

## COMMUNITY AFFAIRS

(a)

### DIVISION OF LOCAL GOVERNMENT SERVICES

#### LOCAL FINANCE BOARD

#### Local Government Ethics Law

#### Local Government Officers

#### Adopted New Rule: N.J.A.C. 5:35-2.1

Proposed: September 6, 2016, at 48 N.J.R. 1726(a).

Adopted: January 31, 2017, by Timothy J. Cunningham, Director,  
Division of Local Government Services.

Filed: January 31, 2017, as R.2017 d.036, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 40A:9-22.3.g.

Effective Date: March 6, 2017.

Expiration Date: March 13, 2021.

#### Summary of Public Comments and Agency Responses:

Public comments, summarized below, were submitted by the following individuals:

COMMENT: Jessica Larney, Assistant Municipal Clerk and Deputy Registrar for the Township of Brick, asks whether individuals in the following positions would be required to file financial disclosure statements under the proposed new rule: Alternate and Conflict Attorneys, Alternate and Conflict Public Defenders, Alternate and Conflict Prosecutors, Special Counsel (with the exception of Bond and Labor counsel), and Alternate and Conflict Engineers. Commenter states she received individual guidance from the Local Finance Board years ago that stated individuals in such positions were required to file financial disclosure statements pursuant to the Local Government Ethics Law.

RESPONSE: Alternate and conflict attorneys, engineers, and prosecutors would not be required to file financial disclosure statements. The rule would only require a financial disclosure statement to be filed by the attorney and engineer who is appointed to represent the local government entity as its named attorney or engineer, along with any other attorneys or engineers who regularly assist the named attorney or engineer in providing professional services to the local government entity. A similar rationale applies to the positions of municipal prosecutors under paragraph (a)17. For reasons discussed below in response to a subsequent comment, municipal public defenders will not be required to file a financial disclosure statement.

A typical scenario is one where a partner in a law firm is appointed to serve as municipal attorney, but the account is assigned to an associate who attends meetings, takes phone calls, provides legal opinions, and performs other law related services for the client. Here, both the municipal attorney and the associate performing much of the legal work would be considered a "municipal attorney" under paragraph (a)12 and, thus, are required to file a financial disclosure statement. Other attorneys within that same law firm who provide little or no services to the municipality would not be required to file a financial disclosure statement. Likewise, an individual who is appointed municipal engineer, along with any other engineers in the firm who regularly provide engineering related services to the municipality, would be considered a "municipal engineer" under paragraph (a)10 and be required to file a financial disclosure statement under this section.

COMMENT: Kathleen Armstrong, Hampton Township Clerk, appreciated that the proposed new rule brought much needed clarity in who is and is not required to file a financial disclosure statement under the Local Government Ethics Law.

RESPONSE: The Director thanks Ms. Armstrong for expressing her support of the rule proposal.

COMMENT: Hon. Mary Melfi, Hunterdon County Clerk, asked that the proposed rule be amended to require that county clerks regularly receive any notices pertaining to the filing of financial disclosure statements under the Local Government Ethics Law. County Clerk Melfi

states that this amendment is necessary because county clerks manage the financial disclosure statement filing process for county "local government offices."

RESPONSE: The Director's rulemaking authority with respect to financial disclosure statements is limited to determining which positions qualify as "managerial executive" and, thus, are required to file as local government officers. Statutory authority to promulgate rules concerning the county level financial disclosure statement filing process rests with the Local Finance Board.

COMMENT: Ms. Cynthia Ege, Lambertville City Clerk, stated that she did not see a reference in the proposed new rule to municipal authorities.

RESPONSE: N.J.A.C. 5:33-2.1 applies to municipal authorities through paragraphs (a)1, 4, 5, 6, 14, and 29 of the adopted rule. Further, N.J.S.A. 40A:9-22.3.g(3) includes members of independent municipal, county, or regional authorities within the definition of "local government officer" and, thus, individuals in these positions are required to file a financial disclosure statement.

COMMENT: Mr. Richard Phoenix, North Plainfield Borough Clerk, states that the proposed rule should be amended to either decrease the fine for late filing of a financial disclosure statement from \$100.00 to \$50.00, or to eliminate the penalty altogether. Mr. Phoenix argues that the \$100.00 minimum fine presently in place is confiscatory and unfairly penalizes volunteers who receive no pecuniary reward for their community efforts.

