

RULE PROPOSALS

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

COMMUNITY AFFAIRS

(a)

DIVISION OF LOCAL PLANNING SERVICES

Fair Housing Act Rules

Proposed New Rules: N.J.A.C. 5:99

Authorized By: Jacquelyn A. Suárez, Commissioner, Department of Community Affairs.

Authority: P.L. 2024, c. 2, §§ 16, 27, and 30 (N.J.S.A. 40:55D-8.5.a, 321.i, and 329.2.a(4)).

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

Proposal Number: PRN 2025-026.

Submit written comments by May 16, 2025, to:

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The agency's proposal follows:

Summary

The New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq., was amended at P.L. 2024, c. 2 (hereinafter referred to as "the Act") and signed into law on March 20, 2024. P.L. 2024, c. 2, is a landmark law that implements the oft-cited *Mount Laurel* doctrine and makes substantial revisions to the Act, notably abolishing the Council on Affordable Housing and establishing a process to enable a municipality to determine its own present and prospective fair share affordable housing obligation based on the formulas calculated by the Department of Community Affairs (Department). The Act also answers the Supreme Court's repeated calls for legislative action on the enforcement of the *Mount Laurel* doctrine, provides reliability and stability to affected parties, and fosters the efficient and effective resolution of disputes.

New Jersey's history in fulfilling its constitutional obligation to create and maintain affordable housing opportunities has been detailed by both its Legislature and the courts and need not be fully reiterated in this Summary. In brief, the State Supreme Court (Court), in the seminal case of *Southern Burlington County NAACP v. Mount Laurel (Mount Laurel I)*, 67 N.J. 151, 187 (1975), determined that each municipality has a constitutional duty to "by its land use regulations, make realistically possible the opportunity for an appropriate variety and choice of housing for all categories of people who may desire to live there, of course including those of low and moderate income." The Court found that proper provisions for adequate housing for all people in the State was "an absolute essential in promotion of the general welfare required in all local

land use regulation." *Id.* at 179-80. This decision from the Court resulted in the creation of the oft-cited *Mount Laurel* doctrine. To enforce this doctrine, the Court, in 1983, in the matter of *Southern Burlington County NAACP v. Township of Mount Laurel (Mount Laurel II)*, 92 N.J. 158, 199 (1983), determined that a "strong judicial hand" was necessary. In recognition of the "social and economic controversy (and its political consequences)," the Court called upon the Legislature to craft legislation "that might completely remove this Court from those controversies." *Id.* at 212-13. Shortly thereafter, in 1985, the Legislature enacted P.L. 1985, c. 222, which, in part, established in the Executive Branch the Council on Affordable Housing (COAH). The State Supreme Court considered the legislation "not ordinary," as it "deal[t] with one of the most difficult constitutional, legal and social issues of our day—that of providing suitable and affordable housing for citizens of low and moderate income." *Hills Dev. Co. v. Township of Bernards*, 103 N.J. 1 (1986).

However, after several rounds of litigation and legislative action, the Court returned to the judiciary the "role as the forum of first instance for evaluating municipal compliance with Mount Laurel obligations," *In re N.J.A.C. 5:96 & 5:97 (Mount Laurel IV)*, 221 N.J. 1, 19-20 (2015), where this role remained with the passage of P.L. 2024, c. 2, in 2024. Therein, the Legislature found that "[t]he interest of all citizens, including low- and moderate-income families in need of affordable housing, and the needs of the workforce, would be best served by a comprehensive planning and implementation response" to the each and every municipality's constitutional obligation to provide, through its land use regulations, a realistic opportunity for a fair share of its regions' present and prospective needs for housing for low- and moderate-income families. N.J.S.A. 52:27D-302.c. The Legislature declared that "[t]here are a number of essential ingredients to a comprehensive planning and implementation response, including the establishment of reasonable fair share housing guidelines and standards, the initial determination of fair share by officials at the municipal level and the preparation of a municipal housing element, State review of the local fair share study and housing element, and continuous State funding for low- and moderate-income housing to replace the federal housing subsidy programs which have been almost completely eliminated." N.J.S.A. 52:27D-302.d. This comprehensive and landmark legislation, in part, formally abolished COAH and instead now allows for a municipality to "seek approval of its fair share affordable housing obligation ... with the guidance of calculations published by the Department of Community Affairs, but that advocates for the low- and moderate-income households of the State shall be provided with an opportunity to contest the municipal determination." N.J.S.A. 52:27D-302.o.

Pursuant to the Act, the Department is responsible for the ongoing monitoring of municipal affordable housing trust fund accounts and development of affordable housing units, as well as enforcement of development fee ordinances and oversight of municipal housing liaisons, administrative agents, and regional contribution agreement (RCA) administrators. The Act tasked the Department with promulgating

administrative rules to effectuate the law and its purposes. The proposed new rules place these Department duties within the Division of Local Planning Services (Division).

In drafting these rules, the Department and the Division of Local Planning Services relied on the language set forth at P.L. 2024, c. 2, as well as other statutes and rules, to find language that would clearly and efficiently carry out the purposes of the Act and also provide clarity to interested parties and municipalities about what the Act requires them to do, respectively. The Department also held stakeholder meetings with the New Jersey League of Municipalities and the Fair Share Housing Center of New Jersey to gather input from different perspectives about the impacts of the Act and the requirements for parties thereunder. The Department believes that the concerns discussed and expressed during those stakeholder meetings are reflected in these rules to the fullest extent possible.

A section-by-section summary of the proposed new rules follows.

Subchapter 1. General Provisions

Proposed new N.J.A.C. 5:99-1.1 sets forth the purpose of the new rules. The section also sets forth a severability clause, which provides that if any of the proposed rules are found to be invalid after they are adopted, that holding will not impact the validity and applicability of the remaining rules. The section also vests with the Division of Local Planning Services, the jurisdiction and authority to enforce the rules and provides that any municipality that is found to not be in compliance with the rules may be subject to forfeiture of any or all funds in the municipality's affordable housing trust fund.

Proposed new N.J.A.C. 5:99-1.2 defines the words, terms, and phrases necessary for the use and interpretation of the new rules, many of which are directly from the statutes that were amended by P.L. 2024, c. 2. The Department also incorporated definitions from prior or existing rules, many of which are longstanding and have provided guidance to municipalities and developers for several years, including the rules of the former Council on Affordable Housing, as well as the Uniform Housing Affordability Controls, the Uniform Construction Code.

The following defined terms were incorporated from the third round affordable housing rules promulgated by the Council on Affordable Housing, formerly codified at N.J.A.C. 5:96 and 5:97, to ensure consistency and a common understanding between those previously codified rules and the Department's proposed new rules: "affordable housing development," "fair share obligation," "affordable unit," "barrier-free escrow," "developer," "development application," "moderate income," "municipal housing liaison," "payment in lieu of constructing affordable units," "RCA administrator," "RCA project plan," "receiving municipality," "reconstruction," "regional contribution agreement (RCA)," "rehabilitation," "sending municipality," and "very low income."

The following defined terms were incorporated from the Act to ensure consistency with the statute: "accessory dwelling unit," "Affordable Housing Dispute Resolution Program," "builder's remedy," "Commissioner," "compliance certification," "county-level housing judge," "Department," "development," "equalized assessed value (EAV)," "exclusionary zoning litigation," "fair share plan," "housing element," "housing project," "housing region," "inclusionary development," "low-income housing," "mixed-use development," "moderate-income housing," "New Jersey Affordable Housing Trust Fund," "non-residential development," "non-residential development fee," "Qualified Urban Aid Municipality," "recreational facilities and community centers," "senior center," "spending plan," and "very low-income housing."

Additionally, the Department incorporated the definitions for "administrative agent" and "low-income" from the Uniform Housing Affordability Control regulations to ensure consistency between the Housing and Mortgage Finance Agency's (HMFA) rules and the Department's.

Finally, the proposed rules set forth several new terms that do not refer to any legislative or regulatory precedents. Some of these terms that are used to reference statutes and persons named in both the Act and the proposed new rules, such as: "Act," which refers to P.L. 2024, c. 2; "Affordable Housing Monitoring System," which refers to the Division's

system for monitoring compliance; "Division," which refers to the Division of Local Planning Services; "HMFA," which refers to the New Jersey Housing and Mortgage Finance Agency; "Treasurer," which refers to the Treasurer of the State of New Jersey; and "UHAC," which refers to the Uniform Housing Affordability Controls, promulgated by HMFA. Some of the words and phrases defined have been referenced historically in other statutes and rules but were not defined, and the Department has determined that defining these terms is necessary to provide context to the proposed new rules, and include: "affordable housing delivery mechanisms," "construction," "development fee," "emergent opportunity," "excess RCA funds," "household," "Municipal Affordable Housing Trust Fund," "municipal development fee ordinance," "new construction," and "order for repose."

Subchapter 2. Affordable Housing Trust Funds

Proposed new N.J.A.C. 5:99-2.1 describes the purpose of the Affordable Housing Trust Funds, which are used to address a municipality's low- and moderate-income housing obligations within the timeframes established by the Legislature and through the rules. Pursuant to N.J.S.A. 52:27D-329.2, a municipality must maintain an affordable housing trust fund and deposit therein any funds collected by the municipality in connection with its affordable housing programs. The proposed new rules set forth a non-exhaustive list of the types of fees that are subject to these statutory requirements, and include: collected development fees (both residential and non-residential), payments in lieu of constructing affordable housing units on sites zoned for such housing, barrier-free escrow funds, recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines, unexpended Regional Contribution Agreements funds from a completed project, and application fees. The Department believes that this non-exhaustive list will provide clarity to interested members of the public.

Proposed new N.J.A.C. 5:99-2.2 sets forth the affordable housing trust fund account requirements, including the type of account that must be used when the affordable housing trust fund account is established, how the municipality gives notice to the Division of Local Planning Services, and a timeline for notice to the Division. Pursuant to the proposed new rule, a municipality has 21 days from the establishment of an affordable housing trust fund account to provide notice to the Division. The Department believes this timeframe provides municipalities with sufficient time to gather the requisite materials required pursuant to the new rule and provide adequate notice to the Division. The proposed new rule also provides a list of expenses for which affordable housing trust funds cannot be spent on, consistent with the provisions at N.J.S.A. 52:27D-329.2. While the statute refers to "municipal development trust funds" and "municipal development fee trust funds," these are all understood to refer to a municipal affordable housing trust fund, as set forth in the proposed new rules, which is consistent with industry usage of these terms.

Proposed new N.J.A.C. 5:99-2.3 provides information on the acceptable and unacceptable uses of funds in the account for housing activity. The proposed new rule provides a list of affordable housing mechanisms on which a municipality may expend funds from its municipal affordable housing trust fund. These mechanisms are found in the statutes amended at P.L. 2024, c. 2, as well as in prior rules promulgated by the Council on Affordable Housing, formerly codified at N.J.A.C. 5:93 through 5:97. The list also gives the Division of Local Planning Services the discretion to approve any other activity of affordable housing mechanism that is not explicitly provided for in the rule.

Proposed new N.J.A.C. 5:99-2.4 provides information on the acceptable and unacceptable uses of funds in the account for administrative expenses as provided for at N.J.S.A. 52:27D-329.2. The proposed new rule also incorporates language from prior rules promulgated by the Council on Affordable Housing, codified at N.J.A.C. 5:93 through 5:97.

Proposed new N.J.A.C. 5:99-2.5 provides information on the acceptable and unacceptable uses of funds in the account for affordability assistance as provided for at N.J.S.A. 52:27D-329.2. The proposed new rule also incorporates and amends language from prior rules promulgated

by the Council on Affordable Housing, formerly codified at N.J.A.C. 5:93 through 5:97, as modified by the Act itself, to specify that a portion of collected development fees must be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipality's fair share plan. The Council on Affordable Housing previously set the minimum amount at 30 percent of all development fees collected. However, the Act does not specify how much of a portion must be used. Thus, to ensure consistency with the Act, the Department has elected to incorporate that language.

Proposed new N.J.A.C. 5:99-2.6 sets forth the manner in which affordable housing trust fund dollars may include fees collected to adapt affordable unit entrances to be accessible and barrier-free as provided for at N.J.S.A. 52:27D-311.b and in the Barrier Free Subcode, N.J.A.C. 5:23-7, of the Uniform Construction Code.

Proposed new N.J.A.C. 5:99-2.7 sets forth the method in which payments in lieu of constructing affordable units on-site may be collected and utilizes the language provided by the Legislature at N.J.S.A. 52:27D-329.2.

Proposed new N.J.A.C. 5:99-2.8 sets forth the other funds that may be contained in the affordable housing trust fund, including recaptured funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines and application fees, and any other funds collected by the municipality in connection with its affordable housing programs. These funds were authorized to be collected and deposited in a municipality's municipal affordable housing trust fund pursuant to prior rules promulgated by the Council on Affordable Housing, formerly codified at N.J.A.C. 5:93 through 5:97. This proposed new rule will continue to allow for the collection of those other funds to aid in a municipality's affordable housing obligations.

Subchapter 3. Development Fees

Proposed new N.J.A.C. 5:99-3.1 sets forth the municipal ordinance requirements for general residential and non-residential development in compliant municipalities, as set forth at N.J.S.A. 52:27D-329.2. The proposed new rule also explains that a municipality that has lost its compliance status may not impose residential development fees on a development that received preliminary or final approval after the municipality has lost its compliance status. Moreover, in that situation, the municipality may not retroactively impose development fees on the development if the municipality regains its compliance status. The Department believes that this language is consistent with the terms at N.J.S.A. 52:27D-329.2 and encourages municipalities that wish to continue imposing development fees to maintain their compliance status.

