

costs for doing so depends upon their existing administrative capacity. The statute allows 10 percent of the funding that they receive to be used to cover their administrative costs. Participating individuals incur no charges for participating in the program.

Federal Standards Statement

This chapter implements a program that has been developed in response to Federal legislation authorizing the states to undertake initiatives to bring persons who have been dependent on public welfare into the labor market, so that they can become self-sufficient. This chapter is consistent with the Individual Development Account Act, a statute adopted by the State of New Jersey as its initiative under the Federal law.

Jobs Impact

The readoption of these rules would facilitate the continued movement of low income individuals from welfare to employment as a result of the building of assets and improved financial education. Participants in the program are thereby enabled to enter the job market and create jobs for themselves and others.

Agricultural Industry Impact

The Department does not anticipate any impact upon the agricultural industry as a result of the readoption of this chapter.

Regulatory Flexibility Analysis

The rules proposed for readoption establish compliance, reporting, and recordkeeping requirements for all organizations and financial institutions that participate in the program, regardless of whether they qualify as "small businesses," as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Such organizations are required, as a condition of funding, to provide counseling and financial education to participants and to work with participating financial institutions and maintain appropriate records. Any financial institutions that are "small businesses" would hold accounts for individual participants in the normal course of their business. Costs incurred by participating organizations are discussed under Economic Impact statement above. Participating organizations or financial institutions do not have to employ any professional services in order to participate in this program. The requirements, applicable to "small businesses" and other entities alike, are necessary in order to protect the interests of participants in the program.

Housing Affordability Impact Analysis

The rules proposed for readoption will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing. Individual Development Account (IDA) Programs are matched savings accounts that help low-income people pay for higher education, purchase homes, or start small businesses. The IDA program meets these objectives by providing financial education, case management, homeownership counseling, and other asset-goal specific training to IDA participants. However, the readoption of these rules will help facilitate the purchase of affordable housing for low income residents.

Smart Growth Development Impact Analysis

The rules proposed for readoption will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey. Individual Development Account (IDA) Programs are matched savings accounts that help low-income people pay for higher education, purchase homes, or start small businesses. The IDA program meets these objectives by providing financial education, case management, homeownership counseling, and other asset-goal specific training to IDA participants. However, the readoption of these rules will help facilitate the purchase of affordable housing for low income residents.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:46.

(a)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Procedural Rules of the New Jersey Council on Affordable Housing for the Period Beginning on (the Effective Date of these Rules)

Proposed New Rules: N.J.A.C. 5:98

Proposed Repeal: N.J.A.C. 5:96

Authorized By: New Jersey Council on Affordable Housing, Sean Thompson, Acting Executive Director.

Authority: N.J.S.A. 52:27D-301 et seq.

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

Proposal Number: PRN 2014-081.

A **public hearing** on the proposed new rules will be held at the following date and time at the following location:

Wednesday, July 2, 2014, at 9:30 A.M.
New Jersey Housing and Mortgage Finance Agency
637 South Clinton Avenue
Trenton, NJ 08650

Submit written comments by August 1, 2014, to:

Sean Thompson, Acting Executive Director
NJ Council on Affordable Housing
PO Box 813
Trenton, NJ 08625-0813

All comments should be identified by the applicable N.J.A.C. citation and submitted in the following format:

"5:98-1.3. Comment: The definition of days should be changed to delete weekends." This may be followed with any supporting reasons, references, and any other additional information that the commenter wishes to provide.

The Council encourages comments to be submitted in electronic form to COAHAdmin@dca.state.nj.us to enable an expeditious review and response. Such comments should include the words "Rule Comments" in the subject box. The Council will also accept written comments sent via mail and/or fax at (609) 633-6056, but requests a follow-up PC-formatted disk in Microsoft Word to be delivered as soon as possible thereafter to enable comments to be processed electronically. Fax copies shall also be followed by a mailed copy if a disk is not possible. The Council encourages all affected municipalities and counties to comment, and in particular would like to solicit comment from the municipalities and counties impacted by Superstorm Sandy.