RESPONSE: The Director's rulemaking authority with respect to financial disclosure statements is limited to determining which positions qualify as "managerial executive" and, thus, are required to file as a local government officer. Although rulemaking authority with respect to the balance of the financial disclosure statement rests with the Local Finance Board, N.J.S.A. 40A:9-22.10 sets a statutory minimum penalty of \$100.00 for Local Government Ethics Law violations. Although the Local Finance Board has the authority to waive a fine, such determinations are made on a case-by-case basis and only if an individual determined to have violated the Local Government Ethics Law appeals their Notice of Violation to the Board.

COMMENT: Mr. W. Scott Jett, North Wildwood City Clerk, applauds the Director and Local Finance Board for attempting to address the confusion on who must file a financial disclosure statement, citing inconsistencies caused by rulings from the Public Employment Relations Commission (PERC). However, commenter argues that the municipal prosecutor and municipal public defender should not be required to file a financial disclosure statement because the requirement would be inconsistent with Attorney General Formal Opinion 91-0096, which states that court personnel, including a municipal judge, are not required to file a financial disclosure statement. Municipal prosecutors and municipal public defenders should be considered court personnel because they serve no other municipal function and do not affect the policy and purposes of any local government agency. In addition, requiring municipal prosecutors and municipal public defenders to file financial disclosure statements runs contrary to recent State measures protecting law enforcement officers by prohibiting disclosure of certain personal information. Requiring disclosure of the personal information of prosecutors and public defenders would endanger those individuals.

RESPONSE: The Director will not be taking the municipal prosecutor position off of the list of those individuals defined as "managerial executive" and, thus, required to file financial disclosure statements. Unlike municipal court personnel covered by Attorney General formal opinion 91-0096, including municipal judges and court administrators, municipal prosecutors do not work for the judiciary, but rather for the municipality. Municipal prosecutors are not subject to the New Jersey Supreme Court's Code of Judicial Conduct and/or Rules of Court pertaining to ethical conduct. By virtue of their role in the enforcement of local ordinances, prosecutorial discretion exercises in plea bargaining and sentencing recommendations, along with their interaction with a municipality's police department, a municipal prosecutor can have a significant impact on the policy and purposes of a municipality. Finally, requiring municipal prosecutors to file a financial disclosure statement would not run afoul of P.L. 2015, c. 226, a law which prohibits State and local government agencies from knowingly

posting or publishing the home address or unpublished telephone number of any current or retired law enforcement officer without first obtaining their written permission. The Division will be issuing guidance on financial disclosure statement filing guidance for those individuals who are current or retired law enforcement officers pursuant to P.L. 2015, c. 226.

Although a municipal public defender has a duty to zealously represent their client in municipal court, they likewise are paid by the municipality and are not court personnel. However, after carefully considering the commenter's argument, the Director ultimately agrees that a municipal public defender does not have a role in the municipality that can properly be characterized as "managerial executive." As such, the Director will not adopt paragraph (a)18 as proposed; thus the adopted rule will not require municipal public defenders to file a financial disclosure statement under the Local Government Ethics Law. Numbering of the remaining subsections will be amended accordingly.

COMMENT: Mr. Christopher Vaz, Seaside Heights Borough Administrator, congratulates the Director on a well written and thought out definition of which positions qualify as "managerial executive." The commenter asks whether municipal court judges, administrators, and staff would continue to be exempt from filing financial disclosure statements. As a previous attorney general opinion has determined that court staff is not required to file financial disclosure statements, while municipal court judges and administrators are considered a "department head" by most municipalities, the Director is asked to clarify whether the proposed rule supersedes that prior attorney general opinion. The commenter also inquired as to whether the financial disclosure statement filing requirement applies only to the principal municipal attorney and the principal municipal engineer, or also to the extended family of attorneys and engineers (for example, conflict counsel, labor counsel, bond counsel, special project engineer). The commenter also suggests that the Director add a section to the proposed rule that expressly exempts certain titles and job functions.

RESPONSE: Municipal court judges and administrators would not be required to file financial disclosure statements under paragraph (a)6, which pertains to department heads, as these positions are covered by the New Jersey Supreme Court's Code of Judicial Conduct and/or Rules of Court pertaining to ethical conduct. This rule would not override Attorney General Formal Opinion 91-0096.

