COMMUNITY AFFAIRS

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Low-Income Housing Tax Credit Qualified Allocation Plan

Proposed Amendments: N.J.A.C. 5:80-33.2, 33.4, 33.5, 33.6, 33.8, 33.9, 33.10, 33.12, 33.14 33.15, 33.16, 33.17, 33.19, 33.24, 33.26, 33.31, 33.32, 33.35, 33.36

Authorized By: New Jersey Housing and Mortgage Finance Agency, Melanie R. Walter, Executive Director

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

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

Proposal Number: PRN 2025-087.

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

Thursday, August 21, 2025, at 10:00 A.M.

New Jersey Housing and Mortgage Finance Agency

637 South Clinton Avenue

Trenton, New Jersey 08611

Please call the Agency Division of Multifamily/Supportive Housing and Lending at (609) 278-7629 to be included on the list of speakers.

Submit written comments by September 19, 2025, to:

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Summary

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

As mandated at Section 42(m)(1)(B) of the IRC, each state housing credit agency must create a qualified allocation plan (QAP) that sets forth the selection criteria utilized to allocate tax credits to eligible applicants. This plan must be approved by the governmental unit of which such agency is a part. N.J.A.C. 5:80-33 constitutes the QAP for the State.

The Agency continually reviews the selection criteria and, from time to time, finds that amendments to the rules are necessary or beneficial to ensure compliance with Federal requirements and State housing policy. Additionally, this proposed rulemaking takes into consideration and, in some instances, incorporates recommendations made in public comments submitted in response to a proposal notice that was published on May 1, 2023, for previous revisions to the QAP (May 1, 2023 proposal notice). See 55 N.J.R. 779(a); 56 N.J.R. 343(b). The Agency proposes to amend the QAP as follows:

General

Throughout the above-cited provisions of the QAP, the Agency proposes certain technical amendments to correct capitalization, improve punctuation and sentence structure, and maintain or attain consistency among referenced terms and provisions. Unless these proposed technical amendments will impact the content of the QAP, they are pointed out only generally in the summary of proposed amendments provided below and are referenced generically as amendments "to improve syntax" or are not discussed any further.

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

The Agency proposes to amend the definition of "'certified minority and/or women business enterprise' or 'certified M/WBE'" to update the website address for the State Department of the Treasury.

The Agency proposes to amend the definition of "'developer fee' or 'development fee'" to eliminate the allowable enhanced developer fee of 20.00 percent of total development cost (as opposed to the standard maximum fee of 15.00 percent of total development cost) for scattered site single-family housing. The Agency believes the increased developer fee for scattered-site single-family detached or duplex housing is no longer warranted. In the current affordable housing environment, scattered-site development does not present any additional costs or difficulties that would justify the increased fee. Further, in the 30-year period since the increased developer fee was originally adopted in 1995, New Jersey's LIHTC program, and others throughout the country, have decisively shifted away from single-family/duplex housing to focus more on multifamily housing projects. The increased developer fee for scattered-site housing reflects an earlier conception of LIHTC that no longer exists.

The Agency proposes to add a definition of "emerging developer" to define those developers who will be eligible for inclusion in the new Family Cycle emerging developer set-aside, proposed at N.J.A.C. 5:80-33.4(a)3.

The Agency proposes to amend the definition of "individuals with physical disabilities" to recognize that the existing itemization of essential activities of daily living is by way of example and not meant to be all-inclusive.

The Agency proposes to amend the definition of "individuals with special needs" to change the term "ex-offenders and youth offenders" to "adults and youth with criminal records" in order to eliminate stereotyping and marginalizing language, as recommended by the Corporation for Supportive Housing, and to add to the list of individuals, those 18 years of age and over who are transitioning from nursing homes.

The Agency proposes to add a definition of "large warehouse facility" to define those structures that are to be taken into account for siting purposes at proposed new N.J.A.C. 5:80-33.12(c)8iii.

The Agency proposes to amend the definition of "minimum rehab project" to more specifically cite to the controlling provision of the Internal Revenue Code at 26 U.S.C. § 42(m)(2).

The Agency proposes to amend the definition of "'Municipal Revitalization Index' or 'MRI'" to update the Department of Community Affairs' website address at which the MRI is available.

The Agency proposes to add a definition of ”on-site transportation” to specify the requirements of transportation that qualify for points in the point categories at N.J.A.C. 5:80-33.16(b)2i and 17(a)1.

The Agency proposes to add a definition of “sponsor,” as that term is used extensively throughout the QAP.

The Agency proposes to amend the definition of “successfully developed and operated” to correct the designation of IRS Form 8823, which is currently mis-designated as “HUD Form 8823.”

The Agency also proposes to amend the definition of “Transit Village” to update the website address for the State Department of Transportation.

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

The Agency proposes amendments to the Family Cycle at N.J.A.C. 5:80-33.4(a) to increase total development cost limits to reflect cost increases in the building industry. It is proposed to increase total development cost limits by 10 percent, with the resultant product being rounded up or down to the nearest multiple of $10,000, thereby resulting in increases of from $317,625 to $350,000 per unit for buildings of one to four residential stories; from $346,500 to $380,000 per unit for buildings with five or six residential stories; and from $375,375 to $410,000 per unit for buildings with over six residential stories. The Agency also proposes to add that applying for a set-aside does not preclude an applicant from also competing in the Family Cycle and further proposes an amendment to reflect that the number of set-asides in the Family Cycle is proposed to be increased from two to three, with the addition of an emerging developer set-aside at proposed new N.J.A.C. 5:80-33.4(a)3.

Amendments are proposed to the mixed-income set-aside at N.J.A.C. 5:80-33.4(a)1 to provide that, while the first reservation of credits from the Family Cycle will still be awarded to a project that is composed of up to 55-percent affordable units and is located outside of a Targeted Urban Municipality (TUM), the second reservation of credits from the Family Cycle will be awarded to one project that is composed of up to 55 percent affordable units and is located within a TUM, with a proposed increase in the amount of per tax-credit-unit credits for both projects from $30,000 to $34,300. The project located outside of a TUM (the first reservation project) must, as required by the current QAP for qualifying mixed-income projects, achieve the maximum points stipulated at N.J.A.C. 5:80-33.15(a)1i, regarding extended affordability; (a)11i, regarding site selection; (a)14ii, regarding proximity to public transportation/jobs; and (a)14iii, regarding high-performing schools. The project located within a TUM (the second reservation project) must achieve the maximum points stipulated at N.J.A.C. 5:80-33.15(a)1i, regarding extended affordability; and (a)11i, regarding site selection. An additional amendment is proposed at N.J.A.C. 5:80-33.4(a)1 to clarify that if, because of lack of demand, the mixed-income set-aside is not "fully" utilized, any "unawarded" credits will be released into the Family Cycle.

The Agency proposes amendments to the preservation set-aside at N.J.A.C. 5:80-33.4(a)2 to stipulate that the third and fourth reservations of credits from the Family Cycle will be awarded to the two highest-ranking eligible preservation projects, rather than, as set forth in the current QAP, the second and third reservations of Family Cycle credits are so awarded and to confirm that the limits on total development costs apply to the set-aside. An additional amendment is proposed at N.J.A.C. 5:80-33.4(a)2 to clarify that any credits not "fully" awarded pursuant to the preservation set-aside because of lack of demand will be released into the Family Cycle.

The Agency proposes new N.J.A.C. 5:80-33.4(a)3 to institute an emerging developer set-aside, to which the fifth reservation of credits from the Family Cycle will be awarded. This proposed set-aside is intended to incentivize rising developers who have exhibited competence in the development of prior LIHTC projects, but who are ineligible for the experienced developer points available at existing N.J.A.C. 5:80-33.15(a)20. To be eligible for the set-aside, a project must be projected to be developed by an emerging developer, as that term will be defined at N.J.A.C. 5:80-33.2, with at least a 70 percent interest in the project's general partner/managing member. The maximum allocation to projects competing in the set-aside is $2,000,000. In addition to meeting the eligibility requirements for projects applying to the other Family Cycle set-asides, applications to the proposed emerging developer set-aside must provide two letters of support/reference from investors, lenders, or other housing finance agencies, at least one of which must be from an investor or lender participating in the subject project, and provide a certificate of completion from a housing development training course and a description of the course. Additionally, at least three members of the development team must have previous experience with the Agency, including the architect, the general contractor, and another development team member that is not a project consultant, and the applicant must enter into a management agreement with a property management company that has at least five years of experience monitoring LIHTC projects and has a tax-credit project portfolio of at least 300 units. The proposed new set-aside also provides that if multiple projects are deemed eligible at the same Tax Credit Committee meeting, credits will be awarded to the application with the highest score, then, if necessary, pursuant to the tiebreaker system at N.J.A.C. 5:80-33.19(a)2. Finally, the proposed set-aside provides that if no set-aside applicant meets the minimum score, resulting in the Emerging Developer set-aside not being utilized, the credits therein will be released into the Family Cycle.

The Agency proposes an amendment at N.J.A.C. 5:80-33.4(b) to delete the negative points reference at N.J.A.C. 5:80-33.15(a)20, which is not a negative points provision.

The Agency proposes amendments at N.J.A.C. 5:80-33.4(d)1 and (e)1 to delete references to the Mixed-Income Reserve, which is proposed to be eliminated through this rulemaking.

