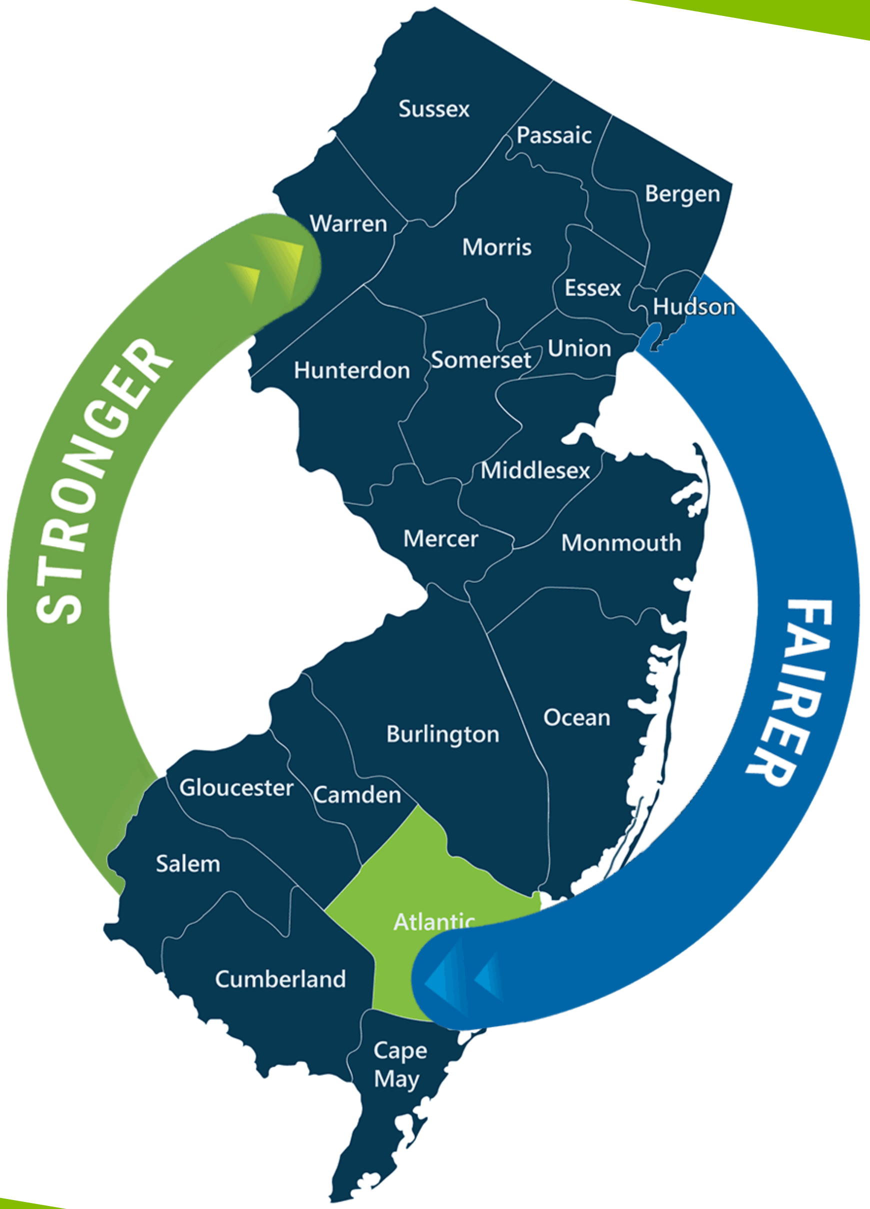
Food Desert Relief Tax Credit Program

March 2023



Agenda

1 | Food Desert Relief Act Overview

2 | Overarching Features

3 | Financing Gap Tax Credit

4 | Initial Operating Costs Tax Credit

THE FOOD DESERT RELIEF ACT

The Food Desert Relief Act (FDRA) is part of the **New Jersey Economic Recovery Act of 2020 (ERA)**, a package of tax incentive, financing, and grant programs Governor Murphy signed into law in January 2021 to address the economic impacts of the COVID-19 pandemic and build a stronger, fairer New Jersey economy. FDRA was amended in June 2022.