With respect to the positions of municipal attorney and municipal engineer, alternate, special, and conflict attorneys or engineers would not be required to file financial disclosure statements. The rule would only require a financial disclosure statement to be filed by the attorney and engineer who is appointed to represent the local government entity as its attorney or engineer, along with any other attorneys or engineers in the same firm as those named appointments who regularly provide professional services to the local government entity. This rule remains consistent with the interpretation set forth in Attorney General Formal Opinion 91-002.

Finally, the Director concludes that changing the rule to specifically exempt certain positions would result in less, rather than greater, clarity. The Director reserves the right to issue technical guidance as necessary in the form of a Local Finance Notice.

COMMENT: Mr. Jay Delaney, Spring Lake Heights Borough Administrator, observes that the Business Administrator title included amongst the positions classified as managerial executive is a required position under the Faulkner Act Mayor-Council form of government as outlined at N.J.S.A. 40:69A-31 et seq. While the proposed rule includes the language "or responsibilities equivalent to such titles," presumably the intent of the proposed regulation is to include the "municipal administrator" position required in the Mayor-Council-Administrator form of government (N.J.S.A. 40:69A-149.2) and the "administrator or municipal administrator" position authorized for other forms of government at N.J.S.A. 40A:9-136. The commenter suggests that the above-referenced titles be specified and included in the rule.

RESPONSE: The Director finds that including the additional above referenced titles would be redundant and unnecessary, considering that a "municipal administrator" would have responsibilities equivalent to the title of "Business Administrator" listed in paragraph (a)1.

COMMENT: Ms. Jewel V. Thompson-Chin, Tenafly Borough Administrator, states that although the proposed new rule helps improve the understanding of what titles are required to file financial disclosure statements, it is not inclusive enough to eliminate some of the confusion or grey areas that may still exist. Although the title "Business Administrator" is generally understood to include other equivalent titles, it may be clearer just to list titles, such as Borough Administrator and City Administrator since these are also fairly common Administrator titles utilized throughout the State. Paragraph (a)6 should include the title "agency director." While paragraph (a)11 requires health officers to file financial disclosure statements, the paragraph does not account for municipalities that have contract health officers (that is, not direct employees). Finally, the commenter asks whether members of environmental and historic commissions, board of health volunteers, or any advisory committee members, in addition to commissioners on boards of recreation, would be required to file financial disclosure statements.

RESPONSE: The Director finds that adding the titles "borough administrator" and "city administrator" would be redundant and unnecessary, considering that the title "business administrator" set forth in paragraph (a)1 would encompass these titles. The term "agency director" as used by commenter has responsibilities substantially similar to the positions set forth in paragraph (a)6. Health officers, whether direct employees or contracted, would be required to file financial disclosure statements pursuant to paragraph (a)11. Board of Health Commissioners would be classified as "local government officers" pursuant to N.J.S.A. 40A:9-22.3.g, and, thus, required to file financial disclosure statements, not by virtue of this rule but rather because of a board of health's authority to enact ordinances. Members of environmental commissions and historic preservation commissions would not be required to file financial disclosure statements under this rule. As for advisory bodies generally, N.J.S.A. 40A:9-22.3.e makes clear that members of purely advisory bodies are not required to file a financial disclosure statement.

COMMENT: Dianne Kelly, Chief Finance Officer for Upper Freehold Township, inquired whether the Chief, Acting Chief, Deputy Chief, or Assistant Chief of a paid fire department, would need to file a financial disclosure statement under the proposed rule if they are volunteers.

RESPONSE: The commenter appears to be asking whether a volunteer chief, acting chief, deputy chief, or assistant chief of a "part-paid" fire department (that is, a department staffed with a combination of volunteer and paid firefighters) would be required to file a financial disclosure statement under this rule. The answer is no. The adopted rule will require financial disclosure statements to be filed for the above-referenced positions only if a fire department is staffed exclusively with paid firefighters.

COMMENT: Ms. Cathy Reese, Warren Township Clerk, asks that the phrase "independent local government agency" be defined.

RESPONSE: Paragraph (a)14 in the proposed rule requires an "independent local government agency attorney" file a financial disclosure statement under the Local Government Ethics Law. The phrase "independent local government agency attorney" refers to an attorney serving a "local government agency" as defined in N.J.S.A. 40A:9-22.3.e, other than the attorney positions specified in paragraphs (a)12 (municipal attorney and county counsel) and 13 (planning board or zoning board of adjustment attorney). For reasons discussed below in response to a subsequent comment, for purposes of clarity the adopted rule will excise the word "independent" from paragraph (a)14.

