

**NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS  
DIVISION OF HOUSING AND COMMUNITY RESOURCES  
Rules of the Neighborhood Revitalization Tax Credit Program  
(N.J.A.C. 5:47) - as of August 18, 2014**

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## **Subchapter 1. GENERAL PROVISIONS**

### **5:47-1.1 Statement of Purpose**

(a) The purpose of these regulations is to implement the provisions of the Neighborhood Revitalization State Tax Credit Act, P.L. 2001, c.415 (N.J.S.A.52:27D-490 et seq.).

(b) The purpose of the Neighborhood Revitalization State Tax Credit Act is to foster the revitalization of New Jersey's low and moderate-income neighborhoods through comprehensive strategies driven by residents and other public and private stakeholders within the neighborhood; specifically, (1) to encourage community-based neighborhood planning; (2) to provide flexible resources for community-based organizations to carry out strategies established in neighborhood plans; (3) to build the capacity of local and community-based organizations to carry out neighborhood revitalization activities; (4) to attract private investment into New Jersey's low and moderate-income neighborhoods; and (5) to foster ongoing partnerships between private corporations and community-based development organizations.

### **5:47-1.2 Definitions**

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

"Assistance" means the contribution of moneys to aid in the provision of neighborhood preservation and revitalization services or community services.

"Business entity" means any business firm or individual which is authorized to conduct or operate a trade or business in the State and is subject to taxes on business related income.

"Certificate for neighborhood revitalization State tax credits" means the certificate in the form prescribed by the Treasurer and issued by the Commissioner to a business entity that specifies the dollar amount of neighborhood preservation and revitalization State tax credits that that business entity may take as an annual credit against certain state taxes pursuant to P.L.2001, c.415 (C.52:27D-490 et seq.).

"Commissioner" means the Commissioner of Community Affairs, and shall include any staff member authorized by the Commissioner to act on his or her behalf with respect to any matter contained within these regulations.

"Department" means the Department of Community Affairs, and shall include any staff member, consultant or advisor authorized to act on behalf of the Department with respect to any matter contained within these regulations.

"Eligible neighborhood" means a contiguous area located in one or more municipalities that, at the time of the application to the Department for approval of a neighborhood preservation and revitalization plan, are all either eligible to receive aid under the "Special Municipal Aid Act," P.L. 1987, c.75 (C.52:27D118.24 et seq.) or coextensive with a school district which qualified for designation as a Special Needs district pursuant to the "Comprehensive Educational Improvement and Financing Act of

1996," P.L. 1996, c. 13 8 (C. 18A:7F-1 et seq.), and as further defined in subchapter 3 of these regulations.

"Housing and economic development activities" means those activities carried out in furtherance of a neighborhood preservation and revitalization plan in an eligible neighborhood approved pursuant to P.L.2001, c.415 (C.52:27D-490 et seq.), to improve the housing and economic conditions of the neighborhood; and shall include, without limitation, measures to foster the rehabilitation and construction of housing affordable to low and moderate income households within the neighborhood, including planning, design, rehabilitation, construction, and management of low and moderate income housing, home buyer counseling, and related activities needed to effectuate the rehabilitation and construction of housing affordable to low and moderate income households; measures to increase business activity within the neighborhood, including the rehabilitation and construction of commercial facilities and the provision of assistance to small business entities; measures to increase the income and labor force participation of neighborhood residents, including provision of education, training, child care and transportation assistance to enable low income neighborhood residents to obtain or retain employment; and measures to foster the creation of sustainable and economically integrated neighborhoods and communities, as further defined in subchapter 4 of these regulations.

"Low income household" means a household whose gross household income is not more than 50 percent of the median gross household income for the region in which the neighborhood is located for households of similar size as determined by the Department.

"Moderate income household" means a household whose gross household income is greater than 50 percent but less than 80 percent of the median gross household income of the region in which the neighborhood is located for households of similar size as determined by the Department.

"Neighborhood preservation and revitalization activities" means housing and economic development activities and other neighborhood preservation and revitalization activities.

"Neighborhood Revitalization Non-Lapsing Trust Fund" means the non-lapsing trust fund established in the State Treasury into which all assistance from business entities receiving certificates under the provisions of subchapter 7 of these regulations shall be deposited.

"Neighborhood Revitalization Plan" means a plan for the preservation or revitalization of an eligible neighborhood, as further defined in subchapter 5 of these regulations.

"Nonprofit organization" means a private nonprofit corporation that has been determined by the Internal Revenue Service of the United States Department of the Treasury to be exempt from income taxation under 26 U.S.C.s.501(c)(3).

"Other Neighborhood Revitalization Activities" means those activities, other than housing and economic development activities, carried out in furtherance of a State-approved neighborhood preservation and revitalization plan in a qualified low and moderate income neighborhood, and may include, without limitation, improvements to infrastructure, streetscape, public open space, and transportation systems; provision of social and community services, health care, crime prevention,

recreation activities, community and environmental health services; and community outreach and organizing activities, as further defined in subchapter 4 of these regulations.

“Qualified nonprofit organization” means a nonprofit organization that has demonstrated a commitment to the neighborhood for which it is submitting a plan or project, as reflected in its past activities or proposed activities in a preservation and revitalization plan, and which has the capacity to carry out activities in furtherance of such a plan, consistent with the provisions of section 4 of subchapter 4 of these regulations.

“Qualified project” means one or more housing and economic development activities and/or other neighborhood revitalization activities to be carried out in accordance with a neighborhood revitalization plan as approved by the Commissioner with funds provided by a business entity eligible to receive a certificate for neighborhood revitalization State tax credits.

## **Subchapter 2. ELIGIBILITY OF BUSINESS ENTITIES FOR TAX CREDIT**

### **5:47-2.1 Eligibility for Tax Credits**

A business entity shall be eligible for a certificate for neighborhood revitalization State tax credits if it agrees to provide funding for a qualified project that has been approved in accordance with sections 4 and 5 of P.L.2001, c.415 (C.52:27D-493 and C.52:27D-494) and complies with the provisions of subchapter 6 of these regulations.

