



Draft Revisions to the Specially Adopted and Concurrently Proposed Aspire Program Rules for Informal Public Comment

BACKGROUND

The New Jersey Economic Development Authority serves as the State's principal agency for driving economic growth. The Authority is committed to making New Jersey a national model for inclusive and sustainable economic development by focusing on key strategies to build strong and dynamic communities, create good jobs for New Jersey residents, and provide pathways to a stronger and fairer economy. Through partnerships with a diverse range of stakeholders, the Authority creates and implements initiatives to enhance the economic vitality and quality of life in the State and strengthen New Jersey's long-term economic competitiveness.

Governor Phil Murphy signed the New Jersey Economic Recovery Act of 2020 into law on January 7, 2021. A courtesy copy of this act can be found by clicking [here](#). The law creates a package of tax incentive, financing, and grant programs that will address the ongoing economic impacts of the COVID-19 pandemic and build a stronger, fairer New Jersey economy.

Programs created in the law include:

- Tax credits to incentivize job creation and capital investment;
- Investment tools to support and strengthen New Jersey's innovation economy;
- Tax credits to strengthen New Jersey's communities including revitalization of brownfields and preservation of historic properties;
- Financial resources for small businesses, including those impacted by the COVID-19 pandemic;
- Support for new supermarkets and healthy food retailers in food desert communities;
- Additional tax credits for film and digital media.

The New Jersey Economic Development Authority is soliciting input from the public on the following draft rule revisions pertaining to the Aspire Program.

PROGRAM OVERVIEW

The New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, as amended by P.L. 2021, c. 160, creates 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.

The Aspire program encourages 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 total costs. The draft revisions include:

- **19:31-23.2 (Definitions)** "Reasonable and appropriate return on investment" is clarified with regard to residential project utilizing Federal tax credits under the Low-Income Housing Tax Credit Program awarded by the New Jersey Housing and Mortgage Finance Agency where the developer is also deriving a return on investment of at-risk capital; and "Community benefits agreement" is revised to include a cross-citation to the rules; a definition of "Redevelopment agreement" is added for clarity.
- **19:31-23.3 (Eligibility criteria)** is amended to provide for extensions in certain emergency situations, add soft costs for project feasibility to the costs incurred prior to application that may be included as project costs.
- **19:31-23.4 (Application submission requirements)** is amended to add cross-citations to the rules and statute; and to clarify that where a community benefits agreement is required, the developer must provide to the Authority a letter of support from the chief executive of the municipality or county acknowledging the requirement and either affirming that the municipality or county shall proceed to negotiate and execute a community benefits agreement or acknowledging and confirming that the municipality or county has entered into a redevelopment agreement with the developer that meets or exceeds the standards required.
- **19:31-23.5 (Fees)** is amended to reflect the different project types that may participate in the Aspire program; increase fees to reflect the Agency's costs for its review of projects with residential components; and add the standard Authority discount for additional tax credit transfer certificates.
- **19:31-23.7 (Approval of completed application; tax credit amounts)** is amended to increase the sum of all tax credits awarded under any program from 90 percent to 95 percent of the project cost for projects utilizing Federal tax credits under the Low-Income Housing Tax Credit Program awarded by the New Jersey Housing and Mortgage Finance Agency.
- **19:31-23.8 (Approval letter; incentive award agreement)** is amended to incorporate, for any project consisting of the new construction of residential units without regard for whether it is utilizing Federal tax credits under the Low-Income Housing Tax Credit Program awarded by the New Jersey Housing and Mortgage Finance Agency, the Uniform Housing Affordability Controls (UHAC), N.J.A.C. 5:80-26.1 et seq., provisions related to bedroom distribution, income limits, affordability averages, and affirmative marketing; ensure that the affordable units are integrated throughout; incorporate a 45-year deed restriction; require a letter from the Agency to the developer with copy to EDA confirming compliance with the affordability controls; allow the Authority to extend, in individual cases, the deadline for any annual reporting or project completion certification

requirement; and clarify the use of a community benefits agreement or a redevelopment agreement.

