

COMMUNITY AFFAIRS

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

New Jersey Housing and Mortgage Finance Agency Low-Income Housing Tax Credit

Qualified Allocation Plan

Adopted Amendments: N.J.A.C. 5:80-33.1 through 33.6, 33.8 through 33.17, 33.19 through 33.34, 33.36, and 33.37

Adopted Repeal and New Rule: N.J.A.C. 5:80-33.7

Adopted Repeal: N.J.A.C. 5:80-33.18

Proposed: May 1, 2023, at 55 N.J.R. 779(a).

Adopted: February 8, 2024, by New Jersey Housing and Mortgage Finance Agency, Melanie R. Walter, Executive Director.

Filed: February 8, 2024, as R.2024 d.015, **with non-substantial changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-6.3).

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

Effective Date: March 4, 2024.

Expiration Date: September 14, 2024.

Summary of Hearing Officer's Recommendation and Agency's Response:

Laura Shields, New Jersey Housing and Mortgage Finance Agency ("NJHMFA" or "Agency") Assistant Director of Tax Credits, conducted a public hearing in the boardroom of NJHMFA at 637 South Clinton Avenue, Trenton, New Jersey at 10:00 A.M. on Friday, May 19, 2023, at which time and place Esmé Devenney of Fair Share Housing Center, appeared and testified.

Subsequent to the hearing, the hearing officer recommended that no changes be made to the rule proposal based on the hearing; the hearing officer's recommendations were accepted by the Agency. Copies of the transcript of the public hearing are available at the following contact: New Jersey Housing and Mortgage Finance Agency, Division of Multifamily/Supported Housing and Lending, Attn: Johanna Peña, 637 South Clinton Avenue, PO Box 18550, Trenton, New Jersey 08650-2085 or jpena@njhmf.gov.

Summary of Public Comments and Agency Responses:

The Agency received comments from the following persons:

1. Elizabeth M. Beckett, CRE, President, Real Estate Strategies, Inc.;
2. Moha Thakur, National Housing Trust;
3. Esmé Devenney, Fair Share Housing Center;
4. Marilyn Davis, Senior Director, Government Affairs, Altice USA, Inc. d/b/a Optimum;
5. Charles M. Lewis, The Brooke Group;
6. Deborah M. Hurley, C-PHM, Executive Director, Edison Housing Authority;
7. Amy Brown, Senior Policy Advisor, New Jersey Long Term Care Ombudsman's Office;
8. Hans Lampart, President, Eastern Pacific Development;
9. Laila Coelho Reilly, Director of Business Development, MaGrann Associates;
10. Kyra Mortensen, Monarch Housing Associates;
11. Jacqueline S. Jones, Executive Director, Housing Authority of the City of Cape May;
12. Jacqueline S. Jones, Executive Director, Housing Authority of the City of Vineland;

13. Jacqueline S. Jones, Executive Director, Ocean City Housing Authority;
14. Ed Martoglio, Founder and President, RPM Development Group;
15. Cassondra Warney, Senior Program Manager, Metro Region, Corporation for Supportive Housing;
16. Staci Berger, President and Chief Executive Officer, Housing and Community Development Network of New Jersey;
17. Rebecca Price, State Advocacy Specialist, U.S. Green Building Council;
18. Hector Fuentes, Business Manager, Residential Construction & General Service Workers Local Union 55;
19. Meredith Marshall, Founder and Managing Partner, BRP Companies;
20. Tracee Battis, Executive Director, Project Freedom, Inc.;
21. Joseph A. Del Duca, Owner and General Counsel, The Walters Group;
22. William Tsadilas, Esq., Pearlman & Miranda, LLC;
23. Diane Riley, Executive Director, The Supportive Housing Association of New Jersey;
24. Michael Luzier, President and CEO, Home Innovation Research Labs;
25. Adenah Bayoh, et al., on behalf of the Black, Indigenous, People of Color Developers' Collaborative;
26. Adenah Bayoh, Founder and Chief Executive Officer, Foya Development LLC;
27. Joshua Weingarten, The Crossings at Brick Church Station c/o Triangle Equities;
28. Adam Gordon, Executive Director, et al., Fair Share Housing Center;
29. William Palatucci, Esq. and Grace Power, Esq., McCarter & English, LLP;

30. Katharine A. Coffey, Esq., Day Pitney LLP, on behalf of New Jersey Builders Association Affordable Housing Committee;

31. David Ginsberg, Senior Vice President, Winn Companies; and

32. Nicole Lockett, Managing Director of Development, Genesis Companies, LLC.

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

1. COMMENT: The commenter, a market analyst, expresses concern about the proposed amendment at N.J.A.C. 5:80-33.12(c)1ii(2) that requires the market study mandated at N.J.A.C. 5:80-33.12(c)1i to include the calculation of utility costs separately for each utility type (for example, electric, gas, etc.) and for each unit type within a project. Specifically, they are concerned that the terms “calculated” and “utility costs” in the proposed new sentence indicate that the analyst who prepares the market study is involved in the determination of utility “allowances” (as opposed to utility “costs”) for a project, whereas, in actuality, the analyst obtains the information from the client. (1)

RESPONSE: The Agency thanks the commenter for identifying this issue and correctly assessing the Agency's intent with respect to the proposed amendment. The Agency is changing the text at N.J.A.C. 5:80-33.12(c)1ii(2) upon adoption to address the commenter's concern and align with industry practice.

2. COMMENT: The commenters strongly support the proposed addition to the eligibility requirements at N.J.A.C. 5:80-33.12(c)21 and to the point system at N.J.A.C. 5:80-33.15(a)20 to, among other things, codify the right of first refusal (ROFR) authorized at Section 42(i)(7) of the Internal Revenue Code (Code), which allows a qualified nonprofit organization the first

opportunity to acquire a low-income housing tax credit (LIHTC) project upon the termination of the affordability compliance period, and to otherwise preclude and/or disincentivize efforts to bring about the early termination of affordability controls on LIHTC units. (2, 10, 16, 25, 26, and 28)

RESPONSE: The Agency thanks the commenters for the expressions of support. While the Agency is adopting the additions to the eligibility requirements at N.J.A.C. 5:80-33.12(c)21, due to concerns expressed by commenters 21 and 30 regarding the transparency and enforceability of the proposed negative points, it is not adopting the additions to the point system at N.J.A.C. 5:80-33.15(a)20.

3. COMMENT: The commenters recommend that the Agency reconsider the proposed amendments to the definition of “‘Targeted Urban Municipalities’ or ‘TUMs’” at N.J.A.C. 5:80-33.2 to more accurately reflect New Jersey municipalities by concentrating on urban centers as opposed to, as proposed, “poor areas of the State,” noting that urban centers and distressed municipalities are not the same. Commercial development and well-to-do residents are moving to urban cities, such as Newark and Jersey City; priority should be given to the development of affordable housing in such metropolitan and other areas at risk of gentrification, which should not be competing with rural municipalities. The population and housing density thresholds for TUM eligibility should, in fact, be increased. (3 and 28)

RESPONSE: The Agency thanks the commenters for expressing their concerns. The Agency has elected not to adopt the parts of the proposed definition of “‘Targeted Urban Municipalities’” specifying the exact population and housing thresholds that need to be met and the ranking methodology. As such, the new TUMs definition will be nearly identical to the existing definition,

differing only by the removal of employment-to-housing ratio as a factor, due to employment-to-housing ratio being moved to the point system, and in its specification that TUMs will be calculated using the most recent Census data, thus codifying existing practice. Given that the existing Qualified Allocation Plan (QAP) does not set forth a specific methodology for determining TUMs, the Agency has been publishing each year's methodology, along with the annual TUMs designations, and shall continue the practice going forward. The Agency disagrees with the commenters' recommendation to narrow the TUMs criteria. Shortening the TUMs list could run counter to the temporary inversion of the approximate 60-40 split in funding between projects in non-TUM areas and in TUMs. With the supply of tax credits for TUM projects increasing, it is in the Agency's interest to ensure that demand remains robust. However, given the sources of funding recently made available by the fiscal year (FY) 2024 State budget and other revisions within the QAP itself, the Agency expects that the laudable policy priorities highlighted by the comments will be achieved despite the concerns raised about the TUMs definition.

4. COMMENT: As with concerns expressed about the definition of "TUMs" in Comment 3, the commenters object to use of the Municipal Revitalization Index (MRI) in the tiebreaker at N.J.A.C. 5:80-33.19(a)1ii, asserting that it focuses on distressed areas of the State while the need for affordable housing is most acute in urban areas, that Camden could receive all of the TUMs allocations, or that the tiebreaker should be more nuanced, considering factors such as transit-oriented development, prevailing wages, and high cost of development. The commenters declare that the methodology again sets urban centers against rural or suburban towns concentrated in South Jersey, the latter of which are less susceptible to gentrification. (3, 7, 28, and 31)

RESPONSE: The Agency thanks the commenters for expressing their concerns, but believes that the possibility of negative consequences is overstated. Most importantly, ties almost never need to be broken with TUMs applications. Pursuant to the current QAP, which has been in effect since 2019, out of the 45 applications received for projects located in TUMs, only one application was not funded due to losing on the tiebreaker, and that application did not receive the maximum available points. With the expanded point system, which benefits projects located in core urban centers, the already low occurrence of ties between TUM applications is expected to decrease even further. In the rare event of a tie, the Agency believes that distress is a valid and relevant factor for determining the location of LIHTC investments, and that a more complicated tiebreaker is not warranted at this time. The QAP's restrictions on LIHTC awards per municipality prevent any one municipality from receiving an inordinate number of tax credit allocations.

5. COMMENT: The commenters support expanding the eligibility criteria for certified minority- and/or women-owned enterprises (M/WBEs) to enable diverse partners to have a greater stake in affordable housing projects, specifically supporting two recommendations advanced by Monarch Housing Associates (Monarch Housing) to: (1) create a completely new, separate point category in which the ownership stake held by an M/WBE must be at least 50 percent; and (2) add bonus points in the category for projects that are 100-percent-led by an M/WBE. The commenters contend that the rulemakings minimum stake of 20 percent in the Family Cycle point system at N.J.A.C. 5:80-33.15(a)6 is too small to give an M/WBE developer significant sway in decision-making, and will not truly encourage training and capacity-building of M/WBE developers. (3, 10, 16, 18, 25, 26, 28, and 32)

RESPONSE: Though the commenters make compelling arguments, their recommended changes are beyond the scope of the current rulemaking. At this time, the Agency believes that its proposed changes at N.J.A.C. 5:80-33.15(a)6, coupled with the proposed changes at N.J.A.C. 5:80-33.15(a)21, will sufficiently address the issues highlighted by the commenters by creating a new avenue for less-experienced developers to earn points and incentivizing more-experienced developers to partner with less-experienced developers. However, the Agency welcomes future discourse with the commenters and other interested parties on this subject.

6. COMMENT: The commenter encourages the Agency to provide feedback to M/WBEs who are unsuccessful in their applications for LIHTC awards or, at least to the extent such feedback is available, inform M/WBE applicants of the availability of that information. (3)

RESPONSE: Although the comment pertains to an important issue, it does not relate to any proposed change and is thus beyond the scope of the current rulemaking. However, the Agency welcomes future discourse with the commenter on this subject.