Facilitate development, construction, and sustainable operations of new supermarkets and grocery stores

Strengthen existing community assets by equipping them with the necessary equipment and infrastructure to provide healthier food options

Help food retailers respond to the shift to e-commerce, including for the Supplemental Nutrition Assistance Program (SNAP) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)

Identify and foster innovative solutions to alleviate food insecurity

The Food Desert Relief Act creates new strategies for NJEDA to address food security

Food Desert Relief Act ($40M/year, 6 years = $240M total)

Product Type	Tax Credits	Grants & Loans (funded by sale of tax credits)	Technical Assistance (funded by sale of tax credits)
Allowable Uses	Project financing gap; Initial operating costs	Technology; Equipment; Food Security Initiatives	Assistance to entities eligible for tax credits, grants or loans
Eligible Applicants	ONLY first or second supermarket or grocery store (16K+ SF) in food desert community (FDC)	Supermarket or grocery store in FDC (new or existing); Mid-sized food retailer (2,500-16,000 sf) in FDC; Small food retailer (less than 2,500 sf) in FDC; Other entities that support food security	Food retailers, non-retailers (e.g. farms, food pantries), non-profits, training provider

Learn more at https://www.njeda.com/food-desert-relief-program

Food Desert Community Designations (#1 - 25)

Rank	Food Desert Name	County	Composite Food Desert Factor Score	Food Desert Population (2020)
1	North, Central and South Camden/Woodlynne*	Camden	86.2	44,702
2	Atlantic City*/Ventnor	Atlantic	78.8	41,382
3	Newark South	Essex	74.2	42,713
4	Newark West	Essex	72.7	49,065
5	Camden East/Pennsauken	Camden	72.1	49,689
6	Trenton West	Mercer	71.8	27,151
7	Newark North and Central	Essex	70.6	50,855
8	Newark East	Essex	69.7	40,427
9	Salem City*	Salem	69.6	5,296
10	Passaic City	Passaic	68.4	39,336
11	Trenton East	Mercer	68.1	57,113
12	Bridgeton/Fairfield Twp/Lawrence Twp*	Cumberland	65.3	29,167
13	Paterson South	Passaic	64.5	35,825
14	New Brunswick City	Middlesex	64.1	49,408
15	Paterson North	Passaic	63.9	46,602
16	Irvington Township	Essex	61.2	31,393
17	Asbury Park City	Monmouth	60.8	14,547
18	Jersey City South	Hudson	60.5	68,636
19	East Orange City	Essex	59.9	65,254
20	Penns Grove*/Carneys Point*	Salem	59.9	13,474
21	Elizabeth City	Union	58.5	69,264
22	Orange/West Orange/Montclair	Essex	57.8	50,522
23	Jersey City Central	Hudson	57.6	58,929
24	Perth Amboy City	Middlesex	57.0	30,997
25	Lindenwold/Clementon*	Camden	56.8	19,469

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Food Desert Community Designations (#26-50)

Rank	Food Desert Name	County	Composite Food Desert Factor Score	Food Desert Population (2020)
26	Plainfield City	Union	56.4	37,829
27	Pleasantville/Absecon	Atlantic	56.0	9,874
28	Red Bank Borough	Monmouth	55.6	1,508
29	Lakewood North	Ocean	52.1	49,364
30	Jersey City North	Hudson	51.5	62,363
31	Woodbine Borough*	Cape May	51.2	2,128
32	Long Branch City	Monmouth	51.2	27,013
33	Millville/Commercial Twp*	Cumberland	49.9	25,634
34	Prospect Park/Haledon/Hawthorne	Passaic	49.4	11,846
35	Keansburg Borough*	Monmouth	49.1	9,755
36	Paulsboro Borough	Gloucester	48.8	2,282
37	Lakewood South	Ocean	48.5	49,831
38	North Bergen/West New York/Guttenberg	Hudson	48.4	48,711
39	Fairview Borough	Bergen	48.3	1,135
40	Egg Harbor City*	Atlantic	47.1	4,396
41	Burlington City	Burlington	46.1	6,101
42	Linden/Roselle	Union	45.7	36,659
43	Vineland City	Cumberland	45.2	13,273
44	Phillipsburg Town	Warren	44.4	13,823
45	Bayonne City	Hudson	42.7	28,718
46	Dover Town	Morris	42.5	10,478
47	Bound Brook Borough	Somerset	42.4	1,823
48	Union City	Hudson	34.9	23,926
49	High Bridge Borough	Hunterdon	26.5	1,221
50	Montague Township*	Sussex	25.1	3,792

