

# Uniform Housing Affordability Controls

N.J.A.C. 5:80-26.1 et seq.  
For the Period Beginning December 20, 2004



Jon S. Corzine, Governor, State of New Jersey

**Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq.**

[Originally adopted October 1, 2001, 33 N.J.R. 3432, and amended December 20, 2004, 36 N.J.R. 5713]

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### **5:80-26.1 Purpose and applicability**

This subchapter is designed to implement the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) by assuring that low- and moderate-income units created under 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 COAH credit under the Fair Housing Act; that receive funding from the Division under the Neighborhood Preservation Balanced Housing Program; that receive funding from the Agency under its UHORP and MONI programs; or with respect to which a municipality or developer contracts with the Agency, HAS or other experienced administrative agent approved by DCA, the Agency or COAH for the administration of affordability controls pursuant to the Fair Housing Act. Unless expressly stated otherwise herein, this subchapter shall apply 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 under Section 42 of the Internal Revenue Code, units that receive Balanced Housing funds under the Agency's Home Express program or to units receiving assistance under the Federal HOME program, 24 C.F.R. §92.252(e), §92.254(a)(4); HUD 202 program, 24 C.F.R. Part 891; HUD 811 program, 24 C.F.R. Part 890; HUD HOPE VI program; or Federal Home Loan Bank, Affordable Housing Program, 12 C.F.R. Part 60.

### **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.A.C. 5:80-26.14.

“Affordability average” means an average of the percentage of median income at which restricted units in an affordable development are affordable to low- and moderate-income households. For example, if the rents for the five restricted rental units in an affordable housing development were affordable at 46, 48, 50, 52 and 54 percent of median income, respectively, the average affordability for the those units would be 50 percent of median income.

“Affordable” means, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6 and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12.

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

“Agency” means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1 et seq.) and in, but not of, the DCA.

“Age-restricted unit” means a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population where the head of the household is a minimum age of either 62 years, or 55 years and meets the provisions of the 42 U.S.C. §§3601 et seq., except that due to death, a remaining spouse of less than 55 years of age shall be permitted to continue to reside.

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

“Balanced Housing” means the Neighborhood Preservation Balanced Housing Program of the DCA as set forth at N.J.S.A. 52:27D-320 and N.J.A.C. 5:43.

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

“COAH” means the Council on Affordable Housing in, but not of, the DCA, established under the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.).

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

“Division” means the Division of Housing in the DCA.

“HAS” means the Housing Affordability Service, formerly known as the “Affordable Housing Management Service,” in the Department of Community Affairs, Division of Housing.

“High-poverty census tract” means a census tract with a census-determined average poverty rate equal to or greater than 25 percent, as determined by the United States Census Bureau.

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

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

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

“Median income” means the median income by household size for an applicable county, as adopted annually by COAH.

“Moderate-income household” means a household with a total gross annual household income in excess of 50 percent but less than 80 percent of the median income.

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

“MONI” means the Agency’s Market Oriented Neighborhood Investment Program, as it may be authorized from time to time by the Agency.

“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 before October 1, 2001.

“Non-exempt sale” means any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses 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.

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

“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 an assisted living residence, 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 financed under UHORP or MONI.

“UHORP” means the Agency’s Urban Homeownership Recovery Program, as it may be authorized from time to time by the Agency Board.

### **5:80-26.3 Affordability average; bedroom distribution**

- (a) In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units and the remainder may be moderate-income units.
- (b) Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
  - 1. The combined number of efficiency and one-bedroom units is no greater than 20 percent of the total low- and moderate-income units;

2. At least 30 percent of all low- and moderate-income units are two bedroom units;
  3. At least 20 percent of all low- and moderate-income units are three bedroom units; and
  4. The remainder, if any, may be allocated at the discretion of the developer.
- (c) Age-restricted low- and moderate-income units may utilize a modified bedroom distribution. At a minimum, the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the affordable development. The standard may be met by creating all one-bedroom units or by creating a two-bedroom unit for each efficiency unit.
- (d) Municipalities shall establish by ordinance that the maximum rent for affordable units within each affordable development shall be affordable to households earning no more than 60 percent of median income. The municipal ordinance shall require that the average rent for low- and moderate-income units be affordable to households earning no more than 52 percent of median income. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least 10 percent of all low- and moderate-income units shall be affordable to households earning no more than 35 percent of median income.
- (e) The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of median income. Each affordable development must achieve an affordability average of 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 type, and low-income ownership units must be available for at least two different prices for each bedroom type.
- (f) Municipal ordinances regulating owner-occupied and rental units shall require that affordable units utilize the same type of heating source as market units within the affordable development.
- (g) The provisions of this section 3 shall not apply to affordable developments financed under UHORP or MONI or to assisted living residences, which shall comply with applicable Agency policies, guidelines and regulations.