7. COMMENT: The commenters concur with the recommendations of Monarch Housing on the proposed amendments at N.J.A.C. 5:80-33.15(a)21 to increase pathways for M/WBEs to become owners/developers of LIHTC projects. Specifically, the commenters support eliminating the previous experience point category in its entirety and instead having the Agency rely on its own independent analysis of the development team and on commitment letters from construction and permanent lenders and tax credit investors in its underwriting of nine-percent LIHTC applicants, as it does with respect to applicants for four-percent LIHTCs. The commenters argue that only a “small group of developers” can satisfy the definition of “successful development experience” and,

therefore, be able to compete successfully for LIHTCs. Rewarding previous experience through this point category promotes the monopolization of LIHTC awards by this group of developers, which blocks entry into the LIHTC field by a “diverse range” of otherwise qualified and willing for-profit and nonprofit housing developers, including, but not limited to, developers with a 50-percent ownership interest in one previous LIHTC project; market-rate multifamily-project developers; and developers of smaller, affordable, non-LIHTC projects. These developers, who do not meet the previous experience requirement, must often partner with those who do in order to receive the necessary points to obtain nine-percent LIHTC funding and, although responsible for significant aspects of the project, are not afforded commensurate decision-making status or profits from developer fees. They rarely are given a 50-percent ownership stake in the projects in which they participate and, therefore, cannot create the experience required to compete for nine-percent LIHTCs on their own; instead, many such “emerging developers” resort to four-percent LIHTC financing, for which there is no “previous experience” threshold, to gain the requisite experience. The commenters observe that four-percent LIHTC-financed projects are usually “more complicated to execute” since they introduce an “added layer of tax-exempt bond financing” and must surmount, to a greater extent than with nine-percent LIHTC financing, a gap funding obstacle, all of which factors contribute to a significant delay, if not outright bar, in emerging developers gaining necessary experience. (3, 10, 16, 18, 25, 28, and 32)

RESPONSE: Although the commenters make compelling arguments, their recommended changes are beyond the scope of the current rulemaking. The Agency considers developer readiness as a critical factor in the success of LIHTC projects. While four-percent projects have no explicit experience requirement, the increased difficulty in assembling a four-percent deal functionally acts to screen out less-ready developers. As no such screening process occurs with nine-percent

projects, explicit consideration of developer readiness is beneficial to the nine-percent program. At this time, the Agency believes that its proposed changes at N.J.A.C. 5:80-33.15(a)21, coupled with the proposed changes at N.J.A.C. 5:80-33.15(a)26, are sufficient for increasing participation by less-experienced developers while ensuring that nine-percent credits are awarded to capable developers. However, as the Agency is committed to increasing equitable access to a diverse range of developers, it will continue to reevaluate these criteria and welcomes future discourse with the commenters on this subject.

8. COMMENT: The commenters maintain that the Agency should ensure that preservation projects truly need nine-percent LIHTC funding and are not inflating costs so as to qualify for such funding when four-percent tax credits would be more appropriate. (3 and 28)

RESPONSE: The commenters' statement does not relate to any proposed change in the rulemaking and are, thus, not a proper subject for public comment. The Agency agrees with the commenters on the importance of efficiently allocating limited tax credits and, as a matter of practice, routinely encourages developers to forego applying for nine-percent tax credits when four-percent credits will suffice.

9. COMMENT: The commenter expresses support for the use of Aspire funding to augment affordable housing opportunities and views Aspire as an important tool to address the preservation of existing public and assisted housing. (3)

RESPONSE: The Aspire Program is not within the Agency. The comment does not relate to any proposed change in the rulemaking and is, thus, not a proper subject for public comment.

10. COMMENT: The commenters support the proposed restoration of the approximate 60-40 split in funding between projects in non-TUM areas and TUMs in the Family, Age-Friendly Senior, and Supportive Housing Cycles following the proposed inversion of that split during the time the Agency is accepting applications to award Affordable Housing Production Fund (AHPF) monies or until December 31, 2025, whichever comes sooner. The commenters acknowledge the Agency's rationale behind the temporary inversion (that is, AHPF monies will be directed primarily to projects in non-TUM [suburban] areas, thus warranting a temporary excess in funding of LIHTC projects in TUMs), but applaud the return of the traditional split by no later than the end of 2025. Additionally, the commenters recommend that the Agency Board have discretion to adjust the split during this time period to maintain an appropriate balance, given the temporary inversion and the infusion of other State funding sources. (3 and 28)

RESPONSE: The Agency thanks the commenters for the expressions of support. While the condensed timeline for obligating funds from the American Rescue Plan Act means that the Agency would most likely have little opportunity to exercise its discretion, the Agency will consider revising the 60-40 split timeline should the need arise.

11. COMMENT: The commenters express support for the proposed amendments to require, rather than encourage, affirmative fair housing marketing at N.J.A.C. 5:80-33.12(c)15, which will help ensure affordable units will be made available to Black and Brown families who have long been excluded from access to such housing. (3, 16, and 28)

RESPONSE: The Agency thanks the commenters for the expressions of support.

12. COMMENT: The commenters express support for the proposed addition at N.J.A.C. 5:80-33.9(a) to mandate that family projects applying for four-percent LIHTCs provide no more than 20 percent efficiency and one-bedroom tax credit units, no fewer than 30 percent two-bedroom tax credit units, and no fewer than 20 percent three-bedroom tax credit units, the latter two categories being deemed “a minimum necessity for growing families.” (3 and 28)

RESPONSE: The Agency thanks the commenters for the expressions of support.

13. COMMENT: The commenters support the proposed addition to the eligibility requirements at N.J.A.C. 5:80-33.12(c)20 that would waive an applicant’s right to request termination of the extended-use period through the qualified contract (QC) process that is provided for in the New Jersey Administrative Code. (3 and 28)

RESPONSE: The Agency thanks the commenters for the expressions of support.

14. COMMENT: The commenters express support for the proposed new eligibility requirement at N.J.A.C. 5:80-12(c)19 that would require high-speed internet service to be provided in all common areas at no charge to tenants and high-speed internet hookup capability to be installed in all units, with one commenter also supporting the proposed amendment to the point category at N.J.A.C. 5:80-33.15(a)8xiv to offer a two-point option for the provision of free high-speed internet service in all units and to require that the costs of providing such service be shown in the operating budget. (4, 16, 28, and 31)

RESPONSE: The Agency thanks the commenters for the expressions of support.

15. COMMENT: The commenter encourages the Agency to go beyond the internet suggestions cited in Comment 14 by “prioritiz[ing]” the provision of free or discounted in-unit broadband connectivity and to require that projects partner with experienced internet service providers (ISPs).

(4)

RESPONSE: The Agency thanks the commenter for the recommendation. At this time, the Agency believes that the proposed amendments will be sufficient to promote affordable broadband access, but welcomes future efforts to increase broadband affordability in New Jersey.

16. COMMENT: The commenter recommends that the Agency “encourage projects to engage trusted community partners already serving the population eligible for affordable broadband solutions in other contexts” in order to facilitate increased broadband adoption efforts without the necessity of resorting to “new rulemakings and proposals requiring administrative procedures.”

(4)

RESPONSE: The Agency thanks the commenter for the recommendation. Though it does not fall within the scope of the QAP document, the Agency welcomes collaborative efforts that will increase broadband affordability in New Jersey.

17. COMMENT: The commenters recommend that the Agency partner with other agencies to help identify ways for developers to fulfill the broadband requirement at below-market costs, or advocate for enhanced State efforts and allocate funding to promote the subsidization of in-home wired broadband for households that apply their Affordable Connectivity Program (ACP) benefit to wireless broadband service. (4 and 28)

RESPONSE: The Agency thanks the commenters for the recommendations and agrees that collaboration and additional funding are important to expanding broadband affordability in New Jersey.

18. COMMENT: The commenters observe that the proposed bedroom-unit distribution addition at N.J.A.C. 5:80-33.9(a) would require non-age-restricted projects applying for four-percent LIHTCs to provide no more than 20 percent efficiency and one-bedroom tax credit units, no fewer than 30 percent two-bedroom tax credit units, and no fewer than 20 percent three-bedroom tax credit units. The commenters cite the bedroom-distribution requirement at N.J.A.C. 5:80-33.4(a) for projects applying for nine-percent tax credits that is similar, but carves out an exception for preservation projects. The commenters advocate for a similar exception for preservation projects that apply for four-percent credits, which are utilized by most preservation projects. They note that many preservation projects were built not being subject to such requirements and, given “zoning, space or structural issues,” it may not be possible to reconfigure those buildings to comply with the bedroom distribution requirements, thereby resulting in a loss of existing affordable housing units. (5, 6, 11, 12, and 13)

RESPONSE: The Agency thanks the commenters for identifying this oversight. The Agency is changing the text at N.J.A.C. 5:80-33.9(a) upon adoption to address the commenters’ concern and clarify that the exemption from minimum bedroom distributions for nine-percent family preservation projects at N.J.A.C. 5:80-33.4(a) applies to four-percent family preservation projects as well.

19. COMMENT: The commenters disagree with the proposed amendment at N.J.A.C. 5:80-33.6(a) that would preclude units that receive Money Follows the Person (MFP) funds or Section 811 funds from being included as part of the minimum 25.00 percent requirement for eligibility to the Supportive Housing Cycle. The commenters observe that the Money Follows the Person Housing Partnership Program (MFPHPP) is a long-term, successful alliance between the Agency and the Department of Human Services, Division of Aging Services, that provides one-bedroom, noninstitutional housing for younger persons with physical disabilities, which allows those persons to continue to receive necessary services, paid for by Medicaid, while not being confined to living in a nursing home. To exclude these persons from eligibility to the Supportive Housing Cycle “creates a bias in [S]tate housing policy” by treating them differently than other special needs populations, such as people with intellectual, developmental, and/or mental health disabilities, and diverges from State policy that favors the deinstitutionalization of persons from nursing homes; it also works against developers seeking to serve multiple populations and reduces the State’s ability to comply with the mandate of *Olmstead v. L.C.*, 527 U.S. 581 (1999). (7 and 23)

RESPONSE: The Agency thanks the commenters for their recommendations. The proposed amendment at N.J.A.C. 5:80-33.6(a) regarding units that receive MFP and Section 811 funds and eligibility for the Supportive Housing Cycle was intended to mirror the proposed amendment at recodified N.J.A.C. 5:80-33.15(a)²² regarding those same units and points under the Family and Age-Friendly Senior Cycles (see Comment 20). However, due to the objections raised by the commenters to both amendments, the Agency has elected to not adopt the proposed amendments at N.J.A.C. 5:80-33.6(a) regarding units that receive MFP and Section 811 funds.

20. COMMENT: The commenters disagree with the proposed amendment at recodified N.J.A.C. 5:80-33.15(a)22 that would preclude units that receive MFP or Section 811 funds from being included as part of the minimum requirement for the point category, stating that the amendment would preclude from the count for eligibility for the two points available in the category units that house nursing home residents with disabilities who are leaving institutions pursuant to the decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), or units that house individuals with disabilities who are at risk of institutionalization, and are in projects that meet the criteria at N.J.A.C. 5:80-33.12(c)14. See N.J.A.C. 5:80-33.15(a)20. The commenters opine that the proposed amendment runs counter to State policy that promotes moving persons out of nursing homes and preventing their entry into nursing homes in the first instance. (7 and 23)

RESPONSE: The Agency thanks the commenters for their recommendations. To avoid duplicative subsidy, the Agency's current practice is to exclude any MFP/Section 811 units from the count of supportive housing units strictly for determining whether the five-percent/five-unit minimum threshold has been met. Rather than discouraging usage of the MFP and Section 811 programs, the Agency encourages usage of the MFP and Section 811 programs, in addition to, the minimum number of units required to qualify for the points, with the effect of incentivizing more, rather than fewer, supportive housing units. The proposed amendment at recodified N.J.A.C. 5:80-33.15(a)22 was intended to codify this practice. However, due to the language's potential for confusion and limited benefit, the Agency has elected to not adopt the proposed amendments at recodified N.J.A.C. 5:80-33.15(a)22 regarding units that receive MFP and Section 811 funds.