COMMENT: Mr. Jon Rheinhardt, Administrator/Chief Financial Officer of Wharton Borough, proposed that paragraph (a)8 be amended to include the phrase "or equivalent in the absence of the chief." Police departments serving certain smaller municipalities have lieutenants that serve in the capacity of a deputy chief. The commenter asked whether the phrase "independent local agency attorney" in paragraph (a)14 encompasses all attorneys appointed by the governing body, and whether it only includes attorneys that are directly employed by the municipality. Finally, the commenter observes that Wharton Borough's deputy municipal clerk, police records clerk, and the deputy Office of Emergency Management (OEM) coordinator currently file financial

disclosure statements because they have the same powers in absence of the main person.

RESPONSE: Police lieutenants that have responsibilities equivalent to a deputy police chief would be required to file a financial disclosure statement under paragraph (a)8 of the adopted rule. If a position that is listed in the rule is vacant, any individual serving in said position on an acting or interim basis would be required to file a financial disclosure statement by virtue of their undertaking the responsibilities of the listed vacant position; otherwise, the deputy positions and police records clerk position referenced by commenter would not be required to file as they are not included in the rule.

Paragraphs (a)12 and 14 of the adopted rule will require the attorney who is appointed to represent the local government agency, regardless of whether they are direct employees or contracted professionals, to file a financial disclosure statement, along with any other attorney in the same firm as those named appointments who regularly provide professional services to the local government entity. The Director acknowledges that paragraph (a)14 should be amended to make clear that it is not referring solely to attorneys who are “independent contractors,” but rather that the paragraph applies generally to any attorney appointed to be the attorney of a local government agency as defined pursuant to N.J.S.A. 40A:9-22.3.e (in addition to those local government agencies specifically referenced in paragraphs (a)12 and 13, respectively). Regardless of whether or not a local government agency attorney is a direct employee, said attorney is considered a “managerial employee” by virtue of their high level of authority and independent judgement that directly affects the policy and purposes of the agency. Further, a local government agency attorney participates in the formulation of management policies. As such, a dedicated paragraph is not necessary for requiring a local government agency attorney who is a contracted professional to file a financial disclosure statement. Because bond counsel, labor counsel, and other special counsel have a comparatively more limited role within a local government agency, individuals in these positions would not be required to file financial disclosure statements under the adopted rule.

COMMENT: Ms. Beth Lippmann, Executive Director of the Livingston Community Partnership Management Program, and Robert S. Goldsmith, Esq., on behalf of Morristown Partnership, Inc., oppose the classification pursuant to paragraph (a)25 in the proposed rule of “special improvement district director(s) and members” as “managerial executive.” The commenters argue that the inclusion of special improvement districts (SIDs) ignores judicial precedent and the clear legislative intent that SIDs be a partnership between local businesses and downtown communities. The New Jersey Supreme Court has made clear that SIDs are, at best, a “quasi-public solution” to issues facing languishing communities, observing in *2nd Roc Jersey Assocs. v. Town of Morristown*, 158 N.J. 581 (1999), that “SIDs are an attempt to achieve privately what municipal government has struggled unsuccessfully to do.” Further, requiring individuals in the above-referenced positions to file financial disclosure statements provides an extremely limited public benefit because SIDs are primarily financed by assessments on commercial properties, to the exclusion of residential, and would result in a sudden decrease in participation from volunteer local business leaders reluctant to file.

RESPONSE: The requirement that “special improvement district director(s) and members” file financial disclosure statements under the Local Government Ethics Law will remain. While a special improvement district created pursuant to N.J.S.A. 40:56-65 et seq., may function as a quasi-public solution to a municipality’s revitalizing and maintaining downtown commercial areas, the fact remains that an SID is a creature of the municipality that creates it. A special improvement district is defined by N.J.S.A. 40:56-66.b as “an area within a municipality designated by municipal ordinance as an area in which a special assessment on property within the district shall be imposed for the purposes of promoting the economic and general welfare of the district and the municipality.” That a municipality has the power to create or dissolve a special improvement district based on whether it fulfills the municipality’s policy and purposes demonstrate that an SID is a creature of municipal government.