### **5:47-2.2 Tax Credit Allowable**

(a) Credits may be granted in an amount up to 100 percent of the approved assistance provided to a nonprofit organization to implement a qualified neighborhood preservation and revitalization project.

(b) The credit may be applied by the business entity receiving the certificate as credit against tax imposed on business related income, including, but not limited to, business income subject to the provisions of the Corporation Business Tax Act (1945), P.L.1945, c. 162 (NJSA 54:10A-1 et seq.), the New Jersey Gross Income Tax Act, NJSA 54A:1-1 et seq., the Savings Institution Tax Act, P.L.1973, c. 31 (NJSA 54:10D-1 et seq.), the tax imposed on marine insurance companies pursuant to NJSA 54:16-1 et seq., the tax imposed on insurers generally, pursuant to P.L. 1945, c. 132 (NJSA 54:18A-1 et seq.), the sewer and water utility excise tax imposed pursuant to section 6 of P.L. 1940, c. 5 (NJSA 54:30A-54) and the petroleum products gross receipts tax imposed pursuant to section 3 of P.L.1990, c. 42 (NJSA 54:15B-3).

(1) For a taxpayer applying credit to liability due pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., the credit allowed pursuant to this section shall only be applied to the amount of gross income tax liability for the taxable year that, as a percentage of gross income tax liability, is equal to the percentage of the taxpayer's gross income that is

attributable to the taxpayer's business entity through which the taxpayer provided the funding for the qualified project. For purposes of determining the amount of gross income tax liability to which a credit allowed pursuant to this section may be applied, gross income shall be calculated without the application of exclusions or deductions.

(c) The credit allowed to a business entity under this section may not exceed for any taxable year \$1,000,000 or the total amount of tax otherwise payable by the business entity for the taxable year, whichever is less, and, in addition, shall not exceed limitations placed on the amounts of credits or carry forward credits allowed, if any, under the relevant statute as enumerated in (b) above concerning the tax for which a credit is being claimed.

(d) Credit shall not be allowed for activities for which the business entity is receiving credit under any other provision against any tax on business related income, including, but not limited to, the corporation business tax, New Jersey Gross Income Tax, corporate income tax, insurance premiums tax, petroleum products gross receipts tax, public utilities franchise tax, public utilities gross receipts tax, public utility excise tax, railroad franchise tax, and the saving institution tax.

(e) The tax credit shall be awarded only for assistance provided within the same tax year as that in which the Commissioner issued the certificate, or if the Commissioner approved assistance for more than one year, within each following tax year in which payment was made as set forth in the schedule that shall be attached to the certificate issued by the Commissioner. This provision may be waived for good cause shown.

(f) Assistance may be approved for the current tax year and up to four additional years in the future.

(g) The Department will grant priority in awarding tax credits to business entities that identify a nonprofit organization partner that has an approved project in its application for tax credits, followed by the remaining prioritizations listed in and pursuant to P.L. 2001, c. 415 (N.J.S.A. 52:27D-496). An approved project will consist of a project application submitted by a nonprofit organization to the Department, as part of an application cycle, which is reviewed and determined to be qualified for funding. The Department will publicize on the Department's website, a list of approved projects for business entities to consider when applying for tax credits.

(h) Failure by the business entity to provide assistance as set forth above shall lead to revocation of the certificate by the Commissioner.

### **Subchapter 3. NEIGHBORHOOD REVITALIZATION PLAN**

#### **5:47-3.1 Submission of plan**

In order for an entity to be eligible to receive a tax credit pursuant to P.L.2001, c.415 (C.52:27D--490 et seq.), the nonprofit organization which is to be the recipient of funding provided by the entity shall

submit a neighborhood preservation and revitalization plan to the Department for approval which shall meet the requirements of this section.

### **5:47-3.2 Eligible neighborhood**

(a) The plan shall be for an eligible neighborhood as defined herein. No more than one plan shall be approved by the Department for any neighborhood or part of a neighborhood, and no areas shall be subject to more than one approved neighborhood plan. If a plan is submitted for a neighborhood which contains within its boundaries all or part of any other neighborhood for which a plan has already been submitted and approved by the Department, the entity shall be required to amend and resubmit the plan to exclude that area for which a plan has already been submitted and approved by the Department. In the event that the area of duplication is *de minimis*; i.e., contains less than 10 percent of the area covered by either plan, the Department will conduct its review of the plan, but will withhold final action to approve the plan until it has been modified to remove the duplication.

(b) An eligible neighborhood shall be located within an eligible municipality, or in parts of two or more municipalities, all of which shall be eligible municipalities, and shall have boundaries that are, to the extent reasonable, recognized by the municipality and/or by the residents of the neighborhood, and incorporate to the extent reasonable clearly defined lines of demarcation such as railroad lines, streams, major streets, or industrial areas.

(c) At least fifty percent (50%) of the households in the neighborhood as determined by the most recent Census of Population shall be of low and moderate income and at least twenty-five percent (25%) of the households in the neighborhood shall be of low income, as defined herein. For purposes of making this determination, the entity preparing the plan may use Census median household income data without respect to household size.

(d) The plan shall provide written justification for the definition of the neighborhood, including the size of the neighborhood.

### **5:47-3.3 Planning process**

(a) The process by which the plan is developed must be one in which residents, property owners, and businesspersons within the neighborhood, other nonprofit organizations within the neighborhood or providing services to neighborhood residents, and the municipal government, are fully informed and all given a meaningful opportunity to participate in the development of the plan. The provisions set forth in this section shall govern plans initiated after March 15, 2004; plans already completed or under way prior to that date are governed by the provisions of subchapter 3, section 5 of these rules.