- **19:31-23.9 (Reporting requirements and annual report)** is amended to require a letter from the Agency to the developer with copy to EDA confirming compliance with the affordability controls; add cross-citations; update the rules to reflect the statutory amendment to N.J.S.A. 34:1B-330 (P.L. 2022, c. 46) permitting a developer or co-applicant may carry forward an unused credit.
- **19:31-23.10 (Reduction, forfeiture, and recapture of tax credits)** is amended to add cross-citations; provide that if 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; provide that the Authority shall not issue the certificate of compliance for any tax credits until the developer obtains a letter from the Agency demonstrating compliance with the affordability controls; and provide that if the Agency determines that the developer is not in compliance with the deed restriction, the Authority may declare a cross-default on all other assistance provided by the Authority to the developer, the co-applicant, any affiliates of the developer or the co-developer, and any entity with common principals and may recapture some or all of the tax credit award.
- **19:31-23.11 (Transformative projects)** is amended to add cross-citations; and provide that a project that is located in its entirety on land designated by the New Jersey Department of Environmental Protection as a Brownfield Development Area in accordance with N.J.S.A. 58:10B-25.1, et seq., and the project costs will include at least \$15 million in environmental remediation may be eligible as a transformative project.

PUBLIC FEEDBACK: WRITTEN COMMENTS

Members of the public are invited to submit written on the draft Aspire rule revisions between the following dates:

- **PUBLIC FEEDBACK OPENS: October 19, 2022**
- **PUBLIC FEEDBACK CLOSES: October 28, 2022**

We welcome constructive input on how to ensure new programs created through the Economic Recovery Act or programs amended by the Economic Recovery Act are structured and administered in a manner that drives opportunities for all residents and communities. Any feedback must be submitted in writing through [the designated online form available on the ERA website](#).

All feedback received through this process will be assessed and considered when preparing the rule amendments that will be proposed to the Authority for Board approval. Following Board approval and after publication in the New Jersey Register, there will be a formal public comment period in accordance with the Administrative Procedure Act.

Please observe the following guidelines when submitting your feedback:

PLEASE DO:

- Reference a specific part of the rules by section and subsection when providing comments.
- Share your feedback, relevant observations, and additional information.
- Keep comments brief and to the point.
- Use attachments to share more detailed or formal feedback.

PLEASE DO NOT:

- Include information that you do not want to be made public.
- Submit any information or other material protected by copyright without the permission of the copyright owner.
- Submit comments about topics unrelated to the Aspire Program.

We may, at NJEDA's sole discretion, publish any, all, or a representative sample of comments in full or in part.

Do not include any information in your comment that you do not want to become public. Do not include any personally identifying or contact information if you do not want to be identified. (Providing optional contact information, however, will allow us to follow up with you if clarification is needed.) We will not accept or agree to a request to keep information confidential.

By submitting material, you grant to the NJEDA the non-exclusive, worldwide, transferable right and license to display, copy, publish, distribute, transmit, print, and use such information or other material in any way and in any medium, including but not limited to print or electronic form.

DRAFT ASPIRE RULE REVISIONS

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

SUBCHAPTER 23. ASPIRE

19:31-23.2 Definitions (Only definitions and rule sections suggested for amendment are shown.)

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

"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. 19:31-23.8(i).

"Reasonable and appropriate return on investment" or "reasonable and appropriate rate of return on investment" means the discount rate at which the present value of the future cash flows of an investment equal the cost of the investment. For a residential project utilizing Federal tax credits under the Low-Income Housing Tax Credit Program awarded by the New Jersey Housing and Mortgage Finance Agency, the reasonable and appropriate return on investment shall be based

on the approval of deferred developer fees pursuant to N.J.A.C. 5:80-33. For purposes of the analysis of the reasonable and appropriate return on investment, an investment shall not include any Federal, State, or local tax credits. **In the event a residential project utilizing Federal tax credits under the Low-Income Housing Tax Credit Program awarded by the New Jersey Housing and Mortgage Finance Agency may also generate returns on equity other than Federal or local grants or proceeds from the sale of Federal or local tax credits, reasonable and appropriate return on investment means both the discount rate at which the present value of the future cash flows of an investment equal the cost of the investment and also shall be based on the approval of deferred developer fees pursuant to N.J.A.C. 5:80-33.**

“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.

