# SPECIAL ADOPTION

## OTHER AGENCIES

## (a)

### NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

### Authority Assistance Programs
### Aspire

### Specially Adopted and Concurrently Proposed New Rules: N.J.A.C. 19:31-23A

Filed: December 5, 2023, as R.2024 d.003.

Authority: P.L. 2020, c. 156, P.L. 2021, c. 60, and P.L. 2023, c. 98.

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

Concurrent Proposal Number: PRN 2024-009.

Effective Date: December 5, 2023.

Expiration Date: June 2, 2025.

Submit written comments by March 2, 2024, to:

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**Take notice** that in accordance with P.L. 2023, c. 98, the New Jersey Economic Development Authority ("NJEDA" or "Authority") has specially adopted the following new rules to implement the provisions of the New Jersey Economic Recovery Act of 2020, establishing the New Jersey Aspire Program Act, sections 54 through 67 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160, and P.L. 2023, c. 98.

The specially adopted new rules became effective on December 5, 2023, upon acceptance for filing by the Office of Administrative Law (OAL). The specially adopted new rules shall be effective for a period not to exceed 365 days from the date of filing, that is, until December 4, 2024.

Concurrently, the provisions of the new rules are being proposed for readoption in accordance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. As the NJEDA has filed this notice of readoption before December 4, 2024, the expiration date is extended 180 days to June 2, 2025, pursuant to N.J.S.A. 52:14B-5.1.c. The concurrently proposed new rules will become effective and permanent upon acceptance for filing by the OAL (see N.J.A.C. 1:30-6.4(f)), if filed on or before June 2, 2025.

The specially adopted and concurrently proposed new rules follow.

**Summary**

**Summary of the Rulemaking and Legislative History**

The New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, created a package of tax incentive, financing, and grant programs to address the ongoing economic impacts of the COVID-19 pandemic and build a stronger, fairer New Jersey economy, including the Aspire Program (Program). The Aspire Program is a gap financing tax incentive program to encourage the development of commercial, mixed use, and residential real estate projects in New Jersey by providing tax credits in an amount based on a percentage of the project's costs.

On November 15, 2021, the NJEDA submitted specially adopted Aspire Program rules, pursuant to section 67 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 (N.J.S.A. 34:1B-335, et seq.), and concurrently proposed rules to the OAL for publication in the New Jersey Register. The specially adopted rules became effective upon acceptance for filing by OAL and were published in the December 20, 2021 New Jersey Register. See N.J.A.C. 19:31-23. The initial expiration for the specially adopted rules was 180 days from the date of filing, or May 14, 2022. The rules were concurrently proposed in accordance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The concurrent proposal extended the expiration of the rules by an additional 180 days to November 10, 2022. See N.J.S.A. 52:14B-5.1.c.

Significant public comments were received. Pursuant to N.J.S.A. 52:14B-5.1.d(1), Governor Phillip D. Murphy, on October 31, 2022, directed that the expiration date of the Aspire rules be extended for a period of 12 months, from November 10, 2022 to November 10, 2023.

Legislative changes were enacted. On July 6th, 2023, Governor Murphy signed S4023 into law as P.L. 2023, c. 98. This new law modified the Aspire Program in various ways.

*Limitations on Tax Credit Awards*

P.L. 2023, c. 98 revised the maximum amounts of tax credits that may be awarded to redevelopment projects and transformative projects pursuant to the Aspire Program. Previously, the law provided that a developer of a redevelopment project could receive tax credits up to the following amounts, subject to certain other limitations: (1) 60 percent of the total project costs for any residential project also receiving Federal four percent low-income housing tax credits (LIHTC), 26 U.S.C. § 42, up to $60 million; (2) 50 percent of total project costs for any commercial project located in a government-restricted municipality, up to $60 million; and (3) 45 percent of total project costs for any other project, up to $60 million if the project is located in a qualified incentive tract, government-restricted municipality, or municipality with a Municipal Revitalization Index distress score of at least 50, or up to $42 million if located elsewhere.

The new law provides that a redevelopment project may receive tax credits up to the following amounts, subject to certain other limitations: (1) 80 percent of total project costs for any project located in a government-restricted municipality, up to $120 million; (2) 60 percent of total project costs for any residential project that also receives LIHTC or any redevelopment project located in a qualified incentive tract, enhanced area, or a municipality with a Municipal Revitalization Index score of at least 50, up to $90 million; and (3) 50 percent of total project costs for any other project, up to $60 million.

Similarly, the new law provides that transformative projects may receive tax credits equal to the lesser of $400 million, the total value of the project financing gap, or the following amounts: (1) 80 percent of total project costs for any transformative project located in a government-restricted municipality; (2) 60 percent of the total project costs for any residential transformative project that also receives LIHTC or any transformative project located in a qualified incentive tract, enhanced area, or a municipality with a Municipal Revitalization Index score of at least 50; or (3) 50 percent of total project costs for any other transformative project. Previously, all transformative projects are entitled to receive tax credits up to 40 percent of the total project costs, the total value of the project financing gap, or $350 million, whichever was less.

*Eligibility Requirements for Commercial Projects*

P.L. 2023, c. 98 revised certain eligibility requirements for commercial projects as well. Previously, a commercial project was required to contain at least 100,000 square feet of commercial or industrial space to qualify for the Program. The new law reduces these square footage requirements to at least 25,000 square feet for any commercial project located in a government-restricted municipality or 50,000 square feet for any other commercial project, except in the case of health care or health services centers.

The new law also amends the definition of "health care or health services center" to require these establishments to: (1) contain not less than 10,000 square feet devoted to health care or health services, where patients may be admitted for or seek medical examination and treatment; and (2) be located within a municipality with a Municipal Revitalization Index distress score of at least 50, a distressed municipality, or a qualified incentive tract. Notwithstanding the default square footage requirements for commercial projects, the new law also provides that any redevelopment project that is comprised solely of a health care or health services center, and which contains not less than 10,000 square feet devoted to health care or health services, would also qualify as a

commercial project pursuant to the Aspire Program. The new law also provides that if a commercial project is comprised solely of a health care or health services center, the health care or health services center is required to comply with certain requirements concerning total project cost.

*Requirements for Residential Projects*

P.L. 2023, c. 98 revises certain requirements of the Aspire Program concerning the approval of residential projects, including the affordability controls that would be required within these projects. Previously, the developer of a new residential project was required to reserve certain residential units for low- and moderate-income housing. The law required these residential units to be subject to affordability controls in accordance with the New Jersey Fair Housing Act, N.J.SA. 52:27D-301 et seq., pursuant to which affordability controls have been adopted by the New Jersey Housing and Mortgage Finance Agency ("HMFA" or the "Agency") and are known as the Uniform Housing Affordability Controls (UHAC), N.J.A.C. 5:80-26. However, UHAC explicitly states that it does "not apply to units qualifying for the Federal Low-Income Housing Tax Credit under Section 42 of the Internal Revenue Code." N.J.A.C. 5:80-26.1. As a result, residential projects that receive funding through both the Aspire Program and LIHTC are not required to comply with the UHAC.

The new law revises the affordability controls that would apply to residential projects pursuant to the Aspire Program. Specifically, the new law requires the EDA, in consultation with the HMFA, to adopt rules concerning the establishment and administration of affordability controls for residential projects pursuant to the Program, including, but not limited to, residential projects that utilize Federal LIHTC. At a minimum, these affordability controls are required to comply with the requirements of the UHAC rules, including requirements concerning the bedroom distributions, affordability averages, affirmative marketing, and the long-term deed restriction of residential units. However, the new law provides an exemption from the bedroom distribution requirements for any residential project that receives the Federal historic rehabilitation tax credit pursuant to section 47 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 47, or a State tax credit pursuant to the "Historic Property Reinvestment Act," N.J.S.A. 34:1B-270 et seq.

The new law also provides that when all residential units constructed in a residential project are reserved for occupancy by low- and moderate-income households, the calculation of total project costs for the project would also include the developer fees paid before acquiring permanent financing, as well as the deferred developer fees pursuant to the rules established by the Agency.

*Transformative Projects*

P.L. 2023, c. 98 revises several requirements of the Aspire Program concerning the eligibility and approval of transformative projects. Previously, a redevelopment project was required to meet the following criteria in order to qualify as a transformative project: (1) have a project financing gap; (2) incur total project costs of at least $100 million; (3) contain 500,000 or more square feet of new or substantially renovated industrial, commercial, or residential space, except for projects which may include 250,000 or more square feet of film studios, professional stages, television studios, recording studios, screening rooms, or other infrastructure for film production (film-related space); and (4) demonstrate a "special economic importance" to the State, as measured by certain State priorities determined by the EDA.

The new law established reduced square footage requirements for certain transformative projects, as follows: (1) 200,000 or more square feet of new or substantially renovated industrial, commercial, or residential space for a project located in a government-restricted municipality; and (2) 300,000 or more square feet of new or substantially renovated industrial, commercial, or residential space for a project located in an enhanced area. The new law maintains the existing square footage requirements for any transformative projects that do not meet these criteria.

Additionally, the new law increases the total project cost requirements for transformative projects from $100 million to $150 million. The new law also provides that only commercial projects would be required to demonstrate a "special economic importance" in order to qualify as transformative projects. However, when a redevelopment project is located entirely on land designated as a brownfield development area, and the project includes at least $15 million in environmental remediation costs, the new law provides that the redevelopment project would be deemed to constitute a "special economic importance."

Previously, a residential project or mixed-use project that qualified as a transformative project was required to contain a minimum number of residential units, which varied depending on the location of the project. The new law reduced the number of residential units that are required to be included in these projects. The new law also reduced the amount of commercial space, from 100,000 square feet to 50,000 square feet, that is required to be constructed within a residential project that includes fewer than 700 new residential units.

Pursuant to the new law, all transformative projects are required to be completed, and the developer must receive a certificate of occupancy for the project, within five years of executing the incentive award agreement, except that the EDA may, in its discretion, extend this period by up to one additional year. However, for a transformative project completed in phases, the developer is required to complete the project and receive a certificate of occupancy for all phases of the project within 10 years of executing either the incentive award agreement or the first transformative phase agreement. Previously, all redevelopment projects were required to be completed and receive certificates of occupancy within four years, except that transformative projects completed in phases were required to be completed within eight years.

The new law removes the limitation on the number of transformative projects that may be located within one municipality. Previously, the EDA could not award tax credits to more than two transformative projects located within the same municipality.

*Additional Conditions of Incentive Award*

P.L. 2023, c. 98 revised several requirements of the Aspire Program, which the developer of a redevelopment project may be required to satisfy as a condition of receiving an incentive award. Notably, the new law revised the circumstances in which a developer would be exempt from the requirement to enter into a community benefits agreement (CBA). Previously, a developer that was otherwise required to enter into a CBA was exempt from this requirement when the developer provided the EDA with an approval letter or redevelopment agreement, as certified by the municipality in which the project was located and which included provisions that met or exceeded the standards required for community benefits agreements. Pursuant to the new law, the developer would be considered to have met the requirements for a CBA if the developer submits a resolution to the EDA, which resolution was adopted by the governing body of the municipality in which the redevelopment project is located after at least one public hearing. Specifically, the resolution would be required to state that the governing body has determined that the redevelopment project will provide economic and social benefits to the community that fulfill certain purposes, which benefits render a separate CBA unnecessary, and explain the reasons supporting the governing body's determination. The new law also exempts any residential project that is located in a government-restricted municipality, and in which 100 percent of the residential units constructed in the residential project are reserved for occupancy by low- and moderate-income households, from the requirement to enter into a CBA.

Additionally, the new law expands the allowance for certain redevelopment projects to demonstrate a reduced net positive benefit to the State. Previously, the developer of a redevelopment project was required to demonstrate to the EDA that the award of tax credits would result in a net positive benefit to the State in an amount determined by the EDA, except not less than the amount of requested tax credits. However, this net benefit requirement was reduced by up to 35 percentage points for any project that was located in a government-restricted municipality. Pursuant to the new law, this reduction in the net benefit requirement will also apply to: (1) any commercial project that contains 50,000 or more square feet of space devoted to research or technology focused incubator and conferencing facilities for one or more institutions of higher education or non-profit organizations, and which has a total project cost of not less than $50 million; (2) any redevelopment project that is predominantly commercial and that receives a Federal historic rehabilitation tax credit or a State tax credit pursuant to the Historic Property Reinvestment Act, N.J.S.A. 34:1B-270 et seq.; and (3) any commercial project that is located

on land owned by the Federal government on or before December 31, 2005.

The new law also provides that the EDA may set a reduced net benefit requirement for any redevelopment project that is undertaken by a major cultural institution to renovate existing space or expand services into additional space, and in which the major cultural institution realizes all returns from the redevelopment project. As defined in the new law, a "major cultural institution" includes any public or nonprofit institution, except for an institution of higher education, within this State that engages in the cultural, intellectual, scientific, environmental, educational, or artistic enrichment of the people of this State, and which institution is designated by the EDA Board as a major cultural institution.

The new law also revised certain provisions of the Aspire Program concerning the prevailing wage requirement for persons employed to perform building services work at a project. Pursuant to the new law, this requirement does not apply to workers who are employed to perform building services work by a commercial tenant, commercial subtenant, or other commercial occupant that has a leasehold interest or other occupancy right in a redevelopment project, which leasehold interest or other occupancy right encompasses less than 5,000 square feet of space. The new law also requires all leases, subleases, or other commercial occupancy agreements applicable to a redevelopment program to include a provision, in a form acceptable to the EDA, which sets forth the prevailing wage requirement.

Additionally, the new law provides that if a commercial tenant, commercial subtenant, or other commercial occupant violates the provision of the lease, sublease, or other commercial occupancy agreement due to the underpayment of the prevailing wage rate, then the developer and any co-applicant of the redevelopment project may be required to forfeit all or part of the tax credit award, depending on the tax period in which the violation is cured and documentation of such correction has been reviewed and approved by Commissioner of Labor and Workforce Development (LWD) and verified by the EDA. Specifically, the new law provides that if a violation is not cured, or is not capable of being cured, within one year of receipt of notice of the violation, the developer and any co-applicant would be required to forfeit 50 percent of the tax credits otherwise authorized for the tax period in which the notice of violation was issued. Thereafter, if the violation is not cured on or before the conclusion of that tax period, the developer and any co-applicant would be required to forfeit up to 100 percent of the tax credits otherwise authorized, as determined by the EDA, in each subsequent tax period until the violation has been cured, and documentation of such correction has been reviewed and approved by the Commissioner of LWD and verified by the EDA.

*Miscellaneous Program Changes*

P.L. 2023, c. 98 amends several other provisions governing the Aspire Program. The new law expands the scope of eligible incentive areas pursuant to the Program by amending the definition of "incentive area" to include: any area designated as a brownfield site pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq.; and an area of not less than 100 acres for which a licensed site remediation professional has certified environmental remediation costs, in accordance with the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq., in an amount not less than $10 million, provided that any portion of such area is located in an area that otherwise qualifies as an incentive area.

The new law also clarifies certain provisions governing the duration of eligibility periods pursuant to the Aspire Program. Previously, the law required the incentive award agreement between the EDA and the developer to specify the amount of the tax credit award and the duration of the eligibility period, which period could not exceed 15 years for a commercial or mixed-use project or 10 years for a residential project. To reduce the total value of tax credits needed to reimburse a developer for all or part of the project financing gap of a redevelopment project, the new law permits the EDA, in its discretion, to approve a duration for the eligibility period that is shorter than the applicable maximum periods.

Additionally, the new law requires the incentive award agreement to include one or more provisions, as determined by the EDA, concerning the terms and conditions for default and the remedies for the developer of a redevelopment project in the event of default. However, the EDA is not permitted to declare a cross-default when the developer of a redevelopment project, including any business affiliate of the developer or any other entity with common principals as the developer, defaults on any other assistance program administered by the EDA.

The new law also amends current law to define the term "reasonable and appropriate return on investment" pursuant to the Aspire Program, which concept is used to determine a developer's project financing gap. In general, the new law defines this term in a manner consistent with pre-existing rules. However, for any residential project that utilizes Federal LIHTCs and generates returns on equity other than Federal or local grants or proceeds from the sale of Federal or local tax credits, the new law provides that the calculation of "reasonable and appropriate return on investment" be based on both: (1) the discount rate at which the present value of the future cash flows of an investment equal the cost of the investment; and (2) with respect only to the units financed with LIHTCs, the approval of deferred developer fees pursuant to the rules established by the HMFA.

Additionally, the new law permits the holders of tax credit transfer certificates to transfer all or part of the tax credit amount for use by a transferee, which transferee may claim the transferred tax credits over a maximum of six years, subject to certain annual limitations.

The new law also directs the Chief Executive Officer of the EDA to adopt rules to implement the Aspire Program, as modified by the new law, which shall be effective upon filing with the OAL. The new law also requires the EDA to submit a report to the Governor and Legislature, on or before December 31, 2023, concerning the effectiveness of the Program in encouraging development in government-restricted municipalities.

*Applicability to Prior and Future Applications*

The new law provides that all Aspire Program applications completed after the date of enactment of P.L. 2023, c. 98 (July 6, 2023) would be subject to the provisions of the new law, including any rules and regulations adopted by the EDA thereunder. In contrast, all Program applications completed on or before July 6, 2023, are subject to the pre-existing provisions of law and rules governing the Aspire Program.

If a completed application for a residential project is submitted within 121 days after the date of enactment (November 4, 2023), the applicant receives all applicable approvals for the project pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., and submits written notice to the EDA before the EDA's decision on the application, the new law provides that the application is subject to some, but not all, of the provisions of the new law. In this event, the new law requires the application to be reviewed, approved, and administered in accordance with the pre-existing provisions of law and rules governing the Aspire Program, except for: (1) the determination of "reasonable and appropriate return on investment," as defined in the new law; and (2) the limitations on total tax credit awards, as increased by the new law.

Additionally, the new law permits certain applicants to withdraw pending applications for the Aspire Program. Specifically, an applicant may withdraw any completed application that was pending approval by the EDA on July 6, 2023, at any time before the EDA approves or denies the application. In this event, the EDA would be required to return all application fees paid by the applicant, and the withdrawal may not serve to prejudice the consideration of any Program application submitted by the applicant thereafter.

*Other Changes to New Jersey Economic Recovery Act of 2020*

P.L. 2023, c. 98 also provides additional changes to the New Jersey Economic Recovery Act of 2020 (ERA), P.L. 2020, c. 156, as amended at P.L. 2021, c. 160. Previously, the total value of tax credits awarded pursuant to the economic development programs contained in the ERA was $11.5 billion over a seven-year period. P.L. 2023, c. 98 amends the ERA to increase the duration of this period from seven years to nine years, thereby extending the period of operation of these programs.

Additionally, the new law permits the EDA to annually transfer certain tax credits otherwise allocated to the Aspire Program and Emerge Program. Previously, the total value of tax credits to be awarded pursuant to the Aspire Program and Emerge Program, not including transformative projects, could not exceed $1.1 billion per year over a six-year period, subject to certain carry-forward authorizations. Further, the total value of tax credits to be awarded for transformative projects pursuant to the Aspire Program could not exceed an aggregate balance of $2.5 billion. The new law provides that beginning in State Fiscal Year 2024, the EDA

may transfer, from the annual allotment of tax credits for the Aspire Program and Emerge Program, an amount not to exceed $500 million in tax credits for transformative projects pursuant to the Aspire Program, provided that: (1) the remaining allocation of tax credits otherwise available for transformative projects is less than $1 billion; and (2) the Board of the EDA determines that the transfer of tax credits is warranted based on such criteria as the Authority deems appropriate. However, if the EDA elects to transfer these tax credits, the new law requires the EDA to award no greater than 65 percent of the transferred tax credits to transformative projects located in the northern counties of the State and no greater than 35 percent of the transferred tax credits to transformative projects located in the southern counties of the State.

**Summary of the Public Comments and Agency Responses:**

In response to the December 20, 2021, notice of proposal at 53 N.J.R. 2252(a), the Authority received comments from the following:

1. Senator Troy Singleton

2. Adam M. Gordon, Esq., Executive Director, Fair Share Housing Center

3. Frank Marshall, Associate General Counsel, New Jersey State League of Municipalities

4. Christiana Foglio, Founder & CEO, Community Investment Strategies, Inc.

5. Kevin Polston, Project Executive, Riverton, Sayreville Seaport Associates Urban Renewal, L.P.

6. Natalie DeFilippo, Vice President of Development, Ingerman

1. COMMENT: While expressing support for the Program, the commenter shared concerns related to the definition of "incentive area" in the Aspire Program proposed rules. Specifically, the commenter expressed concern that requiring a "high frequency bus stop" could render many suburban projects ineligible for the Aspire Program, especially in southern New Jersey where population concentration may not meet the criteria for "high frequency bus stop."

RESPONSE: The NJEDA shares the concerns expressed by the commenter. However, the definition "incentive area" in the Aspire Program Rules, which includes "a high frequency bus stop as certified by the New Jersey Transit Corporation," is taken directly from the authorizing legislation (P.L. 2020, c. 156, section 55) and cannot be changed to address these concerns through the rulemaking process. See N.J.S.A. 34:1B-323. New Jersey Transit Corporation criteria stipulates that a high frequency bus stop must serve: in North Jersey, at least 10 buses per hour during weekday peak periods or at least four buses per hour throughout the day from 6:00 A.M. to 7:00 P.M.; in South Jersey, at least four buses per hour over the course of the day.

2. COMMENT: The commenter suggested that the Aspire Program rules be amended to ensure that all projects funded through the Program are in compliance with the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq., and the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.