(b) The nonprofit organization responsible for developing the plan shall notify the municipal government of its intention to develop a neighborhood plan prior to, or simultaneously with the initial written notice to neighborhood residents, property owners and businesspersons. Notice shall be provided

in writing to the municipal clerk, with copies to the municipal business administrator and the municipal official responsible for planning activities. The nonprofit organization responsible for developing the plan shall provide the municipal official responsible for planning activities with copies of materials prepared by the entity on an ongoing basis during the development of the plan, and shall provide the municipality with the opportunity to comment upon said materials. Wherever reasonably feasible, the nonprofit organization responsible for developing the plan shall obtain a letter from the municipality indicating its support for the plan or, in lieu of a letter, shall submit any comments provided by the municipality on the plan, which shall be attached to the plan submitted to the Department.

(c) The nonprofit organization responsible for developing the plan shall utilize reasonable means to ensure that to the extent reasonably feasible residents, property owners and businesspersons within the neighborhood are informed of the intention to develop the plan. Methods may include flyers, posters, and announcements at community meetings, mailings, direct outreach, and development of a web site. In addition, notice shall be provided on a regular basis while the plan is in preparation.

(d) The nonprofit organization responsible for developing the plan shall provide opportunities for residents, property owners, and businesspersons to participate in the development of the plan. Such opportunities may include large-scale public events such as community meetings, workshops and charrettes, smaller events such as focus groups, as well as formal and informal one-on-one surveys. To the extent that the preparation of the plan involves community meetings, workshops, charrettes, and other public activities, the nonprofit organization shall ensure that residents and other neighborhood stakeholders are provided with adequate notice of such activities.

(e) The nonprofit organization responsible for developing the plan shall reach out to other nonprofit organizations, such as housing development entities, health care providers, educational institutions, and religious institutions located within the neighborhood or, if located outside the neighborhood, providing services to a substantial number of neighborhood residents, and shall solicit their input in the development of the plan. Wherever reasonably feasible, the nonprofit organization responsible for developing the plan shall obtain letters from such nonprofit organizations indicating their involvement in and support for the plan, which shall be attached to the plan submitted to the Department. Collaboration between two or more nonprofit organizations in preparing a plan is encouraged.

(f) Upon completion of a draft plan, the nonprofit organization responsible for developing the plan shall submit a copy of the draft plan to the municipal clerk, with copies to the municipal business administrator and the municipal official responsible for planning activities.

(g) The nonprofit organization responsible for developing the plan shall provide an opportunity for residents, property owners and businesspersons in the neighborhood to comment on the draft plan, by making copies available at convenient locations within and close to the neighborhood, and by scheduling one or more public meetings or workshops in order to solicit comment on the draft plan. The nonprofit organization shall also provide convenient means for submission of written comments, including a mailing address, fax number and e-mail address.



(h) The plan shall not be finalized until 30 days after the draft plan has been submitted to the municipality.

(i) The nonprofit organization responsible for developing the plan shall maintain a file with all written comments on the plan which it shall provide to the Department upon request.

#### **5:47-3.4 Scope of Neighborhood Revitalization Plan**

(a) The plan shall cover a two to ten year period. Plans that cover a minimum of five years are encouraged.

(b) The plan shall include, but need not be limited to, the following elements:

(1) A description of the neighborhood, including the documentation required under section 2 of this subchapter. This shall include one or more legible maps of the city and of the neighborhood identifying features in the neighborhood and surrounding area relevant to the neighborhood revitalization effort.

(2) A narrative description of neighborhood conditions, including statistical and other information about the neighborhood, adequate to establish the need for neighborhood revitalization, and the relationship between the existing conditions of the neighborhood and the proposed strategies, which shall, to the extent reasonably feasible, include indicators related to measurable targets that may be included in (5) below.

(3) A concept of the future of the neighborhood for the time period covered by the plan, which shall set forth the overall goals of the proposed revitalization effort as well as specific goals with respect to specific areas such as improvement of housing conditions, increased number of jobs, participation rates in pre-school education, etc.

(4) A description of the strategies to be followed to foster preservation and revitalization of the neighborhood, including a statement of the rationale for each strategy in the framework of the overall revitalization effort.

(5) A description of the activities to be followed to carry out each strategy that is identified under (4) above, including, where feasible, measurable targets for achievement of revitalization objectives associated with each activity. The description of activities shall include, but need not be limited to, specific activities to foster housing improvement and economic development in the neighborhood and to benefit neighborhood residents.

(6) A description of the estimated financial requirements projected to carry out the activities described under (5) above, the type and conditions of financing required (grant, recoverable grant, loan, etc.), and identification of potential sources, to the extent realistically feasible, for the financial requirements projected.

(7) A timetable for the conduct of the activities described under (5) above, including, to the extent realistically feasible, benchmarks for measuring progress of the activities making up the neighborhood revitalization effort.

(8) A description of any official plans governing the neighborhood, in particular redevelopment plans adopted pursuant to the Local Redevelopment and Housing Law, P.L.1992, c.79 (C.40A:12A-1 et seq.) and currently being implemented; or any State-approved neighborhood empowerment plan pursuant to section 49 of P.L.1996, c.62 (C.55:19-64), and appropriate documentation to show that the proposed neighborhood preservation and revitalization plan is not inconsistent with those plans. If the municipality asserts that the plan is inconsistent with existing plans, the entity submitting the plan shall be permitted to submit evidence to the contrary for the Department's review.

(9) With respect to any provisions of a plan upon which the municipal governing body or planning board have taken official action and which includes provisions governing land use within the scope of the Municipal Land Use Law, P.L. 1975, c. 291, documentation to be provided by the municipality that such provisions of the plan comply with all of the requirements of the Municipal Land Use Law, P.L. 1975, c.291.

#### **5:47-3.5 Plans already completed or underway as of March 15, 2004**

(a) Some eligible nonprofit organizations have already completed neighborhood revitalization plans for eligible neighborhoods prior to March 15, 2004, or have initiated such plans and made substantial progress toward their completion. It is the intent of this section of these rules to permit such plans to obtain approval from the Department, where they are generally consistent in intent and scope with these rules, without imposing undue hardship on eligible organizations or requiring them to duplicate activities previously carried out.

