

Uniform Housing Affordability Controls – 2024 Special Adoption

N.J.A.C. 5:80-26.1 et seq.

For the Period December 20, 2024 to
November 5, 2025



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Readers are advised to consult the official version of the Uniform Housing Affordability Controls at New Jersey Administrative Code 5:80-26.1 et seq.

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N.J.A.C. 5:80-26.1 et seq.

For the Period December 20, 2024 to November 5, 2025

5:80-26.1 Purpose and applicability

This subchapter is designed to implement the New Jersey Fair Housing Act (Act), N.J.S.A. 52:27D-301 et seq., by ensuring that low- and moderate-income units created pursuant to the Act are occupied by low- and moderate-income households for an appropriate period of time. This subchapter provides rules for the establishment and administration of affordability controls on restricted units that receive credit under the Act (including, but not limited to, units in municipalities that have received a compliance certification or are in the process of seeking compliance certification, as that term is defined at N.J.S.A. 52:27D-304; that have a court-approved settlement agreement and/or judgment of compliance and repose; that have been or are the subject of exclusionary zoning litigation, including, but not limited to, builder’s remedy litigation; that received credit from the former Council on Affordable Housing); or received funding from the Department pursuant to the Affordable Housing Trust Fund (AHTF), previously known as the Neighborhood Preservation Balanced Housing Program; or the Department’s Federal HOME Investment Partnerships program, 24 CFR Part 92; that received funding from the Agency through its UHORP, MONI, or CHOICE programs; or with respect to which a municipality or developer contracts with the Agency, HAS, or other experienced administrative agent approved by DCA for the administration of affordability controls pursuant to the Act. Unless expressly stated otherwise herein, this subchapter applies to all restricted units described in the foregoing sentence, regardless of the date on which the units were created; provided, however, that the rules do not apply to units qualifying for the Federal Low-Income Housing Tax Credit (LIHTC) pursuant to Section 42 of the Internal Revenue Code, units that received Balanced Housing funds pursuant to the Agency’s Home Express program, or units receiving funding from HUD pursuant to the Federal HOME Investment Partnerships program, 24 CFR Part 92; the National Housing Trust Fund program, 24 CFR Part 93; the HUD Section 202 Supportive Housing for the Elderly program, 24 CFR Part 891; the HUD Section 811 Supportive Housing for Persons with Disabilities program, 24 CFR Part 891; the HUD HOPE VI program; or the Federal Home Loan Bank Affordable Housing Program, 12 CFR Part 1291. However, newly constructed LIHTC units that receive credit pursuant to the Act must be affirmatively marketed by the developer/owner of those units in accordance with N.J.A.C. 5:80-26.16. Transitional housing units are governed by the rules of their sponsoring programs, such as the Recovery Housing Program, authorized by section 8071 of the SUPPORT for Patients and Communities Act, Pub.L. 115-271, § 8071, 132 Stat. 3894 (2018).

5:80-26.2 Definitions

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

“Administrative agent” means the entity responsible for administering the affordability controls of this subchapter with respect to specific restricted units, as designated pursuant to N.J.S.A. 52:27D-321 and N.J.A.C. 5:80-26.15.

“Affordability average” means an average of the percentage of regional median income at which restricted units in an affordable development are affordable to low- and moderate-income households.

“Affordable” means, 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 development” means a housing development all or a portion of which consists of restricted units.

“Affordable Housing Trust Fund” or “AHTF” means that non-lapsing, revolving trust fund established in DCA pursuant to N.J.S.A. 52:27D-320 and N.J.A.C. 5:43 to be the repository of all State funds appropriated for affordable housing purposes. All references to the “Neighborhood Preservation Nonlapsing Revolving Fund” and “Balanced Housing” mean the AHTF.

“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 through 44) and in, but not of, DCA.

“Age-restricted unit” means a housing unit designed to meet the needs of, and intended exclusively for, the residents of an age-restricted segment of the population where the adult member of the family who is the head of the household for the purposes of determining income eligibility and rent is a minimum age of either 62 years, or 55 years and meets the provisions of 42 U.S.C. §§ 3601 through 3619, except that due to death, a surviving spouse of less than 55 years of age is permitted to continue to reside in the unit.

“Assisted living residence” means a facility licensed by the New Jersey Department of Health to provide apartment-style housing and congregate dining and to ensure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor. Apartment units must offer, at a minimum, one unfurnished room, a private bathroom, a kitchenette, and a lockable door on the unit entrance.

“Certified household” means a household that has been certified by an administrative agent as a very-low-income household, a low-income household, or a moderate-income household.

“CHOICE” means the no-longer-active Choices in Homeownership Incentives for Everyone Program, as it was authorized by the Agency.

“COAH” means the Council on Affordable Housing established in, but not of, DCA pursuant to the Act and that was abolished effective March 20, 2024, pursuant to section 3 at P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1).

“Continuum of Care” or “CoC” means one of the 16 local planning bodies in New Jersey that coordinate service providers and other interested parties to prevent and end homelessness, as authorized by subtitle C of Title IV of the McKinney-Vento Homeless Assistance Act of 1987, 42 U.S.C. §§ 11431 through 11435.

“County-level housing judge” means a judge appointed pursuant to section 5 at P.L. 2024, c. 2 (N.J.S.A. 52:27D-313.2), to resolve disputes over the compliance of municipal fair share affordable housing obligations and municipal fair share plans and housing elements with the Act.

“DCA” and “Department” mean the State of New Jersey Department of Community Affairs.

“Dispute Resolution Program” means the Affordable Housing Dispute Resolution Program, established pursuant to section 5 at P.L. 2024, c.2 (N.J.S.A. 52:27D-313.2).

“Division” means the Division of Local Planning Services in DCA.

“HAS” means the Housing Affordability Service, formerly known as the “Affordable Housing Management Service,” in the Agency.

“Household income” means a household’s gross annual income calculated in a manner consistent with the determination of annual income pursuant to section 8 of the United States Housing Act of 1937 (Section 8), not in accordance with the determination of gross income for Federal income tax liability.

“Housing region” means a geographic area established pursuant to N.J.S.A. 52:27D-304.2b.

“HUD” means the United States Department of Housing and Urban Development.

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

“Low-income unit” means a restricted unit that is affordable to a low-income household.

“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 unit” means a restricted unit that is affordable to a moderate-income household.

“MONI” means the no-longer-active Market Oriented Neighborhood Investment Program, as it was authorized by the Agency.

“Multifamily development” means a housing development with five or more dwelling units.

“Municipal housing liaison” or “MHL” means an appointed municipal employee who is, pursuant to processes and standards to be promulgated by the Department in accordance with N.J.S.A. 52:27D-321.i(1), responsible for oversight and/or administration of the affordable units created within the municipality.

“New Jersey Housing Resource Center” or “Housing Resource Center” means the online affordable housing listing portal, or its successor, overseen by the Agency pursuant to N.J.S.A. 52:27D-321.3 et seq.

“95/5 unit” means a restricted ownership unit that is part of a housing element that received substantive certification from COAH pursuant to N.J.A.C. 5:93, as it was in effect at the time of the receipt of substantive certification, before October 1, 2001.

“Non-exempt sale” means any sale or transfer of ownership of a restricted unit to one’s self or to another individual other than the transfer of ownership between spouses or civil union partners; the transfer of ownership between former spouses or civil union partners ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor’s deed to a class A beneficiary; and the transfer of ownership by court order.

“Nonprofit” means an organization granted nonprofit status in accordance with section 501(c)(3) of the Internal Revenue Code.

“Price differential” means the difference between the controlled sale price of a restricted unit and the fair market value of the unit minus reasonable real estate broker fees, determined as of the date of a proposed contract of sale for the unit.

“Random selection process” means a lottery process by which currently income-eligible applicant-households are selected, at random, for placement in affordable housing units such that no preference is given to one applicant over another, except in the case of a veterans’ preference where such an agreement exists; for purposes of matching household income and size with an appropriately priced and sized affordable unit; or another purpose allowed pursuant to N.J.A.C. 5:80-26.17(k)3.

“Regional median income” means the median income by household size for an applicable housing region, as calculated annually in accordance with N.J.A.C. 5:80-26.3.

“Rent” means the gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. With respect to units in assisted living residences, rent does not include charges for food and services.

“Restricted unit” means a dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of this subchapter, but does not include a market-rate unit that was financed pursuant to UHORP, MONI, or CHOICE.

“Single-family development” means a housing development with one to four dwelling units that does not meet the definition of “project” as defined in the Hotel and Multiple Dwelling Unit Law (N.J.S.A. 55:13A-1 through 13A-31).

“UHORP” means the Agency’s Urban Homeownership Recovery Program, as it was authorized by the Agency Board.

“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 unit” means a restricted unit that is affordable to a very-low-income household.

“Veteran” means a veteran as defined at N.J.S.A. 54:4-8.10.

“Veterans’ preference” means the agreement between a municipality and a developer or residential development owner that allows for low- to moderate-income veterans to be given preference for up to 50 percent of units in relevant projects, as provided for at N.J.S.A. 52:27D-311.j.

5:80-26.3 Regional income limits

- (a) Administrative agents shall use the regional income limits for the purpose of pricing affordable units and determining income eligibility of households.
- (b) Regional income limits are based on regional median income, which is established by a regional weighted average of the “median family incomes” published by HUD. The procedure for computing the regional median income is:
 - 1. For each county in the housing region, multiply HUD’s determination of the county’s “median family income” for a family of four by the Decennial Census’s estimated number of households within the county;
 - 2. Add the resulting products for each county within the housing region, then divide the sum by the summed total estimated number of households in the housing region. Round the resulting quotient up to the nearest multiple of 100 to obtain the regional median income for a household of four; and
 - 3. To compute the regional median income for other household sizes, multiply the regional weighted average by the percentage adjustment factors used by HUD in the Section 8 program, then round each percentage-adjusted regional weighted average up to the nearest multiple of 100.
- (c) To calculate the regional income limits, multiply the relevant percentage by the regional median income for the relevant household size. For example, the regional income limit for a four-person low-income household is equal to 50 percent of the regional median income for a four-person household, while the regional income limit for a one-person very-low-income household is equal to 30 percent of the regional median income for a one-person household.
- (d) Updated regional income limits are effective as of the effective date of the regional Section 8 income limits for the year, as published by HUD, or 45 days after HUD publishes the regional Section 8 income limits for the year, whichever comes later. The new income limits may not be less than those of the previous year.