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Food Desert Relief Tax Credit Program

- Provides tax credits to incentivize **development and operations of new supermarkets and grocery stores**
- Applications are accepted on a **rolling basis**
- Targeted to the designated **Food Desert Communities**
- Bolster **access to nutritious foods** for SNAP- and WIC-eligible New Jerseyans
- Encourage **longevity of supermarkets** after tax credits end, for a lasting impact on food security
- Program **is funded to accept applications through 2027**

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Key Features of the Two Tax Credits

- Capped at $240 million over 7 years
  - Option to roll over unused program tax credits yearly as needed
- Financing gap tax credit awards up to 20 - 40% of project costs, capped at project financing gap
- Initial operating costs tax credit awards up to 50 - 100% of operating costs, capped at operating shortfall
- To receive both tax credits for a single supermarket or grocery store, both applications must be reviewed & approved at the same time and must contain matching financial information

Rules clarification

Eligibility Period & Commitment Period

- Financing gap tax credit issued over 4 years
- Initial operating costs tax credit issued over 3 years
- Both tax credits start when the supermarket is open to the public
- After the tax credits end, the supermarket must continue to meet requirements until it has been open for 7 years

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Rules clarification

First and Second New Supermarket

- Up to two qualifying grocery stores per FDC may be eligible for the tax credits
- Minimum of 16,000 square feet, with at least 80% occupied by food and related products
- Must have started construction or significant rehabilitation after January 7, 2021 (effective date of FDRA)
  - If rehabilitating, the rehab must include repair/replacement of two major systems, impact 75% of square footage, and cost must exceed 60% of the fair market value after rehab
- Designations of first and second are based on the date of approval for tax credits, not on the date construction or rehabilitation began
- Stores must continue to meet milestones set by the Authority in order to retain their designations

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Rules clarification

Eligibility Criteria

- First or second new supermarket located in a designated FDC
- Without the tax credit award, the project is not economically feasible
- With the tax credit award, the project will be **open for business for seven years** and economically and commercially **viable by the seventh year**, as evidenced by a **feasibility study**
- Costs are reasonable and in line with industry standards
- Project financing gap or initial operating cost shortfall exists
- Prevailing wage & affirmative action required on construction & equipment installation
- Except demolition and site remediation, construction has NOT commenced
- Applicant commits that the supermarket will accept SNAP and WIC benefits
- Applicant commits that the supermarket will maintain at least **10% of retail space dedicated to fresh and/or frozen produce**
- Applicant commits that the supermarket will hold at least one **community listening session annually**

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Compliance

FDRA-specific **scenarios that may result in consequences** include but are not limited to:

- Disqualification as a SNAP or WIC vendor,
- Project ceases to be a supermarket or grocery store,
- Project is not operating on a full-time basis,
- Project ceases to dedicate 10% of retail space to fresh and/or frozen produce, and
- Failure to hold an annual community listening session.

Potential consequences include:

- Delay in receiving tax credit,
- Full or partial forfeiture for the current and/or future years, and/or
- Full or partial recapture.

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Financing Gap Tax Credit

Rules clarification

- Applicants must develop and open a supermarket or grocery store for business
- Structured similarly to Aspire
  - Applicant must contribute 20% of the total development cost as equity
  - Applicant must make all good faith efforts to raise additional capital
  - Award amount is based on a calculation involving project financing gap, reasonable and appropriate rate of return, etc.