RESPONSE: As detailed in the above summary at P.L. 2023, c. 98, signed by Governor Murphy on July 6, 2023, this new law revises certain requirements of the Aspire Program concerning the approval of residential projects, including the affordability controls. Previously, the law required residential units to be subject to affordability controls in accordance with the New Jersey Fair Housing Act, N.J.SA. 52:27D-301 et seq., and the corresponding rules set forth at the Uniform Housing Affordability Controls (UHAC), N.J.A.C. 5:80-26. However, UHAC explicitly states that it does not apply to residential projects that receive Federal Low-Income Housing Credit (LIHTC), 26 U.S.C. § 42. As a result, residential projects that receive funding through both the Aspire Program and the Federal LIHTC Program would generally not be required to comply with the UHAC rules. The new law revises the affordability controls and specifically requires the EDA, in consultation with the New Jersey Housing and Mortgage Finance Agency (HMFA), to adopt rules concerning the establishment and administration of affordability controls for Aspire Program residential projects. These affordability controls are included in the new special adoption rules at N.J.A.C. 19:31-23A.15 through 23A.22.

3. COMMENT: The commenter requested clarification in the rules regarding the identity of the chief executive at N.J.A.C. 19:31-23.8 (Approval letter; incentive award agreement) and the ratification or approval process of a negotiated community benefits agreement by the governing body. Further, the commenter requested clarification regarding the county's role and priorities should the municipality choose to designate the county as the negotiator for a community benefits agreement.

RESPONSE: The New Jersey Aspire Program statute specifically references "county or municipality" and "the governing body of the county or municipality in which the redevelopment project is located." N.J.S.A. 34:1B-328.f(1). The Aspire Program rules expand the language in the statute to include the chief executive of the municipality or, if requested by the chief executive of the municipality, the chief executive of the county in which the project is located. Pursuant to N.J.S.A. 34:1B-328.f(1), the community benefits agreement "may include, but shall not be limited to, requirements for training, employment, and youth development and free services to underserved communities in and around the community in which the redevelopment project is located." Therefore, in instances in which the chief executive officer of a municipality has requested the chief executive of the county in which the project is located to enter into the community benefits agreement, the provisions relating to the final community benefits agreement will be commensurate with the size and scope of the redevelopment project.

Further, as detailed in the above summary at P.L. 2023, c. 98, signed by Governor Murphy on July 6, 2023, this new law amended N.J.S.A. 31:1B-328.f to include a process whereby the governing body of the municipality in which the redevelopment project is located may adopt a resolution rendering a separate CBA unnecessary. N.J.A.C. 19:31-23A.8(e) incorporates these statutory changes.

4. COMMENT: This commenter noted that suburban communities may struggle to qualify due to the high frequency bus stop requirement included in the definition of "incentive area." Further, the commenter requested that (1) projects that include affordable housing be exempt from the community benefit agreement, be charged a more modest fees, and be exempt from meeting any minimum score requirements; (2) projects using LIHTC Program credits be exempt from evaluation for actual versus projected rate of return and liability if the rate of return exceeds 15 percent; (3) soft costs should be increased from 20 percent to 30 percent; (4) the rules clarify designation as an "area in need of redevelopment or a redevelopment plan" pursuant to the Local Housing and Redevelopment Law, N.J.S.A. 40A:12A-1 et seq.; (5) the requirement that the applicant-developer list all New Jersey Department of Labor and Workforce Development, Department of Environmental Protection, and Department of the Treasury permits and approvals or obligations and responsibilities be more limited; (6) a reference to the green manual be included in the rules; (7) the CPA procedures and deed restrictions used by HMFA be used in these rules; and (8) language in the rules for situations such as natural disasters and other events outside the control of the developer.

RESPONSE: As detailed in the above summary at P.L. 2023, c. 98, signed by Governor Murphy on July 6, 2023, amended the Aspire Program Act at N.J.S.A. 34:1B-328.f to create an exemption to the community benefits agreement requirement for projects that are located in a government-restricted municipality and 100 percent of the residential units constructed in the are reserved for occupancy by low- and moderate-income households. In addition, the new law provides that a developer shall be considered to have met its CBA requirement by submitting an appropriate resolution adopted by the governing body of the municipality in which the redevelopment project is located to the Authority. These statutory changes have been incorporated into the new special adoption rules at N.J.A.C. 19:31-23A.8(e).

As with all projects, the Authority has developed a fee structure for the Aspire Program that is proportionate to the complexity of the product, aligns with the marketplace, aligns with the size of the customer base, and is consistent across customers and product types. Thus, the fees are based on the type of project and project cost.

The Authority is statutorily obligated to establish scoring criteria for the evaluation of proposed projects, which can be used to set a minimum acceptable score or to allocate tax credits in circumstances where there are more project requests than available credits. Given the relatively large pool of available credits pursuant to the Aspire Program, the NJEDA does not anticipate that the Program will be oversubscribed. Accordingly, a

minimum score approach is appropriately used to assess whether a proposed project is consistent with the objectives, policy goals, and principles of the Program; rather than using scoring as a means to competitively rank or compare projects against each other.

The New Jersey Aspire Program Act statute does not provide the NJEDA authority to exempt projects using low-income housing tax credit (LIHTC) credits from the actual versus projected rate of return and associated liability proscribed by the statute. See N.J.S.A. 34:1B-328.c. In addition, the statutory definition "project cost" specifically states: "costs not directly related to construction, including capitalized interest paid to third parties, of an *amount not to exceed 20 percent* of the total costs and the cost of infrastructure improvements, including ancillary infrastructure projects." N.J.S.A. 34:1B-323 (emphasis added).

The definition of "redevelopment project" is established at N.J.S.A. 34:1B-323. The definition does not require designation of an "area in need of redevelopment or a redevelopment plan" pursuant to the Local Housing and Redevelopment Law, N.J.S.A. 40A:12A-1 et seq. A definition of "redevelopment agreement" is added to the rules at N.J.A.C. 19:31-23A.2, Definitions.

The submission requirements at N.J.A.C. 19:31-23.4, Application submission requirements, and 23.9, Reporting requirements and annual report, are necessary to ensure compliance with the New Jersey Aspire Program Act statute. See N.J.S.A. 34:1B-325.e.

Further, both the New Jersey Aspire Program Act and the proposed rules define the term "minimum environmental and sustainability standards" to mean "standards established by the authority in accordance with the *green building manual* prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6)." See N.J.S.A. 34:1B-323; N.J.A.C. 19:31-23.2 (emphasis added).

Finally, as suggested by the commenter, a force majeure provision is added at N.J.A.C. 19:31-23A.3, Eligibility criteria, and 23A.10, Reduction, forfeiture, and recapture of tax credits, in the new specially adopted concurrently proposed Aspire Program rules to allow the Authority to grant certain limited extensions when the Governor has declared an emergency.

5. COMMENT: This commenter sought clarification of the process for redevelopment agreements in lieu of community benefit agreements; and like commenter four, this commenter also raised concerns regarding scoring criteria, soft costs. The commenter also raised the following issues: Brownfield Development Areas should be added to the rules as transformative project eligibility criteria; additional qualifying language should be added to the rules to ensure that the prevailing wage requirements only apply to work provided by or on behalf of the applicant; modification of the benefit accounting period; inclusion, rather than exclusion, of other public funding sources when determining the need for gap funding and equity; and limitation or reduction of awards due to project vacancy presents developers with a risk they cannot control.

RESPONSE: As detailed in the above summary at P.L. 2023, c. 98, signed by Governor Murphy on July 6, 2023, amended the Aspire Program Act at N.J.S.A. 34:1B-333 to explicitly provide that "if the redevelopment project is located entirely on land designated by the Department of Environmental Protection as a brownfield development area pursuant to section 7 of P.L.2005, c.223 (C.58:10B-25.1), and the project cost of the redevelopment project includes at least $15,000,000 in environmental remediation costs, the redevelopment project shall constitute a project of special economic importance." These statutory changes have been incorporated into the new special adoption rules at N.J.A.C. 19:31-23A.2, Definitions, and 23A.11, Transformative projects.

As detailed in the above summary at P.L. 2023, c. 98, signed by Governor Murphy on July 6, 2023, also amended the Aspire Program Act at N.J.S.A. 34:1B-325 with regard to prevailing wage requirements. Pursuant to the new law, this requirement does not apply to workers who are employed to perform building services work by a commercial occupant that has a leasehold of less than 5,000 square feet of space. Additionally, the new law provides that if a commercial occupant violates the provision of the lease, sublease, or other commercial occupancy agreement due to the underpayment of the prevailing wage rate, then the developer and any co-applicant of the redevelopment project may be required to forfeit all or part of the tax credit award, subject to review and approval by Commissioner of Labor and Workforce Development. These statutory changes have been incorporated throughout the new special adoption rules.

In addition, as detailed in the above summary at P.L. 2023, c. 98, signed by Governor Murphy on July 6, 2023, the new law amended the Aspire Program Act at N.J.S.A. 34:1B-326 to expand the allowance for certain redevelopment projects to demonstrate a reduced net positive benefit to the State to include: commercial projects that contain 50,000 or more square feet of space devoted to research or technology focused incubator and conferencing facilities for one or more institutions of higher education or non-profit organizations, and which has a total project cost of not less than $50 million; redevelopment projects that are predominantly commercial and receive a Federal historic rehabilitation tax credit or a State tax credit pursuant to the "Historic Property Reinvestment Act," N.J.S.A. 34:1B-270 et seq.; commercial projects located on land owned by the Federal government on or before December 31, 2005. The new law also provides that the EDA may set a reduced net benefit requirement for any redevelopment project that is undertaken by a major cultural institution to renovate existing space or expand services into additional space, and in which the major cultural institution realizes all returns from the redevelopment project. Statutory language at N.J.S.A. 34:1B-326.c requiring that "the authority shall not consider the value of any taxes exempted, abated, rebated, or retained pursuant to the "Five-Year Exemption and Abatement Law," P.L. 1991, c. 441 (N.J.S.A. 40A:21-1 et seq.), the "Long Term Tax Exemption Law," P.L. 1991, c. 431 (C.40A:20-1 et al.), the "New Jersey Urban Enterprise Zones Act," P.L. 1983, c. 303 (C.52:27H-60 et seq.), or any other law that has the effect of lowering or eliminating the developer's State or local tax liability" remains unchanged. The statutory changes have been incorporated at N.J.A.C. 19:31-23A.6, Financing gap and fiscal impact analysis.

Finally, the NJEDA has established the forfeiture requirement based on occupancy as an appropriate means by which to conform the Aspire projects to the required UHAC standards and safeguard taxpayer funded incentives awarded pursuant to the Aspire Program.

6. COMMENT: This commenter expressed concerns regarding soft costs and equity. The commenter also expressed concern that the structural components of how low-income housing tax credit program deals are constructed indirectly hamper the Aspire Program from functioning as a gap filler for those projects.

RESPONSE: The NJEDA appreciates the commenter's concerns. The Aspire Program as enacted by sections 54 through 67 at P.L. 2020, c. 156, as amended at P.L. 2021, c. 160 (N.J.S.A. 34:1B-322 et seq.), was established to support projects across a broad range of real estate project categories. The rules were developed to make the Aspire Program effective across the intended range of real estate project types and may not fill project financing gaps for every real estate project in every development category. In such cases, additional project-supporting resources may be necessary.

The low-income housing tax credit program, which was created by the Tax Reform Act of 1986, is the Federal government's primary policy tool for the development of affordable rental housing. LIHTCs are awarded to developers to offset the cost of constructing rental housing in exchange for agreeing to reserve a fraction of rent-restricted units for lower-income households. Developers may claim the tax credits in equal amounts over 10 years once a property is completed and available to be rented. The New Jersey Housing and Mortgage Finance Agency is responsible for the administration and monitoring of the LIHTC program in New Jersey.

**Summary of the New Specially Adopted Concurrently Proposed Aspire Program Rules**

The following paragraphs summarize the contents of each section of the new rules implementing the Aspire Program:

*N.J.A.C. 19:31-23A.1 Applicability and Scope*

This section of the specially adopted concurrently proposed rules provides that this subchapter is promulgated by the NJEDA to implement the provisions of the New Jersey Economic Recovery Act of 2020 establishing the New Jersey Aspire Program Act (Act), sections 54 through 67 at P.L. 2020, c. 156, as amended at P.L. 2021, c. 160, and P.L. 2023, c. 98 (N.J.S.A. 34:1B-322 through 34:1B-335.2).

*N.J.A.C. 19:31-23A.2 Definitions*

This section defines certain terms used in this subchapter and incorporates terms defined at P.L. 2020, c. 156, pertaining to the Program.

*N.J.A.C. 19:31-23A.3 Eligibility Criteria*

This section of the specially adopted concurrently proposed rules provides that a developer and co-applicant, if applicable, shall be eligible to receive an incentive award for a redevelopment project if the developer demonstrates that, without the incentive award, the redevelopment project is not economically feasible; with the incentive award, the redevelopment project will be economically and commercially viable for the duration of the eligibility period; that a project financing gap exists; the redevelopment project, except a commercial project that is predominantly film production uses, is located in the incentive area; except for demolition and site remediation activities, the developer has not commenced any construction at the site of the redevelopment project prior to submitting an application; during the eligibility period, each worker employed to work at the redevelopment project, shall be paid not less than the prevailing wage rate, and the developer shall be issued a temporary certificate of occupancy for the redevelopment project facilities, except that the Authority may grant an extension for certain emergency situations. Only certain costs may be incurred prior to application.

Certain additional requirements apply based on project type. Additionally, a redevelopment project with a project cost in excess of $50,000,000 may complete the redevelopment project in phases and have the temporary certificate of occupancy issued no more than six years from the date on which the incentive award agreement is executed, provided that certain requirements are met.

In addition, the developer must comply with all requirements for filing tax and paying required State taxes and fees; the developer, all principals of the developer, and any affiliate of the developer, is not more than 24 months in arrears of any financing obligation for the redevelopment project at the time of application; except for certain exceptions, the overall public assistance provided to the project will result in a net positive economic benefit to the State; and if the application includes a co-applicant, the developer and co-applicant demonstrate the following: the co-applicant has complied with all requirements for filing and for paying State taxes and fees; the co-applicant's organizational purpose encompasses the proposed participation; the co-applicant has the financial and operational capability to provide the proposed contribution or services; the co-applicant's proposed capital, real property, or services will materially affect and serve the anticipated residents, tenants, or customers of the tenants of the redevelopment project; and the co-applicant's receipt and sale of the tax credits is necessary to finance the redevelopment project.

*N.J.A.C. 19:31-23A.4 Application Submission Requirements*

This section sets forth the information that each applicant and, if applicable, co-applicant must provide to the Authority including but not limited to: financial statements for the last three years of the lead development entity; a description of the project, including a breakdown of uses and related square footage and costs, and the developer's experience with similar project(s); a copy of a market and/or feasibility study for the proposed use of the project site by an independent third party; financial information of the project, which shall include all phases; a certification that any contractors or subcontractors that will perform work at the redevelopment project are registered as required by the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., have not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury; except for a residential project that is located in a government-restricted municipality, and in which 100 percent of the residential units constructed in the residential project are reserved for occupancy by low- and moderate-income households, for a redevelopment project whose total project cost equals or exceeds $10 million and for which a community benefits agreement, a redevelopment agreement, or a resolution is required pursuant to N.J.S.A. 34:1B-328.f and N.J.A.C. 19:31-23A.8(e), a letter of support from the chief executive of the municipality or county, if applicable, acknowledging the requirement and that the requirement must be met within the time required at N.J.A.C. 19:31-23A.8(e)4.

*N.J.A.C. 19:31-23A.5 Fees*

This section of the specially adopted concurrently proposed rules establishes the fees required for the Program. The fee amounts depend on the type of project. If the Authority deems review by a third party necessary, the developer is responsible for the payment.

*N.J.A.C. 19:31-23A.6 Financing Gap and Fiscal Impact Analysis*

This section provides that the Authority shall review the proposed total development cost and evaluate and validate the project financing gap estimated by each developer applying for an incentive award and conduct a fiscal impact analysis to ensure that the overall public assistance provided to the redevelopment project will result in a net positive economic benefit to the State. The net positive economic benefit analysis shall not apply to a residential project, to a component that is a food delivery source, or to a component that is a health care or health services center.

In determining whether the redevelopment project yields the net positive economic benefit, the Authority's consideration shall include, but not be limited to, the direct, indirect, and induced benefits to the State, including local taxes that may benefit the State, and may include induced benefits derived from construction, provided that such determination shall be limited to the net positive economic benefit derived from the capital investment commenced after the submission of an application to the Authority.

*N.J.A.C. 19:31-23A.7 Approval of Completed Application; Tax Credit Amounts*

This section of the specially adopted concurrently proposed rules provides that the Authority shall award incentive awards based on the order in which complete, qualifying applications are received. If interest in the Program so warrants, at the Authority's discretion, and upon notice, the Authority may institute a competitive application process.

Before the Board may consider a developer's application for tax credits, the Authority shall confirm with specific agencies that, any co-applicant, and the lead development entity are in compliance by being in substantial good standing or if a compliance issue exists, whoever is deemed responsible has entered into an agreement with the respective department and any co-applicant, which may include a practical corrective action plan.

If a developer intends to apply to both the Authority and the Agency for subsidies, the developer shall notify the Agency simultaneously with any application made to the Authority.

The maximum amount of tax credits available to a developer to apply annually shall be equal to the total credit amount divided by the duration of eligibility period in years, fractions of a dollar rounded down.

*N.J.A.C. 19:31-23A.8 Approval Letter; Incentive Award Agreement*

This section provides that an award by the Authority's Board will be subject to conditions that must be met in order to retain the credits. An approval letter setting forth the conditions will be sent to the applicant and any co-applicant and shall also provide the requirements necessary for the Authority to execute the incentive award agreement.

Following satisfaction of the requirements for the execution of an incentive award agreement, the Authority shall enter into an incentive award agreement with the developer and any co-applicant. The awarding of tax credits shall be conditioned on the developer's and any co-applicant's compliance with the requirements of the agreement, which as outlined in this section may include, but are not limited to, a labor harmony agreement, a community benefits agreement or redevelopment agreement or a resolution of the governing body in which the redevelopment project is located.

A developer shall submit, prior to the issuance of tax credits pursuant to the incentive award agreement, but no later than six months following project completion, satisfactory evidence of the completion of the redevelopment project and satisfaction of the Program eligibility requirements.

*N.J.A.C. 19:31-23A.9 Reporting Requirements and Annual Report*

This section of the specially adopted concurrently proposed rules requires that an approved developer that enters into an incentive award agreement shall submit an annual report with supporting documentation on the status and continued eligibility compliance of the approved project.

The report is due 120 days after the end of the developer's tax privilege period. Failure to timely submit the report, absent extenuating circumstances and the written approval of the Authority, shall result in a forfeiture of the tax credits for that privilege period.

Upon the Authority's approval of each annual certified report, the Authority shall provide to the developer and the Director a certificate of compliance indicating the amount of tax credits that the developer may apply against the developer's tax liability for that eligibility period. If the Authority approval included a co-applicant, the Authority shall provide the certificate of compliance to the co-applicant with a notice to the developer. Thereafter, the developer and any co-applicant shall apply the credit awarded and the Director of the Division of Taxation shall prescribe the order of priority of the application of the credit and any other credits allowed.

*N.J.A.C. 19:31-23A.10 Reduction, Forfeiture, and Recapture of Tax Credits*

This section provides that the developer and any co-applicant may have their tax credit reduced, forfeited in whole or part, or recaptured for certain violations including, but not limited to, if: the developer changes a project that has been approved absent prior written approval of a modification by the Authority; any labor harmony agreement requirement is not satisfied during the relevant tax period; on or after the third year of the eligibility period, the occupancy of commercial space of a redevelopment project, or component of a redevelopment project, for which a net positive economic benefit analysis is required is reduced to less than 60 percent; any worker employed to perform construction work at the redevelopment project is paid less than the prevailing wage rate for the worker's craft or trade pursuant to N.J.A.C. 19:31-23A.3(a)8 during the relevant tax period, a commercial tenant, commercial subtenant, or other commercial occupant violates the requirement to pay the prevailing wage rate for building services work set forth at N.J.S.A. 34:1B-325.a(7)(b) and N.J.A.C. 19:31-23A.3(a)9, the developer or co-applicant, if a party to the community benefits agreement or redevelopment, is not in compliance with the community benefits agreement or redevelopment agreement.

*N.J.A.C. 19:31-23A.11 Transformative Projects*

This section of the specially adopted concurrently proposed rules sets forth the transformative project eligibility requirements, which include but are not limited to, the redevelopment project: has a project financing gap; has a total project cost of at least $150,000,000; meets certain square footage requirements.

In addition, the section includes specific criteria and requirements for commercial projects of special economic importance and certain residential projects for the construction of 700 or more newly constructed residential units; or a mixed-use residential project with construction of 50,000 square feet or more of commercial space.

For transformative projects completed in phases, the developer shall be issued temporary certificates of occupancy for all phases of the transformative project. Each phase of a transformative project completed shall have a separate eligibility period. After completing each phase, the developer shall submit a certification that the phase is completed with the documents required. If the Authority approves the certification, the tax credit allowed to the developer or co-applicant shall be increased by the tax credit amount corresponding to that phase, which shall include only the infrastructure attributable to that phase. If upon review of the certification of completion of each phase, the Authority adjusts the incremental tax credit for that phase solely due to the certification demonstrating a lesser total project cost than projected at Board approval, the amount of tax credits not included in the incremental tax credit shall be available to the developer and any co-applicant in any subsequent phase, provided that the incremental tax credit has not been resized due to the project financing gap and the State fiscal impact analysis.

