersey Housing and Mortgage Finance Agency Green Future Program. In order to qualify for these points, the application shall include a copy of the completed and signed letter of intent from the developer to NJHMFA. Prior to issuance of the IRS Form 8609, the owner shall have successfully completed the requirements of the Green Future Program, fully approved by NJHMFA.

(3) EPA ENERGY STAR Homes V.3 Certification. Applications shall include a copy of a signed contract between the applicant and a Home Energy Rating System

(HERS) rater (per NJCEP ENERGY STAR Homes Program (tier 2) guidelines) and an NJHMFA form letter of intent executed by the applicant, which states that the applicant has read the NJHMFA Green Point Guide and will comply with all requirements thereof. At the time a project places in service, owners shall submit to NJHMFA the ENERGY STAR Homes Certificate issued by the EPA or NJCEP for each dwelling unit/building in the project.

(4) Incorporation of a solar photovoltaic system into the project. The solar photovoltaic system must meet the following standards: Be sized to cover at least 75 percent of the project's common area electrical expense and be at least a 20 kilowatt system. Documentation for this point includes a written and signed quote from a Board of Public Utilities (BPU)-certified solar installer indicating the location, size, type, cost, and energy output of the proposed system and a signed affidavit from the developer agreeing to purchase, install, and maintain the system for a minimum of 20 years. (Note: Contact the BPU for information on programs available for solar photovoltaic installations. [www.njcleanenergy.com](http://www.njcleanenergy.com).)

Example: A project has an estimated common area electricity need of 50 kilowatts. The roof of the project can accommodate a 40 kilowatt system. The developer is eligible for the solar point since the 40 kilowatt system covers 80 percent of the common area usage and the system is larger than 20 kilowatts.

(5) Leadership in Energy and Environmental Design (LEED) Certification. In order to qualify for these points, the applicant shall submit the following:

(A) A signed letter of intent to become LEED certified;

(B) A copy of the applicant's proposal from an LEED accredited professional;

(C) The LEED accredited professional's accreditation certificate or LEED Provider's Provider Agreement;

(D) The LEED accredited professional's or LEED Provider's experience documentation; and

(E) For issuance of the IRS Form 8609, successful completion of the project as documented by an LEED Certificate or letter of completion from the United States Green Building Council (USGBC) is required.

(6) National Green Building Standard (NGBS) Certification. The applicant shall submit the following:

(A) A signed letter of intent to become National Green Building certified (a Certified Green Home); and

(B) A written proposal from an NGBS Verifier, including:

I. A copy of the NGBS Verifier's Accreditation Certificate; and

II. Documentation of the NGBS Verifier's experience.

(C) For issuance of the IRS Form 8609, successful completion of the program as documented by the NGBS Verifier is required.

(7) Climate Choice Homes Program/Energy Star Tier 3 Participation. Achievement of a Final HERS Index of 45 or below for each unit. In order to qualify for this point, the applicant shall include:

(A) A copy of the completed and signed letter of intent from the developer to NJHMFA;

(B) A signed contract with a certified HERS rater; and

(C) A letter from a contracted HERS rater attesting to design measures already incorporated and the developer's path to successful achievement of a HERS Index of 45 or below.

(D) For issuance of the IRS Form 8609, successful completion of the program as documented by the NJ Clean Energy Program is required.]

**(1) Enterprise Green Communities, Mandatory + 35 optional points or higher;**

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

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

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

**(5) Living Building Challenge; or**

**(6) Passive House.**

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

**(1) Enterprise Green Communities, Mandatory;**

**(2) Leadership in Energy and Environmental Design (LEED), Bronze; or**

**(3) National Green Building Standard (NGBS).**

14. Applicants may select any of the following options. A maximum of six points shall be available in this category:

i. Rehabilitation of historic buildings[,], or projects [which] **that** involve the adaptive re-use of a non-residential building[, or Brownfields projects that have a Remedial Action Work Plan or Response Action Outcome (RAO) approved by the New Jersey Department

of Environmental Protection (DEP) or its designee (a Licensed Site Remediation Professional or LSRP), or a No Further Action (NFA) letter issued by the DEP within the past 10 years shall receive two points. The NFA shall be for an unrestricted use or, if it is for a limited restricted use, the applicant shall provide confirmation from an LSRP that the proposed development may still be constructed despite the limited use. To qualify for this point category, a] **shall qualify for one point.** A significant component of the development (40 percent or more of the units) shall be located within a historic building[,] **or** a building being adaptively re-used[, or a building located on a Brownfields site];

ii. (No change.)

iii. A project that is fully located within a school district wherein [66 percent or more of the students are either proficient or advanced proficient on the NJ ASK 4 in both math and language arts] **40 percent or more of the students are either meeting expectations (Level 4) or exceeding expectations (Level 5) on the Grade 4 Partnership for Assessment of Readiness for College and Careers (PARCC) assessment in both math and language arts** based on data available from the New Jersey Department of Education as of the application deadline shall receive two points. NJHMFA shall rely upon the data effective in the calendar year of the application deadline as well as the preceding year; and

iv. (No change.)

v. **For projects located outside of a Targeted Urban Municipality (TUM), a project that satisfies a municipal affordable housing obligation and is part of a court-approved municipal fair share housing development plan shall receive one**

**point. Sponsors shall submit the fair share housing development plan listing the project and evidence of court approval in the application.**

[15. Applications which have a general partner, voting member, developer, or a related party who owned a managing or controlling interest in a LIHTC project when title was foreclosed by entry of judgment or deed in lieu of foreclosure during the past seven years shall have five points deducted from the application's score. Failure to respond to this point category shall result in the deduction of points as provided under this paragraph.]