19:31-23.3 Eligibility criteria

(a) Prior to March 1, 2027, 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.-8. (No change)

9. 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. **Except that 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:**

- 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.**

10. 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;**

[10.] 11. 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 in section 1 at P.L. 2007, c. 101 (N.J.S.A. 54:50-39);

[11.] 12. 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;

[12.] 13. Except for a residential project, food delivery source, or a health care or health services center with a minimum of 10,000 square feet of space devoted to health care or health services that is located in a municipality with a Municipal Revitalization Index distress score of at least 50 lacking adequate access, as determined by the Commissioner of the Department of Health, the overall public assistance provided to the project will result in a net positive economic benefit to the State; and

[13.] 14. 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;

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; and

3. For applications submitted prior to January 1, 2023, 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 four years prior to the date of the application.

(c) –(f) (No change)

19:31-23.4 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. -12. (No change)

13. As applicable, a certification that the project meets the requirements to reserve residential units as set forth at [N.J.A.C. 19:31-23.3(d)] **N.J.A.C. 19:31-23.3(e) and/or N.J.A.C. 19:31-23.11(e)**;

14.-22. (No change)

23. For a redevelopment project whose total project cost equals or exceeds \$ 10 million and for which a community benefits agreement is required pursuant to **N.J.S.A. 34:1B-328(f) and N.J.A.C. 19:31-23.8(e)**, a letter of support from the chief executive of the municipality or county acknowledging the requirement for a community benefits agreements for the redevelopment project and **either** affirming that the municipality or county shall proceed to negotiate a community benefits agreement in good faith with the developer and execute the community benefits agreement within the time required at N.J.A.C. 19:31-23.8(e)3 **or a letter of support from the chief executive of the municipality or county acknowledging and confirming that the municipality or county has entered into a redevelopment agreement with the developer that meets or exceeds the standards required for a community benefits agreement in accordance with N.J.S.A. 34:1B-328(f), N.J.A.C. 19:31-23.8(e) and N.J.A.C. 19:31-23.11(e);**

24.-25. (No change)

(b) –(e) (No change)

19:31-23.5 Fees

(a) A developer applying for benefits under this program shall submit a one-time non-refundable application fee. The application fee shall be as follows:

1. For projects utilizing tax credits under 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 [utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and] **subject to paragraph 1 above** with total project cost of \$ 50 million or less, the fee shall be \$ 30,000. For other projects not [utilizing tax credits under the Federal Low-Income Housing Tax Credit Program,] **subject to paragraph 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 under 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 \$ [50,000] **75,000**;

2. For projects **that do not have any residential units** [utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and] with total project cost of \$ 50 million or less, the fee shall be \$ 50,000. For other projects **that do not have residential units** [utilizing tax credits under the Federal Low-Income Housing Tax Credit Program], the fee shall be \$ 60,000 without phases and \$ 250,000 with phases; [and]

3. For projects not subject to paragraphs 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 paragraphs 1 or 2 above, the fee shall be \$ 85,000 without phases and \$ 275,000 with phases; and

[3] **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 phases. The fee shall be as follows:

1. For projects utilizing tax credits under 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 \$ [50,000] **75,000**;

2. For projects **that do not have any residential units** [utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and] with total project cost of \$ 50 million or less, the fee shall be \$ [50,000]. For other projects **that do not have residential units** [utilizing tax credits under the Federal Low-Income Housing Tax Credit Program], the fee shall be \$ [60,000] without phases and \$ [250,000] with phases; [and]

3. For projects not subject to paragraphs 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 paragraphs 1 or 2 above, the fee shall be \$ 85,000 without phases and \$ 275,000 with phases; and

[3] 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. 19:31-23.2. 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 under 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] **37,500**;

2. For projects **that do not have any residential units** [utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and] with total project cost of \$ 50 million or less, the fee shall be \$ 30,000. For other projects **that do not have residential units** [utilizing tax credits under the Federal Low-Income Housing Tax Credit Program], the fee shall be \$ 40,000 without phases and \$ 100,000 with phases; [and]