A review of the project financing gap shall be performed at the certification of completion of each phase, and the Authority may resize the incremental tax credit for that phase or subsequent phases.

*N.J.A.C. 19:31-23A.12 Application for Tax Credit Transfer Certificate*

This section details the documentation that must be submitted evidencing the value of the tax credits and provides that a developer or co-applicant may apply for a tax credit transfer certificate, covering one or more years, in lieu of the developer or co-applicant being allowed any amount of the credit against the tax liability of the developer. The tax credit transfer certificate may be sold or assigned, in full or in part, in an amount not less than $25,000, in the privilege period during which the developer or co-applicant receives the tax credit transfer certificate, to another person, who may apply the credit against a tax liability on or after the date of issuance of the tax credit transfer certificate.

The developer or co-applicant shall not sell, pledge, transfer, or assign, including a collateral assignment, a tax credit transfer certificate allowed pursuant to this section for consideration received by the developer or co-applicant of less than 85 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted. A purchaser or assignee of a tax credit transfer certificate pursuant to this section shall not make any subsequent transfers, assignments, or sales of the tax credit transfer certificate. The Authority shall publish, on its Internet website, information concerning each tax credit transfer certificate approved by the Authority and the Director pursuant to this section.

*N.J.A.C. 19:31-23A.13 Assignment of Rights of Incentive Award Agreement*

This section of the specially adopted concurrently proposed rules outlines the process for a developer or co-applicant to pledge, assign, transfer, or sell any or all of its rights, title, and interest in, and to, the incentive award agreement and in the incentive awards payable, along with the rights and remedies. Any assignment will be absolute for all purposes, including the Federal bankruptcy code.

Any pledge of an incentive award made by the developer shall be valid and binding from the time the pledge is made and filed in the records of the Authority. The incentive award pledged and thereafter received by the developer shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding against all parties having claims of any kind. The Authority shall publish certain information on its Internet website concerning each pledge, assignment, transfer, or sale approved by the Authority pursuant to this section.

*N.J.A.C. 19:31-23A.14 Affirmative Action and Prevailing Wage*

This section provides that the Authority's affirmative action requirements at N.J.S.A. 34:1B-5.4 and N.J.A.C. 19:30-3, as well as those within this subchapter shall apply to the redevelopment project, including, but not limited to, construction contracts for certain work performed before the application. The affirmative action requirements shall apply for two years after the first certificate of compliance is issued. During the eligibility period, prevailing wage shall apply to building services at the site of the redevelopment project pursuant to N.J.A.C. 19:31-23A.3(a)9.

*N.J.A.C. 19:31-23A.15 Affordability Controls: Documentation and Monitoring*

This section of the specially adopted concurrently proposed rules provides that developers and any subsequent owner of the affordable development shall retain all documentation and evidence necessary to demonstrate compliance with the affordability controls for the duration of the deed restriction and shall provide such documentation and evidence as set forth in this subchapter or at the request of the Agency or the Authority. The Agency may serve as a monitoring entity acting to report to the Authority compliance with the affordability controls.

*N.J.A.C. 19:31-23A.16 Affordability Controls: Affordability Average; Bedroom Distribution*

This section provides that in each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units and the remainder may be moderate-income units, provided that at least 10 percent of the restricted units shall be very low-income units. Further, this section proscribes the bedroom distribution for restricted units, the affordability average in determining initial rents; and that restricted units shall utilize the same type of heating source as market units within the affordable development.

*N.J.A.C. 19:31-23A.17 Affordability Controls: Occupancy Standards*

This section of the specially adopted concurrently proposed rules proscribes standards for how the initial rents for restricted units shall be determined.

*N.J.A.C. 19:31-23A.18 Affordability Controls: Control Periods for Rental Units*

This section provides that each restricted rental unit shall remain subject to the requirements of the affordability controls for a period of 45 years. Deeds of all real property that include restricted rental units shall contain deed restriction language as prescribed by the Authority. The deed restriction shall have priority over all mortgages on the property. A restricted unit shall remain subject to the affordability controls despite the occurrence of any of the following events: A sale or other voluntary transfer of the ownership of the affordable development or the restricted unit; or the entry and enforcement of any judgment of foreclosure on the affordable development or the restricted unit.

*N.J.A.C. 19:31-23A.19 Affordability Controls: Restrictions on Rents*

This section of the specially adopted concurrently proposed rules provides that rent shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate household size, however, that the rent shall be subject to the affordability average requirement at N.J.A.C. 19:31-23A.18. A written lease is required for all restricted rental units. Those tenant-paid utilities that are included in the utility allowance shall be so stated in the lease.

*N.J.A.C. 19:31-23A.20 Affordability Controls: Tenant Income Eligibility*

This section provides that the initial rent proposed for a restricted unit shall not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined, however, this limit may be exceeded pursuant to certain circumstances exists. Developers and subsequent owners of affordable development shall establish at least one rent for each type of unit based on the number of bedrooms for very low-income, low-income, and moderate-income units.

*N.J.A.C. 19:31-23A.21 Affordability Controls: Affirmative Marketing*

This section of the specially adopted concurrently proposed rules prescribes the affirmative marketing plan and strategy designed to attract renters regardless of race, religious principles, color, national origin, ancestry, marital or familial status, liability for service in the Armed Forces of the United States, nationality, sex, gender identity or expression, disability, age (except age-restricted units), source of lawful income, or number of children the developer or subsequent owner of an affordable development shall utilize.

*N.J.A.C. 19:31-23A.22 Affordability Controls: Household Selection; Related Project Information*

This section provides that the developer or subsequent owner of the affordable development shall obtain all information from applicant households necessary and appropriate to determine that restricted units are occupied by properly sized households with appropriate low- or moderate-income levels. When reviewing an applicant household's income to determine eligibility, the developer or subsequent owner of the affordable development shall compare the applicant household's total gross annual income to the household limits then in effect.

The developer or subsequent owner of the affordable development and shall maintain certain information and provide it to the Agency or the Authority upon request. The developer or subsequent owner of the affordable development shall employ a random selection process when selecting prospective tenants for restricted units.

*N.J.A.C. 19:31-23A.23 Appeals*

This section of the specially adopted concurrently proposed rules provides that an applicant may appeal the Board's action by submitting, in writing, to the Authority, within 20 calendar days from the effective date of the Board's action, an explanation as to how the applicant has met the Program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq.; and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

*N.J.A.C. 19:31-23A.24 Reports by the Authority to the Governor and Legislature on Implementation of the Program*

This section sets forth certain reporting requirements by the Authority to the Governor and the Legislature, which are statutorily required.

*N.J.A.C. 19:31-23A.25 Severability*

This section provides that if any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

The NJEDA has provided a 60-day comment period on this notice of concurrent proposal, therefore, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

**Social Impact**

The new specially adopted and concurrently proposed Aspire Program rules encourage real estate development and private investment into communities across New Jersey, with a focus on low-income and under-resourced communities, and are intended to have a positive social impact.

The Aspire Program is a key component of the State's broader economic development plan, which balances economic impact, for example, stimulating community development, with a focus on increasing equity and opportunity for all. This strategy is clearly demonstrated in the Economic Recovery Act of 2020's overall approach, which establishes or amends 15 different programs with varying development objectives. The Aspire Program is primarily focused on community development. Other programs are primarily focused on areas such as job creation and retention, small and micro business support, and other critical social issues, such as food security.

Catalyzing redevelopment projects and attracting long-term private investment into the State helps bolster long-term tax revenues and revitalizes cities and downtowns into more vibrant magnets for people and investment-rich with cultural amenities and safe, vibrant, walkable, mixed-use neighborhoods.

**Economic Impact**

The new specially adopted and concurrently proposed new rules are intended to bolster the State's economy by stimulating new high-quality economic development. The Aspire Program, the primary community development tool in the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, encourages smart, targeted investments in communities in the form of private capital investment that is, by definition, a durable and sustainable investment in the State's economic infrastructure. The resulting investments will support long-term economic benefits after tax credits have been fully utilized, in the form of job creation opportunities, transit-oriented development, and affordable and workforce housing, even if a given project does not meet its full potential. The fact that capital investment must be completed before tax credits are provided to approved projects, along with robust recapture and repayment provisions if the projects fail to meet their long-term obligations, ensures substantial economic protections within the Program.

**Federal Standards Statement**

A Federal standards analysis is not required because the specially adopted and concurrently proposed new rules are not subject to any Federal requirements or standards.

**Jobs Impact**

With the core focus of encouraging private investment in redevelopment projects, the Aspire Program also creates jobs needed to support approved projects. This includes the creation of union jobs needed to perform construction services on the redevelopment project, as well as permanent full-time jobs tied to the completed project, particularly for commercial and mixed-use projects. Prior to full implementation of the Program through these rules, it is not possible to accurately forecast the number of jobs that will be supported by the Aspire Program; however, the Act and the rules provide a series of transparency measures, including biannual Program evaluation reports, to ensure regular reporting of the number of jobs created.

**Agriculture Industry Impact**

The specially adopted and concurrently proposed new rules may have a positive impact on the agricultural industry, which includes aquaculture

and fisheries, through the targeted industry inclusion of the non-retail food and beverages industry. Specifically, a transformative project may be within the agricultural industry through involvement with research and development activities that advance agricultural food innovation technologies. As a result, new or advanced technologies may benefit the State's agricultural industry operations for the production, processing, preservation, and distribution of raw agricultural goods into consumer food products.

**Regulatory Flexibility Analysis**

The specially adopted and concurrently proposed new rules are unlikely to impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Any requirements are discussed in the Summary above; however, any costs will be minimal and fully offset by the amount of financial assistance received. The fees for the Program are intended to ensure a source of necessary administrative fee revenue for NJEDA to more fully cover the costs of the Program and are discussed in the Summary above.

**Housing Affordability Impact Analysis**

The specially adopted and concurrently proposed new rules are likely to have a positive impact on the affordability of housing in the State by helping to catalyze the development of market-rate housing in distressed communities and, where appropriate, mixed-income and affordable housing; however, the new rules should not impact the average costs of housing in the State. Pursuant to Aspire, a project may qualify for a percent of the total project cost for the new construction of a residential project that receives an allocation from the Federal Low-Income Housing Tax Credit Program administered by the New Jersey Housing and Mortgage Finance Agency. These residential projects supported through the Aspire Program are expected to impact the amount or cost of housing units, primarily including multi-family rental housing in the State.

**Smart Growth Development Impact Analysis**

The specially adopted and concurrently proposed new rules, which authorize tax credit awards for certain residential projects, may result in an indeterminate increase in the number of housing units or result in an increase or decrease in the average cost of housing in Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan.

**Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The new specially adopted and concurrently proposed rules 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 specially adopted and concurrently proposed new rules follows:

SUBCHAPTER 23A. ASPIRE

19:31-23A.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the New Jersey Economic Development Authority ("NJEDA" or "Authority") to implement the provisions of the New Jersey Economic Recovery Act of 2020 establishing the New Jersey Aspire Program Act (Act), sections 54 through 67 at P.L. 2020, c. 156, as amended at P.L. 2021, c. 160, and P.L. 2023, c. 98 (N.J.S.A. 34:1B-322 through 34:1B-335) and shall apply to all Program applications completed after the effective date of P.L. 2023, c. 98 (July 6, 2023); except that in accordance with section 14(b) of P.L. 2023, c. 98, a developer that has submitted a completed application for a residential project and obtains all applicable approvals pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., for the project prior to November 4, 2023, and submits written notice to the Authority before the Authority's decision on the application, may proceed pursuant to the reasonable and appropriate return on investment definition, as amended by section 1 at P.L. 2023, c. 98 (N.J.S.A. 34:1B-323), the tax credit award limits, as amended by subsection b of section 7 of P.L. 2023, c. 98 (N.J.S.A. 34:1B-329) and subsection g of Section 9 of P.L. 2023, c. 98 (N.J.S.A. 34:1B-333), and the rules and statute in effect prior to July 6, 2023.

(b) Pursuant to the Act, the Authority shall administer the Program, including the establishment and administration of affordability controls that apply to the residential units constructed for occupancy by low- and moderate-income households pursuant to the Program, to encourage redevelopment projects through the provision of tax credit awards to reimburse developers for certain project financing gap costs. The requirement to reserve certain units for low- and moderate-income households and the affordability controls for all restricted units in redevelopment projects set forth in this subchapter apply solely as a requirement of this Program and do not replace or supersede any obligation pursuant to any other rule, regulation, law, or legal requirement. The Authority Board may approve the award of a tax credit award to a developer upon application to the Authority pursuant to N.J.S.A. 34:1B-326 and 327. The value of all tax credits approved by the Authority pursuant to the Act shall be subject to the limitations set forth at N.J.S.A. 34:1B-362.

19:31-23A.2 Definitions

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

"Act" means the New Jersey Aspire Program Act, sections 54 through 67 at P.L. 2020, c. 156, as amended at P.L. 2021, c. 160, and P.L. 2023, c. 98 (N.J.S.A. 34:1B-322 through 34:1B-335).

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by, the developer. Control exists in all cases in which the entity is a member of a controlled group of corporations, as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. § 1563), or the entity is an organization in a group of organizations under common control, as defined pursuant to subsection (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. § 414). For a phased transformative project, a developer may establish, by clear and convincing evidence, as determined by the Authority, that control exists in situations involving lesser percentages of ownership if the developer shall have control, at a minimum, of all aspects of compliance with the Program. An affiliate of a developer may contribute to the project cost and may satisfy the requirement for site control during construction and the eligibility period, but in no event shall the tax credit certificate be issued to any affiliate.

"Affordability average" means the mean average of the percentage of median gross household income at which restricted units in an affordable development are affordable to households. For example, if the rents for the five restricted rental units in an affordable development are affordable at 46, 48, 50, 54, and 62 percent of median gross household income, respectively, the average affordability for those units would be 52 percent of median gross household income. The amount shall be rounded up to the nearest whole number (first decimal of five is rounded up).

"Affordability controls" means the controls established at N.J.A.C. 19:31-23A.15 through 22 on restricted units.

"Affordable" means, in the case of a rental unit, that the rent for the unit conforms to the standards set forth at N.J.A.C. 19:31-23A.19 and 23A.20.

"Affordable development" means a redevelopment project with restricted units.

"Agency" means the New Jersey Housing and Mortgage Finance Agency established pursuant to N.J.S.A. 55:14K-1 et seq.

"Age-restricted unit" means "housing for older persons" as defined at 42 U.S.C. § 3607.

"Authority" means the New Jersey Economic Development Authority established at N.J.S.A. 34:1B-4.

"Aviation district" means all areas within the boundaries of the Atlantic City International Airport, established pursuant to N.J.S.A. 27:25A-24, and the Federal Aviation Administration William J. Hughes Technical Center and the area within a one-mile radius of the outermost boundary of the Atlantic City International Airport and the Federal Aviation Administration William J. Hughes Technical Center.

"Board" means the Board of the New Jersey Economic Development Authority established at N.J.S.A. 34:1B-4.

"Building services" means any cleaning or routine building maintenance work, including, but not limited to, sweeping, vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse or trash, window cleaning, securing, patrolling, or other work in connection with the care or securing of an existing building, including services typically provided by a door-attendant or concierge. Building services shall not include any skilled maintenance work, professional services, or other public work for which a contractor is required to pay the prevailing wage as defined at N.J.S.A. 34:11-56.26.

"Cash flow" means the profit or loss that an investment property earns from rent, deposits, and other fees after financial obligations, such as debt, maintenance, government payments, and other expenses, have been paid. Cash flow shall include costs for benefits and services provided pursuant to the community benefits agreement during the eligibility period, subject to the limitations at N.J.A.C. 19:31-23A.8(e)8. For purposes of cash flow, government payments shall not include, among other things, payments that are the result of a violation or a settlement of a violation or any payment that is not reasonable and customary, as determined by the Authority.

"Co-applicant" means an entity that:

1. Is non-profit for taxation purposes pursuant to the provisions of section 501(c)3 of the Internal Revenue Code;

2. Contributes capital, real property, or services related to the project that directly affect and serve the anticipated residents, tenants, or customers of the tenants of the redevelopment project; and

3. Enters into a participation agreement with the developer that specifies the co-applicant's participation in the redevelopment project.

"Commercial project" means a redevelopment project that is predominantly commercial and, if located in a government-restricted municipality, contains 25,000 or more square feet, or if located in any other municipality, contains 50,000 or more square feet of office and retail space, industrial space, or film production uses. Office space shall include laboratory and research and development space. The term "commercial project" includes a redevelopment project comprised solely of a health care or health services center. A commercial project may include a parking component, provided that the square footage for the parking component shall not count toward the required minimum square feet and when determining if a project is a commercial or residential project, a parking component shall not constitute either a residential or commercial use. The term "commercial project" shall not include premises or space used predominately for warehousing, distribution, or fulfilment center.

"Community benefits agreement" means the agreement between the developer; a co-applicant, if applicable; the municipality or county; and the Authority, pursuant to N.J.S.A. 34:1B-328.f and N.J.A.C. 19:31-23A.8(e).

"Developer" or "applicant" means a person who enters, or proposes to enter, into an incentive award agreement pursuant to the provisions at N.J.S.A. 34:1B-328, including, but not limited to, a lender that completes a redevelopment project, operates a redevelopment project, or completes and operates a redevelopment project.

"Developer contributed capital" means equity contributed by the developer.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Distressed municipality" means a municipality that is qualified to receive assistance pursuant to N.J.S.A. 52:27D-178 et seq., a municipality pursuant to the supervision of the Local Finance Board pursuant to the provisions of the Local Government Supervision Act, N.J.S.A. 52:27BB-1 et seq., a municipality identified by the Director of the Division of Local Government Services in the Department of Community Affairs to be facing serious fiscal distress, an SDA municipality, or a municipality in which a major rail station is located.

"Economic development incentive" means a financial incentive, awarded by the Authority, or agreed to between the Authority and a business or person, for the purpose of stimulating economic development or redevelopment in New Jersey, including, but not limited to, a bond, grant, loan, loan guarantee, matching fund, tax credit, or other tax expenditure.

"Eligibility period" means the period of 10 years for an incentive award agreement or incentive phase agreement during which a developer or a co-applicant, if applicable, may claim a tax credit pursuant to the Program.

"Enhanced area" means a municipality that contains an urban transit hub, as defined at N.J.S.A. 34:1B-208; the five municipalities with the highest poverty rates according to the 2017 Municipal Revitalization Index; and the three municipalities with the highest percentage of SNAP recipients according to the 2017 Municipal Revitalization Index.

"Equity" means developer-contributed capital that may consist of cash, 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 the Authority. Property value shall be valued at 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. Equity shall include Federal or local grants and proceeds from the sale of Federal or local tax credits, including, but not limited to, the Historic Rehabilitation Tax Credit, 26 U.S.C. § 47, Low-Income Housing Credit, 26 U.S.C. § 42, and New Market Tax Credit, 26 U.S.C. § 45D. Equity shall not include State grants or tax credits or proceeds from redevelopment area bonds. For a residential project utilizing Low-Income Housing Tax Credits awarded by the New Jersey Housing and Mortgage Financing Agency, equity also includes the portion of the developer's fee that is deferred for a minimum of five years.

"Environmental remediation costs" means any costs incurred by a developer in the completion of any actions necessary to investigate, clean up, or respond to a known, suspected, or threatened discharge of contaminants, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action, pursuant to N.J.S.A. 58:10B-1 et seq.

"Film production uses" means a film studio, professional stage, sound stage, television studio, recording studio, screening room, or other production support space or infrastructure used for film production, including, but not limited to, production offices, mill space, or backlots, provided that the predominant use shall not be administrative or back office use.

"Fiscal impact analysis" means the analysis to be undertaken by the Authority to determine if the project meets the requirement of providing a net positive economic benefit to the State.

"Food delivery source" means access to nutritious foods, such as fresh fruits and vegetables, through grocery operators, including, but not limited to, a full-service supermarket or grocery store, and other healthy food retailers of at least 16,000 square feet, including, but not limited to, a prepared food establishment selling primarily nutritious ready-to-serve meals.

"Full-time employee at the redevelopment project" means a full-time employee whose primary office is at the redevelopment project and who spends at least 60 percent of their time at the redevelopment project, or who spends any other period of time generally accepted by custom or practice as full-time employment at the redevelopment project, as determined by the Authority.

"Government-restricted municipality" means a municipality in this State with a municipal revitalization index distress score of at least 75, that met the criteria for designation as an urban aid municipality in the 2019 State fiscal year, and that, on the effective date at N.J.S.A. 34:1B-269 et seq. (January 7, 2021), is subject to financial restrictions imposed pursuant to the Municipal Stabilization and Recovery Act, N.J.S.A. 52:27BBBB-1 et seq., or is restricted in its ability to levy property taxes on property in that municipality as a result of the State of New Jersey owning or controlling property representing at least 25 percent of the total land area of the municipality or as a result of the Federal government of the United States owning or controlling at least 50 acres of the total land area of the municipality, which is dedicated as a national natural landmark.

"Health care or health services center" means an establishment that consists of not less than 10,000 square feet devoted to health care or health services where patients are admitted for or seek examination and treatment by one or more physicians, dentists, psychologists, or other medical practitioners, and which is located in a municipality with a

Municipal Revitalization Index distress score of at least 50, a distressed municipality, or a qualified incentive tract.