The agency proposal follows:

Summary

N.J.A.C. 5:96, Procedural Rules of the New Jersey Council on Affordable Housing for the Period Beginning on June 2, 2008, are being proposed for repeal simultaneously with the proposal herein of new rules N.J.A.C. 5:98, Procedural Rules of the New Jersey Council on Affordable Housing for the Period Beginning (the Effective Date of these Rules), as part of the Council on Affordable Housing's (Council's) revision of its Third Round Methodology. The proposed repeal and new rules are a necessary administrative action to permit municipalities to petition for third round substantive certification in accordance with the revised regulations and methodology.

As required by the Fair Housing Act (FHA) at N.J.S.A. 52:27D-307 and 308, the Council must adopt all rules necessary for effectively carrying out the provisions and purposes of the act. To that end, the Council enacted N.J.A.C. 5:92 (first round rules), effective August 4, 1986, with subsequent amendments; N.J.A.C. 5:93 (second round rules), effective June 6, 1994, with subsequent amendments; and N.J.A.C. 5:94 (third round rules), effective December 20, 2004, and amended May 15, 2006, and August 20, 2007. On January 25, 2007, *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by the New Jersey Council on Affordable Housing (and related cases)*, 390 N.J. Super. 1 (App. Div. 2007), the New Jersey Superior Court, Appellate Division affirmed in part, reversed in part, and remanded portions of the rules back to the

Council for rulemaking. In response, the Council adopted N.J.A.C. 5:96 and 5:97 effective June 2, 2008, and amended October 20, 2008. On September 26, 2013, the New Jersey Supreme Court issued its decision *In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing*, 215 N.J. 578 (2013) in which the Council was directed to use a methodology similar to that used in the first and second round affordable housing regulations rather than the growth-share approach used in previous iterations of the third round rules.

Summary of Proposed New Rules

The proposed new rules and Third Round Methodology are the Council's response to the Supreme Court decision.

The proposed new rules include changes which will increase the efficiency and effectiveness of the substantive certification process and facilitate the production of affordable housing. Many sections of the rules have been clarified, reorganized, and updated.

N.J.A.C. 5:98-1 provides the purpose of the procedural rules, the criteria for establishing jurisdiction, and the definitions of terms. Definitions of the following terms have been added: "affordable housing delivery techniques" and "Affordable Housing Obligation." The definitions of the following words and terms have been revised: "administrative agent," "amendment," "RCA Project Plan," "Regional Contribution Agreement," "sending municipality," and "substantive certification." The definitions of the following terms have been deleted: "affordable housing program(s)" and "minor technical amendment." Certain provisions relating to jurisdiction have been relocated to this subchapter.

N.J.A.C. 5:98-2 outlines the requirements for the filing of a Housing Element and Fair Share Plan. The rules significantly reduce the amount of information required to be submitted by the municipality for the filing of a Housing Element and Fair Share Plan and eliminates the Council's 45-day deficiency review process. The electronic submission of filing documents is now required.

N.J.A.C. 5:98-3 provides the criteria for the submission of a petition or re-petition for substantive certification as well as the requirements for public notice and review of the petition. The rules significantly reduce the amount of information required to be submitted by the municipality for a petition for substantive certification and eliminates the Council's 45-day deficiency review timeframe. The electronic submission of petition documents is now required. A reference to N.J.S.A. 52:27E-311.g, which effectively exempts certain municipalities from the re-petition requirement, has been added to this subchapter. A municipality that received a vacant land adjustment is now required to re-petition if a change occurs which creates new development opportunities. The rules delete provisions regarding minor revisions to an adopted Fair Share Plan and no longer limit the number of municipal petitions.

N.J.A.C. 5:98-4 contains standards for the submission and review of objections to a proposed Housing Element and Fair Share Plan. The rules now state that the Executive Director or designee may issue a pre-mediation report.

N.J.A.C. 5:98-5 contains standards for the Council's review of municipal development fee ordinances, spending plans, and amendments. Statutory references and language are now included where appropriate in this subchapter. The rules reduce the amount of information required to be submitted by the municipality for review of a development fee ordinance.

N.J.A.C. 5:98-6 outlines the procedures for the review of a municipality's Housing Element and Fair Share Plan when no objections are filed. The rules provide for three staff report options: a recommendation for substantive certification, conditional substantive certification, or denial of substantive certification. This subchapter no longer provides for a report requesting additional information or requires the Council to issue a report within 45 days. The rules also set forth the criteria for granting substantive certification and identify the terms of dismissal.