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Financing Gap Tax Credit - Award Size Criteria

Rules clarification

An agreement between the **owner or operator of a supermarket or grocery store** and one or more **labor organizations**, which requires that:

- Participating labor organization and its members agree to refrain from picketing, work stoppages, boycotts, or other economic interferences
- Business agrees to maintain a neutral posture toward unionizing

A labor harmony agreement is voluntary, unless the State has a proprietary interest in the project.

Applicants for the financing gap tax credit will be **eligible for the maximum cap** on their tax credit amount **only if they require a labor harmony agreement for the supermarket operator**. A collective bargaining agreement will be accept in lieu of a labor harmony agreement.

Financing Gap Tax Credit - Award Size

Award size is calculated as the **lower of the project financing gap or a cap as follows**:

	No labor harmony agreement	Labor harmony agreement
First supermarket in FDC	30% of project costs	40% of project costs
Second supermarket in FDC	15% of project costs	20% of project costs

Rules clarification

Financing Gap Tax Credit – Excess Return on Investment

- Reasonable and appropriate rate of return on investment determined at Board approval
- At project certification, NJEDA will determine if actual financing is consistent with what was submitted at award approval. The award may be reduced if the actual financing makes the financing gap smaller than previously calculated.
- NJEDA will re-evaluate project returns in two scenarios:
  - Before the final year of eligibility. If returns exceed the Board-approved level by more than 15%, the amount issued in the final year of eligibility will be reduced by 20% of the excess.
  - If the applicant sells, leases, or subleases the store. If returns exceed the Board-approved level by more than 15%, the applicant shall pay to the State 20% of the excess.

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Rules clarification

Initial Operating Costs Tax Credit - Definitions

- **Initial operating shortfall = Initial operating costs + net operating profit – net income**
  - If this is negative, there is no shortfall.

- **Initial operating costs** are an eligible supermarket's costs within one month before opening and for three years after opening. These costs must be aligned with industry standards. Inventory is not included.

- **Net operating profit** is after taxes, other than income taxes. Net operating profit is calculated as a percentage of sales and based on industry standards.

- **Net income** is after cost of inventory.

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Initial Operating Costs Tax Credit – Example Calculation

Initial Operating Costs	= Total Costs – Cost of Goods Sold = $11 Million – $7 Million = $4 Million
Net Operating Profit (in $)	= Sales * Net Operating Profit (as % of Sales) = $10 Million * 3% = $0.3 Million
Net Income	= Sales Income + Other Income – Cost of Goods Sold = $10 Million + $0 Million – $7 Million = $3 Million
Initial Operating Shortfall	= Initial Operating Costs + Net Operating Profit – Net Income = $4 Million + $0.3 Million – $3 Million = **$1.3 Million**

Initial Operating Costs Tax Credit - Award Size

Award size is calculated as the **lower of the initial operating cost shortfall** or a cap as follows:

- For the first new supermarket in a FDC, 100% of initial operating costs
- For the second new supermarket in a FDC, 50% of initial operating costs

<u>Example:</u>

Initial operating costs = $4 Million

Initial operating shortfall = $1.3 Million

$1.3M / $4M = 33%, so shortfall is 33% initial operating costs

33% is less than 100%, so the tax credit approved is $1.3 Million

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Appendix

Rules clarification

Eligibility - Definitions

Supermarket or Grocery Store

A retail outlet with a lease or ownership of at least **16,000 square feet**, of which at least **80% is occupied by food and related products**, which products shall be based on industry standards, as determined by the Authority, except that the food and related products shall not include alcoholic beverages and products related to the consumption of such beverages. The square footage of a supermarket or grocery store shall include any space that the supermarket or grocery store subleases, licenses, or otherwise allows another entity to occupy.

Rules clarification

Eligibility - Definitions

New Supermarket or Grocery Store

A supermarket or grocery store that commenced new construction of the building or commenced rehabilitation of at least 75 percent of its square footage, after the effective date of the FDRA.