"Hospitality establishment" means a hotel, motel, or any business, however organized, that sells food, beverages, or both, with seating for consumption by patrons on the premises.

"Incentive area" means an aviation district; a port district; area designated pursuant to the State Planning Act, N.J.S.A. 52:18A-196 et seq., as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a Designated Center, provided an area designated as Planning Area 2 (Suburban) or a Designated Center shall be located within a one-half mile radius of the mid-point, with bicycle and pedestrian connectivity, of a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station, including all light rail stations, or a high frequency bus stop, as certified by the New Jersey Transit Corporation; an area designated as a Brownfield Site pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq.; and an area of not less than 100 acres for which a licensed site remediation professional has certified environmental remediation costs in accordance with the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq., in an amount not less than $10,000,000, provided that any portion of such area is located in an area that otherwise qualifies as an incentive area.

"Incentive award" means an award of tax credits to a developer or a co-applicant, if applicable, to reimburse a developer for all or a portion of the project financing gap of a redevelopment project pursuant to the provisions at N.J.S.A. 34:1B-322 through 34:1B-335.

"Incentive award agreement" means the contract executed between a developer, any co-applicant, if applicable, and the Authority pursuant to N.J.S.A. 34:1B-328, which sets forth the terms and conditions pursuant to which the developer and any co-applicant may receive the incentive awards authorized pursuant to the provisions at N.J.S.A. 34:1B-322 through 34:1B-335.

"Incentive phase agreement" means, for a phased project, the capital investment requirements, and the time periods in which each phase of the project shall be commenced and completed. The incentive phase agreement may be incorporated in the incentive award agreement.

"Labor harmony agreement" means an agreement between a business that serves as the owner or operator of a retail establishment, hospitality establishment, or distribution center and one or more labor organizations, which requires, for the duration of the agreement: that any participating labor organization and its members agree to refrain from picketing, work stoppages, boycotts, or other economic interference against the business; and that the business agrees to maintain a neutral posture with respect to efforts of any participating labor organization to represent employees at an establishment or other unit in the retail establishment, hospitality establishment, or distribution center, agrees to permit the labor organization to have access to the employees, and agrees to guarantee to the labor organization the right to obtain recognition as the exclusive collective bargaining representatives of the employees in an establishment or unit at the retail establishment, hospitality establishment, or distribution center by demonstrating to the New Jersey State Board of Mediation, Division of Private Employment Dispute Settlement, or a mutually agreed-upon, neutral, third-party that a majority of workers in the unit have shown their preference for the labor organization to be their representative by signing authorization cards indicating that preference. The labor organization or organizations shall be from a list of labor organizations which have requested to be on the list and which the Commissioner of Labor and Workforce Development has determined represent substantial numbers of retail establishment, hospitality establishment, or distribution center employees in the State.

"Lead Development Entity" means the entity that is responsible for overseeing the redevelopment project and is relied upon by the Authority to demonstrate operational capability, expertise, and experience to complete the project. The Authority shall determine which entity is the lead development entity by considering the role an entity has in the coordination of activities related to the redevelopment project, including, but not limited to, project design, project financing, permitting and local approvals, construction oversight and contracting, and property management.

"Low-income household" means a household with a gross household income equal to 50 percent or less of the median gross household income.

"Low-income housing" or "low-income unit" means a housing unit affordable to and occupied or reserved for occupancy by low-income households.

"Major cultural institution" means a public or nonprofit institution, not including an institution of higher education, within this State that engages in the cultural, intellectual, scientific, environmental, educational, or artistic enrichment of the people of this State, and which institution is designated by the board as a major cultural institution. To be designated, a major cultural institution shall demonstrate at approval either an average of at least $2,000,000 in gross revenue in the most recent three consecutive tax years or that it has raised at least $5,000,000 in contributions and grants for a redevelopment project. Additionally, if the major cultural institution was established less than three years prior to the application, it shall provide an independent analysis that it has the ability and likelihood to remain operational for the duration of the eligibility period.

"Major rail station" means a railroad station that is located within a qualified incentive area and that provides to the public access to a minimum of six rail passenger service lines operated by the New Jersey Transit Corporation.

"Median gross household income" means the median income for households of the same size within the county in which the housing unit is located according to the Federal Department of Housing and Urban Development standard as utilized by the Agency for Federal low-income housing tax credits.

"Minimum environmental and sustainability standards" means the standards established by the Authority, in accordance with the green building manual prepared by the Commissioner of the Department of Community Affairs pursuant to N.J.S.A. 52:27D-130.6, regarding the use of renewable energy, energy-efficient technology, and non-renewable resources to reduce environmental degradation and encourage long-term cost reduction. The Authority shall publish these standards on its website.

"Mixed-use residential project" means a residential project with less than 700 units that qualifies as a transformative project.

"Moderate-income household" means a household with a total gross annual household income in excess of 50 percent but equal to or less than 80 percent of the median gross household income.

"Moderate-income housing" or "moderate-income unit" means a housing unit affordable to and occupied or reserved for occupancy by moderate-income households.

"Municipal Revitalization Index" means the index created by the Department of Community Affairs ranking New Jersey's municipalities according to eight separate indicators that measure diverse aspects of social, economic, physical, and fiscal conditions in each locality.

"Newly constructed residential unit" means a residential unit that was not previously occupied as a residential unit with the same room configuration, including, but not limited to, bedroom distribution, unit square footage, and floor plan. Any change that combines existing rooms that does not otherwise change the room configuration, such as combining separate kitchen and living rooms into a single kitchen and living room space, shall not be considered the construction of a newly constructed residential unit.

"Parking component" means any part of a redevelopment project used for parking and ancillary uses. For a redevelopment project that is not a phased transformative project, the parking and ancillary uses shall not be the sole use of any building or structure and any other use shall have at least 2,500 square feet. For a phased transformative project, the size of the parking component shall be based on the number of parking spaces required by the municipality or other applicable government entity that is applicable to the redevelopment project.

"Port district" means the portions of a qualified incentive area that are located within: the Port of New York District of the Port Authority of New York and New Jersey, as defined at Article II of the Compact Between the States of New York and New Jersey of 1921; or a 15-mile radius of the outermost boundary of each marine terminal facility established, acquired, constructed, rehabilitated, or improved in the South Jersey Port District established pursuant to the South Jersey Port Corporation Act, N.J.S.A. 12:11A-1 et seq.

"Program" means the New Jersey Aspire Program established by sections 54 through 67 at P.L. 2020, c. 156, as amended at P.L. 2021, c. 160, and P.L. 2023, c. 98 (N.J.S.A. 34:1B-322 through 34:1B-335).

"Project cost" or "total project cost" means the sum of the costs incurred in connection with a redevelopment project by a developer until the earlier of the issuance of a permanent certificate of occupancy and the certification of costs pursuant to N.J.A.C. 19:31-23A.8(f), or until such other time specified by the Authority, based upon such other documentation evidencing project completion as set forth in the incentive award agreement, for a specific investment or improvement, 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 total project costs, and the cost of infrastructure improvements, including ancillary infrastructure projects. Project cost shall not include the cost of acquiring land. Project cost shall include otherwise qualifying costs incurred by an affiliate of the developer. The fees paid by the developer or any co-applicant to the Authority associated with the application or administration of an incentive award pursuant to N.J.S.A. 34:1B-322 through 335 shall not constitute a project cost. When 100 percent of the residential units constructed in a residential project are reserved for occupancy by low- and moderate-income households, the term "project cost" shall also include the total amount of developer fees paid before acquiring permanent financing, as well as the deferred developer fees approved pursuant to the rules established by the Agency.

"Project financing gap" means 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, developer-contributed capital, which shall not be less than 20 percent of the total development cost, and investor or financial entity capital or loans for which the developer, 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; provided, however, that for a redevelopment project located in a government-restricted municipality, the developer-contributed capital shall not be less than 10 percent of the total development cost.

"Qualified incentive tract" means a population census tract having a poverty rate of 20 percent or more; or a census tract in which the median family income for the census tract does not exceed 80 percent of the greater of the Statewide median family income or the median family income of the metropolitan statistical area in which the census tract is situated.

"Random selection process" means a process by which currently income-eligible households are selected for placement in restricted units such that no preference is given to one household over another except for purposes of matching household income and size with an appropriately priced and sized restricted unit (for example, by lottery).

"Reasonable and appropriate return on investment" means the discount rate at which the present value of the future cash flows of an investment equals the cost of the investment. In determining the "reasonable and appropriate return on investment," an investment shall not include any Federal, State, or local tax credits. For a residential project that utilizes Federal low-income housing tax credits awarded by the Agency, the "reasonable and appropriate return on investment" shall be based on the approval of deferred developer fees pursuant to the rules established by the Agency. In the event that a residential project, which utilizes Federal low-income housing tax credits awarded by the Agency, generates returns on equity other than Federal or local grants or proceeds from the sale of Federal or local tax credits, the "reasonable and appropriate return on investment" shall be based on both the discount rate at which the present value of the future cash flows of an investment equal the cost of the investment for the entire project, and when evaluating only the units financed with Federal low-income housing tax credits awarded by the Agency, the approval of deferred developer fees pursuant to the rules established by the Agency.

"Redevelopment agreement" means a properly executed agreement between a municipality and a developer that pertains to a property being redeveloped and includes the redevelopment project, pursuant to the Local Redevelopment and Housing law, N.J.S.A. 40A:12A-1 et seq.

"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.

"Rent" means the gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances utilized by the Agency for Federal low-income housing tax credits.

"Residential project" means a redevelopment project that is predominantly residential, intended for multi-family residency, and may include a parking component. When determining if a project is a residential or commercial project, a parking component shall not constitute either a residential or commercial use.

"Restricted unit" means a dwelling unit that is subject to the affordability controls.

"SDA district" means an SDA district as defined at N.J.S.A. 18A:7G-3.

"SDA municipality" means a municipality in which an SDA district is situated.

"Soft costs" means costs not directly related to construction, including 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 all costs associated with financing, design, engineering, legal, or real estate commissions, including, but not limited to, architect fees, permit fees, loan origination and closing costs, construction management, and freight and shipping delivery. The term does 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 not included in the definition of project cost, project management, or other similar costs. Soft costs shall include costs for benefits and services provided pursuant to the community benefits agreement that are not directly related to construction of the project, subject to the limitations at N.J.A.C. 19:31-23A.8(e)8.

"Square feet" means the sum of all areas on all floors of a building included within the outside faces of its exterior walls, including all vertical penetration areas for circulation and shaft areas that connect one floor to another, but disregarding cornices, pilasters, buttresses, and similar structures that extend beyond the wall faces.

"Total development cost" or "total redevelopment cost" means any and all costs incurred for and in connection with the redevelopment project by the developer and any affiliate of the developer until the issuance of a permanent certificate of occupancy, 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.

"Transit hub" means an urban transit hub, as defined at N.J.S.A. 34:1B-208, that is located within an eligible municipality, as defined at N.J.S.A. 34:1B-208 and also located within a qualified incentive area.

"Vacant commercial building" means any commercial building or complex of commercial buildings having over 400,000 square feet of office, laboratory, or industrial space that is more than 70 percent unleased and unoccupied for a period of over one year at the time of application to the Authority, except that the amount of square feet in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties shall be 200,000.

"Very low-income household" means a household with a total gross annual household income equal to 35 percent or less of the median gross household income.

"Very low-income housing" or "very low-income unit" means a housing unit affordable and occupied or reserved for occupancy by very low-income households.

"Workforce housing" means housing that is affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs, and occupied or reserved for occupancy by households with a gross household income of more than 80 percent, but less than 120 percent, of the median gross household income for households of the same size within the housing region in which the housing is located.

19:31-23A.3 Eligibility criteria

(a) Prior to March 1, 2029, a developer and co-applicant, if applicable, shall be eligible to receive an incentive award for a redevelopment project only if the developer demonstrates to the Authority at the time of application that:

1. Without the incentive award, the redevelopment project is not economically feasible;

2. With the incentive award, the redevelopment project will be economically and commercially viable for the duration of the eligibility period;

3. A project financing gap, which includes consideration of the project's reasonable and appropriate return on investment exists, or the Authority determines that the redevelopment project's reasonable and appropriate return on investment is below the market rate of return and supports an incentive award of all or a portion of the project financing gap;

4. The redevelopment project, except a commercial project that is predominantly film production uses, is located in the incentive area;

5. Except for demolition and site remediation activities, the developer has not commenced any construction at the site of the redevelopment project prior to submitting an application. However, the Authority may determine that the redevelopment project would not be completed without the award or, in the event the redevelopment project is to be undertaken in phases, the requested incentive award is limited to only phases for which construction has not yet commenced;

6. The redevelopment project shall comply with minimum environmental and sustainability standards;

7. The redevelopment project shall comply with the Authority's affirmative action requirements, adopted pursuant to N.J.S.A. 34:1B-5.4, as provided at N.J.A.C. 19:31-23A.14(a);

8. During the eligibility period, each worker employed to perform construction work at the redevelopment project shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of the Department of Labor and Workforce Development pursuant to N.J.S.A. 34:11-56.25 et seq., and 34:11-56.58 et seq. For construction work, prevailing wage shall apply to all work done by tenants at the redevelopment project;

9. During the eligibility period, each worker employed to perform building services work at the redevelopment project, whether pursuant to contract by the developer, or a commercial tenant, commercial subtenant, or other commercial occupant, shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to N.J.S.A. 34:11-56.25 et seq., and 34:11-56.58 et seq., except that this requirement shall not apply to workers employed to perform building services work by a commercial tenant, commercial subtenant, or other commercial occupant that has a leasehold interest or other occupancy right in a redevelopment project, which leasehold interest or other occupancy right encompasses less than 5,000 square feet of space within the project. For purposes of this paragraph, square feet shall mean the rentable area of the building or structure in the lease but does not include the tenant's *pro rata* portion of common areas. In the event a portion of a redevelopment project is undertaken by a tenant and the tenant has a leasehold of more than 55 percent of space in the building owned or controlled by the developer, the requirement that each worker employed to perform building service work at the building be paid not less than the prevailing wage shall apply to the entire redevelopment project and all tenants therein. The requirement in this paragraph shall not apply to residential tenants or residential subtenants;

10. The redevelopment project shall be completed, and the developer shall be issued a temporary certificate of occupancy for the redevelopment project facilities by the applicable enforcing agency within four years of executing the incentive award agreement corresponding to the redevelopment project. However, if the Governor declares an emergency, the Chief Executive Officer of the Authority may grant an extension for the duration of the emergency and the Board of the Authority, upon recommendation of the Chief Executive Officer, may grant two additional six-month extensions, provided that on an ongoing basis:

i. The extensions are due to the economic disruption caused by the emergency;

ii. The project is delayed due to unforeseeable acts related to the project beyond the developer's control and not due to the developer's fault or negligence;

iii. The developer is using best efforts, with all due diligence, to proceed with the completion of the project and the issuance of the temporary certificate of occupancy; and

iv. The developer has made and continues to make all reasonable efforts to prevent, avoid, mitigate, and overcome the delay;

11. A redevelopment project with a project cost in excess of $50,000,000 may complete the redevelopment project in phases and have the temporary certificate of occupancy issued no more than six years from the date on which the incentive award agreement is executed, provided that:

i. Each phase shall be $50,000,000 or more, except for the last phase;

ii. The developer shall obtain a temporary certificate of occupancy for each phase; and

iii. The first temporary certificate of occupancy shall be obtained within four years of executing the incentive award agreement;

12. The developer has complied with all requirements for filing tax and information returns and for paying or remitting required State taxes and fees by submitting, as a part of the application, a tax clearance certificate, as described at N.J.S.A. 54:50-39;

13. The developer, all principals of the developer, and any affiliate of the developer, is not more than 24 months in arrears of any financing obligation for the redevelopment project at the time of application, in accordance with N.J.S.A. 34:1B-325.a;

14. Except for a residential project, food delivery source, or a health care or health services center, the overall public assistance provided to the project will result in a net positive economic benefit to the State; and

15. If the application includes a co-applicant, the developer and co-applicant demonstrate the following:

i. The co-applicant has complied with all requirements for filing tax and information returns and for paying or remitting required State taxes and fees by submitting, as a part of the application, a tax clearance certificate, as described in Section 1 at P.L. 2007, c. 101 (N.J.S.A. 54:50-39);

ii. The co-applicant's organizational purpose encompasses the proposed participation;

iii. The co-applicant has the financial and operational capability to provide the proposed contribution or services;

iv. The co-applicant's proposed capital, real property, or services will materially affect and serve the anticipated residents, tenants, or customers of the tenants of the redevelopment project; and

v. The co-applicant's receipt and sale of the tax credits is necessary to finance the redevelopment project.

(b) The following are the only costs incurred prior to application that may be included as project costs:

1. For applications submitted on or after January 1, 2024, demolition, site remediation, soft costs for project feasibility, and acquisition of buildings or other site improvements not including any land acquisition costs are project costs if incurred within two years prior to the date of the application; and

2. For applications submitted on or after January 1, 2023, and prior to January 1, 2024, demolition, site remediation, soft costs for project feasibility, and acquisition of buildings or other site improvements not including any land acquisition costs are project costs if incurred within three years prior to the date of the application.

(c) To determine that the project has a project financing gap, the developer shall demonstrate that the redevelopment project has developer-contributed capital of at least 20 percent of the total development cost, except that if a redevelopment project is located in a government-

restricted municipality, the developer-contributed capital shall be at least 10 percent of the total development cost.

(d) For a residential project to qualify for an incentive award, the residential project shall:

1. Have a total project cost of at least $17,500,000, if the project is located in a municipality with a population greater than 200,000 according to the latest Federal decennial census;

2. Have a total project cost of at least $10,000,000, if the project is located in a municipality with a population less than 200,000 according to the latest Federal decennial census; or

3. Have a total project cost of at least $5,000,000, if the project is in a qualified incentive tract or government-restricted municipality.

(e) For a residential project or a redevelopment project consisting of, or containing any, newly constructed residential units to qualify for an incentive award, the developer shall reserve at least 20 percent of the residential units constructed for occupancy by low- and moderate-income households with affordability controls set forth in this subchapter, except that a residential project receiving a Federal historic rehabilitation tax credit pursuant to Section 47 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 47, or a tax credit pursuant to the Historic Property Reinvestment Act, N.J.S.A. 34:1B-270 through 34:1B-276, shall be exempt from the affordability controls related to bedroom distribution.

(f) For all redevelopment projects, in order to include the cost of acquiring a building or buildings in the project cost of a redevelopment project involving the rehabilitation or improvement of the building or buildings, all other components of the project cost must equal or exceed the cost of acquiring the building or buildings, provided the cost of acquiring a building or buildings may be 60 percent of the total project cost for a project utilizing tax credits pursuant to the Federal Low-Income Housing Tax Credit Program and that consists solely of units reserved for occupancy by low- and moderate-income households.

19:31-23A.4 Application submission requirements

(a) Each application to the Authority made by a developer shall include the following information in an application format prescribed by the Authority:

1. The name of the developer and lead development entity;

2. The contact information of the person identified as the primary contact for the developer and lead development entity;

3. The type of the business of the developer and lead development entity;

4. The New Jersey tax identification number of the developer and lead development entity;

5. The Federal tax identification number of the developer and lead development entity;

6. Financial statements for the last three years of the lead development entity;

7. A description of the project, including a breakdown of uses and related square footage and costs, and the developer's experience with similar project(s);

8. A copy of a market and/or feasibility study for the proposed use of the project site by an independent third party, which must include the firm's position regarding the marketability and underwriting of the revenue and expense components of the proposed project for the duration of the eligibility period;

9. An anticipated construction schedule;

10. Financial information of the project, which shall include all phases, including, but not limited to, estimated project costs and total development costs, any State or local financial assistance for the project, proposed terms of financing, projected reasonable and appropriate return on investment on developer's contributed capital, net margin, and cash on cash yield, and a certification from the chief executive officer, or equivalent officer of the developer, that additional capital cannot be raised from other sources on a non-recourse basis after making all good faith efforts to raise additional capital, and any other documentation demonstrating economic and commercial viability pursuant to N.J.A.C. 19:31-23A.3(a)2;

11. As applicable, a certification that the project meets the requirements to reserve residential units as set forth at N.J.A.C. 19:31-23A.3(e) and/or 23A.11(e) and the affordability controls for such reserved units;

12. A list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities, with which the developer and the lead development entity is associated with, or has an interest in. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by Program interest numbers or licensing numbers. The developer and the lead development entity shall also submit a written certification by the chief executive officer, or equivalent officer of the developer, stating that the developer applying for the Program and the lead development entity satisfy the criteria at N.J.A.C. 19:31-23A.7(b)1 to be in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury, and the criteria at N.J.A.C. 19:31-23A.7(b)2 to be in substantial good standing with the Agency;

13. A certification that any contractors or subcontractors that will perform work at the redevelopment project are registered as required by the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., have not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury;

14. A certification by the chief executive officer, or equivalent officer of the developer, that the officer has reviewed the application information submitted and that the representations contained therein are accurate;

15. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;

16. Submission of a tax clearance certificate of the developer and the lead development entity;

17. A list of all the development subsidies, as defined at N.J.S.A. 52:39-1 et seq., that the developer is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received;

18. The status of control of the entire redevelopment project site, shown for each block and lot of the site as indicated on the local tax map;

19. A list and status of all required local, State, and Federal government permits and local planning and zoning board approvals that have been issued for the redevelopment project, or will be required to be issued, pending resolution of financing issues;

20. A description of how the minimum environmental and sustainability standards are to be incorporated into the proposed redevelopment project, including use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction;

21. Except for a residential project that is located in a government-restricted municipality, and in which 100 percent of the residential units constructed in the residential project are reserved for occupancy by low- and moderate-income households, for a redevelopment project whose total project cost equals or exceeds $10 million and for which a community benefits agreement, a redevelopment agreement, or a resolution is required pursuant to N.J.S.A. 34:1B-328.f and N.J.A.C. 19:31-23A.8(e), a letter of support from the chief executive of the municipality or county, if applicable, acknowledging the requirement and that the requirement must be met within the time required at N.J.A.C. 19:31-23A.8(e)4;

22. Information required by the Authority to evaluate and determine the application's score pursuant to N.J.A.C. 19:31-23A.7(c);

23. If a developer is applying as a major cultural institution, or to undertake a redevelopment project in which the proposed major cultural institution has an ownership interest:

i. Either:

(1) Form 990s or other forms filed with the Internal Revenue Service for the most recent three consecutive tax years showing the proposed major cultural institution's gross revenue; or

(2) Executed agreements or letters of intent demonstrating current contribution or grant commitments to the proposed major cultural institution;

ii. An independent analysis demonstrating that the proposed major cultural institution has the ability and likelihood to remain operational for the duration of the eligibility period; and

iii. If applicable, documentation evidencing the ownership interest by the proposed major cultural institution; and

24. Any other necessary and relevant information as determined by the Authority for a specific application, including, but not limited to, information needed to complete project financial review and developer capacity.