N.J.A.C. 5:98-7 outlines the procedures for the review of a municipality's Housing Element and Fair Share Plan when one or more objections have been filed. The rules now state that the Executive Director or designee may issue a pre-mediation report. The 45-day limit for issuing the pre-mediation report has been deleted.

N.J.A.C. 5:98-8 outlines the procedures for conducting, concluding, and reopening mediation and also sets forth the criteria for a mediation report. The rules allow the Council to hold a hearing or transfer the matter to OAL regarding contested issues of material fact resulting from mediation. The rules also include a provision for the Council, under certain circumstances, to direct the municipality to amend its Housing Element and Fair Share Plan to include an objector's site and address any shortfall. Provisions relating to limits on size and makeup of mediation teams have been deleted. The rules eliminate the time limits on mediation and the issuance of a mediation report. The 14-day comment period on the mediation report has been eliminated.

N.J.A.C. 5:98-9 details procedures for referral of a contested matter to the Office of Administrative Law (OAL) for a hearing. There is no change from the current rules.

N.J.A.C. 5:98-10 contains standards for the Council's realistic opportunity review to be undertaken at the midpoint of a municipality's certification period, pursuant to N.J.S.A. 52:27D-313.b. These provisions replace the current rules' Plan Evaluation subchapter. The rules also detail public notice and review requirements.

N.J.A.C. 5:98-11 sets forth the various monitoring requirements for municipalities with regard to affordable units and programs, affordable housing trust funds, and affirmative marketing. Provisions for enforcement related to a municipality's failure to submit up-to-date monitoring or administer affordable housing units and programs in accordance with the Council's rules are also included. The requirement for information regarding a municipality's actual growth has been deleted.

N.J.A.C. 5:98-12 details the general powers of the Council, including restraining orders, accelerated denial of substantive certification, administrative orders, and orders to show cause. There is no change from the current rules.

N.J.A.C. 5:98-13 details the motion process, including the form of motion, supportive affidavits, briefs and documents, oral argument requests, response time frame, and orders. The rules permit the Council to accept a motion for reconsideration if requested due to previously unknown facts or circumstances. The electronic submission of motion documents is now required.

N.J.A.C. 5:98-14 outlines the requirements for amending the terms of substantive certification, including the review of any objections filed. The rules now permit only municipalities to request amendment to the terms of substantive certification and eliminate the provisions relating to amendment by motion. The provisions regarding minor technical amendments have been removed. The rules significantly reduce the amount of information required to be submitted by the municipality for an amendment of substantive certification. Provisions regarding the filing and review of objections to petitions to amend the terms of substantive certification have been replaced by a reference to Subchapter 4.

N.J.A.C. 5:98-15 provides criteria for the submission of a waiver from a specific requirement of the Council's rules. The rules revise the criteria for granting a waiver to ensure that the provisions of the Act would not be contravened and the waiver would foster the intent of, if not the letter of, the Council's rules.

N.J.A.C. 5:98-16 provides jurisdictional and transitional procedures for all municipalities currently under the Council's jurisdiction, including municipalities that received third round substantive certification. The rules require that, in order to remain under the jurisdiction of the Council, municipalities under COAH's jurisdiction as of the effective date of these rules and municipalities that received third round substantive certification must either file a newly adopted Housing Element and Fair Share Plan or petition for substantive certification within six months of the effective date of these rules.

N.J.A.C. 5:98-17 sets forth a requirement for the establishment of a municipal housing liaison. In addition, the rules outline the responsibilities of a municipal housing liaison, the Council's procedures for approval of a municipal housing liaison, and the education requirements. The rules require the municipal housing liaison to complete training within six months of appointment, provided classes are occurring regularly.

N.J.A.C. 5:98-18 sets forth the procedures and criteria for contracting with an administrative agent, who may perform some or all of the duties

and responsibilities of an administrative agent as set forth in the Uniform Housing Affordability Controls. The subchapter also includes the Council's procedures for approval of an administrative agent and the education requirements. The rules indicate that the Council is no longer publishing a list of approved administrative agents on its website. The rules require the administrative agent to complete training at the earliest possible time, based on availability of classes.