#### **5:80-26.4 Occupancy standards**

- (a) In determining the initial rents and initial sales prices for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be used:
1. A studio shall be affordable to a one person household;

2. A one bedroom unit shall be affordable to a one and one-half person household;
  3. A two bedroom unit shall be affordable to a three person household;
  4. A three bedroom unit shall be affordable to a four and one-half person household;  
and
  5. A four bedroom unit shall be affordable to a six person household.
- (b) For assisted living facilities, the following standards shall be used:
1. A studio shall be affordable to a one person household;
  2. A one-bedroom unit shall be affordable to a one and one-half person household;
  3. A two-bedroom unit shall be affordable to a two person household or to two one-person households.
- (c) In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the administrative agent shall strive to
1. Provide an occupant for each unit bedroom;
  2. Provide children of different sex with separate bedrooms; and
  3. Prevent more than two persons from occupying a single bedroom.

**5:80-26.5 Control periods for ownership units**

- (a) Each restricted ownership unit shall remain subject to the requirements of this subchapter until the municipality in which the unit is located elects to release the unit from such requirements pursuant to action taken in compliance with (g) below. Prior to such a municipal election, 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. Units located in high-poverty census tracts shall remain subject to these affordability requirements for a period of at least 10 years;
  2. Any 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, shall have its control period governed by said grant of substantive certification, judgment or grant agreement or contract;  
and

3. 95/5 units are subject to the option and price restriction rules set forth below at N.J.A.C. 5:80-26.20 through 5:80-26.26.
  - (b) The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit and shall terminate only at such time as the municipality opts to release the unit from the requirements of this subchapter in accordance with (g) below, or at such other time as is applicable under (a) above.
  - (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 first 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 and its restricted price. The recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit. The recapture note and recapture mortgage lien shall be in favor of the Agency if the unit was financed under UHORP or MONI, in favor of the State if State funds other than UHORP or MONI contributed to the financing of the unit, and, in all other cases, in favor of the municipality in which the unit is located. The recapture note and recapture mortgage lien shall be in the form prescribed in subchapter Appendices L, M, N, O, P and Q, as applicable.
    1. The recapture lien shall also provide that [sic] recapture amount shall 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 approved by the administrative agent.
    2. Municipalities that exercise the option to purchase restricted ownership units pursuant to (f) below shall not be required to satisfy the recapture lien.
    3. Upon termination of the affordability control period pursuant to (g) below, and satisfaction of the recapture of the lien [sic], the unit may be sold at fair market value and the proceeds retained by the seller.
  - (d) All conveyances of restricted ownership units shall be made by deeds and restrictive covenants substantially in the form prescribed in subchapter 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 form of 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 in subchapter Appendices A, D, E F, G H, I, J, K, L, M, N, O, P and

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.

- (f) At the time of the first non-exempt sale following a 30-year interval from the date of the issuance of the initial certificate of occupancy, a municipality shall have the right of first refusal to purchase a restricted ownership unit at the maximum restricted price, with the exceptions noted under (a) above, provided that:
  - 1. The municipality enters into a contract to purchase the unit within 60 days of notification of intent to sell by the owner of the restricted unit; and
  - 2. The recapture lien described in (c) above remains in full force and effect.
- (g) Any municipality may elect to release a restricted ownership [sic] from the requirements of this subchapter at a time to be set forth in the municipal ordinance required under (g)3 below, but after the expiration of the applicable minimum control period specified under (a) above, provided that:
  - 1. The recapture lien described in (c) above remains in full force and effect;
  - 2. If the lien required under (c) above is in favor of the municipality, the municipality has a COAH-approved spending plan pursuant to N.J.A.C. 5:94-6.5(c) requiring that all proceeds from the satisfaction of a recapture lien on a restricted ownership unit be used to create one new affordable unit for every unit released from affordability controls within the municipality; and
  - 3. The municipal election to release the unit from the requirements of this subchapter is made pursuant to a municipal ordinance authorizing such elections with respect to units located either in areas specifically identified in the Housing Element of the municipal Master Plan or throughout the entire municipality.
- (h) A municipality may use development fees to purchase and/or rehabilitate a restricted ownership 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 form set forth in Appendix F to this subchapter, 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 shall be entitled to sell it to any purchaser at the fair market price.

**5:80-26.6 Price restrictions for ownership units**

- (a) The initial purchase price for a restricted ownership unit shall be approved by the administrative agent and, if the unit is receiving assistance under the Balanced Housing Program, shall be consistent with the Balanced Housing grant agreement.
- (b) The initial purchase price for all restricted ownership units except those financed under 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 Federal Reserve H.15 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 under N.J.A.C. 5:80-26.4; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3.
- (c) The initial purchase price of a restricted ownership unit financed under UHORP or MONI unit 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 Federal Reserve HR15 [sic] 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 a household whose income does not exceed 45 percent of median income, in the case of a low-income unit, or 72 percent of median income, in the case of a moderate-income unit, and that is of an appropriate household size as determined under 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 shall be consistent with the regional income limits most recently published by COAH and calculated pursuant to N.J.A.C. 5:94-7.2(b). The administrative agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- (e) The master deeds of affordable developments shall provide no distinction between the condominium or homeowner association fees and special assessments paid by low- and moderate-income purchasers and those paid by market purchasers. Notwithstanding the foregoing sentence, condominium units subject to a municipal ordinance adopted before October 1, 2001, which provides for condominium or homeowner association fees and/or assessments different from those provided for in this subsection shall have such fees and assessments governed by said ordinance.
- (f) 95/5 units are subject to the option and price restriction rules set forth below in N.J.A.C. 5:80-26.20 through 26.26.