For purposes of this definition, rehabilitation of at least 75 percent of the square footage of a supermarket or grocery store means the repair or replacement of two or more major systems, including, but not limited to: (a) roof, (b) plumbing, (c) heating and cooling (including refrigeration), (d) electrical, (e) load bearing structural systems, or (f) weatherization (e.g. solar panels, siding, replacement windows, and doors), where the costs of such repair or replacement, exclusive of soft costs that exceed 20 percent of the total costs of repair and replacement, exceeds 60 percent of the fair market value of a rehabilitated supermarket or grocery store after such repair and replacement. and the rehabilitation affects at least 75 percent of square footage of the supermarket or grocery store.

This means: To qualify as a new supermarket without new construction, the work done must

- Involve repairing or replacing at least two major systems,
- Cost at least 75% of property value, and
- Affect at least 75% of square footage

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Eligibility - Definitions

First or Second New Supermarket or Grocery Store

The **first and second** new supermarket or grocery store within **each FDC** to be **approved for tax credits** under the program by the Authority, except that a supermarket or grocery store **may lose the designation** of first or second new supermarket or grocery store if the project does not meet **milestones** designated by the Authority in a timely manner, as determined by the Authority.

This means: to receive tax credits, a supermarket must be

- Newly constructed or rehabilitated after January 2021,
- One of the first two supermarkets in an FDC to be approved by NJEDA under this program, and
- On track with milestones set by NJEDA

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Eligibility - Definitions

Opening of the Supermarket or Grocery Store for Business to the Public

The date a new supermarket or grocery store that has

a) received a **temporary certificate of occupancy and all certifications from State and local health departments required to operate**, and

b) met the requirements of the incentive award, and

c) Starts operating the supermarket or grocery store on a full-time basis.

This means: For a supermarket to qualify as being open, it has to:

- Have a temporary certificate of occupancy,
- Have all required health department certifications,
- Meet incentive award requirements, and
- Open for at least 60 hours a week.

Eligibility - Definitions

Operating on a Full-Time Basis

Operating **at least 60 hours per week every week of the year**, absent unavoidable closures or other circumstances approved by the Authority.

Unavoidable Closures

Any closure due to weather, strikes, acts of God, governmental restrictions, enemy action, civil commotion, fire, unavoidable casualty or other causes similarly **beyond the control of the operator of the supermarket or grocery store** as determined in the sole discretion of the Authority.

This means: For a supermarket to qualify as being open, it has to stay open 60 hours a week, except when there are emergencies that mean it needs to close, unless it gets approval from NJEDA for an exception.

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Rules clarification

Financing Gap Tax Credit - Definitions

Total Development Cost

Any and all **costs incurred for and in connection with the project** by the applicant and any affiliate of the applicant **until the opening** of the supermarket or grocery store for business to the public, or upon such other event evidencing project completion as set forth in the incentive grant agreement, which shall include, but is not limited, to project costs, soft costs, and cost of acquisition of land and buildings. If the supermarket or grocery store is a component of a facility, the costs of any shared structures or improvements, including but not limited to, foundations or parking lots, may be included as total development cost only to the extent of the supermarket or grocery store's pro-rata share, based on square footage, of the facility.

Project Area

Land or lands adjacent and **necessary to the operation of the new supermarket or grocery store**, including but not limited to parking lots, loading docks, and satellite refrigerated pods.

Rules clarification

Financing Gap Tax Credit - Definitions

Project Financing Gap

The **part of the total development cost**, including reasonable and appropriate **return on investment**, that **remains to be financed after all other sources of capital have been accounted for**, including, but not limited to, **applicant-contributed capital, which shall not be less than 20 percent** of the total development cost, which may include the value of any existing land and improvements in the project area owned or controlled by the developer, and the cost of infrastructure improvements in the public right-of-way, and **investor or financial entity capital or loans** for which the applicant, after making **all good faith efforts** to raise additional capital, **certifies that additional capital cannot be raised** from other sources on a non-recourse basis.

Property Value

The lesser of: 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.