The creation of an SID constitutes the delegation of certain responsibilities from the municipality to the SID, which is administered

by a “district management corporation” that State statute grants significant powers, including the ability to provide security and sanitation, hire employees, borrow money, execute contracts, purchase, lease, or otherwise dispose of property, and fund property rehabilitation. N.J.S.A. 40:56-84 requires a district management corporation’s annual budget to be approved by a resolution of the municipal governing body after a public hearing; in fact, the municipality has the power to amend the corporation’s budget within certain parameters. Pursuant to N.J.S.A. 40:56-68(b), at least one member of a district management corporation shall be a member of the governing body.

The power of a SID to impose a special assessment, including on residential uses located within its boundaries unless specifically exempted by municipal ordinance, is combined with the municipality’s obligation under N.J.S.A. 40:56-68.b to enforce the special assessment’s collection in the same fashion as property taxes or payments in lieu of taxes (PILOTs); which once collected, the municipality must transfer to the district management corporation administering the SID. The municipal tax assessor determines the apportionment of special assessments based on information provided by the district management corporation, with such apportionment subject to approval by the municipal governing body. N.J.S.A. 40A:56-71 also permits the municipal enabling ordinance to allow a district management corporation to review and approve construction or alteration of buildings and structure façades within the District.

Given the substantial powers delegated by the municipality when establishing a special improvement district, combined with the significant role the municipality plays in the operation of a SID, the Director disagrees with commenters’ assertion that there is a limited benefit to requiring a special improvement district’s executive director and governing body members to file financial disclosure statements pursuant to the Local Government Ethics Law; rather, the Director expects their inclusion to provide greater transparency to the public concerning the individuals that operate an entity with substantial powers delegated by a municipal governing body. SIDs undertake actions that impact all residents of their respective municipalities, not just businesses located within the SID’s boundaries. N.J.S.A. 40A:9-22.g permits the Director to require such disclosure as a means to further the intent and purpose of the Local Government Ethics Law. Finally, no evidence has been presented to support the argument that requiring the filing of financial disclosure statements would deter local business leaders from participating in special improvement district administration and governance.

#### Federal Standards Statement

No Federal standards analysis is required because the new rule is not adopted in order to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements.

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

#### SUBCHAPTER 2. LOCAL GOVERNMENT OFFICERS

##### 5:35-2.1 Managerial executives

(a) Individuals with the following titles or responsibilities equivalent to such titles shall be considered managerial executives under the definition of “local government officer” set forth in N.J.S.A. 40A:9-22.3.g:

1. Business administrator;
2. Municipal or county manager;
3. Chief financial officer;
4. Treasurer;
5. Municipal clerk or clerk of governing body;
6. Department heads, including executive directors, division directors, deputy directors, and assistant directors;
7. Chief or acting chief of police and paid fire departments, or “officer in charge” in lieu of a chief or acting chief title;
8. Deputy chiefs and assistant chiefs of police and paid fire departments;

- 9. Chief or acting chief of a beach patrol;
- 10. Municipal and county engineer;
- 11. Health officer;
- 12. Municipal attorney and county counsel;
- 13. Planning board or zoning board of adjustment attorney;
- 14. \*[Independent local]\* \*Local\* government agency attorney;
- 15. Municipal and county emergency management coordinators;
- 16. Trustees on a library board of trustees;
- 17. Municipal prosecutor;
- \*[18. Municipal public defender;]\*
- \*[19.]\* \*18.\* County prosecutors;
- \*[20.]\* \*19.\* County agriculture board members;
- \*[21.]\* \*20.\* County college board of trustees;
- \*[22.]\* \*21.\* Board of recreation commissioners;
- \*[23.]\* \*22.\* Local ethics board members;
- \*[24.]\* \*23.\* Rent leveling board members;
- \*[25.]\* \*24.\* Special improvement district executive director/director and its members;
- \*[26.]\* \*25.\* Special taxing district executive director/director and its commissioners;
- \*[27.]\* \*26.\* Joint insurance fund executive director/director and its commissioners;
- \*[28.]\* \*27.\* Local pension board commissioners;
- \*[29.]\* \*28.\* Tax collector;
- \*[30.]\* \*29.\* Qualified purchasing agent;
- \*[31.]\* \*30.\* Construction official; and
- \*[32.]\* \*31.\* Tax assessor.

(a)

**NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY**

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

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

Proposed: October 3, 2016, at 48 N.J.R. 1989(a).  
 Adopted: February 3, 2017, by New Jersey Housing and Mortgage Finance Agency, Anthony L. Marchetta, Executive Director.  
 Filed: February 3, 2017, as R.2017 d.038, **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-5g and 26 U.S.C. § 42(m).  
 Effective Date: March 6, 2017.  
 Expiration Date: November 16, 2017.