5:80-26.4 Affordability average; bedroom distribution

- (a) For the purposes of determining affordability averages and bedroom distributions, all restricted units within any single-family development in a municipality are treated as one scattered-site affordable development. This treatment affects only the calculations of affordability and bedroom counts for single-family developments, is not to be construed to

require that the restricted units be developed or administered as one scattered-site affordable development, and does not affect multifamily developments.

(b) For the purposes of determining affordability averages and bedroom distributions, unless stated otherwise, non-integer values calculated pursuant to this subsection are to be rounded up to the nearest whole number. However, non-integer values calculated pursuant to (e)3, 4, or 5, or (g)2, 3, or 5 below may be rounded down or up to the nearest whole number in either direction. For example, 33.1901 will typically be rounded up to 34, but may be rounded down to 33 or up to 34 if calculated pursuant to (e)3, 4, or 5, or (g)2, 3, or 5 below.

(c) Municipalities shall establish by ordinance that:

1. The average rent for all restricted units within each affordable development is affordable to households earning no more than 52 percent of median income;
2. The maximum rent for all restricted units within each affordable development is affordable to households earning no more than 60 percent of regional median income; however, municipalities may permit a maximum rent affordable to households earning no more than 70 percent of regional median income for moderate-income units within affordable developments where very-low-income units compose at least 13 percent of the restricted units. In such developments, the number of units with rent affordable to households earning 70 percent of regional median income may not exceed one plus the number of very-low-income units in excess of 13 percent of the restricted units; and
3. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom count for very-low-income, low-income, and moderate-income units, provided that at least 13 percent of all restricted units within each municipality are affordable to very-low-income households.

(d) The maximum sale price of restricted ownership units within each affordable development must be affordable to households earning no more than 70 percent of regional median income. Each affordable development must achieve an affordability average of no more than 55 percent for restricted ownership units. In achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom count, and low-income ownership units must be available for at least two different prices for each bedroom count.

(e) Unless otherwise approved pursuant to (l) below, in each affordable development, restricted units that are not age-restricted or supportive housing must be structured in conjunction with realistic market demands such that:

1. At a minimum, the number of bedrooms within the restricted units equals twice the number of restricted units;
2. Two-bedroom and/or three-bedroom units compose at least 50 percent of all restricted units;

3. No more than 20 percent of all restricted units, rounded up or down to the nearest whole number in either direction, are efficiency or one-bedroom units;
 4. At least 30 percent of all restricted units, rounded up or down to the nearest whole number in either direction, are two-bedroom units;
 5. At least 20 percent of all restricted units, rounded up or down to the nearest whole number in either direction, are three-bedroom units; and
 6. The remainder of the restricted units, if any, are allocated at the discretion of the developer in accordance with the municipality's housing element and fair share plan.
- (f) Unless otherwise approved pursuant to (l) below, in each affordable development, restricted units that are age-restricted or supportive housing must be structured, such that, at a minimum, the number of bedrooms within the restricted units equals the number of restricted units. For example, the standard may be met by creating a two-bedroom unit for each efficiency unit. In affordable developments with 20 or more restricted units that are age-restricted or supportive housing, two-bedroom and three-bedroom units must compose at least five percent of those restricted units.
- (g) Unless otherwise approved pursuant to (l) below, in each affordable development, the following income distribution requirements must be satisfied by all of the restricted units in the development as well as by, considered in isolation, the restricted units that are age-restricted, the restricted units that are supportive housing, and the restricted units that are neither age-restricted nor supportive housing:
1. At least 50 percent of all restricted units are low-income or very-low-income units;
 2. At least 50 percent of all restricted efficiency or one-bedroom units, rounded up or down to the nearest whole number in either direction, are low-income units or very-low-income units;
 3. At least 50 percent of all restricted two-bedroom units, rounded up or down to the nearest whole number in either direction, are low-income units or very-low-income units;
 4. At least 50 percent of all restricted three-bedroom units are low-income units or very-low-income units;
 5. At least 50 percent of all restricted units with four or more bedrooms, rounded up or down to the nearest whole number in either direction, are low-income units or very-low-income units; and
 6. Any very-low-income units are distributed between each bedroom count as proportionally as possible, to the nearest whole unit, to the total number of restricted units within each bedroom count. For example, if half of the restricted units are two-bedroom units, then half of the very-low-income units should be two-bedroom units.

- (h) For the purposes of determining bonus credits pursuant to N.J.S.A. 52:27D-311.k(5), the minimum number of three-bedroom units required pursuant to this subchapter is determined by taking 20 percent of the total number of family housing units in the municipal fair share plan and housing element, not by summing up the three-bedroom-unit requirements calculated for each affordable development.
- (i) In determining the initial rents and initial sale prices for compliance with the affordability average requirements for restricted units other than age-restricted units and assisted living facilities, the following standards apply:
 - 1. An efficiency unit is affordable to a one-person household;
 - 2. A one-bedroom unit is affordable to a one-and-one-half-person household;
 - 3. A two-bedroom unit is affordable to a three-person household;
 - 4. A three-bedroom unit is affordable to a four-and-one-half-person household; and
 - 5. A four-bedroom unit is affordable to a six-person household.
- (j) For age-restricted units and assisted living facilities, the following standards apply:
 - 1. An efficiency unit is affordable to a one-person household;
 - 2. A one-bedroom unit is affordable to a one-and-one-half-person household;
 - 3. A two-bedroom unit is affordable to a two-person household or to two one-person households; and
 - 4. A three-bedroom unit is affordable to a two-and-one-half-person household.
- (k) The provisions of this section do not apply to affordable developments financed pursuant to UHORP, MONI, or CHOICE or to assisted living residences, each of which must comply with applicable Agency rules.
- (l) The requirements at (e), (f), and (g) above must be satisfied by all restricted units in the municipality, considered in the aggregate. The individual requirements at (e), (f), and (g) above may be waived or altered for a specific affordable development with written approval from the Division if such waiver or alteration would not result in a material deviation from the municipal housing element and fair share plan. Any waiver or alteration that would result in a material deviation from the municipal housing element and fair share plan must receive written approval from the Dispute Resolution Program or, if the municipality does not participate in the Dispute Resolution Program, from a county-level housing judge.

5:80-26.5 Occupancy standards

- (a) Any unit that, prior to December 20, 2024 (the effective date of the amendments to this subchapter, as promulgated pursuant to P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1)), received

substantive certification from COAH, was part of a judgment of compliance from a court of competent jurisdiction, or became subject to a grant agreement or other contract with either the State or a political subdivision thereof, shall be subject to the regulations of this subchapter (UHAC regulations) that were in effect prior to December 20, 2024 (the effective date of the amendments promulgated pursuant to P.L. 2024, c. 2).

(b) Developments approved as part of a compliance certification or that otherwise contain restricted units subject to the UHAC regulations shall satisfy the following occupancy standards:

1. For any 100-percent affordable development comprising one or more restricted units:

- i. Restricted units must meet the minimum square footage required for the number of inhabitants for which the unit is marketed and the minimum square footage required for each bedroom, as set forth in the applicable municipal code or the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4, whichever is greater;
- ii. Each bedroom in each restricted unit must have at least one window; and
- iii. Restricted units must include adequate air conditioning and heating;

2. For developments comprising market-rate rental units and restricted rental units:

- i. Restricted units must use the same building standards (for example, plumbing, insulation, or siding) as market-rate units of the same unit type (for example, flat or townhome) within the same development, except that restricted units and market-rate units may use different interior finishes;
- ii. Restricted units and market-rate units within the same affordable development must be sited such that restricted units are not concentrated in less desirable locations;
- iii. Restricted units may not be physically clustered so as to segregate restricted and market-rate units within the same development or within the same building, but must be interspersed throughout the development, except that age-restricted and supportive housing units may be physically clustered if the clustering facilitates the provision of on-site medical services or on-site social services;
- iv. Residents of restricted units must be offered the same access to communal amenities as residents of market-rate units within the same affordable development. Examples of communal amenities include, but are not limited to, community pools, fitness and recreation centers, playgrounds, common rooms and outdoor spaces, and building entrances and exits;
- v. Restricted units must include adequate air conditioning and heating and, if market-rate units provide cooling and heating, restricted units must use the

same type of cooling and heating sources as market-rate units of the same unit type;

- vi. Each bedroom in each restricted unit must have at least one window;
 - vii. Restricted units must be of the same unit type (for example, flat or townhome) as market-rate units within the same building; and
 - viii. Restricted units must be of at least the same size as the most common market-rate unit(s) of the same type and bedroom count within the same development, but under no circumstances shall any restricted unit or bedroom be less than 90 percent of the minimum size prescribed by the applicable municipal code or Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4, whichever prescribes the greater minimum size;
3. For developments containing for-sale units, including those with a mix of rental and for-sale units, (b)2 above shall govern the rental units, while for-sale units shall adhere to the following:
- i. Restricted units must use the same building standards as market-rate units of the same unit type (for example, flat, townhome, or single-family home), except that restricted units and market-rate units may use different interior finishes;
 - ii. Restricted units may be clustered, provided that the buildings or housing product types containing the restricted units are integrated throughout the development and are not concentrated in an undesirable location or in undesirable locations;
 - iii. Restricted units may be of different housing product types than market-rate units, provided that developments containing market-rate townhomes or single-family homes offer restricted housing options that also include townhomes or single-family homes;
 - iv. Restricted units must meet the minimum square footage required for the number of inhabitants for which the unit is marketed and the minimum square footage required for each bedroom, as set forth in the applicable municipal code or the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4, whichever provides the greater minimum square footages;
 - v. Penthouse and end units may be reserved for market-rate sale, provided that the overall number, value, and distribution of affordable units across the development is not negatively impacted by such reservation(s);
 - vi. Residents of restricted units must be offered the same access to communal amenities as residents of market-rate units within the same affordable development. Examples of communal amenities include, but are not limited

to, community pools, fitness and recreation centers, playgrounds, common rooms and outdoor spaces, and building entrances and exits;

- vii. Each bedroom in each restricted unit must have at least one window; and
- viii. Restricted units must include adequate air conditioning and heating;