The proposed new rule also incorporates language from the Statewide Non-Residential Development Fee Act at N.J.S.A. 40:55D-8.4, which mandates all non-residential development fees are collected prior to the issuance of a certificate of occupancy. It is common in the industry for municipalities and developers to follow this same procedure relative to residential development fees. The proposed new rule codifies this commonly utilized practice, while also providing municipalities with the option to collect up to half of the imposed development fees at the time it issued a building permit to a developer.

Additionally, the proposed new rule provides that, in the event of a challenge to an imposed and/or collected development fee, the fees shall be deposited in an interest-bearing account to be maintained by the municipality and that the local code official may, in spite of the challenge, issue a certificate of occupancy if the construction meets all the relevant requirements for the certificate. This will ensure that any disputed fees are securely stored until the conclusion of any challenge. Moreover, the proposed new rule provides that if the fees are returned to the developer, any accrued interest shall also be returned. Finally, the new rule provides that a municipality's development fee ordinance shall include a provision that the Division shall be authorized to determine and direct the manner in which all funds are deposited in the municipality's municipal affordable housing trust fund in the event that the municipality violates proposed new N.J.A.C. 5:99-5.6, which would constitute a non-compliant administration of the municipality's fund. This language is consistent with P.L. 2024, c. 2, as well as other proposed rules in this chapter, and

incorporates language from prior rules promulgated by the Council on Affordable Housing, formerly codified at N.J.A.C. 5:93 through 5:97.

Proposed new N.J.A.C. 5:99-3.2 sets forth specific guidelines for residential development fee ordinances in compliant municipalities and exemptions. The section specifies that a development fee ordinance shall impose a maximum of one-and-one-half percent of the equalized assessed value, or EAV, of the development. The proposed rule also allows a municipality to impose an increased development fee of up to six percent of the EAV for each additional unit that may be realized for a development that has received an increase in residential density after a developer has filed an application for a variance pursuant to N.J.S.A. 40:55D-70.d(5). The new rule also provides a list of eligible exactions, ineligible exactions, and exemptions from residential development fees. This language mirrors that from prior rules promulgated by the Council on Affordable Housing, formerly codified at N.J.A.C. 5:93 through 5:97. However, the new rule also details certain entities who are exempted from the imposition of property taxes, such as Federal, State, county, and local government units, as well as non-profit organizations that have received tax exempt status pursuant to the Internal Revenue Code and that provide current evidence of that status with a certification that services of the organization are provided at reduced rates to those who establish an inability to pay existing charges. Both governmental units and tax-exempt non-profit organizations serve the public good, and the Department believes that exempting these parties from development fees will incentivize the continued development in municipalities that impose residential development fees, in lieu of only developing in districts that do not impose residential development fees.

Proposed new N.J.A.C. 5:99-3.3 sets forth specific guidelines for non-residential development fee ordinances in compliant municipalities in addition to the fees imposed pursuant to the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7. All non-residential development, unless otherwise exempted, are subject to the imposition of non-residential development fees pursuant to the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7. While the law does not require a municipality to enact a non-residential development fee ordinance, the proposed new rules provide clarity to those municipalities that have chosen to do so. The proposed new rules mirror the language of the Statewide Non-Residential Development Fee Act.

Proposed new N.J.A.C. 5:99-3.4 sets forth specific guidelines for non-residential development fee collection in non-compliant municipalities in accordance with the fees imposed pursuant to the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7. Pursuant to the proposed language, which incorporates language from the Statewide Non-Residential Development Fee Act, non-compliant municipalities, regardless of whether the municipality is a Qualified Urban Aid Municipality, are required to impose non-residential development fees. However, the section clarifies that a non-compliant municipality may not retain or expend those fees, and instead must remit those fees to the Treasurer of the State of New Jersey.

Subchapter 4. Expedited Approval of Expenditures for Emergent Opportunities To Create Affordable Housing

Proposed new N.J.A.C. 5:99-4.1 sets forth that municipalities may request authorization from the Division of Local Planning Services to expend excess affordable housing trust funds, those being funds that were not anticipated in the municipality's spending plan, on emergent affordable housing opportunities not included in the municipal fair share plan. This section is proposed to implement N.J.S.A. 52:27D-329.2.a(4). The new rule provides guidance to municipalities on what they must provide to the Division to make a valid request. This section does not nullify a municipality's obligation to pursue an amendment to its fair share plan and spending plan through the Affordable Housing Dispute Resolution Program (Program) or through a court of competent jurisdiction as required pursuant to the Act. Rather, this section is intended to expedite these steps by allowing a municipality to act quickly on an emergent affordable housing opportunity.

Subchapter 5. Reporting, Monitoring, and Enforcement

Proposed new N.J.A.C. 5:99-5.1 sets forth the municipalities required to provide monitoring information and the annual deadline established pursuant to N.J.S.A. 52:27D-329.4.

Proposed new N.J.A.C. 5:99-5.2 sets forth the monitoring and publication requirements of the Division of Local Planning Services for municipal affordable housing trust fund expenditures as established pursuant to N.J.S.A. 52:27D-329.4. The section also mandates that any reporting from municipalities be submitted to the Division of Local Planning Services through the Affordable Housing Management System, an online platform that the Department believes will streamline reporting and provide a uniform format and process by which municipalities can make their reports pursuant to N.J.S.A. 52:27D-329.4.

Proposed new N.J.A.C. 5:99-5.3 sets forth the monitoring and publication requirements of the Division of Local Planning Services for the number and type of affordable housing units constructed, construction start dates, and certificates of occupancy granted, all of which is required pursuant to N.J.S.A. 52:27D-329.4. Similar to proposed N.J.A.C. 5:99-5.2, this section would mandate that the reporting of this information to the Division of Local Planning Service be made through the online Affordable Housing Management System.

Proposed new N.J.A.C. 5:99-5.4 outlines that municipalities may only collect fees and maintain their affordable housing trust fund until their compliance certification or judgment of compliance expires, unless the municipality has entered the process for compliance certification of a housing element and fair share plan. The section also provides, pursuant to N.J.S.A. 52:27D-329.2 and 40:55D-8.4, the affordable housing trust funds of a municipality that falls out of compliance with its affordable housing obligations are subject to forfeiture to the New Jersey Affordable Housing Trust Fund as defined at N.J.S.A. 52:27D-320.

Proposed new N.J.A.C. 5:99-5.5 outlines the process in which municipal trust funds will be transferred due to failure to spend, or commit to expend, development fees within four years of the collection date pursuant to N.J.S.A. 52:27D-329.2. The section also clarifies what it means for funds to be expended, or committed for expenditure, and provides standards for municipalities to meet for reporting purposes, including standards for reporting affordability assistance expenses and other administrative expenses.

Proposed new N.J.A.C. 5:99-5.6 sets forth the actions that may be taken by the Division of Local Planning Services, should an affordable housing program not be administered in accordance with this chapter. The section provides a list of circumstances which, if determined to have occurred, will result in the Division instituting an enforcement action. The list in the proposed rule includes eight specific provisions, as well as a catch-all provision that would allow for the Division to levy an enforcement action should it find other good cause demonstrating that municipal affordable housing funds are not being used for an approved purpose. This language will allow the Division to have the flexibility to enforce the chapter and the Fair Housing Act for unanticipated or uncommon situations and scenarios. The section also provides notice about the procedures the Division must follow if it is to institute an enforcement action. This language was taken from the prior rules promulgated by the Council on Affordable Housing, formerly codified at N.J.A.C. 5:93 through 5:97. Finally, the section offers parties aggrieved by an enforcement action or decision by the Division to request a hearing, which shall be conducted in accordance with the provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and affords the Commissioner of the Department of Community Affairs the opportunity to issue a final agency decision on the matter. These provisions are consistent with the rights of aggrieved parties as set forth in the Administrative Procedures Act and affords those aggrieved parties with due process to challenge a decision on an enforcement action by the Division.

Subchapter 6. Municipal Housing Liaison

Proposed new N.J.A.C. 5:99-6.1 provides that all municipalities that have created, or will create, affordable housing programs and/or affordable units shall establish the position of and appoint a municipal housing liaison, pursuant to N.J.S.A. 52:27D-321, and utilizes language from that statute.

Proposed new N.J.A.C. 5:99-6.2 sets forth the responsibilities of the municipal housing liaison, pursuant to N.J.S.A. 52:27D-321. The Department anticipates that these responsibilities will be similarly detailed in the forthcoming updates to the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26, from the New Jersey Housing and Mortgage Finance Agency (HMFA). The section also provides a list of responsibilities that a municipal housing liaison is not authorized to contract out or otherwise delegate to a third party. Municipal housing liaisons carry a higher level of responsibility and accountability, as an employee of the municipality, to the municipality itself, including overseeing administrative agents, who are not necessarily employees of the municipality. The Department believes that this list of non-delegable responsibilities, which were provided for in prior rules promulgated by the Council on Affordable Housing, formerly codified at N.J.A.C. 5:93 through 5:97, are essential to maintaining that heightened level of accountability to the municipality.

Proposed new N.J.A.C. 5:99-6.3 sets forth the process by which a municipal housing liaison appointment is approved and is intended to give the Division and the public assurances that the municipal housing liaison is qualified to carry out the responsibilities assigned to the role. The list of items that a municipality must submit in order to appoint a municipal housing liaison is also consistent with Directive 14-24, published by the Administrative Office of the Courts.

Proposed new N.J.A.C. 5:99-6.4 requires that municipal housing liaisons complete an education program and that they earn 20 continuing education credits every three years. These requirements are consistent with those necessary to maintain an Affordable Housing Professional Certificate.

Subchapter 7. Administrative Agent

Proposed new N.J.A.C. 5:99-7.1 provides that all municipalities that have created, or will create, affordable housing programs and/or affordable housing units may designate an administrative agent, pursuant to N.J.S.A. 52:27D-321 and the UHAC.

Proposed new N.J.A.C. 5:99-7.2 sets forth the responsibilities of the administrative agent with regard to the administration of affordable units and compliance with UHAC regulations. The responsibilities of the administrative agent in this section are derived from the UHAC.

Proposed new N.J.A.C. 5:99-7.3 sets forth the process by which an administrative agent appointment is approved and is intended to give the Division and the public assurances that the administrative agent is qualified to carry out the responsibilities assigned to the role. The section identifies the requirements for an administrative agent to be certified, pursuant to N.J.S.A. 52:27D-321, and outlines continued monitoring of performance and revocation of duties.

Proposed new N.J.A.C. 5:99-7.4 sets forth the procedures to be undertaken to change administrative agents to ensure continuation of services and proper transfer of important project information. The language in this section is consistent with the provisions of the UHAC.

Proposed new N.J.A.C. 5:99-7.5 requires that administrative agents complete an education program and that they earn 20 continuing education credits every three years. These requirements are consistent with those necessary to maintain an Affordable Housing Professional Certificate.

Subchapter 8. RCA Administrator

Proposed new N.J.A.C. 5:99-8.1 provides that all municipalities that have received funds through a regional contribution agreement (RCA) shall establish the position of RCA administrator. While the Legislature found in the Act that RCAs should no longer be utilized as a mechanism for the creation of affordable housing, there still remain uncompleted affordable housing projects and programs that were undertaken as part of an RCA. For those uncompleted projects, the RCA remains open and valid, and the municipality must appoint an RCA administrator.

Proposed new N.J.A.C. 5:99-8.2 sets forth the responsibilities of the RCA administrator and follows previously adopted and recognized procedures for administering an RCA program plan promulgated by the Council on Affordable Housing, formerly codified at N.J.A.C. 5:93, 5:94, and 5:97.

Proposed new N.J.A.C. 5:99-8.3 sets forth the process by which the RCA administrator appointment is approved and is intended to give the Division and the public assurances that the RCA administrator is qualified to carry out the responsibilities assigned to the role. Proposed new N.J.A.C. 5:99-8.4 requires that RCA administrators complete an education program and that they earn 20 continuing education credits every three years. These requirements are consistent with those necessary to maintain an Affordable Housing Professional Certificate.

Subchapter 9. Education Program

Proposed new N.J.A.C. 5:99-9.1 sets forth the purpose of the Education Program to provide an understanding of the roles and duties of the municipal housing liaison, administrative agent, and RCA administrator.

Proposed new N.J.A.C. 5:99-9.2 sets forth the process by which cost and tuition for the Education Program may be determined and provisions for utilization of affordable housing trust fund for payment.

Proposed new N.J.A.C. 5:99-9.3 sets forth the curriculum for the Education Program and includes minimum requirements based on responsibilities pursuant to the UHAC.

Proposed new N.J.A.C. 5:99-9.4 provides the standards for determining satisfactory completion of the Education Program, as determined by the Division. The Division has determined that a sufficient score for a passing grade on the examination is 70 percent. This figure was utilized in the prior rules promulgated by the Council on Affordable Housing, formerly codified at N.J.A.C. 5:93 through 5:97.

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

Social Impact

Primarily, the Department believes that the proposed new rules will impact municipalities and their employees, as well as developers across the State. The proposed new rules regulate many of the technical aspects that accompany a municipality's affordable housing obligation, which is set forth by the Act itself. The proposed new rules include provisions for monitoring compliance with the collection of development fees and other funds that are deposited into a municipality's affordable housing trust fund, as well as education provisions for those who will serve as municipal housing liaisons and administrative agents. The Department anticipates that the proposed new rules will impact municipalities and those municipal employees whose position is relative to the municipality's affordable housing obligations. The Department anticipates that the proposed new rules will also impact developers because the rules detail some of the technical requirements regarding the collection of development fees, both residential and non-residential.