N.J.A.C. 5:98-19 sets forth requirements for the establishment of a Regional Contribution Agreement (RCA) administrator, who shall be responsible for oversight and coordination of all the activities of the municipal government as it relates to the creation, preservation, and administration of affordable housing programs and/or affordable units funded through regional contribution agreements. The subchapter includes an outline of the responsibilities of an RCA administrator, the Council's procedures for approval of an RCA administrator, and the education requirements. The time frame for completion of training by the RCA administrator has been deleted.

N.J.A.C. 5:98-20 details the education program for municipal housing liaisons, RCA administrators, and administrative agents to be sponsored by the Council. The curriculum for the education program now includes records management.

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

Social Impact

The procedural rules continue to offer various opportunities for public comment regarding municipal housing elements and fair share plans. The new requirements for electronic submission of fair share plans, amendments, and motions will enhance the public's ability to access and review these documents through the Council's website.

Revisions to the sections pertaining to filing and petition requirements are designed to streamline the substantive certification process, which in turn will accelerate the production of affordable housing for low- and moderate-income households.

Economic Impact

The procedural rules provide clear and direct guidance for municipalities that wish to participate in the Council's administrative process as an alternative to the Court. The economic impact of participation in the Council's process, however, is designed to be less than the impact created by involvement in a builder's remedy lawsuit. While the municipalities involved incur costs associated with the application of these rules, including construction costs, operation and maintenance costs, and legal and professional fees, such costs may be defrayed through the collection of development fees. These rules will allow a municipality to make proactive economic and planning choices to its advantage rather than be subjected to protracted legal challenges that cost significantly more in time and money.

Federal Standards Statement

No Federal standards analysis is required because these rules are not being proposed in order to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements.

Jobs Impact

The proposed new rules do not mandate an increase or decrease in employment opportunities since participation in the Council's process is voluntary. Nevertheless, it is anticipated that as growth, development, and construction occur naturally, new jobs attributable to the production of affordable housing will be added in those municipalities that voluntarily participate.

Agriculture Industry Impact

The proposed procedural rules have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The primary purpose of the proposed new rules is to provide a procedural framework for the petition and certification process of a municipal housing element and fair share plan, in accordance with the Fair Housing Act. These rules do not regulate small businesses, as

defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but small businesses may become involved in the Council's process as objectors to municipal fair share plans and as owners of sites designated for low- and moderate-income housing, who may participate in mediation. As objectors, small businesses may employ legal counsel to represent them before the Council, but are not required to do so. Since participation in mediation serves the interests of participating objectors, no lesser requirements or exceptions based on business size are provided.

Housing Affordability Impact Analysis

The proposed new rules provide a procedural framework for the petition and certification process of a municipal housing element and fair share plan, in accordance with the Fair Housing Act, and, therefore, do not directly impact housing affordability.

Smart Growth Development Impact Analysis

The proposed new rules, by streamlining the substantive certification process, encourage and accelerate the production of affordable housing, which is consistent with the principles of smart growth and may result in a decrease in the average cost of housing and/or housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 5:96.

Full text of the proposed new rules follows:

CHAPTER 98 PROCEDURAL RULES OF THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING FOR THE PERIOD BEGINNING (THE EFFECTIVE DATE OF THESE RULES)

SUBCHAPTER 1. GENERAL PROVISIONS

5:98-1.1 Short title; purpose; scope

(a) The provisions of this chapter shall be known as the "Procedural Rules of the New Jersey Council on Affordable Housing for the Period Beginning (the Effective Date of these Rules)."

(b) This chapter establishes procedures to be used by municipalities in addressing their constitutional obligation to provide a fair share of affordable housing for low- and moderate-income households pursuant to N.J.S.A. 52:27D-301 et seq.

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

5:98-1.2 Jurisdiction and builder's remedy litigation

(a) A municipality shall fall within the jurisdiction of the Council if:

1. The municipality has filed a Housing Element and Fair Share Plan and petitioned for substantive certification simultaneously or within two years of such filing;

2. The municipality has filed a Housing Element and Fair Share Plan and is the defendant to an exclusionary zoning suit within two years of such filing;

3. The municipality has been granted substantive certification pursuant to N.J.A.C. 5:96-6.3; or

4. A court transfers jurisdiction of the case to the Council pursuant to N.J.S.A. 52:27D-316.

(b) When a municipality falls within the jurisdiction of the Council pursuant to (a) above, the municipality shall not be subject to a builder's remedy, unless the municipality's petition is dismissed or substantive certification is revoked by the Council.