4. If the affordable development is constructed in phases, than:
 - i. No more than 10 percent of the market-rate units may be completed prior to the completion of at least one restricted unit;
 - ii. No more than 25 percent of the market-rate units plus one, may be completed prior to the completion of 25 percent of the restricted units;
 - iii. No more than 50 percent of the market-rate units may be completed prior to the completion of 50 percent of the restricted units;
 - iv. No more than 75 percent of the market-rate units may be completed prior to the completion of 75 percent of the restricted units;
 - v. No more than 90 percent of the market-rate units may be completed prior to the completion of all of the restricted units; and
 - vi. If the phasing schedule at (b)4i through v above is not feasible due to the nature of the development, that the restricted units are completed prior to the completion of the market-rate units; and
 5. The individual requirements at (b)1, 2, 3, and 4 above may be waived or altered with written approval from the Division if such waiver or alteration would not result in a material deviation from the municipal housing element and fair share plan. Any waiver or alteration that would result in a material deviation from the municipal housing element or fair share plan must receive written approval from the Dispute Resolution Program or, if the municipality does not participate in the Dispute Resolution Program, from a county-level housing judge.
- (c) In referring certified households to specific restricted units, the administrative agent shall strive, to the extent feasible and without causing an undue delay in occupying the unit, to:
1. Ensure each bedroom is occupied by at least one person, except for age-restricted units;
 2. Provide a bedroom for every two adult occupants;
 3. Provide a bedroom for every occupant under the age of 18, unless the household requests a different arrangement, which arrangement may not result in more than two occupants under the age of 18 occupying any bedroom; and

4. Avoid placing a one-person household into a unit with more than one bedroom.

5:80-26.6 Control periods for ownership units

- (a) Each restricted ownership unit must remain subject to the requirements of this subchapter until the end of the control period specified in the deed restriction unless the municipality in which the unit is located elects to extend the unit's restriction in compliance with (h) below. A restricted ownership unit must remain subject to the requirements of this subchapter for a period of at least 30 years; provided, however, that:
 1. Any unit that, prior to December 20, 2024 (the effective date of the amendments to this subchapter as promulgated pursuant to P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1)), received substantive certification from COAH, was part of a judgment of compliance from a court of competent jurisdiction, or became subject to a grant agreement or other contract with either the State or a political subdivision thereof, will have its control period governed by such grant of substantive certification, judgment, grant agreement, or contract;
 2. 95/5 units are subject to the option and price restriction rules set forth at N.J.A.C. 5:80-26.21 through 26.27; and
 3. Units for which affordability controls have been extended pursuant to (h) below are subject to a minimum period of extension of 30 years, except that the extension period may be limited to 20 years if the original and extended terms of affordability controls, in combination, are at least 60 years.
- (b) The affordability control period for a restricted ownership unit commences on the date the initial certified household takes title to the unit and terminates at the first non-exempt sale after the end of the deed-restricted affordability period, if, and only if, the municipality does not exercise the right of first refusal to extend the control period in accordance with (h) below, and if and only if, the seller has provided the municipality with at least 60 days' notice of the seller's intention to make the first non-exempt sale.
- (c) Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the administrative agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value. At the time of the sale of the unit, the purchaser shall execute and deliver to the administrative agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors, and assigns) to repay, upon the first non-exempt sale after the unit's release from the requirements of this subchapter, an amount equal to the difference between the unit's non-restricted fair market value, as determined previously by the administrative agent, and its restricted price. The recapture note must be secured by a recapture lien evidenced by a duly recorded mortgage on the unit. The recapture note and recapture mortgage lien must be in favor of the Agency if the unit was financed pursuant to UHORP, MONI, or CHOICE, in favor of the State if State funds other than UHORP, MONI, or CHOICE contributed to the financing of the unit, in favor of the nonprofit if the unit was developed by a nonprofit entity without Agency or State funding, and, in all other cases, in favor of the municipality in which

the unit is located. The recapture note and recapture mortgage lien must be in the form prescribed at N.J.A.C. 5:80-26 Appendices L, M, N, O, P, and Q, incorporated herein by reference, as applicable.

1. The recapture lien must also provide that the recapture amount be reduced by the cumulative dollar value of capital expenditures by all owners during the control period for improvements and/or upgrades to the unit, as may be approved by the administrative agent.
 2. Municipalities that exercise the option to purchase restricted ownership units pursuant to (f) below are not required to satisfy the recapture lien.
 3. Upon termination of the affordability control period pursuant to (g) below, and satisfaction of the recapture mortgage lien, the unit may be sold at fair market value and the proceeds retained by the seller. However, the recapture mortgage lien will remain a lien on the property until it is satisfied and the administrative agent files a discharge.
- (d) All conveyances of restricted ownership units must be made by deeds and restrictive covenants substantially in the forms prescribed at N.J.A.C. 5:80-26 Appendices A, B, C, D, L, M, N, O, P and Q, incorporated herein by reference, as applicable. Each purchaser of a 95/5 unit, in addition, shall execute a note and mortgage in the forms prescribed at N.J.A.C. 5:80-26 Appendices G and H, incorporated herein by reference.
- (e) The affordability controls set forth in this subchapter and incorporated in instruments in the forms presented at N.J.A.C. 5:80-26 Appendices A and D through Q, incorporated herein by reference, shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units. In furtherance of the State's vested interest in maintaining affordable housing, all conveyances of restricted ownership units are deemed to have been made by deeds and restrictive covenants as prescribed at (d) above and each purchaser of a 95/5 unit is deemed to have executed a note and mortgage as prescribed in this subchapter, regardless of whether such required instruments have actually been prepared or executed. DCA, the Agency, and/or any municipality or party may enforce the restrictions that would have been contained in such instrument(s) as if such instrument(s) had, in fact, been prepared and duly executed. A sale or transfer of ownership made other than in conformity with the requirements of this subchapter is not an authorized non-exempt sale; thus, all requirements, restrictions, and liens associated with the unit being sold or transferred shall remain in effect until full satisfaction thereof and compliance with this subchapter.
- (f) When the first non-exempt sale occurs 30 or more years after the date the initial certificate of occupancy was issued, a municipality may exercise the right of first refusal to purchase a restricted ownership unit at the maximum restricted price, with the exceptions noted at (a) above, provided that:
1. The municipality enters into a contract to purchase the unit within 60 days after the owner notifies the municipality of their intent to sell the restricted unit; and

2. The recapture lien described at (c) above remains in full force and effect. Any municipality may elect to release a restricted ownership from the requirements of this subchapter at a time to be set forth in the municipal ordinance.
- (g) A municipality may use municipal affordable housing trust funds to purchase and/or rehabilitate restricted ownership units.
- (h) Each restricted ownership unit will be released from affordability restrictions upon the date of the first non-exempt sale after the end of the deed-restricted affordability period unless the municipality exercises the right of first refusal to extend the affordability control period for the restricted ownership unit. To exercise the right of first refusal, the municipality must:
1. Notify the owner, in writing, of its intent to extend the affordability controls no later than 180 days prior to the end of the deed-restricted affordability control period;
 2. Issue a new deed restriction extending the control period for not less than 30 years or, if the original control period and extended control period, in combination, total at least 60 years, then not less than 20 years; and
 3. Either:
 - i. Purchase the restricted unit pursuant to (f) above and convey it to a very-low-, low-, or moderate-income purchaser at a price not to exceed the maximum allowable restricted sale price; or
 - ii. Compensate the homeowner no less than \$20,000 from the municipal affordable housing trust fund to support the preservation of the unit.
- (i) In those instances in which control periods expire pursuant to this section, the administrative agent shall, within 60 days of the expiration of the control period, execute a release, substantially in the form set forth at N.J.A.C. 5:80-26 Appendix F, incorporated herein by reference, of all restriction instruments with respect to the unit. The owner of the restricted unit is responsible for recording the release instruments and returning the recorded originals promptly to the administrative agent. Upon the expiration of the control period for a restricted ownership unit established in this section, the owner of the unit may sell it to any purchaser at the fair market price.

5:80-26.7 Price restrictions for ownership units

- (a) The administrative agent shall set the initial purchase price for a restricted ownership unit. If the unit is receiving assistance pursuant to the AHTF, the price must be consistent with the AHTF grant agreement.
- (b) The initial purchase price for all restricted ownership units, except those financed pursuant to UHORP, MONI, or CHOICE is calculated so that the monthly carrying costs of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the FreddieMac 30-Year Fixed Rate-Mortgage rate of interest), taxes, homeowner and private mortgage insurance, and condominium or homeowner association fees do not

exceed 28 percent of the eligible monthly income of an appropriate household size as determined pursuant to N.J.A.C. 5:80-26.4; provided, however, that the price shall be subject to the affordability average requirement at N.J.A.C. 5:80-26.3.

- (c) The initial purchase price of a restricted ownership unit financed pursuant to UHORP or MONI shall be calculated so that the monthly carrying costs of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the FreddieMac 30-Year Fixed-Rate Mortgage rate of interest), taxes, homeowner and private mortgage insurance, and condominium or homeowner association fees, do not exceed 28 percent of the eligible monthly income of an appropriate household size as determined pursuant to N.J.A.C. 5:80-26.5; provided, however, that the price is subject to the affordability average requirement at N.J.A.C. 5:80-26.4.
- (d) The maximum resale price for a restricted ownership unit, if the resale occurs prior to the one-year anniversary of the date on which title to the unit was first transferred to a certified household, is the initial purchase price. If the resale occurs on or after such anniversary date, the maximum resale price may increase annually based on the percentage increase in the regional median income, effective as of the same date as the regional median income calculated pursuant to N.J.A.C. 5:80-26.3. The actual resale price may be lower than the maximum resale price for reasons including, but not limited to, home disrepair and market decline. The maximum resale price may not be lower than the last recorded purchase price. The administrative agent shall approve all resale prices, in writing, and in advance of the resale, to ensure compliance with the foregoing standards.
- (e) The master deeds and declarations of covenants and restrictions for affordable developments may not distinguish between restricted units and market-rate units in the calculation of any condominium or homeowner association fees and special assessments to be paid by low- and moderate-income purchasers and those to be paid by market-rate purchasers. Condominium or homeowner association fees and special assessments charged to affordable units shall be based on the common interest percentage and the full build-out budget. Affordable units in a condominium or homeowner association subject to a municipal ordinance adopted before December 20, 2004, which ordinance provides for condominium or homeowner association fees and/or assessments different from those provided for in this subsection are governed by the ordinance. If the affordability controls on such units are extended by the municipality or by agreement between the municipality and the affordable homeowner, the existing fee structure will be maintained. Any increase to the homeowner association fee, condominium association fee, or amenity fee that would cause an owner of an affordable unit to exceed the housing costs specified in this subchapter is prohibited. If renovations or charges related to a special assessment do not impact or benefit affordable units, affordable unit owners may not be subject to the special assessment charge.
- (f) 95/5 units are subject to the option and price restriction rules set forth at N.J.A.C. 5:80-26.21 through 26.27.