N.J.A.C. 5:80-33.5 Age-Friendly Senior Cycle

The Agency proposes amendments to the Age-Friendly Senior Cycle at N.J.A.C. 5:80-33.5(a) to increase total development cost limits to reflect cost increases in the building industry. It is proposed to increase total development cost limits by 10 percent, with the resultant product being rounded up or down to the nearest multiple of $10,000, thereby resulting in increases of from $317,625 to $350,000 per unit for buildings of one to four residential stories; from $346,500 to $380,000 per unit for buildings with five or six residential stories; and from $375,375 to $410,000 per unit for buildings with over six residential stories. The Agency also proposes to add that applying for a set-aside does not preclude an application from also competing in the Age-Friendly Senior Cycle. An additional amendment is proposed at N.J.A.C. 5:80-33.5(a) to clarify that if, because of lack of demand, the preservation set-aside is not "fully" utilized, any "unawarded" credits will be released into the Age-Friendly Senior Cycle.

The Agency proposes an amendment at N.J.A.C. 5:80-33.5(b) to delete the negative points reference at N.J.A.C. 5:80-33.15(a)20, which is not a negative points provision.

The Agency proposes amendments at N.J.A.C. 5:80-33.5(d)1 and (e)1 to delete references to the Mixed-Income Reserve, which is proposed to be eliminated through this rulemaking.

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

The Agency proposes amendments to the Supportive Housing Cycle at N.J.A.C. 5:80-33.6(a) to increase total development cost limits to reflect cost increases in the building industry. It is proposed to increase total development cost limits by 10 percent, with the resultant product being rounded up or down to the nearest multiple of $10,000, thereby resulting in increases of from $317,625 to $350,000 per unit for buildings of one to four residential stories; from $346,500 to $380,000 per unit for buildings with five or six residential stories; and from $375,375 to $410,000 per unit for buildings with over six residential stories.

The Agency proposes an amendment at N.J.A.C. 5:80-33.6(c) to delete the negative points reference at N.J.A.C. 5:80-33.15(a)20, which is not a negative points provision.

The Agency proposes amendments at N.J.A.C. 5:80-33.6(d)1 and (e)1 to delete references to the Mixed-Income Reserve, which is proposed to be eliminated by this rulemaking.

N.J.A.C. 5:80-33.8 Awards from the Reserve

The Agency proposes amendments to Awards from the Reserve at N.J.A.C. 5:80-33.8(a)1 to increase total development cost limits to reflect cost increases in the building industry. It is proposed to increase total development cost limits by 10 percent, with the resultant product being rounded up or down to the nearest multiple of $10,000, thereby resulting in increases from $317,625 to $350,000 per unit for buildings of one to four residential stories; from $346,500 to $380,000 per unit for buildings with five or six residential stories; and from $375,375 to $410,000 per unit for buildings with over six residential stories.

The Agency proposes to delete N.J.A.C. 5:80-33.8(a)2 and 3. The proposed deletions at N.J.A.C. 5:80-33.8(a)2 and 3 are to effectuate the elimination of the Mixed-Income Reserve, which will be partially compensated for by the proposed expansion of the Mixed-Income set-aside in the Family Cycle at N.J.A.C. 5:80-33.4(a)1.

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

The Agency proposes to amend N.J.A.C. 5:80-33.9(a)4 to delete the negative points reference at N.J.A.C. 5:80-33.15(a)20, which is not a negative points provision.

N.J.A.C. 5:80-33.10 Application Fee Schedule

The Agency proposes to amend N.J.A.C. 5:80-33.10(a)1 to delete the reference to the Mixed-Income Reserve, which is proposed to be eliminated through this rulemaking.

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

The Agency proposes to amend N.J.A.C. 5:80-33.12(c)1ii(2) to include the number of parking spaces in the description of the proposed improvements section of the required market study, and to amend N.J.A.C. 5:80-33.12(c)1ii(11) to express that notice of significant deficiencies in a market study will be provided to the preparer by email, rather than in writing.

The Agency proposes to amend N.J.A.C. 5:80-33.12(c)8ii(3), with respect to Green requirements, to replace the necessity of providing the currently-required individual unit meter data, or evidence of attempts to acquire such data, with the provision of whole building aggregate data.

The Agency proposes new N.J.A.C. 5:80-33.12(c)8iii to provide standards for the siting of residential buildings within the vicinity of large warehouse facilities and, if applicable, by virtue of any residential building being within 1,000 feet of the nearest property line of a large warehouse facility, that the application must include the steps proposed to be taken to ensure compliance with the Environmental Stressor Performance Standards set forth in the Guide to QAP Green Requirements (Green Guide). The proposed new regulation also provides a website address where the Green Guide can be accessed.

The Agency proposes to amend N.J.A.C. 5:80-33.12(c)19 to include new minimum design standards to which all projects applying for LIHTC awards must conform. The proposed new standards include air conditioning and a requirement that all bedrooms have at least one window with access to natural light.

N.J.A.C. 5:80-33.14 Scoring and ranking

The Agency proposes to amend N.J.A.C. 5:80-33.14(a) for clarity.

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

The Agency proposes to delete and replace N.J.A.C. 5:80-33.15(a)6 to provide a more nuanced award of points for certified minority- and/or women-owned-business-enterprise (certified M/WBE) participation. The current provision awards five points to projects that have a certified M/WBE with at least a 20 percent interest in the project's management or that pledge to expend at least 20 percent of construction costs on certified M/WBE contractors, subcontractors, and material suppliers. With the objective of enhancing M/WBE participation in LIHTC projects, the proposed new paragraph includes two separate categories, with a sliding scale of between one to five points encompassing a percentage of ownership in the general partner/managing member by a certified M/WBE or a pledge to expend a percentage of construction costs on M/WBE contractors, subcontractors, and material suppliers.

The Agency proposes to amend the unit amenities point category at N.J.A.C. 5:80-33.15(a)8 as follows: at subparagraph (a)8ii, to substitute all-electric cooking appliances for a washer and dryer hookup; at subparagraph (a)8vi, to substitute air filtration of at least a specified Minimum Efficiency Reporting Value on all ventilation systems for through the wall, individual dwelling unit air conditioning; and at subparagraph (a)8xiii, to delete outside storage lockers.

The Agency proposes to amend the project amenities point category at N.J.A.C. 5:80-33.15(a)9 to add the following as point options: at subparagraph (a)9vi, free parking spaces of at least one space for each tax-credit unit and free covered, secured bicycle storage in designated numbers (depending upon the type of tax-credit units) and size, which would replace the existing 1.0 parking spaces per unit (the Agency has determined the existing parking space option overlaps with similar municipal requirements, thus providing applicants wih a point for an amenity they are, in many cases, already required to provide); at new subparagraph (a)9ix, a gym/fitness center; and at new subparagraph (a)9x, for TUM projects only, at least one item of extreme heat mitigation infrastructure.

The Agency proposes to amend N.J.A.C. 5:80-33.15(a)13i(1), (2), and (3) to replace the phrase "climate adaptive" with "future-ready."

The Agency proposes to amend N.J.A.C. 5:80-33.15(a)14ii to clarify that the additional points provided for in the subparagraph are available only to projects that achieve at least one point for public transportation.

The Agency proposes to amend N.J.A.C. 5:80-33.15(a)20 as follows: at subparagraph (a)20i, to clarify that eligibility for the points in the subparagraph is dependent on the qualifying general partner, voting member, developer, or related party having at least a 50 percent interest in the general partner/managing member of each previously successful LIHTC project; at subparagraph (a)20ii, to clarify that eligibility for the points in the subparagraph is dependent on the qualifying general partner, voting member, developer, or related party having at least a 20 percent interest in the general partner/managing member of each previously successful LIHTC project and to improve syntax; and at subparagraph (a)20iii, to clarify that eligibility for the points in the subparagraph is dependent on the qualifying general partner, voting member, developer, or related party having at least a 50 percent interest in the general partner/managing member of each previously successful LIHTC project, to improve syntax, and to increase the number of points to be awarded pursuant to the subparagraph from two to three.

5:80-33.16 Point system for the Age-Friendly Senior Cycle

The Agency notes that N.J.A.C. 5:80-33.16(a) provides that, with certain exceptions, the point system for the Age-Friendly Senior Cycle includes all point categories of the Family Cycle. Therefore, the proposed amendments at N.J.A.C. 5:80-33.15(a)6, 8, 9, 13, and 20,.discussed above, under the point system for the Family Cycle at N.J.A.C. 5:80-33.15 are proposed to be indirectly incorporated into the point system for the Age-Friendly Senior Cycle.

The Agency proposes to amend the point system for the Age-Friendly Senior Cycle at N.J.A.C. 5:80-33.16(b)2iii by specifically setting forth the time elements necessary for an on-site healthcare provider's services to be considered as being provided "regularly."

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

The Agency notes that N.J.A.C. 5:80-33.17(a) provides that, with certain exceptions, the point system for the Supportive Housing Cycle includes all point categories of the Family Cycle. Therefore, proposed amendments at N.J.A.C. 5:80-33.15(a)6, 8, 9, 15, and 20,.discussed above, under the point system for the Family Cycle at N.J.A.C. 5:80-33.15 are proposed to be indirectly incorporated into the point system for the Supportive Housing Cycle.