21. COMMENT: In addition to opposing the amendments proposed at recodified N.J.A.C. 5:80-33.15(a)22, the commenter recommends the point category be increased from two to three points, with the retention of MFP participants. (7)

RESPONSE: The comment does not relate to any proposed change in the rulemaking and is, thus, not a proper subject for public comment. At this time, with funding available from the Supportive Housing Cycle, the Special Needs Housing Trust Fund, and other sources, the Agency believes that changes to the point category at N.J.A.C. 5:80-33.15(a)22 are not necessary.

22. COMMENT: The commenters oppose the provision at proposed new N.J.A.C. 5:80-33.13(c) that precludes a project that receives its initial tax credit award in the 2022 funding cycle or later and that also receives hardship credits from the Reserve, and any affiliated entity, from applying for tax credits for a new project in all cycles in the round after the award has been approved by the Tax Credit Committee. The commenters contend that penalizing an applicant for exercising “rights” granted pursuant to previous iterations of the QAP is “fundamentally wrong,” that penalties should never be imposed retroactively, that the interest rate environment and rampant inflation have caused developers to encounter hardship for reasons out of their control, and that the penalty will discourage developers from participating in the LIHTC program. Further, if a penalty is to be imposed, it should be implemented in 2023 or later, and/or not serve as an absolute bar to the offending developer’s participation in the subsequent funding round, instead merely reducing the number of applications that can be submitted by that developer by the number of hardship requests. (8, 10, 21, 25, 26, 28, and 30)

RESPONSE: While the Agency understands the concerns of the commenters, it believes that the proposed increases to the cost cap, coupled with a stabilizing inflation environment, will reduce

the usage of hardship credits, except as a true last resort. The proposed penalty, equivalent to the penalty for a credit exchange, is important in ensuring that only the most complete projects will apply for, and be awarded, nine-percent credits. However, acknowledging that retroactive penalties should not be imposed and to ease the transition for existing projects, the Agency is changing the text at N.J.A.C. 5:80-33.13(c) upon adoption so that the suggested one-for-one reduction applies to projects initially funded in 2023 and earlier, and the proposed penalty first takes effect for projects initially awarded tax credits in the 2024 funding cycle.

23. COMMENT: The commenter asserts that construction costs have increased by 25 to 30 percent across-the-board since 2019. Therefore, the proposed increase of 15.5 percent is inadequate and is, in fact, less than the temporary increase provided in 2022. The commenter recommends increasing cost caps by 15.5 percent plus the temporary 2022 increase. (8)

RESPONSE: According to an Agency analysis, the proposed cost cap increase is in line with observed construction cost increases and is, therefore, considered adequate at this time.

24. COMMENT: The commenters express concern over the proposed 15.5-percent increase in cost caps in the Family, Age-Friendly Senior, and Supportive Housing Cycles at N.J.A.C. 5:80-33.4(a), 33.5(a), and 33.6(a), respectively, and in Awards from the Reserve at N.J.A.C. 5:80-33.8(a)1. They note that the existing cost caps were imposed in 2018, so the proposed 15.5-percent increase covers a five-year period during which the cost of construction increased by a greater amount, that the cost caps discourage developments that are larger, denser, taller, more urban, or equipped with more features, that the four-percent credit has no cost cap, that supportive units are more expensive than other units, that the maximum credit allocation already caps the amount of credits that can be

awarded to a project, and that high inflation has increased costs considerably. As such, they advocate for either a waiver of cost caps “until development costs stabilize,” or elimination of the cost caps altogether. (10, 14, 16, 23, 25, 26, and 30)

RESPONSE: The Agency, while sympathetic to the commenters' concerns, firmly believes in the importance of controlling costs and the appropriateness of doing so through the QAP. Therefore, the Agency does not support removing the cost caps. Should circumstances require it, the Agency retains its ability to waive the cost caps through official Board action.

25. COMMENT: The commenters state that the proposed \$7,500 per unit exemption from maximum development costs for Passive House in the Family, Age-Friendly Senior, and Supportive Housing Cycles at N.J.A.C. 5:80-33.4(a), 33.5(a), and 33.6(a), respectively, and in Awards from the Reserve at N.J.A.C. 5:80-33.8(a)1 is inadequate for incentivizing green building, with one commenter recommending increasing the amount to \$15,000 per unit. (14 and 30)

RESPONSE: The Agency thanks the commenters for their input. However, given that Passive House is not required, and leads to significant long-term savings, the Agency feels that the proposed incentive is sufficient at this time. Should additional incentive prove to be necessary, the Agency will consider increasing the cost cap exemption for Passive House.

26. COMMENT: The commenter recommends replacing “adults and youth with criminal legal records” for the existing “ex-offenders and youth offenders” at item 5 at the definition of “individuals with special needs” at N.J.A.C. 5:80-33.2. (15)

RESPONSE: The comment does not relate to any proposed change in the rulemaking and is, thus, not a proper subject for public comment. However, the Agency will consider the recommendation for future QAP proposals.

27. COMMENT: The commenter recommends including families with a child welfare case who are also homeless or at risk of homelessness as an item at the definition of “individuals with special needs” at N.J.A.C. 5:80-33.2. (15)

RESPONSE: The comment does not relate to any proposed change in the rulemaking and is, thus, not a proper subject for public comment. However, the Agency notes that these individuals may already be covered under multiple populations within the definition of “individuals with special needs,” including, but not limited to, “runaway and homeless youth,” “individuals or families who are homeless,” or “individuals in other emerging special needs groups identified by State agencies.”

28. COMMENT: The commenter recommends including aging individuals as an item at the definition of “individuals with special needs” at N.J.A.C. 5:80-33.2. (15)

RESPONSE: The comment does not relate to any proposed change in the rulemaking and is, thus, not a proper subject for public comment.

29. COMMENT: The commenter recommends “broaden[ing]” the age of persons to whom projects qualifying for admission to the Age-Friendly Senior Cycle would be open to 55 and older. (15)

RESPONSE: The Age-Friendly Senior Cycle is currently available to projects with at least 80 percent of units occupied by persons 55 years of age and older.

30. COMMENT: The commenter encourages reserving a portion of the Age-Friendly Senior Cycle for a “supportive housing/senior overlap,” either as a threshold requirement or as a point category. (15)

RESPONSE: The Supportive Housing Cycle is currently available to both family and senior projects and routinely receives applications for senior housing projects. Therefore, the Agency does not believe that a supportive housing set-aside within the Age-Friendly Senior Cycle is necessary at this time.

31. COMMENT: The commenter applauds the Agency for being one of the few housing finance agencies in the nation that includes supportive housing requirements in the QAP. (15)

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

32. COMMENT: The commenter recommends including a definition of supportive housing in the definitions section of the QAP at N.J.A.C. 5:80-33.2, which definition should indicate that supportive housing residents have the same rights and responsibilities as tenants of other housing units, pay a portion of their rent, and that supportive housing is permanent housing. The commenter also recommends that the definition of supportive housing include quality standards and they list five components that quality supportive housing should meet. In order to ensure that supportive housing sustains an adequate quality level, the Agency should require unspecified “applicants” (presumably those applying for credits from the Supportive Housing Cycle) to complete and

submit a Commitment to Quality checklist or provide an “endorsement from an independent evaluator” with their applications. (15)

RESPONSE: The comment does not relate to any proposed change in the rulemaking and is, thus, not a proper subject for public comment. However, the Agency notes that LIHTC units must be permanent housing and meet high quality standards.

33. COMMENT: The commenter advocates that the Agency increase the amount of credits allocated to the Supportive Housing Cycle at N.J.A.C. 5:80-33.6(a) from the existing 12.5 percent minimum to 40 percent of total available credits and increase the qualifying minimum percentage of units required to be rented to special needs individuals from the existing 25 percent to 35 percent in order to help meet the approximately 25,400 units of supportive housing needed in the State. (15)

RESPONSE: The comment does not relate to any proposed change in the rulemaking and is, thus, not a proper subject for public comment.

34. COMMENT: The commenter concurs with the proposed amendment at N.J.A.C. 5:80-33.6(a) to correct an omission and express that an agreement between the proposed owner entity and the social service provider must be included with an application to the Supportive Housing Cycle. (15)

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

35. COMMENT: The commenter “strongly recommend[s]” the Agency not adopt the proposed amendment at N.J.A.C. 5:80-33.6(a) that would no longer require the Agency to approve the social

services plan included with an application to the Supportive Housing Cycle, as Agency approval enhances the quality of such a plan. (15)

RESPONSE: The proposed amendment was introduced to clarify that Agency approval of the social services plan prior to application is unnecessary. The Agency shall continue to review and approve all social services plans prior to awarding tax credits.

36. COMMENT: The commenter recommends deleting the phrase “if applicable” as it pertains to the provision at N.J.A.C. 5:80-33.12(c)14iv regarding submission of a social services plan by projects that contain supportive housing units, stating that “social services are always appropriate for supportive housing.” (15)

RESPONSE: Social service plans are required for applications to the Supportive Housing Cycle pursuant to the eligibility criteria set forth at N.J.A.C. 5:80-33.6(a).

37. COMMENT: The commenter recommends, based on their belief that all supportive housing is permanent and that service participation is voluntary, that, rather than award points to applicants who “plan to develop all of the units as lease-based permanent supportive housing ([with] no time limit for tenancy and/or program participation),” as currently provided in the point system for the Supportive Housing Cycle at N.J.A.C. 5:80-33.17(b)3, this should be an eligibility requirement for applications to the Supportive Housing Cycle. (15)

RESPONSE: The comment does not relate to any proposed change in the rulemaking and is, thus, not a proper subject for public comment.

38. COMMENT: The commenter recommends the Agency consider partnering with other State agencies and business and philanthropic entities to generate additional funds to provide supportive housing services. (15)

RESPONSE: The comment relates to a suggested operating procedure rather than any proposed change in the rulemaking or anything that would be codified in a rule. The Agency notes that it consistently works with other State agencies to reach mutual goals and seeks the type of external partnerships suggested, as evidenced by its Hospital Partnership Subsidy Program.

39. COMMENT: The commenter recommends that more than two points be awarded at N.J.A.C. 5:80-33.17(b)4 to applications that evidence rental assistance funding commitments for all special needs units. (15)

RESPONSE: The comment does not relate to any proposed change in the rulemaking and is, thus, not a proper subject for public comment.

40. COMMENT: The commenter expresses support for the Agency's efforts to provide additional supportive housing for special needs tenants. (15)

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

41. COMMENT: The commenter recommends the Special Needs Housing Subsidy Loan Program be "wrapped into" the nine-percent and four-percent LIHTC application processes so that applicants would only need to submit one application to apply for either or both resources. (15)

RESPONSE: The Unified Application for HMFA Multifamily Rental Housing Production Programs (UNIAP) already combines different funding sources into one application.