5:80-26.8 Buyer income eligibility for ownership units

- (a) Very-low-income ownership units are reserved for households with a household income less than or equal to 30 percent of regional median income. Low-income ownership units are

reserved for households with a household income less than or equal to 50 percent of regional median income. Moderate-income ownership units are reserved for households with a household income less than 80 percent of regional median income. For example, a household earning 48 percent of regional median income may qualify for any low-income or moderate-income unit; however, a household earning 53 percent of regional median income would qualify for a moderate-income unit, but would not qualify for a low-income unit. Notwithstanding the foregoing, the administrative agent may permit moderate-income purchasers to buy low-income units in housing markets where, as determined by the Division, units are reserved for low-income purchasers, but there is an insufficient number of low-income purchasers to permit prompt occupancy of the units. In such instances, the purchased unit must be maintained as a low-income unit and sold at a low-income price point such that on the next resale the unit will still be affordable to low-income households and able to be purchased by a low-income household. A certified household that purchases a restricted ownership unit must occupy it as the principal residence and not lease the unit; provided, however, the administrative agent may permit the owner of a restricted ownership unit, upon a showing of hardship, to lease the unit to a certified household for a period not to exceed one year.

- (b) The administrative agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the unit (including principal, interest, taxes, homeowner and private mortgage insurance, and condominium or homeowner association fees, as applicable) does not exceed 35 percent of the household's eligible monthly income. The administrative agent, however, may exercise its discretion to certify a low- or moderate-income household as eligible despite the fact that the unit's monthly housing cost would exceed the 35 percent level, if the household obtains a firm mortgage loan commitment at the higher level from a licensed financial institution, under terms consistent with the requirements of the New Jersey Home Ownership Security Act of 2002, N.J.S.A. 46:10B-22 through 35, including certification from a nonprofit counselor approved by HUD or the New Jersey Department of Banking and Insurance that the borrower has received counseling on the advisability of the loan transaction.

5:80-26.9 Limitations on indebtedness secured by ownership units; subordination

- (a) Prior to incurring any indebtedness to be secured by an ownership unit, the owner shall submit to the administrative agent a notice of intent to incur such indebtedness (for example, a home equity loan or solar loan), in such form and with such documentary support as determined by the administrative agent, and the owner may not incur any such indebtedness unless and until the administrative agent has determined and confirmed, in writing, that the proposed indebtedness complies with the provisions of this section.
- (b) With the exception of original purchase money mortgages, during a control period, neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by an ownership unit to exceed 95 percent of the maximum allowable resale price of that unit, as such price is determined by the administrative agent in accordance with N.J.A.C. 5:80-26.7(c).

5:80-26.10 Capital improvements to ownership units

- (a) The owner of an ownership unit may apply to the administrative agent to increase the maximum sales price for the unit to reflect eligible capital improvements made since they purchased the unit. Eligible capital improvements are limited to those that make the unit suitable for a larger household or that add an additional bathroom. However, the maximum sale price of an improved housing unit may not exceed the limits of affordability for the larger household.
- (b) Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, or wall-to-wall carpeting) are included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the administrative agent at the time of signing the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price, subject to 10-year, straight-line depreciation, has been approved by the administrative agent. Unless otherwise approved by the administrative agent, the purchase of any property other than central air conditioning may not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at resale.
- (c) Capital expenditures approved, in writing, by the administrative agent for non-cosmetic replacement of existing items of property or non-cosmetic improvement to the property (for example, replacement of a leaky roof, installation of a solar energy system owned by the homeowner, installation of energy-efficient windows, or replacement of broken appliances with ENERGY STAR-labeled products) do not affect the maximum sale price, but will be factored into calculating reductions to the recapture amount pursuant to N.J.A.C. 5:80-26.6(c)1.

5:80-26.11 Maintenance of restricted ownership units

Upon the first transfer of title that follows the expiration of the applicable minimum control period provided pursuant to N.J.A.C. 5:80-26.6(a), the owner of a restricted ownership unit shall obtain a Continuing Certificate of Occupancy or a certified statement from the municipal building inspector stating that the unit meets all code standards.

5:80-26.12 Control periods for rental units

- (a) Each restricted rental unit must remain subject to the requirements of this subchapter until the end of the control period specified in the unit's deed restriction, unless the unit's restriction is extinguished in compliance with (e) below or extended in compliance with (f) below. A restricted rental unit must remain subject to the requirements of this subchapter for a period of at least 40 years; provided, however, that the control period of any unit that, prior to December 20, 2024, (the effective date of the amendments to this subchapter as promulgated pursuant to P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1)), received substantive certification from COAH, was part of a judgment of compliance from a court of competent jurisdiction, or became subject to a grant agreement or other contract with either the State or a political subdivision thereof will be governed by such grant of substantive certification, judgment, grant agreement, or contract.

1. Rental units created on or after January 1, 2025, and which are subject to affordability controls for low- and/or moderate-income families pursuant to this subchapter are subject to a deed restriction of not less than 40 years.
 2. Any project composed entirely of rental units subject to the affordability controls of this section that does not participate in a State-administered preservation program may elect to extinguish the existing deed restriction beginning 30 years following the start of the deed restriction, regardless of original length, provided that the project enters into a new deed restriction of at least 30 years and that the project has applied for and obtained a refinancing and/or has commenced an approved rehabilitation for the purpose of preservation.
 3. Any project composed entirely of rental units subject to the affordability controls of this section that participates in a State-administered preservation program may elect to extinguish the existing deed restriction prior to the 30th year, regardless of original length, provided that the project enters into a new deed restriction that, in combination with the original deed restriction, totals at least 60 years.
- (b) The affordability control period for the restricted rental units in a development commences on the first date that a unit is issued a certificate of occupancy and terminates only at the end of the control period specified in the deed restriction or at such time that the municipality releases the unit from the requirements of this subchapter in accordance with (e) below. For any restricted rental units occupied at the end of the control period specified in the deed restriction or the time at which the municipality releases the unit from the requirements, the affordability controls set forth in this subchapter remain in effect until the date on which the occupant household vacates the rental unit, provided that the occupant household continues to earn a household income of less than 80 percent of the applicable regional median income. If, at that time, a rental household's income exceeds 80 percent of the regional median income, the rental rate restriction will expire at the later of either the next scheduled lease renewal or in 60 days.
- (c) Deeds of all real property that include restricted rental units must contain deed restriction language that conforms with the requirements of this subchapter and is substantially in the form set forth at N.J.A.C. 5:80-26 Appendix E, incorporated herein by reference. The requirements of this subchapter govern the terms of deed restrictions regardless of the language ultimately utilized in the recorded deed restriction document. No terms, whether intentional or unintentional, that circumvent the requirements of this subchapter may be enforced. All deed restrictions must be read in accordance with the requirements of this subchapter. Any terms that directly conflict with the requirements of this subchapter are of no legal effect, are contrary to the public policy of the State, and may be stricken only by an application to the Dispute Resolution Program or a county-level housing judge. Deed restrictions are severable, such that invalidation of any provision due to inconsistency with this subchapter will not terminate the deed restriction, but, rather, the deed restriction will be read to include the provision of this subchapter with which the original language was inconsistent. The deed restriction has priority over all mortgages on the property. The developer or seller shall file the deed restriction with the records office of the county in which the unit is located, and a copy of the filed document must be provided to the administrative

agent within 30 days of the receipt of a certificate of occupancy for the unit. The preparer of the foregoing instrument shall certify to the administrative agent that the deed restriction language at N.J.A.C. 5:80-26 Appendix E has been included therein. If the recorded deed restriction is not provided to the administrative agent within 30 days of the receipt of the certificate of occupancy, the administrative agent shall at any time thereafter send notice to the developer or seller providing a 30-day cure period. If the deed restriction is not provided within the cure period, the administrative agent shall record the deed restriction with the records office of the county on notice to the developer or seller and may bill the seller for reasonable costs associated therewith. Under no circumstances may a developer or seller be excused from any requirements of this subchapter because of a failure to record the deed restriction. If a development is sold by a developer prior to recording the deed restriction, the buyer is not excused from adhering to the requirements of this subchapter and any recourse shall be to recover from the seller rather than seeking to extinguish any affordability controls of the development.

- (d) A restricted rental unit shall remain subject to the affordability controls of this subchapter despite the occurrence of any of the following events:
1. A sublease or assignment of the lease of the unit;
 2. A sale or other voluntary transfer of ownership of the unit;
 3. The entry and enforcement of any judgment of foreclosure or grant of a deed in lieu of foreclosure; or
 4. The release from affordability restrictions at the end of the affordability control period, until occupancy by the first new tenant subsequent to the release of controls.
- (e) Unless affordability controls are extended pursuant to (f) below, any municipality shall release any or all of the restricted rental units in a development from the requirements of this subchapter at a time to be set forth in the municipal ordinance required below, but only after the expiration of the minimum control period specified at (a) above, provided that:
1. The municipal election to release the unit from the requirements of this subchapter is made pursuant to a municipal ordinance authorizing such elections; and
 2. The administrative agent, within 60 days of the municipal election, executes a release, in the form set forth at N.J.A.C. 5:80-26 Appendix F, incorporated herein by reference, of all restriction instruments with respect to the unit(s). The owner of the restricted unit(s) is responsible for recording the release instruments and returning the recorded originals promptly to the administrative agent. Upon the expiration of the control period for a restricted rental unit established in this section, the owner of the unit may lease it to any tenant at the fair market rent.
- (f) Restricted rental units will be released from affordability restrictions at the end of the affordability control period, subject to the limitations at (b) above, unless the municipality exercises the right of first refusal to extend the affordability control period for the restricted rental units. To exercise the right of first refusal, the municipality must:

1. No later than 180 days prior to the end of the affordability control period, elect to extend the affordability control period pursuant to a municipal ordinance authorizing such elections;
2. Issue a new deed restriction extending the control period for not less than 30 years or, if the original control period and extended control period, in combination, total at least 60 years, then not less than 20 years;
3. If permitted by the relevant statute, grant or extend an agreement for payment in lieu of taxes pursuant to the New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., or 55:14K-37(b); and
4. To support the preservation, contribute:
 - i. At least \$12,000 per restricted unit from the municipal affordable housing trust fund, if an agreement for payment in lieu of taxes has been granted or extended;
 - ii. At least \$17,500 per restricted unit from the municipal affordable housing trust fund, if no agreement for payment in lieu of taxes has been granted or extended; or
 - iii. Any other assistance not less than the equivalent of \$10,000 per restricted unit, if the assistance was approved pursuant to N.J.S.A. 52:27D-329.2(4), as part of the municipality's compliance certification or by DCA, and if the assistance is consistent with the municipality's housing element and fair share plan.