**5:80-26.7 Buyer income eligibility for ownership units**

- (a) Low-income ownership units shall be reserved for households with a gross household income less than or equal to 50 percent of median income. Moderate income ownership

units shall be reserved for households with a gross household income less than 80 percent of median income. For example, a household earning 48 percent of median income may be placed in any low-income unit; however, a household earning 53 percent does not qualify for a low-income unit. A household earning 67 percent of median [sic] may be placed in any moderate income housing unit. A household earning less than 50 percent of median [sic] may be placed in a moderate income housing unit. Notwithstanding the foregoing, however, the administrative agent may permit moderate-income purchasers to buy low-income units in housing markets where, as determined by COAH or the Division, as applicable, low-income prices are required but there is an insufficient number of low-income purchasers to permit prompt occupancy of the units. 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 33 percent of the household's eligible monthly income. The administrative agent, however, may exercise the discretion to certify a low- or moderate-income household as eligible despite the fact that the unit's monthly housing cost would exceed the 33 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 et seq., including certification from a non-profit 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.

**5:80-26.8 Limitations on indebtedness secured by ownership unit; 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, in such form and with such documentary support as determined by the administrative agent, and the owner shall not incur any such indebtedness unless and until the administrative agent has determined 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.5:80-26.6(c).

### **5:80-26.9 Capital improvements to ownership units**

- (a) The owners of ownership units may apply to the administrative agent to increase the maximum sales price for the unit on the basis of capital improvements made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or that add an additional bathroom. In no event shall the maximum sales price of an improved housing unit 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, wall-to-wall carpeting) shall be 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 shall 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.

### **5:80-26.10 Maintenance of Restricted Ownership Units**

A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the municipal building inspector stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80-26.5(a).

### **5:80-26.11 Control periods for rental units**

- (a) Each restricted rental unit shall remain subject to the requirements of this subchapter until the municipality in which the unit is located elects to release the unit from such requirements pursuant to action taken in compliance with (e) below. Prior to such a municipal election, a restricted rental unit must remain subject to the requirements of this subchapter for a period of at least 30 years; provided, however, that:
  - 1. Units located in high-poverty census tracts shall remain subject to these affordability requirements for a period of at least 10 years;
  - 2. Any unit included in a Neighborhood Rehabilitation Project pursuant to N.J.A.C. 5:43-4.4(b) shall remain subject to these affordability requirements for a period of at least 10 years; and

3. Any 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, shall have its control period governed by said grant of substantive certification, judgment or grant agreement or contract.
- (b) The affordability control period for the restricted rental units in a development shall commence on the first date that a certified household occupies a unit and shall terminate only at such time that the municipality opts to release the unit from the requirements of this subchapter in accordance with (e) below, except that the affordability controls set forth in this subchapter shall remain in effect until the date on which a rental unit shall become vacant, provided that the occupant household continues to earn a gross annual income of less than 80 percent of the applicable median income. If, at that time, a rental household's income is found to exceed 80 percent of the regional median income, the rental rate restriction shall expire at the later of either the next scheduled lease renewal or 60 days.
  - (c) Deeds of all real property that include restricted rental units shall contain deed restriction language substantially in the form set forth in Appendix E to this subchapter, incorporated herein by reference. The deed restriction shall have priority over all mortgages on the property. The deed restriction shall be filed by the developer or seller with the records office of the county in which the unit is located, and a copy of the filed document shall be provided to the administrative agent within 30 days of the receipt of a certificate of occupancy. The preparer of the foregoing instrument shall certify to the administrative agent that the deed restriction language in Appendix E has been included therein.
  - (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 the ownership of the unit; or
    3. The entry and enforcement of any judgment of foreclosure.
  - (e) Any municipality may elect to 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 after the expiration of the minimum control period specified under (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 with respect to units located either in areas specifically identified in the Housing Element of the municipal Master Plan or throughout the entire municipality; and

2. The administrative agent shall, within 60 days of the municipal election shall [sic], execute a release, in the form set forth in Appendix F to this subchapter, 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 shall be entitled to lease it to any tenant at the fair market rent.

#### **5:80-26.12 Restrictions on rents**

- (a) The initial rent for a restricted rental unit shall be approved by the administrative agent and, if the unit is receiving assistance under the Balanced Housing Program, shall be consistent with the Balanced Housing grant agreement. The initial rent shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate household size as determined under N.J.A.C. 5:80-26.4; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3.
- (b) At the anniversary date of the tenancy of the certified household occupying a restricted rental unit, the rent may be increased, if such increase is consistent with the regional income limits most recently published by COAH, calculated pursuant to N.J.A.C. 5:94-7.2(b), and has been 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.
- (c) Approved initial rents may not be increased when an announcement of a COAH-adopted increase occurs during initial lease-up activity. Rents may not be increased more than once a year. Rents may not be increased by more than one COAH-approved increment at one time. Rents may not be increased at the time of a new occupancy if the new occupancy occurs within a year of the last occupancy and prior to the next published COAH-adopted increase. No additional fees or charges may be added to the approved rent (except, in the case of units in an assisted living residence, for the customary charges for food and services) without the express written approval of the administrative agent. Application fees (including the charge for any credit check) may not exceed five percent of the monthly rental of the applicable restricted unit and shall be payable to the administrative agent to be applied to the costs of administering the controls in this subchapter as applicable to the unit.
- (d) A written lease is required for all restricted rental units, except for units in an assisted living residence. 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 on the lease. All lease provisions shall comply with applicable law.