(b) Process. If the following information is not contained in the plan, the applicant shall attach a report describing the manner in which the plan was developed or is being developed, including but not limited to:

- (1) the means used or being used to inform residents, property owners and businesses of the plan, and the manner in which they were provided with an opportunity to comment on it;
- (2) the manner in which notice was provided or is being provided to the municipality or municipalities in which the neighborhood is located; and
- (3) the manner in which the nonprofit organization submitting the plan consulted with or is consulting with other organizations located in the neighborhood or providing services to residents of the neighborhood.

(c) Scope. If the plan, as prepared, is organized differently from the scope of a neighborhood revitalization plan as set forth in section 4 of this sub-chapter, the applicant shall attach a report showing how the plan contains, in substance, information that is comparable in scope.

(d) Consistency with other plans. If not contained within the plan, the applicant shall append to the plan a description of any official plans governing the neighborhood, in particular redevelopment

plans adopted pursuant to the Local Redevelopment and Housing Law, P.L.1992, c.79 (C.40A:12A-1 et seq.) and currently being implemented; or any State-approved neighborhood empowerment plan pursuant to section 49 of P.L.1996, c.62 (C.55:19-64), and appropriate documentation to show that the proposed neighborhood preservation and revitalization plan is not inconsistent with those plans. If the municipality asserts that the plan is inconsistent with existing plans, the entity submitting the plan shall be permitted to submit evidence to the contrary for the Department's review.

(e) The Department shall approve a plan already completed or underway as of March 15, 2004 where it finds that the neighborhood for which it was prepared is an eligible neighborhood and that, based on the plan and any supplemental reports as set forth in this section, the scope of the plan and the process by which it was developed are generally consistent with the intent and language of P.L. 2001, Chapter 415. (C52:27D-490 et seq.). Where the scope of the plan is lacking in one or more elements that, as a result, render it inadequate as a basis for one or more projects as set forth in these regulations, the Department may require the applicant to supplement the plan with such elements as may be necessary as a condition of approval of the plan.

#### **5:47-3.6 Approval of other plans**

(a) A nonprofit organization may, in submitting a proposed plan pursuant to this section, adopt a redevelopment plan adopted pursuant to the Local Redevelopment and Housing Law, P.L.1992, c.79 (C.40A:12A-1 et seq.) and currently being implemented; or a State-approved neighborhood empowerment plan adopted pursuant to section 49 of P.L.1996, c.62 (C.55:19-64), or a neighborhood preservation and revitalization plan previously approved by the Department, as its neighborhood preservation and revitalization plan. In so doing, the non-profit organization submitting the plan shall provide documentation that the area covered by the plan meets the criteria for an "eligible neighborhood" as set forth in section 2 of this subchapter, and shall provide supplementary material as set forth in subsection (b) of section 4 of this subchapter to the extent that any such information is not contained in the plan being submitted.

(b) A nonprofit organization may submit a plan, based on any of the plans set forth in subsection (a) above, which supplements that plan with additional elements; e.g., since a redevelopment plan customarily addresses only physical improvements to a neighborhood, the organization may want to supplement it with additional elements such as economic development, education, etc. In such case, the organization submitting the plan shall provide documentation that the process by which the supplemental elements of the plan were developed was consistent with the standards and requirements of Section 3 of this subchapter.

#### **5:47-3.7 Amendments to plan**

(a) A nonprofit organization that has submitted a neighborhood preservation and revitalization plan to the Department may amend the plan at any time.

(b) The process by which the amendment is prepared shall be consistent with the procedural requirements of section 3 of this subchapter, with the scope of the notification and participatory process proportional to the scope of the amendment and the extent to which it materially changes the direction or priorities of the plan previously submitted. For example, should the organization propose a fundamental redirection of its housing or economic development strategy, such an amendment should only be submitted after an extended participatory process has been followed; alternatively, a minor amendment such as a change in use of a specific small site need not be the subject of an extended process, except for notification of directly interested parties, including the municipality, and giving them the opportunity to comment on the proposed change prior to submission of the amendment to the Department.

(c) The organization shall document the process followed with respect to the amendment. The Department may require the organization to resubmit the amendment after carrying out a more extensive participatory process if it finds that the extent of the process followed is clearly inadequate in light of the substantive scope of the amendment.

#### **5:47-3.8 Submission of plans and amendments; approval of plans**

(a) The Department shall prepare an application form that specifies the components of the plan to be submitted to the Department consistent with the provisions of section 4 of this subchapter.

(b) The Department shall approve plans meeting the requirements of the act and these regulations for a period of three (3) years, which shall begin on the date that written approval of the plan is granted by the Department. During that period, or any extension of that period granted under section 9 of this subchapter, the Department shall not accept submission of any plan for the same neighborhood or any part thereof from any other nonprofit organization.

(c) The Department may revoke its approval of a plan at any time after one year following the date written approval of the plan was granted, if the nonprofit organization submitting the plan has failed to submit a project application as provided in subchapter 4 of these regulations.

#### **5:47-3.9 Mandatory review; extension of approval**

(a) In order for approval of the plan to be extended by the Department beyond the initial three year approval period, each nonprofit organization receiving approval of its plan shall carry out a review of the plan prior to the end of the period. The Department may waive this requirement for good cause shown. The review shall address the following areas:

- (1) Changes in neighborhood conditions since the plan was prepared.
- (2) Changes in priorities, goals, objectives and strategies being pursued by the nonprofit organization and its partners.
- (3) The effectiveness, results, difficulties, etc. associated with the various activities carried out by the nonprofit organization and its partners to further the plan.

(b) Upon completion of the review, the nonprofit organization may seek an extension of approval of the plan for an additional three years, by submitting to the Department a report setting forth the findings of the review, along with amendments, if any, to the plan.

(c) Upon receipt of the materials required under (a) and (b) above, the Department shall extend approval of the plan for an additional three year period if it finds that the plan, as documented in the review by the nonprofit organization, continues to represent a sound plan for the preservation and revitalization of the neighborhood.

(d) Nonprofit organizations may seek further extensions to the period of approval of the plan, and the Department may grant further extensions, for additional three year periods by following the procedures set forth in this section, without limitation.

## **Subchapter 4. PROJECTS**

### **5:47-4.1 Introduction**

(a) The Department shall prepare an application form that specifies the components of the project to be submitted to the Department consistent with the provisions of this subchapter.