5:80-26.13 Restrictions on rents

- (a) The administrative agent shall set the initial rent for a restricted rental unit. If the unit is receiving assistance pursuant to the AHTF, the initial rent must be consistent with the AHTF grant agreement. The initial rent must be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate household size as determined pursuant to N.J.A.C. 5:80-26.5; provided, however, that the rent is subject to the affordability average requirement at N.J.A.C. 5:80-26.4.
- (b) At the anniversary date of the tenancy of the certified household occupying a restricted rental unit, the rent may be increased to an amount commensurate with the annual percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U), specifically U.S. Bureau of Labor Statistics Series CUUR0100SAH, titled "Housing in Northeast urban, all urban consumers, not seasonally adjusted." The maximum allowable rent increase for the year will be effective as of the same date as the regional median income limits determined pursuant to N.J.A.C. 5:94-26.3. This rent increase may not exceed five percent in any one year and notice thereof must be filed with the administrative agent. If the landlord has charged a tenant less than the initial maximum allowable rent for a restricted unit, the landlord may, with the approval of the administrative agent, use the maximum allowable rent instead of the current rent in performing this multiplication to establish the rent for the next tenant under a new

lease. LIHTC units are not governed by the provisions of this subsection, but rather by the provisions of the State's Qualified Allocation Plan, N.J.A.C. 5:80-33.1 through 33.40.

- (c) Approved initial rents are fixed as of the start of the property's initial lease-up. Municipal Housing Liaison-adopted increases may not be implemented during lease-up. Each new, separately financed phase of a project may seek MHL approval to use the then-effective initial rents, provided that the lease-up of the phase will occur at least 12 months after the prior phase was placed in service. Rents may not be increased more than once a year or by more than one MHL-approved increment at one time. Rents may not be increased at the time of a new occupancy if the new occupancy occurs within one year of the last occupancy and prior to the next published MHL-approved increase. No additional fees, operating costs, or charges may be added to the approved rent (except in the case of units in assisted living residences, for the customary charges for food and services) without the express written approval of the administrative agent. Operating costs for the purposes of this section include certificate of occupancy fees, move-in fees, move-out fees, and on-site parking or parking deck fees. Any fee structure that would remove or limit affordable renters' access to any amenities or services that are required or included for market-rate renters is prohibited. Application fees (including the charge for any credit check) may not exceed five percent of the monthly rent of the applicable restricted unit and are payable to the administrative agent to be applied to the costs of administering the controls in this subchapter as applicable to the unit. Fees for truly optional, unit-specific, non-communal items that are charged to market-rate tenants on an optional basis, such as pet fees for tenants with pets, storage spaces, bicycle-share programs, or one-time rentals of party or media rooms, may be charged to affordable tenants, if applicable. Pet fees may not exceed \$30.00 per month and associated one-time payments for optional fees pertaining to pets, such as a pet cleaning fee, are prohibited. Fees for other optional, unit-specific, non-communal items may not exceed the amounts charged to market-rate tenants.
- (d) A written lease is required for all restricted rental units, except for units in assisted living residences. Final lease agreements are the responsibility of the landlord and the prospective tenant. Tenants are responsible for security deposits and the full amount of the rent as stated in the lease. All lease provisions must comply with applicable law. The landlord shall provide the administrative agent with sufficient information for preparation of a unit inventory form for entry into the centralized affordable housing unit inventory system. The landlord shall submit a copy of each lease entered into with a certified household to the administrative agent within 10 business days after the execution of each lease.
- (e) The lease must specify which tenant-paid utilities are included in the utility allowance and include the most recent utilities chart at the time of lease-up approved by DCA for its Section 8 program. The allowance for utilities must be consistent with the utility allowance approved by DCA for its Section 8 program.

5:80-26.14 Tenant income eligibility

- (a) Low-income rental units are reserved for households with household incomes less than or equal to 50 percent of regional median income. Moderate-income rental units are reserved for households with household incomes less than or equal to 80 percent of regional median

income. Very-low-income rental units are reserved for households with household incomes less than or equal to 30 percent of regional median income.

- (b) The administrative agent shall certify a household as eligible for a restricted rental unit when the household is a very-low-income household, a low-income household, or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.17; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
1. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent and the proposed rent will reduce its housing costs;
 2. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
 3. The household is currently in substandard or overcrowded living conditions;
 4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 5. The household documents proposed third-party assistance from an outside source, such as a family member, in a form acceptable to the administrative agent and the owner of the unit.
- (c) The applicant shall file documentation sufficient to establish the existence of any of the circumstances at (b) above with the administrative agent, who shall counsel the household on budgeting.

5:80-26.15 Administrative agent

The administrative agent shall administer and enforce the affordability controls set forth in this subchapter, which actions are reviewable by the Municipal Housing Liaison pursuant to N.J.S.A. 52:27D-321. 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. The administrative agent shall also fulfill the responsibilities promulgated by the Department in accordance with N.J.S.A. 52:27D-321.i(1) and shall have the authority to discharge and release any or all instruments, as set forth at N.J.A.C. 5:80-26 appendices, filed of record to establish affordability controls.

5:80-26.16 Affirmative marketing

- (a) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age (except for "housing for older persons" as defined at N.J.S.A. 10:5-1 et seq. and age-

restricted units as permitted pursuant to 42 U.S.C. § 3601 et seq.), number of children, source of lawful income, or any other characteristic described in the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 through 5.50, to housing units that are being marketed by a developer or sponsor of affordable housing. Unless stated otherwise, supportive housing units must comply with the affirmative marketing requirements of their respective sponsoring programs, where applicable. The affirmative marketing plan is intended to reach those potentially eligible persons who are least likely to apply for affordable units in the plan region by attracting applications from eligible applicant-households in preparation for the random selection process. It is a continuing program that directs all marketing activities toward the housing region in which the municipality is located throughout the deed restriction period. Each developer or administrative agent shall document and report the affirmative marketing plan for the units under their purview to the municipal housing liaison, who shall ensure that developers and administrative agents are marketing units in accordance with the provisions in this section.

- (b) The administrative agent shall ensure the affirmative marketing of affordable units. Municipalities may designate an experienced municipal staff person approved by the Division to be the administrative agent responsible for implementing the affirmative marketing plan. The administrative agent shall attend an affirmative marketing training program approved by the Division.
- (c) If the municipality does not designate a municipal staff person, it shall contract with other experienced administrative agent(s) approved by the Division to administer the affirmative marketing plan(s). The municipality shall also ensure that all affordable-unit, applicant, and sales records are returned to the municipality for reporting purposes and to aid with future resales. The municipality is ultimately responsible for the proper administration of the affirmative marketing program, including initial sales, rentals, resales, and re-rentals.
- (d) In implementing the affirmative marketing plan, administrative agents shall designate an experienced staff person to provide counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law. Alternatively, the administrative agent may contract with an experienced entity approved by the Division to provide such counseling services.
- (e) The affirmative marketing plan must contain the following information:
 - 1. The name and address of the project;
 - 2. The number of units, including the number of sale and/or rental units;
 - 3. The physical characteristics of affordable units, including the unit type (that is, family, age-restricted, or supportive), bedroom counts, total square footage, and accessibility features;
 - 4. The prices of for-sale units and/or the rental amounts of rental units;
 - 5. The expected date the affordable housing units will be available;

6. The name of the sales agent and/or rental manager;
 7. A description of the random selection method that will be used to select occupants of affordable housing units;
 8. The population(s), if any, that will be given preference in the selection process pursuant to N.J.A.C. 5:80-26.17(k);
 9. Required application fees; and
 10. A phone number, email address, website address, and New Jersey Housing Resource Center information for the property.
- (f) The affirmative marketing plan must describe the media to be used in advertising and publicizing the availability of housing. In developing the plan, the administrative agent shall account for language barriers. In addition to the items specified at (e) above, the plan must include the following:
1. Available units, waitlist opportunities, and lottery applications, as applicable, to be posted to the New Jersey Housing Resource Center;
 2. The names of potential paid targeted digital advertising to be used throughout the housing region;
 3. The names of specific newspapers and other publications circulated within the housing region, such as neighborhood-oriented weekly newspapers, religious publications, and organizational newsletters;
 4. The names of employers throughout the housing region that will be contacted to post advertisements and distribute flyers regarding available affordable housing;
 5. The names of specific community and regional organizations that will aid in soliciting low- and moderate-income applicants. Such organizations may include nonprofit, religious, governmental, fraternal, civic, and other organizations;
 6. The names of specific internet websites that operate as housing search websites and municipal and county websites where the affordable homes will be advertised;
 7. The names of specific social media websites and platforms where advertisements will be posted or linked;
 8. The locations of public transit stops in the housing region where flyers will be posted; and
 9. Other advertising and outreach efforts to groups that are least likely to be reached. If the applicant demonstrates that other advertising and outreach efforts are substantially more effective in reaching the target population than any of the means enumerated at

(f)2 through 8 above, the Division may approve a plan that substitutes an equal number of those means.

(g) The affirmative marketing process for available affordable units must begin at least four months prior to expected occupancy and may begin before construction commences. In implementing the marketing program, the administrative agent shall:

1. Post a listing of the available affordable housing units to the New Jersey Housing Resource Center at least 60 days before the random selection process or within one day following the date the owner, developer, property manager, or other administrative entity provides information regarding the application process to prospective applicants or solicits any applications from potential applicants through any other means pursuant to N.J.S.A. 52:27D-321.6. It is the responsibility of the Municipal Housing Liaison, in coordination with the administrative agent(s), to ensure compliance with all provisions of N.J.S.A. 52:27D-321.3 through 321.6;
2. Within one business day of listing the affordable housing units on the New Jersey Housing Resource Center, notify the local Continuum of Care of any rental housing units for individuals with special needs that are reserved for individuals and families that are homeless and of any permanent supportive housing rental units;
3. Publish at least one advertisement in a regional newspaper;
4. Advertise the units on at least one housing search website; and
5. Undertake at least two additional regional marketing strategies, one digital and one non-digital, using the sources listed at (f)2 through 9 above.