The landlord shall provide the administrative agent with sufficient information for a 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 ten business days after the execution of each lease.

- (e) Those tenant-paid utilities that are included in the utility allowance shall be so stated in the lease. The allowance for utilities shall be consistent with the utility allowance approved by DCA for its Section 8 program.

**5:80-26.13 Tenant income eligibility**

- (a) Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of median income. Moderate income rental units shall be reserved for households with a gross household income less than 80 percent of median income.
- (b) The administrative agent shall certify a household as eligible for a restricted rental unit when the household is 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. 5:80-26.16; 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 the circumstances in (b) above with the administrative agent, who shall counsel the household on budgeting.

**5:80-26.14 Administrative agent**

- (a) The affordability controls set forth in this subchapter shall be administered and enforced by the administrative agent. The primary responsibility of the administrative agent shall be to ensure that the restricted units under administration are sold or rented, as applicable, only to low- and moderate-income households. Among the responsibilities of the administrative agent are the following:
1. Conducting an outreach process to insure affirmative marketing of affordable housing units in accordance with the provisions of N.J.A.C. 5:80-26.15;
  2. Soliciting, scheduling, conducting and following up on interviews with interested households;
  3. Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;
  4. Providing written notification to each applicant as to the determination of eligibility or non-eligibility;
  5. Creating and maintaining a referral list of eligible applicant households living in the COAH region and eligible applicant households with members working in the COAH region where the units are located;
  6. Employing a random selection process when referring households for certification to affordable units;
  7. Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
  8. Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;
  9. Instituting and maintaining an effective means of communicating information between owners and the administrative agent regarding the availability of restricted units for resale or rental;
  10. Instituting and maintaining an effective means of communicating information to low- and moderate-income households regarding the availability of restricted units for resale or rental;
  11. Reviewing and approving requests from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership;

12. Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the cost of central air conditioning systems;
  13. Processing requests and making determinations on requests by owners of restricted units for hardship waivers;
  14. Communicating with lenders regarding foreclosures;
  15. Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.10;
  16. Notifying the municipality of an owner's intent to sell a restricted unit;
  17. Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the appropriate county's register of deeds or county clerk's office after the termination of the affordability controls in this subchapter for each restricted unit;
  18. Providing annual reports to COAH as required; and
  19. Such other responsibilities as may be necessary to carry out the provisions of this subchapter.
- (b) The administrative agent shall create and shall publish in plain English, and in such other languages as may be appropriate to serving its client base, a written operating manual, as approved by COAH, setting forth procedures for administering such affordability controls, including procedures for long-term control of restricted units; for enforcing the covenants set forth in Appendices A, B, C, D and E of this subchapter, consistent with the provisions of N.J.A.C. 5:80-26.18; and for releasing restricted units promptly at the conclusion of applicable control periods. The administrative agent shall have authority to take all actions necessary and appropriate to carrying out its responsibilities hereunder. The operating manual shall have a separate and distinct chapter or section setting forth the process for identifying applicant households seeking certification to restricted units, for reviewing applicant household eligibility, and for certifying applicant households in accordance with the household certification and referral requirements set forth in N.J.A.C. 5:80-26.16.
1. Such process shall require that an applicant household be notified in writing of the results of its application for certification within 20 days of the administrative agent's determination thereof.
  2. At the discretion of the administrative agent, such process may include either or both an outreach requirement and a face-to-face applicant interview process.

3. The administrative agent shall establish and maintain a ready database of applicant households as a referral source for certifications to restricted units, and shall establish written procedures to ensure that selection among applicant households be via the database, and in accordance with a uniformly applied random selection process and all applicable State and Federal laws relating to the confidentiality of applicant records.
- (c) Except in the case of restricted units receiving UHORP or MONI funding, the municipality in which restricted units are located shall select one or more administrative agents for those units. A municipality itself (through a designated municipal employee, department, board, agency or committee) may elect to serve as the administrative agent for some or all restricted units in the municipality, or the municipality may select HAS or an experienced private entity approved by the Division, the Agency or COAH to serve as administrative agent for some or all restricted units in the municipality. HAS may delegate a portion or portions of its administrative agent duties to third parties, by written contract, provided that in such case HAS shall retain oversight and monitoring responsibilities, including, but not limited to, authority over enforcement policy and actions and confidentiality of tenant/applicant data solicited for rent-up and certification purposes. When a municipality selects an experienced private entity to serve as administrative agent for specific restricted units, the administrative agent must be approved by the Division, if the restricted units are to receive funding under the Neighborhood Preservation Balanced Housing Program, or by COAH, if the restricted units are not to receive funding under the Neighborhood Preservation Balanced Housing Program but are to receive COAH credit. The foregoing approval by COAH or the Division is to be based on the private entity's demonstration of the ability to provide a continuing administrative responsibility for the length of the control period for the restricted units. The Agency shall select the administrative agents for restricted units receiving UHORP or MONI funding.
  - (d) In all cases where a municipality has selected HAS as its administrative agent, HAS and the municipality shall enter into a contract for the provision of housing affordability control services substantially in the form set forth in Appendix I.
  - (e) When reviewing a private entity to determine whether it should be designated as administrative agent, a municipality shall obtain and review the following and submit it to the Division, the Agency or COAH, as applicable, for approval:
    1. Documentation which demonstrates that the private entity's purposes include the provision of housing services and housing counseling and the promotion of the principles underlying the Federal Fair Housing laws and that the private entity has knowledge of and familiarity with the New Jersey Fair Housing Act, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.) and its implementing rules;