(c) If an exclusionary zoning lawsuit is filed either prior to the filing of a Housing Element and Fair Share Plan or after the filing of a Housing Element and Fair Share Plan where a petition for substantive certification was not submitted within two years of the filing, and the case is transferred to the Council by the court, the Council shall require the municipality to include the contested site as a component of its plan provided the site is suitable pursuant to N.J.A.C. 5:99-7.1(b).

(d) If a municipality fails to petition for substantive certification within two years after initially filing a Housing Element and Fair Share Plan in accordance with N.J.S.A. 52:27D-316, the filing shall automatically expire.

(e) When a case is transferred to the Council by court order pursuant to N.J.S.A. 52:27D-316, the municipality shall file an adopted Housing Element and Fair Share Plan with the Council pursuant to N.J.A.C. 5:98-2, or petition for substantive certification pursuant to N.J.A.C. 5:98-3, within five months from the date of transfer. If the municipality fails to file or petition within the five-month time period, jurisdiction shall revert to the court.

5:98-1.3 Definitions

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

“Act” means the Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.).

“Administrative agent” means the entity responsible for the administration of affordable units in accordance with this chapter, N.J.A.C. 5:99, and UHAC.

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

“Affordable Housing Obligation” means the total of the Rehabilitation Share, the Unanswered Prior Obligation, and the Fair Share of Prospective Need.

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

“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.).

“Amendment” means the municipal submission of a revision to a certified Housing Element and Fair Share Plan that has been adopted by the planning board and endorsed by the governing body.

“Controls on Affordability” means any rule governing affordable units as found in N.J.A.C. 5:80-26.

“Council” means the New Jersey Council on Affordable Housing established under the Act, which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in the State.

“Days” means calendar days.

“Fair Share Plan” means the plan that describes the mechanisms and the funding sources, if applicable, by which a municipality proposes to address its affordable housing obligation as set forth in the Housing Element. It includes the draft ordinances necessary to implement that plan, and addresses the requirements of N.J.A.C. 5:99-4.

“Filed Housing Element and Fair Share Plan” means the municipal submission of a Housing Element and Fair Share Plan accompanied by a duly adopted resolution from the governing body endorsing the Housing Element and the Fair Share Plan adopted by the planning board, but not necessarily petitioning for Council review or certification of the plan pursuant to this chapter.

“Housing Element” means the portion of a municipality’s master plan, required by the Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-28.b(3) and the Act, that includes all information required by N.J.A.C. 5:99-2 and establishes the municipality’s fair share obligation.

“Housing region” means a geographic area, determined by the Council, of no less than two and no more than four contiguous, whole counties, which exhibits significant social, economic, and income similarities and which constitutes, to the greatest extent practicable, a Primary Metropolitan Statistical Area (PMSA) as last defined by the United States Census Bureau.

“Mediation” means the process established by the Act whereby objectors to a municipality’s petition for substantive certification and other participants meet with the municipality under the direction of a Council-appointed mediator to attempt to resolve disputes.

“Motion” means a written application requesting the Council to make a specified ruling or order pursuant to N.J.A.C. 5:98-13.

“Municipal housing liaison” means an appointed municipal employee who is responsible for oversight and/or administration of the affordable units created within the municipality.

“OAL” means the Office of Administrative Law.

“Objector” means a person who files objections to a municipal Housing Element and Fair Share Plan in accordance with N.J.A.C. 5:98-4.1.

“Participant to mediation” means any person the mediator deems necessary to conduct mediation and resolve any objections to a municipality’s petition for substantive certification. The Council, or its designee conducting mediation, shall determine the extent to which a participant may take part in mediation.

“Petition for substantive certification” means a request made by municipal resolution which a municipality files, or is deemed to have filed in accordance with this chapter, which engages the Council’s review process seeking a determination as to whether the Housing Element and Fair Share Plan of the municipality are consistent with the Act and compliant with rules promulgated by the Council. When used in this chapter, petition shall also mean re-petition.

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

“RCA Project Plan” means a past application, submitted by a receiving municipality in an RCA, delineating the manner in which the receiving municipality has created or rehabilitated low- and moderate-income housing.

