Publication date: May 19, 2021

June 16, 2021

August 18, 2021

August 24, 2021

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Competitive 9% Low Income Housing Tax Credits (LIHTC)

Frequently Asked Questions (FAQs)

The FAQs are an opportunity to provide all applicants and the public with the same information to preserve the competitive integrity of the 9% LIHTC program. Following is a list of questions that have been sent to the LIHTC mailbox with regard to the 2021 competitive 9% application round.

Applicants are encouraged to check the website prior to submitting a question to the LIHTC mailbox. As questions and responses are added, the revision dates will appear at the top of this page and will be included in a different color font. Applicants are encouraged to check back periodically.

Please be advised that it remains the sole responsibility of the Applicant to review carefully, and comply with, the requirements of QAP regulations and to ensure that any application presented to the NJHMFA Tax Credit division is clear, unambiguous, and complete in all respects at the time of submission. Responses to FAQs are only examples of a theoretical application of a limited set of facts to a rule or rules. They are for guidance purposes only and are not agency regulations. If there is an inconsistency between the adopted Qualified Allocation Plan (QAP) and the responses to FAQs, then the QAP prevails. Until confirmed through final action of the Tax Credit Committee, responses presented in the FAQs are merely an aid and may not be relied upon as a recommendation, counsel, or expectation of an approval.

As a reminder, project-specific questions, including document review and/or confirmation of eligibility for threshold requirements or points, are not permitted.

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Reminder to Applicants:

1. Applicants are reminded that a LIHTC application will be eliminated if there is an excess of three (3) cures or (6) clarifications. In sections such as those documenting site control or zoning and preliminary site plan approval if the documentation demonstrating the meeting of these threshold items is complicated, Applicants should take care to provide clear and consistent explanations.

2. Applicants are reminded of the following:

9% Application Deadlines
Family, Senior and Supportive Housing Cycles: Noon on August 31, 2021

Mixed Income Reserve: June 9, 2020 - August 31, 2021 (Rolling)

Submission Requirements

All 9% applications must be submitted electronically through Leap File to the LIHTC mailbox (NJHMFAtaxcredits@njhmfa.gov) by the deadline (noon on August 31).

Leap File instructions can be found on the LIHTC Resources and FAQs page.

No paper applications will be accepted. Applications received without the $4,000 application fee shall be deemed incomplete and ineligible for credits.

For wire payments, please contact Johanna Pena at jpena@njhmfa.gov. **(Wire Payments are strongly encouraged)**

Please send check payments to:
New Jersey Housing and Mortgage Finance Agency
ATTN: Johanna Pena
Tax Credit Division
637 South Clinton Avenue
P.O. Box 18550
Trenton, NJ 08650

Applicants are **well advised** make submissions **well in advance of the Noon, August 31, 2021 deadline** to insure proper submission through Leap File.

<u>Pre-Application Meetings</u>

Q: Will the Tax Credit division be scheduling 1 hour pre-application meetings prior to the 9% tax credit deadline, as has been previous practice?

A: The Agency will not be scheduling pre-application meetings but will be responding to written questions sent to the LIHTC mailbox at: NJHMFAtaxcredits@njhmfa.gov. All questions and responses will be posted in the FAQs on the HMFA website so all applicants have the benefit of the same information.

Tax Abatement

Q: If we have a property that is currently owned by a non-profit, which is not paying real estate taxes, will we still be able to qualify for 5 points for the 15-year tax abatement for a PILOT of 6.28%?

A: Pursuant to N.J.A.C. 5:80-33.15(a)4, proof of an applicant's tax-exempt nonprofit status is not sufficient to qualify for points for tax abatement.

Q: Am I correct in reading the tax abatement required by the application need not be one granted pursuant to the Long Term Tax Exemption Law (N.J.S.A. 40A:20-1 et seq.) or N.J.S.A. 55:14K-37(b)? Would a tax abatement/exemption issued pursuant to N.J.S.A. 54:4-3.6 be acceptable for the purposes of the tax credits application?

A: An exemption under N.J.S.A. 54:4-3.6 would not qualify a project for the points in the municipal support point category. N.J.S.A. 54:4-3.6 provides a tax exemption, not abatement, **but** the exemption must be based upon the **use of the property**, not the status of the property owner. While in one sense, an exemption under 54:4-3.6 does deprive the municipality of tax revenue (i.e., if the property were devoted to another use), the exemption is mandated by State law and is thus not really "municipal support" – the municipality has no say in the exemption. If the use being made of the property satisfies any provision of the statute, the exemption must be granted. Also, the QAP does not recognize an entity's non-profit status as qualifying for the points: "Proof of an applicant's tax-exempt nonprofit status is not sufficient to qualify for points for tax abatement."

Rental Assistance Point Category in the Supportive Housing Cycle

Q: My organization is planning to apply for 9% credits in the Supportive Housing Cycle this year. In order to receive the 2 points for project-based rental assistance, is there a particular term that the section 8 contract must have? For instance, would a renewable HAP contract with a five year term qualify for points in this section?