42. COMMENT: The commenter cites “the historic and current realities of redlining and the long history of racism in housing” and observes that the Agency has a “unique opportunity to shift the paradigm for housing development[.]” To address the inequities, the commenter proposes the Agency “identify opportunities for persons with lived experience” to participate in the QAP process and rely upon a needs assessment to better understand and respond to the racial disparities in housing in the State. (15)

RESPONSE: The comment does not relate to any proposed change in the rulemaking and is, thus, not a proper subject for public comment. However, the Agency will consider the recommendation for future QAP revisions.

43. COMMENT: The commenter recommends the Agency develop key performance indicators to forecast and record the number of supportive housing units produced as the result of the QAP’s dedicated supportive housing provisions. (15)

RESPONSE: The comment relates to a suggested operating procedure rather than any proposed change in the rulemaking or anything that would be codified in a regulation.

44. COMMENT: The commenter supports the proposed amendment of the definition of “individuals with special needs” at N.J.A.C. 5:80-33.2 to clarify that the category applies to veterans who are disabled and/or homeless, not just to those who are disabled and homeless. (16)

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

45. COMMENT: The commenter supports the proposed addition at N.J.A.C. 5:80-33.12(c)7i to underwrite supportive housing units that do not receive project-based rental assistance with rents affordable to tenants whose incomes are at or below 20 percent of the area median income adjusted for family size. (16)

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

46. COMMENT: The commenter supports the proposed amendments to the clean energy requirements at N.J.A.C. 5:80-33.12(c)8 to update those requirements that must be met by applicants in order to comply with the most recent New Jersey standards as set forth in the Guide to QAP Green Requirements (Green Guide) and in the Agency Energy Benchmarking Initiative. (16)

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

47. COMMENT: The commenter supports the proposed allowed exemptions from cost caps in the amounts of either up to \$15,000 per unit for adaptive reuse projects or up to \$7,500 per unit for projects that meet the Passive House standard to allow for additional costs that are expected to be incurred with these projects. (16)

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

48. COMMENT: The commenters support the proposed amendment at N.J.A.C. 5:80-33.15(a)1i to incentivize the extension of affordability controls to 45 years for all projects applying in the Family Cycle, regardless of location and mixed- or full-affordability status, rather than only for fully affordable projects in non-TUM areas as currently provided. (3, 16, and 28)

RESPONSE: The Agency thanks the commenters for the expressions of support.

49. COMMENT: The commenters support the proposed amendment at N.J.A.C. 5:80-33.15(a)1ii to add a 15-year compliance period extension requirement in order for projects located in TUMs to be awarded the 15 points available in the Family Cycle point category. (3, 16, and 28)

RESPONSE: The Agency thanks the commenters for the expressions of support.

50. COMMENT: The commenter supports the proposed amendment at N.J.A.C. 5:80-33.15(a)2 to clarify that an application will receive two points for utilizing public housing waiting lists. (16)

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

51. COMMENT: The commenters support the addition of proposed new N.J.A.C. 5:80-33.15(a)19 to impose a 15-point deduction for applications that have a general partner or affiliate that owns a managing or controlling interest in a State LIHTC project that, within the preceding four years, has been found to have discriminated pursuant to the Federal Fair Housing Act, failed to comply with State fair housing policies or tenant selection standards, or been assessed a monetary penalty pursuant to the State Fair Chance in Housing Act. (10, 16, 25, 26, and 28)

RESPONSE: The Agency thanks the commenters for the expressions of support.

52. COMMENT: The commenters support the proposed rewrite of N.J.A.C. 5:80-33.19(a)1 to institute a new first tiebreaker system, including proposed new N.J.A.C. 5:80-33.19(a)1i to provide that for projects located outside of a TUM, the first tiebreaker will be to award a tax credit reservation to the project in the municipality that has either never hosted a nine-percent LIHTC

project or has gone the longest time since hosting a project that received an award of nine-percent LIHTCs. (10, 16, 25, 26, and 28)

RESPONSE: The Agency thanks the commenters for the expressions of support.

53. COMMENT: The commenters support the addition of proposed new N.J.A.C. 5:80-33.32(f)17 to require an owner's annual Certificate of Continuing Program Compliance to contain a statement attesting that the owner notified each applicant and tenant of their rights pursuant to the Violence Against Women Act (VAWA) and distributed Form HUD-5382, the VAWA self-certification form. (16 and 28)

RESPONSE: The Agency thanks the commenters for the expressions of support.

54. COMMENT: The commenters commend the Agency in general for amendments proposed at the green building point category of the Point System for the Family Cycle at N.J.A.C. 5:80-33.15(a)13i and ii to track current standards and to require climate adaptive selections to attain the maximum points available. The commenters assert that requiring climate adaptive credits will help prepare communities to deal with and recover from "increased instances of disasters and extreme weather patterns," and that the "degree of flexibility will ensure that the investment in climate resilience is meaningful and cost-effective." (17 and 24)

RESPONSE: The Agency thanks the commenters for the expressions of support.

55. COMMENT: The commenters request that the QAP be amended to require projects seeking Passive House certification to earn climate adaptive credits, as is proposed to be required of projects seeking Enterprise Green Communities, Leadership in Energy and Environmental Design

(LEED), or National Green Building Standard (NGBS) certifications, to obtain the maximum green building points available at N.J.A.C. 5:80-33.15(a)13i. The commenters point out that Passive House is focused almost exclusively on the reduction of energy use and sustainability, not resilient construction. (17 and 24)

RESPONSE: The Agency thanks the commenters for their feedback. Due to the increased difficulty in achieving Passive House or Living Building Challenge compared to the other four-point green building standards, and the corresponding decreased usage among LIHTC projects in New Jersey, the Agency believes that increasing the requirements is not warranted at this time.

56. COMMENT: The commenter recommends elimination of the reference to the New Jersey Net Zero program in the Green Guide, as the program no longer exists. The commenter offers the U.S. Department of Energy's Zero Energy Ready Home program as an acceptable substitute. (17)

RESPONSE: The Agency thanks the commenter for identifying this issue. The Agency is changing the text of the Green Guide upon adoption to remove any such obsolete references; however, no change to the actual rule text is required.

57. COMMENT: While stating that they do not oppose the increased standard for M/WBE participation proposed at N.J.A.C. 5:80-33.15(a)6, the commenters cite the current difficulty in soliciting multiple bids from certain trades given the current construction situation and submit that the proposed increase in M/WBE participation will decrease the pool of potential bidders, in turn, increasing the costs of developing LIHTC projects. The commenters further opine that the proposed five-percent increase will, in practice, have little effect on expanding opportunities for M/WBEs. (21 and 30)

RESPONSE: The Agency believes that the proposed five-percent increase represents a modest change that should not prove significantly difficult to attain, but the Agency will closely monitor the effect of the new policy.

58. COMMENT: The commenter asserts that the policies of the QAP have long presented barriers that prevent small, certified M/WBEs, particularly emerging developers of color, from participation in the LIHTC program. These barriers, which include financial obstacles imposed by syndicators and lenders on smaller firms, tend to direct LIHTC funding to developers who are white and male, yet LIHTC projects are concentrated in low-income communities that are occupied by people of color and female-headed households, resulting in numerous LIHTC projects being developed by persons who do not resemble the persons who will ultimately reside in those projects. The commenter expresses recognition that the proposed addition at N.J.A.C. 5:80-33.15(a)21ii to award previous experience points to applications with a general partner, voting member, developer, or related party (with at least a 50-percent interest in the general partner/managing member) that has successfully developed and operated at least three other LIHTC projects with at least a 20-percent ownership stake in each project “is intended to provide a pathway for ... [M/WBEs] that were [previously] included as junior development partners,” but expresses concern that, given the keen competition for LIHTC awards, this is an unrealistic or overly time-consuming process. To remedy that deficiency, the commenter suggests the requirement be lowered to one successfully completed project, which is deemed “a realistic threshold,” while providing a means of access to the LIHTC program for emerging firms. (26)

RESPONSE: Though the commenter’s argument and proposed amendment are compelling, the recommended changes are beyond the scope of the current rulemaking. The Agency considers

developer readiness as a critical factor in the success of LIHTC projects. While four-percent projects have no explicit experience requirement, the increased difficulty in assembling a four-percent deal functionally acts to screen out less-ready developers. As no such screening process occurs with nine-percent projects, explicit consideration of developer readiness is beneficial to the nine-percent program. At this time, the Agency believes that its proposed changes at N.J.A.C. 5:80-33.15(a)21, coupled with the proposed changes at N.J.A.C. 5:80-33.15(a)26, are sufficient for increasing participation by less-experienced developers while ensuring that nine-percent credits are awarded to capable developers. However, the Agency will closely monitor this issue going forward.

59. COMMENT: The commenter expresses support for the proposed amendments at N.J.A.C. 5:80-33.15(a)6 that would award points to projects whose owners partner with M/WBEs with at least a 20-percent interest in the general partner/managing member and increase the percentage required to be spent on M/WBE contractors, subcontractors, and material suppliers from 15 to 20 percent of construction costs. (31)

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

60. COMMENT: In the Green Guide, the commenter recommends: (1) eliminating references to NJ Pay 4 Performance New Construction and NJ Pay for Performance Existing Construction, due to those programs sunseting. The commenter recommends replacing the latter with NJ Engineered Solutions Utility Program, as it is a similar-enough substitute; (2) removing references to specific versions in “Energy Star Homes Version 3.1,” “EnergyStar Multifamily New Construction Version 1.1,” “LEED version 4.1 Silver or Higher w/Climate Adaptive Selections,” “Passive

House version 2.0,” “Living Building Challenge 3.1,” and “LEED version 4.1 Silver or Higher,” replacing the version numbers with “(latest edition)” in all cases; (3) correcting a typographical error on the “4 Point Options with Climate Adaptive Selections” page; (4) adding six additional options for Site Resilience Climate Adaptive Selections under LEED; (5) in the Healthy Futures Climate Adaptive Selections under Enterprise Green Communities, removing two options as being mandatory, moving one option to the Site Resilience Climate Adaptive Selections, combining two options as being part of the same category, and clarifying the applicability/minimum points needed for four options; and (6) adding 10 additional options for Healthy Futures Climate Adaptive Selections under LEED. (9)

RESPONSE: The Agency thanks the commenter for the recommendations. The Agency is changing the text of the Green Guide upon adoption to incorporate the recommended edits, with the exception of one of the recommended options for Healthy Futures Climate Adaptive Selections. The Agency believes that LEED’s EApC111: Alternative Performance Rating Method credit would see little usage due to its energy calculation method being more common for commercial and mixed-use buildings and its whole-building approach fitting better with master rather than individual metering. However, these changes do not require any changes to the New Jersey Administrative Code.

61. COMMENT: In the Green Guide, the commenters request clarification on: (1) whether “Enterprise Green Communities plus 40 pts w/Climate Adaptive selections” refers to Enterprise Green Communities Certification or Enterprise Green Communities Certification Plus; and (2) what documentation will be required for the nine-percent Green Options. (9 and 24)

RESPONSE: As the commenter assumed, the Green Guide reference is to Enterprise Green Communities Certification with at least 40 additional points, not to Enterprise Green Communities Plus, which is a different standard. As the other commenter surmised, the documentation that is required for the nine-percent Green Options is intended to fall under the “Required Documents for Energy Efficiency & Climate Adaptive Design” section.