Ultimately, the Department believes that these impacted groups will benefit from the proposed new rules, as the rules streamline the process for municipalities to meet their affordable housing obligations and have positive impacts on vulnerable populations throughout the State.

Economic Impact

The Department anticipates that the proposed new rules will have both positive and negative economic impacts on governmental bodies of the State and several segments of the public proposed to be regulated. In terms of a positive impact, the Department believes that the rules will effectuate the purpose of the Fair Housing Act and aid in the creation of affordable housing opportunities, which is a pressing need for all residents. According to a 2022 study from the Rutgers University New Jersey State Policy Lab, based on data from the U.S. Census Bureau's annual American Community Survey, while New Jersey's median household income was two percent higher than the national average, New Jersey's median monthly costs for owner-occupied housing ranked third amongst all states, surpassing the national median by nearly 44 percent. William Irving, Rutgers University: New Jersey State Policy Lab, New Jersey Ranks First in Income, but Housing Costs Take a Hefty Share Especially for those with Lower Incomes (available at <https://policylab.rutgers.edu/new-jersey-ranks-first-in-income-but-housing-costs-take-a-hefty-share/>) (last visited Jan. 16, 2025). Moreover, the data showed that the median gross rent in New Jersey was 20 percent higher than the national median "with the highest relative rental burdens falling on those

in the lower income counties." *Ibid.* According to the New Jersey State Policy Center at Rutgers University:

New Jersey ranked sixth in terms of the percentage of homeowners with mortgages spending 30% or more of their household income on monthly housing costs—an improvement from its rank of third in 2021. The State ranked eighth in terms of the percentage of renter-occupied units spending 30% or more of their income on gross rent (rent plus utilities). The federal Department of Housing and Urban Development (HUD) considers renter households with housing cost ratios (rent and utilities as a percentage of income) of over 30% to be "cost-burdened" and those with ratios of over 50% to be "severely cost-burdened." Among households with incomes below \$50,000, New Jersey had the third highest percentage (55.1%) of renters paying more than 50% of their income in rent and utilities, a reflection of the state's inadequate stock of affordable housing.

[*Ibid.*]

It cannot be denied that the need for affordable housing opportunities, particularly for New Jersey's low- and moderate-income residents, is a pressing need.

There is the potential, pursuant to the Act and the proposed new rules, that municipalities could face additional or increased costs in fulfilling their affordable housing obligations and implementing processes for compliance with the Act. For example, municipalities may face increased costs as it relates to the administration of units. Some municipalities may need to hire additional staff to fulfill the increased roles and responsibilities of a municipal housing liaison or an administrative agent. Some municipalities may need to expend funds to pay for required education. However, the potential economic benefits and constitutional obligations outweigh any potential costs. Additionally, most or all of the additional expenses can be paid for utilizing funds from the municipal affordable housing trust fund. Finally, the Department does not anticipate that the proposed new rules will impact developers, as the proposed new rules will not lead to an increase in development fees. Both residential and non-residential development fees have been imposed and collected well before the passage of the Act and the proposal of this rulemaking, and neither the Act nor the proposed new rules purport to increase the amount of any imposed development fees or the frequency of their collection by municipalities.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules are not being proposed pursuant to the authority of, or to implement, comply with, or participate in, any program established pursuant to Federal law or any State statute that incorporates or refers to any Federal law, standards, or requirements.

Jobs Impact

Although several new municipal positions are created as a direct result of the Act, the proposed new rules are not expected to have a significant impact on the creation or loss of jobs in the State of New Jersey. It is possible that the Act itself will compel municipalities to fill vacant positions for municipal housing liaisons and administrative agents, positions that existed prior to the passage of the Act but were not always filled. However, the rules, in and of themselves, do not purport to create any jobs.

Agriculture Industry Impact

The Department does not anticipate that the proposed new rules will impact the agricultural industry.

Regulatory Flexibility Statement

The proposed new rules are not expected to impose reporting, recordkeeping, or other compliance requirements on small businesses. Rather, any recordkeeping, reporting, or other requirements for compliance fall to the municipality, the municipal housing liaison, and the administrative agent, none of which are small businesses. Thus, no regulatory flexibility analysis is required.

Housing Affordability Impact Analysis

The Department anticipates that the proposed new rules will have a positive impact on housing affordability, as the Act and the accompanying rules are designed to increase the supply of affordable housing in the State for moderate-income, low-income, and very low-income households by helping to alleviate housing shortages and stabilizing or reducing housing costs for low- and moderate-income families, over time. While the Act and the proposed new rules will not result in an increase or decrease in the cost of housing itself, the underlying policy goal is to increase the availability of affordable rental and for-sale housing.

As stated in the Economic Impact above, there is a dearth of affordable housing in New Jersey, which ranks among the most expensive states to live in and has one of the highest costs of living in the United States. While the proposed new rules, themselves, do not inform a municipality's affordable housing obligation—which is accomplished by the Act itself—the rules nevertheless effectuate the policies and goals expressed in that legislation. The proposed new rules vest within the Division of Local Planning Services the authority to monitor the progress of New Jersey's municipalities in meeting their respective affordable housing obligations and take enforcement action should a municipality fail to comply with meeting its affordable housing obligations. The proposed new rules also create a uniform and streamlined Affordable Housing Management System to ensure that New Jersey's municipalities are accurately reporting up-to-date information about their progress towards fulfilling their respective affordable housing obligations. The Division's proposed new rules will ultimately incentivize municipalities to maintain their compliance status in meeting their affordable housing obligations, which all serve to maintain and promote the development of affordable housing in this State.

The Department believes that the new rules serve to effectuate the overarching goals and policies established at P.L. 2024, c. 2. In drafting the new rules, the Department and the Division of Local Planning Services relied on the language set forth at P.L. 2024, c. 2, as well as other statutes and rules, to find language that would clearly and efficiently carry out the purposes of the Fair Housing Act and also provide clarity to interested parties and municipalities about what the Fair Housing Act requires them to do, respectively.

Smart Growth Development Impact Analysis

As referenced in the housing affordability analysis above, the Department anticipates that the proposed new rules will have a positive impact on housing affordability by increasing the supply of affordable housing in the State. The Department does not anticipate that the proposed new rules will impact smart growth development or redevelopment. Indeed, the Department's proposed new rules regulate many of the technical and administrative aspects of the implementation of the Act, and do not touch on the actual development or other land use aspects of creating affordable housing. Thus, while the Act itself may impact land use and development in Planning Areas 1 and 2, particularly with regard to what sites are determined to be "developable," the Department's proposed rules do not.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposed new rules follows:

CHAPTER 99 FAIR HOUSING ACT REGULATIONS

SUBCHAPTER 1. GENERAL PROVISIONS

5:99-1.1 Purpose

(a) This chapter establishes procedures to be used by municipalities in addressing requirements set forth in the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq., and the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

(b) If any part of this chapter shall be held invalid, the holding shall not affect the validity of the remaining parts of this chapter. If a part of this chapter is held invalid in one or more of its applications, the chapter shall remain in effect in all valid applications that are severable from the invalid application.

(c) The Division of Local Planning Services shall have jurisdiction regarding the enforcement of this chapter, provided that any municipality that is not in compliance with this chapter, as adopted by the Division of Local Planning Services, may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund, established pursuant to N.J.S.A. 52:27D-320.

5:99-1.2 Definitions

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

"Accessory dwelling unit" means a residential dwelling unit that provides complete independent living facilities with a private entrance for one or more persons, consisting of provisions for living, sleeping, eating, sanitation, and cooking, including a stove and refrigerator, and is located within a proposed or existing primary dwelling, within an existing or proposed structure that is an accessory to a dwelling on the same lot, constructed in whole or part as an extension to a proposed or existing primary dwelling, or constructed as a separate detached structure on the same lot as the existing or proposed primary dwelling.

"Act" means P.L. 2024, c. 2.

"Administrative agent" means the entity responsible for the administration of affordable units in accordance with N.J.A.C. 5:99-7, and as designated by the UHAC at N.J.A.C. 5:80-26.15.

"Affordability assistance" means the use of funds to render housing units more affordable to low- and moderate-income households and includes, but is not limited to, down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowner's association or condominium fees and special assessments, common maintenance expenses, and assistance with emergency repairs and rehabilitation to bring deed-restricted units up to code, pursuant to N.J.A.C. 5:99-2.5.

"Affordable" means a sales price or rent within the economic means of a low- or moderate-income household, as defined in the UHAC as, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth at N.J.A.C. 5:80-26.7 and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth at N.J.A.C. 5:80-26.13.

"Affordable housing delivery mechanisms" means any of the methods of creating or preserving actual housing units available to low- and moderate-income households or creating a realistic opportunity for the construction of such units, as permitted by the Act.

"Affordable housing development" means a development included in a municipality's housing element and fair share plan, and includes, but is not limited to, an inclusionary development, a municipally sponsored affordable housing project, or a 100 percent affordable development.

"Affordable Housing Dispute Resolution Program" or "the Program" refers to the dispute resolution program established pursuant to N.J.S.A. 52:27D-313.2.

"Affordable Housing Monitoring System" or "AHMS" means the Department's cloud-based software application, which shall be the central repository for municipalities to use for reporting detailed information regarding affordable housing developments, affordable housing unit completions, and the collection and expenditures of funds deposited into the municipal affordable housing trust fund.

"Affordable unit" means a housing unit proposed or developed pursuant to the Act, including units created with municipal affordable housing trust funds.

"Barrier-free escrow" means the holding of funds collected to adapt affordable unit entrances to be accessible in accordance with N.J.S.A. 52:27D-311a et seq. Such funds shall be held in a municipal affordable housing trust fund pursuant to N.J.A.C. 5:99-2.6.

"Builder's remedy" means court-imposed site-specific relief for a litigant who seeks to build affordable housing for which the court requires a municipality to utilize zoning techniques, such as mandatory set-asides

or density bonuses, including techniques that provide for the economic viability of a residential development by including housing that is not for low- and moderate-income households in accordance with N.J.S.A. 52:27D-304.

“Commissioner” means the Commissioner of the Department of Community Affairs.

“Compliance certification” means the certification issued to a municipality by the Program pursuant to section 3 at P.L. 2024, c. 2, that provides a municipality immunity from exclusionary zoning litigation during the current round of present and prospective need and through July 1 of the year the next round of affordable housing obligations begins, which is also known as a “judgment of compliance” resulting in an “order for repose.” “Compliance certification” shall include a judgment of repose granted in an action filed pursuant to section 13 at P.L. 1985, c. 222 (N.J.S.A. 52:27D-313).

“Compliant municipality” means a municipality that is in the process of seeking compliance certification pursuant to the directives issued by the Administrative Office of the Courts, has obtained compliance certification, or who has filed for, or has obtained, a Judgment of Compliance, Order for Repose, or other court approval pursuant to the Act.

“Construction” means new construction and additions, but does not include alterations, reconstruction, renovations, conversion, relocation, or repairs, as those terms are defined in the State Uniform Construction Code promulgated pursuant to the State Uniform Construction Code Act, P.L. 1975, c. 217 (N.J.S.A. 52:27D-119 et seq.).

“County-level housing judge” means a judge appointed pursuant to section 5 at P.L. 2024, c. 2, to resolve disputes over the compliance of municipal fair share affordable housing obligations and municipal fair share plans and housing elements with the Act.

“Department” means the New Jersey Department of Community Affairs.

“Developer” means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

“Development” means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining, excavation, or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

“Development application” means the application form and all accompanying documents required by ordinance for approval of a subdivision plat, a site plan, planned development, conditional use, zoning variance, or direction of the issuance of a permit pursuant to N.J.S.A. 40:55D-34 or 40:55D-36.

“Development fee” means money paid by a developer for the improvement of residential and non-residential property as permitted pursuant to N.J.S.A. 52:27D-329.2 and 40:55D-8.1 through 40:55D-8.7 and N.J.A.C. 5:99-3.

“Division” means the Division of Local Planning Services within the Department of Community Affairs.

“Emergent opportunity” means a circumstance that has arisen whereby affordable housing will be able to be produced through a delivery mechanism not originally contemplated by or included in a fair share plan that has been the subject of a compliance certification.

“Equalized assessed value” or “EAV” means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 at P.L. 1973, c. 123 (N.J.S.A. 54:1-35a, 54:1-35b, and 54:1-35c). Estimates at the time of building permit may be obtained by the tax assessor using construction cost estimates. Final EAV shall be determined at project completion by the municipal assessor.

“Excess RCA funds” means unspent money transferred prior to July 17, 2008, pursuant to a regional contribution agreement whose terms have been fulfilled.

“Exclusionary zoning litigation” means litigation challenging the fair share plan, housing element, ordinances, or resolutions that implement the fair share plan or housing element of a municipality based on alleged noncompliance with the Act or the *Mount Laurel* doctrine, which litigation shall include, but shall not be limited to, litigation seeking a builder’s remedy.

“Extension of expiring controls” means extending the deed restriction period on units where the controls will expire in the current round of a housing obligation, so that the total years of a deed restriction is at least 60 years.

“Fair share obligation” means the total of the present need and prospective need as determined by the Affordable Housing Dispute Resolution Program, or a court of competent jurisdiction.

“Fair share plan” means the plan or proposal, which may readily be adopted with accompanying ordinances and resolutions, pursuant to subsection f. of section 3 at P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1) by which a municipality proposes to satisfy its obligation to create a realistic opportunity to meet its fair share of low- and moderate-income housing needs of its region and which details the affirmative measures the municipality proposes to undertake to achieve its fair share of low- and moderate-income housing, as provided in the municipal housing element, and addresses the development regulations necessary to implement the housing element, including, but not limited to, inclusionary requirements and development fees, and the elimination of unnecessary housing cost-generating features from the municipal land use ordinances and regulations.