A: While the point category at N.J.A.C. 5:80-33.17(b)4 does not stipulate a particular term, it should be noted that as part of the feasibility analysis, N.J.A.C. 5:80-33.13(a)13 states "Upon the expiration of project based rental assistance, Supportive Housing projects shall be underwritten at rents no more than 20 percent of area median income adjusted for family size."

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Developer Application Limits

Q: The Family Cycle limits one application per developer/general partner/managing member per municipality. Does this limit apply to Mixed Income Reserve projects (located within a TUM)?

A: The one application per developer/general partner/managing member per municipality limit applies only in the Family, Senior and Supportive Housing Cycles.

Successful Development Point Category

Q: If a NJ LIHTC project has met the performance criteria of a "successful development" (as per Part III, Section 14 of the application) but a Form 8609 has not yet been issued, can the project be used as evidence of Successful Development Experience?

A: N.J.A.C. 5:80-33.15(a)19iii defines "Successfully developed and operated" as a tax credit project with no outstanding issues of noncompliance that has achieved 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. There is no reference to issuance of Form 8609 as a pre-requisite.

Inclusionary Projects

Q: I have read the clarifying guidance regarding "Inclusionary Developments". By my reading, it appears that a Court-approved mixed-income project would not be eligible for an allocation of tax credits, even under the Mixed-income Set-aside, if 100% of the affordable units are Court-accredited. Is my reading correct?

A: Developer Bulletin 2019-7 and Section 19 of P.L. 2008, c. 46, N.J.S.A. 52:27D-321.1 (A500 ACS), stipulates, in part, that the affordable portion of any mixed-income or mixed-use development that is part of a fair share housing plan approved by the council or a court-approved judgment of repose or compliance shall only be permitted to receive an allocation of Low Income Housing Tax Credits provided the applicant can conclusively demonstrate that the market-rate residential or commercial units are unable to internally subsidize the affordable units.

Qualified Nonprofit Points in the Supportive Housing Cycle

Q: 5:80-33.17(b)5 of the QAP states: "Applications submitted by a qualified nonprofit organization with 100.00 percent of the general partner interest in the final ownership entity shall be awarded two points. Applications submitted by a qualified nonprofit organization with at least 50.00, but less than 100.00, percent of the general partner interest in the final ownership entity shall be awarded one point." Please consider a situation in which Qualified Nonprofit Entity A owners 51% of the general partner interest and Qualified Nonprofit Entity B owners 49% of the general partner interest. Would such a project be eligible for 2 points because qualified nonprofit entities collectively own 100% of the general partner interest?

A: Provided 100% of the general partner interest is owned by qualified nonprofit organization(s), the project would qualify for 2 points.

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Ready to Grow point category

Q: The UNIAP indicates that in order to qualify for "ready to grow" points in a non-smart growth area, "evidence shall be submitted in the application that the majority (that is, more than 50 percent) of the property is or was covered by "structures"; however the "ready to grow" definition in the QAP includes no such requirement. Clarify or explain how the UNIAP could have changed the requirements to the QAP without having first gone through the procedures governing rule changes.

A: Since 2017, the "50 percent of property is or was covered by structures" language has appeared in the "redevelopment project" definition at N.J.A.C. 5:80-33.2. However, commenter is correct that the defined term "redevelopment project" (although used twice elsewhere in the QAP) inadvertently does not appear to be a factor in determining a "ready to grow area." This being the case, the UNIAP will be revised to remove such requirement from the 2021 "ready to grow" criteria.

Development Cost Caps

Q: Given recent extreme price spikes in construction materials, particularly lumber, will there be any changes to the current total development cost per unit maximums

A: As of the printing of this FAQ (6/16/21), the total development cost limits remain the same as listed in the QAP.

High Opportunity Areas - School Proficiency

Q: For the high opportunity areas point category in the family cycle – will there be a published list of proficient schools to use in this application round? I see the 2018 and 2019 lists on the FAQ and Resources page but not a list for 2020 and cannot find that data independently online either. Should we be using the 2019 data for this year's round instead?

A: As set forth in the UNIAP, the 2018 and 2019 lists of high proficiency school districts should be used. The QAP states that the NJHMFA shall rely upon the data effective in the calendar year of the application deadline as well as the preceding year. Due to the COVID 19 pandemic, PARCC Assessment tests were not administered in 2020 so therefore, the two latest years remain 2018 and 2019.

Planning and Zoning Board Approval – Threshold

Q. As a result of the COVID-19 pandemic, our project's municipality has developed a severe backlog in their site plan and zoning approvals processes. The municipality has advised that they support our project, and we expect to obtain a Technical Review Committee Memo in response to our Preliminary/Final Site Plan Submission and Zoning Variance request in advance of the August 31st tax credit deadline.

Given the challenges that COVID-19 has caused for municipal approval processes, would HMFA accept a Technical Review Committee Memo and letter of support from the municipality to meet the Agency's Preliminary Site Plan Approval threshold requirements?