The Agency proposes to amend the point system for the Supportive Housing Cycle at N.J.A.C. 5:80-33.17(b)4 to specifically reference and cite to the Section 811 Project Rental Assistance program as among those eligible government sources of rental assistance for special needs units. This amendment is intended to incentivize greater utilization of the Agency's Section 811 program capacity.

N.J.A.C. 5:80-33.19 Tiebreaker System

The Agency proposes to amend the tiebreaker system at N.J.A.C. 5:80-33.19(a)2ii to delete the reference to the Mixed-Income Reserve, which is proposed to be eliminated through this rulemaking.

N.J.A.C. 5:80-33.24 Reservations, Allocations, and Binding Commitments

The Agency proposes to add new N.J.A.C. 5:80-33.24(c) to provide, with approval of the Tax Credit Committee and in the Agency's discretion, for the issuance of awarded nine-percent tax credits from the subsequent tax-credit-authority year and the means for effecting such an issuance. The proposed new subsection also provides that the penalty for an exchange of credits set forth at N.J.A.C. 5:80-33.37(d) does not apply to such an exchange.

N.J.A.C. 5:80-33.26 Obtaining IRS Form 8609: Deadlines and Extension Fees

The Agency proposes to amend N.J.A.C. 5:80-33.26(b) to change the deadline for submitting a project owner's IRS Form 8609 request package. Instead of requiring submission to the Agency within 90 days after permanent loan closing, the new deadline would be no later than 90 days prior to the owner's tax-filing deadline. This proposed change reflects that the loan closing date is not relevant to the Agency's process in preparing the IRS Form 8609. Additionally, the proposed amendment would limit the $1,000 fee payable to the Agency to those instances in which a project requires an expedited review.

N.J.A.C. 5:80-33.31 Applicant's Affirmative Obligation to Disclose Changes

The Agency proposes to amend N.J.A.C. 5:80-33.31(a) to improve syntax and to highlight that substantial changes to a proposed development, such as a reduction in project unit count or a change in point category elections, may cause reconsideration of a project's LIHTC allocation by the Agency.

N.J.A.C. 5:80-33.32 Compliance Monitoring

The Agency proposes to amend N.J.A.C. 5:80-33.32(g) to correct the reference to Pub. L. No. 110-289, which is currently mis-designated as "P.L. No. 110-289."

N.J.A.C. 5:80-33.35 Notification of Noncompliance

The Agency proposes to amend N.J.A.C. 5:80-33.35(a) by replacing the "sufficient notice" with "sufficient time."

N.J.A.C. 5:80-33.36 Confidentiality of Tax Credit Applications and Information

The Agency proposes to amend N.J.A.C. 5:80-33.36(c)1 for grammar.

This notice of proposal is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5 as a 60-day comment period is being provided.

Social Impact

The proposed creation of the Emerging Developer set-aside in the Family Cycle at N.J.A.C. 5:80-33.4(a)3 will facilitate access to LIHTC awards for otherwise experienced developers who have not previously received an LIHTC award, who will compete in the set-aside with similarly situated developers, rather than against those who are better established at the LIHTC application process. The Agency believes this will help pave the way for new, likely younger, developers to enter the industry and, thereby, promote a continuing stream of affordable housing developers. The requirements set forth for eligibility to the set-aside ensure that credits will be awarded to capable developers lacking only experience, not competence.

The proposed increase in the number of available points and the options for attaining points in the M/WBE point category of the Family Cycle at N.J.A.C. 5:80-33.15(c)6 (which is incorporated into the point systems for the Age-Friendly Senior Cycle at N.J.A.C. 5:80-33.16(a) and the Supportive Housing Cycle at N.J.A.C. 5:80-33.17(a)) reflect the Agency's commitment to increasing participation in the development of affordable housing by minority- and women-owned businesses, as encouraged by comments received from, among others, Monarch Housing Associates and Adenah Bayoh in response to the May 1, 2023 proposal notice. Combined with the introduction of the Emerging Developer set-aside, the proposed amendments to the M/WBE point category are expected to promote innovation and diversity from relatively newer entrants to the affordable housing industry.

Proposed new N.J.A.C. 5:80-33.12(c)8iii to impose siting requirements for new construction projects with respect to large warehouse facilities and, for all projects with residential buildings within 1,000 feet of a large warehouse facility, to include in the LIHTC application measures to be undertaken to ensure compliance with the Agency's Green Guide's Environmental Stressor Performance Standards, is intended to strike a balance between the necessary and beneficial economic impact that warehouses and distribution centers bring to a neighborhood and the concomitant negative environmental, traffic, and safety effects of their presence. The Agency believes the proposed amendment is preferable to the alternative of a blanket deduction of points for proximity to large commercial developments, which would effectively preclude projects to be sited in certain smaller municipalities – and, thus, those municipalities themselves – from meaningful participation in the competition for LIHTC credits; rather, the Agency recognizes that, as has been demonstrated in real-world New Jersey situations, the negative impacts can be mitigated by appropriate measures, allowing for coexistence between an affordable housing project and a large-scale commercial building.

The amendments proposed at N.J.A.C. 5:80-33.12(c)19ii and iii, to require all units in LIHTC projects to have air conditioning (which the Agency views as a necessity, rather than as an amenity) and at least one window with access to natural light in all bedrooms will enhance the quality of life for tenants, especially given the well-documented increased heat and humidity of recent New Jersey summers. In a similar vein, proposed amendments to the Family Cycle point system at N.J.A.C. 5:80-33.15(a)8ii and vi and at (a)9vi, ix, and x are expected to enhance quality of life for tenants. Those proposed amendments provide points for, respectively, all-electric cooking appliances (which dovetails with the electrification provisions of the Urban Preservation Program and the Workforce Housing Program); high-efficiency air filtration in ventilation systems; free parking and free bicycle storage; a gym or fitness center; and, for projects in TUMs, heat mitigation elements. The proposed Family Cycle point system amendments will be incorporated into the

Age-Friendly Senior and Supportive Housing Cycles by virtue of N.J.A.C. 5:80-33.16(a) and 33.17(a), respectively.

Economic Impact

In general, the proposed amendments recognize the industry-wide increased costs of housing development in the northeastern United States, particularly in New Jersey.

In the Family, Age-Friendly Senior, and Supportive Housing Cycles at N.J.A.C. 5:80-33.4(a), 33.5(a), and 33.6(a), respectively, and in Awards from the Reserve at N.J.A.C. 5:80-33.8(a)1, it is proposed to increase the limits that can be spent on per-unit development costs by approximately 10 percent for buildings of all levels in recognition of recent cost increases throughout the building industry and to account for proposed amendments at N.J.A.C. 5:80-33.12(c)19 that will require air conditioning and bedroom windows in all LIHTC-financed units.

The Agency estimates that the cost of the steps to be taken to ensure compliance with the Environmental Stressor Performance Standards set forth in the Green Guide in order to comply with the proposed amendment at N.J.A.C. 5:80-33.12(c)8iii to be between $2,500 and $10,000.

The amendment proposed at N.J.A.C. 5:80-33.26(b) to replace the existing requirement of payment of a $1,000 fee to the Agency for each week, or part thereof, that an owner is late in submitting a complete IRS Form 8609 request package with a requirement of payment of the fee only when projects require an expedited IRS Form 8609 is expected to result in fewer fees being paid to the Agency for IRS Form 8609 services.

Federal Standards Statement

With respect to affordability requirements, the Code sets forth minimum standards for low-income housing tax credits. Tax credit affordability requirements are set forth at Sections 42(g)(1)(A), (B), and (C) of the IRC, pursuant to which housing sponsors elect a minimum set-aside of either: (i) 20 percent or more of the residential units being both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income (AMGI); (ii) 40 percent or more of the residential units being both rent-restricted and occupied by individuals whose income is 60 percent or less of AMGI; or (iii) 40 percent or more of the residential units being both rent-restricted and occupied by individuals whose income does not exceed the imputed income limitation designated by the taxpayer (not to exceed 80 percent of AMGI) with respect to the respective unit. Affordability must be maintained for an initial compliance period of a minimum of 15 years, 26 U.S.C. § 42(i)(1), and is also subject to an extended use period of an additional 15 years beyond the compliance period, 26 U.S.C. § 42(h)(6)(D). Housing sponsors, in order to maximize tax credit allocations, often elect to place affordability controls on all units within a project. None of the proposed amendments deviate from those standards.

Other than as set forth above, the proposed amendments do not contain any standards or requirements that exceed the standards or requirements imposed by applicable Federal law (26 U.S.C. § 42 and the regulations promulgated thereunder at 36 CFR Part 1 Subpart 42).

Jobs Impact

The proposed amendments are not expected to either create or result in the loss of jobs by number, as the dollar amount of low-income housing tax credits available to the State, which is broadly determinative of the number of units that can ultimately be financed thereby, is set by the Federal government and is not impacted by the QAP. However, the proposed replacement of N.J.A.C. 5:80-33.15(a)6 to incentivize participation in the development of LIHTC projects by certified M/WBEs is expected to alter the racial and gender composition of tax-credit recipients and those in contributing businesses, including contractors, subcontractors, and material suppliers. Additionally, the proposed establishment of an Emerging Developer set-aside at N.J.A.C. 5:80-33.4(a)3 is expected to provide new or expanded job opportunities for development team members who have not previously been fully engaged in LIHTC project development.