3. For projects not subject to paragraphs 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 paragraphs 1 or 2 above, the fee shall be \$ 52,500 without phases and \$ 112,500 with phases; and

[3.]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. 19:31-23.12 or permission to pledge a tax credit transfer certificate purchase contract as collateral shall pay to the Authority a fee, as follows:

1. For projects utilizing tax credits under 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 [utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and] **subject to paragraph 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 [utilizing tax credits under the Federal Low-Income Housing Tax Credit Program,] **subject to paragraph 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) Upon application 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, a developer shall pay to the Authority a fee, as follows:

1. For projects utilizing tax credits under 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 [utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and] **subject to paragraph 1 above** with total project cost of \$ 50 million or less, the fee shall be \$ 10,000. For other projects not [utilizing tax credits under the Federal Low-Income Housing Tax Credit Program,] **subject to paragraph 1 above**, the fee shall be \$ 10,000 without phases and \$ 20,000 with phases; and

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

(h) 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 under 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 [utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and] **subject to paragraph 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 [utilizing tax credits under the Federal Low-Income Housing Tax Credit Program,] **subject to paragraph 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.

(i) 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. 19:31-23.8(a); and a non-refundable fee shall be paid for each subsequent extension, as follows:

1. For projects utilizing tax credits under 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 [utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and] **subject to paragraph 1 above** with total project cost of \$ 50 million or less, the fee shall be \$ 7,500. For other projects not [utilizing tax credits under the Federal Low-Income Housing Tax Credit Program,] **subject to paragraph 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.

(j) 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. 19:31-23.8(f) for the respective redevelopment project, or the respective phase of a phased transformative project pursuant to N.J.A.C. 19:31-23.11(d); and a non-refundable fee shall be paid for each subsequent extension, as follows:

1. For projects utilizing tax credits under 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 [utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and] **subject to paragraph 1 above** with total project cost of \$ 50 million or less, the fee shall be \$ 7,500 for each extension. For other projects not [utilizing tax credits under the Federal Low-Income Housing Tax Credit Program,] **subject to paragraph 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.

(k) 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 under 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 [utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and] **subject to paragraph 1 above** with total project cost of \$ 50 million or less, the fee shall be \$ 25,000. For other projects not [utilizing tax credits under the Federal Low-Income Housing Tax Credit Program,] **subject to paragraph 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.

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

19:31-23.7 Approval of completed application; tax credit amounts

(a) – (e) No change.

(f) Notwithstanding the provisions at (e) above, for projects with tax credits under the Federal Low-Income Housing Tax Credit Program, in no event shall the sum of all tax credits awarded under any program administered by the Authority and the Federal Low-Income Housing Tax Credit Program exceed [90] **95** percent of the project cost. For all other projects, in no event shall the sum of all tax credits awarded under any program administered by the Authority exceed 80 percent of the project cost.

(g) -(h) (No change)

19:31-23.8 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 and the Director of the Division of Taxation of the determination.

1. The Board's award of the 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 will require that the qualified residential project will be monitored by an administrative agent as defined at N.J.A.C. 5:80-26.2 during the eligibility period for purposes of the affordable housing reservation at N.J.A.C. 19:31-23.3(e).] The approval letter shall also provide the requirements necessary for the Authority to execute the incentive award agreement.

2. -4. (No change)

(b) (No change)

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

1.-21 (No change)

22. A requirement for the developer to comply with the affordability controls as required by the Fair Housing Act, N.J.S.A. 52:27D-301, et seq., including, but not limited to, the following requirements as verified by the Agency: the requirements of N.J.A.C. 5:80-26.3 related to bedroom distribution in non-age-restricted and age-restricted projects income limits, and affordability averages, and the requirements of P.L.2020, c.51 (N.J.S.A. 52:27D-321.3, et seq.) and N.J.A.C. 5:80-26.15(e)-(i) related to affirmatively marketing each unit reserved for low- and moderate-income households by, among other things, posting notice of all available affordable units on the New Jersey Housing Resource Center website and selecting applicants for the units by lottery.