62. COMMENT: The commenter requests clarification on the definition of “climate adaptive selections” at N.J.A.C. 5:80-33.15(a)13. (21)

RESPONSE: The eligible climate adaptive selections are found in the Green Guide, located on the Agency’s website at <https://nj.gov/dca/hmfa/developers/lihtc/greenpoints/>.

63. COMMENT: The commenters request clarification of the language at N.J.A.C. 5:80-33.19(a)1ii, which sets forth the new tiebreaker for projects located in TUMs, asserting that the proposed amendment contradicts the definition of “MRI” at N.J.A.C. 5:80-33.2. (10, 25, and 26)

RESPONSE: The Agency thanks the commenters for identifying the potential for confusion and correctly assessing the Agency’s intent with respect to the proposed amendment. The Agency is changing the text at N.J.A.C. 5:80-33.19(a)1ii upon adoption to address the commenters’ concerns and better communicate the Agency's intention.

64. COMMENT: The commenters request that, as soon as possible, the Agency publish the list of TUMs as determined pursuant to the new definition at N.J.A.C. 5:80-33.2. The commenters also encourage the Agency to publish a list of TUMs pursuant to the existing definition, and consider

allowing a one-year lookback on TUM qualification to ease the transition between the different definitions and to assist with project planning. (21 and 30)

RESPONSE: The Agency will publish the designated TUMs and calculation methodology soon after adoption of the new definition. The existing TUMs are published on the Agency website. The Agency anticipates that there will be enough overlap with the current list and enough time elapsed between the QAP adoption and the opening of nine-percent applications to render a one-year lookback unnecessary.

65. COMMENT: The commenter recommends that the Agency consider an alternative to Passive House certification, such as allowing evidence of compliance with the Passive House standard by professionals certified by the Passive House Institute, in addition to Passive House certification, citing the high cost of certification. (30)

RESPONSE: The Agency believes that certification is a critical component of demonstrating compliance with the Passive House standard and, therefore, is required for any project seeking the points and cost cap increases allowed for Passive House.

66. COMMENT: The commenters oppose the removal of the supplemental award at N.J.A.C. 5:80-33.2 and 33.8, alleging that removal is “a grave mistake,” that the supplemental award has historically been used only as a last resort, and that limiting the possibility of extra tax credit allocations to the hardship process will be harmful to the affordable housing industry. (21 and 30)

RESPONSE: The Agency respectfully disagrees. Recent experience shows that the supplemental award is no longer being used as a last resort. Pursuant to its current usage, the supplemental award

reduces the number of new projects that the Agency is able to fund, creates perverse incentives for applicants, and circumvents the established hardship process.

67. COMMENT: The commenters express concern that the proposed increase from \$1.75 million to \$2 million in the maximum credit allocation in the Family Cycle at N.J.A.C. 5:80-33.4(a), while an improvement, is insufficient in meeting the needs of an industry affected by elevated construction and financing costs. They recommend that the maximum credit allocation instead be increased to \$2.1 million or \$2.2 million, noting that the limit implemented during the Great Recession was \$2.2 million. (21 and 30)

RESPONSE: According to an Agency analysis, the proposed new maximum credit allocation is in line with the observed need. While the interest rate environment is a setback, it is not on the same level as during the Great Recession. The Agency does not believe that an increase beyond that being provided is warranted at this time.

68. COMMENT: The commenters express concern with the proposed requirement that adaptive reuse projects undergo a site inspection performed by the Agency “to assess the amenability of conversion to multifamily housing.” They contend that the provision is redundant with the municipal approval process and the developer’s ability to finance and lease such a project, and recommend that the language be deleted, that the inspection take place at the request of the developer, or that the Agency clarify when such an inspection would occur and what factors would be evaluated to determine “amenability.” (21 and 30)

RESPONSE: The Agency thanks the commenters for the feedback. To clarify, for adaptive reuse projects seeking cost cap exclusions, the site inspection will take place during application review.

However, the Agency disagrees with the recommendation to remove the site inspection requirement. Adaptive reuse projects are complicated, and the Agency believes in the importance of confirming that an adaptive reuse project is viable before awarding a tax credit allocation. The Agency already inspects the sites of adaptive reuse projects seeking Agency bond financing, so the amendment represents an extension of, rather than a departure from, existing practice.

69. COMMENT: The commenter recommends that the Agency either eliminate the \$30,000 limit on tax credits awarded per tax-credit-eligible unit for non-TUM Mixed-Income set-aside projects in the Family Cycle at N.J.A.C. 5:80-33.4(a)1 or increase the limit to \$33,750, noting that the rulemaking eliminates the corresponding cap for Mixed-Income Reserve projects in TUMs. (30)

RESPONSE: At this time, due to lack of pressing need, the Agency will not adjust the \$30,000 limit on tax credits awarded per tax-credit-eligible unit for non-TUM Mixed-Income set-aside projects.

70. COMMENT: The commenter recommends that, “to minimize confusion and ensure that developers have a fair opportunity to apply for funding,” the Agency issue a public notice disclosing the details of and specifying the deadline for the “time period in which NJHMFA is accepting project applications” for the Affordable Housing Production Fund (AHPF) at N.J.A.C. 5:80-33.4(d), 33.5(d), 33.6(d), and 33.8(a)3. (30)

RESPONSE: The Agency thanks the commenter for the recommendation, and will provide public notice in advance of any termination of the application period for the AHPF.

71. COMMENT: The commenters express concern that the proposed increase from \$1.4 million to \$1.6 million—approximately 14.3 percent—in the maximum credit allocation under the Age-Friendly Senior Cycle is insufficient, and that the maximum credit allocation should instead be increased by 20 percent. (21 and 30)

RESPONSE: As with the Family Cycle, Agency analysis suggests that the proposed new maximum credit allocation is in line with the observed need. The Agency does not believe an additional increase is warranted at this time.

72. COMMENT: The commenters disagree with the proposed reduction from \$400,000 to \$300,000 in the cost cap exemption for an integrated community center or social service space. They point out that nearly all community areas in senior communities are integrated, and that they are more expensive to build due to the greater needs of senior citizens. They recommend, instead, that the amount be \$400,000 or greater. (21 and 30)

RESPONSE: The Agency thanks the commenters for their feedback. Due to the expressed concerns, the Agency will retain the existing \$400,000 total development cost exception for integrated community centers or social service spaces, while adopting the new \$800,000 total development cost exception for stand-alone community centers and social service spaces. The Agency is changing the text at N.J.A.C. 5:80-33.4(a), 33.5(a), 33.6(a), and 33.8(a)1 upon adoption to revert the suggested dollar amount to the existing rule text.

73. COMMENT: The commenters assert that the proposed increase from \$100,000 to \$150,000 per project in the maximum award from the Reserve at N.J.A.C. 5:80-33.8(a)1, though a step in

the right direction, is insufficient, and that \$200,000 per project would be a more appropriate limit. (21, 28, and 30)

RESPONSE: The Agency believes that the proposed new maximum amount—a 50 percent increase over the existing maximum—is adequate, especially given expected stabilization in the interest rate environment.

74. COMMENT: The commenter suggests clarifying edits to the proposed new language pertaining to the chain of site control documentation at N.J.A.C. 5:80-33.12(c)2ii. Specifically, the commenter recommends adding the phrase “such that the applicant’s right of site control over the property from the property owner is evidenced” at the end of the sentence, in order to avoid confusion by clearly advising applicants that they must demonstrate their right to the property as derived from the property owner, including through any intermediaries. (30)

RESPONSE: The Agency thanks the commenter for the recommendation and believes that the suggested language accurately and clearly communicates the intent of the revised provision. The Agency is changing the text at N.J.A.C. 5:80-33.12(c)2ii upon adoption to incorporate the commenter's suggestion.

75. COMMENT: The commenters object to the proposed provision at N.J.A.C. 5:80-33.12(c)6v that “owner equity/loans in excess of \$1,000,000 shall be considered a permanent source that cannot subsequently be replaced by another funding source.” They recommend that exceptions be added for mixed-income projects, “moderate income developments,” preservation projects, or Aspire projects, or that the provision be reconsidered entirely. (29, 30, and 31)

RESPONSE: The Agency thanks the commenters for their feedback, but expresses its continued support for the amendment. New Jersey's LIHTC program is intended to provide the last piece of funding to affordable housing projects that are “ready to go,” with all other funding sources committed. Allowing large amounts of owner equity to be replaced in applications that have been submitted not only creates the potential that tax credits will be awarded to applications that are effectively incomplete, but also threatens the timely development of LIHTC projects in the event that alternate funding sources are not promptly committed. The Agency believes that the proposed revision, with its exceptions for Federal Home Loan Bank and New Jersey Economic Development Authority financing (including, but not limited to, the Aspire Program), allows for responsible use of owner equity while protecting the LIHTC program from negative effects.

76. COMMENT: The commenters request that the Agency define “resilience requirements of the Green Guide” and “Site and Risk Assessment Review Report” at N.J.A.C. 5:80-33.12(c)8ii(3). (21 and 30)

RESPONSE: Resilience requirements and details of the Site and Risk Assessment Review Report are found in the Green Guide, located on the Agency’s website at <https://nj.gov/dca/hmfa/developers/lihtc/greenpoints/>, therefore, no definition in the rule text is needed or appropriate.

77. COMMENT: The commenters request that the Agency provide specific language that it will require from investors for the provisions at N.J.A.C. 5:80-33.12(c)21v (letter of intent) and (c)21vi (written acknowledgement). They also express opposition to the proposed negative points system at N.J.A.C. 5:80-33.12(c)21vii and 33.15(a)20, citing concerns with enforceability and

transparency, noting, in particular, that the prior “history of investors is often blind to sponsors.” The commenters, therefore, request that the Agency publish a list of entities that have demonstrated a history of conduct detrimental to long-term compliance with extended use agreements. (21 and 30)

RESPONSE: The Agency thanks the commenters for expressing their requests and concerns. The Agency will publish acceptable language for the letter of intent and written acknowledgement from potential investors. At this time, the Agency acknowledges the difficulty of obtaining information regarding previous issues of noncompliance or misdeeds by investors and, in recognition of that obstacle, will not adopt the proposed addition at N.J.A.C. 5:80-33.15(a)20 that would impose negative points for what is, in essence, a failure to do so.

78. COMMENT: The commenters request that the Agency clarify the meaning of “permanent open space” at N.J.A.C. 5:80-33.15(a)9iv and the intent behind the change. (21 and 30)

RESPONSE: The revised open space point option is intended to ensure that residents have access to open and green amenity spaces, and to be more flexible with respect to what constitutes such spaces than the previous “community gardens” option. If open space is permitted or required by local zoning, then no conflict exists.

79. COMMENT: The commenter recommends that the Agency rephrase the proposed addition at N.J.A.C. 5:80-33.15(a)11i to, “A project may qualify for more than six points, but the allocation of points for positive land uses is limited to a maximum of six points,” rather than, “Up to six points for positive land uses can be received for each application.” (30)

RESPONSE: The Agency thanks the commenter for the recommendation and agrees that the commenter's wording more clearly reflects the scoring system. The Agency is changing the text at N.J.A.C. 5:80-33.15(a)11i upon adoption to incorporate the commenter's suggestion.