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

“Regional Contribution Agreement (RCA)” means a contractual agreement, pursuant to the Act, into which two municipalities voluntarily entered to transfer a portion of a municipality’s fair share obligation to another municipality within its housing region.

“Re-petition” means the municipal submission of a revision to a petition that has been adopted by the planning board and endorsed by the governing body, but has not yet received substantive certification.

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

“Service list” means a list maintained by the Council pursuant to N.J.A.C. 5:98-3.7.

“Substantive certification” means a determination by the Council approving a municipality’s Housing Element and Fair Share Plan in accordance with the provisions of the Act, this chapter, and N.J.A.C. 5:99. In no event shall a grant of substantive certification extend beyond a 10-year period starting on the date the municipality files its housing element with the Council or December 31, 2024, whichever is earlier.

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

SUBCHAPTER 2. FILING A HOUSING ELEMENT AND FAIR SHARE PLAN

5:98-2.1 Filing

A municipality may file its Housing Element and Fair Share Plan with the Council at any time pursuant to the Act.

5:98-2.2 Filing requirements

(a) A municipal Housing Element and Fair Share Plan that is filed with the Council shall be submitted to the Council in hard copy and electronic format and shall contain the following information:

1. A copy of the adopted Housing Element and Fair Share Plan;
2. A certified copy of the resolution of the municipal planning board adopting the Housing Element and Fair Share Plan as part of the municipality’s master plan pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.;
3. A certified copy of a resolution of the governing body endorsing the Housing Element and Fair Share Plan and requesting that the Plan remain on file without a petition; and
4. A service list pursuant to N.J.A.C. 5:98-3.7.

(b) A municipality may revise and re-file its Housing Element and Fair Share Plan before submitting a petition, but such re-filing shall not extend the period of jurisdiction described in N.J.A.C. 5:98-1.2 beyond two years from the date of the initial filing.

SUBCHAPTER 3. PETITION FOR SUBSTANTIVE CERTIFICATION

5:98-3.1 Petition

(a) A municipality may petition the Council for substantive certification within two years from the date of filing its Housing Element and Fair Share Plan, or may file and petition the Council simultaneously.

(b) In no event shall a grant of substantive certification extend beyond a 10-year period starting on the date the municipality initially files its housing element with the Council.

5:98-3.2 Petition requirements

(a) A municipal petition for substantive certification shall be submitted to the Council in hard copy and electronic format and shall contain the following information:

1. A copy of the adopted Housing Element and Fair Share Plan;
2. A certified copy of the resolution of the municipal planning board adopting the Housing Element and Fair Share Plan as part of the municipality's master plan pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.;
3. A certified copy of a resolution of the governing body endorsing the Housing Element and Fair Share Plan and requesting Council review and certification of the Housing Element and Fair Share Plan; and
4. A service list pursuant to N.J.A.C. 5:98-3.7.

5:98-3.3 Action equivalent to a petition for substantive certification

A municipality engaged in an exclusionary zoning lawsuit whose Housing Element and Fair Share Plan has been transferred to the Council by a court pursuant to N.J.S.A. 52:27D-316, shall be deemed to have petitioned for substantive certification when the Council accepts the municipality's adopted Housing Element and Fair Share Plan as required pursuant to N.J.A.C. 5:98-1.2. The municipality shall submit an adopted Housing Element and Fair Share Plan to the Council within five months from the date of transfer. The municipal plan shall conform to the petitioning requirements of N.J.A.C. 5:98-3.2.

5:98-3.4 Re-petition

(a) A municipality that has petitioned the Council may re-petition with a revised Housing Element and Fair Share Plan in accordance with N.J.A.C. 5:98-3.2 prior to the grant of substantive certification, but such re-petition shall not extend the period of jurisdiction described in N.J.A.C. 5:98-1.2 beyond two years from the date of the initial filing.

(b) A municipality shall re-petition when the revisions to its plan include a change in site, substantial change in density, a change in other zoning requirements that results in a change of housing type on a specific site, or a fundamental change in approach to its low- and moderate-income housing obligation; however, pursuant to N.J.S.A. 52:27D-311.g, a municipality which has received substantive certification and has actually effected the construction of its affordable housing obligation is not subject to this requirement.

(c) If a municipality received a vacant land adjustment and a change occurs that creates developable land or provision of public utilities where previously there were none, the municipality shall repetition including the new available sites in its plan.