(b) If the developer is applying with a co-applicant, the application shall also include the following information of the co-applicant:

1. The name of the business;

2. The contact information of the person identified as the primary contact for the business;

3. The type of the business;

4. The New Jersey tax identification number;

5. The Federal tax identification number;

6. A list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities, with which the co-applicant is associated with, or has an interest in. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by Program interest numbers or licensing numbers. The co-applicant shall also submit a written certification by the chief executive officer, or equivalent officer of the eligible co-applicant, stating that the co-applicant applying for the Program satisfies the criteria at N.J.A.C. 19:31-23A.7(b)1 to be in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury;

7. A certification by the chief executive officer, or equivalent officer of the co-applicant, that the officer has reviewed the application information submitted and that the representations contained therein are accurate;

8. A completed legal questionnaire disclosing all relevant legal matters, in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;

9. Submission of a tax clearance certificate, pursuant to N.J.S.A. 54:50-39;

10. A list of all the development subsidies, as defined at N.J.S.A. 52:39-1 et seq., that the co-applicant is requesting or receiving for the redevelopment project, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received;

11. Organizing documents of the co-applicant and a narrative regarding the activity of the co-applicant generally, and in the State and municipality;

12. A description of the long-term participation agreement between the co-applicant and the developer, including a description of how the co-applicant will take an active role in the redevelopment project, including a description of the capital, real property, or services related to the project that the co-applicant will provide that directly affect and serve the anticipated residents, tenants, or customers of the tenants of the project;

13. An explanation of the need for a co-applicant to receive and sell the tax credits to finance the redevelopment project and how the co-applicant satisfies the eligibility criteria set forth at N.J.A.C. 19:31-23A.3(a)15; and

14. Any other necessary and relevant information as determined by the Authority for a specific application, including, but not limited to, information needed to complete review of project financial review and developer capacity.

(c) The Authority shall not consider an application for a redevelopment project, unless the developer submits with the application a letter evidencing support for the redevelopment project from the governing body of the municipality or municipalities in which the redevelopment project is located.

(d) The Authority may, in its sole discretion, consider two or more applications as one application for one redevelopment project based on factors including, but not limited to, the location of the redevelopment projects, the types of uses proposed, and the developer's financing and operational plans.

(e) If circumstances require a developer to amend its application to the Authority, then the developer, or chief executive officer or equivalent officer of the developer, shall certify to the Authority that the information provided in its amended application is true pursuant to the penalty of perjury.

19:31-23A.5 Fees

(a) A developer applying for benefits pursuant to the Program shall submit a one-time non-refundable application fee. The application fee shall be as follows:

1. For projects utilizing tax credits pursuant to the Federal Low-Income Housing Tax Credit Program and that consist solely of units that are reserved for low- and moderate-income households, the fee shall be $10,000;

2. For projects not subject to (a)1 above, with total project cost of $50 million or less, the fee shall be $30,000. For other projects not subject to (a)1 above, the fee shall be $50,000 without phases and $75,000 with phases; and

3. For transformative projects, the fee shall be $100,000 for each phase included in the proposed project.

(b) A developer shall pay to the Authority the full amount of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews or other analyses by a third party retained by the Authority, if the Authority deems such retention to be necessary.

(c) The developer shall pay to the Authority a non-refundable fee prior to the approval of the tax credit by the Authority as follows, except that the fee shall be refunded if the Authority does not approve the tax credit:

1. For projects utilizing tax credits pursuant to the Federal Low-Income Housing Tax Credit Program and that consist solely of units that are reserved for low- and moderate-income households, the fee shall be $75,000;

2. For projects that do not have any residential units with total project cost of $50 million or less, the fee shall be $50,000. For other projects that do not have residential units, the fee shall be $60,000 without phases and $250,000 with phases;

3. For projects not subject to (c)1 or 2 above, with total project cost of $50 million or less, the fee shall be $75,000. For other projects not subject to (c)1 or 2 above, the fee shall be $85,000 without phases and $275,000 with phases; and

4. For transformative projects, the fee shall be $500,000 for each phase included in the proposed project.

(d) For all redevelopment projects, including transformative projects, a developer shall pay, to the Authority, a non-refundable fee prior to the receipt of the tax credit certificate. For a phased transformative redevelopment project, the developer shall pay an additional non-refundable fee prior to the approval of the project cost certification for the second phase and each subsequent phase. The fee shall be as follows:

1. For projects utilizing tax credits pursuant to the Federal Low-Income Housing Tax Credit Program and that consist solely of units that are reserved for low- and moderate-income households, the fee shall be $75,000;

2. For projects that do not have any residential units with total project cost of $50 million or less, the fee shall be $50,000. For other projects that do not have residential units, the fee shall be $60,000 without phases and $250,000 with phases;

3. For projects not subject to (d)1 or 2, above, with total project cost of $50 million or less, the fee shall be $75,000. For other projects not subject to (d)1 or 2 above, the fee shall be $85,000 without phases and $275,000 with phases; and

4. For transformative projects, the fee shall be $500,000 for each phase included in the approved project.

(e) A developer shall pay, to the Authority, an annual servicing fee, beginning with the tax accounting or privilege period in which the Authority accepts the certification that the developer has met the eligibility requirements of the Program for the respective redevelopment project, or the first phase for a phased transformative project, and for the

duration of the eligibility period pursuant to N.J.A.C. 19:31-23A.2. The annual servicing fee shall be paid to the Authority by the developer at the time the developer submits its annual report, as follows:

1. For projects utilizing tax credits pursuant to the Federal Low-Income Housing Tax Credit Program and that consist solely of units that are reserved for low- and moderate-income households, the fee shall be $37,500;

2. For projects that do not have any residential units with total project cost of $50 million or less, the fee shall be $30,000. For other projects that do not have residential units, the fee shall be $40,000 without phases and $100,000 with phases;

3. For projects not subject to (e)1 or 2 above, with total project cost of $50 million or less, the fee shall be $42,500. For other projects not subject to (e)1 or 2 above, the fee shall be $52,500 without phases and $112,500 with phases; and

4. For transformative projects, the fee shall be $200,000 for each phase included in the approved project.

(f) A developer applying for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-23A.12, including use of the tax credit transfer certificate as collateral, or to pledge, assign, transfer, or sell any or all of its right, title, and interest in and to an incentive award agreement and in the incentive awards payable thereunder, shall pay to the Authority a fee, as follows:

1. For projects utilizing tax credits pursuant to the Federal Low-Income Housing Tax Credit Program and that consist solely of units that are reserved for low- and moderate-income households, the fee shall be $10,000, and $5,000 for each additional request made annually;

2. For projects not subject to (f)1 above, with total project cost of $50 million or less, the fee shall be $10,000, and $5,000 for each additional request made annually. For other projects not subject to (f)1 above, the fee shall be $10,000 without phases and $5,000 for each additional request made annually, and $20,000 with phases, and $10,000 for each additional request made annually; and

3. For transformative projects, the fee shall be $20,000 and $10,000 for each additional request made annually, for each phase included in the approved project.

(g) A developer shall pay to the Authority a non-refundable fee for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval, as follows:

1. For projects utilizing tax credits pursuant to the Federal Low-Income Housing Tax Credit Program and that consist solely of units that are reserved for low- and moderate-income households, a non-refundable fee of $10,000 shall be paid for each request for any administrative change, addition, or modification to the tax credit; and a non-refundable fee of $30,000 shall be paid for any major change, addition, or modification to the tax credit, such as those requiring extensive staff time and Board approval;

2. For projects not subject to (g)1 above, with total project cost of $50 million or less, a non-refundable fee of $10,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of $30,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval. For other projects not subject to (g)1 above, a non-refundable fee of $20,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of $30,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval without phases and $150,000 with phases; and

3. For transformative projects, a non-refundable fee of $30,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of $300,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval.

(h) A non-refundable fee shall be paid for the first six-month extension to the date by which the developer shall provide project financing and planning documentation required in the approval letter pursuant to N.J.A.C. 19:31-23A.8(a); and a non-refundable fee shall be paid for each subsequent extension, as follows:

1. For projects utilizing tax credits pursuant to the Federal Low-Income Housing Tax Credit Program and that consist solely of units that are reserved for low- and moderate-income households, the fee shall be $7,500;

2. For projects not subject to (h)1 above, with total project cost of $50 million or less, the fee shall be $7,500. For other projects not subject to (h)1 above, the fee shall be $10,000 without phases and $15,000 with phases; and

3. For transformative projects, the fee shall be $20,000 for each phase included in the approved project.

(i) A non-refundable fee shall be paid for the first six-month extension to the date by which the developer shall submit the satisfactory evidence with respect to the eligibility requirements of the Program pursuant to N.J.A.C. 19:31-23A.8(f) for the respective redevelopment project, or the respective phase of a phased transformative project pursuant to N.J.A.C. 19:31-23A.11(d); and a non-refundable fee shall be paid for each subsequent extension, as follows:

1. For projects utilizing tax credits pursuant to the Federal Low-Income Housing Tax Credit Program and that consist solely of units that are reserved for low- and moderate-income households, the fee shall be $7,500 for each extension;

2. For projects not subject to (i)1 above, with total project cost of $50 million or less, the fee shall be $7,500 for each extension. For other projects not subject to (i)1 above, the fee shall be $10,000 without phases and for each subsequent extension shall be $15,000 and $15,000 with phases and for each subsequent extension shall be $30,000; and

3. For transformative projects, the fee shall be $20,000 for each phase included in the approved project and for each subsequent extension shall be $40,000 for each phase included in the approved project.

(j) A developer seeking to terminate an existing incentive agreement in order to participate in an incentive award agreement authorized pursuant to the Aspire Program shall pay to the Authority a non-refundable fee, as follows:

1. For projects utilizing tax credits pursuant to the Federal Low-Income Housing Tax Credit Program and that consist solely of units that are reserved for low- and moderate-income households, the fee shall be $25,000;

2. For projects not subject to (j)1 above, with total project cost of $50 million or less, the fee shall be $25,000. For other projects not subject to (j)1 above, the fee shall be $50,000; and

3. For transformative projects, the fee shall be $100,000 for each phase included in the approved project.

(k) The fees paid to the Authority pursuant to this section shall not affect or reduce any fees due to the Agency.

19:31-23A.6 Financing gap and fiscal impact analysis

(a) The Authority shall review the proposed total development cost and evaluate and validate the project financing gap estimated by each developer applying for an incentive award, as follows:

1. The Authority shall evaluate the proposed total redevelopment costs to develop, and the components of the redevelopment project against reasonable market costs and components of comparable projects;

2. The Authority shall determine if the developer's submitted financial information for the project and, if applicable, all phases, is satisfactory. If satisfactory, the Authority shall incorporate the financial information in the project financing gap, including the reasonable and appropriate return on investment; and

3. The project financing gap analysis shall include, but not be limited to, an evaluation of the total development cost, amount of capital sufficient to complete the project, proposed rental rates, vacancy rates, reasonable and appropriate return on investment, and, in the Authority's sole discretion, a comparison to alternative financing structures for a comparable project available to the developer or its tenants.

(b) The Authority shall conduct a State fiscal impact analysis to ensure that the overall public assistance provided to the redevelopment project will result in a net positive economic benefit to the State, provided that the net positive economic benefit analysis shall not apply to a residential project, to a component that is a food delivery source, or to a component

that is a health care or health services center. In determining whether a project will result in a net positive economic benefit to the State, the Authority shall not consider the value of any taxes exempted, abated, rebated, or retained pursuant to the Five-Year Exemption and Abatement Law, N.J.S.A. 40A:21-1 et seq., the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq., or any other law that has the effect of lowering or eliminating the developer's State or local tax liability. The determination made pursuant to this subsection shall be based on the potential tax liability of the developer without regard for potential tax losses if the developer were to locate in another state. The Authority shall evaluate the net positive economic benefits on a present value basis pursuant to which the requested tax credit allocation amount is discounted to present value at the same discount rate as the projected benefits from the implementation of the proposed redevelopment project for which an award of tax credits is being sought.

(c) For a redevelopment project subject to the requirement at (b) above, to be eligible for any tax credits pursuant to the Program, a developer shall demonstrate to the Authority that the award of tax credits will yield a net positive economic benefit to the State not less than 160 percent of the award. The net positive economic benefit shall be evaluated for the duration of the eligibility period. The chief executive officer or equivalent officer of the developer shall certify, under the penalty of perjury, that all documents submitted and factual assertions made to the Authority to demonstrate that the award of tax credits will yield a net positive economic benefit to the State in accordance with this subsection are true and accurate at the time of submission. Notwithstanding this provision, the following redevelopment projects shall demonstrate to the Authority that the award of tax credit shall yield a net positive economic benefit to the State not less than 125 percent:

1. A redevelopment project located in a government-restricted municipality;

2. A commercial project that contains 50,000 or more square feet of space devoted to an incubator and conferencing facilities that are predominantly focused on research or technology that are used or managed by one or more institutions of higher education or non-profit organizations, and which has a total project cost of not less than $50 million;

3. A commercial project that receives a Federal historic rehabilitation tax credit pursuant to section 47 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 47, or a tax credit pursuant to the Historic Property Reinvestment Act, N.J.S.A. 34:1B-270 through 34:1B-276;

4. A commercial project that is located on land owned by the Federal government on or before December 31, 2005; and

5. A redevelopment project that is undertaken by a major cultural institution, or undertaken by a developer in which the major cultural institution has an ownership interest, to renovate existing space or expand services into additional space, including, but not limited to, new construction.

(d) In determining whether the redevelopment project yields the net positive economic benefit pursuant to (b) above and as certified by the chief executive officer or equivalent officer of the developer pursuant to (c) above, the Authority's consideration shall include, but not be limited to, the direct, indirect, and induced benefits to the State, including local taxes that may benefit the State, and may include induced benefits derived from construction, provided that such determination shall be limited to the net positive economic benefit derived from the capital investment commenced after the submission of an application to the Authority. For the purposes of calculating employee wages at the redevelopment project site to be included in the evaluation of the net positive economic benefit, the Authority shall rely upon the average wages in the region in which the respective redevelopment project is located.

(e) If, during the administration of the Program, the methodology used by the Authority in evaluating the net positive economic benefit of redevelopment projects is modified, the Authority shall apply such modification to the methodology prospectively. Prospective application means using the modified methodology to pending applications and to redevelopment projects that have been previously approved if the developer requests a modification, or this subchapter or the incentive award agreement requires, or authorizes, the Authority to conduct a reevaluation of the net positive economic benefit.

(f) In determining net positive economic benefits for any business or person considering locating in a redevelopment project and applying to receive from the Authority any other economic development incentive subsequent to the award of tax credits pursuant to the Act and this subchapter, the Authority shall not credit the business or person with any benefit that was previously credited to the redevelopment project.

19:31-23A.7 Approval of completed application; tax credit amounts

(a) Prior to March 1, 2029, for redevelopment projects eligible pursuant to N.J.S.A. 34:1B-325 and this subchapter, the Authority shall award incentive awards based on the order in which complete, qualifying applications are received by the Authority. If interest in the Program so warrants, at the Authority's discretion, and upon notice, the Authority may institute a competitive application process whereby all completed applications submitted by a date certain will be evaluated as if submitted on that date. The review will determine whether the applicant:

1. Complies with the eligibility criteria;

2. Satisfies the submission requirements; and

3. Provides adequate information for the subject application.

(b) Before the Board may consider a developer's application for tax credits:

1. The Authority shall confirm with the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the developer, any co-applicant, and the lead development entity are in compliance by being in substantial good standing with the statutes, rules, and other enforceable standards of the respective department, or, if a compliance issue exists, the developer, any co-applicant, as applicable, or the lead development entity has entered into an agreement with the respective department and any co-applicant, which may include a practical corrective action plan, as applicable.

i. Substantial good standing shall be determined by each department and mean, at a minimum, that the developer, the lead development entity, and any co-applicant:

(1) As to the Department of Labor and Workforce Development and the Department of Environmental Protection:

(A) Is in substantial compliance with all material statutes, rules, and other enforceable standards of the respective department that apply to the developer and any co-applicant; and

(B) Has no material violations of those statutes, rules, or other enforceable standards that remain substantially unresolved through entry into a corrective action plan, or other agreement with the department, with respect thereto; and

(2) As to all other departments, has no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective department.

ii. If the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury promulgates or issues its own more stringent rule or standard defining the term "substantial good standing," the respective department shall use such rule or standard to determine whether an entity is in substantial good standing.

2. The Authority shall confirm with the Agency that the applicant and the lead development entity are in compliance by being in substantial good standing with regard to the Agency's low-income housing tax credit.

3. The Authority may contract with an independent third party to perform a background check on the developer, the lead development entity, and any co-applicant.

4. Any contractors or subcontractors that will perform work at the redevelopment project shall be registered as required by the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., shall not have been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and shall possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury.

(c) Provided that the requirements at (b) above are satisfied, the Authority shall allocate incentive awards to redevelopment projects according to the redevelopment project's score and until either the

available incentive awards are exhausted or all redevelopment projects obtaining the minimum score receive an incentive award, whichever occurs first. The scoring shall be based on factors including, but not limited to, consistency of proposed use with applicable land use requirements or redevelopment plans; whether the redevelopment project adheres to smart growth, equitable development, and transit-oriented development principles; whether the redevelopment project has environmental or public health stressors and is located in an overburdened community pursuant to N.J.S.A. 13:1D-157 et seq.; whether the redevelopment project design anticipates long-term risks of climate change to the redevelopment project; and inclusion of workforce housing in a residential project not located in a distressed municipality. If insufficient funding exists to fully fund all eligible projects, a project may be offered partial funding.

(d) If a developer intends to apply to both the Authority and the Agency for tax credits, subsidies, or other financing, the developer shall notify the Agency simultaneously with any application made to the Authority. The Authority shall transmit its grant determination for such residential projects to the Agency, along with any information developed by the Authority and confirmation of the Authority's intent to provide an incentive award or award to the project. Approval of an application by the Agency, subject to the Agency's rules and guidelines for the applicable Agency Program, shall be the final determination required for an incentive award for a residential project pursuant to this section.

(e) Up to the limits established at (f) below, and in accordance with an incentive award agreement, beginning upon completion of the capital investment and the receipt of the temporary certificate of occupancy for the redevelopment project or the first phase of an approved phased project, or upon any other event evidencing project completion as set forth in the incentive award agreement, a developer shall be allowed a total tax credit pursuant to the Program that shall not exceed the percentages in this subsection. For purposes of the calculation of tax credits, project cost shall be reduced by the amount of State and local grants and tax credits other than those awarded pursuant to the Program.

1. Eighty of the total project cost for a redevelopment project that is located in a government-restricted municipality, not to exceed $120 million per redevelopment project or phase for a redevelopment project;

2. Sixty percent of the total project cost for a residential project that receives a four-percent allocation pursuant to the Federal Low-Income Housing Tax Credit Program or a redevelopment project that is located in a qualified incentive tract, enhanced area, or a municipality with a Municipal Revitalization Index score of at least 50, not to exceed $90 million per redevelopment project or phase of a redevelopment project; or

3. Fifty percent of the total project cost for any other redevelopment project, not to exceed $60 million per redevelopment project or phase for a redevelopment project.

(f) Notwithstanding the provisions at (e) above, for projects with tax credits pursuant to the Federal Low-Income Housing Tax Credit Program in which not all the residential units are reserved for occupancy by low- and moderate-income households, in no event shall the sum of all tax credits awarded pursuant to any program administered by the Authority and the Federal Low-Income Housing Tax Credit Program exceed 90 percent of the project cost. For all other projects, in no event shall the sum of all tax credits awarded pursuant to any program administered by the Authority exceed 90 percent of the project cost.

(g) The maximum amount of tax credits available to a developer to apply annually shall be equal to the total credit amount divided by the duration of eligibility period in years, fractions of a dollar rounded down.

19:31-23A.8 Approval letter; incentive award agreement

(a) Upon receipt of a recommendation from the Authority staff on the redevelopment project, the Board shall determine whether or not to approve the application, the maximum amount of tax credits, and the maximum percentage amount of allowed tax credits for its capital investment in a redevelopment project, and promptly notify the applicant, any co-applicant, and the Director of the Division of Taxation of the determination.

