Aspire Program FAQ

Last Revised April 12, 2022

This Aspire Program "Frequently Asked Questions" resource is intended to help anyone interested in the Aspire program to better understand how the program works. This includes, but is not limited to: potential applicants, state and local government officials, lenders, community members, community organizations, and other interested members of the public.

The questions and answers included here reflect the major features of the program, as well as questions the Aspire Program staff commonly receive from the public.

The FAQ is an effort to help readers understand key information points from the rules and to help clarify terms in the rules that may be challenging to understand without a background in legislative, administrative, and regulatory language use.

The Aspire program rules are available here.

This FAQ resource will be updated over time as additional questions emerge. Your contributions will help make this resource more useful. Please send any additional questions or comments to Aspire Program staff at Aspire@njeda.com.

PROGRAM BASICS

1. **Where in NJ are projects eligible for Aspire program funding?**
    i. Planning Area 1 (Metropolitan)
    ii. An Aviation District
    iii. A Port District
    iv. Planning Area 2 (Suburban) or Designated Center, provided that the project is either within a half mile of a rail transit station, ferry terminal, bus terminal or of a high frequency bus stop as certified by NJ Transit
    v. Film Studio projects can be anywhere

    The NJEDA has developed a mapping tool showing all eligible geographies for the Aspire program. That mapping tool can be found here. A project location within an incentive area on the mapping tool does not guarantee eligibility for participation in the program. Consultation with program staff prior to beginning work on an application is advised.

2. **How do I know if a bus stop is a high-frequency bus stop as certified by New Jersey Transit?**
    i. First, consult the high-frequency bus stop definitions included on Slide 8 of the Aspire Program overview at the following link.
    ii. If you believe that a specific bus stop meets the definition, send Google map image or similar of the bus stop location and bus schedule information for that stop to Aspire Program staff at aspire@njeda.com. Program staff will consult with you further about next steps.

iii. Over time, as bus stops are certified as "high-frequency" stops by New Jersey Transit they will be reflected in the Aspire mapping tool.

3. What kinds of business entities are eligible for Aspire program funding?

i. Applicants should be NJ-based business entities that can effectuate a real estate development project. One or more of the members of this entity will be a real estate development firm. Other members may include non-profit organizations, investors, providers of business services, etc. Development teams can include partners who are not developers but have specifically defined project roles. However, the applicant will commonly be a developer. The applicant must be a legal entity within the State of New Jersey.

4. Does "redevelopment project" in the Aspire program mean the same thing as in New Jersey redevelopment law?

i. No.

ii. The statute establishing the Aspire program refers to projects under the Aspire program as "redevelopment projects." However, that definition (provided below) does not require projects to be located in an "area in need of redevelopment" or any other "redevelopment" related status.

iii. The definition in the Aspire program statute reads: "Redevelopment project" means a specific construction project or improvement or phase of a project or improvement undertaken by a developer, owner or tenant, or both, and any ancillary infrastructure project. A redevelopment project may involve construction or improvement upon lands, buildings, improvements, or real and personal property, or any interest therein, including lands under water, riparian rights, space rights, and air rights, acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated, or improved. N.J.S.A. 34:1B-323.

5. How big does an Aspire <u>residential</u> project need to be to qualify for tax credits?

Residential projects must meet minimum project cost thresholds, based on the population of the municipality where the project is located. The thresholds are:

i.	Qualified Incentive Tract	$ 5 million
ii.	Government Restricted Municipality	$ 5 million
iii.	Municipal Population < 200,000	$10 million
iv.	Municipal Population > 200,000	$17.5 million

A project located in a Qualified Incentive Tract in a municipality with population larger than 200,000 must only meet the minimum cost for location in a QIT.

6. **How big does an Aspire <u>commercial</u> project need to be to qualify for tax credits?**

A commercial project must be at least 100,000 square feet in size to qualify for the Aspire program.

7. **What is the difference between "total project cost" and "total development cost"?**
   i. "Total project cost" is the basis by which NJEDA determines the size of a tax credit award. It does not include the cost of land (although is inclusive of land-related costs like surveying, tax payments, maintenance, etc.)
   ii. "Total development cost" is the basis by which NJEDA calculates developer returns and is inclusive of land costs and other costs not allowed as part of "total project cost," such as soft costs in excess of 20% of "total project cost".
   iii. For the purposes of quantifying the minimum required developer equity contribution, total development cost will be the cost basis used.