80. COMMENT: The commenter disagrees with the new language at N.J.A.C. 5:80-33.15(a)14ii that incorporates the jobs-to-housing ratio, urging that the revision be rejected outright due to the metric creating an "inaccurate assessment of a municipality's housing situation," receiving overwhelmingly negative feedback in the past, and being duplicative with the existing MRI system. (30)

RESPONSE: The Agency disagrees with the commenter's contention. The Agency has used the jobs-to-housing ratio for TUMs determinations since 2019 without issue, and has been encouraged by other commenters to expand its use of the metric. While the MRI calculation incorporates median household income, unemployment rate, and poverty rate, none of those factors are direct analogues for the jobs-to-housing ratio. Additionally, the new language uses jobs-to-housing in conjunction with proximity to public transit, and not as a standalone factor.

81. COMMENT: The commenter, though appreciative of the Agency's intent to create more variation in application scores, disagrees with the new school district point scale. They cite the significant impact of the COVID-19 pandemic on academic performance and express concern that the proposed change could "perpetuate a lack of diversity in housing choices, as many of the municipalities with the highest performing school districts are also often those with the least multi-family housing." This would result in those municipalities being able to fulfill their affordable housing obligations with 100 percent affordable LIHTC developments, while other municipalities

that currently have more multifamily housing would need to rely on “inclusionary communities, with higher overall unit counts.” (30)

RESPONSE: The Agency thanks the commenter for their feedback. The two-year lookback on test scores should help ameliorate the concerns about the pandemic affecting academic performance, as testing data will either include pre-pandemic scores or be of greater remove from the pandemic-induced disruptions. While the Agency is sympathetic to the second point, it believes that other changes to the scoring system, such as the expansion of the transit points, will prevent school district points from becoming inordinately determinative of the fate of nine-percent applications. The scoring system has always awarded more points for “more” benefits, such as being located in the highest-performing school districts, and any changes to that model are beyond the scope of this QAP revision.

82. COMMENT: The commenter requests that the Agency define what it means at N.J.A.C. 5:80-33.16(b)2iii to “regularly” offer a licensed and insured on-site healthcare provider. (30)

RESPONSE: For the purposes of defining “projects that regularly offer a licensed and insured on-site healthcare provider with a private room,” Agency policy considers “regularly” to mean that the on-site health professional’s services are available at least twice per month, for at least 20 hours total (that is, four five-hour-long sessions held every week, or two 10-hour-long sessions held every two weeks), according to a set schedule circulated to residents in advance. The Agency will propose to amend N.J.A.C. 5:80-33.16(b)2iii to clarify the meaning of “regularly” offering a licensed and insured on-site healthcare provider in due course.

83. COMMENT: The commenter opposes the proposed addition at N.J.A.C. 5:80-33.9(a) mandating that family projects applying for four-percent LIHTCs provide no more than 20 percent efficiency and one-bedroom tax credit units, no fewer than 30 percent two-bedroom tax credit units, and no fewer than 20 percent three-bedroom tax credit units, expressing their concern that projects being built in locations with different housing needs will be negatively affected. (19)

RESPONSE: The technical correction the Agency is making at N.J.A.C. 5:80-33.9(a), noted above, exempts preservation and historic rehabilitation projects from the bedroom-unit distribution requirement, which should go some way in alleviating the commenter's concerns. The Agency believes that the proposed bedroom-unit distribution requirement is important to ensuring that tax-credit-financed projects serve a broad range of household types.

84. COMMENT: The commenters recommend that the Agency create an exception to the proposed bedroom-distribution requirements at N.J.A.C. 5:80-33.9(a) for projects seeking Aspire funding during the 121-day grace period following the passage of P.L. 2023, c. 98, as those projects, being exempt from Aspire's amended bedroom-distribution requirements, would no longer qualify for LIHTCs. They additionally recommend that the grace period apply to all future phases of phased Transformative Aspire projects planning to seek LIHTCs. (19 and 22)

RESPONSE: The Agency thanks the commenters for expressing their concerns. Given that the 121-day grace period following the passage of P.L. 2023, c. 98 ended on October 25, 2023, prior to the effective date of this QAP revision, the Agency does not see the need to add any exemptions for Aspire projects.

85. COMMENT: The commenters support the expansion of the Family Cycle’s Preservation set-aside from one to two projects, as well as the increase in maximum credit award for Preservation projects from \$1.25 million to \$1.4 million. (20 and 31)

RESPONSE: The Agency thanks the commenters for the expressions of support.

86. COMMENT: The commenters support the increase in maximum credit award per project for the Supportive Housing Cycle from \$1.4 million to \$1.6 million. (20 and 23)

RESPONSE: The Agency thanks the commenters for the expressions of support.

87. COMMENT: The commenter requests clarification on the point system for the Supportive Housing Cycle at N.J.A.C. 5:80-33.17(a), specifically whether the one-point category at N.J.A.C. 5:80-33.15(a)14i for redevelopment/historic rehabilitation/adaptive reuse projects now applies to all Supportive Housing Projects, and whether the total maximum points available in the Supportive Housing Cycle, pursuant to N.J.A.C. 5:80-33.15(a)14i, should be seven points rather than three. (20)

RESPONSE: The Agency thanks the commenter for their questions and for bringing an ambiguity to the forefront. The answer to the first question is “yes,” the point category at N.J.A.C. 5:80-33.15(a)14i for redevelopment/historic rehabilitation/adaptive reuse projects does now apply to all Supportive Housing Projects. With regard to the second inquiry, there are three points available for Supportive Housing projects pursuant to N.J.A.C. 5:80-33.17(a)1 and 2, which paragraphs replace existing N.J.A.C. 5:80-33.15(a)14ii and iii, respectively. However, for the N.J.A.C. 5:80-33.15(a)14 “high opportunity” point category as a whole, the commenter is correct that seven points are available for Supportive Housing projects, which seven available

points reflect amendments being adopted at N.J.A.C. 5:80-33.15(a)14. The Agency is making a technical change upon adoption at N.J.A.C. 5:80-33.17(a) to remove the potentially misleading reference to “three points in this category,” thereby acknowledging that the predicate of the term “this” in the second sentence is ambiguous (that is, it should refer to the entirety of the seven points available for Supportive Housing Cycle applications at N.J.A.C. 5:80-33.15(a)14, not only to the points available for such applications at N.J.A.C. 5:80-33.15(a)14ii and iii). The Agency believes the phrase being inserted at N.J.A.C. 5:80-33.17(a) upon adoption will clarify the number of points available for projects applying to the Supportive Housing Cycle.

88. COMMENT: The commenter encourages the Agency to “institute an annual escalation (tied to CPI, for example) in the per unit cost caps.” (21)

RESPONSE: Though the commenter raises an interesting idea, at this time, the Agency is focused on implementing adjustments to the per-unit cost caps solely within the QAP revision process.

89. COMMENT: The commenter disagrees with the removal of the sliding scale for contractor fee limits at N.J.A.C. 5:80-33.28, as it may disadvantage smaller developments. (21)

RESPONSE: The contractor fee limits are being amended to align the LIHTC program with the Agency’s multifamily bond financing program, so that the same formula can be used for all projects. Given the high percentage of LIHTC projects that use Agency financing and the typical size of projects seeking LIHTCs, the Agency believes that any negative impacts of the change will be minimal and greatly outweighed by the positive impacts.

90. COMMENT: The commenter suggests a clarifying edit to the proposed new definition of “at risk of losing its affordability controls” at N.J.A.C. 5:80-33.2, specifically proposing that “within five years after the tax credit date of allocation” should be revised to “within five years after the date of the new tax credit allocation.” (21)

RESPONSE: The Agency thanks the commenter for the recommendation and believes that the suggested language accurately and clearly communicates the intent of the revised definition. The Agency is changing the definition of “at risk of losing its affordability controls” at N.J.A.C. 5:80-33.2 upon adoption to incorporate the commenter’s suggestion.

91. COMMENT: The commenter asks if “NJHMFA ‘preliminary financing’ [as used at N.J.A.C. 5:80-33.12(c)6] constitutes the existing process of receiving a ‘conditional commitment’ from the NJHMFA board, or if there will be an entirely new process.” (21)

RESPONSE: The commenter is correct that the process for obtaining a “preliminary approval letter” will conform with the existing process for receiving a “conditional commitment,” excluding the need for Agency Board approval.

92. COMMENT: The commenter asserts that awarding points to projects located in Opportunity Zones is “of very limited benefit ... and should be reconsidered.” (21)

RESPONSE: The Agency thanks the commenter for the recommendation. However, at this time, it continues to be State policy to encourage investment in Opportunity Zones.

93. COMMENT: The commenter supports the QAP’s three-point category for third-party green building standards, especially the inclusion of the National Green Building Standard (NGBS). (24)

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

94. COMMENT: The commenter recommends that the Agency, rather than implementing the proposed distress-based tiebreaker for TUMs at N.J.A.C. 5:80-33.19(a)1ii, instead create a set-aside for one project with high distress, rather than rely on the traditional tiebreaker for other TUM applications. (26)

RESPONSE: As noted in the Response to Comment 4, the TUMs tiebreaker sees exceptionally low usage, and should come into play even less frequently under the expanded point system. The Agency believes that the commenter's suggestion would create complications disproportionate to any benefit.

95. COMMENT: The commenter encourages the Agency to “codify that syndicators and investors can not include a forced sale requirement on a property” and “define value for the purpose of approving the exit and sale of the limited partner interest to be established pursuant to full appraisal and capital needs assessment,” so as to protect affordable housing developers and properties from predatory investors. (26)

RESPONSE: The Agency thanks the commenter for the feedback. At this time, the Agency believes that the proposed additions at N.J.A.C. 5:80-33.12(c)20 and 21 adequately address the concerns raised. However, the Agency will consider the recommendations for future revisions to the QAP.

96. COMMENT: The commenter requests that the maximum credit award for the Mixed-Income Reserve at recodified N.J.A.C. 5:80-33.8(a)2 be increased, as the maximum credit award for the Family, Age-Friendly Senior, and Supportive Housing Cycles all received increases. (27)

RESPONSE: The Agency intentionally did not increase the maximum annual allocation of credits for the Mixed-Income Reserve. The maximum amount of \$2,000,000 now aligns with the maximum annual allocation of credits for the mixed-income set-aside in the Family Cycle. At this time, the Agency does not believe that an increase is warranted.

97. COMMENT: The commenter expresses support for the provision at N.J.A.C. 5:80-33.32(f)18 requiring annual confirmation of compliance with the Housing Resource Center statute. The commenter additionally recommends that the mandatory affirmative marketing consider demographic trends in addition to total population for the purposes of directing outreach toward those who are least likely to apply, as this would be beneficial in gentrifying neighborhoods. The commenter finally suggests that the Agency broaden its efforts to track implementation of affirmative marketing plans, including requiring landlords to show how they effectively identified community partners. (28)

RESPONSE: The Agency thanks the commenter for their support and the recommendation, and will take the latter into consideration for future revisions to the QAP. At this time, the Agency believes that the proposed changes to the affirmative marketing provisions and annual compliance requirements are adequate, but it encourages affirmative marketing plans to consider trends, as well as total population and be implemented in collaboration with community partners.