Recodify existing 16. – 20. as **15. – 19.** (No change in text.)

[21.] **20.** Applicants may select one of the following:

i. (No change.)

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

Recodify existing 22. – 24. as **21. – 23.** (No change in text.)

**24. Three points shall be awarded to projects located within municipalities not defined as a TUM with 6.00 percent poverty or less. Two points shall be awarded to projects located within municipalities not defined as a TUM with 6.01 percent to 10.7 percent poverty. One point shall be awarded to projects located within municipalities not defined as a TUM with greater than 10.7 percent poverty. Two points shall be awarded to projects located within municipalities defined as a TUM with 17.00 percent**

**poverty or less. One point shall be awarded to projects located within municipalities defined as a TUM with greater than 17.00 percent poverty. NJHMFA shall rely upon the American Community Survey Five-Year Estimates, Table S1701 (Poverty Status in the Past 12 Months), U.S. Department of the Census. NJHMFA shall rely upon the data effective in the calendar year of the application deadline, as well as in the preceding year.**

5:80-33.16 Point system for the Senior Cycle

The point system for the Senior Cycle includes all point categories of the Family Cycle except the point categories at N.J.A.C. 5:80-33.15(a)3 concerning large family units and **the point category at N.J.A.C. 5:80-33.15(a)14v concerning municipal fair share development plans. Additionally, the point category at N.J.A.C. 5:80-33.15(a)14iii concerning proficient schools is replaced with the following[.]:**

**“iii. A project that is fully located within a municipality wherein 25.00 percent or less of the occupied housing units are renter-occupied housing units and 25.00 percent or more of the municipality is 55 years of age or older shall receive two points. NJHMFA shall rely upon the American Community Survey Five-Year Estimates, Table S2502 (Demographic Characteristics for Occupied Housing Units) and Table DP05 (ACS Demographic and Housing Estimates), U.S. Department of the Census. NJHMFA shall rely upon the data effective in the calendar year of the application deadline as well as in the preceding year.”**

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

(a) The point system for the Supportive Housing Cycle includes all point categories of the Family Cycle except for the point categories at N.J.A.C. 5:80-33.15(a)3, concerning large family units, N.J.A.C. 5:80-33.15(a)5, concerning social services, **N.J.A.C. 5:80-33.15(a)14v, concerning municipal fair share development plans,** and N.J.A.C. 5:80-33.15[(a)21](a)20, concerning supportive housing units.

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

1. Applicants shall be awarded up to five points to the extent the social services plan required at N.J.A.C. 5:80-33.12(c)14iv incorporates the following:

i. A description of the target population's(s') supportive service needs, which may include a range of services across a wide continuum of care and intensity appropriate to the target population(s). The description must acknowledge that each special needs tenant does not have to utilize the services appropriate to the target population(s). The social services plan must address the specific appropriate and needed services to assist tenants to maintain their housing and stable community living at no cost to the tenant. Appropriate and needed services must be supported by supportive service agreements and evidence-based practice, research and/or direct practice experience. Supportive housing projects must have, at a minimum, a social service coordinator. The supportive services plan must address the following:

(1) – (2) (No change.)

(3) A description of how the service provider will facilitate tenant/landlord relationships, including detailed eligibility and ineligibility criteria for tenant selection and screening (**that is, what disqualifies a prospective tenant**), as well as

a plan for problem resolution to minimize evictions for supportive housing tenants;  
and

(4) (No change.)

2. Up to two points will be awarded as follows: one point will be awarded to applicants that will provide on-site or off-site education, **such as GED preparation or local community college** for tenants of the supportive housing units; and one point will be awarded to applicants that will provide job training and job search assistance and support to tenants of the supportive housing units. Applicants shall provide evidence of funding commitments and signed agreements with qualified service providers specifically identifying a detailed scope of services to be provided and term for the provision of these services. The identified education and/or employment service provider must have [a verifiable track record for the provision of these services] **experience providing services to the target population.**

3. – 4. (No change.)

5. Applications submitted by a qualified nonprofit organization **with 100.00 percent of the general partner interest in the final ownership entity** shall be awarded two points. **Applications submitted by a qualified nonprofit organization with at least 50.00, but less than 100.00, percent of the general partner interest in the final ownership entity shall be awarded one point.**

6. – 7. (No change.)

5:80-33.19 Tiebreaker system

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

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

[i. In the HOPE VI/Choice Neighborhood set asides at N.J.A.C. 5:80-33.4(a)1 and 33.5(a)1, a tax credit reservation shall be awarded to the project with the greatest percentage of HOPE VI/Choice Neighborhood funds committed in relation to Total Development Cost.]

Recodify existing ii. – iv. as **i. – iii.** (No change in text.)

2. (No change.)

#### 5:80-33.21 Application needs analysis

(a) – (b) (No change.)

(c) NJHMFA shall perform needs analyses at three separate times: application, allocation, and at the time the project is placed in service. (See N.J.A.C. 5:80-33.23 and 33.27.) Pursuant to **section 31** of the [Housing and Economic Recovery Act of 2008, Pub. L. 110-289 (HR 3221)] **Protecting Americans from Tax Hikes Act of 2015**, the applicable credit percentage shall be nine percent for the 70 percent present value credit [for buildings that place in service between July 31, 2008 and December 30, 2013. NJHMFA shall announce the tax credit percentage to be used for application purposes, by written and/or electronic notices to the mailing list maintained by the Tax Credit Division, at least 30 days prior to the application deadline]. The credit amount reserved is limited to the lesser of:

1. – 2. (No change.)

(d) (No change.)

5:80-33.32 Compliance monitoring

(a) – (e) (No change.)

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

1. – 14. (No change.)

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

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

(g) (No change.)