(b) A project means one or more activities, as further described below, to be carried out in accordance with a neighborhood revitalization plan approved by the Department, utilizing but not limited to funds provided by a business entity receiving a certificate for neighborhood revitalization tax credits pursuant to C.52:27D-492. A project shall include one or more housing and economic development activities, and may also include one or more other neighborhood revitalization activities as defined herein.

(c) In preparing project submissions, nonprofit organizations should also address the criteria set forth under sections 2 and 3 of subchapter 5 of these rules.

### **5:47-4.2 Scope of project, activities**

(a) Housing and economic development activities shall be as defined in subchapter 1 of these rules, and shall include such additional activities consistent with that definition; activities should confer benefits on individuals while also providing a benefit to the neighborhood as a geographic entity. These include activities to produce new housing (through construction or rehabilitation), preserve and/or upgrade existing housing, or render existing housing more affordable. Use of tax credit funds to assist a household currently resident in the neighborhood to obtain or afford housing outside the neighborhood would not be an eligible use. Housing activities shall be designed to minimize displacement of residents, particularly low income residents, in the course of implementing the neighborhood housing strategy. In order to further the goal of creating economically integrated neighborhoods, and where it is required to further the plan, assistance may be used to support a mixed income housing project, where a portion of the housing units in the specific housing project or in the neighborhood housing strategy are reserved for low and moderate income households and a portion are designated as market rate housing units.

(b) Other neighborhood revitalization activities shall be as defined in subchapter 1 of these regulations, but shall supplement rather than supplant the activities of the municipal and county governments, and existing health, educational and other service providers. Where a proposed activity covers actions that are customarily considered within the scope of normal municipal service delivery or the maintenance and repair of municipal infrastructure, the nonprofit organization shall demonstrate that the activity is not supplanting any action that is the municipality's responsibility.

(c) All activities shall take place within the neighborhood designated by the approved plan, except for activities that "particularly benefit residents of the neighborhood" pursuant to C.52:27D-495(b)(1). Activities that take place outside of the neighborhood shall be clearly identified by the nonprofit organization in the project application. The Department shall have sole discretion in determining whether such an activity is eligible for funding through the tax credit program. Such activities may include:

- (1) economic development activities where the nature of the economic conditions driving the activity dictates that they should take place outside the neighborhood;
- (2) service delivery activities where the facility of the service provider is located outside the neighborhood, but is accessible to the neighborhood, and the funds will be used for activities that primarily benefit the residents of the neighborhood;
- (3) development of a facility, program or activity jointly with a nonprofit organization carrying out neighborhood revitalization activities in another neighborhood of the city that will benefit the residents of both neighborhoods.

(d) Tax credit funds can be applied to activities in the manner the nonprofit organization determines to be most effective, including grants, capital subsidy, recoverable grants, loans, equity investments, and use for program services and activities.

(e) The nonprofit organization shall submit a timeline for completion of each of the activities that compose the project application. Use of tax credit funds may extend beyond the year or years in which the contribution was made to the nonprofit organization, but shall not extend beyond three years from the date the project is approved by the Department. The Department may extend the timeline for a specific activity for good cause shown.

(f) The nonprofit organization shall submit a budget for the project which shall show the breakdown of how the tax credit funds are to be used, and the anticipated use of other funds for the activities in the project, or complementary activities to be carried out by the nonprofit organization and its partners in carrying out the neighborhood revitalization strategy.

(g) The budget shall clearly demonstrate that at least 60 percent of the tax credit funds to be received by the nonprofit organization shall be used for housing and economic development activities.

(h) The nonprofit organization shall demonstrate how ongoing project activities will be funded after the completion of the funding period.

(i) The total amount of tax credit funds shown in the project budget, shall not exceed one million dollars (\$1,000,000).

#### **5:47-4.3 Consistency of project with plan**

(a) The Department will review the activities in the project to determine that they are in furtherance of the approved plan on the basis of the following criteria:

(1) To the extent possible, each activity shall clearly fit within an element of the plan, although the specific activity set forth in the project may be a subset or part of an element of the plan. For example, the plan may call for rehabilitation of abandoned housing in the neighborhood, and the project may identify specific abandoned buildings that are to be rehabilitated during the term of the project.

(2) The plan element shall clearly encompass the proposed activity. For example, the plan may call in general terms for a commercial revitalization program for a business district in the neighborhood, which can be spelled out in detail in the project.

(3) Activities set forth in a project need not be set forth specifically in the plan, as long as the activity clearly furthers an element or a strategy that *is* set forth in the plan. For example, if the plan calls for developing housing for home ownership, a program of homebuyer education and counseling can be an eligible activity even though it is not set forth in the plan.

(b) A nonprofit organization may submit a project and a plan or a plan amendment simultaneously, in which case the Department will review and approve the plan or the plan amendment before initiating its review of the project.

#### **5:47-4.4 Nonprofit organization; capacity**

(a) The nonprofit organization must demonstrate that it, along with any partners, has the capacity to carry out the activities set forth in the project in a timely and responsible fashion. The Department will evaluate the information provided by the nonprofit organization on the basis of the following criteria:

(1) Organizational capacity. The nonprofit organization shall demonstrate that it has the organizational capacity to manage the programs and activities for which it will be responsible. It will demonstrate that it has financial management systems and administrative systems in place that are adequate to deal with the scope and nature of the activities for which it will be responsible.

(2) Development and service delivery capacity. The nonprofit organization shall demonstrate that either (i) it has a track record of successfully carrying out similar activities of similar scope; (ii) it has a track record of successfully carrying out different activities, but of similar scope, where it shows that the skills and experience are reasonably transferable between the activities; or (iii) it has demonstrated strong organizational capacity, and has identified and is capable of recruiting the staff and consultants necessary to carry out the activities in the project.

(3) Capacity of partners. Where an activity will be carried out by a partner entity, the nonprofit organization shall submit adequate documentation to enable the Department to evaluate the capacity of the partner entity to carry out the activity consistent with (1) and (2) above. The Department shall make a determination that the nonprofit organization has adequate capacity to supervise and monitor the activities being carried out by partner entities.