“Firm and binding obligation” means a demonstration by a municipality, evidenced by documentation substantiating a legally enforceable agreement entered into by the municipality with a third party, sufficient proof of building or other permits, efforts concerning land acquisition or project development, or other documentation that demonstrates a commitment to spend trust fund monies in a manner consistent with the Act, the municipality’s fair share plan, the Act, an approved spending plan, and all applicable regulations.

“HMFA” or “the Agency” means the New Jersey Housing and Mortgage Finance Agency established pursuant to P.L. 1983, c. 530 (N.J.S.A. 55:14K-1 et seq.).

“Housing element” means the portion of a municipality’s master plan adopted in accordance with the Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-28.b(3) and the Act consisting of reports, statements, proposals, maps, diagrams, and text designed to meet the municipality’s fair share of its region’s present and prospective housing needs, particularly with regard to low- and moderate-income housing, which shall include the municipal present and prospective obligation for affordable housing, determined pursuant to subsection f. at N.J.S.A. 52:27D-304.1.

“Housing project” means a project, or distinct portion of a project, which is designed and intended to provide decent, safe, and sanitary dwellings, apartments, or other living accommodations for persons of low- and moderate-income; such work or undertaking may include buildings, land, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, educational, welfare, or other purposes. The term “housing project” may also be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection therewith.

“Housing region” means a geographic area established pursuant to N.J.S.A. 52:27D-304.2 for each round of low- and moderate-income housing obligations pursuant to the Act.

“Inclusionary development” means a residential housing development in which a substantial percentage of the housing units are provided for a reasonable income range of low- and moderate- income households.

“Judgment of compliance” or “judgment for repose” means a determination issued by the Superior Court approving a municipality’s fair share plan to satisfy its affordable housing obligation for a particular 10-year round.

“Low-income household” means a household with a household income equal to 50 percent or less of the regional median income.

“Low-income housing” means housing 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 equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

“Mixed use development” means any development that includes both a non-residential development component and a residential development component, and shall include developments for which: (1) there is a common developer for both the residential development component and the non-residential development component, provided that for purposes of this definition, multiple persons and entities may be considered a common developer if there is a contractual relationship among them obligating each entity to develop at least a portion of the residential or non-residential development, or both, or otherwise to contribute resources to the development; and (2) the residential and non-residential developments are located on the same lot or adjoining lots, including, but not limited to, lots separated by a street, a river, or another geographical feature.

“Moderate-income household” means a household with a household income in excess of 50 percent but less than or equal to 80 percent of the regional median income.

“Moderate-income housing” means housing 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 equal to more than 50 percent but less than 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located.

“Municipal affordable housing trust fund” means a separate, interest-bearing account held by a municipality for the deposit of development fees, payments in lieu of constructing affordable units on sites zoned for affordable housing, barrier-free escrow funds, recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines, unexpended RCA funds remaining from a completed RCA project, application fees, and any other funds collected by the municipality in connection with its affordable housing programs, which shall be used to address municipal low- and moderate-income housing obligations within the time frames established by the Legislature and this chapter. As used in this chapter, “municipal affordable housing trust fund” shall also mean a “municipal development trust fund” and a “municipal development fee Trust fund.”

“Municipal development fee ordinance” means an ordinance adopted by the governing body of a municipality that authorizes the collection of development fees.

“Municipal housing liaison” or “MHL” means an appointed municipal employee who is responsible for oversight and/or administration of the affordable housing units created within the municipality and oversight of the authorization of individuals being provided access to the AHMS.

“New construction” means the creation of a new housing unit under regulation by a code enforcement official regardless of the means by which the unit is created. Newly constructed units are evidenced by the issuance of a certificate of occupancy and may include new residences created through additions and alterations, adaptive reuse, subdivision, or conversion of existing space, and moving a structure from one location to another.

“New Jersey Affordable Housing Trust Fund” means an account established pursuant to N.J.S.A. 52:27D-320.

“Non-residential development” means:

1. Any building or structure, or portion thereof, including, but not limited to, any appurtenant improvements, which is designated to a use group other than a residential use group according to the State Uniform Construction Code, N.J.A.C. 5:23, promulgated to effectuate the State Uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq., including any subsequent amendments or revisions thereto;

2. Hotels, motels, vacation timeshares, and child-care facilities; and

3. The entirety of all continuing care facilities within a continuing care retirement community which is subject to the Continuing Care Retirement Community Regulation and Financial Disclosure Act, N.J.S.A. 52:27D-330 et seq.

“Non-residential development fee” means the fee authorized to be imposed pursuant to N.J.S.A. 40:55D-8.1 through 40:55D-8.7.

“Order for repose” means the protection a municipality has from a builder’s remedy lawsuit for a period of time from the entry of a judgment of compliance by the Superior Court. A judgment of compliance often results in an order for repose.

“Payment in lieu of constructing affordable units” means the payment of funds to the municipality by a developer when affordable units are not produced on a site zoned for an inclusionary development.

“Qualified Urban Aid Municipality” means a municipality that meets the criteria established pursuant to N.J.S.A. 52:27D-304.3.c(1).

“RCA administrator” means an appointed municipal employee who is responsible for oversight and/or administration of affordable units and associated revenues and expenditures within the municipality that were funded through regional contribution agreements.

“RCA project plan” means a past application, submitted by a receiving municipality in an RCA, delineating the manner in which the receiving municipality intended to create or rehabilitate low- and moderate-income housing.

“Receiving municipality” means, for the purposes of an RCA, a municipality that contractually agreed to assume a portion of another municipality’s fair share obligation.

“Reconstruction” means any project where the extent and nature of the work is such that the work area cannot be occupied while the work is in progress and where a new certificate of occupancy is required before the work area can be reoccupied, pursuant to the Rehabilitation Subcode of the Uniform Construction Code, N.J.A.C. 5:23-6. Reconstruction shall not include projects comprised only of floor finish replacement, painting or wallpapering, or the replacement of equipment or furnishings. Asbestos hazard abatement and lead hazard abatement projects shall not be classified as reconstruction solely because occupancy of the work area is not permitted.

“Recreational facilities and community centers” means any indoor or outdoor buildings, spaces, structures, or improvements intended for active or passive recreation, including, but not limited to, ball fields, meeting halls, and classrooms, accommodating either organized or informal activity.

“Regional contribution agreement” or “RCA” means a contractual agreement, pursuant to the Act, into which two municipalities voluntarily entered into prior to July 18, 2008, to transfer a portion of a municipality’s affordable housing obligation to another municipality within its housing region.

“Rehabilitation” means the repair, renovation, alteration, or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

“Residential development fee” means money paid by a developer for the improvement of residential property as permitted pursuant to N.J.S.A. 52:27D-329.2 and N.J.A.C. 5:99-3.2.

“Sending municipality” means, for purposes of an RCA, a municipality that has contractually agreed to transfer a portion of its fair share obligation to another willing municipality.

“Senior center” means any recreational facility or community center with activities and services oriented towards serving senior citizens.

“Spending plan” means a method of allocating funds contained in an affordable housing trust fund account, which includes, but is not limited to, development fees collected and to be collected pursuant to an approved municipal development fee ordinance, or pursuant to N.J.S.A. 52:27D-329.1 et seq., for the purpose of meeting the housing needs of low- and moderate-income individuals.

“Treasurer” means the Treasurer of the State of New Jersey.

“UHAC” means the Uniform Housing Affordability Controls set forth at N.J.A.C. 5:80-26.

“Very-low-income household” means a household with a household income less than or equal to 30 percent of the regional median income.

“Very-low-income housing” means housing 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 equal to 30 percent or less of the median gross household income for

households of the same size within the housing region in which the housing is located.

SUBCHAPTER 2. AFFORDABLE HOUSING TRUST FUNDS

5:99-2.1 Purpose

(a) This subchapter regulates the establishment, implementation, review, monitoring, and enforcement of a municipal affordable housing trust fund pursuant to the Act.

(b) Municipal affordable housing trust funds shall be used to address municipal low- and moderate-income housing obligations within the time frames established by the Act and this chapter.

(c) A compliant municipality shall maintain an affordable housing trust fund to deposit all residential and non-residential development fees, payment in lieu of constructing affordable units, barrier-free escrow funds, recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines, unexpended RCA funds remaining from a completed RCA project, application fees, and any other funds collected by the municipality in connection with its affordable housing programs.

(d) A Qualified Urban Aid Municipality that collects residential development fees shall maintain an affordable housing trust fund to deposit the fees and shall receive Division approval of a spending plan for the fund pursuant to N.J.A.C. 5:99-2.3.

(e) A municipality may impose, collect, and spend affordable housing trust funds if it retains its status as a compliant municipality, subject to any limitations imposed by this chapter.

(f) A municipality shall not spend, or commit to spend, any affordable housing trust funds, including Statewide non-residential fees collected and deposited into the municipal affordable housing trust fund, without first obtaining the approval of the expenditure as part of its compliance certification or by the Division pursuant to N.J.S.A. 52:27D-329.2.a(4). A municipality within the jurisdiction of the Program or a court of competent jurisdiction shall not spend affordable housing trust funds unless the Program has approved a plan for spending such funds in accordance with N.J.S.A. 52:27D-329.2.a(4) or the Division has approved spending plan expenditures for emergent opportunities to create affordable housing after a municipality has obtained compliance certification in conformance with N.J.A.C. 5:99-4.

5:99-2.2 Account requirements

(a) All affordable housing trust funds shall be deposited in a separate, interest-bearing account. In establishing the account, the municipality shall provide written authorization, in the form of a three-party escrow agreement between the municipality, the bank or other financial institution, and the Division, to permit the Division to direct the disbursement of the funds, as provided for at N.J.A.C. 5:99-5.6, shall be maintained at all times. This authorization shall be submitted to the Division within 21 days from the opening of the trust fund account and/or within 21 days of any change in banks or other financial institutions in which trust funds are deposited.

(b) With the approval of the Department's Division of Local Government Services, the municipality may invest its affordable housing trust fund in the State of New Jersey cash management fund, provided that the amount of money in the cash management fund that comprises the funds and income attributable to such funds shall at all times be identifiable.

(c) All interest accrued in the affordable housing trust fund shall only be used on eligible affordable housing activities included in an approved spending plan or an emergent opportunity authorized by the Division.

(d) A municipality within the jurisdiction of the Program or a court of competent jurisdiction shall not spend affordable housing trust funds unless the Program or a court of competent jurisdiction has approved a plan for spending such funds in accordance with N.J.S.A. 52:27D-329.2.a(4) or the Division has approved spending plan expenditures for emergent opportunities to create affordable housing after a municipality has obtained compliance certification in conformance with N.J.A.C. 5:99-4.1.

(e) Any municipality with an affordable housing trust fund account shall be subject to N.J.A.C. 5:99-4.

(f) Municipal affordable housing trust funds shall not be expended:

1. To reimburse the municipality for activities that occurred prior to the authorization of a municipality to collect development fees;

2. On attorney fees or court costs to obtain a judgment of compliance or order of repose, including any associated administration costs;

3. On any costs in connection with a challenge to a determination of the municipality's fair share obligation; or

4. On any costs in connection with a challenge to the municipality's obligation, housing element, or fair share plan.

(g) In addition to the restrictions at (f) above, no more than 20 percent of all affordable housing trust funds, exclusive of those collected prior to July 17, 2008, to fund an RCA, may be expended on administration, in accordance with N.J.A.C. 5:99-2.4.

(h) A municipality shall set aside a portion of its affordable housing trust fund for the purpose of providing affordability assistance to low- and moderate-income households in affordable units included in a municipal fair share plan, in accordance with N.J.A.C. 5:99-2.5.

(i) Compliant municipalities, Qualified Urban Aid Municipalities, or municipalities that have previously collected such funds while under the protection of presumptive validity of their affordable housing plan or immunity from exclusionary zoning litigation and in accordance with an approved spending plan are authorized to commit or expend affordable housing trust funds in accordance with this chapter, UHAC, and the Act.

(j) A non-compliant Qualified Urban Aid Municipality meeting the criteria set forth in paragraph (1) of subsection c. of section 7 at P.L. 2024, c. 2, which has been authorized to collect residential development fees pursuant to N.J.A.C. 5:99-3.5(b), may not spend, or commit to spend, any affordable housing development fees, without first obtaining the Division's approval of the expenditure by submitting a spending plan for current funds in the municipal affordable housing trust fund and projected funds through the current round. The Division shall review the spending plan for consistency with N.J.A.C. 5:99-2 and shall notify the municipality upon the approval of the spending plan.