8. **How does a developer turn Aspire tax credits into project funding or financing?**
   i. The recipient of tax credit awards may sell tax credits it is awarded to another party in exchange for cash that can be used to reimburse development expenses. The purchaser of the tax credits may then apply those credits for themselves. Each tax credit award may only be sold one time. There are various statutory and program rules that set minimum discounts at which tax credit awards may be sold by award recipients. Potential applicants should pay close attention to these rules.
   ii. Upon NJEDA Board approval of tax credit awards, awardees must comply with terms of their tax credit awards, and are at risk of forfeiting a part, or the entirety, of their tax credit award in the event of non-compliance.
   iii. The mechanics and timing of award monetization transactions will be determined by each project's specific cash-flow and funding needs. In all instances the annual issuance of tax credits will be subject to NJEDA review of the applicant's compliance with obligations set forth in the Aspire program rules.

9. **How much tax credit support does the Aspire program provide for any given project?**
   i. The tax credit awards made to any individual project will vary according to:
      1. The project's location
      2. The project's proposed uses
      3. The project's costs to develop
      4. The strength of the market in which the project is located

   ii. Depending on these factors, an Aspire project can receive up to $60 million in tax credit awards. Many projects will be eligible for only $42 million in such awards. Refer to the program overview slides available **<u>here</u>** for more details on award eligibility.

iii. The maximum tax credit awards possible are also subject to ceilings on the tax credit award as a percent of project costs and as a function of Net Benefit Test outcomes.

10. Can Aspire tax credits be combined with other funding sources to fill project financing gaps?

i. Yes. However, the statute and the rules apply ceilings on the combined total amount of tax credit awards received as a percent of project costs. Potential applicants should familiarize themselves with Aspire program statute and rule details to ensure they understand these limits.

11. Can a developer finance a project with 0% equity if Aspire funds are part of the project's support?

i. Developer equity (or contributed capital) must be at least 20 percent of total costs of development, or if the project is located in a government-restricted municipality, the developer equity requirement is lowered to at least 10 percent of total costs of development. For projects receiving low-income housing tax credit (LIHTC) allocated by the NJ Housing and Mortgage Finance Agency (NJ HMFA), LIHTC and deferred developer fees are treated as equity for the purposes of satisfying EDA equity-contribution requirements. Projects may also treat other Federal tax credits such as New Market Tax Credits and Federal Historic Tax Credits as equity. In all instances, the applicant is required to make up any shortfall that may exist between the percent equity contribution required and the LIHTC, New Market, Historic, or other tax credits that may count towards the applicant's equity contribution.

12. **What specific non-tax credit sources may be counted as a developer's contributed equity in a project?**

i. Equity contributed by a developer can include cash, deferred development fees, costs for project feasibility incurred within the 12 months prior to application, property value less any mortgages when the developer owns the project site, and any other investment by the developer in the project deemed acceptable by NJEDA.

Property values will be valued at the lesser of either the purchase price, provided the property was purchased pursuant to an arm's length transaction within 12 months of application; or the value as determined by a current appraisal acceptable to the Authority. A "current" appraisal must be dated within 90 days of the application. Note that all non-arm's length transactions will require a full appraisal.

Equity can also comprise Federal or local grants and proceeds from the sale of Federal or local tax credits, as described above.

Equity cannot include State grants or tax credits or proceeds from redevelopment area bonds.

13. When will tax credits granted on an Aspire application be available to project developers?

i. Developers will be issued their awarded tax credits upon receipt of a temporary certificate of occupancy by the developer and upon satisfying the terms of their grant agreement.

ii. Additional grant agreement elements that will need to be satisfied include final cost certification, compliance with sustainability standards, confirmation that prevailing wage rules have been followed, and, when applicable, housing affordability controls are in place.

iii. As long as the developer complies with all provisions of Aspire program rules, one tenth of the award will be issued each year for the 10 years of the eligibility period.

14. Can a project receive Aspire program tax credits if a project is already under construction?

i. In most cases, no - Aspire awards are intended to incentivize new construction work. There are limited circumstances where NJEDA may determine that a project that has halted and cannot proceed without an award, and thus may be eligible for Aspire program support.