Agriculture Industry Impact

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

Regulatory Flexibility Statement

The proposed amendments will apply primarily to project developers, managing agents, and service providers of LIHTC projects, most, if not all, of which are small businesses as defined at section 2 of the Regulatory Flexibility Act, N.J.S.A. 52:14B-17.

The Agency does not anticipate that there will be any adverse economic impact on small businesses of different types and different sizes as a result of this rulemaking. The IRC mandates certain minimum requirements for LIHTC projects, from which no deviations are permitted. Further, the Agency has a statutory obligation to "[s]timulate the construction, rehabilitation and improvement of adequate and affordable housing in the State." N.J.S.A. 55:14K-2.e(2). Therefore, the Agency deems it prudent to require that all applicants, awardees, managing agents, and related parties and individuals be held to the same standards, including, without limitation, the same compliance and reporting requirements and timetables, without exemption or exception.

Any reporting, recordkeeping, and additional compliance requirements are discussed in the Summary above. The Agency finds that the proposed amendments will not impose other than nominal reporting, recordkeeping, or other compliance requirements on small businesses because those amendments only continue in effect or, at most, alter the timing and/or frequency of existing requirements.

Housing Affordability Impact Analysis

The LIHTC program promotes the construction and rehabilitation, and, therefore, preserves and augments the supply, of affordable rental housing in the State. Each year, the Agency funds approximately 1,000 units of newly constructed or significantly rehabilitated rental housing pursuant to the QAP. The Agency expects to fund a similar number of affordable rental units through the QAP as it is proposed to be amended by this rulemaking. Units financed pursuant to the LIHTC program serve to house residents earning no more than 80 percent of area median gross income and, in many instances, households earning significantly less than that amount. Thus, the proposed amendments are expected to impact approximately 1,000 units of new or rehabilitated rental housing serving low- and moderate-income residents.

The Agency finds that the proposed rulemaking would impose an insignificant impact on housing affordability in the State because there is an extreme unlikelihood that the proposed amendments would evoke a change in the average costs associated with housing. The proposed amendments to the Family, Age-Friendly Senior, and Supportive Housing Cycles at N.J.A.C. 5:80-33.4(a), 33.5(a), and 33.6(a), respectively, and to Awards from the Reserve at N.J.A.C. 5:80-33.8(a)1, to increase the limits that can be spent on per-unit development costs by approximately 10 percent do not themselves affect housing costs or affordability, but rather reflect recent cost increases that have already occurred, and are expected to continue to occur, throughout the affordable housing industry. Thus, the Agency finds that the increased development costs that would be allowed pursuant to the proposed amendments are reflective of, but will not impose, significant cost increases in the building industry or impact housing affordability.

Smart Growth Development Impact Analysis

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

The proposed amendments are expected to impact the development of approximately 1,000 prospective new or rehabilitated rental housing units for low- and moderate-income households, the vast majority, if not all, of which will be in multifamily housing structures. Additionally, some of the proposed amendments will apply to the approximately 43,000 existing LIHTC units in the

State, most of which are in multifamily structures and provide housing for low- and moderate-income households.

The Agency does not anticipate that the proposed amendments will affect new construction within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. No amendments are proposed to the existing definition of “smart growth area” at N.J.A.C. 5:80-33.2; thus, the construction of projects in Planning Areas 1 or 2 and within designated centers will not be impacted by the proposed amendments.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Agency has evaluated the proposed rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State. Accordingly, no further analysis is required.

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

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

5:80-33.2 Definitions

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

. . .

"Certified minority and/or women business enterprise" or "certified M/WBE" means a minority- and/or women-owned business or enterprise that is registered with, and certified by, the Division of Revenue and Enterprise Services, Uniform Certification Service, in the State of New Jersey Department of the Treasury. Information on how to register as a certified M/WBE is available at [https://www.state.nj.us.treasury/revenue/ucs.shtml] **https://www.nj.gov/treasury/revenue/ucs.shtml**.

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

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

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

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

[1. Scattered site single-family detached or duplex housing;]

[2.] **1.** Projects of 25 units or [less] **fewer**; or

[3.] **2.** (No change in text.)

The non-deferred portion of the developer fee shall not exceed 8.00 percent (13.00 percent for the [three] **two** types of housing referenced at 1[,] **and** 2[, and 3] above) of total development cost excluding acquisition cost, working capital, marketing expenses, escrows, operating deficit reserves, step-in-the-shoes costs, and costs associated with syndication.

A developer fee of up to 4.00 percent shall be permitted for building acquisition costs, but the non-deferred portion shall not exceed 2.00 percent. The cost of acquiring a building shall not be allowed in the calculation of the developer fee if the acquisition is between related parties. A related party, as used in this definition, means a relationship between parties when there is a spousal or family relationship, parent-subsidiary relationship, or where owners, officers, directors, partners, stockholders, or members of one business entity hold a 10.00 percent or more interest in the other business entity.

. . .

"Emerging Developer" means a developer that: (1) has had equity participation in no fewer than three multifamily residential and/or mixed-use projects comprising at least 25 total units; (2) qualifies for fewer than three points pursuant to N.J.A.C. 5:80-33.15(a)20; and (3) does not have any active LIHTC awards, allocations, or reservations for projects in development that, once all completed, would qualify the developer for three points pursuant to N.J.A.C. 5:80-33.15(a)20. For example, a developer with 20-percent ownership stakes in one LIHTC project that has been successfully developed and operated and another LIHTC project currently in development is considered an Emerging Developer, but a developer with a 50 percent ownership stake in an LIHTC project currently in development is not.

. . .

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

"Individuals with special needs" means:

1. – 4. (No change.)

5. [Ex-offenders and youth offenders] **Adults and youth with criminal records**;

6. – 10. (No change.)

11. Individuals in treatment for substance abuse; [and]

12. Individuals 18 years and over transitioning from nursing homes; and

[12.] **13.** (No change in text.)

. . .

“Large warehouse facility” means a warehouse distribution facility or warehouse fulfillment center with at least 150,000 square feet of gross floor area and/or at least 40 feet of height that currently exists or has received final site plan approval.

. . .

“Minimum rehab project” means any project undertaking only a minimum amount of rehabilitation. Minimum rehab is defined as **a** construction cost totaling less than $30,000 per unit. Minimum rehab projects are eligible to apply only in the Supportive Housing Cycle. NJHMFA shall utilize an amount not less than 33.33 percent of developer fee based on building acquisition costs as a funding source in its evaluation required at 26 U.S.C. § [42(m)] **42(m)(2)**.

“Municipal Revitalization Index” or “MRI” means the Municipal Revitalization Index Distress Score by which New Jersey’s municipalities are ranked according to 10 separate indicators that measure diverse aspects of social, economic, physical, and fiscal conditions. Each municipality in the State receives a composite score and ranking, ranging from the most distressed (ranking number 1) to the least distressed (ranking number 564). The MRI is available at

[https://www.nj.gov/dca/home/MuniRevitIndex.html]

https://www.nj.gov/dca/home/MuniRevitIndex.shtml.

. . .

"On-site transportation" means transportation that is provided specifically for the residents of a project and is offered at least once per week either directly by the project or through a contract between the owner and transportation company, stipulating fees and frequency of service. The transportation must be provided at no cost to the residents. Transportation services may include trips to places such as grocery stores, shopping centers, banks, places of worship, and recreation facilities.

. . .

"Sponsor" means any person, partnership, corporation, association, or other entity that receives an allocation or issuance of Low-Income Housing Tax Credits from NJHMFA or applies for an allocation or issuance of Low-Income Housing Tax Credits from NJHMFA.

"Successfully developed and operated" means a tax credit project with no uncorrected [HUD] **IRS** Form 8823s that has achieved [93-percent] **93 percent** occupancy and has maintained a permanent debt service coverage ratio of at least 1.15 percent for six consecutive months during the project's most recent full fiscal year preceding the application deadline.

. . .

"Transit Village" means a community served by bus, train, light rail, or ferry that has been designated as such by the State's Transit Village Task Force pursuant to criteria available at [https://www.state.nj.us/transportation/community/village/criteria.shtm] **https://www.nj.gov/transportation/community/village/application.shtm**. The Transit Village Initiative is designed to spur economic development, urban revitalization, and private-sector investment using access to transit as an asset. The New Jersey Department of Transportation coordinates the Task Force composed of various State agencies that review municipal applications and make recommendations. Transit Villages must be designated by the tax credit application deadline.

. . .