2. Evidence of a history of successful management of restricted affordable housing units, particularly those produced as a result of the New Jersey Fair Housing Act or through a *Mount Laurel* court settlement;
  3. Representations and warranties from the experienced private entity that, if the entity serves as administrative agent with respect to restricted units in which it has a pecuniary interest, the entity shall not allow the pecuniary interest to compromise in any way its administration of the controls set forth in this subchapter;
  4. The draft contract between the municipality and the private entity serving as administrative agent;
  5. Documentation of the private entity's capacity to undertake the duties of an administrative agent;
  6. A statement of intent to attend continuing education opportunities on affordability controls and compliance monitoring when available; and
  7. Such other relevant documents from a specific applicant as required by the municipality to justify approval as an administrative agent.
- (f) The administrative agent shall have the authority to discharge and release any or all instruments, as set forth in the Appendices of this subchapter, filed of record to establish affordability controls.

**5:80-26.15 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 or number of children to housing units which are being marketed by a developer or sponsor of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward the COAH Housing Region in which the municipality is located and covers the period of deed restriction.
- (b) The administrative agent shall assure the affirmative marketing of affordable units. Municipalities may designate an experienced municipal staff person approved by COAH to be the administrative agent responsible for implementing the affirmative marketing plan. The administrative agent shall attend an affirmative marketing training program approved by COAH.
- (c) If the municipality does not designate a municipal staff person, it shall contract with other experienced administrative agents approved by COAH to administer the affirmative

marketing plan. Where a municipality contracts with another administrative agent to administer the affirmative marketing plan, the municipality shall appoint a housing officer who shall supervise the contracting administrative agent. In addition, where the contracting administrative agent is not responsible for the entire affirmative marketing plan, the municipality shall outline who or what municipal agent is responsible for the remaining portion of the affirmative marketing plan. The municipality shall also ensure that all original applicant and sales records of affordable units are returned to the municipality for reporting purposes and to aid with future resales. The municipality has the ultimate responsibility for the proper administration of the affirmative marketing program, including initial sales and rentals and resales and rerentals.

- (d) In implementing the affirmative marketing plan, administrative agents shall designate an experienced staff person approved by COAH 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 agency approved by COAH to provide such counseling services.
- (e) The affirmative marketing plan shall provide the following information:
  - 1. The name and address of the project;
  - 2. The number of units, including the number of sales and/or rental units;
  - 3. The price of sales and/or rental units;
  - 4. The name of the sales agent and/or rental manager.
  - 5. A description of the random selection method that will be used to select occupants of affordable housing.
  - 6. Disclosure of required application fees.
- (f) The affirmative marketing plan shall describe the media to be used in advertising and publicizing the availability of housing. In developing the plan, the administrative agent shall consider the use of language translations. The plan shall include the following:
  - 1. The names of specific newspapers of general circulation within the housing region;
  - 2. The names of specific radio and television stations broadcasting throughout the housing region;
  - 3. The names of 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 non-profit, religious, governmental, fraternal, civic, and other organizations; and
  6. Other advertising and outreach efforts to groups that are least likely to be reached by commercial media efforts.
- (g) The affirmative marketing process for available affordable units shall begin at least four months prior to expected occupancy. In implementing the marketing program, the administrative agent shall undertake all of the following strategies:
1. Publication of one advertisement in a newspaper listed under N.J.A.C. 5:80-26.15(f)1;
  2. Broadcast of one advertisement by a radio or television station listed above under N.J.A.C. 5:80-26.15(f)2; and
  3. At least one additional regional marketing strategy using one of the sources listed above under (f)3 through 6 above.
- (h) Such advertising and outreach shall take place during the first week of the marketing program and each month thereafter until all the units have been leased or sold. The advertisement shall include at least the following:
1. The location of the units;
  2. Directions to the housing units;
  3. A range of prices for the housing units;
  4. The size, as measured in bedrooms, of the housing units;
  5. The maximum income permitted to qualify for the housing units;
  6. The location of applications for the housing units;
  7. The business hours when interested households may obtain an application for a housing unit; and
  8. Application fees, if any.

- (i) Applications for affordable housing shall be available in several locations, including, at a minimum, the county administrative building and/or the county library for each county within the housing region; the municipal administrative building(s) and the municipal library in the municipality in which the units are located; and the developer's sales office. Applications shall be mailed to prospective applicants upon request.
- (j) If the costs of advertising affordable units are to be a developer's responsibility, the requirement shall be a condition of the municipal planning board or zoning board approval and required by ordinance.