i. This requirement shall apply to all redevelopment projects, whether or not such projects receive additional State or Federal financing, except that a redevelopment project may deviate from this subsection when necessary to comply with Federal law or regulation.

ii. To determine the income limits, the Agency may use the Multifamily Tax Subsidy income limits as published by the US Department of Housing and Urban Development on an annual basis.

iii. In addition, redevelopment projects with market-rate units shall distribute the units reserved for occupancy by low- and moderate-income households among the different

sized units to reflect the same percentage distribution as the number of different sized units bear to the total number of units, unless the bedroom distribution requirements of N.J.A.C. 5:80-26.3 provide for a greater number of bedrooms, in which case the bedroom distribution requirements of N.J.A.C. 5:80-26.3 shall apply. Low- and moderate-income units shall be distributed throughout the project such that the tenants of such units will have equal access to, and enjoyment of, all common facilities of the redevelopment project.

iii. In addition, the developer shall record a deed restriction upon project completion for 45 years, as verified by the Agency and enforceable by the Authority.

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

[23.] 24. Indemnification and insurance requirements from the developer and any co-applicant;

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

[25.] 26. Default and remedies, including, but not limited to, a default if a developer or any co-applicant made a material misrepresentation on its application.

(d) (No change)

(e) For a redevelopment project whose total project cost equals or exceeds \$ 10 million, in addition to the incentive award agreement, the developer shall execute a community benefits agreement or agreements pursuant to subsection [e.] f. of section 60 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-328), as prescribed below. Any co-applicant that is responsible or required to provide services under the community benefits agreement shall also execute the community benefits agreement.

1. (No change)

2. (No change)

3. 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 community benefits agreement **or a redevelopment agreement that meets or exceeds the requirements established for a community benefits agreement in this section (N.J.S.A. 34:1B-328(f); N.J.A.C. 19:31-23.8(e) and N.J.A.C. 19:31-23.11(e))** is a condition to entering into an incentive award agreement.

4. 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, 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 shall provide a record, including hearing minutes, satisfactory to the Authority, which shall be an exhibit to the community benefits agreement.

5. 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.-vi. (No change)

6.-7. (No change)

8. A developer shall not be required to enter into a community benefits agreement pursuant to this subsection if the developer submits, to the Authority, **a letter of support from the chief executive of the municipality or county acknowledging confirming that the municipality or county has entered into a redevelopment agreement with the developer that meets or exceeds the standards required for a community benefits agreement in accordance with N.J.A.C. 19:31-23.8(e)**, 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 pursuant to **N.J.S.A. 34:1B-328(f) and (e)[2]** above required for a community benefits agreement in this subsection, as determined by the Chief Executive Officer.

9. (No change)

(f) A developer shall submit, prior to the issuance of tax credits under 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 contained 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.-4 (No change)

5. [Documentary evidence that a deed restriction reserving units pursuant to N.J.A.C. 19:31-23.3(e) or 23.11(e) has been recorded against each residential component of the redevelopment project. The deed restriction shall require that all residential units remain residential units until the eligibility period has expired;] **A letter from the Agency to the developer with copy to the Authority confirming compliance with the affordability controls as set forth in N.J.A.C. 19:31-23.8(c)22;**

6.-9. (No change)

(g) –(i) (No change)

19:31-23.9 Reporting requirements and annual report

(a) (No change)

(b) The annual report shall consist of:

1.-7. (No change)

8. For a project with residential units, [documentary evidence that the deed restriction required pursuant to N.J.A.C. 19:31-23.8(f) remains recorded, and documentation from the administrative agent that the redevelopment project remains in compliance with the affordability controls pursuant to the Fair Housing Act, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.)] **a letter from the Agency to the developer with copy to the Authority confirming compliance with the affordability controls as set forth in N.J.A.C. 19:31-23.8(c)22;**

9.-10. (No change)

11. A certification indicating compliance with the community benefits agreement required pursuant to **N.J.S.A. 34:1B-328(f) and N.J.A.C. 19:31-23.8(e)**;

12.-15. (No change)

(c)-(d) (No change)