98. COMMENT: The commenter expresses support for the revised definition of “redevelopment project” at N.J.A.C. 5:80-33.2 that removes a requirement that the majority of a property was previously covered by structures in non-smart growth areas. (28)

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

99. COMMENT: The commenter expresses support for the increased \$800,000 cost cap exemption for standalone community centers and social service buildings. (28)

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

100. COMMENT: The commenter expresses support for the changes at N.J.A.C. 5:80-33.9(b) and 33.12(a) to “disincentivize market rate developers from asking for tax credits when they can independently support projects.” (28)

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

101. COMMENT: The commenter expresses support for the addition to the definition of “community benefits agreement” at N.J.A.C. 5:80-33.2, as well as the definition itself and its usage at N.J.A.C. 5:80-33.12(c)17ii. (28)

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

102. COMMENT: The commenter expresses support for the Family Cycle’s new additional requirements for units set aside for families experiencing homelessness, particularly the Homeless Management Information System (HMIS)-registration and bedroom-distribution provisions at recodified N.J.A.C. 5:80-33.15(a)22i. (28)

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

103. COMMENT: The commenter expresses support for the deletion, due to obsolescence, of “regional contribution agreements” or “RCAs” at N.J.A.C. 5:80-33.12(c)6. (28)

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

104. COMMENT: The commenter recommends that the Agency adopt an extended-use policy consistent with the Uniform Housing Affordability Controls (UHAC) default policy of continued affordability unless and until the municipality releases the deed restriction, which, the commenter contends, would prevent future housing crises. (28)

RESPONSE: The Agency thanks the commenter for the recommendation and agrees with the policy objective of long-term affordability. At this time, the Agency considers the extension of existing requirements accomplished by the proposed amendments to be sufficient.

105. COMMENT: The commenter supports the replacement of “community gardens” with the new open-space point option at N.J.A.C. 5:80-33.15(a)9iv and 33.16(b)2v. (28)

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

106. COMMENT: The commenter recommends that the Agency restore the option to earn points for a high jobs-to-housing ratio in the positive land uses category at N.J.A.C. 5:80-33.15(a)11i, as “constructing affordable housing in job-rich areas may expand income streams for those in affordable housing and internships for students[.]” (28)

RESPONSE: The Agency thanks the commenter for the recommendation and agrees on the availability of jobs being an important factor in siting affordable housing. However, the Agency believes that the proposed amendments adequately incorporate jobs-to-housing ratio in a more appropriate point category.

107. COMMENT: The commenter supports the revised point structure for positive/negative land uses at N.J.A.C. 5:80-33.15(a)11i and ii, opining that it is important “to deeply disincentivize projects within close proximity to landfills, incinerators, and prisons.” (28)

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

108. COMMENT: The commenter supports the revised point structure for school district performance at N.J.A.C. 5:80-33.15(a)14iii, as well as the substitution of the New Jersey Student Learning Assessments (NJSLA) for the Partnership for Assessment of Readiness for College and Careers (PARCC) assessment. They note that “educational access is a critical factor in siting affordable housing.” (28)

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

109. COMMENT: The commenters contend that the proposed bedroom-unit distribution for four-percent family projects at N.J.A.C. 5:80-33.9(a) is problematic for rehabilitation projects, adaptive reuse projects, housing constructed for vulnerable populations (for example, veterans, homeless persons, individuals with special needs, and disabled persons), and projects in certain Transit-Oriented Development (TOD) and special zoning districts. (30 and 31)

RESPONSE: As noted in the response to prior comments, the Agency is changing the proposed language at N.J.A.C. 5:80-33.9(a) to exclude preservation projects and historic rehabilitation projects from the required bedroom-unit distribution. The Agency is not implementing an explicit exception for adaptive reuse projects, as the concerns that apply to preservation projects are not applicable in the same degree to adaptive reuse projects. Supportive housing projects will not be affected by the bedroom distribution requirement. Finally, while certain zoning districts may have different priorities, the Agency is committed to ensuring that its projects accommodate families of diverse sizes and compositions.

Summary of Agency Initiated Changes upon Adoption:

At the definition of “‘certified minority and/or women business enterprise’ or ‘certified M/WBE’” at N.J.A.C. 5:80-33.2, the Agency is changing the reference to the “Small Business Registration, and M/WBE Certification Services Unit” in the New Jersey Department of the Treasury to the “Uniform Certification Service” to properly reference the service.

At N.J.A.C. 5:80-33.12(c)15, the Agency is removing the capitalization of the initial letter of the word “white” to properly follow accepted terminology.

At N.J.A.C. 5:80-33.12(c)21vi, the Agency is removing the capitalization of the initial letter of the word “state” as the reference is to the “statutory, court-interpreted, or common law” of any state, not just that of New Jersey.

At N.J.A.C. 5:80-33.15(a)11ii, the Agency is closing up the space between “(a)11ii” and “(1) through (8) below” to properly cite the reference to the sub-subparagraphs (1) through (8).

At N.J.A.C. 5:80-33.32(f)18, the Agency is changing “<https://nj.gov.njhrc>” to “<https://nj.gov/njhrc>” to correct a typographical error in the website address.

Federal Standards Analysis

With respect to affordability requirements, the Code sets forth minimum standards for low-income housing tax credits. Tax credit affordability requirements are set forth at Sections 42(g)(1)(A), (B), and (C) of the Code, pursuant to which housing sponsors elect 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 (AMGI); (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 AMGI; or (iii) 40 percent or more of the residential units being both rent-restricted and occupied by individuals whose income does not exceed the imputed income limitation designated by the taxpayer (not to exceed 80 percent of AMGI) with respect to the respective unit. 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 adopted amendments or new rule deviate from those standards.

Other than as set forth above, the adopted amendments and new rule 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 C.F.R. Part 1 Subpart 42).

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

SUBCHAPTER 33. LOW-INCOME HOUSING TAX CREDIT QUALIFIED ALLOCATION
PLAN

5:80-33.2 Definitions

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

...

“At risk of losing its affordability controls” means a project with a deed restriction that expires within five years ***[after the tax credit date of allocation]*** ***of the date of the new tax credit allocation*** that is “likely” to convert to market rate (as supported by the market analysis at N.J.A.C. 5:80-33.12(c)1ii), a project with project-based assistance that expires within five years ***[after the tax credit date of allocation]*** ***of the date of the new tax credit allocation***, a project that may be condemned, or a project that is subject to foreclosure, unless NJHMFA determines such acquisition is part of an arrangement a purpose of which is to terminate such affordability controls. For multi-phase projects, forestalling of a foreclosure by funding of the initial phase shall not preclude latter phases of the same project from qualifying for the set-asides at N.J.A.C. 5:80-33.4(a)1 and 33.5(a)1, provided the latter phases satisfy the remaining elements of the definition of “preservation project” below.

...

“Certified minority and/or women business enterprise” or “certified M/WBE” means a minority- and/or women-owned business or enterprise that is registered with, and certified by, the Division of Revenue and Enterprise Services, ***[Small Business Registration, and M/WBE**

Certification Services Unit]* ***Uniform Certification Service*** in the State of New Jersey Department of the Treasury. Information on how to register as a certified M/WBE is available at <https://www.state.nj.us.treasury/revenue/ucs.shtml>.

...

“Targeted Urban Municipalities” or “TUMs” means those urban municipalities designated by the following factors: MRI, population, and housing density*[, Municipalities are eligible to be designated as a TUM if they have at least 5,000 residents, 2,000 housing units, and meet a municipal housing density of at least 425 units per square mile or have at least one census tract with a housing density of at least 1,275 units per square mile, as of]**, **relying on*** the most recent data from the U.S. Census Bureau*[’s Population Estimates Program (PEP) and American Community Survey (ACS) 5-Year Estimates]*. *[Eligible municipalities shall be ranked according to their MRI Distress Scores in descending order.]* NJHMFA shall publish annually a list of the New Jersey municipalities that are designated as TUMs.

...

5:80-33.4 Family Cycle

(a) Non-age-restricted developments may apply to this cycle. Not less than 50 percent of the total credits awarded in the Family, Age-Friendly Senior, and Supportive Housing Cycles will be available in the Family Cycle, and the maximum annual allocation of credits to any one development competing in this cycle is \$2,000,000. Total development costs shall not exceed \$317,625 per unit for buildings of one to four residential stories, \$346,500 per unit for buildings with five or six residential stories, and \$375,375 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 *[\$300,000]* ***\$400,000*** maximum for an integrated community center or social service space, or up to \$10,000 per unit and \$800,000 maximum for a stand-alone community or social service building (subject to third-party cost certification), required deferred developer fee, if any, and either up to \$15,000 per unit for adaptive reuse projects or up to \$7,500 per unit for projects achieving the Passive House standard. For adaptive reuse projects, NJHMFA will perform a site inspection to assess the amenability of conversion to multifamily housing. Additionally, the development, design, and construction teams must demonstrate successful experience with the established methodologies required to produce an adaptive reuse project. 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 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.-2. (No change from proposal.)

(b)-(e) (No change from proposal.)

5:80-33.5 Age-Friendly Senior Cycle

(a) Senior projects may apply to this cycle. Not less than 20 percent of the total credits awarded in the Family, Age-Friendly Senior, and Supportive Housing Cycles will be available in the Age-Friendly Senior Cycle, and the maximum annual allocation of credits to any one development

competing in this cycle is \$1,600,000. Total development costs shall not exceed \$317,625 per unit for buildings of one to four residential stories, \$346,500 per unit for buildings with five or six residential stories, and \$375,375 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 *[\$300,000]* ***\$400,000*** maximum for an integrated community center or social service space or up to \$10,000 per unit and \$800,000 maximum for a stand-alone community or social service building (subject to third-party cost certification), required deferred developer fee, if any, and either up to \$15,000 per unit for adaptive reuse projects or up to \$7,500 per unit for projects achieving the Passive House standard. For adaptive reuse projects, NJHMFA will perform a site inspection to assess the amenability of conversion to multifamily housing. Additionally, the development, design, and construction teams must demonstrate successful experience with the established methodologies required to produce an adaptive reuse project. 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 compose at least 85 percent of the project. There is one set-aside in the Age-Friendly Senior Cycle, the preservation set-aside. The first and second reservations of credits from the Age-Friendly Senior Cycle shall be given to the highest-ranking eligible applications from preservation set-aside projects. The maximum annual allocation of credits to developments competing in this set-aside is \$1,200,000. If, because of lack of demand, the preservation set-aside is not utilized, the credits shall be released into the Age-Friendly Senior Cycle.

(b)-(e) (No change from proposal.)

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. *[Units receiving Money Follows the Person (MFP) funds, first authorized by Congress as a demonstration program by section 6071 of the Deficit Reduction Act of 2005, Pub. Law 109-171 (2006), and subsequently extended and amended by Congress, or Section 811 funds cannot be included as part of the minimum 25.00-percent requirement.]* An executed agreement between the proposed owner entity and the social service provider, and a social services plan consistent with the requirements of this subsection for the Supportive Housing Cycle shall be submitted in the application. There will be not less than 12.5 percent of the total credits awarded in the Family, Age-Friendly Senior, and Supportive Housing Cycles available in the Supportive Housing Cycle and the maximum annual allocation of credits to any one development competing in this cycle is \$1,600,000. Total development costs shall not exceed \$317,625 per unit for buildings of one to four residential stories, \$346,500 per unit for buildings with five or six residential stories, and \$375,375 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 *[\$300,000]* ***\$400,000*** maximum for an integrated community center or social service space or up to \$10,000 per unit and \$800,000 maximum for a stand-alone community or social service building (subject to third-party cost certification), required deferred developer fee, if any, and either up to \$15,000 per unit for adaptive reuse projects or up to \$7,500 per unit for projects achieving the Passive House standard. For adaptive reuse projects, NJHMFA will perform a site inspection to assess the amenability of conversion to multifamily housing. Additionally, the development, design, and

construction teams must demonstrate successful experience with the established methodologies required to produce an adaptive reuse project.