Financing Gap Tax Credit - Definitions

Project Cost

The costs incurred in connection with the establishment of a supermarket or grocery store within a food desert community by the applicant until the **opening of the supermarket or grocery store to the public** and the certification of costs pursuant to N.J.S.A. 19:28-8 including the **costs relating to lands, buildings, improvements, real or personal property, or any interest therein**, including leases discounted to present value, including lands under water, riparian rights, space rights, and air rights acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated, or improved, any environmental remediation costs, plus **soft costs of an amount not to exceed 20 percent of the project costs**, and the **cost of infrastructure improvements**, including ancillary infrastructure projects. For the purposes of this subchapter, ancillary infrastructure projects may include off-site self-contained temperature-controlled lockers located in a food desert community that is exclusively serviced from the supermarket or grocery store. Project cost shall include otherwise qualifying costs incurred by an affiliate of the applicant. The fees paid by the applicant to the Authority associated with the application or administration of an incentive award pursuant to sections 35 through 42 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-303 through 34:1B-310) shall not constitute a project cost. Project cost shall include otherwise qualifying costs incurred by an affiliate of the applicant. The fees paid by the applicant or a co-applicant, if applicable, to the Authority associated with the application or administration of an incentive award shall not constitute a project cost. Project cost **shall not include the cost of acquiring land**. If the supermarket or grocery store is a component of a facility, the otherwise qualifying costs of any shared structures or improvements, including but not limited to, foundations or parking lots, may be included as project cost only to the extent of the supermarket or grocery store’s pro-rata share, based on square footage, of the facility.

Financing Gap Tax Credit - Definitions

Equity

The applicant must contribute equity of **at least 20% of the total development cost**, which can consist of:

- Cash,
- Deferred development fees,
- Project feasibility costs from within the last year,
- (If the applicant owns the project area) the property value of the project area, minus any mortgages,
- The cost of infrastructure improvements in the public right of way,
- Federal or local grants,
- Proceeds from the sale of federal or local tax credits, and
- Any other investment by the applicant in the project that deemed acceptable by NJEDA.

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

If the supermarket or grocery store is a component of a facility, the equity contributed by the applicant to the development of the facility may be considered as equity for the project only to the extent of the supermarket or grocery store's pro-rata share, based on square footage, of the facility.

Financing Gap Tax Credit - Definitions

Reasonable and Appropriate Return on Investment

The discount rate at which the **present value of the future cash flows** of an investment **equal the cost of the investment**. For purposes of the analysis of the reasonable and appropriate return on investment, an **investment shall not include any Federal, State, or local tax credits and grants**.

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Financing Gap Tax Credit - Application Review

Administrative Review and Application Completeness Check (list not exhaustive)

- Online application is **complete** and all forms are **signed**
- Project site is in a Food Desert Community
- Letter of support from governing body of municipality
- Project description, costs and financial information
- Projected number of employees
- Market/feasibility study by independent third party, covering eligibility period and commitment period
- Breakdown of uses and square footage (e.g. planogram)
- Commitment to accept benefits from SNAP and WIC
- **Anticipated construction schedule**
- Binding agreement between developer and supermarket operator
- **If there are applications for both** a financing gap tax credit and an initial operating costs tax credit relating to the same supermarket or grocery store, **both applications must be reviewed & approved at the same time and financial information submitted in both applications must match**. If an application for only one of the two credits is approved, a later application for the other credit relating to the same supermarket or grocery store will not be accepted.

Financing Gap Tax Credit - Additional Program Details

APPROVAL CONDITIONS

Within in one year after Board Approval, several conditions, known as approval letter conditions, will need to be met. These conditions include but are not limited to:

- Documentation of site control (site access, ownership or lease, etc.),
- Copies of all required permits,
- Prevailing wage and affirmative action monitoring,
- Floor plan,
- Site plan approval, if applicable,
- **Executed agreement with operator of the supermarket or grocery store**, and
- **Executed financial commitments**.

Financing Gap Tax Credit - Additional Program Details

PROGRESS REPORTS/ANNUAL REPORTS

Progress reports shall be submitted to the NJEDA **every 6 months during the project**, starting from 6 months from board approval through certification of completion.

Annual reports shall be submitted beginning at board approval. These will include but not be limited to:

- Certifications indicating continued compliance with:
  - The incentive award agreement,
  - The labor harmony agreement, if applicable,
  - The requirement to be operating on a full-time basis,
  - Prevailing wage and affirmative action requirements, and
  - Good standing with sister state agencies (DOL, DEP, Treasury).
- CPA-certified financial statements,
- Floor plan/planogram,
- SNAP vendor permit,
- WIC vendor agreement, and
- Evidence a community listening session was held.