PROGRAM SIZE AND DURATION

15. **How much funding does the Aspire program provide overall?**

i. Aspire shares an annual award cap of $1.1 billion with the Emerge program, a separate and distinct job attraction and retention program also established by the Economic Recovery Act of 2020. This annual cap applies for the first six years of the programs.

ii. In addition to the $1.1 billion shared overall program cap, there is a requirement that no more than $715 million in tax credit awards be made annually to New Jersey's northern counties (Bergen, Essex, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union, and Warren) and no more than $385 million in awards be made annually to New Jersey's southern counties (Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem)).

iii. After the program's first six years, any as-yet-unallocated tax credit awards may be awarded irrespective of geography.

16. How long will the Aspire program last?

i. The Aspire program's statutory end date is March 1st, 2027.

ELIGIBLE PROJECTS AND PROJECT ELEMENTS

17. Can a public parking garage be included as an eligible commercial project?

i. A public parking garage cannot be included as a stand-alone commercial project.
ii. In addition, parking costs above and beyond those associated with meeting minimum project parking requirements as part of planning and zoning approvals ALSO may not be included in project costs for the purposes of tax credit sizing.
iii. Points i and ii aside, parking spaces built consistent with meeting minimum parking space provision requirements MAY be made available for public parking purposes and generate parking income to the project.

18. How does project scoring relate to whether a project is approved for Aspire tax credits?

i. Beyond determining project eligibility, the NJEDA uses project scoring to determine whether a project meets threshold tests of public benefit necessary for entry into the Aspire program. Once a project is determined to meet that threshold test, no subjective project scoring tests are applied.
ii. If applicants have questions about how their projects will be scored, applicants may submit their proposed responses to the Aspire program scoring questions to Aspire program staff in advance of application. Aspire program staff will assess the proposed responses for consistency with program goals as tested via the scoring questions and provide feedback to the applicant about any changes that may be required in order to meet the threshold test.

19. Are there any project-related costs that cannot be included in "total project costs" as part of the tax credit award calculation?

i. The cost of acquiring land for projects is not an eligible cost for reimbursement with Aspire tax credit awards.
ii. The funding of capital reserves is also not an eligible cost for Aspire program tax credit awards.
iii. Other costs not eligible for reimbursement include:
    1. Soft costs beyond 20 percent of project costs;
    2. Costs for community benefit agreement-funded programs that exceed five percent of total project costs;
    3. Incentive consultant fees, NJEDA fees, loan interest payments on permanent financing, escrows, reserves, pre-opening costs, commissions and fees to the developer, project management, or other similar costs;
    4. Costs the applicant cannot demonstrate were incurred in accordance with prevailing wage requirements; and
    5. Costs such as demolition, site remediation, building acquisition or other site improvements that are incurred more than two years prior to Aspire application (or three years if applying on or after January 1, 2023

and before to January 1, 2024; or four years if applying prior to January 1st 2023).

iv. NJEDA will also develop guidelines defining reasonable and customary project costs. Project costs that fall clearly outside these boundaries may be excluded from eligible, reimbursable project costs.

20. Can fees paid to NJEDA for application to the Aspire program be refunded to the applicant?

i. No, the Aspire program rules clearly state that fees paid to NJEDA are non-refundable This includes but is not limited to the application fee, which is non-refundable regardless of whether or not the application is approved for Aspire tax credits.

21. What constitutes a "governing body" for the required letter of support?

i. Generally, this means a municipal council. However, because there are variations in governance structures within NJ municipalities EDA uses general language about what is required in terms of a letter of support from a governing body.

22. What topics should a governing body letter of support address?

i. The aim of the governing body letter of support is to assure NJEDA that any outstanding project issues still requiring local approval following an Aspire award – for example, permits and plan approvals – would not jeopardize project schedule and milestones due to project's inconsistency with local policy priorities.

ii. Governing body support letters should communicate:
    1. Project consistency with local development goals; and
    2. Governing body support for the project and the awarding of Aspire tax credits requested by the Aspire applicant.

iii. Governing body support letters should also acknowledge the Aspire program requirement for projects to obtain a temporary certificate of occupancy (TCO) within four years of NJEDA's approval of a project's application for Aspire program tax credits.

iv. A governing body letter of support does not need to provide a detailed list of approvals still pending after NJEDA award of Aspire tax credits. However, such a list would be a welcome element of a governing body support letter if such details are available.

v. If the project at issue is applying as a **Transformative Project** under the Aspire program, a governing body support letter should also acknowledge the Aspire program rule that no municipality may receive Aspire program funding for more than two transformative projects, and that the project being supported would take up one of the up-to-two transformative projects permitted.