(b)-(e) (No change from proposal.)

5:80-33.8 Awards from the Reserve

(a) Projects that need credits because of technical errors or severe hardship can submit a reapplication for credits from the Reserve. The Reserve may also be used to fund cost overruns 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, Age-Friendly Senior, and Supportive Housing Cycles shall be deposited into the Reserve. Awards of credits from the Reserve are subject to availability and NJHMFA's evaluation of the request.

1. Hardship requests for additional credits from the Reserve are limited to \$150,000 per project. Total development costs shall not exceed \$317,625 per unit for buildings of one to four residential stories, \$346,500 per unit for buildings with five or six residential stories, and \$375,375 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 *\$300,000* ***\$400,000*** maximum for an integrated community center or social service space, or up to \$10,000 per unit, and \$800,000 maximum for a stand-alone community or social service building (subject to third-party cost certification), required deferred developer fee, if any, and either up to \$15,000 per unit for adaptive reuse projects or up to \$7,500 per unit for projects achieving the Passive House standard. Hardship requests must be documented to the satisfaction of NJHMFA and must demonstrate the existence of an unforeseen emergency 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 September 30. 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.

2.-4. (No change from proposal.)

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 conversion to tenant ownership (if applicable), tax abatement (if applicable), and the negative point categories; a period of restriction meeting the criteria corresponding with the maximum points stipulated at N.J.A.C. 5:80-33.15(a)1i; and a sponsor certification and breakdown of costs and basis. For family projects*, **except for preservation and historic rehabilitation projects, which shall retain, at a minimum, their existing percentages of two-bedroom and three-bedroom units***, 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. 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.-5. (No change from proposal.)

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

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

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

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

i. (No change from proposal.)

ii. A market study, certified to both the applicant and NJHMFA in the analyst's Certification, shall be submitted for all projects. Two copies of the report shall be submitted. The market study shall be no more than six months old. Projects applying for additional credits from the Reserve that have already received a previous allocation of tax credits shall not be required to submit a new market study. The analyst shall state in the certification that all market study requirements have been fully addressed. If any relevant information cannot be obtained, the analyst shall explain why the information cannot be obtained. The study shall also identify any assumptions, estimates, projections, and models used in the analysis. The assumptions used in the

market study (for example, project rents, unit mix, amenities, etc.) must precisely reflect the information provided in the tax credit application. The data and analysis shall clearly indicate enough demand in the market to support the proposed development. Any additional information appropriate to the market area and the project shall be submitted to demonstrate the demand for the proposed housing project. The report shall include, at a minimum:

(1) (No change from proposal.)

(2) A description of the proposed site, including pictures of the site and existing structures, pictures of the immediate neighborhood, visibility/access/exposure, proximity to retail and employment, detailed neighborhood and market area maps showing all significant nearby land uses, block and lot numbers of each parcel, site acreage, available public services and public transportation, and existing infrastructure. A description of the proposed improvements including unit mix, a commentary on the preliminary drawings including unit size and design, proposed project and unit amenities, and any applicable tenant charges, tenant-paid utilities, and project-paid utilities shall be provided. *[Annual utility costs shall be calculated]* ***Detailed monthly utility allowance figures shall be presented*** separately for each utility type (for example, electric, gas, etc.) and for each unit type within the project;

(3)-(11) (No change from proposal.)

iii.-iv. (No change from proposal.)

2. Applications shall include the information set forth at (c)2i and ii below in order to demonstrate site control:

i. (No change from proposal.)

ii. The applicant assumes the full burden of disclosing with certainty in its application how it will obtain and maintain site control. The application shall set forth with

specificity by what means each parcel of the project's real property is to be acquired if such acquisition has not yet been perfected; applications shall not indicate alternate means of acquisition for any particular parcel. If multiple documents are necessary to evidence site control, there shall be no lapse in the chain of site control documentation*, **such that the applicant's right of site control over the property from the property owner is evidenced***.

For all forms of site control, a copy of the current owner's recorded deed (or equivalent) shall be submitted as supporting documentation. In the case of a municipality or other entity acquiring property through eminent domain, at a minimum, the applicant shall submit as part of its application a copy of all written offers, as described at N.J.S.A. 20:3-6, or its successor, executed by the condemnor to the condemnee(s) with regard to all real property comprising the project that is to be acquired by this means, which offers must be in effect and valid at the time of submission to NJHMFA. If additional documents have been executed and/or filed with regard to eminent domain at the time of application deadline, the applicant shall append a copy of those documents with its application and shall continue to supplement the application with such documents as required at N.J.A.C. 5:80-33.31; additionally, the declaration of taking shall be recorded within three months from the date of the Tax Credit Committee meeting at which awards/decisions are announced.

3.-14. (No change from proposal.)

15. All owners and developers shall affirmatively market their projects. For projects of 25 units or more, applicants shall submit an Affirmative Fair Housing Marketing Plan, which, in short, documents how the project will be marketed to those people who are least likely to apply. For instance, if the proposed development is located in an area predominantly populated by *[White]* ***white*** persons, outreach should be directed to *[non-White]* ***non-white***

persons. Conversely, if the population is predominantly Black persons, outreach should be directed to non-Black persons. Pursuant to N.J.S.A. 52:27D-321.3 et seq., affirmative fair housing marketing plans shall include registering projects on the New Jersey Housing Resource Center (HRC) and posting vacancies, waitlist opportunities, and lottery drawings when accepting applications for such openings. The listings on the HRC shall comply with N.J.S.A. 52:27D-321.6.a for initial marketings and with N.J.S.A. 52:27D-321.6.b and 6.c for all subsequent applications. Additionally, as part of the affirmative marketing requirement, the owner/developer shall notify the local CoC of any units reserved pursuant to N.J.A.C. 5:80-33.15(a)22 for individuals and families that are homeless. At the time the units are placed in service, the owner/developer and rental agent shall certify that the project was affirmatively marketed.

16.-20. (No change from proposal.)

21. NJHMFA is committed to the long-term affordability of developments for the benefit of tenants and full compliance by applicants and principals with the provisions of the Code, the extended use agreement, and other program requirements. NJHMFA similarly has an interest in preserving the right of first refusal (ROFR) by a qualified nonprofit organization at the close of the compliance period, as authorized at Section 42(i)(7) of the Code. NJHMFA reserves the right to require any or all of the following from applicants, as applicable:

i.-v. (No change from proposal.)

vi. Written acknowledgement from any or all potential investors or syndicators that they have never sought to undermine the exercise of a right of first refusal or option to purchase in prior transactions, that they understand that return on investment is primarily in the form of tax benefits and not dependent on the project's appreciation in value, and that the ROFR as

authorized at Section 42 of the Code is distinct from a right of first refusal pursuant to *[State]*
state statutory, court-interpreted, or common law;

vii.-ix. (No change from proposal.)

5:80-33.13 Application for additional credits

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

(c) ***The sponsor of a project that receives its initial tax credit award prior to the 2024 funding cycle and also receives hardship credits from the Reserve, as provided in this section, as well as any affiliate entity effectively under the sponsor's control and any entity that is a related party with respect to the sponsor, for each award of hardship credits received shall be eligible for one fewer award for a new project from all tax credit cycles in the round following the day on which the Tax Credit Committee approves the request.*** The sponsor of a project that receives its initial tax credit award in the *[2022]* ***2024*** funding cycle or later and also receives hardship credits from the Reserve as provided in this section, as well as any affiliate entity effectively under the sponsor's control and any entity that is a related party with respect to the sponsor, shall be precluded from applying for tax credits for a new project for all tax credit cycles in the round following the day on which the Tax Credit Committee approves the request.

5:80-33.15 Point system for the Family Cycle

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

1.-10. (No change from proposal.)

11. Applications may receive up to a maximum of six points for the following (to be eligible for points in this category, proximity to the locations at (a)11i(1) through (20) below shall be

addressed in the market analysis as required at N.J.A.C. 5:80-33.12(c)1). At a minimum, structures must have building permits issued and be under construction to qualify:

i. As indicated, projects located within one-half mile of the positive land uses at (a)11i(1) through (8) below shall receive two points. Family Cycle projects located within three miles of positive land uses (a)11i(1) through (20) below shall be awarded one point. Age-Friendly Senior Cycle and Supportive Housing Cycle projects located within one mile of positive land uses at (a)11i(1) through (20) below shall be awarded one point. Multiple points shall not be awarded for proximity to multiple positive land uses of the same category (that is, a project located within one-half mile of two supermarkets will receive two points, not four points). *[Up to six points for positive land uses can be received for each application]* ***While a project may qualify for more than six points, an application can receive no more than six points for positive land uses*:**

(1)-(20) (No change from proposal.)

ii. Projects located within one mile of the following negative land uses at *[(a)11ii(1)]* ***(a)11iii(1)*** through (8) below shall have three points deducted from the project score for each qualifying item, up to a maximum of six points for each application:

(1)-(8) (No change from proposal.)

iii. (No change from proposal.)

12.-19. (No change from proposal.)

*[20. Applications that have a general partner, voting member, developer, sponsor, investor, syndicator, lender, or related party that has within the preceding 10 years, in NJHMFA's determination, participated in a foreclosure (or instrument in lieu of foreclosure) in New Jersey or another jurisdiction that was part of an arrangement with a purpose of

terminating an extended low-income housing commitment (regardless of whether the extended low-income housing commitment was terminated through such foreclosure or instrument) shall have 15 points deducted from the application's score. Failure to respond to this point category shall result in the deduction of points as provided pursuant to this paragraph. Applications that receive negative points in this category do not qualify for the set-asides at N.J.A.C. 5:80-33.4, 33.5, and 33.6, and may not receive any points for developer experience at (a)21 below.]*

[21.] ***20.*** (No change from proposal.)

[22.] ***21.*** Applicants may select one of the following* [. Units receiving Money Follows the Person (MFP) funds or Section 811 funds cannot be included as part of the minimum requirements for this point category]*:

i.-ii. (No change from proposal.)

Recodify existing 23.-26. as **22.-25.** (No change from proposal.)

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

(a) The point system for the Supportive Housing Cycle includes all point categories of the Family Cycle except for the point categories at N.J.A.C. 5:80-33.15(a)3, concerning large-family units, N.J.A.C. 5:80-33.15(a)5, concerning social services, and N.J.A.C. 5:80-33.15(a)22, concerning supportive housing units. Additionally, the point categories at N.J.A.C. 5:80-33.15(a)14ii and iii are replaced, respectively, with the following, for a maximum of *[three points in this category]* ***seven points available pursuant to N.J.A.C. 5:80-33.15(a)14 for applications to the Supportive Housing Cycle***.

1.-3. (No change from proposal.)

(b) (No change from proposal.)

5:80-33.19 Tiebreaker system

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

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

i. (No change from proposal.)

ii. For projects located within a TUM, a tax credit reservation shall be awarded to the project located in the municipality with the **[highest]* ***lowest*** MRI ***ranking**** (that is, with the greatest ****level of**** distress). ***For example, a municipality ranked number 4 would be awarded over a municipality ranked number 33.***

2.-3. (No change from proposal.)

5:80-33.32 Compliance monitoring

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

(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.-17. (No change from proposal.)

18. That the owner registered and posted the property on the New Jersey Housing Resource Center (HRC) and has actively updated property information pursuant to N.J.S.A. 52:27D-321.3. The HRC is located at *<https://nj.gov/njhrc>]* *<https://nj.gov/njhrc>*; and