**5:47-4.5. Joint projects by more than one nonprofit organization; role of the lead agency**

(a) Projects may be submitted jointly by two or more nonprofit organizations. In all such cases, one nonprofit organization shall be designated in the application as the lead organization, and shall meet the criteria and accept responsibilities as set forth in this section.

(b) The lead organization shall document that it has adequate organizational capacity, as set forth in section 5 of this subchapter to act as the lead organization for the project.

(c) The lead organization shall be responsible for providing the Department with all quarterly and annual reports and other monitoring information as set forth in N.J.A.C. 5:47-7.1.

(d) The project application shall set forth clearly the organizational relationship, reporting requirements, and other management information systems that will be established by the lead organization and the other nonprofit organizations undertaking the project to ensure that the activities will take place in a timely fashion, and that all necessary information will be provided to the lead organization, and by the lead organization to the Department.

**5:47-4.6 Submission of project in conjunction with submission of an application by a business entity**

A project may be submitted in conjunction with an application by a business entity submitted pursuant to subchapter 6 of these regulations, in which case the non-profit organization's project application shall reference the business application, and provide appropriate documentation that the business entity has committed to provide assistance for the project.

**Subchapter 5. CRITERIA FOR QUALIFYING PROJECTS**

**5:47-5.1 Introduction**

In the event that the total qualified projects seeking tax credits certified under the act exceed, or appear likely to exceed the \$10 million limit established under the act, or the total amount of funds available in any one fiscal year, if funds provided in previous years are available as provided in section 3 of subchapter 6, the Department is required to establish by regulation the standards and procedures for determining which projects shall be determined to be qualified in order to ensure that the total tax credits allocated do not exceed the statutory limit. These procedures shall be used to rank projects as well in the event that the number of approved projects exceeds the amount of assistance available, even if the total



does not exceed the statutory limit. The Department will rank projects on the basis of the factors set forth in sections 2, 3 and 4 of this subchapter.

#### **5:47-5.2 Extent to which project addresses distress**

(a) The Department shall evaluate the extent to which the activities set forth in the project address distress criteria, with particular emphasis on the following:

- (1) The extent to which they will alleviate poverty by increasing total household income;
- (2) The extent to which they will increase disposable income by increasing access to facilities and services at affordable prices, such as housing and health care;
- (3) The extent to which they will reduce unemployment, including creating jobs, increasing access to jobs, creating business activities, and strengthening existing neighborhood-based business enterprises;
- (4) The extent to which they contribute to enhancing the quality of life in the neighborhood, as reflected in physical and/or programmatic improvements, in ways that have the potential to increase the market competitiveness of the neighborhood, and its attractiveness to potential homebuyers and renters, including but not limited to environmental and cultural resources, educational and recreational activities, business attraction and retention activities, historic preservation, and civic engagement.

(b) The relative level of distress of one neighborhood relative to other neighborhoods shall not be a consideration for purposes of establishing the rating of an application under this factor.

#### **5:47-5.3 Leveraging; municipal support**

(a) The Department shall evaluate the extent to which the activities set forth in the project are likely to attract public or private investment to the subject project or other projects in the neighborhood, with particular emphasis on the following:

- (1) The total dollar amount of funds committed or realistically anticipated from sources other than the assistance provided under this program, including, but not limited to:
  - i. Conventional loan capital;
  - ii. Grants, from public or private sources;
  - iii. Subordinated debt;
  - iv. Debt at significantly below-market interest rates, or significantly deferred payment terms; and
  - v. Equity investments
- (2) The extent to which the municipality is providing resources to support the project or related neighborhood activities, in particular from municipal operating or capital funds.
- (3) The leveraging ratio of tax credit assistance to other funds for comparable projects.

#### **5:47-5.4 Nonprofit organization capacity**

The Department shall evaluate the extent to which the nonprofit organization has demonstrated the capacity to carry out the project, pursuant to the criteria established in section 4 of subchapter 4 of these regulations.

### **Subchapter 6. SUBMISSION OF APPLICATION BY BUSINESS ENTITY; ISSUANCE OF CERTIFICATES**

#### **5:47-6.1 Business applications**

(a) Any business entity seeking a certificate for neighborhood revitalization tax credits shall submit an application to the Department, which shall include the following information:

- (1) Whether the certificate is for the current year, or for more than one years, and if so, how many years;
- (2) The amount of assistance the business entity proposes to provide for each year for which it seeks a certificate, which shall be not less than \$25,000 per year;
- (3) Whether it proposes to provide the assistance to a specific project or projects; if so, it shall identify:
  - i. The municipality in which the project is located;
  - ii. The neighborhood for which the project is planned; and
  - iii. The nonprofit organization submitting the project.
- (4) Whether the business entity or any wholly owned subsidiary has previously received any certificates, and if so, the status of the assistance payments required under those certificates;
- (5) If the business entity or any wholly owned subsidiary has failed to provide assistance pursuant to a previous approval, a statement of the reasons for the failure to provide assistance and of why the entity should not be barred from receiving an additional certificate; and
- (6) The type of tax or taxes for which the business entity seeks to receive credit.

#### **5:47-6.2 Notice; deposit of assistance**

(a) With respect to business applications that specify a project or projects, the Department shall notify the business entity in a timely manner (1) that the project application has been received by the Department; and (2) that the Department has taken action to approve or disapprove the project.

(b) The Department shall verify the amount of assistance to be provided. In the case of a multiyear application, it shall establish an annual schedule of assistance to be provided in each tax year covered by the application.

(c) Approval of any project shall be contingent upon the Department's making the following determinations:

- (1) That the total assistance to be provided for the project does not exceed \$1,000,000; and
- (2) That neither the business entity seeking the certificate nor any wholly owned subsidiary has previously failed to provide assistance to a nonprofit organization for which approval was granted.