**5:80-26.16 Household certification and referral; related project information**

- (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 with appropriate low- or moderate- income levels. No household may be referred to a restricted unit, or may 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 in Appendices J or K to this subchapter, as applicable.
- (b) The administrative agent shall prepare a standard form of certification and shall sign and date one for each household when certified. An initial certification shall be valid for no more than 180 days unless a valid contract for sale or lease has been executed within that time period. In this event, certifications shall be 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.
  - 1. When reviewing an applicant household's income to determine eligibility, the administrative agent shall compare the applicant household's total gross annual income to the regional low- and moderate-income limits then in effect, as adopted by COAH. For the purposes of this subchapter, income includes, but is not limited to, wages, salaries, tips, commissions, alimony, regularly scheduled overtime, pensions, social security, unemployment compensation, TANF, verified regular child support, disability, net income from business or real estate, and income from assets such as savings, certificates of deposit, money market accounts, mutual funds, stocks, bonds and imputed income from non-income producing assets, such as equity in real estate.
  - 2. Except as otherwise specifically stated in this subchapter, the sources of income considered by the administrative agent shall be the types of regular income reported to the Internal Revenue Service and which can be used for mortgage loan approval. Household annual gross income shall be calculated by projecting current gross income over a 12-month period.
  - 3. Assets not earning a verifiable income shall have an annual imputed interest

income using a current average annual savings interest rate. Assets not earning income include present real estate equity. Applicants owning real estate must produce documentation of a market value appraisal and outstanding mortgage debt. The difference shall be treated as the monetary value of the asset and the imputed interest added to income. If the applicant household owns a primary residence with no mortgage on the property valued at or above the regional asset limit as published annually by COAH, a certificate of eligibility shall be denied by the administrative agent, unless the applicant's existing monthly housing costs (including principal, interest, taxes, homeowner and private mortgage insurance, and condominium and homeowner association fees as applicable) exceed 38 percent of the household's eligible monthly income.

4. Rent from real estate is considered income, after deduction of any mortgage payments, real estate taxes, property owner's insurance and reasonable property management expenses as reported to the Internal Revenue Service. Other expenses are not deductible. If actual rent is less than fair market rent, the administrative agent shall impute a fair market rent.
  5. Income does not include benefits, payments, rebates or credits received under any of the following: Federal or State low-income energy assistance programs, food stamps, payments received for foster care, relocation assistance benefits, income of live-in attendants, scholarships, student loans, personal property such as automobiles, lump-sum additions to assets such as inheritances, lottery winnings, gifts, insurance settlements, and part-time income of persons enrolled as full-time students. Income, however, does include interest and other earnings from the investment of any of the foregoing benefits, payments, rebates, or credits.
- (c) The administrative agent shall require each member of an applicant household who is 18 years of age or older 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 must produce documentation of current status.
- (d) Income verification documentation may include, but is not limited to, the following for each and every member of a household who is 18 years of age or older:
1. Four consecutive pay stubs, not more than 120 days old, including bonuses, overtime or tips, or a letter from the employer stating the present annual income figure;
  2. Copies of Federal and State income tax returns for each of the preceding three tax years;
  3. A letter or appropriate reporting form verifying monthly benefits such as Social Security, unemployment, welfare, disability or pension income (monthly or annually);

4. A letter or appropriate reporting form verifying any other sources of income claimed by the applicant, such as alimony or child support;
  5. Income reports from banks or other financial institutions holding or managing trust funds, money market accounts, certificates of deposit, stocks or bonds; and
  6. Evidence or reports of income from directly held assets such as real estate or businesses.
- (e) Court ordered payments for alimony or child support to another household, whether or not it is being paid regularly, shall be excluded from income for purposes of determining income eligibility.
- (f) 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.
- (g) A certificate of eligibility may be withheld by the administrative agent as a result of an applicant's inability to demonstrate sufficient present assets for down payment or security deposit purposes, subject to development phasing that may provide opportunity for future savings.
- (h) A certificate of eligibility may be withheld by the administrative agent as a result of an applicant's inability to verify funds claimed as assets, household composition or other facts represented.
- (i) A certificate of eligibility shall be denied by the administrative agent as a result of any willful and material misstatement of fact made by the applicant in seeking eligibility.
- (j) 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 adopted for that year by COAH.
- (k) The following information shall promptly be provided to the administrative agent by the developer or sponsor of any project containing any affordable units subject to the requirements of this subchapter, upon the latter of either final municipal land use approval or issuance of a grant contract by a governmental authority:
1. The total number of units in the project, and number of restricted units, broken down by bedroom size, identifying which are low- and which are moderate-income units, and including street addresses of restricted units;
  2. Floor plans of all affordable units, including complete and accurate identification of uses and dimensions of all rooms;

3. A project map identifying the locations of affordable units and market units;
  4. 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;
  5. Projected construction schedule;
  6. Proposed pricing for all units, including any purchaser options and add-on items;
  7. A list of all public funding sources, and copies of grant or loan agreements for those sources;
  8. Condominium fees or homeowner association and any other maintenance or other fees;
  9. Estimated real property taxes for sale units;
  10. Sewer, trash disposal and any other utility assessments;
  11. Flood insurance requirement, if applicable;
  12. A description of all HVAC systems;
  13. Location of any common areas and elevators;
  14. Proposed form of lease for any rental units;
  15. The name of the person who will be responsible for official contact with the administrative agent for the duration of the project; and
  16. The State-approved Planned Real Estate Development public offering statement and/or master deed where available.
- (l) The administrative agent shall employ a random selection process when referring households for certification to affordable units.