5:99-2.3 Use of funds for housing activity

(a) A municipality may use affordable housing trust funds for any housing activity as itemized in the spending plan and approved by the Program or as approved by the Division as an emergent opportunity to create affordable housing. Such activities include, but are not limited to:

1. A rehabilitation program whose purpose is to renovate deficient housing units that are occupied by low- and moderate-income households, in accordance with the New Jersey State Housing Code, N.J.A.C. 5:28, or the requirements of the Rehabilitation Subcode, N.J.A.C. 5:23-6, as applicable. Any recaptured funds from a rehabilitation program shall be deposited into a municipality's affordable housing trust fund and subject to the provisions thereof;

2. New construction of affordable housing units and related development costs; in the case of inclusionary developments, eligible costs shall be prorated based on the proportion of affordable housing units included in the development;

3. Creation of a market to affordable program to pay down the cost of unrestricted units and offer them in sound condition, for sale or rent, at affordable prices to low- and moderate-income households to address all or a portion of the affordable housing obligation;

4. Extensions or improvements of roads and infrastructure directly serving affordable housing development sites; in the case of inclusionary developments, costs shall be prorated based on the proportion of affordable housing units included in the development;

5. RCAs, approved prior to July 17, 2008;

6. Acquisition and/or improvement of land to be used for affordable housing;

7. Accessory dwelling units;

8. The extension of expiring controls;

9. The construction of group homes and supportive and special needs housing;

10. Maintenance and repair of affordable housing units;

11. To defray the costs of structured parking; in the case of inclusionary developments, eligible costs shall be prorated based on the proportion of affordable housing units included in the development;

12. Affordability assistance in accordance with N.J.A.C. 5:99-2.5;

13. Repayment of municipal bonds issued to finance low- and moderate-income housing activity;

14. Any other activity as specified in the approved spending plan or as approved by the Division as an emergent affordable housing opportunity; or

15. Any other activity approved by the Division.

5:99-2.4 Use of funds for administrative expenses

(a) No more than 20 percent of all affordable housing trust funds, exclusive of those collected prior to July 17, 2008, to fund an RCA, shall be expended on administration.

(b) Administrative expenses may include costs reasonably related to the determination of the fair share obligation and the development of a municipal housing element and fair share plan and may include fees necessary to develop or implement affordable housing programs, an affirmative marketing program, and/or expenses that are reasonably necessary for compliance with the processes of the Program, including, but not limited to, the costs to the municipality of resolving a challenge pursuant to the Program.

(c) Administrative expenses may also include costs associated with functions carried out in compliance with UHAC, including activities related to the marketing program and waitlist management, administering the placement of occupants in housing units, income qualification of households, monitoring the turnover of sale and rental units, preserving existing affordable housing, and compliance with the Division's monitoring requirements.

(d) The proportion of a municipal employee's salary related to the MHL or RCA administrator functions and fees for required educational programs, may be paid as an administrative expense from the municipal affordable housing trust fund.

5:99-2.5 Use of funds for affordability assistance

(a) A municipality shall set aside a portion of all development fees collected and interest earned for the purpose of providing affordability assistance to low- and moderate-income households in affordable units included in the municipality's fair share plan.

1. Affordability assistance for very-low-income households may include offering a subsidy to developers of inclusionary or 100 percent affordable housing developments or buying down the cost of low- or moderate-income units in a municipal fair share plan to make them affordable to very low-income households, including special needs and supportive housing opportunities.

(b) A municipality may contract with a private or public entity to administer any part of its housing element and fair share plan, including the requirement for affordability assistance, or any program or activity for which the municipality expends development fee proceeds.

5:99-2.6 Barrier-free escrow

An affordable housing trust fund may include fees collected to adapt affordable unit entrances to be accessible in accordance with the Act and the Barrier Free Subcode, N.J.A.C. 5:23-7. The municipality shall set forth the mechanism by which it will collect and distribute funds intended to convert adaptable entrances in compliance with the technical design standards of the Barrier Free Subcode at N.J.A.C. 5:23-7. Funds collected for this purpose shall at all times be identifiable from other funds. A municipality that collects, or anticipates collecting, funds to adapt affordable unit entrances shall identify the funds on its monitoring report pursuant to N.J.A.C. 5:99-5.

5:99-2.7 Payments in lieu of constructing affordable units on-site

(a) Payments in lieu of constructing affordable units shall not be imposed on any non-residential development.

(b) A municipality that chooses to collect or anticipates collecting payments in lieu of constructing affordable units shall identify the funds on its monitoring report pursuant to N.J.A.C. 5:99-5.2 and include a plan for the use of the funds in its spending plan.

(c) Payment-in-lieu fees shall be deposited into the municipality's affordable housing trust fund, but shall be accounted for separately from any other fees collected by a municipality. Whenever a payment-in-lieu fee is assessed by a municipality pursuant to this section, a development fee authorized pursuant to N.J.S.A. 52:27D-329.2 shall not be charged in connection with the same development.

5:99-2.8 Other funds

(a) An affordable housing trust fund may also contain recaptured funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines and application fees, and any other funds collected by the municipality in connection with its affordable housing programs. A municipality that collects, or anticipates collecting, such fees shall identify the funds on its monitoring report pursuant to N.J.A.C. 5:99-5 and include a plan for the use of the funds in its spending plan.

(b) An affordable housing trust fund shall also contain any excess RCA funds, where the RCA has been completed in accordance with the RCA project plan.

(c) A municipality that is not a compliant municipality may not retain excess RCA funds and shall transfer any such funds to the New Jersey Affordable Housing Trust fund established pursuant to N.J.S.A. 52:27D-320.

SUBCHAPTER 3. DEVELOPMENT FEES

5:99-3.1 General non-residential and residential development fee ordinance requirements for compliant municipalities

(a) This subchapter regulates the assessment and collection of development fees, including the payment of any necessary costs related to the administration of affordable units included in the municipal plan. All non-residential development in the State is subject to the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7. A compliant or Qualified Urban Aid Municipality which has adopted a residential development fee ordinance shall be authorized to impose and collect development fees from developers of residential property, in accordance with this chapter and N.J.S.A. 52:27D-329.2.

(b) A compliant municipality shall impose, collect, retain, and expend fees collected from non-residential development in accordance with the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7 and this chapter.

(c) All amounts collected shall be deposited and shall be accounted for separately, by payer, source property or development, and date of deposit as set forth at N.J.A.C. 5:99-5.

(d) A municipality that has failed to maintain its status as a "compliant municipality" shall not impose a residential development fee on a development that receives preliminary or final approval after the expiration of the municipality's compliance certification or a judgment of compliance, nor shall a municipality retroactively impose a development fee on such a development should the municipality subsequently come into compliance. A Qualified Urban Aid Municipality may continue to impose residential development fees regardless of its compliance status.

(e) A municipality shall collect 100 percent of the development fee for residential and non-residential development at or prior to the issuance of the certificate of occupancy.

1. A municipality may collect up to 50 percent of the development fee at the time of issuance of the building permit. The remaining portion shall be collected at, or prior to, the issuance of the certificate of occupancy. Developers shall be notified of the fee by the municipality, including when payment is required to be made, at the time of land use board approval or application for a construction permit.

2. For residential developments, regardless of the time of collection or the date of approvals, the fee shall be based on the residential development fee percentage pursuant to the municipal ordinance in effect on the date that residential building permits are issued.

3. For non-residential developments as of July 17, 2008, the fee shall be 2.5 percent of the EAV, or such other amount pursuant to the Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7.

(f) Imposed and collected residential development fees that are contested shall be deposited under protest in an interest-bearing escrow account by the municipality. The local code enforcement official shall thereafter issue the certificate of occupancy provided that the construction is otherwise eligible for a certificate of occupancy. If all or a portion of the contested fees are returned to the developer, the accrued interest on the returned amount shall also be returned.

(g) A developer may challenge non-residential development fees imposed pursuant to N.J.S.A. 52:27D-329.1 et seq., by filing a challenge with the Director of the Division of Taxation. Collected fees shall be placed in an interest-bearing escrow account by the municipality if the municipality is authorized to retain the fees, or by the State if the municipality is not authorized to retain the fees. The local code enforcement official shall thereafter issue the certificate of occupancy provided that the construction is otherwise eligible for a certificate of occupancy. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

(h) Any ordinance adopted by a municipality for the purpose of imposing and collecting development fees shall provide that, in the event any of the conditions described at N.J.A.C. 5:99-5.6 occur, the Division shall be authorized, on behalf of the municipality, to direct the manner in which all funds in the affordable housing trust fund shall be expended. A three-party escrow agreement between the municipality, the institution in which funds are deposited, and the Division shall be maintained at all times.

(i) A municipality that collects or anticipates collecting development fees shall identify the funds on its monitoring report pursuant to N.J.A.C. 5:99-5 and include a plan for the use of the funds in its spending plan pursuant to N.J.A.C. 5:99-2.2.

(j) The Division shall maintain, on its Internet website, a list of each municipality that is authorized to retain the development fees collected pursuant to this section and that has a confirmed status of compliance with the Act, or is in the process of seeking compliance certification, which compliance shall include a spending plan pursuant to N.J.S.A. 52:27D-329.2 for all development fees collected.

5:99-3.2 Residential development fee ordinances

(a) A residential development fee ordinance shall impose a maximum fee of one-and-one-half percent of the EAV of the development provided no increased density is permitted.

1. The ordinance may impose an increased development fee of up to six percent of the EAV, for each additional unit that may be realized for a development that has received an increase in residential density pursuant to N.J.S.A. 40:55D-70.d(5) (known as a "d" variance). If the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the density for the purposes of calculating the increased development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

2. Ordinances imposing residential development fees may apply to new construction, additions, and alterations to existing residential development. Residential development fee ordinances shall clearly indicate which types of development are subject to the imposition of the fee. Development fees assessed on new construction shall be based on the EAV of land and improvements. Development fees assessed on additions and alterations shall be based only on the increase in EAV that results from the addition or alteration.

(b) Eligible exactions, ineligible exactions, and exemptions from residential development fees shall be treated as follows:

1. Affordable housing developments, affordable housing developments where the affordable units are being provided elsewhere in the municipality, and developments where the developer has made a payment in lieu of constructing affordable units shall be exempt from residential development fees;

2. Residential development fees may be imposed and collected when an existing structure is expanded, undergoes a change to a more intense use, or is demolished and replaced. The development fee that may be imposed and collected shall be calculated on the increase in the EAV resulting from the expansion, change to a more intense use, or replacement;

3. Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval necessitating an amended preliminary or a new preliminary approval pursuant to N.J.S.A. 40:55D-46.b and

40:55-48.b. Where a site plan approval does not apply, a zoning and/or construction permit shall be synonymous with preliminary or final site plan approval for this purpose;

4. Municipal development fee ordinances may exempt or impose lower development fee rates for specific types of residential development, provided each classification of development is addressed consistently. Examples include, but are not limited to, exempting or reducing the fee for improvements where the EAV does not exceed a threshold minimum determined by the municipality, developments with one or two owner-occupied dwelling units, or green buildings;

5. A municipality may exempt or reduce fees in specific residential areas or zones in order to promote development in that area. Examples include, but are not limited to, exempting all residential development in a mixed-use zone, residential development within a one-half-mile radius of a train station, or residential development within areas in need of redevelopment pursuant to N.J.S.A. 40:12A-1 et seq.;

6. Residential structures demolished and replaced as a result of a fire, flood, or any natural disaster or catastrophe shall be exempt from paying any residential development fee, even if the new structure has an increased EAV as compared to the previous structure;

7. Non-profit organizations that have received tax exempt status pursuant to the Internal Revenue Code, providing current evidence of that status is submitted to the municipal clerk, together with a certification that services of the organization are provided at reduced rates to those who establish an inability to pay existing charges, shall be exempted from paying a development fee; and

8. Federal, State, county, and local governments shall be exempt from paying a development fee.

(c) Any municipality that is not in compliance with the requirements of this chapter may be subject to forfeiture of any or all funds remaining within its municipal affordable housing trust fund pursuant to N.J.A.C. 5:99-5.6. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to N.J.S.A. 52:27D-320.

5:99-3.3 Non-residential development fee collection for compliant municipalities

(a) Non-residential development fees shall be imposed pursuant to the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7.

(b) A developer of property that received preliminary site plan approval, pursuant to N.J.S.A. 40:55D-46, or final approval pursuant to N.J.S.A. 40:55D-50 prior to July 17, 2008, and that was subject to the payment of a validly imposed municipal non-residential development fee ordinance shall continue to be subject to the conditions of the municipally imposed fee.

(c) Any non-residential development fee ordinance shall be consistent with the provisions of the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7, and shall not impose a payment in lieu of constructing affordable housing upon a developer of non-residential property as a condition of non-residential development.

(d) Any municipality that is not in compliance with the requirements of the Statewide Non-Residential Development Fee Act and this chapter may be subject to forfeiture of any or all funds remaining within its municipal affordable housing trust fund pursuant to N.J.S.A. 40:55D-8.4 and N.J.A.C. 5:99-5.6. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to N.J.S.A. 52:27D-320.

(e) Non-residential development fees shall be imposed as follows:

1. A fee equal to two-and-one-half percent of the EAV of the land and improvements, for all new non-residential construction on an unimproved lot or lots, or such other amount pursuant to the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7; or

2. A fee equal to two-and-one-half percent of the increase in EAV, of the additions or alterations to existing structures to be used for non-residential purposes, or such other amount pursuant to the Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7.

(f) All non-residential construction of buildings or structures on property used by churches, synagogues, mosques, and other houses of worship, and property used for educational purposes, that are tax-exempt pursuant to N.J.S.A. 54:4-3.6, shall be exempt from the imposition of a non-residential development fee pursuant to this section, provided that the property continues to maintain its tax exempt status pursuant to that statute for a period of at least three years from the date of issuance of the certificate of occupancy. In addition, the following shall be exempt from the imposition of a non-residential development fee pursuant to the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7:

1. Parking lots and parking structures, regardless of whether the parking lot or parking structure is constructed in conjunction with a non-residential development, or whether the parking lot is developed as an independent non-residential development;

2. Any non-residential development that is an amenity to be made available to the public, including, but not limited to, recreational facilities, community centers, and senior centers that are developed in conjunction with, or funded by, a non-residential developer;

3. Non-residential construction resulting from a relocation of, or an on-site improvement to, a nonprofit hospital or a nursing home facility;

4. Projects that are located within a specifically delineated urban transit hub, as defined pursuant to N.J.S.A. 34:1B-208;

5. Projects that are located within an eligible municipality, as defined pursuant to N.J.S.A. 34:1B-208, the Urban Transit Hub Tax Credit Act, when a majority of the project is located within a one-half mile radius of the midpoint of a platform area for a light rail system; and

6. Projects determined by the New Jersey Transit Corporation to be consistent with a transit village plan developed by a transit village designated by the New Jersey Department of Transportation.