A: NJAC 5:80-33.12 sets forth the threshold eligibility requirements for submission of a 9% competitive LIHTC application. 5:80-33.12(c)(3) states that Applicants shall submit a copy of the preliminary or final site plan resolution as well as all other approvals. Further, the regulation states that it is the applicant's responsibility to ensure that the project complies with all applicable local land use and zoning ordinances and that nothing at the local or county level will interfere with the project obtaining all necessary permits. Municipal support of the project and receipt of the Technical Committee Memo is insufficient to meet the requirements of 5:80-33.12(c)(3). At the very least the preliminary site plan approval and all required variances are required to meet threshold requirements.

Development Cost Limits – Mixed Income Reserve

Q. Do the limits on total development costs apply to Mixed-Income Reserve projects (located in a TUM)? Thank you.

A. Mixed-Income Reserve projects are eligible for up to $30,000 in credits per tax-credit-eligible unit and the maximum allocation of credits is $ 2,000,000.00. The limits on the TDC are not applicable.

Clarification: Mixed Income Reserve vs. Mixed Income Set-Aside.

Mixed Income Reserve - NJAC 5:80-33.8(a)(3): Approximately 40 percent of the credits in the Family Cycle shall be set aside for eligible family projects located within a Targeted Urban Municipality (TUM) with up to a 55 percent affordability component. Mixed-Income Reserve projects are eligible for up to $30,000 in credits per tax-credit-eligible unit and the maximum annual allocation of credits is $2,000,000.

Mixed-Income set-aside -NJAC 5:80-33.4(a)(1): The first reservation of credits from the Family Cycle shall be awarded to one project that contains up to 55% affordable units and is located outside of a Targeted Urban Municipality (TUM). Up to $30,000 in credits per tax-credit-eligible unit are available and the maximum annual allocation of credits is $1,750,000. The limits on total development costs do not apply to this set-aside.

Senior Cycle: Points for Municipality with > 25% 55 years of Age and Older – Census.

Q: The High Opportunity Area points for the Senior Cycle includes the use of the American Community Survey 5 year Estimate Census table DP05. The application states: "*NJHMFA shall rely upon the data effective in the calendar year of the application deadline as well as in the preceding year.*"

The Census website states that:

*"The **2020** American Community Survey (ACS) 1-year estimates will be **released** on September 23, 2021. These **data** will be available for the nation, all states, the District of Columbia, Puerto Rico, every congressional district, every metropolitan area, and all counties and places with populations of 65,000 or more."*(https://www.census.gov/programs-surveys/acs/news/data-releases/2020/release.html)

It appears from the above that the most recent estimates available for the census will be 5-year data from 2014-2019. Is this the data set that we should use for our projects?

ACS DEMOGRAPHIC AND HOUSING ESTIMATES
Survey/Program: American Community Survey

Years: 2019, 2018, 2017, 2016, 2015, 2014, 2013, 2012, 2011, 2010
Table: DP05

A: The latest information provided in American Community Survey 5-year Estimate Census table DPO5 ends in 2019. Therefore, for this point category we shall rely on census information for 2019 and 2018. The question refers to "High Opportunity Area points" for the Senior Cycle. We are confused by this wording. We assume that the Question is in connection with the following. Please refer to 5:80-33.16 Point system for the Senior Cycle.

5:80-33.16 (b) The Senior Cycle also includes the following point categories: 1. A project that is fully located within a municipality wherein 25.00 percent or more of the residents in the municipality are 55 years of age or older shall receive one point. NJHMFA shall rely upon the American Community Survey Five-Year Estimates, Table DP05 (ACS Demographic and Housing Estimates), U.S. Department of the Census. NJHMFA shall rely upon the data effective in the calendar year of the application deadline as well as in the preceding year.

Site Control

Q: For the 'site control' section, our subject property will be acquired via eminent domain. For such instances, the application states:

"At a minimum, the applicant shall submit a copy of all written offers, as described at N.J.S.A. 20:3-6 or its successor, executed by the condemnor to the condemnee(s) with regard to all real property comprising the project which are to be acquired by this means, which offers must be in effect and valid at the time of submission to NJHMFA."

In our case, the complete file of written offer correspondence is voluminous, and the condemnor has subsequently provided us with a declaration of taking and corresponding recorded order for final judgment. Since we have progressed well beyond the 'written offer' stage, would these documents be sufficient to establish site control, or do you need to see the written offer documentation even though it is moot at this point?

A: Unless at time of application, the Declaration of Taking is recorded, the requirements as set forth regarding Site Control at NJAC 5:80-33.12©(2)(i) and (ii) should be followed to the letter. While we appreciate that the offers may be redundant, at this point, section (ii) is clear that the application shall contain all written offers as described at NJSA 20:3-6 or its successor executed by the condemnor to the condemnee(s) with regard to all real property comprising the project which is to be acquired by means of *eminent domain.* Section (ii) also requires all executed and filed documents with regard to the eminent domain be filed with the application. Since this is an electronic submission, the fact that the complete file is voluminous should not pose a problem. Once the applicant meets all the requirements to establish site control, the Agency can determine the relevance of documents contained in the submission. Applicant is reminded that the Declaration of Taking **shall be recorded** within three months from the date of the Tax Credit Committee meeting at which awards/decisions are announced. dd