5:80-33.4 Family Cycle

(a) Non-age restricted developments may apply to this cycle. Not less than 50 percent of the total credits awarded in the Family, Age-Friendly Senior, and Supportive Housing Cycles will be available in the Family Cycle, and the maximum annual allocation of credits to any one development competing in this cycle is $2,000,000. Total development costs shall not exceed [$317,625] **$350,000** per unit for buildings of one to four residential stories, [$346,500] **$380,000** per unit for buildings with five or six residential stories, and [$375,375] **$410,000** per unit for buildings with over six residential stories, excluding capitalized permanent reserves, non-basis-eligible off-site improvements, up to $10,000 per unit and $400,000 maximum for an integrated community center or social service space, or up to $10,000 per unit and $800,000 maximum for a stand-alone community or social service building (subject to third-party cost certification), required deferred developer fee, if any, and either up to $15,000 per unit for adaptive reuse projects or up to $7,500 per unit for projects achieving the Passive House standard. For adaptive reuse projects, NJHMFA will perform a site inspection to assess the amenability of conversion to multifamily housing. Additionally, the development, design, and construction teams must demonstrate successful experience with the established methodologies required to produce an adaptive reuse project. If multiple tranches of this cycle are awarded, all set-asides for this cycle will be applicable to each tranche. **Applying for a set-aside does not preclude an application from also competing in the Family Cycle.** Minimum rehab projects are not eligible to apply in this cycle. Unless market area demographics and/or financial feasibility demonstrate otherwise, all non-age-restricted projects (except preservation and historic rehabilitation projects) must adhere to the following minimum bedroom distributions: the combined number of efficiency and one-bedroom tax credit units shall be no greater than 20.00 percent of the tax credit units; at least 30.00 percent of the tax credit units shall be two-bedroom units; and at least 20.00 percent of the tax credit units shall be three-bedroom units. There are [two] **three** set-asides in the Family Cycle:

1. Mixed-Income set-aside: The first reservation of credits from the Family Cycle shall be awarded to one project that contains up to 55 percent affordable units and is located outside of a Targeted Urban Municipality. **The second reservation of credits from the Family Cycle shall be awarded to one project that contains up to 55 percent affordable units and is located within a Targeted Urban Municipality.** Up to [$30,000] **$34,300** in credits per tax-credit-eligible unit are available and the maximum annual allocation of credits is $2,000,000. The limits on total development costs do not apply to this set-aside. The project's market study as provided for at N.J.A.C. 5:80-33.12(c)1ii shall clearly demonstrate that the tax credit units in the project provide a minimum [20-percent] **20 percent** market advantage compared to comparable market-rate units. The project shall achieve a minimum of 65 percent of the maximum score under the ranking criteria established at N.J.A.C. 5:80-33.15[, including]**. If the project is located outside of a Targeted Urban Municipality, the project must achieve** the maximum points stipulated at N.J.A.C. 5:80-33.15(a)1i regarding extended affordability; [5:80-33.15](a)11i, regarding site selection; [5:80-33.15](a)14ii, regarding proximity to public [transportation] **transportation/jobs**; and [5:80-33.15](a)14iii, regarding high-

performing schools. **If the project is located within a Targeted Urban Municipality, the project must achieve the maximum points stipulated at N.J.A.C. 5:80-33.15(a)1i, regarding extended affordability, and (a)11i, regarding site selection.** Should multiple projects be deemed eligible at the same Tax Credit Committee meeting, credits shall be awarded in accordance with the tiebreaker at N.J.A.C. 5:80-33.19(a)1. If, because of lack of demand, the mixed-income set aside is not **fully** utilized, the **unawarded** credits therein shall be released into the Family Cycle.

2. Preservation set-aside: The [second and] third **and fourth** reservations of credits from the Family Cycle shall be given to the two highest-ranking eligible application**s** from preservation set-aside projects. The maximum annual allocation of credits to developments competing in this set-aside is $1,400,000. **The limits on total development costs apply to this set-aside.** If, because of lack of demand, the preservation set-aside is not **fully** utilized, the **unawarded** credits [in the preservation set-aside] **therein** shall be released into the Family Cycle.

3. Emerging Developer set-aside: The fifth reservation of credits from the Family Cycle shall be awarded to one project that is developed by an Emerging Developer with at least a 70 percent interest in the project's general partner/managing member. The maximum annual allocation of credits to developments competing in this set-aside is $2,000,000. The limits on total development costs apply to this set-aside. The project shall achieve a minimum of 65 percent of the maximum score pursuant to the ranking criteria established at N.J.A.C. 5:80-33.15, including the maximum points stipulated at N.J.A.C. 5:80-33.15(a)1i, regarding extended affordability, and (a)11i, regarding site selection. The application must include at least two letters of support/reference from investors,

lenders, and/or housing finance agencies that describe previous and/or current experiences with the developer. At least one of the letters of support/reference must be from an investor or lender participating in the project. At least three members of the development team must have previous experience with NJHMFA, including the architect, the general contractor, and another development team member that is not a project consultant. The developer must enter into a management agreement with a property management company that has at least five years of experience monitoring LIHTC projects and a tax credit portfolio of no fewer than 300 units. The developer must provide, as part of the application, a certificate of completion for a housing development training course, as well as a description of the course. Any developer that is related to, or controlled by, a non-emerging developer, or is otherwise determined by NJHMFA to not meet the criteria established for an Emerging Developer, is not eligible for this set-aside. Should multiple projects be deemed eligible at the same Tax Credit Committee meeting, credits shall be awarded to the highest-scoring application, then, if necessary, in accordance with the tiebreaker system starting at N.J.A.C. 5:80-33.19(a)2. If no set-aside applicant achieves the minimum score, such that the Emerging Developer set-aside is not utilized, the credits therein shall be released into the Family Cycle.

(b) Projects that receive negative points pursuant to N.J.A.C. 5:80-33.15(a)15, 17, 18, **or** 19[, or 20] shall not be eligible to compete in any set-aside.

(c) (No change.)

(d) For the duration of the time period in which NJHMFA is accepting project applications to award the $305,000,000 in Federal [“]Coronavirus State Fiscal Recovery Fund[”] dollars appropriated to the Affordable Housing Production Fund (AHPF) pursuant to P.L. 2022, c. 49, or until December 31, 2025, whichever comes sooner, the following shall apply:

1. Approximately 60 percent of the credits (inclusive of all set-asides [and all credits awarded under the Mixed-Income Reserve established at N.J.A.C. 5:80-33.8(a)3]) shall be made available to projects in Targeted Urban Municipalities (TUMs), seeking to maintain a lower constraint of not less than 50 percent.

2. - 3. (No change.)

(e) Following the termination of the time period in which NJHMFA accepts project applications to award the $305,000,000 in Federal [“]Coronavirus State Fiscal Recovery Fund[”] dollars appropriated to the AHPF, or after December 31, 2025, whichever comes sooner, the following shall apply:

1. Approximately 40 percent of the credits (inclusive of all set-asides [and all credits awarded under the Mixed-Income Reserve established at N.J.A.C. 5:80-33.8(a)3]) shall be made available to projects in TUMs, seeking to maintain a lower constraint of not less than 35 percent.

2. – 3. (No change.)

5:80-33.5 Age-Friendly Senior Cycle

(a) Senior projects may apply to this cycle. Not less than 20 percent of the total credits awarded in the Family, Age-Friendly Senior, and Supportive Housing Cycles will be available in the Age-Friendly Senior Cycle, and the maximum annual allocation of credits to any one development competing in this cycle is $1,600,000. Total development costs shall not exceed [$317,625] **$350,000** per unit for buildings of one to four residential stories, [$346,500] **$380,000** per unit for buildings with five or six residential stories, and [$375,375] **$410,000** per unit for buildings with over six residential stories, excluding capitalized permanent reserves, non-basis-eligible off-site improvements, up to $10,000 per unit and $400,000 maximum**,** for an integrated community center or social service space, or up to $10,000 per unit and $800,000 maximum**,** for a stand-alone community or social service building (subject to third-party cost certification), required deferred developer fee, if any, and either up to $15,000 per unit for adaptive reuse projects or up to $7,500 per unit for projects achieving the Passive House standard. For adaptive reuse projects, NJHMFA will perform a site inspection to assess the amenability of conversion to multifamily housing. Additionally, the development, design, and construction teams must demonstrate successful experience with the established methodologies required to produce an adaptive reuse project. If multiple tranches of this cycle are awarded, all set-asides for this cycle will be applicable to each tranche. **Applying for a set-aside does not preclude an application from also competing in the Age-Friendly Senior Cycle.** Minimum rehab projects are not eligible to apply in this cycle. Unless market area demographics demonstrate otherwise, one-bedroom units should compose at least 85 percent of the project. There is one set-aside in the Ae-Friendly Senior Cycle, the preservation set-aside. The first and second reservations of credits from the Age-Friendly Senior Cycle shall be given to the highest-ranking eligible applications from preservation set-aside projects. The maximum annual allocation of credits to developments competing in this set-aside is $1,200,000. If, because of lack of demand, the preservation set-aside is not **fully** utilized, the **unawarded** credits **therein** shall be released into the Age-Friendly Senior Cycle.

(b) Projects that receive negative points pursuant to N.J.A.C. 5:80-33.15(a)15, 17, 18, **or** 19[, or 20] shall not be eligible to compete in any set-aside.

(c) (No change.)

(d) For the duration of the time period in which NJHMFA is accepting project applications to award the $305,000,000 in Federal [“]Coronavirus State Fiscal Recovery Fund[”] dollars appropriated to the Affordable Housing Production Fund (AHPF) pursuant to P.L. 2022, c. 49, or until December 31, 2025, whichever comes sooner, the following shall apply:

1. Approximately 60 percent of the credits (inclusive of all set-asides [and all credits awarded under the Mixed-Income Reserve established pursuant to N.J.A.C. 5:80-33.8(a)3]) shall be made available to projects in TUMs, seeking to maintain a lower constraint of not less than 50 percent.