**Summary of Hearing Officer’s Recommendation and Agency’s Response:**

Anne Hamlin, New Jersey Housing and Mortgage Finance Agency (“NJHMFA” or “Agency”) Director of Tax Credit Services, conducted a public hearing in the boardroom of NJHMFA at 637 South Clinton Avenue, Trenton, New Jersey at 10:00 A.M. on Wednesday, October 26, 2016, at which time and place the following persons appeared and testified:

- 1. Kevin Dowd, Candlebrook Properties, LLC; and
- 2. Vivian Cox Fraser, Urban League of Essex County.

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 address: New Jersey Housing and Mortgage Finance Agency, Division of Tax Credit Services, Attn: Johanna Peña, 637 South Clinton Avenue, PO Box 18550, Trenton, New Jersey 08650-2085.

**Summary of Public Comments and Agency Responses:**

The Agency received comments from the following persons:

- 1. Kevin Dowd, Candlebrook Properties, LLC;
- 2. Vivian Cox Fraser, Urban League of Essex County, Newark, NJ;
- 3. Tracee Battis, Director of Project Development, Project Freedom, Inc.;
- 4. Lianna Petroski, Director, Enterprise Community Investment, Inc., New York, NY;
- 5. Joel Silver, Senior Vice President, Michaels Development Company, Marlton, NJ;
- 6. Barbara K. Schoor, Vice President, Community Investment Strategies, Inc., Lawrenceville, NJ;
- 7. Arnold Cohen, Senior Policy Coordinator, Housing Community Development Network of NJ, Trenton, NJ;
- 8. Adam M. Gordon, Esq., Fair Share Housing Center (FSHC), Cherry Hill, NJ; and
- 9. Jacob Fisher, Pennrose Properties.

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

COMMENT: The commenter requests that more consideration be given to preservation projects, particularly those with project-based vouchers and/or NJHMFA participation. The commenter expresses his belief that as the qualified allocation plan (QAP) is currently structured, preservation projects, especially those in targeted urban municipalities (TUMs), are at a particular disadvantage. (1)

RESPONSE: The Agency continues to prioritize preservation projects through the preservation set-aside in the Family Cycle at N.J.A.C. 5:80-33.4(a)2, to which projects with project-based vouchers that can demonstrate they are “at risk of losing [their] level of affordability” are eligible to apply. Therefore, the Agency does not agree that preservation projects are at a disadvantage under the QAP as currently structured. However, as with all aspects of the QAP, the Agency will continue to monitor the status of preservation projects in promoting affordable housing goals, particularly in urban areas.

COMMENT: The commenter states that the QAP appears to favor large concentrations of disadvantaged persons within large buildings, without any real interaction within the community; she opines that the QAP should include a priority for scattered site housing to aid municipalities with abandoned and vacant properties while providing affordable housing and deconcentrating poverty. (2)

RESPONSE: The Agency disagrees with the representation that the QAP favors large concentrations of poverty. To the contrary, the Agency notes that one of the main priorities of the QAP and of the State’s affordable housing policy is to deconcentrate poverty; to that end, significant efforts have been undertaken to site tax-credit projects in low-poverty neighborhoods with access to transit, employment opportunities, and high-performing schools. Additionally, provisions are in place to restrict new construction in census tracts where 30 percent or more of the units are funded through the tax-credit program. Further, it is noteworthy that several scattered site housing developments have been funded under prior iterations of the QAP. Therefore, the Agency believes that the present allocation system is appropriate and sufficiently expansive to accommodate both multifamily and scattered site development.

COMMENT: The commenter supports the amendment in the Supportive Housing Cycle at N.J.A.C. 5:80-33.6(a), raising the tax credit authority from \$1,200,000 to \$1,400,000, noting that the increase will enable the development of additional barrier-free housing units of which there is a great shortage in New Jersey. (3)

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

COMMENT: The commenter supports the award in the point system for the Supportive Housing Cycle at N.J.A.C. 5:80-33.17(b)5 of two points for non-profit developers who have a 100-percent non-profit interest in the final ownership entity and one point for a 50-percent or greater non-profit ownership interest in the final ownership entity. (3)

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

COMMENT: The commenter supports the permitted exclusion to the cap on development costs for community center or social service space of up to a maximum of \$400,000 in the Family, Senior, Supportive