(g) A developer of a mixed use development shall be required to pay the non-residential development fee relating to the non-residential development component of a mixed use development subject to the provisions at N.J.S.A. 52:27D-329.1 et seq.

(h) Non-residential construction connected with the relocation of the facilities of a for-profit hospital shall be subject to the fee authorized to be imposed pursuant to this section to the extent of the increase in equalized assessed valuation.

(i) A developer of a non-residential development exempted from the non-residential development fee pursuant to this section shall be subject to that fee at such time as the basis for the exemption set forth in this subsection no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.

(j) If a property that was exempt from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees in these circumstances may be enforceable by the municipality as a lien against the real property of the owner.

(k) The payment of non-residential development fees shall be made prior to the issuance of a certificate of occupancy for such development. A final certificate of occupancy shall not be issued for any non-residential development until such time as the fee imposed pursuant to this section has been paid by the developer. A non-residential developer may deposit with the appropriate entity, the development fees as calculated by the municipality under protest, and the local code enforcement official shall thereafter issue the certificate of occupancy provided that the construction is otherwise eligible for a certificate of occupancy.

1. The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development that may be subject to a non-residential development fee.

2. Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the EAV of the non-residential development. The construction official responsible for the issuance of a final certificate of occupancy shall notify the local assessor

of any and all requests for the scheduling of a final inspection on property that may be subject to a non-residential development fee.

(l) Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated EAV of the improvements of the non-residential development in accordance with the rules adopted by the Treasurer pursuant to N.J.S.A. 54:1-35.35; calculate the non-residential development fee pursuant to N.J.S.A. 40:55D-8.1 through 40:55D-8.7; and thereafter notify the developer of the amount of the non-residential development fee.

(m) Should the municipality fail to determine or notify the developer of the amount of the non-residential development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth at N.J.S.A. 40:55D-8.6.b.

(n) Upon tender of the estimated non-residential development fee, provided the developer is in full compliance with all other applicable laws or rules, the municipality shall issue a final certificate of occupancy for the subject property.

(o) Any municipality that is not in compliance with the requirements established pursuant to N.J.S.A. 40:55D-8.1 through 40:55D-8.7, or the rules of the Division promulgated pursuant thereto, may be subject to forfeiture, pursuant to N.J.A.C. 5:99-5.6, of any or all funds remaining within its municipal affordable housing trust fund. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to N.J.S.A. 52:27D-320.

(p) Failure of the municipality to comply with the timeframes or procedures set forth in this section may subject the municipality to penalties imposed by the Commissioner; any penalties so imposed shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to N.J.S.A. 52:27D-320.

5:99-3.4 Non-residential development fee ordinance requirements for non-compliant municipalities

A non-compliant municipality, regardless of its status as a Qualified Urban Aid Municipality, shall impose non-residential development fees pursuant to the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7, as set forth at N.J.A.C. 5:99-3.3(e) through (p), which shall be paid to the Treasurer in accordance with N.J.A.C. 5:99-3.1 in a manner and on such forms as required by the Treasurer, provided that a certified proof concerning the payment shall be furnished by the Treasurer, to the municipality. A non-compliant municipality shall not retain or expend non-residential development fees.

SUBCHAPTER 4. EXPEDITED APPROVAL OF EXPENDITURES FOR EMERGENT OPPORTUNITIES TO CREATE AFFORDABLE HOUSING

5:99-4.1 Consideration for emergent opportunities not in the adopted fair share plan

(a) A compliant municipality may request authorization from the Division for expenditure of excess affordable housing trust funds on emergent affordable housing opportunities not included in the municipal fair share plan. Any such request shall be consistent with the Act and shall not remove or reduce any approved affordable housing delivery mechanisms.

(b) Emergent affordable housing opportunities may include, but are not limited, to, those activities permitted pursuant to N.J.A.C. 5:99-2.3.

(c) Any such request to the Division to utilize excess affordable housing trust funds on emergent affordable housing opportunities not included in the municipal fair share plan shall be in the form of a resolution from the governing body of the municipality and shall include:

1. Documented proof that the excess funds are not accounted for in the municipality's spending plan approved by the Program or a court of competent jurisdiction;

2. A description of the affordable housing activity in accordance with (b) above;

3. Documentation demonstrating that the entire municipal trust fund balance will be spent and/or committed for expenditure within four years, as set forth at N.J.A.C. 5:99-5.5, shall be submitted to the Division with the request; and

4. A certification that the affordable housing opportunity is consistent with the Act and information describing the proposed affordable housing mechanism. The certification shall demonstrate that the proposal does not alter the spending plan approved by the Program or court of competent jurisdiction.

(d) The municipality shall submit reporting pursuant to N.J.A.C. 5:99-5.2 relating to the affordable units created using affordable housing trust funds.

SUBCHAPTER 5. REPORTING, MONITORING, AND ENFORCEMENT

5:99-5.1 Applicability

(a) Compliant municipalities and Qualified Urban Aid Municipalities that maintain affordable housing trust funds are required to annually submit monitoring information to the Division in the time and form described in this subchapter.

(b) Municipalities with expired, revoked, nullified, or dismissed fair share plans shall provide monitoring information to the Division in accordance with this subchapter until the expiration of affordability controls on all affordable units.

5:99-5.2 Municipal affordable housing trust fund monitoring information

(a) The Division shall conduct monitoring of affordable housing trust funds maintained by municipalities subject to the terms of a compliance certification. Monitoring reports shall include the information described at N.J.A.C. 5:99-5.3. Monitoring reports for each calendar year shall be in the form of a certification specifying that all information provided in the AHMS is complete, accurate, and current through the most recent calendar year and shall be accompanied by a year-end bank or other financial institution statement that will be used to reconcile municipal reporting. Municipal monitoring information certifications shall be submitted by the municipal housing liaison, or their designee, which shall be a municipal employee, through the AHMS, by February 15 of each year for trust fund activity through December 31 of the previous year.

(b) The Division shall develop and publish on the Division's Internet website a detailed summary of municipal affordable housing trust fund expenditures for each municipality and shall update each summary on an annual basis. Every municipality that is, or has been, authorized to impose and collect development fees from developers of residential property, or payments in lieu of constructing affordable housing, or retain and expend non-residential development fees shall provide the Division with a copy of the adopted development fee ordinance and a detailed accounting of all fees that have been collected into the affordable housing trust fund and all expenditures from the previous calendar year.

(c) Municipal monitoring information shall include a full accounting of any affordable housing trust fund activity, including the source and amount of funds collected, the amount and purpose for which any funds have been expended, and the status of the plan to spend the remaining balance pursuant to N.J.A.C. 5:99-5.5. All municipal monitoring information submissions shall be made through the online AHMS, made available by the Department on the Division's website.

(d) A municipality that fails to provide monitoring information to the Division by February 15th of each year in the form required by the Division pursuant to this subchapter may be subject to enforcement actions by the Division pursuant to N.J.A.C. 5:99-5.6.

(e) A municipality shall deposit all fees collected, including non-residential or residential development fees, into the municipal affordable housing trust fund.

5:99-5.3 Completed affordable unit monitoring information

(a) Each municipality shall submit information to the Division concerning completed affordable housing units pursuant to this subchapter on an annual basis. Municipalities shall provide the following information to the Division:

1. The number and type of affordable housing units actually constructed, including:
 - i. The housing type;
 - ii. The tenure of the housing, in the case of a rental unit;
 - iii. The affordability level;

- iv. The number of bedrooms;
- v. The date and expiration of affordability controls; and
- vi. Whether occupancy is reserved for families, senior citizens, or other special populations;

2. Construction commencement dates;
3. Certificates of occupancy granted;
4. Start and expiration dates of deed restrictions; and
5. Residential and non-residential development fees collected and expended, including:
 - i. The purposes and amounts of such expenditures; and
 - ii. The current balance in the municipality's affordable housing trust fund.

(b) Monitoring reports for each calendar year shall be in the form of a certification, submitted by the municipal housing liaison, or their designee, which shall be a municipal employee, through the AHMS, by February 15th of each year, specifying that all information provided in the AHMS is complete, accurate, and current through the most recent calendar year.

(c) The Division shall maintain on its Internet website, and publish on an annual basis, an up-to-date municipal status report based on its collection of information of the information pursuant to this subchapter.

5:99-5.4 Ongoing collection of fees and maintenance of the affordable housing trust fund

(a) The ability for a municipality to impose and collect and retain residential development fees and the ability to retain non-residential development fees and maintain an affordable housing trust fund is subject to maintaining its status as a compliant municipality, except that a Qualified Urban Aid Municipality may continue to retain residential development fees regardless of its compliance status pursuant to the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7.

(b) If a court of competent jurisdiction finds that a municipality has failed to maintain its status as a compliant municipality, the municipality may be subject to forfeiture of any or all funds remaining within their affordable housing trust fund.

(c) Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to N.J.S.A. 52:27D-320.

(d) A municipality that is not a compliant municipality that imposes and collects fees and maintains an affordable housing trust fund shall submit an updated spending plan in accordance with the time frames set forth at N.J.S.A. 52:27D-304.1 for municipal submission of a housing element and fair share plans.

5:99-5.5 Requirement to spend or commit to expend development fees within four years of the date of collection

(a) Development fees collected by a compliant municipality or Qualified Urban Aid Municipality shall be expended or committed for expenditure within four years of the date of collection.

(b) The Division may request that a municipality submit to the Division proof of expenditure or commitment to expend trust fund monies within four years of the date of their collection, in accordance with N.J.S.A. 52:27D-329.2.d. Proof of expenditure, or a commitment to expend trust fund dollars, shall be demonstrated by a legally enforceable agreement between a municipality and a third party or other documentation that demonstrates a firm and binding obligation by the municipality to spend trust fund dollars in a manner consistent with the municipality's fair share plan, the Act, an approved spending plan, and all applicable rules. For purposes of this section, funds are expended, or committed for expenditure, if one of the following standards has been met:

1. The funds have been spent on a housing activity in accordance with N.J.A.C. 5:99-2.3;

2. The Division has been provided with an executed contract or legally enforceable agreement funding the implementation of an allowable housing activity in accordance with N.J.A.C. 5:99-2.3, and the following, as applicable: a municipal resolution or ordinance creating the affordable housing program, a policy and procedures manual, and completion of affordable housing trust fund and unit monitoring, indicating units completed or rehabilitated, or the municipality has otherwise demonstrated a firm and binding obligation to spend such funds in a

manner consistent with addressing its respective affordable housing obligation;

3. For affordability assistance expenses, the Division has been provided with the following: demonstration of a firm and binding obligation to spend such funds in a manner consistent with addressing the affordability assistance obligation required by the Act or a municipal resolution or ordinance and an executed contract or agreement for expenses related to providing affordability assistance to existing low- and moderate-income households, a policies and procedures manual for any affordability assistance program executed by the municipality, and a contract with an administrative agent to carry out the program if applicable; or

4. For administrative expenses, the Division has been provided with the following: a municipal resolution or ordinance and an executed contract or agreement for expenses related to administering affordable housing.

(c) A municipality that fails to expend or commit to expend the amounts collected within four years of the date of collection pursuant to N.J.S.A. 52:27D-329.2 shall be required to transfer any unexpended and/or uncommitted revenue collected to the New Jersey Affordable Housing Trust Fund established pursuant to N.J.S.A. 52:27D-320. The Division shall follow the procedures set forth at (d) through (f) below before requiring any transfer of funds.

(d) The Division shall notify a municipality and the Program of any unexpended and/or uncommitted funds indicated by the Division's records.

(e) A municipality may respond to a notification issued pursuant to (d) above within 30 days of receipt of the notification. Said response shall be, in writing, and may include any documentation to substantiate that any funds have been expended or committed to be expended within four years of the date of collection. Any written response by email shall be sent to AHMS@dca.nj.gov. Any other written response may be addressed to:

New Jersey Department of Community Affairs
Division of Local Planning Services
101 S. Broad Street
PO Box 813
Trenton, New Jersey 08625

(f) The Division shall review any response submitted pursuant to (e) above and shall issue a written decision setting forth the reasons for accepting or rejecting the information submitted, or shall request additional information, within 45 days, pursuant to the procedures set forth at N.J.A.C. 5:99-5.6. The Division shall, upon notice to the municipality, be entitled to any reasonable extensions of time as the Division deems necessary.

5:99-5.6 Enforcement

(a) A municipality's ability to impose and collect funds and maintain its affordable housing trust fund pursuant to this chapter shall be conditioned on its compliance with all requirements of this chapter.