(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 section 5 at P.L. 1945,

c. 162 (N.J.S.A. 54:10A-5). A developer, or co-applicant, shall apply the credit awarded against the developer's liability under section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), sections 2 and 3 at P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or N.J.S.A. 17B:23-5 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, shall not carry forward an unused credit, unless the developer or co-applicant was unable to use the credit because the developer's redevelopment project was directly impacted by a natural disaster, State emergency, national emergency, or a situation that was out of the developer's control that adversely affected the developer's or co-applicant's use of the credit that year. The developer or co-applicant may be permitted to carry forward an unused credit for up to two years, providing one or both has submitted evidence of the developer's redevelopment project being directly impacted by such a circumstance and receiving approval from the Authority and the Director.] **A developer or co-applicant may carry forward an unused credit in accordance with N.J.S.A. 34:1B-330.** 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) (No change)

19:31-23.10 Reduction, forfeiture, and recapture of tax credits

(a) The developer and any co-applicant shall forfeit all credit for the tax period in which the change occurs and each subsequent tax period, if:

1.-3. (No change)

4. The developer changes the project, so that the project would score less than the minimum score pursuant to [N.J.A.C. 19:31-23.7(e)] **N.J.A.C. 19:31-23.7(c).**

(b) (No change)

(c) If, during the eligibility period, the occupancy of a project 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 credit shall be allowed. For the purposes of this subsection, a residential unit shall be considered occupied if the unit is leased; and 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)-(l) (No change)

(m) **If, during the eligibility period, the letter from the Agency indicates that the developer is not in compliance with the affordability controls as set forth in N.J.A.C. 19:31-23.8(c)22, the Authority shall not issue the certificate of compliance for any tax credits until the developer obtains a letter from the Agency demonstrating compliance.**

(n) **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. 19:31-23.8(c)22iii, the Authority may declare a cross-default on all other assistance provided by the Authority to the**

developer, the co-applicant, any affiliates of the developer or the co-developer, and any entity with common principals as the developer or co-applicant and may recapture some or all of the tax credit award.

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

19:31-23.11 Transformative projects

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

1.-3. (No change)

4. For commercial projects, 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, professional stages, television studios, recording studios, screening rooms, or other infrastructure for film production, either:

(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; or

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

(3) The project is located in its entirety on land designated by the New Jersey Department of Environmental Protection as a Brownfield Development Area in accordance with N.J.S.A. 58:10B-25.1, et seq., and the project costs will include at least \$15 million in environmental remediation; 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:

i. Is of special economic importance by meeting one of the following criteria:

(1) The project is located in a government-restricted municipality, enhanced area, or distressed municipality;

(2) The project is not located in a government-restricted municipality, enhanced area, or distressed municipality and includes at least 20 percent of new residential units for low- and moderate-income households or workforce housing, in addition to the 20 percent of the new residential units for occupancy by low- and moderate-income households required pursuant to (e) below; [or]

(3) Involves the substantial renovation of a vacant commercial building; [and] or

(4) The project is located in its entirety on land designated by the New Jersey Department of Environmental Protection as a Brownfield Development Area in accordance with N.J.S.A. 58:10B-25.1, et seq., and the project costs will include at least \$15 million in environmental remediation; and

ii. Either includes:

(1) The construction of 1,000 or more new residential units; or

(2) Is a mixed-use residential project with construction of 100,000 square feet or more of retail or commercial space, exclusive of any parking component and with the majority of such non-residential use being commercial, and includes one of the following:

(A) If the project is located in a government-restricted municipality, includes the construction of 250 or more new residential units;

(B) If the project is located in an enhanced area, includes the construction of 350 or more residential units; or

(C) If the project is not located in a government-restricted municipality or enhanced area, and includes the construction of 600 or more 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 [and hospitals].

(c)-(d) (No change)

(e) All transformative projects that include newly constructed residential units shall reserve at least 20 percent of the new residential units for occupancy by low- and moderate-income households with affordability controls as required under the Fair Housing Act, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.) **and as set forth in N.J.A.C. 19:31-23.8(c)22.**

(f)-(q) No Change.