2. - 3. (No change.)

(e) Following the termination of the time period in which NJHMFA accepts project applications to award the $305,000,000 in Federal Coronavirus State Fiscal Recovery Fund dollars appropriated to the AHPF, or after December 31, 2025, whichever comes sooner, the following shall apply:

1. Approximately 40 percent of the credits (inclusive of all set-asides [and all credits awarded under the Mixed-Income Reserve established at N.J.A.C. 5:80-33.8(a)3]) shall be made available to projects in TUMs, seeking to maintain a lower constraint of not less than 35 percent;

2. – 3. (No change.)

5:80-33.6 Supportive Housing Cycle

(a) Supportive housing projects in which a minimum of 25.00 percent of the total project units are rented to individuals with special needs may apply to the Supportive Housing Cycle. An executed agreement between the proposed owner entity and the social service provider, and a social services plan consistent with the requirements of this subsection for the Supportive Housing Cycle shall be submitted in the application. There will be not less than 12.5 percent of the total credits awarded in the Family, Age-Friendly Senior, and Supportive Housing Cycles available in the Supportive Housing Cycle and the maximum annual allocation of credits to any one development competing in this cycle is $1,600,000. Total development costs shall not exceed [$317,625] **$350,000** per unit for buildings of one to four residential stories, [$346,500] **$380,000** per unit for buildings with five or six residential stories, and [$375,375] **$410,000** per unit for buildings with over six residential stories, excluding capitalized permanent reserves, non-basis-eligible off-site improvements, up to $10,000 per unit and $400,000 maximum**,** for an integrated community center or social service space**,** or up to $10,000 per unit and $800,000 maximum**,** for a stand-alone community or social service building (subject to third-party cost certification), required deferred developer fee, if any, and either up to $15,000 per unit for adaptive reuse projects or up to $7,500 per unit for projects achieving the Passive House standard. For adaptive reuse projects, NJHMFA will perform a site inspection to assess the amenability of conversion to multifamily housing. Additionally, the development, design, and construction teams must demonstrate successful experience with the established methodologies required to produce an adaptive reuse project.

(b) (No change.)

(c) Projects that receive negative points pursuant to N.J.A.C. 5:80-33.15(a)15, 17, 18, **or** 19[, or 20] shall not be eligible to compete in any set-aside.

(d) For the duration of the time period in which NJHMFA is accepting project applications to award the $305,000,000 in Federal Coronavirus State Fiscal Recovery Fund dollars appropriated to the Affordable Housing Production Fund (AHPF) pursuant to P.L. 2022, c. 49, or until December 31, 2025, whichever comes sooner, the following shall apply:

1. Approximately 60 percent of the credits (inclusive of all set-asides [and all credits awarded under the Mixed-Income Reserve established at N.J.A.C. 5:80-33.8(a)3]) shall be made available to projects in TUMs, seeking to maintain a lower constraint of not less than 50 percent.

2. – 3. (No change.)

(e) Following the termination of the time period in which NJHMFA accepts project applications to award the $305,000,000 in Federal Coronavirus State Fiscal Recovery Fund dollars appropriated to the AHPF, or after December 31, 2025, whichever comes sooner, the following shall apply:

1. Approximately 40 percent of the credits (inclusive of all set-asides [and all credits awarded under the Mixed-Income Reserve established at N.J.A.C. 5:80-33.8(a)3]) shall be made available to projects in TUMs, seeking to maintain a lower constraint of not less than 35 percent.

2. - 3. (No change.)

5:80-33.8 Awards from the Reserve

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

1. Hardship requests for additional credits from the Reserve are limited to $150,000 per project. Total development costs shall not exceed [$317,625] **$350,000** per unit for buildings

of one to four residential stories, [$346,500] **$380,000** per unit for buildings with five or six residential stories, and [$375,375] **$410,000** per unit for buildings with over six residential stories, excluding capitalized permanent reserves, non-basis-eligible off-site improvements, up to $10,000 per unit and $400,000 maximum for an integrated community center or social service space, or up to $10,000 per unit, and $800,000 maximum for a stand-alone community or social service building (subject to third-party cost certification), required deferred developer fee, if any, and either up to $15,000 per unit for adaptive reuse projects or up to $7,500 per unit for projects achieving the Passive House standard. Hardship requests must be documented to the satisfaction of NJHMFA and must demonstrate the existence of an unforeseen emergency where the completion of the project is jeopardized without an award of additional low-income housing tax credits. No more than one hardship award shall be approved with respect to a given project. Hardship applications to the Reserve are accepted on an ongoing basis until September 30. To apply to the Reserve for a hardship reservation of additional credit, applicants must follow the procedures at N.J.A.C. 5:80-33.13(a)1.

[2. Credits in the Family Cycle shall be set aside for up to two eligible family projects located within a Targeted Urban Municipality with up to a 55-percent affordability component. Mixed-Income Reserve projects are eligible for a maximum annual allocation of credits for all projects of $2,000,000. The project's market study at N.J.A.C. 5:80-33.12(c)1ii shall clearly demonstrate that the tax credit units provide a minimum 20 percent market advantage compared to comparable market-rate units. Projects shall achieve a minimum of 65 percent of the maximum score under the ranking criteria established pursuant to N.J.A.C. 5:80-33.15. Should multiple projects be deemed eligible at the same Tax Credit

Committee meeting, credits shall be awarded in accordance with the tiebreaker at N.J.A.C. 5:80-33.19(a)1. Credits not awarded pursuant to this paragraph shall be deposited for use in the Family Cycle at N.J.A.C. 5:80-33.4.

3. Notwithstanding the provisions at (a)2 above, for the duration of the time period in which NJHMFA is accepting project applications to award the $305,000,000 in Federal Coronavirus State Fiscal Recovery Fund dollars appropriated to the Affordable Housing Production Fund pursuant to P.L. 2022, c. 49, or until December 31, 2025, whichever comes sooner, the percentage of credits set aside for eligible family projects located within a TUM with up to a 55-percent affordability component shall be 60 percent.]

[4.] **2.** (No change in text.)

5:80-33.9 Volume cap credits

(a) Projects financed by tax-exempt bonds that request tax credits pursuant to Section 42(h)(4) of the Code are required by Section 42(m)(1)(D) of the Code to satisfy the requirements for allocation of a housing credit dollar amount under the qualified allocation plan. Projects requesting tax credits entirely from volume cap do not have to compete and there are no cycle deadlines. However, complete applications shall be submitted at least one month before the tax-exempt bonds are sold. The following information shall be included in order for the application to be deemed complete: all applicable sections of the application corresponding to eligibility requirements at N.J.A.C. 5:80-33.12; those sections of the application corresponding to the point categories for conversion to tenant ownership (if applicable), tax abatement (if applicable), and the negative point categories; a period of restriction meeting the criteria corresponding with the maximum points stipulated at

N.J.A.C. 5:80-33.15(a)1i; and a sponsor certification and breakdown of costs and basis. For family projects, except for preservation and historic rehabilitation projects, which shall retain, at a minimum, their existing percentages of two-bedroom and three-bedroom units, the combined number of efficiency and one-bedroom tax credit units shall be no greater than 20.00 percent of the tax credit units; at least 30.00 percent of the tax credit units shall be two-bedroom units; and at least 20.00 percent of the tax credit units shall be three-bedroom units. A copy of the appraisal/market study required by the applicant's lender and/or syndicator may be submitted in lieu of the market study required at N.J.A.C. 5:80-33.12(c)1ii.

1. – 3. (No change.)

4. Projects that would have received negative points pursuant to N.J.A.C. 5:80-33.15(a)15, 17, 18, **or** 19[, or 20] shall not be issued tax credits until such items are corrected.

5. (No change.)

(b) – (c) (No change.)

5:80-33.10 Application fee schedule

(a) The following fees shall be submitted at the time the application or reapplication is submitted:

1. An application fee of $5,000 shall be paid by applicants for projects applying to the Family, Age-Friendly Senior, or Supportive Housing Cycle [and to the Mixed-Income Reserve], and by applicants for projects applying for volume cap tax credits.

2. (No change.)

(b) (No change.)

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

(a)– (b) (No change.)

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

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

i. (No change.)

ii. A market study, certified to both the applicant and NJHMFA in the analyst's [Certification] **certification**, shall be submitted for all projects. Two copies of the report shall be submitted. The market study shall be no more than six months old. Projects applying for additional credits from the Reserve that have already received a previous allocation of tax credits shall not be required to submit a new market study. The analyst shall state in the certification that all market study requirements have been fully addressed. If any relevant information cannot be obtained, the analyst shall explain why the information cannot be obtained. The study shall also identify any assumptions, estimates, projections, and models used in the analysis. The assumptions used in the market study (for example, project rents, unit mix, amenities, etc.) must precisely reflect the information provided in the tax credit application. The data and analysis shall clearly indicate enough demand in the market to support the proposed development. Any additional information appropriate to the market area and the project shall be submitted to demonstrate the demand for the proposed housing project. The report shall include, at a minimum:

(1) (No change.)

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

(3) – (10) (No change.)