(d) The Department shall provide the business entity with the schedule of assistance to be provided, shall notify the business entity that it has made these determinations, and shall notify the business entity of the amount that it must pay to the Department for deposit into the Neighborhood Revitalization Non-Lapsing Trust Fund pursuant to the provisions of Sec. 7.b.(5) of the Act (C.52:27D-496(b)(5)).

(e) The Department shall issue certificates to business entities not identifying the priority of a project or projects according to section 4 of this subchapter.

#### **5:47-6.3 Certificate**

The Department shall issue the business entity a certificate for neighborhood revitalization tax credits in the amount previously determined. The Department shall issue up to \$10,000,000 in certificates in each fiscal year, notwithstanding the dollar amount of assistance requested in projects submitted to and approved by the Department. Any funds received in any fiscal year in excess of the amount allocated to qualified projects shall be allocated by the Department to qualified projects in any subsequent fiscal year in which the dollar amount sought by qualified projects exceeds the amount of assistance available.

#### **5:47-6.4 Priority in processing**

(a) In processing applications for certificates from business entities, the Department shall give priority to applications which propose to provide assistance to a specific project or projects. The certificate issued to such business entity shall specify the project to which the assistance is to be provided.

(b) Within those applications receiving priority under (a) above, applications that demonstrate a multi-year commitment by the business entity to implementation of the neighborhood preservation and rehabilitation plan shall receive priority.

(c) The Department shall give second priority to processing applications by business entities not specifying a particular project, but for which there are one or more projects which have been approved by the Department, and which are seeking assistance, in which event the Department may pool applications by business entities in order to provide the amount of assistance requested by each nonprofit organization that has submitted a project, and shall issue each business entity providing assistance a certificate specifying the project to which the assistance is to be provided.

(d) The Department will give third priority to processing applications by business entities not specifying a particular project, and for which no project approved by the Department is seeking

assistance. In this case, the Department shall issue a certification without specifying the project to which the assistance is to be provided, and shall deposit the amount set forth in the certificate in the Neighborhood Revitalization Non-lapsing Trust Fund.

#### **5:47-6.5 Administrative fee**

The Department may charge an administrative fee up to a maximum of one and one half percent (1.5%) of the amount of assistance provided by the business entity. The administrative fee shall be withdrawn by the Department from the Neighborhood Revitalization Non-lapsing Trust Fund at the time the business entity deposits the assistance for each year as provided in the certificate issued by the Department.

### **Subchapter 7. CONTRACTING; MONITORING**

#### **5:47-7.1 Contract; reporting requirements; monitoring authority of Commissioner**

(a) The Department shall enter into a contract with each nonprofit organization that has received approval of a project and for which funds have been committed pursuant to a certificate issued by the Department to one or more business entities. The contract shall set forth the timetable and conditions by which the nonprofit organization may draw down the tax credit funds, shall set forth the reports and other information that the nonprofit organization shall provide the Department, and shall include such other provisions not inconsistent with the statute and these rules as may be appropriate.

(b) The nonprofit organization shall post bond and security in the amount and in such form as established by the Department.

(c) The nonprofit organization shall provide the Department with a quarterly tracking report as well as an annual report on all activities set forth in the project. The nonprofit organization shall also submit the annual report to the business or businesses providing assistance to the organization. Each report shall include

- (1) A description of actions taken and funds expended with respect to each activity set forth in the project;
- (2) A description of progress toward the goals and objectives of each activity, including, to the extent feasible and appropriate, quantifiable measurement of progress and results;
- (3) Identification of difficulties and obstacles experienced in implementing the activities in the project; and
- (4) Identification of any changes in the scope, direction or structure of any activity in the project, and the reasons for changes.

(d) The nonprofit organization shall provide the Department with an annual audit report of the organization conducted by a qualified and independent CPA within 9 months after the close of the

organization's fiscal year. The audit shall provide for a separate accounting of tax credit funds received by the nonprofit organization pursuant to these regulations.

(e) The nonprofit organization shall maintain separate records for all activities contained within any project approved by the Department, which shall be available for inspection by the Department upon written request during the customary business hours of the nonprofit organization.

(f) The nonprofit organization shall, upon request and reasonable advance notice, permit representatives of the Department to inspect activities being carried out in furtherance of a project approved by the Department, whether located in the premises of the nonprofit organization or any other premises.

(g) In the event that the Commissioner determines that corrective action pursuant to section 2 of this subchapter may be required, or that it is necessary in order to obtain further information with respect to any project approved by the Department, the Commissioner may schedule one or more evidentiary hearings, to be located at such time and place as the Commissioner may determine, and may issue subpoenas and administer oaths, pursuant to the provisions of N.J.S.A. 52:27D-3.

#### **5:47-7.2 Failure to perform activities; corrective actions**

(a) If, after notice and hearing pursuant to section 1 of this subchapter, the Commissioner finds that any assistance provided under these rules has been (i) used for some purpose other than the activity or activities for which it was approved; or, (ii) although used for the activity for which it was approved, used in a manner that was illegal, improper, or in violation of the terms and conditions of the contract entered into between the nonprofit organization and the Department, the Commissioner may impose sanctions, including but not limited to any or all of the following:

- (1) Requiring that all or part of the funds provided to the nonprofit organization for the approved project be paid back to the Department, which shall expend them pursuant to section 4 of this subchapter;
- (2) Requiring that the nonprofit organization take corrective action as a condition of retaining tax credit funds, including but not limited to:
  - i. Establishing or modifying administrative procedures, financial controls, or other measures as required by the Department;
  - ii. Removing or reassigning individuals found to be responsible for misuse of assistance provided to the nonprofit organization;
  - iii. Amending or abrogating any agreement between the nonprofit organization and any third party, where the third party has been found to be responsible in whole or part for misuse of assistance provided to the nonprofit organization; or
  - iv. Placing one or more activities for which assistance has been provided under the administrative control of the Department, or of an entity selected for that purpose by the Department.

- (3) Revoking the Department's determination that the project was qualified; in which case the Department may abrogate the contract between the Department and the nonprofit organization, and reuse any unexpended funds held for the project as provided in section 4 of this subchapter.
- (4) Barring the nonprofit organization for a period of time to be determined by the Commissioner from approval of future projects.