1. The Board's award of the tax credits will be subject to conditions subsequent that must be met in order to retain the credits. An approval letter setting forth the conditions subsequent will be sent to the applicant and any co-applicant. Such conditions shall include, but not be limited to, the requirement that the project complies with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), that the project does not violate any environmental law requirements, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, and the requirement that the minimum environmental and sustainability standards are incorporated into the proposed project. The approval letter shall also provide the requirements necessary for the Authority to execute the incentive award agreement.

2. The approval letter shall require documentation evidencing project financing and planning approvals, including the submittal of executed financing commitments, documents that evidence site control by the developer or an affiliate of the developer, a copy of the site plan approval, and a copy of all required permits and planning and zoning approvals and permits. If a developer is applying as a major cultural institution or to undertake a redevelopment project in which the proposed major cultural institution has an ownership interest, and the developer applied on the basis of contributions and grants, the approval letter shall also require submittal of executed grant and contribution agreements. If the Authority approval included a co-applicant, the required documents shall also include the executed participation agreement between the co-applicant and the developer with a term that extends for the duration of the eligibility period. Absent extenuating circumstances or the Authority's determination, in its sole discretion, the Authority's approval of the tax credits shall expire if the developer or co-applicant, as applicable, does not submit the documentation required in this paragraph within a year after approval of the application.

3. If the terms of the financial commitment in the evidence required by the approval letter are materially different from the projected terms in the application, the Authority may re-evaluate the project financing gap and reduce the size of the incentive award, accordingly.

4. The approval letter shall provide an estimated date of completion and include a requirement for periodic progress reports. If the Authority does not receive a progress report when required, or if the progress report demonstrates unsatisfactory progress, then the Authority, upon consultation with the Agency, and if the Agency has provided financial assistance or awarded tax credits to the redevelopment project, may rescind the incentive award. If the Authority rescinds an incentive award in the same calendar year in which the Authority approved the incentive award, then the Authority may allocate the unused tax credits to another applicant.

(b) Following satisfaction of the requirements for the execution of an incentive award agreement, the Authority shall enter into an incentive award agreement with the developer and any co-applicant. The Chief Executive Officer of the Authority shall negotiate the terms and conditions of the incentive award agreement on behalf of the State. The awarding of tax credits shall be conditioned on the developer's and any co-applicant's compliance with the requirements of the agreement.

(c) The incentive award agreement shall specify and include:

1. A detailed description of the proposed redevelopment project. For a phased project, the incentive award agreement may include an incentive phase agreement for each phase, which shall contain a description of the phase, the expected project cost and total development cost, and the commencement and completion for the respective phase;

2. The maximum amount of project cost and the maximum percentage of the project cost that will be used to calculate the amount of tax credits. If the actual project costs are less than the project cost set forth in the application, the tax credit shall be calculated based on the actual project cost;

3. The duration of the eligibility period;

4. A description of the occupancy permit or other event evidencing project completion that begins the eligibility period;

5. An ongoing requirement to provide the Authority with current personnel information that will enable the Authority to administer the Program;

6. A requirement that the developer shall not cease to operate the redevelopment project during the eligibility period;

7. A method for the developer to certify that it has met the project cost and other eligibility requirements of the Program;

8. A requirement for the developer to provide annual financial statements, as certified by a certified public accountant and accompanied by an unqualified opinion, reporting the project's financial performance;

9. Representations that the developer will comply with the minimum environmental and sustainability standards;

10. Representations that the developer and any co-applicants are in substantial good standing and that the redevelopment project will comply with all applicable laws, including, but not limited to, prevailing wage requirements pursuant to N.J.A.C. 19:31-23A.14(b) and (c), affirmative action requirements pursuant to N.J.A.C. 19:31-23A.14(a), and environmental laws, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13;

11. A provision permitting an audit of evidence and documentation, of the developer and any co-applicant, supporting the certifications pursuant to (f) below, and the annual reports pursuant to N.J.A.C. 19:31-23A.9, as the Authority deems necessary;

12. Reporting requirements pursuant to N.J.A.C. 19:31-23A.9;

13. A provision permitting the Authority to amend the agreement;

14. A provision establishing the conditions pursuant to which the Authority, the developer and any co-applicant, or all parties, may terminate the agreement;

15. Milestones for the redevelopment project, which shall include the estimated date of commencement and completion of the project, and a provision that the Authority, upon consultation with the Agency, if the Agency has provided financial assistance or awarded tax credits to the redevelopment project, may rescind the award of tax credits if a project fails to advance in accordance with the milestones in the incentive award agreement or fails to provide progress reports required pursuant to the approval letter;

16. A provision to verify the financing gap and the developer's updated projected cash flow at the time the developer submits the evidence of the completion of the project pursuant to (f) below, which shall include, but is not limited to, any executed permanent financing commitments. To ensure the protection of taxpayer money, if the Authority determines at project certification that the actual capital financing approach utilized by the project or the updated projected cash flow has resulted in a financing gap that is smaller than the financing gap determined at Board approval, the Authority shall reduce the amount of the tax credit or accept payment from the developer on a *pro rata* basis. If there is no project financing gap due to the actual capital financing approach utilized by the project or the updated projected cash flow, then the developer shall forfeit the incentive award;

17. A provision requiring that at the end of the seventh year of the eligibility period, the Authority shall evaluate the developer's actual reasonable and appropriate rate of return on investment and compare that actual reasonable and appropriate rate of return on investment to the reasonable and appropriate rate of return at the time of Board approval. If the actual rate of return on investment exceeds the reasonable and appropriate rate of return on investment at the time of Board approval by more than 15 percent, the Authority shall require the developer to pay 20 percent of the amount in excess of the reasonable and appropriate rate of return on investment at time of Board approval. The Authority shall require an escrow account to be held by the Authority until the end of the eligibility period. Following the final year of the eligibility period, the Authority shall determine if the developer's actual rate of return exceeded the reasonable and appropriate rate of return determined at Board approval. If the final actual rate of return does not exceed the reasonable and appropriate rate of return determined at Board approval, the Authority shall release to the developer the escrowed funds. If the actual project final rate of return exceeds the reasonable and appropriate rate of return determined at Board approval, the Authority shall require the developer to pay 20 percent of the amount of the excess, which shall include the funds held in escrow, and such funds shall be deposited in the State General Fund;

18. A provision acknowledging the Authority's right to confirm with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury, as set forth at N.J.A.C. 19:31-23A.7(b)1, that the developer, and any co-applicant, is in substantial good standing or has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable;

19. A provision providing that if the developer, and any co-applicant, is not in substantial good standing with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury and has not entered into an agreement with the respective department, as set forth at N.J.A.C. 19:31-23A.7(b)1, and after being given written notice thereof and an opportunity to be heard or to contest the determination by the respective department, then the developer and any co-applicant shall forfeit the tax credits in any year in which the developer and any co-applicant is neither in substantial good standing with each department nor has entered into a practical corrective action;

20. A requirement that the developer shall include in all commercial leases or other commercial occupancy agreements and shall require that all subleases or other commercial occupancy agreements applicable to the redevelopment project include, a provision setting forth the requirements at N.J.A.C. 19:31-23A.3(a)9, which provision shall be in a form acceptable to the Authority. A provision that if a commercial tenant, commercial subtenant, or other commercial occupant fails to pay the required prevailing wage rate as set forth at N.J.A.C. 19:31-23A.3(a)9, then the issuance of tax credits to the developer and any co-applicant shall be delayed until such time as documentation demonstrating compliance has been provided to the Commissioner of Labor and Workforce Development, subsequently reviewed and approved by the Commissioner of Labor and Workforce Development, and verified by the Authority;

21. A requirement that the developer shall confirm that each contractor or subcontractor performing work at the redevelopment project: is registered as required by the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq.; has not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State; and possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury;

22. A requirement for the developer to engage in on-site consultations prior to commencement of construction with the Division of Workplace Safety and Health in the Department of Health;

23. A requirement for the developer of a redevelopment project with newly constructed residential units to comply with the affordability controls;

24. A provision allowing the Authority to extend, in individual cases, the deadline for any annual reporting or project completion certification requirement;

25. Indemnification and insurance requirements from the developer and any co-applicant;

26. Events that would trigger forfeiture, reduction, or recapture of the tax credits, including, but not limited to, provisions in this subchapter; and

27. Default and remedies, including, but not limited to, a default if a developer or any co-applicant made a material misrepresentation on its application, provided that the incentive award agreement shall not allow the Authority to declare a cross-default when the developer of a redevelopment project, including any business affiliate of the developer or any other entity with common principals as the developer, is in default with any other assistance program administered by the Authority.

(d) The Authority shall not enter into an incentive award agreement for a redevelopment project that includes at least one retail establishment that will have more than 10 full-time employees, at least one distribution center that will have more than 20 full-time employees, or at least one hospitality establishment that will have more than 10 full-time employees, unless the incentive award agreement includes a precondition that any business that serves as the owner or operator of the retail establishment, distribution center, or hospitality establishment enters into a labor harmony agreement with a labor organization or cooperating labor organizations that represent retail or distribution center employees in the State. A labor harmony agreement shall be required only if the State has a proprietary interest in the redevelopment project and shall remain in effect for as long as the State acts as a market participant in the redevelopment project. The Authority may enter into an incentive award agreement with a developer and any co-applicants without the labor harmony agreement required pursuant to this subsection, if the Authority determines that the redevelopment project would not be able to go forward

if a labor harmony agreement is required. The Authority shall support the determination by a written finding, which provides the specific basis for the determination.

(e) Except as set forth at (e)1 below, for a redevelopment project whose total project cost equals or exceeds $10 million, in addition to the incentive award agreement, the developer and any co-applicant that is responsible or required to provide services pursuant to the community benefits agreement shall execute a community benefits agreement in accordance with N.J.S.A. 34:1B-328.f, as prescribed below.

1. A developer shall not be required to enter into a community benefits agreement pursuant to this subsection if:

i. The developer submits to the Authority a copy of either the developer's approval letter from the Authority or a redevelopment agreement applicable to the redevelopment project, provided that the approval letter or redevelopment agreement is certified by the municipality in which the redevelopment project is located, and includes provisions that meet or exceed the standards required for a community benefits agreement in this subsection, as determined by the Chief Executive Officer;

ii. The developer submits to the Authority:

(1) A resolution adopted by the governing body of the municipality in which the redevelopment project is located, which states and explains the governing body's reasons and determined that the redevelopment project will provide economic and social benefits to the community that fulfill the purposes at N.J.S.A. 34:1B-328.f and this subsection and, thus, rendering a separate community benefit agreement unnecessary; and

(2) Documentation that the resolution was adopted after at least one public hearing at which the governing body provided an opportunity for residents, community groups, and other stakeholders to testify; or

iii. the project is a residential project that is located in a government-restricted municipality, and in which 100 percent of the residential units constructed in the residential project are reserved for occupancy by low- and moderate-income households.

2. The developer shall enter into a community benefits agreement with the Authority and the chief executive of the municipality or, if requested by the chief executive of the municipality, the chief executive of the county, in which the redevelopment project is located. If the municipality requests the county to enter into the agreement, the chief executive of the municipality must submit to the Authority a signed letter notifying the Authority that the municipality has made the request. The Authority shall not participate in negotiations between the developer and the municipality or county; however, the Authority shall review the agreement prior to the execution of the agreement to determine compliance with the requirements of this subsection including, but not limited to, a provision for mediation as required pursuant to (e)7ii below. The agreement may include, but shall not be limited to, requirements for training, employment, and youth development and free services to underserved communities in and around the community in which the redevelopment project is located, as well as any other Program element, on the project site or in the host community, intended to improve community health, safety, access to opportunity, recreational opportunity, environmental resilience and environmental quality, quality of life, or other locally-prioritized community benefit.

3. The community benefits agreement or redevelopment agreement shall include a list of contributions by the developer; the monetary equivalent for any non-monetary contribution; an event of default, if the developer forfeits tax credits pursuant to N.J.A.C. 19:31-23A.10(e)2 in two successive years; and the date by which the community advisory committee must submit its annual report pursuant to (e)7 below.

4. The developer and the municipality or county shall have six months, with two three-month extensions, after Authority Board approval of the developer's application, to enter into a community benefits agreement, the redevelopment agreement, or approve the resolution and submit such agreement or resolution to the Authority. Submission of such community benefits agreement, redevelopment agreement, or resolution is a condition to entering into an incentive award agreement.

5. Prior to entering a community benefits agreement or a redevelopment agreement, the governing body of the municipality or, if the county is executing the agreement, the governing body of the county, in which the redevelopment project is located shall hold at least one public hearing subject to the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., at which the chief executive, or designee from the chief executive's department or office, shall hear testimony from residents, community groups, and other stakeholders on the needs of the community that the agreement should address. The chief executive, or designee, shall provide a record, including hearing minutes, satisfactory to the Authority, which shall be an exhibit to the community benefits agreement.

6. The community benefits agreement or redevelopment agreement shall provide for the creation of a community advisory committee to oversee the implementation of the agreement, monitor successes, and ensure compliance with the terms of the agreement, as follows:

i. The community advisory committee created pursuant to this paragraph shall be comprised of representatives from diverse community groups and residents of the municipality or, if the county is executing the agreement, community groups and residents of the county in which the redevelopment project is located.

ii. The chief executive of the municipality or, if the county is executing the agreement, the chief executive of the county shall appoint the members of the community advisory committee, which shall consist of not less than three members.

iii. For new construction or substantial rehabilitation projects, the community advisory committee shall have at least one representative from the business community in the zip code in which the redevelopment project is located, at least one representative from a community group, and at least one resident from the zip code in which the redevelopment project is located. There shall be no more than one municipal or county employee on the community advisory committee.

iv. For all other projects, the community advisory committee shall be determined by the chief executive of the municipality, or if the county is executing the agreement, the chief executive of the county, without regard to the criteria listed at (e)6iii above.

v. Community advisory committee members shall be required to sign a letter certifying that they have no financial or other interested relationship with the developer and any co-applicant. The certifications shall be submitted to the Authority by the developer or the municipality, or if the county is executing the agreement, the county.

vi. Any report or action shall be approved by a majority of the members of the community advisory committee.

7. The community advisory committee shall produce an annual report, including an evaluation of whether the developer is in compliance with the terms of the community benefits agreement or the redevelopment agreement:

i. If the report from the community advisory committee and the certification from the developer pursuant to N.J.A.C. 19:31-23A.9(b)1 both indicate that the developer is in compliance with the community benefits agreement, then the developer shall be in compliance with the community benefits agreement. Absent extenuating circumstances, and the written approval of the Authority, if the community advisory committee does not timely submit the annual report, then the determination of compliance of the developer shall be based on the certification from the developer pursuant to N.J.A.C. 19:31-23A.9(b)1.

ii. If the report from the community advisory committee indicates that the developer is not in compliance with the terms of the community benefits agreement, the Authority shall serve as, or identify, a mediator. The community advisory committee, municipality or county, as applicable, and the developer shall enter into non-binding mediation to seek resolution or mutually agreeable amendments to the community benefits agreement within 60 days of the notice from the Authority of the person who will serve as a mediator. Thereafter, the results of the mediation shall be reported to the Authority.

iii. If a resolution is not able to be achieved through mediation, a hearing officer will be assigned by the Authority. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. Following completion of the record review and in-person hearing, as applicable, the hearing officer shall issue a written report to the Chief Executive Officer containing his or her finding(s) and recommendation(s). The hearing officer's report shall be advisory in

nature. The developer, municipality or county, and the community advisory committee shall receive a copy of the written report of the hearing officer and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report. The Chief Executive Officer shall consider the hearing officer's report and any timely submitted written comments and exceptions. Based on that review, the Chief Executive Officer shall make a determination of compliance or non-compliance. The process described in this subsection is not a contested case subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

8. The sum of costs for benefits and services provided pursuant to the community benefits agreement or the redevelopment agreement included as soft costs or to determine cash flow shall not exceed five percent of project cost. For purposes of this paragraph, costs for benefits and services incurred during the eligibility period shall be discounted to present value.

(f) A developer shall submit, prior to the issuance of tax credits pursuant to the incentive award agreement, but no later than six months following project completion, satisfactory evidence of the completion of the redevelopment project and satisfaction of the Program eligibility requirements, which shall include, but not be limited to, the documents in this subsection. The Authority may provide any information in the annual report to the Agency for any redevelopment project if the Agency has provided financial assistance or awarded tax credits to the redevelopment project.

1. Evidence of a temporary certificate of occupancy or other event evidencing project completion that begins the eligibility period indicated in the incentive award agreement;

2. A certification by a qualified independent certified public accountant of the actual project costs. The certification shall be made pursuant to an "agreed upon procedures" letter acceptable to the Authority. If the project cost is reduced below the relevant minimum project cost for eligibility, the redevelopment project shall no longer be eligible. If the project cost in the certification is less than the project cost in the approval of the application, the Authority may re-evaluate the net positive economic benefit and reduce the size of the tax credits accordingly. The Authority shall qualify certified public accountants and provide to the developer the list of qualified certified public accountants; provided, however, the developer may select a certified public accountant that is independent to the developer and any co-applicant and not on the Authority's list of qualified certified public accountants for purposes of the project cost certification, if the developer demonstrates an extenuating circumstance prohibiting the developer from retaining a qualified certified public accountant. Such circumstances include, but are not limited to, the unavailability of any of the qualified certified public accountants to timely complete the certification or none of the qualified certified public accountants are independent to the developer;

3. A floor plan identifying the actual and proposed uses and square foot of gross leasable area for each such use and, if the redevelopment project comprises multiple buildings, a site plan. For a redevelopment project with eligibility requirements on size or uses, including, but not limited to, predominance of commercial, residential, or film production uses, evidence that the project satisfies all such requirements. For a redevelopment project in which any commercial tenant, commercial subtenant, or other commercial occupant is the party to the contract to perform building services work as set forth at N.J.A.C. 19:31-23A.3(a)9, the floor plan, or site plan, shall identify all such tenants, the premise occupied by each such tenant, and the size of the space occupied by such tenant;

4. A certification indicating whether or not the developer is aware of any condition, event, or act that would cause the developer or any co-applicant not to be in compliance with the approval, the Act, or this subchapter;

5. A letter from the Agency to the developer with a copy to the Authority confirming compliance with the affordability controls;

6. A certification from a licensed engineer that the redevelopment project has adhered in all material respects to the plan submitted by the developer describing how the developer would satisfy the minimum environmental and sustainability standards;

7. Any permanent financing commitments executed as of the date of the submission of the documents in this subsection and an updated project *pro forma*;

8. A certification by the chief executive officer or equivalent officer of the developer that the information provided pursuant to this subsection is true pursuant to the penalty of perjury. Claims, records, or statements submitted by a developer to the Authority in order to receive tax credits shall not be considered claims, records, or statements made in connection with State tax laws; and

9. If the Authority approval included a co-applicant, a certification that the participation agreement between the developer and the co-applicant remains in effect and is not in default.

(g) A developer shall forfeit the credit amount for any tax period for which the developer's documentation remains uncertified by the Authority as of the date for certification indicated in the incentive award agreement, although credit amounts for the remainder of the years of the eligibility period shall remain available to the developer.

(h) Once the Authority accepts the documentation required at (f) above and the Authority determines that all eligibility requirements and other required conditions have been met, within 90 days of the Authority's acceptance of the documentation and evidence satisfactory to the Authority, the Authority shall notify the developer and notify the Director. The developer shall receive its tax credit certificate that will be based on the information submitted in the certification pursuant to (f) above, provided it shall not exceed the maximum amount determined by the Board pursuant to N.J.A.C. 19:31-23A.7(e), (f), and (g). The use of the tax credit certificate shall be subject to the receipt of an annual certificate of compliance issued by the Authority.

(i) At, or before, the date of certification, any modification to the redevelopment project as approved by the Board, including, but not limited to, a reduction in the amount of the project cost, or square feet, shall require review and approval by the Authority to determine that the redevelopment project, as modified, does not undermine the basis for the tax credit award approved.

19:31-23A.9 Reporting requirements and annual report

(a) A developer approved for an incentive award and that enters an incentive award agreement shall submit annually, commencing in the year in which the incentive award is issued and for the remainder of the eligibility period, a report indicating whether the developer is aware of any condition, event, or act that would cause the developer or any co-applicant not to be in compliance with the incentive award agreement or the provisions of this subchapter and the Act and any additional reporting requirements in the incentive award agreement or tax credit certificate. The developer, or an authorized agent of the developer, shall certify that the information provided pursuant to this subsection is true under the penalty of perjury. The Authority may provide any information in the annual report to the Agency for any redevelopment project if the Agency has provided financial assistance or awarded tax credits to the redevelopment project.