(h) Such advertising and outreach must take place during the first week of the marketing program and continue until all of the units being brought to market at that time have been sold in the case of for-sale units or until enough applications from eligible households have been received to fill all of the units plus two years of future re-rentals in the case of rental units. Applications must be accepted for no less than 45 days following the initial advertisement on the New Jersey Housing Resource Center, except for the resale of for-sale units, in which case, applications must be accepted for no less than 30 days. No lottery may be conducted while applications are still being accepted. The advertisement must include at least the following:

1. The location of the units;
2. An address sufficient to find directions to the housing units;
3. A range of prices for the housing units;
4. The sizes, as measured in number of bedrooms and square footage, of the housing units;
5. The types (that is, family, age-restricted, or supportive) and number of affordable units available;

6. The number of units available to very-low-, low-, and moderate-income households within the pertinent eligible income ranges;
 7. The accessibility features, if any, of the units;
 8. The maximum income permitted to qualify for the housing units;
 9. The population(s), if any, given preference in the selection process pursuant to N.J.A.C. 5:80-26.17(k)3;
 10. The location(s) of and links to applications for the housing units;
 11. The expected completion date(s) for the affordable housing units;
 12. The date of the lottery;
 13. The business hours when interested households may obtain hard copies of applications for the housing units;
 14. Contact information, including an email address and phone number that are regularly monitored by the administrative agent; and
 15. Application fees, if any.
- (i) Applications for affordable housing or notices of such, if offered online, must be available in multiple locations, including, at a minimum, the county administration building and/or the county library for each county within the housing region; the municipal administration building(s) and the municipal library in the municipality in which the units are located; and the developer's sales office. The developer shall mail applications to prospective applicants upon request and shall make applications available through a secure online website address. The municipality shall post the application links and/or notices of affordable housing either directly on the home page of the municipality's official website or on a landing page directly, clearly, and conspicuously linked to from the home page of the municipality's official website.
 - (j) If the municipality intends to require affordable housing developers to incur the cost of affirmative marketing and advertising for affordable units, the municipality must adopt such policy and make the requirement a condition of the project's planning and zoning board approvals.
 - (k) In carrying out the affirmative marketing process, the administrative agent shall comply with all provisions of the Fair Chance in Housing Act, N.J.S.A. 46:8-52 through 64.

5:80-26.17 Household certification and referral

- (a) The administrative agent shall secure all information from applicant households necessary and appropriate to determine that restricted units are occupied by properly sized households of low- or moderate-income. No household may be referred to a restricted unit or receive a

commitment with respect to a restricted unit unless that household has received a signed and dated certification, as set forth in this section, and has executed a certificate in the form set forth at N.J.A.C. 5:80-26 Appendix J or K, as applicable.

- (b) The administrative agent shall prepare a standard form of certification and shall sign and date one such certification for each household when certified. An initial certification is valid for no more than 180 days unless a valid contract for sale or lease has been executed within that time period. In such event, the certification is valid until such time as the contract for sale or lease is ruled invalid and no occupancy has occurred. Certifications may be renewed, in writing, at the request of a certified household for an additional period of 180 days at the discretion of the administrative agent. The administrative agent must provide applicant households a minimum of 10 business days from the date of initial request for information to produce documentation necessary for certification. The administrative agent shall transmit notice to each applicant household as to whether certification has been granted or denied, including the reason(s) for denying certification, if any, no later than five business days after determining the household's eligibility.
1. When reviewing an applicant household's income to determine eligibility, the administrative agent shall compare the applicant household's annual income to the regional low- and moderate-income limits calculated pursuant to N.J.A.C. 5:80-26.3. For the purposes of this subchapter, the administrative agent shall determine household income in accordance with the procedure for calculating annual income at the time of initial occupancy and assistance, stipulated at 24 CFR 5.609, as it may be updated from time to time, and described in Chapter 5 of HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs, which is available at https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsg/4350.3.
 2. Household income is calculated by projecting current gross income over a 12-month period.
 3. The administrative agent shall deny the certificate of eligibility if the applicant household meets income eligibility requirements but possesses net household assets valued at an amount greater than the net asset limit, defined as the estimated median home equity held by New Jersey homeowners as determined annually by the United States Census Bureau's Survey of Income and Program Participation and published by the Census Bureau in "State-Level Wealth, Asset Ownership & Debt of Households Tables" in the "Wealth and Asset Ownership Data Tables" series, available at <https://www.census.gov/topics/income-poverty/wealth/data/tables.html>. Administrative agents shall determine household net assets in accordance with the procedure for calculating "net family assets" stipulated at 24 CFR 5.603(b), as it may be updated from time to time. The estimated net value of an applicant's primary residence shall be excluded from the calculation of net total assets if any of the following apply:
 - i. The applicant's existing monthly housing costs (including principal, interest, taxes, homeowner and private mortgage insurance, and condominium or

homeowner association fees, as applicable) exceed 38 percent of the household's eligible monthly income;

- ii. The applicant is receiving assistance for the residence pursuant to 24 CFR 982.620 or pursuant to the Homeownership Option at 24 CFR 982;
 - iii. The applicant jointly owns the residence with an owner-occupant who is not part of the applicant household and with whom the applicant does not reside;
 - iv. The residence is a restricted ownership unit subject to the requirements of this subchapter or a unit that, prior to December 20, 2004, received substantive certification from COAH, was part of a judgment of compliance from a court of competent jurisdiction, or became subject to a grant agreement or other contract with either the State or a political subdivision thereof, including any 95/5 unit;
 - v. Any member of the applicant household is a victim of domestic violence, dating violence, sexual assault, or stalking, as defined at 24 CFR 5.2003; or
 - vi. The applicant demonstrates that the residence is not suitable for occupancy, according to any of the criteria listed at 24 CFR 5.618(a)(2)(i) through (v).
- (c) The administrative agent shall require each member of an applicant household who is 18 years of age or older, except full-time students under the age of 26 and those under the age of 26 participating in a registered apprenticeship program, to provide documentation to verify the member's income, including income received by adults on behalf of minor children for their benefit. Household members 18 years of age or older who do not receive income or who qualify for the full-time student or apprenticeship exemption must produce documentation as to their current status.
- (d) Income verification documentation may include, but is not limited to, the acceptable forms of verification identified at Appendix 3 of HUD Handbook 4350.3 REV-1, available online at <https://www.hud.gov/sites/documents/4350a3HSGH.PDF>, for each and every member of a household who is 18 years of age or older, except full-time students under the age of 26 and those under the age of 26 in a registered apprenticeship program.
- (e) At the discretion of the administrative agent, households may also be required to produce documentation of household composition for determining the correct unit size and applicable median income guide.
- (f) The administrative agent may deem ineligible an applicant who is unable to demonstrate sufficient present assets for down payment or security deposit purposes, subject to development phasing that may provide an opportunity for future savings.
- (g) The administrative agent may deem ineligible an applicant who is unable to verify funds claimed as assets, household composition, or other facts represented in the application.

- (h) The administrative agent shall deny a certificate of eligibility to an applicant who makes any willful or material misstatement of fact in seeking eligibility.
- (i) The administrative agent shall screen households that apply for low- and moderate-income housing for preliminary income eligibility by comparing their total gross annual income to the regional low- and moderate-income limits calculated for that year. In lieu of calculating household income, the administrative agent, at their discretion, may accept a household income determination made within the previous 12 months to assess eligibility for the Temporary Assistance for Needy Families (TANF) block grant, Medicaid, the Supplemental Nutrition Assistance Program (SNAP) benefit, the Earned Income Tax Credit (EITC), the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), Supplemental Security Income, public housing, Section 8, or low-income housing tax credits (LIHTC). Additionally, the administrative agent shall accept household income determinations made within the previous 180 days by another administrative agent or by the Department or the Agency.
- (j) The administrative agent shall accept self-certification from any member of an applicant household claiming to be a victim of domestic violence, dating violence, sexual assault, or stalking for purposes of the exception to the homeownership restriction at (b)3iii above. In such case, the administrative agent must comply with the confidentiality requirements and restrictions on requesting documentation pursuant to 24 CFR 5.2007.
- (k) The administrative agent shall employ a random selection process when referring households to affordable units. With approval from the Division, supportive housing units may be exempted from the random selection process. The administrative agent may elect to conduct the random selection prior to or after households are certified for eligibility.
 - 1. If conducting the random selection prior to household certification, the administrative agent shall select households from the entire applicant pool, without regard for income, household size, or other distinguishing factors.
 - 2. If conducting the random selection following household certification, the administrative agent shall notify all applicants of their eligibility or ineligibility in advance of the random selection and may conduct either one random selection from the entire applicant pool or separate random selections from each subgroup of the applicant pool. Each eligible household will be assigned to an applicable subgroup(s) as follows:
 - i. Whether the household is seeking for-sale units, rental units, or both;
 - ii. The number of bedrooms the household qualifies for;
 - iii. The household income level;
 - iv. The unit type applicable to the household (that is, family, age-restricted, or supportive);

- v. Whether the household is seeking an accessible unit;
 - vi. For supportive housing applicants only, whether any member of the household belongs to the eligible population; and
 - vii. Any of the occupancy preferences allowed pursuant to (k)3 below.
3. A municipality may elect to adopt any or all of the four occupancy preferences at (k)3i, ii, iii, and iv below. If it does so, the municipality shall adopt its desired occupancy preference(s) prior to the usage of the occupancy preference(s) in any random selection process. All other occupancy preferences, including preferences for residents of the municipality, are prohibited:
- i. A preference of up to 50 percent of the restricted units in a particular project for very-low-, low-, and moderate-income veterans who served in time of war or other emergency, pursuant to N.J.S.A. 52:27D-311(j);
 - ii. A preference for very-low-, low-, and moderate-income households that reside or work in the housing region;
 - iii. Subordinate to the regional preference, a preference for very-low-, low-, and moderate-income households that reside or work in New Jersey; and
 - iv. With respect to existing restricted units undergoing approved rehabilitation for the purpose of preservation or to restricted units newly created to replace existing restricted units undergoing demolition, a preference for the very-low-, low-, and moderate-income households that are displaced by the rehabilitation or demolition and replacement.
- (l) Developers and property management entities shall not discriminate against any person as prohibited by Federal Fair Housing laws or by the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 through 10:5-50. Administrative agents and municipal housing liaisons shall report property managers to the Division, which shall refer such matters to the Office of the Attorney General if they receive any complaints that developers or property managers are discriminating against applicants or residents.
- (m) In certifying and referring households, the administrative agent shall comply with all provisions of the Fair Chance in Housing Act, N.J.S.A. 46:8-52 through 64.
- (n) Upon being referred to an available unit, an applicant must be provided with a minimum of five business days to accept or reject the administrative agent's offer.