23. What benefits are counted in an Aspire project's net benefit analysis test?

i. Reminder: the requirement to conduct a net benefit analysis applies only to primarily commercial projects.
ii. The net positive economic benefit analysis will include direct and indirect tax revenues for ongoing benefits at the State level, as well as direct, indirect, and induced tax revenues at the State level for construction benefits. Local tax benefits will only be included if they directly benefit the State, for example by reducing the amount the State needs to provide local governments to support local public programs.
iii. For more details on how the net benefit analysis is conducted, consult these materials on the Aspire program home page.

24. Does a primarily residential project have to meet a net benefit test?

i. No. Primarily residential projects are excluded from having to demonstrate a positive net benefit. Furthermore, the residential component of a predominantly commercial project is also excluded from project-related net benefit calculations.

25. How is the net benefit test applied to mixed-use projects?

i. First, an assessment will be made to determine whether the project is predominantly residential or predominantly commercial.
ii. If the project is predominantly residential, the project will not be required to undergo a net benefit test.
iii. If the project is predominantly commercial, it must undergo a net benefit test.
iv. For a predominantly commercial project, any use that is excluded by the statute from a net benefit test requirement will be carved out of the net benefit analysis. In addition to residential uses, these uses include certain health care facilities occupying spaces larger than 10,000 square feet and certain food retailers selling fresh foods occupying spaces larger than 16,000 square feet.
v. NJEDA staff will use the Impact Analysis for Planning (IMPLAN) model to measure economic benefits to the state of the project.
vi. Average wages and average employees per square feet values that are appropriate to the region where the project is located and the type of real estate product that is being built will be used.
vii. Projects located in a Government-Restricted Municipality (Paterson, Trenton, and Atlantic City) must show that benefits to the State are at least 150 percent of tax credit incentives awarded.
viii. Projects located anywhere else must show that fiscal benefits to the State are at least 185 percent of tax credit incentives awarded.

26. What projects and costs can be included in a Community Benefits Agreement (CBA)?

i. What goes into a CBA will be determined through discussions between the developer and the host municipality. There are no programmatic limits to what can be funded by a CBA.

27. Must prevailing wages be paid during project construction?

i. Yes.
ii. In addition, any project costs incurred prior to application that are otherwise eligible (i.e., demolition, site remediation) and that an applicant wishes to be included as part of the project costs for purposes of tax credit awards must be able to evidence that prevailing wages were paid for that work.

28. Do prevailing wages have to be paid after an Aspire-funded project is built and becomes operational?

i. Yes. Prevailing wages must be paid for all building management services over the term of the eligibility period (the 10 years during which any awarded tax credits are issued), including (but not limited to) maintenance, janitorial, and cleaning services.
ii. In addition, if any further construction at the project should be required during the 10-year eligibility period, workers engaged in that construction also must be paid prevailing wages, and evidence of that provided to NJEDA.

29. If a project receiving Aspire tax credits does better than expected, does its "excess profit" need to be shared back with the State of New Jersey?

i. Yes.
ii. For every project receiving tax credit awards under the Aspire program, NJEDA is required to determine a "reasonable and appropriate return on investment" (RARI).
iii. If a project's returns exceed the RARI set by the NJEDA Board at project approval by more than 15 percent, the applicant will be required to share 20 percent of the proceeds above that amount with the NJ State Treasury.
iv. An initial assessment of project success will be calculated during the project's 7^{th} year. A final assessment will be calculated during the project's 10^{th} and final year. A project sale could also cause these calculations to be made at an earlier time.

30. How will Aspire program project details and project performance information be available to the public?

i. As required by statute, the Authority will publish and maintain information regarding individual projects awarded and overall program activity on its website.

31. **Do the residential components of Aspire-funded project need to ensure that the product mix of affordable units is proportionate to the product mix for market-rate units?**
    i. Yes.
    ii. Furthermore, affordable units in Aspire-funded projects must be evenly distributed throughout the project, and – consistent with the even distribution of units throughout the project – the timing of the delivery of affordable units must be contemporaneous with the delivery of market-rate units.