(b) Occurrence of any of the following deficiencies may result in the Division taking an action pursuant to (c) below:

1. Failure to meet deadlines for information required by the Division in its review of a development fee ordinance;

2. Failure to commit or expend development fees within four years of the date of collection in accordance with N.J.A.C. 5:99-5.5;

3. Failure to comply with the requirements of the Non-Residential Development Fee Act and N.J.A.C. 5:99-3;

4. Failure to address the Division's conditions for approval of a plan to spend funds within the deadlines imposed by the Division;

5. Failure to submit accurate monitoring reports pursuant to this subchapter within the time limits imposed by the Act, this chapter, and/or the Division;

6. Expenditure of funds on activities not approved by the Program or the Division or otherwise permitted by law;

7. Revocation of compliance certification;

8. Failure of a municipal housing liaison or administrative agent to comply with the requirements set forth at N.J.A.C. 5:99-6, 7, and 8; or

9. Other good cause demonstrating that municipal affordable housing funds are not being used for an approved purpose.

(c) If the Division determines that any of the items set forth at (b) above have occurred, or that an affordable housing program is otherwise not being administered in accordance with the rules of the Division, the Division shall notify the Program and the municipality, including the chief financial officer of the municipality, and the municipality may be subject to Division action. Such action may include, but is not limited to, one or more of the following:

1. Requiring the municipality to enact a municipal resolution appropriating funds from general revenue or its resolution of intent to bond, in the event there is a shortfall in funding for a proposed affordable housing delivery technique;

2. Revoking approval of the municipal housing liaison, the RCA administrator, and/or the administrative agent;

3. Bringing, through a summary proceeding, any findings of violation of the responsibilities for municipal housing liaisons, RCA administrators, and administrative agents before a county-level housing judge, to docket the violation, issue corrective orders, and/or levy fines; or

4. Such other actions as the Program or Division determines are necessary and appropriate to remediate the violation.

(d) In the event the Division takes action pursuant to (c) above, the Division may direct the subject municipality to cease its imposition, collection, and expenditure of affordable housing trust funds. The Division shall use the following procedures:

1. Prior to directing a municipality to cease imposition, collection, and expenditure of affordable housing trust funds, the Division shall allow the municipality to correct or provide explanation or additional information, with regard to the deficiency identified pursuant to (b) above. Any such correction shall be in writing. Said correction may be issued through email to AHMS@dca.nj.gov. Any other written correction shall be addressed to:

New Jersey Department of Community Affairs
Division of Local Planning Services
101 S. Broad Street
PO Box 813
Trenton, New Jersey 08625

2. The Division shall review any submission made pursuant to (d)1 above. If, upon review, the Division makes any of the determinations set forth at (b)1 through 9 above, the Division shall provide written notice to the municipality and the bank or financial institution where the municipality's affordable housing trust fund is maintained.

3. Upon notifying the bank or financial institution in accordance with the escrow agreement pursuant to N.J.A.C. 5:99-2.2, the Division shall direct that all or a portion of the funds remaining in the municipal affordable housing trust fund shall be transferred into the New Jersey Affordable Housing Trust Fund established pursuant to N.J.S.A. 52:27D-320 within the time frame specified by the Program or the Division.

(e) Any party may request that the Division review and take action pursuant to (c) above if the party suspects that any of the conditions set forth at (b) above exists. Any request to the Division shall be, in writing, and shall be supported by sufficient and credible evidence, as determined by the Division. Any written request shall be submitted to:

New Jersey Department of Community Affairs
Division of Local Planning Services
101 S. Broad Street
PO Box 813
Trenton, New Jersey 08625

(f) With regard to violations of the responsibilities for municipal housing liaisons, RCA administrators, and administrative agents, prior to bringing a summary proceeding before a county-level housing judge, an interested party shall first file an appeal from a decision made by an administrative agent with the municipal housing liaison responsible for the jurisdiction. Any appeal from a decision of a municipal housing liaison may be made to the Division. When acting in this capacity, the Director of the Division may appoint one or more employees of the HMFA or the Department to assist in rendering the final decision whenever they, in their sole discretion, determine that their participation would materially promote a fair and just disposition of the appeal. The Division Director shall issue a written decision upholding, modifying, or reversing an administrative agent's decision with reasons in support thereof.

(g) For all other items set forth at (b) above, a party aggrieved by a decision of the Department pursuant to (d) above may appeal that decision

to the Department and request a hearing. An appeal must be filed with the Department within 15 days of receipt of notice that the Division is acting pursuant to (c) above. Hearings shall be conducted in accordance with the provisions 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. The Commissioner shall render a written decision upon the conclusion of the hearing. Such written decision shall be a final agency decision.

(h) A county-level housing judge may issue fines and order corrective actions for violations and may consider patterns of violations in determining whether a municipality is meeting its obligations pursuant to the compliance certification issued by the Program or a court of competent jurisdiction.

SUBCHAPTER 6. MUNICIPAL HOUSING LIAISON

5:99-6.1 Requirement for a municipal housing liaison

(a) All municipalities that have created, or will create, affordable housing programs and/or affordable units pursuant to the Act and the UHAC shall establish the position of a municipal housing liaison by ordinance and, subject to the approval of the Division, appoint, by resolution of the governing body or letter from the chief executive, a municipal employee to serve in this position.

(b) The municipal housing liaison is responsible for oversight and coordination of all the activities of the municipal government as it relates to the creation, preservation, and administration of affordable housing programs, affordable units, and reporting pursuant to the Act and this chapter.

5:99-6.2 Responsibilities of the municipal housing liaison

(a) The following responsibilities shall be performed exclusively by the municipal housing liaison:

1. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, administrative agents, and interested households;
2. Overseeing the monitoring of and reporting on the status of all proposed and completed affordable housing programs and affordable units in the municipality's fair share plan;
3. Overseeing and monitoring administrative agents within their municipality's jurisdiction to ensure compliance with the UHAC;
4. Ensuring that an administrative agent is assigned to administer the sales, rentals, re-sales, and re-rentals of all deed-restricted affordable units in the municipality at all times. For units at the end of their deed-restricted control period, an administrative agent shall be available to administer the sale of all properties until such time of the first authorized non-exempt sale after controls on affordability have been in effect on the unit;
5. Verifying, certifying, and providing monitoring and reporting information within the AHMS at such time and in such form as the Division requires;
6. Listing, on the municipal website, contact information for the administrative agent for each completed project with an affordable component within the municipality;
7. Overseeing the coordination of meetings with affordable housing providers, developers, municipal officials, and administrative agents, as applicable; and
8. Where applicable, providing to an administrative agent a copy of the adopted municipal operating manual(s), housing element and fair share plan, and ordinances relating to the creation and administration of the municipality's affordable housing programs and/or affordable units.

(b) Access to AHMS shall be authorized only by the municipal housing liaison, or their designee, which shall be a municipal employee.

(c) The municipal housing liaison may also serve as the administrative agent pursuant to N.J.A.C. 5:99-7 for some or all of the affordable units in the municipality. These duties shall be outlined in the municipal ordinance establishing the position of the municipal housing liaison. All applicable tasks not performed by the municipal housing liaison, shall be contracted to an administrative agent pursuant to N.J.A.C. 5:99-7.

(d) Information regarding specific characteristics of municipal affordable housing projects or programs and the resulting unit completions may be entered into AHMS by a contracted entity other than the municipal housing liaison with the written approval of the

municipality and pursuant to the oversight of the municipal housing liaison.

5:99-6.3 Approval of the municipal housing liaison

(a) The appointment of the municipal housing liaison is subject to review and approval by the Division.

(b) Upon entering the process for compliance certification, the municipality shall submit its ordinance establishing the position of the municipal housing liaison and a resolution by the governing body or a letter from the chief executive appointing a municipal employee to serve as the municipal housing liaison to the Division.

(c) If the municipal housing liaison is to perform the duties of an administrative agent, the municipality shall also submit evidence to the Division of the municipal housing liaison's qualifications to successfully manage, including any history of managing affordable housing units, particularly those produced as a result of the Act or through an exclusionary zoning court settlement, which shall include:

1. A resume;
2. A statement of qualifications; and
3. A statement of intent to attend initial and continuing education courses authorized by the Division related to the creation, preservation, and administration of affordable housing programs and/or affordable units.

(d) Upon review of the information submitted pursuant to (c) above, the Division may approve or deny the appointment of the MHL to serve dually as the administrative agent. The Division shall notify the municipality of its decision, in writing, no later than 45 days after submission. The Division shall, upon notice to the municipality, be entitled to any reasonable extensions of time as the Division deems necessary.

(e) The Division shall monitor the performance of any approved municipal housing liaison and may revoke said approval, should the Division find that the municipal housing liaison has failed to administer the municipality's affordable housing programs and/or affordable units in accordance with the rules of the Division pursuant to N.J.A.C. 5:99-5.6.

5:99-6.4 Education requirements

(a) All appointed municipal housing liaisons shall successfully complete the Division's Education Program as described at N.J.A.C. 5:99-9 within the timeframes specified by the Division.

(b) If the municipal housing liaison is to perform the duties of an administrative agent, the municipal housing liaison shall also successfully complete the Division's Education Program as described at N.J.A.C. 5:99-9 prior to engaging in any administrative agent activities.

(c) Approved municipal housing liaisons shall earn 20 continuing education requirements over a three-year period. The applicant is responsible for retaining all records of attendance, organization membership, or program participation. The Division shall publish on its Internet website a list of approved courses.

SUBCHAPTER 7. ADMINISTRATIVE AGENT

5:99-7.1 Requirements for an administrative agent

(a) All municipalities that have created, or will create, affordable housing programs and/or affordable units shall designate or approve, for each project or program within its fair share plan, an administrative agent to administer the affordable housing program and/or affordable units in accordance with the requirements of the Act, the Program, this chapter, and the UHAC.

(b) The administrative agent may be the municipal housing liaison, the RCA administrator, other municipal employee, or a person or entity selected pursuant to the UHAC.

(c) The administrative agent may perform the duties and responsibilities set forth in this subchapter.

5:99-7.2 Responsibilities of the administrative agent

(a) The primary responsibility of the administrative agent is to ensure that the restricted units under administration are sold or rented, as applicable, only to very-low, low-, and moderate-income households in accordance with the provisions of the UHAC. The administrative agent is also responsible for the following:

1. Conducting an outreach process to ensure affirmative marketing of affordable housing units consistent with the municipal Affirmative Fair Marketing Plan in accordance with the provisions of the UHAC at N.J.A.C. 5:80-26.16;

2. Soliciting, scheduling, conducting, and following up on applications and/or interviews with interested households;

3. Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income household;

4. Providing written notification to each applicant as to the determination of eligibility or non-eligibility;

5. Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located;

6. Employing a random selection process when referring households for certification to affordable units;

7. Furnishing to attorneys or closing agents appropriate forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;

8. Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded recapture mortgage, and note, as appropriate;

9. Instituting and maintaining an effective means of communicating information between owners of affordable units and the administrative agent regarding the availability of their restricted units for resale or re-rental;

10. Instituting, maintaining, and documenting an effective means of communicating information to low- and moderate-income households regarding the availability of restricted units for resale or re-rental, inclusive of listings on the New Jersey Housing Resource Center pursuant to N.J.S.A. 52:27D-321.6;

11. Sending annual mailings to owners as prescribed for in the UHAC at N.J.A.C. 5:80-26.19;

12. Reviewing and approving requests from owners of restricted units who wish to take out home equity loans or refinance during the terms of their ownership;

13. Reviewing and approving requests to increase the maximum sales prices from owners of restricted units who wish to make capital improvements that would affect the selling prices of their units. Such authorizations shall be limited to those improvements resulting in additional bedrooms or bathrooms, and the cost of a central air conditioning system installed subsequent to the initial sale of the unit;

14. Processing requests and making determinations on requests by owners of restricted units for hardship waivers;

15. Communicating with lenders regarding foreclosures;

16. Ensuring the issuance of continuing certificates of occupancy or certified statements from municipal building inspectors pursuant to the UHAC at N.J.A.C. 5:80-26.11;

17. Notifying the municipality of an owner's intent to sell a 95/5 unit, as defined in the UHAC at N.J.A.C. 5:80-26.2;

18. Ensuring that the removal of deed restrictions and cancellation of mortgages are effectuated and properly filed with the appropriate county's register of deeds or clerk's office after the termination of the affordability controls in this subchapter for each restricted unit;

19. Exercising appropriate authority to discharge and release any or all instruments, as set forth in the UHAC appendices establishing affordability controls;

20. Providing annual reports, including a detailed description of completed units and any other information necessary for the municipality to produce its status report as required pursuant to N.J.S.A. 52:27D-329.4, to the municipal housing liaison and the Division by February 15 of each calendar year;

21. Calculating initial rents or sales prices for affordable units; and

22. Such other responsibilities as may be necessary to carry out the provisions of this subchapter.

(b) The administrative agent shall create and publish in plain English and in such other languages as may be appropriate to serving their respective client base, a written operating manual, as approved by the municipal housing liaison, setting forth procedures for administering such affordability controls, including procedures for long-term control of

restricted units; for enforcing the covenants set forth in the UHAC appendices, consistent with the provisions at N.J.A.C. 5:80-26.19; and for releasing restricted units promptly at the conclusion of applicable control periods. The administrative agent shall have authority to take all actions necessary and appropriate, as permitted by law, to carry out its responsibilities in this chapter. The operating manual shall have a separate and distinct chapter or section setting forth the process for identifying applicant households seeking certification to restricted units, for reviewing applicant household eligibility, and for certifying applicant households in accordance with the household certification and referral requirements set forth at N.J.A.C. 5:80-26.17.

1. Such process shall require that an applicant household be notified, in writing, of the results of its application for certification within five business days of the administrative agent's determination thereof.

2. At the discretion of the administrative agent, such process may include either or both an outreach requirement and a face-to-face applicant interview process.

3. The administrative agent shall establish and maintain a ready database of applicant households as a referral source for certifications to restricted units, and shall establish written procedures to ensure that selection among applicant households be through the database, and in accordance with a uniformly applied random selection process and all applicable State and Federal laws relating to the confidentiality of applicant records.