5:80-26.18 Procedures for changing administrative agents

- (a) In order to ensure an orderly transfer of control 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 or during the transition:

1. A letter advising of the change shall be sent to all low-and moderate-income homeowners in the case of ownership units, and all landlords or their agents in the case of rental developments;
 2. In the case of ownership units, legal assignments to the name of the new administrative agent of all restriction instruments shall be prepared and recorded;
 3. Hard copy files on each unit, to contain, 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, hardship 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
 4. The new administrative agent must be provided with:
 - i. A written methodology, such as the operating manual required in this subchapter, applied in the past and to be applied in the future for a calculation of maximum resale prices and rents;
 - ii. The 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;
 - iv. A description of the number of bedrooms and physical layout of each unit;
 - v. Floor plans; and
 - vi. In the case of condominiums and units within a homeowner association, a copy of the master deed and public offering statement.
- (b) The Division or HAS, as applicable, shall assume the duties of administrative agent by default with respect to any restricted units that are not effectively under the supervision of a competently performing administrative agent as determined by the Department.

5:80-26.19 Enforcement

- (a) By accepting State funds for affordable housing purposes, or by seeking or receiving a compliance certification, a municipality shall be deemed to have delegated to its administrative agent the day-to-day responsibility for implementing practices and procedures designed to ensure effective compliance with the controls set forth in this subchapter. However, the municipality, through its municipal housing liaison, shall retain the ultimate responsibility for ensuring effective compliance with this subchapter.
- (b) The administrative agent's enforcement responsibility for implementing such practices and procedures may not be delegated or otherwise transferred to any other party, except to a successor administrative agent. Anything in this subchapter to the contrary, notwithstanding,

the Agency and DCA each may, in its discretion, contract with for-profit and nonprofit organizations to carry out delegated administrative agent functions, provided, however, that in any such case the Agency or DCA shall maintain primary responsibility for the delegated functions.

(c) As part of a municipality's ongoing compliance with P.L. 2024, c. 2, the municipality, through the municipal housing liaison, shall:

1. Provide to the administrative agent the name, title, email address, and telephone number of the municipal housing liaison who will be responsible for oversight of the administrative agent on all matters related to this subchapter;
2. Contract with an administrative agent, subject to approval of the governing body, for oversight of all affordable single-family properties that do not designate an administrative agent of their own. For the purposes of designation, the municipal housing liaison may charge a fee not to exceed a prorated amount of the cost to contract with the administrative agent to developers who do not contract with their own administrative agent. The prorated amount is based on the developers' share of affordable single-family units participating in the scattered-site pool assigned to the relevant administrative agent.
3. Ensure that applicable local ordinances are not in conflict with, and enable efficient implementation of, this subchapter;
4. Ensure that all restricted units are identified as affordable within the tax assessor's office and any municipal utility authority (MUA). The municipality and MUA shall promptly notify the administrative agent of a change in billing address, payment delinquency of two consecutive billing cycles, transfer of title, or institution of a foreclosure action, foreclosure judgment, or deed in lieu of foreclosure as to all affordable units;
5. Work with the administrative agent to ensure that affordable housing opportunities are posted to the New Jersey Housing Resource Center pursuant to N.J.S.A. 52:27D-321.3 through 321.6, including, if necessary, levying fines in accordance with N.J.S.A. 52:27D-321.6.e(2);
6. Maintain a list of all affordable units within its jurisdiction, including the date of deed restriction expiration, income limits, and the administrative agent for each unit;
7. Report the information at (c)6 above to the Division each year; and
8. Publish on the municipality's website the affordable housing operating manual, the affirmative marketing plan required pursuant to N.J.A.C. 5:80-26.16, and contact information for the administrative agent for each project within the municipality's jurisdiction with an affordable housing component for which affirmative marketing is required.

(d) Administrative agent practices and procedures include, but are not limited to, the following:

1. Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit be offered, or in any other way committed, to any person other than a household duly certified to the unit by the administrative agent;
2. Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificate set forth at N.J.A.C. 5:80-26 Appendix J or K;
3. Working with the Municipal Housing Liaison to ensure that affordable housing opportunities are posted to the New Jersey Housing Resource Center pursuant to N.J.S.A. 52:27D-321.3 through 321.6, including, if necessary, levying fines for noncompliance and requiring new lotteries;
4. Sending annual mailings to all owners of affordable dwelling units, reminding them of the following requirements:
 - i. If the unit is owner-occupied, that the unit may be resold only to a household that has been approved in advance and in writing by the administrative agent;
 - ii. That no sale of the unit will be lawful, unless approved in advance and in writing by the administrative agent, and that no sale may be for a consideration greater than the maximum permitted resale price, as determined by the administrative agent;
 - iii. That no refinancing, equity loan, secured letter of credit, or any other mortgage obligation or debt secured by the unit may be incurred except as approved in advance and, in writing, by the administrative agent, and that at no time will the administrative agent approve any debt that would make the total of all such debt exceed 95 percent of the then-applicable maximum permitted resale price;
 - iv. That the owner of the unit shall at all times maintain the unit as their principal place of residence, which is defined as residing in the unit at least 260 days out of each calendar year;
 - v. That, except as set forth at (d)4vii below, at no time may the owner of the unit lease or rent the unit to any person or persons, except on a short-term hardship basis, as approved in advance and, in writing, by the administrative agent;
 - vi. That the maximum permitted rent chargeable to affordable tenants must be mailed to tenants in accordance with (e)1 below;
 - vii. Copies of all leases or lease renewal agreements for affordable rental units must be submitted annually to the administrative agent;

- viii. If the affordable unit is a two-family home, that the owner may lease the rental unit only to certified households approved, in writing, by the administrative agent, may charge rent no greater than the maximum permitted rent as determined by the administrative agent, and shall submit for written approval of the administrative agent copies of all proposed leases prior to having them signed by any prospective tenant; and
 - ix. That no improvements may be made to any unit that would affect its bedroom configuration, except as provided at N.J.A.C. 5:80-26.10(a) and in any event, that no improvement made to the unit will be taken into consideration to increase the maximum permitted resale price, except for improvements approved in advance and, in writing, by the administrative agent;
5. Securing annually from municipalities lists of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back into or sell their unit;
 6. Establishing a program for diverting unlawful rent payments to the municipality's affordable housing trust fund or other appropriate municipal fund approved by the Department. For purposes of this subsection, unlawful rent payments means:
 - i. All rent monies paid by a person who has not been duly certified in accordance with the provisions at N.J.A.C. 5:80-26.17;
 - ii. All rent paid by a person or persons renting an ownership unit from an owner who has moved out of their unit illegally;
 - iii. Rent paid by a lawful tenant in excess of amounts permitted by law; and
 - iv. Rent paid to an affordable unit owner who is claiming a hardship, when the owner has not received prior authorization from the administrative agent as provided for at N.J.A.C. 5:80-26.8(a); and
 7. Establishing a rent-to-equity program, to be implemented in situations where an affordable unit owner has unlawfully rented their unit, and where the tenant has entered into a tenancy without knowledge of its unlawful nature. Under such a rent-to-equity program, the tenant, including the immediate family of the tenant, shall be given an opportunity to purchase the unit from the affordable unit owner, and the affordable unit owner shall be compelled to sell the unit to the tenant, with the total of all rent paid to the owner being credited to the tenant as down payment money paid to the affordable unit owner. Anything in this subchapter to the contrary, notwithstanding, any person offered a unit under such a rent-to-equity program must first be certified as eligible pursuant to N.J.A.C. 5:80-26.17.
- (e) The owner of a development containing affordable rental units subject to this subchapter or the assigned management company thereof shall:

1. Send to all current tenants in all restricted rental units an annual mailing containing a notice as to the maximum permitted rent, together with the telephone number, mailing address, and email address of the administrative agent to whom complaints of excess rent can be issued; and
2. Promptly provide to the administrative agent, upon the latter of either final municipal land use approval or issuance of a grant contract by a governmental authority, as well as upon receipt of the certificate of occupancy:
 - i. The total number of units in the project and the number of affordable units, broken down by bedroom count, identifying which are very-low-income, low-income, and moderate-income units, and including street addresses of affordable units;
 - ii. Floor plans of all affordable units, including complete and accurate identification of all rooms and the dimensions thereof;
 - iii. A project map identifying the location of affordable units and market-rate units;
 - iv. A list of project principals or partners, together with a list of all other affordable projects in which they have been involved over the previous five years;
 - v. A projected construction schedule;
 - vi. Proposed pricing for all units, including any purchaser options and add-on items;
 - vii. A list of all public funding sources and copies of grant or loan agreements for those sources;
 - viii. Condominium or homeowner association fees and any other applicable fees;
 - ix. Estimated real property taxes for for-sale units;
 - x. Sewer, water, trash disposal, and any other utility assessments;
 - xi. Flood insurance requirement, if applicable;
 - xii. A description of all HVAC systems;
 - xiii. The location of any common areas and elevators;
 - xiv. A proposed form of lease for any rental units;

- xv. The name of the person who will be responsible for official contact with the administrative agent for the duration of the project, which must be updated if the contact changes; and
 - xvi. The State-approved planned real estate development public offering statement and/or master deed, where applicable.
- (f) It is the responsibility of the municipal housing liaison and the administrative agent(s) to ensure that affordable housing units are administered properly. All affordable units must be occupied within a reasonable amount of time and be re-leased within a reasonable amount of time upon the vacating of the unit by a tenant. If an administrative agent or municipal housing liaison becomes aware of or suspects that a developer or landlord has not complied with these regulations, it shall report this activity to the Division. If a developer or landlord or property manager has been found to have intentionally violated any terms of this subchapter, including by keeping a unit vacant, the developer or property manager shall be fined up to the amount required to construct a comparable affordable unit of the same size and the deed restriction period will be extended for the length of the time the unit was out of compliance, in addition to the remedies provided for in this section. For the purposes of this subsection, a reasonable amount of time shall presumptively be 60 days, unless a longer period of time is required due to demonstrable market conditions and/or failure of the municipal housing liaison or the administrative agent to refer a certified tenant.
- (g) Banks and other lending institutions are prohibited from issuing any loan secured by owner-occupied real property subject to the affordability controls set forth in this subchapter if such loan would be in excess of amounts permitted by the restriction documents recorded in the deed or mortgage book in the county in which the property is located. Any loan issued in violation of this subsection is void as against public policy.
- (h) The Agency and the Department hereby reserve, for themselves and for each administrative agent appointed pursuant to this subchapter, all of the rights and remedies available at law and in equity for the enforcement of this subchapter, including, but not limited to, fines, evictions, and foreclosures as approved by a county level housing judge.