(b) The annual report shall consist of:

1. A certification indicating whether or not the developer is aware of any condition, event, or act that would cause the developer or any co-applicant not to be in compliance with the approval, the Act, the incentive award agreement, community benefits agreement pursuant to N.J.S.A 34:1B-328.f and N.J.A.C. 19:31-23A.8(e), or this subchapter;

2. A certification indicating that the project does not violate any environmental law requirements, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13;

3. For the two years after the first certificate of compliance is issued, evidence that the redevelopment project remains in compliance with the Authority's affirmative action requirements pursuant to N.J.A.C. 19:31-23A.14(a);

4. Evidence that the redevelopment project remains in compliance with the Authority's prevailing wage requirements pursuant to N.J.A.C. 19:31-23A.14(b) and (c);

5. A tax clearance certificate as described at N.J.S.A. 54:50-39 for the developer and any co-applicant;

6. A certification from the developer that the project is still operating and that the redevelopment project continues to meet the eligibility

requirements on site control, size, and uses, including, but not limited to, predominance of commercial, residential, or film production uses, and a floor plan identifying the actual uses and square foot of gross leasable area for each such use and, if the redevelopment project comprises multiple buildings, a site plan. For a redevelopment project with eligibility requirements on size or uses, including, but not limited to, predominance of commercial, residential, or film production uses, evidence that the project satisfies all such requirements. For a redevelopment project in which any commercial tenant, commercial subtenant, or other commercial occupant is the party to the contract to perform building services work as set forth at N.J.A.C. 19:31-23A.3(a)9, the floor plan, or site plan, shall identify all such tenants, the premise occupied by each such tenant, and the size of the space occupied by such tenant;

7. For a commercial project, a list of all tenants, the gross leasable area leased by each tenant, and whether the tenant is operating its business at the premises leased by the tenant;

8. For a project with residential units, a letter from the Agency to the developer with copy to the Authority confirming compliance with the affordability controls;

9. A list of tenant information for all residential units;

10. Annual financial statement, as certified by a certified public accountant and accompanied by an unqualified opinion, reporting the project's financial performance, and, for the annual report for the seventh and last year, updated project *pro forma* and all other information required by the Authority to evaluate the actual reasonable and appropriate rate of return on investment;

11. If applicable, a certification indicating compliance with the community benefits agreement or redevelopment agreement provisions required pursuant to N.J.S.A. 34:1B-328.f and N.J.A.C. 19:31-23A.8(e);

12. If applicable, satisfactory evidence that the developer complies with the labor harmony agreement requirement pursuant to N.J.A.C. 19:31-23A.8(d);

13. For the first annual report, the permanent certificate of occupancy covering the entire redevelopment project;

14. If the Authority approval included a co-applicant, a certification that the participation agreement between the developer and the co-applicant remains in effect and is not in default and that the co-applicant is making the contribution(s) required pursuant to the participation agreement; and

15. In conducting its annual review, the Authority may require a developer to submit any information determined by the Authority to be necessary and relevant to its review.

(c) The report required at (a) above is due 120 days after the end of the developer's tax privilege period. Failure to timely submit the report, absent extenuating circumstances and the written approval of the Authority, shall result in a forfeiture of the tax credits for that privilege period. The Authority reserves the right to audit any of the representations made and documents submitted in the annual report.

(d) Upon receipt, review, and acceptance of each report submitted during the eligibility period, the Authority shall provide to the developer and the Director a certificate of compliance indicating the amount of tax credits that the developer may apply against the developer's tax liability. If the Authority approval included a co-applicant, the Authority shall provide the certificate of compliance to the co-applicant with a notice to the developer. The Authority shall not prorate the tax credit for the first year. No tax credit certificate will be valid without the certificate of compliance issued for the relevant tax privilege period.

(e) Upon receipt by the Director of the certificate of compliance, the Director shall allow the developer or co-applicant a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5. A developer, or co-applicant, shall apply the credit awarded against the developer's liability pursuant to N.J.S.A. 17:32-15, 17B:23-5, 54:10A-5, or 54:18A-2 and 3, for the tax period during which the Director allows the developer or co-applicant a tax credit pursuant to this subsection. A developer or co-applicant may carry forward an unused credit for use in the seven privilege periods next following the privilege period for which the credits are awarded. Credits granted to a partnership shall be passed through to the corporate partners, corporate members, or corporate owners, respectively, *pro rata*, or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method provided to the Director accompanied by any additional information as the Director may prescribe consistent with any rule, guidance, or other publication issued by the Division of Taxation.

(f) The Director shall prescribe the order of priority of the application of the credit allowed pursuant to this section and any other credits allowed by law against the tax imposed pursuant to N.J.S.A. 54:10A-5. The amount of the credit applied pursuant to this section against the tax imposed pursuant to N.J.S.A. 54:10A-5 for a tax privilege period, together with any other credits allowed by law, shall not reduce the tax liability to an amount less than the statutory minimum provided at N.J.S.A. 54:10A-5.

19:31-23A.10 Reduction, forfeiture, and recapture of tax credits

(a) The developer and any co-applicant shall forfeit all credits for the tax period in which the change occurs and each subsequent tax period and may be subject to recapture, if:

1. The developer changes a project that has been approved based on certain eligibility requirements on size and uses, including, but not limited to, the predominance of commercial, residential, or film productions uses, and the redevelopment project changes such that the eligibility requirements are no longer met;

2. Absent prior written approval of a modification by the Authority, the developer changes any characteristic of the redevelopment project, including, but not limited to, uses, that were utilized to determine the net positive economic benefit pursuant to N.J.A.C. 19:31-23A.6(b) and 23A.11(l) or of a transformative project that was utilized to determine the anticipated employee occupancy pursuant to N.J.A.C. 19:31-23A.11(a)4i(1);

3. The developer changes the project, so that the project would score less than the minimum score pursuant to N.J.A.C. 19:31-23A.7(c); or

4. If, upon review of the certification and documentation for any phase of a transformative project, the project has been modified such that it no longer qualifies as a transformative project.

(b) If any labor harmony agreement requirement pursuant to N.J.A.C. 19:31-23A.8(d) is not satisfied during the relevant tax period, then the developer and any co-applicant shall forfeit all credit for the tax period in which the labor harmony agreement requirements are not satisfied and each subsequent tax period until the first tax period for which documentation demonstrating compliance has been reviewed and approved by the Authority, for which tax period and each subsequent period the full amount of the tax credit shall be allowed.

(c) If, on or after the third year of the eligibility period, the occupancy of commercial space of a redevelopment project, or component of a redevelopment project, for which a net positive economic benefit analysis is required pursuant to N.J.A.C. 19:31-23A.6(b) is reduced to less than 60 percent, the developer and any co-applicant shall forfeit all credit for the tax period in which the change occurs and each subsequent tax period until the first tax period for which documentation demonstrating the restoration of occupancy to the threshold level required by this subsection has been reviewed and approved by the Authority, for which tax period and each subsequent period the full amount of the tax credit shall be allowed. For the purposes of this subsection, commercial space shall be considered occupied if the space is leased and the tenant is operating its business in the leased space. Occupancy for the tax period shall be determined as the average of the monthly occupancy for the period. If the Authority determines there are extenuating circumstances beyond the developer and any co-applicant's control based on the Governor declaring an emergency, the Authority may waive the 60 percent occupancy requirement for the tax year.

(d) As of the date of the annual report pursuant to N.J.A.C. 19:31-23A.9:

1. If any worker employed to perform construction work at the redevelopment project is paid less than the prevailing wage rate for the worker's craft or trade pursuant to N.J.A.C. 19:31-23A.3(a)8 during the relevant tax period, then the developer and any co-applicant shall forfeit all credit for the tax period in which the prevailing wage is not paid and each subsequent tax period until the first tax period for which documentation demonstrating compliance has been reviewed and approved by the Authority, for which tax period and each subsequent period the full amount of the tax credit shall be allowed.

2. Notwithstanding any provisions of law to the contrary, if a commercial tenant, commercial subtenant, or other commercial occupant violates the requirement to pay the prevailing wage rate for building services work set forth at N.J.S.A. 34:1B-325.a(7)(b) and N.J.A.C. 19:31-23A.3(a)9, then the issuance of all certificates of compliance for the tax credits to the developer and any co-applicant shall be delayed until such time as documentation demonstrating compliance has been provided to the Commissioner of Labor and Workforce Development, subsequently reviewed and approved by the Commissioner of Labor and Workforce Development, and verified by the Authority. If a violation is not cured, or is not capable of being cured, within one year of receipt of notice of the violation, then the developer and any co-applicant shall forfeit 50 percent of the tax credits otherwise authorized for the tax period in which the notice of violation was issued. If the violation is not cured on or before the conclusion of that tax period in which the one year to cure has expired, the developer and any co-applicant shall forfeit up to 100 percent of the tax credits otherwise authorized, as determined by the Authority, in each subsequent tax period until the first tax period for which documentation demonstrating compliance has been provided to the Commissioner of Labor and Workforce Development, subsequently reviewed and approved by the Commissioner of Labor and Workforce Development, and verified by the Authority. In this event, the developer and any co-applicant shall be allowed the full tax credit amount beginning in the tax period in which documentation of compliance was reviewed and approved by Commissioner of Labor and Workforce Development and verified by the Authority, including each subsequent tax period in which the tax credits are otherwise authorized.

3. If the developer is not in compliance with the requirements set forth at N.J.A.C. 19:31-23A.4(a)13, the Authority may suspend the tax credits for the relevant tax period if the developer, and if the suspension continues for two years, then, at the Authority's sole option, the developer and any co-applicant may forfeit the tax credits for those years.

(e) Unless an exception applies, if the developer or co-applicant, if a party to the community benefits agreement or redevelopment, is not in compliance with the community benefits agreement or redevelopment agreement pursuant to N.J.A.C. 19:31-23A.8(e), the following shall apply:

1. The amount of tax credits that the developer or any co-applicant may apply in the relevant tax period shall be reduced by 120 percent of the sum of the monetary values of the contributions for which the developer is not in compliance, if the Authority determines that:

i. Compliance with the specific contribution is delayed due to unforeseeable acts related to the project beyond the eligible developer's control and without its fault or negligence;

ii. The developer is using best efforts, with all due diligence, to proceed with the completion of the contribution; and

iii. The developer has made all reasonable efforts to prevent, avoid, mitigate, and overcome the noncompliance; and

2. For any other noncompliance, the developer and any co-applicant shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating compliance has been reviewed and approved by the Authority. The full amount of the tax credit shall be allowed for the first tax period in which the Authority has approved compliance and each subsequent tax credit for which the Authority approves compliance.

(f) If the redevelopment project was eligible by demonstrating a lower net positive economic benefit pursuant to N.J.A.C. 19:31-23A.6(c), and the redevelopment project ceases to meet the respective eligibility, then the Authority shall re-evaluate the net positive economic benefit and either reduce the size of the tax credits accordingly or recapture any excess tax credits.

(g) If, based on new information, the Authority determines that a reduction, forfeiture, or recapture should have been applicable pursuant to any of the provisions in this section, the Authority shall recapture the tax credits for the relevant tax period(s).

(h) If, at any time, the Authority determines that the developer or co-applicant made a material misrepresentation on the developer's application, project completion certification, annual report, or any related submissions, the developer and any co-applicant shall forfeit, and the Authority may recapture any or all of, the incentive award and all tax credits awarded pursuant to the Program, which shall be in addition to any other remedies in the incentive award agreement and any criminal or civil penalties to which the developer, co-applicant, and the respective officer may be subject.

(i) The developer shall provide an updated project *pro forma* and other relevant financial documentation to the Authority when the incentive award agreement is to be terminated. The Authority shall evaluate the reasonable and appropriate return on investment as of the date of termination in the same manner as at the end of the eligibility period pursuant to N.J.A.C. 19:31-23A.8(c)17.

(j) If the developer fails to provide the financial documentation required for the Authority to evaluate the reasonable and appropriate return on investment pursuant to (i) above or N.J.A.C. 19:31-23A.8(c)17, the Authority shall recapture all of the tax credits awarded.

(k) Any recapture amount pursuant to this section may include interest on the recapture amount, at a rate equal to the statutory rate for tax deficiencies, plus any statutory penalties, and all costs incurred by the Authority and the Division of Taxation in the Department of the Treasury in connection with the pursuit of the recapture, including, but not limited to, counsel fees, court costs, and other costs of collection. The Authority shall confer with the Division of Taxation to determine the recapture amount.

(l) The Authority shall notify the Agency of any reduction, forfeiture, or recapture of tax credit if the Agency has provided financial assistance or awarded tax credits to the redevelopment project.

(m) If all or part of a tax credit sold or assigned pursuant to N.J.S.A. 34:1B-331 and N.J.A.C. 19:31-23A.12(a) is subject to recapture, then the Authority shall pursue recapture from the developer and to the extent the co-applicant is involved with the basis for the recapture, any co-applicant, and not from the purchaser or assignee of the tax credit transfer certificate.

(n) If, during the eligibility period, the letter from the Agency pursuant to N.J.A.C. 19:31-23A.8(f)5 or 23A.9(b)8 indicates that the developer is not in compliance with the affordability controls, the Authority shall not issue the certificate of compliance for any tax credits until the developer obtains a letter from the Agency demonstrating compliance.

(o) If, after the eligibility period, the Agency determines that the developer is not in compliance with the deed restriction pursuant to N.J.A.C. 19:31-23A.18(c), the developer, the lead development entity, and the owner shall be ineligible for any Authority financial assistance for the construction or development of a real estate project. The Authority shall have the right to enforce specific performance of the affordability controls. The developer and lead development entity shall no longer be subject to this provision if the Authority provides written approval of the sale or transfer of the project.

(p) Any funds recaptured pursuant to this section, including penalties and interest, shall be deposited into the General Fund of the State.

19:31-23A.11 Transformative projects

(a) To be eligible as a transformative project, the redevelopment project must satisfy the following criteria:

1. Has a project financing gap;

2. Has a total project cost of at least $150,000,000;

3. Includes:

i. Two hundred thousand or more square feet of new or substantially renovated industrial, commercial, or residential space for a project located in a government-restricted municipality, exclusive of any parking component;

ii. Two hundred fifty thousand or more square feet of film production uses, exclusive of any parking component;

iii. Three hundred thousand or more square feet of new or substantially renovated industrial, commercial, or residential space for a project located in an enhanced area, exclusive of any parking component; or

iv. Five hundred thousand or more square feet of new or substantially renovated industrial, commercial, or residential space for any other project, exclusive of any parking component;

4. A commercial project is of special economic importance and creates modern facilities that enhance the State's competitiveness in attracting targeted industries by meeting the following criteria:

i. Except for a redevelopment project with 250,000 or more square feet of film production uses:

(1) Creates 500 new full-time jobs, which shall be demonstrated by determining the anticipated employee occupancy based on the regional averages for employment density for the type of use or uses at the redevelopment project;

(2) Involves the substantial renovation of a vacant commercial building; or

(3) The project is located entirely on land designated by the New Jersey Department of Environmental Protection as a Brownfield Development Area pursuant to N.J.S.A. 58:10B-25.1, and the project costs of the redevelopment project includes or will include at least $15 million in environmental remediation costs; and

ii. Provides opportunities to leverage leadership in a high-priority targeted industry as demonstrated by factors including, but not limited to, being undertaken by a developer that is making an industry leading investment in a new technology or high-growth sub-industry or catalyzing a new sub-industry or industry-cluster within the State;

5. For residential projects include one of the following:

i. The construction of 700 or more newly constructed residential units; or

ii. Is a mixed-use residential project with construction of 50,000 square feet or more of commercial space, exclusive of any parking component, and includes one of the following:

(1) If the project is located in a government-restricted municipality, and includes the construction of 200 or more newly constructed residential units;

(2) If the project is located in an enhanced area, and includes the construction of 300 or more newly constructed residential units; or

(3) If the project is not located in a government-restricted municipality or enhanced area, and includes the construction of 400 or more newly constructed residential units; and

6. Leverages the competitive economic development advantages of the State's mass transit assets, higher education assets, and other economic development assets, in attracting or retaining both employers and skilled workers generally or in targeted industries by providing employment or housing.

(b) A transformative project shall not include a redevelopment project at which more than 50 percent of the premises is occupied by one or more businesses engaged in final point of sale retail, including, but not limited to, hotels.

(c) A transformative project, other than a project that includes 250,000 or more square feet of film production uses, shall be located in an incentive area, a distressed municipality, a government-restricted municipality, or an enhanced area. A transformative project receiving an incentive award pursuant to this section that includes 250,000 or more square feet of film production uses may be located anywhere in the State. The Authority shall not consider an application for a transformative project unless the applicant submits with its application a letter evidencing support for the transformative project from the governing body of the municipality in which the transformative project is located.

(d) A transformative project may be completed in phases, which phases may be determined by the Authority based on factors, such as written architectural plans and specifications completed before or during the physical work, certificates of occupancy, or financial and operational plans.

(e) In accordance with N.J.A.C. 19:31-23A.3(e), all transformative projects that include any newly constructed residential units shall reserve at least 20 percent of the newly constructed residential units and all other residential units for occupancy by low- and moderate-income households with affordability controls.

(f) The Authority shall review and determine whether to approve an incentive award to a transformative project in accordance with the provisions applicable to any redevelopment project, unless otherwise provided in this section.

(g) For transformative projects completed in phases, the developer and any co-applicant shall enter into a transformative phase agreement with the Authority. As used in this subsection, "transformative phase agreement" shall mean a sub-agreement of the incentive award agreement that governs the timing, capital investment, and other applicable details of the respective phase of a phased project. The transformative phase agreement may be incorporated in the incentive award agreement.

(h) Notwithstanding the provisions at N.J.S.A. 34:1B-325 and 34:1B-269 et seq., or other sections in this subchapter to the contrary, a transformative project shall be completed, and the developer shall be issued a certificate of occupancy for the transformative project facilities by the applicable enforcing agency, within five years of executing the incentive award agreement, except that the Authority may, in its discretion, extend this deadline by up to one additional year. For transformative projects completed in phases, the transformative project shall be completed, and the developer shall be issued temporary certificates of occupancy for all phases of the transformative project by the applicable enforcing agency within 10 years of executing either the incentive award agreement or the first transformative phase agreement corresponding to the transformative project. For a project component to be allowed as a phase, a developer shall obtain a temporary certificate of occupancy for the entirety of the component and the component shall be $50,000,000 or more except for the last component.

(i) Notwithstanding the provisions at N.J.S.A. 34:1B-323, 328, and 269 et seq., or other sections in this subchapter to the contrary, each phase of a transformative project completed shall have a separate eligibility period. After completing each phase, the developer shall submit a certification that the phase is completed with the documents required pursuant to N.J.A.C. 19:31-23A.8(f). In the certification for the project cost for that phase, any infrastructure work completed at the same time shall be included in the certification for that phase. The amount of soft costs for a phase may exceed 20 percent of the total project cost in the certification for the respective phase. If the aggregate amount of soft costs at the completion of the final phase exceeds 20 percent of the aggregate total project cost in all phase certifications, the Authority shall reduce the amount of allowable soft costs and shall resize the incremental tax credit for the final phase and recapture other excess tax credits. If the Authority approves the certification, the tax credit allowed to the developer or co-applicant shall be increased by the tax credit amount corresponding to that phase, which shall include only the infrastructure attributable to that phase. If upon review of the certification of completion of each phase, the Authority adjusts the incremental tax credit for that phase solely due to the certification demonstrating a lesser total project cost than projected at Board approval, the amount of tax credits not included in the incremental tax credit shall be available to the developer and any co-applicant in any subsequent phase, provided that the incremental tax credit has not been resized due to the project financing gap and the State fiscal impact analysis. Notwithstanding the different eligibility periods for each phase, all conditions and requirements applicable during an eligibility period pursuant to N.J.S.A. 34:1B-322 through 335 and all other sections in this subchapter shall apply to the entire transformative project until the end of the eligibility period for the last phase.

(j) Notwithstanding the provisions at N.J.S.A. 34:1B-328 and 269 et seq., or other sections in this subchapter to the contrary, for a transformative project completed in phases, a review of the project financing gap shall be performed at the certification of completion of each phase, and the Authority may resize the incremental tax credit for that phase or subsequent phases. The Authority shall re-evaluate the developer's reasonable and appropriate return on investment as set forth at N.J.A.C. 19:31-23A.8(c)17 in the seventh year and at the end of the eligibility period for the last phase, provided that the Authority may also re-evaluate the developer's reasonable and appropriate return on investment during the fifth year of any earlier phase.

(k) The Authority shall review the transformative project cost and evaluate and validate the project financing gap estimated by the developer. The Authority shall perform a single project financing gap analysis for a transformative project.

(l) The Authority shall conduct a State fiscal impact analysis to ensure that the overall public assistance provided to the transformative project will result in a net positive economic benefit to the State in accordance with the percentages pursuant to N.J.A.C. 19:31-23A.6(c). The Authority shall determine a single net positive economic benefit for a transformative project, including a phased transformative project, and the net positive economic benefit evaluation shall be conducted for the period beginning with the first eligibility period and ending with the last eligibility period. In determining whether a transformative project will result in a net positive economic benefit to the State, the Authority shall not consider the

value of any taxes exempted, abated, rebated, or retained pursuant to the Five-Year Exemption and Abatement Law, N.J.S.A. 40A:21-1 et seq., the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq., or any other law that has the effect of lowering or eliminating the developer's State or local tax liability. The determination made pursuant to this subsection shall be based upon the potential tax liability of the developer without regard for potential tax losses if the developer were to locate in another state. The Authority shall evaluate the net positive economic benefits on a present value basis pursuant to which the requested tax credit allocation amount is discounted to present value at the same discount rate as the projected benefits from the implementation of the proposed transformative project for which an award of tax credits is being sought. Projects that are predominantly residential shall be excluded from the calculation of the net positive economic benefit test required pursuant to this subsection.

(m) In determining net positive economic benefits for any business or person considering locating in a transformative project and applying to receive from the Authority any other economic development incentive subsequent to the award of transformative project tax credits pursuant to N.J.S.A. 34:1B-333 and this section, the Authority shall not credit the business or person with any benefit that was previously credited to the transformative project pursuant to N.J.S.A. 34:1B-333 and this section.