**5:80-26.17 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) HAS 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 COAH, in the case of units receiving COAH credit, or by DCA, in the case of units receiving Balanced Housing funding but not receiving COAH credit.

**5:80-26.18 Enforcement**

- (a) By accepting State funds for affordable housing purposes, or by submitting to the jurisdiction of COAH, 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. The municipality, however, 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 shall not be delegated or otherwise transferred to any other party, except to a successor administrative agent. Anything herein to the contrary notwithstanding, the Agency and DCA each may, in their 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) The municipality shall:

1. Provide to the administrative agent the name, title and telephone number of the municipal official who shall be responsible for liaison with the administrative agent on all matters related to this subchapter;
2. Ensure that applicable local ordinances are not in conflict with, and enable efficient implementation of, this subchapter;
3. Retain or otherwise designate legal counsel for the purposes of representing any municipal entity acting as administrative agent and of enforcing the controls set forth in 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 writ of foreclosure on all affordable units; and
5. Provide all reasonable and necessary assistance in support of the administrative agent's efforts to ensure effective compliance with the controls set forth in this subchapter.

(d) Administrative agent practices and procedures shall include, but shall not necessarily be 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 can 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 certificates set forth in Appendices J and K;
3. The posting annually in all rental properties, including two-family homes, of a notice as to the maximum permitted rent together with the telephone number of the administrative agent where complaints of excess rent can be made;

4. Annual mailings to all owners of affordable dwelling units, reminding them of the following notices and 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 shall be lawful, unless approved in advance and in writing by the administrative agent, and that no sale shall be for a consideration greater than [sic] regulated 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 other 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, if incurring the debt 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 his or her principal place of residence, which shall be defined as residing at the unit at least 260 days out of each calendar year;
  - v. That, except as set forth in N.J.A.C. 5:80-26.18(c)4vii, at no time shall 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 is as stated in the notice required to be posted in accordance with N.J.A.C. 5:80-26.18(d)3 of this subchapter, a copy of which shall be enclosed, and that copies of all leases for affordable rental units must be submitted annually to the administrative agent;
  - vii. If the affordable unit is a two-family home, that the owner shall lease the rental unit only to certified households approved in writing by the administrative agent, shall 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 proposed tenant; and
  - viii. That no improvements may be made to any unit that would affect its bedroom configuration, except as provided in subsection (a) of N.J.A.C. 5:80-26.9(a) [sic], 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 to their unit or sell it;

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 DCA. For purposes of this subsection, unlawful rent payments shall mean:
    - i. All rent monies paid by a person who has not been duly certified in accordance with the provisions of N.J.A.C. 5:80-26.16;
    - ii. All rent paid by a person or persons renting an ownership unit from an owner who has moved out of his or her unit illegally;
    - iii. Rent paid by a lawful tenant in excess of amounts permitted by law; and
    - iv. Rent paid to an affordable owner who is claiming a hardship, when the owner has not received prior authorization from the administrative agent as is provided for under the provisions of N.J.A.C. 5:80-26.7(a); and
  7. Establishing a rent-to-equity program, to be implemented in situations where an affordable owner has unlawfully rented out his or her unit, and where the tenant has entered into a tenancy without knowledge of its unlawful nature. Under such rent-to-equity program, the tenant, including the immediate family of such tenant, shall be given an opportunity to purchase the unit from the affordable owner, and the affordable owner shall be compelled to sell the unit to the tenant, with the total of all rent paid to the owner being credited to tenant as down payment money paid to the affordable owner. Anything herein to the contrary notwithstanding, any person offered a unit under such a rent to equity program must first be certified as eligible under the provisions of N.J.A.C. 5:80-26.16.
- (e) 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 shall be void as against public policy.
- (f) The Agency, COAH and the DCA 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.

#### **5:80-26.19 Appeals**

Appeals from all decisions of an administrative agent appointed pursuant to this subchapter shall be filed in writing with the Executive Director of the Agency. When acting in this capacity, the Executive Director may appoint one or more employees of the Agency, COAH and/or the Department of Community Affairs to assist him or her in rendering the final decision, whenever he or she, in his or her sole discretion, determines that committee participation would materially

promote a fair and just disposition of the appeal. A written decision of the Executive Director upholding, modifying or reversing an administrative agent's decision shall be a final administrative action.

**5:80-26.20 Option to buy 95/5 units**

- (a) Each 95/5 unit shall be subject to an option permitting purchase of the unit at the maximum allowable restricted sales price at the time of the first non-exempt sale after controls on affordability have been in effect on the unit for the period specified in N.J.A.C. 5:93-9.2. The option to buy shall be available to the municipality, the DCA, the Agency, or a qualified non-profit entity as defined in this chapter.
- (b) The owner of a 95/5 unit shall notify the administrative agent and COAH by certified mail of any intent to sell the unit 90 days prior to entering into an agreement for the first non-exempt sale after controls have been in effect on the housing unit for the period specified in N.J.A.C. 5:93-9.2.
- (c) Upon receipt of such notice, the option to buy the unit at the maximum allowable restricted sales price or any mutually agreed upon sales price that does not exceed the maximum allowable restricted sales price shall be available for 90 days. The administrative agent shall notify the municipality, the DCA, the Agency, and COAH 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. If the municipality fails to 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 shall be entitled to purchase the unit. If the option to purchase the unit at the maximum allowable restricted sales 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 the intent to sell, the owner may proceed to sell the housing unit pursuant to N.J.A.C. 5:93-9.8. If the owner does not sell the unit within one year of the date of the delivery of notice of intent to sell, the option to buy the unit shall be restored and the owner shall 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 sales price shall be exercised by certified mail and shall be deemed exercised upon mailing.