#### **5:47-7.3 Business entities held harmless**

No sanction imposed by the Commissioner against any nonprofit organization shall affect the validity of the credits for assistance already contributed and awarded to a business entity that was not on notice of the wrongful action of the nonprofit organization at the time it made the contribution.

#### **5:47-7.4 Reuse of funds**

In the event that any funds contributed for a particular project cannot be used for that project, whether because the project cannot be completed, or because the Department has taken action to abrogate a contract with a nonprofit organization or has recaptured funds provided to a nonprofit organization pursuant to the provisions of section 2 of this subchapter, the Department shall return the funds to the pool available to fund other projects as provided in these rules.

### **Subchapter 8. CLEARINGHOUSE; POOLING OF FUNDS BY DEPARTMENT**

#### **5:47-8.1 Establishment of clearinghouse**

(a) The Department shall establish a clearinghouse for business entities seeking to provide assistance to qualified projects, and qualified projects seeking assistance from business entities. The clearinghouse shall include the following information, which shall be available at the Department's offices or upon written request to the Department, and which shall be posted on the Department of Community Affairs website:

- (1) The name of each business entity receiving a certificate pursuant to section 4 of subchapter 6 of these rules which does not specify a project or nonprofit organization to which it proposes to provide assistance;
- (2) The amount deposited by each business entity in the Neighborhood Revitalization Non-lapsing Trust Fund for the current year, and the amount that it proposes to provide in subsequent years, if any;
- (3) The name of each nonprofit organization that has received approval for a plan from the Department pursuant to subchapter 3 of these rules and the location of the neighborhood covered by the plan.

(4) The name of each nonprofit organization that has received approval for a project from the Department pursuant to subchapter 4 of these rules, the location of the neighborhood for which the project is proposed, the amount of assistance sought by the nonprofit organization to carry out the project, and the amount of any assistance, if less than the full amount sought, already provided or committed; and

(5) Contact information for business entities and nonprofit organizations listed in the clearinghouse.

(b) Business entities and nonprofit organizations may use the clearinghouse to contact one another. In the event that a business entity listed in the clearinghouse decides to allocate its assistance to a project listed in the clearinghouse, it shall notify the Department, which shall amend its certificate to specify the project for which the assistance is being provided.

#### **5:47-8.2 Allocation of assistance by the Department**

(a) To the extent that any business entities submit Applications to provide assistance, or receive certificates and deposit assistance in the Neighborhood Revitalization Non-lapsing Trust Fund, without specifying a project or projects to which the assistance is to be provided; and any projects receive approval from the Department that do not specify a business entity as a source of all or part of the assistance needed to carry out the project, the Department shall allocate that assistance to qualified projects, including pooling assistance from more than one business entity in order to fully fund an approved project.

(b) Notwithstanding the criteria set forth in subchapter 5 to qualify projects, the Department shall give priority in allocation of such assistance to projects which have already received assistance or commitments of assistance equal to or greater than one-third of the total amount of assistance sought for the project. The Department shall rank the remaining projects according to the criteria set forth in subchapter 5 of these rules.

### **Subchapter 9. NEIGHBORHOOD REVITALIZATION NON-LAPSING TRUST FUND; USE OF INTEREST PROCEEDS**

#### **5:47-9.1 Use of interest**

The Department shall use any interest earnings on the funds deposited in the Neighborhood Revitalization Non-lapsing Trust Fund (hereinafter the "trust fund") to further the purpose of the Neighborhood Revitalization Tax Credit program as provided in this subchapter.

#### **5:47-9.2 Determination of available funds**

At the beginning of each fiscal year, the Department shall make a determination of the amount of interest earnings accumulated in the trust fund, and the amount to be made available to qualified entities,

as defined herein, and other appropriate entities under this section. The Department shall make available for this purpose all interest earnings accumulated in the trust fund.

### **5:47-9.3 Use of Funds**

(a) The Department shall set aside interest proceeds to be made available in each fiscal year for grants to be used for any of the following purposes:

(1) To qualified entities to provide training and technical assistance to nonprofit organizations eligible to prepare plans and submit projects for tax credit assistance. Areas of training and technical assistance may include, but shall not be limited to, assistance in preparing neighborhood revitalization plans and developing projects based on those plans; developing technical capacity to implement projects and related neighborhood revitalization activities; and building management and financial capacity among nonprofit organizations engaged in neighborhood revitalization activities. Qualified entities shall be public or nonprofit entities that have demonstrated through the conduct of successful programs and activities their ability to provide training and technical assistance to nonprofit organizations carrying out community development and neighborhood revitalization activities.

(2) To nonprofit organizations to carry out planning activities consistent with subchapter 3 of these rules;

(3) Other activities to improve the capacity of nonprofit organizations to plan and carry out neighborhood revitalization activities eligible for tax credit assistance; or

(4) Marketing activities, including, but not limited to, presentations, workshops and preparation of materials, designed to inform business and corporate entities about the opportunities available to provide assistance and obtain tax credit benefits.

(b) Under no circumstances shall the award of a grant to a nonprofit organization under this subchapter be interpreted to mean that a nonprofit organization shall receive preference in the ranking of qualified projects pursuant to subchapter 5 of these rules.

## **Subchapter 10: TASK FORCE**

### **5:47-10.1 Establishment of task force**

The Department shall establish a task force to advise the Department staff on the administration of the Neighborhood Revitalization State Tax Credit Program, including such salient matters that the staff of the Department or any member of the task force shall put before the committee.

### **5:47-10.2 Membership of task force**

(a) The membership of the committee shall include individuals representing



- (1) Nonprofit organizations eligible to participate in the program and/or statewide associations representing these entities;
- (2) Business and corporate entities potentially providing assistance to such nonprofit corporations and/or statewide associations representing these entities; and
- (3) State agencies administering programs or engaged in activities that further neighborhood revitalization activities by such nonprofit corporations.

**5:47-10.3 Meetings**

The task force shall meet at least two times in each calendar year.