(n) The Authority shall administer the credits awarded pursuant to this section, in accordance with the provisions at N.J.S.A. 34:1B-330 and 331; and N.J.A.C. 19:31-23A.9, 23A.10, 23A.12, and 23A.13.

(o) Prior to allocating an incentive award to a developer, the Authority shall confirm that the developer, lead development entity, and any co-applicant for the transformative project satisfies the requirements at N.J.A.C. 19:31-23A.7(b)1 for substantial good standing or agreement with the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, the Department of the Treasury, N.J.A.C. 19:31-23A.7(b)2 for substantial good standing with the Agency, and N.J.A.C. 19:31-23A.7(b)4 regarding contractors and subcontractors.

(p) Notwithstanding the limitation on incentive awards set forth at N.J.S.A. 34:1B-329 and 362 and any other sections in this subchapter to the contrary, the Authority may allow a developer of a transformative project a tax credit in an amount not to exceed the lesser of the amounts below. For purposes of the calculation of tax credits, project cost shall be reduced by the amount of State and local grants and tax credits other than those awarded pursuant to the Program.

1. Eighty percent of the total project cost for a transformative project that is located in a government-restricted municipality, which percentage shall apply to the total project cost of each phase of a phased transformative project;

2. Sixty percent of the total project cost for a residential transformative project that receives a four-percent allocation from the Federal Low-Income Housing Tax Credit Program administered by the Agency or a transformative project that is located in a qualified incentive tract, enhanced area, or a municipality with a Municipal Revitalization Index score of at least 50, which percentage shall apply to the total project cost of each phase of a phased transformative project;

3. Fifty percent of the total project cost for any other transformative project, which percentage shall apply to the total project cost of each phase of a phased transformative project;

4. The total value of the project financing gap; or

5. $400,000,000, except that for a transformative project that is developed in phases, the $400,000,000 limitation on incentive awards shall apply to the total aggregate award for all phases of the transformative project.

(q) For a transformative project, the approval letter shall include conditions that must be satisfied and documents and certifications that must be submitted for each phase. Until the developer submits the certification for the last phase, the developer shall submit progress reports for each phase that has not yet been certified.

19:31-23A.12 Application for tax credit transfer certificate

(a) A developer or co-applicant may apply to the Director and the Chief Executive Officer of the Authority for a tax credit transfer certificate, covering one or more years, in lieu of the developer or co-applicant being allowed any amount of the credit against the tax liability of the developer. The tax credit transfer certificate, upon receipt thereof by the developer or co-applicant from the Director and the Chief Executive Officer of the Authority, may be sold or assigned, in full or in part, in an amount not less than $25,000, in the privilege period during which the developer or co-applicant receives the tax credit transfer certificate from the Director, to another person, who may apply the credit against a tax liability pursuant to N.J.S.A. 54:10A-5, 54:18A-2 and 3, 17:32-15, or 17B:23-5; provided, however, that the holder of a tax credit certificate may transfer all or part of the tax credit amount, on or after the date of issuance of the tax credit transfer certificate, for use by the transferee in the tax period for which it was issued, and the transferee may carry forward all or part of the tax credit amount in any of the next five successive tax periods. Notwithstanding any provision of this section to the contrary, the amount of tax credits that may be claimed by the transferee in any tax period shall not exceed the total tax credit amount divided by the duration of the eligibility period in years. The certificate provided to the developer or co-applicant shall include a statement waiving the developer's or co-applicant's right to claim the amount of the credit that the developer has elected to sell or assign against the developer's tax liability.

(b) The developer or co-applicant shall not sell, pledge, transfer, or assign, including a collateral assignment, a tax credit transfer certificate allowed pursuant to this section for consideration received by the developer or co-applicant of less than 85 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted. The developer or co-applicant shall submit to the Authority documentation evidencing the value of the tax credits that may include, but not be limited to, the purchase agreement, except:

1. A developer or co-applicant of a residential project consisting of newly constructed residential units may assign a tax credit transfer certificate for consideration of less than 85 percent subject to the submission of a plan to the Authority and the agency to use the proceeds derived from the assignment of tax credits to complete the residential project, which plan must demonstrate that the developer or co-applicant is receiving no less than 75 percent of the transfer credit amount before considering any discounting to present value; and

2. Notwithstanding the provisions at (b)1 above, a developer or co-applicant of a residential project consisting of newly constructed residential units that has received tax credits pursuant to the Federal Low-Income Housing Tax Credit Program, 26 U.S.C. § 42(b)(1)(B)(i), may assign a tax credit transfer certificate for consideration of no less than 65 percent of the transfer credit amount before discounting to present value subject to the submission of a plan to the Authority and the New Jersey Housing and Mortgage Finance Agency to use the proceeds derived from the assignment of tax credits to complete the residential project.

(c) The tax credit transfer certificate issued to a developer or co-applicant by the Director shall be subject to any limitations and conditions imposed on the application of State tax credits pursuant to N.J.S.A. 34:1B-322 through 335 and any other terms and conditions that the Director may prescribe including, but not limited to, any applicable statutes of limitations for claiming a refund or credit.

(d) A purchaser or assignee of a tax credit transfer certificate pursuant to this section shall not make any subsequent transfers, assignments, or sales of the tax credit transfer certificate. If a lender that holds a tax credit certificate as collateral on a redevelopment project forecloses on the project, the foreclosure and resulting transfer of the certificate shall not be considered a sale of the transfer certificate.

(e) The Authority shall publish, on its internet website, the following information concerning each tax credit transfer certificate approved by the Authority and the Director pursuant to this section:

1. The name of the transferrer;

2. The name of the transferee;

3. The value of the tax credit transfer certificate;

4. The State tax against which the transferee may apply the tax credit; and

5. The consideration received by the transferrer.

19:31-23A.13 Assignment of rights of incentive award agreement

(a) A developer who has entered into an incentive award agreement pursuant to N.J.S.A. 34:1B-328 may, upon notice to and written consent of the Authority and State Treasurer, pledge, assign, transfer, or sell any or all of its right, title, and interest in, and to, the incentive award agreement and in the incentive awards payable pursuant to the incentive award agreement, and the right to receive the incentive awards, along with the rights and remedies provided to the developer pursuant to the incentive award agreement, provided that any sale, assignment, or transfer of the incentive award agreement shall be to the purchaser, assignee, or transferee of the redevelopment project. To decide whether to consent, the Authority and State Treasurer will consider the purchase price and terms of the pledge, assignment, transfer, or sale, the allocation of the purchase price to the tax credit in relation to the minimum required pursuant to N.J.A.C. 19:31-23A.12(b), and the impact of the transaction to the reasonable and appropriate return on investment for the seller(s) and the purchaser. Any assignment shall be an absolute assignment for all purposes, including the Federal bankruptcy code. If the Authority approval included a co-applicant, prior to requesting the consent of the Authority and State Treasurer, the developer shall obtain, in writing, the co-applicant's consent, and the developer shall provide the co-applicant's written consent to the Authority and State Treasurer with the developer's notice.

(b) A co-applicant who has entered into an incentive award agreement pursuant to N.J.S.A. 34:1B-328 may, upon notice to and written consent of the Authority and State Treasurer, assign, transfer, or sell any or all of its right, title, and interest in, and to, the incentive award agreement and in the incentive awards payable pursuant to the incentive award agreement, and the right to receive the incentive awards, along with the rights and remedies provided to the co-applicant pursuant to the incentive award agreement, provided that the purchaser shall be a non-profit pursuant to section 501(c)3 of the Internal Revenue Code. To decide whether to consent, the Authority and State Treasurer will consider the contributions of the co-applicant, the proposed contributions by the purchaser, the purchase price and terms of the assignment, transfer, or sale, and the allocation of the purchase price to the tax credit. The new purchaser shall be the co-applicant and shall be required to receive an assignment of the co-applicant's participation agreement or to execute a new participation agreement with the developer. Any assignment shall be an absolute assignment for all purposes, including the Federal bankruptcy code. Prior to requesting the consent of the Authority and State Treasurer, the co-applicant shall obtain, in writing, the developer's consent, and the co-applicant shall provide the developer's written consent to the Authority and State Treasurer with the co-applicant's notice.

(c) Any pledge of an incentive award made by the developer shall be valid and binding from the time the pledge is made and filed in the records of the Authority. The incentive award pledged and thereafter received by the developer shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding against all parties having claims of any kind, in tort, contract, or otherwise against the developer irrespective of whether the parties have notice thereof. As a condition of any incentive grant, the grantee, assignee, pledgee, or subsequent holder of the incentive grant shall immediately file notice of the same with the clerk of the county in which the project is located.

(d) The Authority shall publish, on its internet website, the following information concerning each pledge, assignment, transfer, or sale approved by the Authority pursuant to this section:

1. The name of the person or entity offering the pledge, assignment, transfer, or sale of a right, title, or interest in an incentive grant agreement or tax credit agreement;

2. The name of the person or entity receiving the pledge, assignment, transfer, or sale of a right, title, or interest in the incentive grant agreement or tax credit agreement;

3. The value of the right, title, or interest in the incentive grant agreement or tax credit agreement; and

4. The consideration received by the person or entity offering the pledge, assignment, transfer, or sale of the right, title, or interest in the incentive grant agreement or tax credit agreement.

19:31-23A.14 Affirmative action and prevailing wage

(a) The Authority's affirmative action requirements at N.J.S.A. 34:1B-5.4 and N.J.A.C. 19:30-3 and 19:31-23A.3(a)7 shall apply to the redevelopment project, including, but not limited to, construction contracts for work performed before the application and after November 15, 2021 and included in the project cost. The affirmative action requirements shall apply for two years after the first certificate of compliance is issued.

(b) The Authority's prevailing wage requirements at N.J.S.A. 34:1B-5.1 and N.J.A.C. 19:30-4 and 19:31-23A.3(a)8 shall apply to the redevelopment project, including, but not limited to, the following:

1. Construction contracts for work performed before the application and included in the project cost;

2. Construction contracts for work performed 24 months prior to the eligibility period pursuant to N.J.S.A. 34:1B-5.1(b); and

3. Construction contracts for work performed during the eligibility period.

(c) During the eligibility period, prevailing wage shall apply to building services at the site of the redevelopment project pursuant to N.J.A.C. 19:31-23A.3(a)9.

19:31-23A.15 Affordability controls: documentation and monitoring

(a) Developers and any subsequent owner of the affordable development shall retain all documentation and evidence necessary to demonstrate compliance with the affordability controls for the duration of the deed restriction set forth at N.J.A.C. 19:31-23A.18 and shall provide such documentation and evidence as set forth in this subchapter or at the request of the Agency or the Authority.

(b) As set forth in this subchapter, the Agency may serve as a monitoring entity acting to report to the Authority compliance with the affordability controls. Notwithstanding such monitoring by the Agency, enforcement of any and all requirements pursuant to this subchapter shall be the responsibility of the Authority.

19:31-23A.16 Affordability controls: affordability average; bedroom distribution

(a) In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units and the remainder may be moderate-income units, provided that at least 10 percent of the restricted units shall be very low-income units.

(b) The bedroom distribution for restricted units that are not age-restricted shall be as follows:

1. The combined number of studios and one-bedroom units is no greater than 20 percent of all restricted units;

2. At least 30 percent of all restricted units are two-bedroom units;

3. At least 20 percent of all restricted units are three-bedroom units; and

4. The remainder, if any, may be allocated at the discretion of the developer or subsequent owner of the affordable development.

(c) In determining the initial rents, the affordability average shall be no more than 52 percent.

(d) Restricted units that are age-restricted units may utilize a modified bedroom distribution. At a minimum, the number of bedrooms shall equal the number of restricted units that are age-restricted units within the affordable development. The standard may be met by creating all one-bedroom units or by creating a two-bedroom unit for each studio.

(e) Restricted units shall utilize the same type of heating source as market units within the affordable development.

19:31-23A.17 Affordability controls: occupancy standards

(a) In determining the initial rents for compliance with the affordability average requirements for restricted units, the following standards shall be used:

1. A studio shall be affordable to a one-person household;

2. A one-bedroom unit shall be affordable to a one and one-half person household;

3. A two-bedroom unit shall be affordable to a three-person household;

4. A three-bedroom unit shall be affordable to a four and one-half person household; and

5. A four-bedroom unit shall be affordable to a six-person household.

(b) In offering specific restricted units to low- and moderate-income households, to the extent feasible, and without causing an undue delay in occupying the unit, the developer or subsequent owner of the affordable development shall strive to:

1. Provide an occupant for each bedroom;
2. Provide children of different sex with separate bedrooms; and
3. Prevent more than two persons from occupying a single bedroom.

19:31-23A.18 Affordability controls: control periods for rental units

(a) Each restricted rental unit shall remain subject to the requirements of the affordability controls for a period of 45 years.

(b) The affordability control period for the restricted units shall commence on the first date that a low- or moderate-income household occupies a unit and shall terminate at the end of the period set forth at (a) above, except that the eviction or termination of tenancy (other than for good cause) of an existing tenant of any restricted unit or the increase in the gross rent with respect to any restricted unit not otherwise authorized pursuant to this subchapter shall be prohibited for an additional three years.

(c) Deeds of all real property that include restricted rental units shall contain deed restriction language as prescribed by the Authority. The deed restriction shall for the period set forth at (a) above, require compliance with the affordability controls, prohibit the sale or transfer of individual restricted units unless without the prior written consent of the Authority, and shall grant the Authority the rights set forth at N.J.A.C. 19:31-23A.10. The deed restriction shall have priority over all mortgages on the property.

(d) A restricted unit shall remain subject to the affordability controls despite the occurrence of any of the following events:

1. A sale or other voluntary transfer of the ownership of the affordable development or the restricted unit; or
2. The entry and enforcement of any judgment of foreclosure on the affordable development or the restricted unit.

19:31-23A.19 Affordability controls: restrictions on rents

(a) Rent shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate household size as determined pursuant to N.J.A.C. 19:31-23A.17; provided, however, that the rent shall be subject to the affordability average requirement at N.J.A.C. 19:31-23A.16.

(b) Mandatory fees or charges shall be included in the calculation of rent.

(c) Application fees (including the charge for any credit check) may not exceed five percent of the monthly rental of the applicable restricted unit.

(d) A written lease is required for all restricted rental units. Final lease agreements are the responsibility of the developer (or subsequent owner of the affordable development) and the prospective tenant. Tenants are responsible for security deposits and the full amount of the rent as stated on the lease. All lease provisions shall comply with applicable law.

(e) Those tenant-paid utilities that are included in the utility allowance shall be so stated in the lease. The allowance for utilities shall be consistent with the utility allowance as utilized by the Agency for Federal low-income housing tax credits.

19:31-23A.20 Affordability controls: tenant income eligibility

(a) The initial rent proposed for a restricted unit shall not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 19:31-23A.22; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:

1. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its eligible monthly income for rent and the proposed rent will reduce its housing costs;
2. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
3. The household is currently in substandard or overcrowded living conditions;
4. The household documents the existence of assets, with which the household proposes to supplement the rent payments; or
5. The household documents proposed third-party assistance from an outside source, such as a family member.

(b) Developers and subsequent owners of affordable development shall establish at least one rent for each type of unit based on the number of bedrooms for very low-income, low-income, and moderate-income units.

19:31-23A.21 Affordability controls: affirmative marketing

(a) The developer or subsequent owner of an affordable development shall have an affirmative marketing plan that is a regional marketing strategy designed to attract renters regardless of race, religious principles, color, national origin, ancestry, marital or familial status, liability for service in the Armed Forces of the United States, nationality, sex, gender identity or expression, disability, age (except age-restricted units), source of lawful income, or number of children to housing units which are being marketed by a developer or sponsor of affordable housing. The affirmative marketing plan shall also target those potentially eligible persons who are least likely to apply for restricted units in that region. The affirmative marketing plan shall be continuing and cover the period of deed restriction.

(b) The developer or subsequent owner of an affordable development shall comply with the affirmative marketing plan for restricted units.

(c) The affirmative marketing plan shall provide the following information:

1. The name and address of the project;
2. The number of units, including the number of rental units;
3. The rent for rental units;
4. The name of the rental manager;
5. A description of the random selection process that will be used to select occupants of restricted units; and
6. Disclosure of required application fees.

(d) The affirmative marketing plan shall describe the media to be used in advertising and publicizing the availability of units, including restricted units. In developing the plan, the developer or subsequent owner of the affordable development shall consider the use of language translations. The plan shall include the following:

1. The names of specific newspapers of general circulation within the region;
2. The names of specific radio and television stations broadcasting throughout the region;
3. The names of other publications circulated within the region, such as neighborhood oriented weekly newspapers, religious publications, and organizational newsletters;
4. The names of employers throughout the region that will be contacted to post advertisements and distribute flyers regarding the available restricted units;
5. The names of specific community and regional organizations that will aid in soliciting low- and moderate-income household applicants. Such organizations may include non-profit, religious, governmental, fraternal, civic, and other organizations; and
6. Other advertising and outreach efforts to groups that are least likely to be reached by commercial media efforts.

(e) The affirmative marketing process for available restricted units shall begin at least four months prior to expected occupancy. In implementing the affirmative marketing program, the developer or subsequent owner of the affordable development shall undertake all of the following strategies:

1. Publication of one advertisement in a newspaper listed pursuant to (d)1 above;
2. Broadcast of one advertisement by a radio or television station listed above pursuant to (d)2 above;
3. At least one additional regional marketing strategy using one of the sources listed pursuant to (d)3, 4, 5, and 6 above; and
4. Addition of the affordable development to the Agency's New Jersey Housing Resource Center website.

(f) Such advertising and outreach shall take place during the first week of the affirmative marketing program and each month thereafter until all the restricted units have been leased. The advertisement shall include at least the following:

1. The location of the restricted units;
2. Directions to the restricted units;

3. The range of rents for the restricted units;
4. The size, as measured in bedrooms, of the restricted units;
5. The maximum income permitted to qualify for the restricted units;
6. The location of applications for the restricted units;
7. The business hours when interested households may obtain an application for a restricted unit; and
8. Application fees, if any.

(g) Applications for restricted units shall be available in several locations, including, at a minimum, the county administrative building and/or the county library for each county within the housing region; the municipal administrative building(s), and the municipal library in the municipality in which the restricted units are located; and the rental office of the developer or the subsequent owner of the affordable development. Applications shall be mailed to prospective applicants upon request.

19:31-23A.22 Affordability controls: household selection; related project information

(a) The developer or subsequent owner of the affordable development shall obtain all information from applicant households necessary and appropriate to determine that restricted units are occupied by properly sized households with appropriate low- or moderate-income levels.

(b) When reviewing an applicant household's income to determine eligibility, the developer or subsequent owner of the affordable development shall compare the applicant household's total gross annual income to the household limits then in effect. For the purposes of this subchapter, income and assets, and verification of same, shall be defined and calculated as set forth by the Agency for Federal low-income housing tax credits.

(c) Households shall also be required to produce documentation of household composition for determining the correct unit size and applicable median income guide.

(d) The following information shall be maintained by the developer or subsequent owner of the affordable development and shall be provided to the Agency or the Authority upon request:

1. The total number of units in the redevelopment project, and number of restricted units, broken down by bedroom size, identifying which are moderate-, low-, and very low-income units, and including street addresses of restricted units;
2. Floor plans of all restricted units, including complete and accurate identification of uses and dimensions of all rooms;
3. A project map identifying the locations of restricted units and market units;
4. Proposed rent for all units;
5. Any maintenance or other fees;
6. Sewer, trash disposal, and any other utility assessments;
7. A description of all HVAC systems;
8. Location of any common areas and elevators;
9. Proposed form of lease; and
10. The name of the person who is responsible for compliance with the affordability controls.

(e) The developer or subsequent owner of the affordable development shall employ a random selection process when selecting prospective tenants for restricted units.

19:31-23A.23 Appeals

(a) The Board's action shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.

(b) An applicant may appeal the Board's action by submitting, in writing, to the Authority, within 20 calendar days from the effective date of the Board's action, an explanation as to how the applicant has met the Program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq.; and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) Appeals that are timely submitted shall be handled by the Authority as follows:

1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.
2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board with his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. After reviewing the report, the Chief Executive Officer of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.
3. The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the appeal.
4. Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

19:31-23A.24 Reports by the Authority to the Governor and Legislature on implementation of the Program

(a) Beginning in 2022, and every two years thereafter, a State college or university established pursuant to Chapter 64 of Title 18A of the New Jersey Statutes shall, pursuant to an agreement executed between the State college or university and the Authority, prepare a report on the implementation of the Program, and submit the report to the Authority, the Governor, and, pursuant to N.J.S.A. 52:14-19.1, to the Legislature. Each biennial report required pursuant to this section shall include a description of each redevelopment project receiving a tax credit pursuant to the Program, a detailed analysis of the consideration given in each project to the factors set forth at N.J.S.A. 34:1B-326 and 327 and N.J.A.C. 19:31-23A.6 and 7, in the case of a commercial project, the return on investment for incentive awards provided and the commercial project's impact on the State's economy, and any other metrics the State college or university determines are relevant based upon national best practices. The Authority shall prepare a written response to the report, which the Authority shall submit to the Governor and, pursuant to N.J.S.A. 52:14-19.1, to the Legislature.

(b) On or before December 31, 2023, the Authority shall submit a report to the Governor and, pursuant to N.J.S.A. 52:14-19.1, the Legislature on the effectiveness of the Program in encouraging development in government-restricted municipalities, which report shall include, at a minimum, recommendations to incentivize additional development in government-restricted municipalities through financial assistance or other incentives that the authority determines are appropriate.

19:31-23A.25 Severability

If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.