(11) The provisions at N.J.A.C. 5:80-33.11(d) and (e) shall not apply to market studies submitted pursuant to this subsection. Instead, during the market study review process, a reviewer contracted by NJHMFA shall notify the independent, third-party professional who completed the market study by telephone and, simultaneously, [in writing,] by email about significant missing or unclear components of the market study. A copy of such correspondence shall also be simultaneously sent to NJHMFA and the tax credit applicant. Failure of the independent, third-party professional who

completed the market study to provide a sufficient response within five business days about significant missing or unclear components of a market study shall result in an application being declared ineligible.

iii. For projects of 25 units or [less] **fewer** and projects receiving Project Based Section 8 rental assistance for 100 percent of the units, the form of market analysis described below may be submitted in lieu of the market study requirements listed at (c)1ii(1) through (7) above:

(1) – (2) (No change.)

iv. (No change.)

2. – 7. (No change.)

8. Successful participation in the New Jersey Clean Energy Program's (NJCEP) NJ ENERGY STAR Certified Homes Program Version 3.1, NJ Zero Energy Ready Homes, NJ Pay for Performance–New Construction, ENERGY STAR Multifamily New Construction Version 1.1, or alternative per the Guide to QAP Green Requirements (Green Guide), and in the NJHMFA Energy Benchmarking Initiative shall be required for all applications. Both the Green Guide and the NJHMFA Energy Benchmarking Initiative are available at https://nj.gov/dca/hmfa/developers/lihtc/greenpoints/.

i. (No change.)

ii. In order to satisfy the Energy Benchmarking Initiative requirements at (c)8 above, the application shall include a copy of the completed and signed letter of intent from the developer to NJHMFA. Prior to issuance of the IRS Form 8609, the developer/owner shall submit the forms at (c)8ii(1), (2), and (3) below, which can be found at: https://nj.gov/dca/hmfa/developers/lihtc/greenpoints/:

(1) – (2) (No change.)

(3) [Completed NJHMFA New Jersey Green Homes Office Tenant Utility Release Forms and/or evidence that requests for such forms were made from at least 40 percent of tenants occupying the project at the time of the IRS Form 8609 issuance for new construction or at least 25 percent of each unit type for rehabilitation projects. The applicant shall also be required to include the tenant utility release form as a part of the lease agreement. For new construction projects, the applicant shall ensure that at least 40 percent of the tenants have active utility release forms (or shall provide documentation of the efforts to obtain such forms) and common area] **For new construction projects, whole building aggregate** utility data shall be reported for the first three years of occupancy. For rehabilitation projects, the applicant shall provide **whole building aggregate** utility data for one year prior to commencement of renovation work and for two years post-construction for all common areas and [at least 25 percent of each unit type] **units**. Common area and [tenant] **whole building aggregate** utility data shall be uploaded into the ENERGY STAR Portfolio Manager at www.energystar.gov/benchmark pursuant to the procedures outlined in the NJHMFA Energy Benchmarking Technical Manual, available at https://nj.gov/dca/hmfa/developers/lihtc/greenpoints/. In order to satisfy the resilience requirements of the Green Guide, the application shall include a Site and Risk Assessment Review Report. Prior to issuance of the IRS Form 8609, the

developer/owner shall submit an Emergency Management Plan addressing all site-specific risk hazards per the requirements in the Green Guide.

iii. For new construction projects, residential buildings must be at least 250 feet away from any large warehouse facilities, measured from the façade of the residential building to the nearest property line of the large warehouse facility. For all projects, if any residential buildings will be within 1,000 feet of a large warehouse facility, measured from the façade of the residential building to the nearest property line of the large warehouse facility, the application must include a list and descriptions of all measures to be taken to ensure compliance with the Green Guide's Environmental Stressor Performance Standards, available at https://nj.gov/dca/hmfa/developers/lihtc/greenpoints/.

9. – 14. (No change.)

15. All owners and developers shall affirmatively market their projects. For projects of 25 units or more, applicants shall submit an Affirmative Fair Housing Marketing Plan, which, in short, documents how the project will be marketed to those people who are least likely to apply. For instance, if the proposed development is located in an area predominantly populated by white persons, outreach should be directed to non-white persons. Conversely, if the population is predominantly Black persons, outreach should be directed to non-Black persons. Pursuant to N.J.S.A. 52:27D-321.3 et seq., affirmative fair housing marketing plans shall include registering projects on the New Jersey Housing Resource Center (HRC) and posting vacancies, waitlist opportunities, and lottery drawings when accepting applications for such openings. The listings on the HRC shall comply with N.J.S.A. 52:27D-321.6.a for initial marketings and with N.J.S.A. 52:27D-321.6.b and 6.c for all subsequent applications.

Additionally, as part of the affirmative marketing requirement, the owner/developer shall notify the local CoC of any units reserved pursuant to N.J.A.C. 5:80-[33.15(a)22]**33.15(a)21** for individuals and families [that] **who** are homeless. At the time the units are placed in service, the owner/developer and rental agent shall certify that the project was affirmatively marketed.

16. – 18. (No change.)

19. **All projects must adhere to the following minimum design standards:**

[19.] **i.** High-speed internet must be provided in all common areas at no charge to tenants and high-speed internet hookup capability must be installed in all units[.]**;**

ii. All units must have air conditioning. Individual window units may not be used to satisfy this requirement for new construction. For preservation projects, individual window units may be installed only if they are ENERGY STAR-labeled. Packaged terminal heat pumps must be inverter-driven and designed to meet an ambient winter design temperature of 10 degrees Fahrenheit without electric resistance backup; and

iii. All bedrooms must have at least one window with access to natural light. Bedroom window sizes must meet all code requirements. Adaptive reuse projects may be exempted from this requirement only with prior approval from NJHMFA.

20. – 21. (No change.)

5:80-33.14 Scoring and ranking

(a) Due to the limited amount of credits and the high volume of applications to NJHMFA, only a fraction of the projects that apply typically receive credits. In addition to meeting the eligibility criteria described at N.J.A.C. 5:80-33.12, applications that fail to satisfy a minimum of 65 percent of the maximum score pursuant to the ranking criteria established at N.J.A.C. 5:80-33.15, 33.16, and 33.17 shall be declared ineligible to obtain a reservation of tax credits. NJHMFA will rank projects according to the score sheet submitted in the project's application. Should an applicant fail to include a completed self-score sheet, the application shall be ranked utilizing a preliminary score as determined by NJHMFA. NJHMFA shall perform a cursory review of the application and**, if the requisite documentation has been submitted,** shall assume the maximum score for each of the criteria at N.J.A.C. 5:80-33.13, 33.15, 33.16, 33.17, and this section [provided the requisite documentation has been submitted]. Based on this ranking, NJHMFA will then examine the applications of only those projects that rank sufficiently high to receive credits. Once it is determined that an application meets all eligibility requirements, it is admitted into the cycle and underwritten.

(b) – (d) (No change.)

5:80-33.15 Point system for the Family Cycle

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

1. – 5. (No change.)

[6. Five points are awarded to projects that have a certified M/WBE with at least a 20-percent interest in the general partner/managing member or pledge to expend a sum equaling at least 20 percent of construction cost on contractors, subcontractors, and material suppliers that are certified M/WBEs.]

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

i. An applicant may select one of the three options below for a maximum of five points based on the percentage interest in the general partner/managing member that is held by a certified M/WBE. The certified M/WBE must earn a percentage of the paid and deferred developer fee at least equal to their percentage of the ownership, must not have a disproportionately larger share of deferred developer fees than their ownership interest, must not be related to or controlled by any other entity with an interest in the general partner/managing member, and must remain part of the ownership entity at least through the 15-year compliance period, with significant roles and responsibilities during development and compliance. The applicant must submit a fully executed agreement between each of the entities, which agreement specifies each of those terms, as well as language granting NJHMFA the right to approve any changes to the ownership entity of the project:

(1) Certified M/WBE has a 100-percent interest in the general partner/managing member — five points;

(2) Certified M/WBE has a 50-percent or greater, but less than 100-percent interest in the general partner/managing member — three points; or

(3) Certified M/WBE has a 20-percent or greater, but less than 50-percent, interest in the general partner/managing member — one point.

ii. An applicant may select one of the two options below for a maximum of five points based on the percentage of construction costs pledged to be expended on

contractors, subcontractors, and material suppliers that are certified M/WBEs and are not related to or controlled by any entity with an interest in the general partner/managing member:

(1) At least 20 percent of construction costs — five points; or

(2) At least 15 percent, but less than 20 percent, of construction costs — three points.

7. (No change.)

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

i. (No change.)

[ii. A washer and dryer hook-up with drip pan or floor drain;]

ii. All-electric cooking appliances;

iii. – v. (No change.)

[vi. Through the wall, individual dwelling unit air conditioning;]

vi. Air filtration of Minimum Efficiency Reporting Value (MERV) 13 or higher on all ventilation systems;

vii. – xi. (No change.)

xii. Patios; **and**

[xiii. Outside storage lockers; and]

[xiv.] **xiii.** (No change in text.)

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

i. – v. (No change.)