**5:80-26.21 Municipal option on 95/5 units**

- (a) Any municipality that elects to purchase a 95/5 unit pursuant to N.J.A.C. 5:93-9.4 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 sales price or rent provided the unit is controlled by a deed restriction in accordance with Appendix A or an alternative form approved by COAH; or
  - 2. Convey the unit at fair market value subject to the provisions of (b) and (c) below.

- (b) Municipalities that purchase low-income 95/5 units shall maintain them as low-income housing units.
- (c) Municipalities that elect to purchase 95/5 units and convey them at a fair market value shall:
  - 1. Notify COAH of any proposed sale and sales price 90 days before closing;
  - 2. Notify COAH of the price differential as defined in N.J.A.C. 5:93-1.3; 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 COAH approves a spending plan in accordance with the applicable COAH rules at that time. Money deposited in housing trust funds shall be subject to the applicable COAH rules at that time.

**5:80-26.22 State option on 95/5 units**

- (a) When the DCA or the Agency elects to purchase a 95/5 unit pursuant to N.J.A.C. 5:93-9.4 and 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 sales price or rental; 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.

**5:80-26.23 Non-profit option on 95/5 units**

- (a) Non-profit entities may apply to COAH 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 by COAH.
- (b) Non-profit entities that have been designated by COAH shall be eligible to purchase low- or moderate-income units pursuant to N.J.A.C. 5:93-9.4 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 sales price or rental. Low-income units shall be made available to low-income purchasers or tenants and the housing unit shall be regulated by the deed restriction and lien adopted by COAH, appended to this subchapter as Appendix B. The term of the controls on affordability shall be the same as those required by N.J.A.C. 5:93-9.2.

**5:80-26.24 Seller option on 95/5 units**

- (a) An eligible seller of a 95/5 unit that has been controlled for the period established in N.J.A.C. 5:93-9.2 who has provided the requisite notice of an intent to sell, may proceed with the sale if no eligible entity as outlined in N.J.A.C. 5:80-26.19(c) and 26.22 exercises its option to purchase within 90 days.
- (b) Subject to N.J.A.C. 5:93-9.9, the seller may elect to:
  - 1. Sell to a certified household at a price not to exceed the maximum permitted sales price in accordance with existing COAH rules, provided that the unit is regulated by the deed restriction and lien adopted by COAH, appended to this subchapter as Appendix B for a period of at least 30 years; or
  - 2. Exercise the repayment option and sell to any purchaser at market price, providing that 95 percent of the price differential is paid to the administrative agent, as an instrument of the municipality, at closing.
- (c) If the sale will be to a qualified low- or moderate-income household, the administrative agent shall certify the income qualifications of the purchaser and shall ensure the housing unit is regulated by the deed restriction and lien required by COAH, which has been appended to this subchapter as Appendix B.
- (d) The administrative agent shall examine any contract of sale containing a repayment option to determine if the proposed sales 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 sales price does not bear a reasonable relationship to fair market value. The administrative agent shall make 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 sales price does not bear a reasonable relationship to fair market value. A repayment obligation determination made as a result of an owner's appeal shall be a final determination of the administrative agent appealable under N.J.A.C. 5:80-26.18.
- (f) The repayment shall 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 (see N.J.A.C. 5:93-8.15) and may be used as per N.J.A.C. 5:93-8.16. Money deposited in

housing trust funds may not be expended until the municipality submits and COAH approves a spending plan (see N.J.A.C. 5:93-5.1(c)).

**5:80-26.25 Municipal rejection of repayment option on 95/5 units**

- (a) A municipality shall have 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 by N.J.A.C. 5:93-9.2. Such determination shall be made by resolution of the municipal governing body and shall be effective upon filing with COAH. The resolution shall specify the time period for which the repayment option shall not be applicable. During such period, no seller in the municipality may utilize the repayment option permitted by N.J.A.C. 5:93-9.8.
- (b) Municipalities that exercise the option outlined in (a) above shall:
  - 1. Provide public notice in a newspaper of general circulation; and
  - 2. Notify the administrative agent and COAH of its governing body's action.
- (c) The administrative agent shall ensure that the deed restriction on all affected housing units reflects the extended period of controls.

**5:80-26.26 Continued application of options to create, rehabilitate or maintain 95/5 units**

When a housing unit has been maintained as a low- or moderate-income unit after controls have been in effect for the period specified in N.J.A.C. 5:93-9.2, the deed restriction governing the housing units shall allow municipalities, DCA, the Agency, COAH, non-profit agencies and sellers of low- and moderate-income units to again exercise all the same options as provided in this subchapter.