5:80-26.20 Appeals

Appeals from all decisions of an administrative agent appointed pursuant to this subchapter must be filed, in writing, with the municipal housing liaison for the jurisdiction. A decision by the municipal housing liaison may be appealed to the Division. A written decision of the Division Director upholding, modifying, or reversing an administrative agent's decision is a final administrative action.

5:80-26.21 Option to buy 95/5 units

- (a) Each 95/5 unit is subject to an option permitting purchase of the unit at the maximum allowable restricted sale price at the time of the first authorized non-exempt sale after controls on affordability have been in effect on the unit for the period specified at N.J.A.C. 5:80-26.6. The option to buy is available to the municipality in which the unit is located, DCA, the Agency, and approved nonprofit entities.

- (b) The owner of a 95/5 unit shall notify the administrative agent and municipal housing liaison by certified mail and by email of any intent to sell the unit 90 days prior to entering into an agreement for the first authorized non-exempt sale after controls have been in effect on the housing unit for the period specified at N.J.A.C. 5:80-26.6.
- (c) Upon receipt of a notice specified at (b) above, the option to buy the unit at the maximum allowable restricted sale price or any mutually agreed upon sale price that does not exceed the maximum allowable restricted sale price will be available for 90 days. The administrative agent shall notify the municipal housing liaison and the Division that the unit is for sale. The municipality shall have the right of first refusal to purchase the unit. If the municipality exercises this option, it may enter into a contract of sale for the unit. If the municipality does not exercise this option within 90 days, the first of the other entities giving notice to the seller of its intent to purchase during the 90-day period may purchase the unit. If the option to purchase the unit at the maximum allowable restricted sale price is not exercised by one of the above entities by a written offer to purchase the housing unit within 90 days of receipt of notice of the intent to sell, the owner may proceed to sell the housing unit pursuant to N.J.A.C. 5:80-26.25. If the owner does not sell the unit within one year of the date of the delivery of the notice of intent to sell, the option to buy the unit will be restored and the owner will be required to submit a new notice of intent to sell 90 days prior to any future proposed date of sale.
- (d) Any option to buy a housing unit at the maximum allowable restricted sale price must be exercised by certified mail and by email and will be deemed to have been exercised upon transmission of the email.

5:80-26.22 Municipal option on 95/5 units

- (a) Any municipality that elects to purchase a 95/5 unit may:
 - 1. Convey or rent the unit to a low- or moderate-income purchaser or tenant at a price or rent not to exceed the maximum allowable restricted sale price or rent, provided the unit is controlled by a deed restriction in accordance with N.J.A.C. 5:80-26 Appendix A or an alternative form approved by the Division; or
 - 2. Convey the unit at fair market value subject to the provisions at (b) and (c) below.
- (b) Municipalities that purchase low-income 95/5 units shall maintain such units as low-income housing units.
- (c) Municipalities that purchase 95/5 units and convey them at a fair market value shall:
 - 1. Notify the Division and the Dispute Resolution Program of any proposed sale and sale price at least 90 days before closing;
 - 2. Notify the Division and the Dispute Resolution Program of the price differential; and

3. Deposit the price differential in an interest-bearing housing trust fund devoted solely to the creation, rehabilitation, or maintenance of low- and moderate-income housing.
- (d) Money deposited in housing trust funds may not be expended until the municipality submits and the Division or the Dispute Resolution Program approves a spending plan in accordance with the applicable rules in effect at the time of the proposed expenditure. Money deposited in housing trust funds is subject to the applicable Division rules in effect at the time of deposit.
- (e) Failure of a unit owner to comply with the notice requirements at N.J.A.C. 5:80-26.21(a) and (b) does not affect the rights and remedies available to the municipality, the Division, or the Agency, nor does the failure of the municipality, the Division, or the Agency to take any affirmative action with respect to such failure of a unit owner operate as a waiver of any such rights and remedies.

5:80-26.23 State option on 95/5 units

- (a) When DCA or the Agency elects to purchase a 95/5 unit pursuant to this section, it may:
1. Convey or rent the 95/5 unit to a low- or moderate-income purchaser or tenant at a price or rent not to exceed the allowable restricted sale price or rental amount; or
 2. Convey the unit at fair market value and utilize the price differential to subsidize the construction, rehabilitation, or maintenance of low- and moderate-income housing within the appropriate housing region.

5:80-26.24 Nonprofit option on 95/5 units

- (a) Nonprofit entities may apply to the municipal housing liaison at any time for the right to purchase 95/5 units subsequent to the period of controls on affordability, provided the unit remains controlled by a deed restriction approved as part of the compliance certification.
- (b) Nonprofit entities that have been designated by the Division are eligible to purchase low- or moderate-income units for the sole purpose of conveying or renting the housing unit to a low- or moderate-income purchaser or tenant at a price or rent not to exceed the allowable restricted sale price or rental amount. Low-income units must be made available to low-income purchasers or tenants and the housing unit must be regulated by the deed restriction and lien approved as part of the compliance certification, appended to this subchapter as N.J.A.C. 5:80-26 Appendix B. The terms of the controls on affordability are the same as those required at N.J.A.C. 5:80-26.6.

5:80-26.25 Seller option on 95/5 units

- (a) An eligible seller of a 95/5 unit that has been controlled for the period established at N.J.A.C. 5:80-26.6 who has provided the requisite notice of an intent to sell, may proceed with the sale if no eligible entity exercises its option to purchase within 90 days.
- (b) Subject to this subchapter, the seller may:

1. Sell to a certified household at a price not to exceed the maximum permitted sale price in accordance with existing rules, provided that the unit is regulated by the deed restriction and lien approved as part of a compliance certification, appended to this subchapter as N.J.A.C. 5:80-26 Appendix B, for a period of at least 30 years; or
 2. Exercise the repayment option and sell to any purchaser at market price, provided that 95 percent of the price differential is paid to the administrative agent, as an instrumentality of the municipality, at closing.
- (c) If the sale is to a qualified low- or moderate-income household, the administrative agent shall certify the income qualifications of the purchaser and shall ensure that the housing unit is regulated by the deed restriction and lien required as part of a compliance certification, appended to this subchapter as N.J.A.C. 5:80-26 Appendix B.
- (d) The administrative agent shall examine any contract of sale containing a repayment option to determine if the proposed sale price bears a reasonable relationship to the housing unit's fair market value. In making this determination, the administrative agent may rely on comparable sales data or an appraisal. The administrative agent shall not approve any contract of sale where there is a determination that the sale price does not bear a reasonable relationship to fair market value. The administrative agent shall make such a determination within 20 days of receipt of the contract of sale and shall calculate the repayment option payment.
- (e) The administrative agent shall adopt an appeal procedure by which a seller may submit written documentation requesting the administrative agent to recompute the repayment obligation if the seller believes an error has been made, or to reconsider a determination that a sale price does not bear a reasonable relationship to fair market value. A repayment obligation determination made as a result of an owner's appeal is a final determination of the administrative agent appealable pursuant to N.J.A.C. 5:80-26.20.
- (f) The repayment will occur at the date of closing and transfer of title for the first non-exempt transaction after the expiration of controls on affordability.
- (g) The administrative agent shall deposit all repayment proceeds in a housing trust fund, which funds may be used as specified at N.J.S.A. 52:27D-329.2. Money deposited in housing trust funds may not be expended until the municipality submits and the Division or the Dispute Resolution Program approves a spending plan. See N.J.S.A. 52:27D-329.2.

5:80-26.26 Municipal rejection of repayment option on 95/5 units

- (a) A municipality has the right to determine that the most desirable means of promoting an adequate supply of low- and moderate-income housing is to prohibit the exercise of the repayment option and maintain controls on lower-income housing units sold within the municipality beyond the period required at N.J.A.C. 5:80-26.6. Such determination must be made by resolution of the municipal governing body and will be effective upon filing with the Dispute Resolution Program. The resolution must specify the time period for which the repayment option is not applicable. During such period, no seller in the municipality may utilize the repayment option permitted at N.J.A.C. 5:80-26.25.

(b) Municipalities that exercise the option outlined at (a) above shall:

1. Provide public notice in a newspaper of general circulation;
2. Notify the administrative agent and the Division of its governing body's action;
3. Extend the control period not less than 30 years or, if the original control period and extended control period, in combination, total at least 60 years, not less than 20 years; and
4. Take at least one of the following actions:
 - i. Purchase the affordable units; or
 - ii. Contribute at least \$10,000 per unit from the municipal affordable housing trust fund to support the preservation of the units.

(c) The administrative agent shall ensure that the deed restriction on all affected housing units reflects the extended period of controls.

5:80-26.27 Continued application of options to create, rehabilitate, or maintain 95/5 units

The deed restriction governing 95/5 housing units must allow municipalities, DCA, the Agency, nonprofit entities, and sellers of low- and moderate-income units to again exercise all the same options as provided in this subchapter when a housing unit has been maintained as a low- or moderate-income unit after affordability controls have been in effect for the period specified at N.J.A.C. 5:80-26.6.

5:80-26.28 Severability

If any sentence, paragraph, section, or other component of this subchapter, or the application thereof to any person or circumstance is adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any of the foregoing components loses its force and effect, such judgment or action will apply only to the specific component under consideration and will not affect, impair, or void the remaining provisions of this subchapter.