32. **For what length of time must affordable units in Aspire-funded projects be made available to meet affordable housing requirements?**
    i. The duration of an applicant's responsibility to keep affordable units in use for affordable housing requirements will depend on specific local housing affordability controls.
    ii. If at any point during the 10-year eligibility period, EDA learns of any deviation from the affordable housing plan that formed the basis of EDA's project approval, the applicant may be at risk of forfeiture of tax credits awarded.
    iii. The approval letter will require that the qualified residential project will be monitored by an administrative agent as defined in N.J.A.C. 5:80-26.2 during the eligibility period for purposes of the affordable housing reservation in N.J.A.C. 19:31-23.3(e).
    iv. For a project with residential units, documentary evidence will need to be provided by the applicant that the deed restriction required pursuant to N.J.A.C. 19:31-23.8(f)6 remains recorded, and documentation from the administrative agent that the redevelopment project remains in compliance with the affordability controls pursuant to the "Fair Housing Act," P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et al.);

33. **If a residential project is solely rehabilitation of an existing housing project (i.e., no new construction) is the 20 percent affordable housing set aside not required?**
    i. Yes. If a project consists solely of rehabilitating or renovating existing units, with no change to the composition of units or creation of new units, the 20 percent reservation is not a requirement.

34. **Is the internal rate of return calculated based on leveraged (equity calculation) or unleveraged (total project cost calculation) returns?**
    i. The internal rate of return will be calculated based on developer equity contributed and returns on that equity.

35. **How is "final point of sale" defined in terms of transformative projects?**
    i. "Final point of sale" will include any business that generates revenue from transactions that occur at a specific location based on a location-specific activity. Casinos, hospitality (e.g., hotels and dining), healthcare services, and retail all to fall into the "final point of sale" category.

36. Does the repayment of excess returns apply to projects financed with LIHTC?

i. Yes, although it is not anticipated to be a significant issue. This would primarily come into play in the event the project contained a considerable portion of market rate housing that far exceeded what was anticipated at approval.

37. Can ongoing costs of a CBA be an element of developer operating cost for a project?

i. Yes. However, the ongoing expenditures anticipated must be defined at the project's outset so that they can be accurately incorporated into calculation of project return and tax credit award.

ii. For purposes of eligible costs for calculating tax credit award size, the net present value of CBA-related operating costs may not – when summed with any CBA-related project development costs – exceed five percent of total project costs.

iii. Note that project development costs must be accounted for as "soft costs," which – for purposes of eligible cost and award size calculations –may not exceed a total of 20 percent of project cost. To the extent that the sum of CBA-related project development costs and other soft costs exceed the 20 percent soft cost cap, that will limit the amount of CBA-related costs that can be included as part of project costs.

38. What is considered a "soft cost"?

i. "Soft costs" includes project costs not directly related to construction. This may include capitalized interest paid to third parties, real estate taxes, utility connection fees, accounting, title/bond insurance, fixtures/equipment with a useful life of five years or less, affordable housing fees, and costs associated with financing, design, engineering, legal, or real estate commissions.

ii. Soft costs do NOT include early lease termination costs, air fare, mileage, tolls, gas, meals, packing material, marketing and advertising, temporary signage, incentive consultant fees, Authority fees, loan interest payments on permanent financing, escrows, reserves, pre-opening costs, commissions and fees to the developer, project management, or other similar costs.

iii. As described in the answer to Question 37(iii) above, soft costs may also include costs for benefits and services provided under the community benefits agreement that are not directly related to construction of the project.

39. What project expenses are referred to in the market study opinion on expenses?

i. Any project expenses not relating to the cost of financing, hard construction costs, or soft costs incurred during construction are expected to be substantiated by the Market Study.

ii. The Market Study should provide justification for the cap rate used to provide a terminal value of the project as included in the required proforma.

iii. The NJEDA will reserve the right to substantiate anything contained in the proforma that is not substantiated by the Market Study or other documentation provided by the applicant. This may occur at the expense of the applicant.

40. Do affordable housing projects need to complete a market study?

i. If the majority of a project's units are affordable, a market study is not required, and a municipal body's adopted resolution of need or declaration of need statement will be sufficient to satisfy the market study requirement.

41. Who can I contact to learn more about the Aspire program?

i. Nat Bottigheimer
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