(c) Subject to the approval of the municipal housing liaison, administrative agents may grant a waiver of the income qualification requirement for units where a buyer has not been identified for an extended period of time and where the administrative agent has developed a set of criteria to determine that a waiver is necessary due to a lack of qualified applicants. This waiver shall not change the deed restriction in any way on the unit and the next sale shall be conducted according to the applicable rules.

5:99-7.3 Approval of administrative agent

(a) The designation of administrative agents is subject to review and approval by the Division.

(b) The municipality in which restricted units are located, through its designated municipal housing liaison, shall approve one or more administrative agents for those units. A municipality itself (through a designated municipal employee or department that receives the certification as outlined at (e) below) may elect to serve as the administrative agent for some or all restricted units in the municipality, or the municipality contract with the housing affordability service (HAS), located within the HMFA, or an experienced private entity certified through the processes outlined at (e) below by the Division to serve as administrative agent for some or all restricted units in the municipality. When a municipality selects an experienced private entity to serve as administrative agent for specific restricted units, the administrative agent must be approved by the Division.

(c) If a municipality selects HAS as its administrative agent, HAS and the municipality shall enter into a contract substantially in the form set forth in the UHAC for the provision of housing affordability control services.

(d) An administrative agent shall apply to the Division for approval by submitting the following:

1. A valid and current administrative agent certificate as required pursuant to N.J.S.A. 52:27D-321;

2. Evidence of satisfactory completion of the Division's Education Program for each individual serving as an administrative agent as described at N.J.A.C. 5:99-9;

3. Disclosure of any interest, monetary or otherwise, that may be held by the administrative agent, or firm or company for which the administrative agent works, and the affordable units being administered and representation that the interest will not compromise the administration of the units;

4. A template of the form of contract to be used between the entity serving as administrative agent and its municipal clients;

5. A sample operating manual for each type of program and/or unit the administrative agent seeks to administer;

6. A statement of intent to attend initial and continuing education courses provided by the Division related to the creation, preservation, and administration of affordable housing programs and/or affordable units; and

7. Such other relevant documents as required by the Division to justify approval as an administrative agent.

(e) If a currently practicing administrative agent has not been approved by the Division, the administrative agent shall submit all documentation required at (d) above to the Division. If the current administrative agent has completed an alternate education program required pursuant to this chapter, proof of completion shall be submitted to the Division with the documentation required in this section.

(f) The Division and the municipal housing liaison shall monitor the performance of all approved administrative agents for compliance with this chapter. In the event the administrative agent does not administer a municipality's affordable housing program and/or affordable units in accordance with the certificate of compliance, municipal ordinance, or the Division's rules, the Division may revoke its approval and/or require the municipality to retain a different administrative agent. The Division reserves the right to revoke approval of an administrative agent for other compelling circumstances.

5:99-7.4 Procedures for changing administrative agents

(a) In order to ensure an orderly transfer of affordable housing administration responsibility from a municipality to an administrative agent, from one administrative agent to another administrative agent, or other transfer, the following minimum requirements are necessary before and during the transition:

1. A letter advising of the change shall be sent to all low- and moderate-income homeowners in the case of affordable ownership units, and to all landlords or their agents in the case of affordable rental units;

2. Hard copy and electronic files, containing, at a minimum, the original deed restriction, repayment mortgage, and mortgage note (if applicable), the application materials, verifications, and certifications of all present owners, pertinent correspondence, any documentation of home improvement, waiver, or other approvals granted by the former administrative agent, and other miscellaneous correspondence shall be physically transferred to the custody of the incoming or new administrative agent; and

3. The new administrative agent shall be provided with:

i. A written methodology, such as the operating manual required pursuant to this subchapter, applied in the past and to be applied in the future for a calculation of maximum resale prices and maximum rents;

ii. The calculations employed to determine the initial base sales price or initial base rent for each unit;

iii. Identification for each unit as to whether categorized as low-income or moderate-income and the range of affordability at which the units was priced;

iv. A description of the number of bedrooms and physical layout of each unit;

v. Floor plans;

vi. In the case of condominiums and units within a homeowner association, a copy of the master deed and/or public offering statement; and

vii. Waiting list materials and pending applications, including contact information for all applicants and current certifications or certifications in progress.

(b) The municipality or HAS, as applicable, shall assume the duties of administrative agent by default with respect to any restricted units that are not effectively through the supervision of a competently performing administrative agent, as determined by the Department.

5:99-7.5 Education requirements

(a) All administrative agents shall successfully complete the Division's Education Program as described at N.J.A.C. 5:99-9 within the timeframe specified by the Division.

1. If there is a delay in the availability of one or more sessions required to complete the Education Program, the administrative agent shall successfully complete the Education Program at the earliest possible time.

(b) Approved administrative agents shall earn 20 continuing education requirements over a three-year period. The applicant is responsible for

retaining all records of attendance, organization membership, or program participation. The Division shall publish on its Internet website a list of approved courses.

SUBCHAPTER 8. RCA ADMINISTRATOR

5:99-8.1 Requirement for an RCA administrator

(a) All municipalities that have received funds through an RCA and are still administering an RCA Project Plan shall establish the position of RCA administrator by ordinance and, subject to the approval of the Division, appoint a municipal employee to serve in this position.

(b) The RCA administrator is responsible for oversight and coordination of all the activities of the municipal government as it relates to the status of funds received, creation, preservation, and administration of affordable housing units funded through RCAs.

5:99-8.2 Responsibilities of the RCA administrator

(a) The following responsibilities of the RCA administrator may not be contracted out:

1. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, administrative agents, and interested households;

2. Establishing an escrow account(s) for the funds associated with each RCA and coordinating the execution of an escrow agreement between the receiving municipality, the bank or financial institution, and the Division;

3. Monitoring the status of all proposed and completed affordable housing programs and affordable units in the municipality funded through RCAs;

4. Compiling, verifying, and submitting reports at such time and in such form as the Division requires;

5. Coordinating meetings with affordable housing providers, developers, municipal officials, and administrative agents, as applicable; and

6. Where applicable, providing to an administrative agent a copy of the adopted municipal operating manual(s), RCA Project Plan, and ordinances relating to the creation and administration of the municipality's affordable housing programs and/or affordable units funded through regional contribution agreements.

(b) The RCA administrator may also serve as the administrative agent pursuant to this subchapter for some or all of the affordable units in the municipality funded through RCAs. These duties shall be outlined in the municipal ordinance establishing the position of the RCA administrator. All applicable tasks not performed by the RCA administrator, shall be contracted to an administrative agent pursuant to this subchapter.

(c) A municipality that has appointed a municipal housing liaison pursuant to N.J.A.C. 5:99-6 shall contract with an administrative agent pursuant to N.J.A.C. 5:99-7 for all applicable tasks not performed by the RCA administrator or municipal housing liaison.

5:99-8.3 Approval of the RCA administrator

(a) The appointment of the RCA administrator is subject to review and approval by the Division.

(b) Upon submission of any RCA Project Plan amendment to the Program or a court of competent jurisdiction, the receiving municipality shall submit its ordinance establishing the position of the RCA administrator and a resolution by the governing body or a letter from the chief executive appointing a municipal employee to serve as the RCA administrator to the Division.

(c) If the RCA administrator is to perform the duties of an administrative agent, the municipality shall also submit evidence to the Division of the RCA administrator's history of successful management of affordable housing units, particularly those produced through the Act or through an exclusionary zoning court settlement, which shall include:

1. A resume;

2. A statement of qualifications; and

3. A statement of intent to attend initial and continuing education courses authorized by the Division related to the creation, preservation, and administration of affordable housing programs and/or affordable units.

(d) The Division and the municipal housing liaison shall monitor the performance of the approved RCA administrator for compliance with this

chapter. In the event, the RCA administrator does not administer the municipality's affordable housing program and/or affordable units in accordance with the Program or the Division's rules, the Division may revoke its approval. The Division reserves the right to revoke approval of an RCA administrator for other compelling circumstances.

5:99-8.4 Education requirements

(a) All appointed RCA administrators shall successfully complete the Division's Education Program as described at N.J.A.C. 5:99-9.

(b) If the RCA administrator is to perform the duties of an administrative agent, the RCA administrator shall also successfully complete the Division's Education Program as described at N.J.A.C. 5:99-9.

(c) Approved RCA administrators shall earn 20 continuing education requirements over a three-year period. The applicant is responsible for retaining all records of attendance, organization membership, or program participation. The Division shall publish on its Internet website a list of approved courses.

(d) Any costs associated with a municipal employee attending required educational programs may be paid as an administrative expense from the municipal affordable housing trust fund subject to the limitations set forth at N.J.A.C. 5:99-2.4(a).

SUBCHAPTER 9. EDUCATION PROGRAM

5:99-9.1 Purpose

The purpose of the Education Program is to provide a basic understanding of the roles and duties of any person or entity appointed or contracted with to serve as a municipal housing liaison pursuant to N.J.A.C. 5:99-6, an administrative agent pursuant to N.J.A.C. 5:99-7, and/or an RCA administrator pursuant to N.J.A.C. 5:99-8.

5:99-9.2 Cost and tuition

The Division shall determine and approve the delivery of the Education Program. The providers may charge a reasonable tuition to cover the cost of offering the Education Program, not in excess of the expense of administration and delivery of the Education Program or parts thereof. Tuition costs for municipal employees may be paid from the municipal affordable housing trust fund subject to the cap on administrative expenses set forth at N.J.A.C. 5:99-2.4.

5:99-9.3 Curriculum and requirements

(a) The Education Program may include one or more sessions.

(b) The initial session is a prerequisite for all other sessions and is required to be taken by municipal housing liaisons, RCA administrators, and administrative agents. The initial session shall, at a minimum, provide an overview of the roles and responsibilities of municipal housing liaisons, RCA administrators, and administrative agents.

(c) Additional sessions shall provide detailed instruction for the administration of affordable housing programs and affordable units, including, but not limited to: affirmatively marketing affordable units, determining affordable sales prices and rents, establishing and managing an applicant pool, matching households to available units, certifying households, implementing affordability controls, preparing legal documents, records management, fair housing, and ethics.

5:99-9.4 Standards for determining satisfactory completion

(a) At the conclusion of each session, all attendees shall take a multiple-choice test. Session participants will be permitted to use the session materials and notes for reference while completing the test.

(b) In order to receive a certificate of completion, attendees shall demonstrate an adequate understanding of the Education Program material by achieving at least a 70 percent score on the test. The tests shall be graded by the session providers.

(c) Attendees who do not achieve at least a 70 percent score on the test may retake the test once without retaking the session. Attendees who do not achieve at least a 70 percent score on the second test shall be required to retake the session and the test.

ENVIRONMENTAL PROTECTION

(a)

WATERSHED AND LAND MANAGEMENT

Coastal Zone Management Rules

Freshwater Wetlands Protection Act Rules

Flood Hazard Area Control Act Rules

Proposed Repeal: N.J.A.C. 7:7A-11.10

Proposed Amendments: N.J.A.C. 7:7-17.11 and 17.14; 7:7A-11.1, 11.2, 11.6, 11.9, 11.13, 11.16, 11.22, 11.25, and 11.26; and 7:13-13.9

Authorized By: Shawn M. LaTourette, Commissioner, Department of Environmental Protection.

Authority:

As to N.J.A.C. 7:7: N.J.S.A. 12:3-1 et seq., 12:5-3, 13:1D-1 et seq., 13:1D-9 et seq., 13:1D-29 et seq., 13:9A-1 et seq., 13:19-1 et seq., 23:2A-1 et seq., and 58:10A-1 et seq.;

As to N.J.A.C. 7:7A: N.J.S.A. 13:9B-1 et seq., 23:2A-1 et seq., and 58:10A-1 et seq.;

As to N.J.A.C. 7:13: N.J.S.A. 13:1D-1 et seq., 13:1D-29 et seq., 13:20-1 et seq., 23:2A-1 et seq., 58:1A-1 et seq., 58:10A et seq., 58:11A-1 et seq., and 58:16A-50 et seq.

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

DEP Docket Number: 01-25-02.

Proposal Number: PRN 2025-027.

A **public hearing** concerning this notice of proposal will be held virtually on April 16, 2025, at 10:00 A.M.

A link to the virtual public hearing and more information about the live hearing will be provided on the Department of Environmental Protection's (Department) website at www.nj.gov/dep/wlm/proposals.

Submit comments by close of business on May 16, 2025, electronically at www.nj.gov/dep/rules/comments. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

The Department encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

Attn: Chris Segal, Esq.
DEP Docket No. 01-25-02
Office of Legal Affairs
New Jersey Department of Environmental Protection
401 East State Street, 7th Floor
Mail Code 401-04L
PO Box 402
Trenton, NJ 08625-0402

If you are interested in providing oral testimony or submitting written comments at a public hearing, please email the Department at DEPWLMProgramDevelopment@dep.nj.gov no later than 5:00 P.M., April 14, 2025, with your contact information (name, organization, telephone number, and email address). You must provide a valid email address so the Department can send you an email confirming receipt of your interest to testify orally at the hearing and provide you with a separate option for a telephone call-in line if you do not have access to a computer that can connect to Microsoft Teams. It is requested (but not required) that anyone providing oral testimony at the public hearing provide a copy of any prepared text to the Department at the hearing. Please note the Department will take oral testimony at the hearing in chronological order based upon when you registered for the event. Further, the hearing will be recorded. This notice of proposal may be viewed or downloaded from the Department's website at www.nj.gov/dep/rules.

The agency proposal follows:

Summary

As the Department of Environmental Protection (Department) has provided a 60-day comment period on this notice of proposal, this notice