[vi. 1.0 parking spaces per unit (may be off-street: garage, parking lot, pad, or driveway, or on-street: designated/permit);]

vi. Free parking (at least one parking space per tax-credit unit) and free covered, secured bicycle storage (at least 0.5 bicycle spaces per tax-credit unit for family projects; at least 0.2 bicycle spaces per tax-credit unit for senior projects) for LIHTC tenants. If bicycle storage is provided through storage lockers assigned to individual units, each storage locker shall be not less than 144 cubic feet;

vii. Healthy food delivery program (at least twice per month); [and]

viii. Smoke-free community[.]**;**

ix. Gym/fitness center; and

x. For TUM projects only, at least one item of extreme heat mitigation infrastructure, such as a green roof, cool pavement, or tree canopy comprising at least 25 percent of project green space.

10. – 12. (No change.)

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

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

(1) Enterprise Green Communities, Mandatory + 40 optional points or higher with [climate-adaptive] **future-ready** selections;

(2) Leadership in Energy and Environmental Design (LEED), Silver or higher with [climate-adaptive] **future-ready** selections;

(3) National Green Building Standard (NGBS), Silver or higher with [climate-adaptive] **future-ready** selections;

(4) – (6) (No change.)

ii. (No change.)

14. Applicants may select any of the following options. A maximum of 12 points shall be available in this category:

i. (No change.)

ii. A project may select one of the options set forth at (a)14ii(1), (2), (3), or (4) below based on the availability of public transportation. [A] **If a** project **earns at least one point for public transportation, it** will qualify for up to two additional points if the municipality in which it is fully located has a jobs-to-housing ratio of 1.5 or greater**,** or will qualify for one additional point if the municipality in which it is fully located has a jobs-to-housing ratio between 0.95 and 1.5. NJHMFA shall rely on the most recent data available from the New Jersey Department of Labor and Workforce Development and the American Community Survey 5-Year Estimates, Table B25001, as of the application deadline, as well as the data for the preceding calendar year. Up to five points for public transportation and/or jobs availability can be received for each application.

(1)-(4) (No change.)

iii. A project shall receive points as set forth at (a)14iii(1), (2), or (3) below based on the school district in which it is fully located, according to the percentage of students that are either meeting expectations (Level 4) or exceeding expectations (Level 5) on the Grade 4 New Jersey Student Learning Assessments (NJSLA) in both Math and English Language Arts (ELA). NJHMFA shall rely on the most recent data available from the New Jersey Department of Education (DOE) as of the application deadline, as well as the data for the preceding calendar year. For example, the data released for 2021 and 2022 by the DOE will be accepted for applications submitted in 2023. If the NJSLA is no longer in use, NJHMFA will substitute whatever assessment is designated as a replacement by the DOE. [A] **If a** project **earns at least one point for NJSLA performance, it** will qualify for one additional point if the school district in which it is fully located participates in New Jersey's Interdistrict Public School Choice Program starting no later than Grade 6. Up to three points for school district characteristics can be received for each application.

(1) – (3) (No change.)

iv. – v. (No change.)

15. – 19. (No change.)

20. Applicants may select one of the following:

i. Applicants with a general partner, voting member, developer, or related party (with at least a 50-percent interest in the general partner/managing member) that has successfully developed and operated at least two other LIHTC projects **(**with at least a 50-percent [ownership stake in] **interest in the general partner/managing member of** each project**)** shall receive three points;

ii. Applications with a general partner, voting member, developer, or related party (with at least a 50-percent interest in the general partner/managing member) that has successfully developed and operated at least three other LIHTC projects **(**with at least a 20-percent [ownership stake in] **interest in the general partner/managing member of** each project**)** and has entered into a management agreement with a property management company that has at least five years of experience monitoring LIHTC projects and a tax credit portfolio of no [less] **fewer** than 300 units shall receive three points; or

iii. Applications with a general partner, voting member, developer, or related party (with at least a 50-percent interest in the general partner/managing member) that has successfully developed and operated at least one other LIHTC project **(with at least a 50-percent interest in the general partner/managing member)** and has entered into a management agreement with a property management company that has at least five years of experience monitoring LIHTC projects and a tax credit portfolio of no [less] **fewer** than 300 units shall receive [two] **three** points.

21. – 25. (No change.)

5:80-33.16 Point system for the Age-Friendly Senior Cycle

(a) (No change.)

(b) The Age-Friendly Senior Cycle also includes the following point categories:

1. (No change.)

2. Applicants may select any of the following options for a maximum of nine points. Within six months of completion of rent-up for the project, the developer/owner shall notify the NJHMFA Division of Multifamily/Supportive Housing and Lending that the services indicated in the application are in place or are being put in place:

i. – ii. (No change.)

iii. Two points shall be awarded to projects that regularly offer a licensed and insured on-site healthcare provider with a private room. **NJHMFA policy considers "regularly" to mean that the on-site health professional's services are available at least twice per month, for at least 20 hours total (that is, four five-hour-long sessions held every week or two 10-hour-long sessions held every two weeks), according to a set schedule circulated to residents in advance.**

iv. – vi. (No change.)

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

(a) (No change.)

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

1. – 3. (No change.)

4. Applications that evidence rental assistance funding commitments from the HUD McKinney-Vento Programs**, the Section 811 Project Rental Assistance program authorized by the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. § 8013, as amended by the Frank Melville Supportive Housing Investment Act of 2010, Pub. L. No. 111-374, 124 Stat. 4089,** or other government source(s) of project-based or sponsor-based rental assistance for all the special needs units shall be awarded two points.

5. – 7. (No change.)

5:80-33.19 Tiebreaker system

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

1. (No change.)

2. If there is still a tie after the first tiebreaker set forth at (a)1 above, a tax credit reservation shall be awarded based on the following:

i. (No change.)

ii. In all other cycles [and the Mixed-Income Reserve], a tax credit reservation shall be awarded to the project with the least amount of tax credits per tax-credit bedroom. Superintendent units shall not be included for purposes of calculating this tiebreaker.

3. (No change.)

5:80-33.24 Reservations, allocations, and binding commitments

(a) – (b) (No change.)

(c) Should current credit year authority remain and nine percent tax credit awards take place after June 30, NJHMFA shall issue the tax credits from the subsequent tax credit authority year by way of an immediate carryover allocation and executed "Exchange of Credits" document in order to help ensure project completion in a timely manner, maximize the potential for receipt by the State of additional tax credit authority unused by other states, and minimize the risk of the State's loss of tax credit authority to other states. The penalty for an exchange of credits set forth at N.J.A.C. 5:80-33.37(d) will not be imposed for such an exchange.

5:80-33.26 Obtaining IRS Form 8609: deadlines and extension fees

(a) (No change.)

(b) The entire IRS Form 8609 request package, including the allocation/issuance fee described at N.J.A.C. 5:80-33.25 and the audit report, in a form acceptable to NJHMFA, must be submitted to NJHMFA [within 90 days after permanent loan closing. On a case-by-case basis, NJHMFA may extend its filing deadline if the owner can show good cause; however, in order to defray the added expense and regulatory burden of processing IRS Form 8609 requests that arrive after the deadline, an extension] **no later than 90 days prior to the owner's tax-filing deadline. A** fee of $1,000 shall be payable to NJHMFA for [each week or part thereof that the owner is late in submitting a complete package. NJHMFA reserves the right to recapture an allocation if a deadline is unmet] **any project requiring an expedited IRS Form 8609 package review**.

(c) – (d) (No change.)

5:80-33.31 Applicant's affirmative obligation to disclose changes

(a) Applicants are under a continuing affirmative obligation to advise NJHMFA no less frequently than annually if any changes to any aspect of the proposed development occur and provide relevant information as it becomes available, including pending/anticipated litigation which may affect the proposed development. NJHMFA shall require the owner to certify and may require further documentation to verify that all representations made in the application concerning the proposed development, including representations relied upon to determine the applicant's eligibility, scoring, and ranking, are, and continue to be, true at the time of carryover allocation and issuance of the IRS Form 8609. Substantive changes**, including, but not limited to, a reduction in the project unit count or a change in point category elections, are not permitted once a nine-percent tax credit reservation has been issued and** may cause the project's allocation to be reconsidered by NJHMFA. NJHMFA reserves the right to ask for any documentation necessary throughout the application, reservation, carryover, and placed in service processes.

(b) – (d) (No change.)

5:80-33.32 Compliance monitoring

(a) – (f) (No change.)

(g) As required [by] **pursuant to** the Housing and Economic Recovery Act of 2008, [P.L.] **Pub. L.** No. 110-289, owners are required to submit, on an annual basis, data pertaining to the residents of LIHTC-funded units. Such data must contain, but is not limited to, income, rental assistance, disability status, monthly rental payment, race, ethnicity, family composition, and age.

5:80-33.35 Notification of noncompliance

(a) Upon determination by NJHMFA of noncompliance with Section 42 of the Code, this subchapter, or any other relevant rules, regulations, or procedures, NJHMFA shall give notice to the owner of the noncompliance. The owner shall then be given sufficient [notice] **time** to correct the noncompliance.

(b) (No change.)

5:80-33.36 Confidentiality of tax credit applications and information

(a) – (b) (No change.)

(c) To the extent they constitute "trade secrets" or "proprietary commercial or financial information" within the meaning of the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq., the following documents are confidential, non-public records:

1. Financing information and syndication documents submitted in compliance with N.J.A.C. 5:80-33.12(c)5. However, an applicant's certification of the extent of Federal, State**,** and local subsidies shall be a public record;

2. – 6. (No change.)

(d) - (e) (No change.)

. . .