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Financing Gap Tax Credit - Additional Program Details

SUBMITTALS FOR COMPLETION

- Temporary certificate of occupancy
- Evidence that the supermarket or grocery store is open for business to the public
- Certification by CPA of actual project costs
- Floor plan identifying the actual uses and square footage for each use
- Copies of SNAP vendor permit and WIC vendor agreement or evidence of submitted application for SNAP and WIC retailer approval
- Certification of compliance with incentive award agreement
- If pursuing rehabilitation, certification from a licensed engineer that the applicant has repaired or replaced 2 or more major systems, affecting at least 75% of square footage
- Certification that the information provided is accurate
- Labor harmony agreement, if applicable
- Any other information that may be required by NJEDA

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Initial Operating Costs Tax Credit - Application Review

Administrative Review and Application Completeness Check (list not exhaustive)

- Online application is **complete** and all forms are **signed**
- Project site is in a Food Desert Community
- Letter of support from governing body of municipality
- Project description, costs and financial information
- Projected number of employees
- Market/feasibility study by independent third party, covering eligibility period and commitment period
- Breakdown of uses and square footage (e.g. planogram)
- Commitment to accept benefits from SNAP and WIC
- **Acknowledgment by prospective landlord that the applicant will operate a supermarket or grocery store**
- Binding agreement between landlord and operator
- **If there are applications for both** a financing gap tax credit and an initial operating costs tax credit relating to the same supermarket or grocery store, **both applications must be reviewed & approved at the same time and financial information submitted in both applications must match**. If an application for only one of the two credits is approved, a later application for the other credit relating to the same supermarket or grocery store will not be accepted.

Initial Operating Costs Tax Credit - Additional Program Details

APPROVAL CONDITIONS

Within one year after Board Approval, several conditions, known as approval letter conditions, will need to be met. These conditions include but are not limited to:

- Documentation of site control (site access, ownership or lease, etc.),
- Copies of all required permits,
- Prevailing wage and affirmative action monitoring,
- Floor plan, and
- **Evidence of sufficient liquidity or financing on an annual basis to operate the supermarket or grocery store**.

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Initial Operating Costs Tax Credit - Additional Program Details

PROGRESS REPORTS/ANNUAL REPORTS

Progress reports shall be submitted to the NJEDA **every 6 months** during the project, starting from 6 months from board approval through opening for business.

Annual reports shall be submitted beginning at board approval. Certifications will be required to indicate **continued compliance** with the incentive award agreement and with the labor harmony agreement if applicable, as well as continued operating on a full-time basis, prevailing wage, affirmative action, and good standing with sister state agencies. Other required documentation will include CPA-certified financial statements, floor plan/planogram, SNAP vendor permit, WIC vendor agreement, and evidence a community listening session was held.

Initial Operating Costs Tax Credit – Fiscal Protection

Rules clarification

- At project certification, NJEDA will determine if actual financing is consistent with what was submitted at award approval. The award may be reduced if the actual financing makes the projected initial operating shortfall smaller than previously calculated.

Rules clarification

Program Fees

Type of Fee	Financing Gap Tax Credit		Initial Operating Costs Tax Credit	
	Project Costs <$10MM	Project Costs ≥$10MM	Total Sales <$20MM	Total Sales ≥$20MM
Application Fee	$2,500	$10,000	$2,500	$5,000
Approval Fee	$5,000	$15,000	$5,000	$10,000
Issuance Fee	$5,000	$15,000	$2,500	$5,000
Servicing Fee (x7)	$2,500	$10,000	$2,500	$5,000
Transfer Fee	$5,000	$15,000	$5,000	$10,000
Minor Mod	$2,000	$5,000	$2,500	$5,000
Major Mod	$5,000	$15,000	$5,000	$10,000
Total (w/o mods or transfer)	**$30,000**	**$110,000**	**$27,500**	**$55,000**

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