5:98-3.5 Notice

(a) When a municipality petitions for substantive certification or is deemed to have petitioned pursuant to N.J.A.C. 5:98-3.3, the municipality shall publish notice within seven days of its petition in a newspaper of general circulation within the municipality and county. If the Council's Executive Director determines that notice was not published in a newspaper of general circulation, the municipality shall be required to republish in another appropriate newspaper.

(b) Notice of a petition for substantive certification shall be provided in the following format:

NOTICE OF PETITION FOR SUBSTANTIVE CERTIFICATION

NOTICE is hereby given that (MUNICIPALITY) has petitioned the New Jersey Council on Affordable Housing for Substantive Certification of its Housing Element and Fair Share Plan, pursuant to N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:98-3.1 et seq. A copy of the adopted Housing Element and Fair Share Plan and supporting documentation is available for public inspection at the office of the (Municipal Clerk, etc.), (MUNICIPALITY) Municipal Building, (street address), during regular business hours. Comments or objections to said petition for Substantive Certification must be filed with the New Jersey Council on Affordable Housing, 101 South Broad Street, PO Box 813, Trenton, New Jersey 08625-0813 and with the municipal clerk by (DATE), which is within 45 days of publication of this notice.

Municipal Clerk

(c) A municipality that chooses to revise its plan and re-petition or is required to re-petition with a revised plan for substantive certification shall provide notice in the following format:

NOTICE OF RE-PETITION FOR SUBSTANTIVE CERTIFICATION

NOTICE is hereby given that (MUNICIPALITY) has re-petitioned the New Jersey Council on Affordable Housing for Substantive Certification of its Housing Element and Fair Share Plan pursuant to N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:98-3.4. The (MUNICIPALITY) Planning Board, subsequent to public hearing, adopted a revision to its Housing Element and Fair Share Plan on (DATE). The adopted plan is a revision of a previously adopted Housing Element and Fair Share Plan for which the (Township/Borough/Town/City) had initially petitioned the Council on Affordable Housing for substantive certification on (DATE).

A copy of the revised and adopted Housing Element and Fair Share Plan and supporting documentation is available for public inspection at the office of the (Municipal Clerk, etc.), (MUNICIPALITY) Municipal Building, (street address), during regular business hours. Comments or objections to said re-petition shall be filed with the Council on Affordable Housing, 101 South Broad Street, PO Box 813, Trenton, New Jersey 08625-0813 and with the municipal clerk by (DATE) which is within 45 days of publication of this notice.

Municipal Clerk

(d) An updated list of all petitions for substantive certification received by the Council, as well as electronic copies of the municipal Housing Elements and Fair Share Plans submitted, shall be published monthly on its website.

5:98-3.6 Public review

A municipality that has petitioned for substantive certification with the Council shall make the Housing Element and Fair Share Plan, and any supporting documents and ordinances, available for public inspection within the municipality during regular business hours for a period of 45 days beginning on the date of publication of the notice of petition for substantive certification, pursuant to N.J.S.A. 52:27D-314.

5:98-3.7 Service list

(a) At the time it files or petitions for substantive certification, a municipality shall provide the Council with a service list that includes the following information:

1. The current names and addresses of owners of sites identified by block and lot that were included in previously certified or court settled plans that were zoned for low- and moderate-income housing and/or were to pay a negotiated fee(s). The owners of sites that have been completely developed shall not be included on the service list;

2. The names and addresses of owners of all new or additional sites included in the Fair Share Plan. The sites shall be identified by block and lot and paired with the names and addresses of the respective owners;

3. The names and addresses of all municipal employees or designees that the municipality would like notified of all correspondence relating to the filing or petition; and

4. The names and addresses of relevant county, regional and/or State entities.

(b) The owners of sites designated in the municipal submission shall be given written notice by the municipality of the submission of a petition. Such property owners may participate in mediation and shall have the rights granted to objectors of the municipal submission.

(c) Any interested person may submit a written request to the Council to be included on the service list or deleted from a service list for one or more municipalities.

SUBCHAPTER 4. OBJECTIONS TO A PROPOSED HOUSING ELEMENT AND FAIR SHARE PLAN

5:98-4.1 Objections

(a) Within 45 days of publication of the notice of a municipality's petition for substantive certification, any person may file objections to a municipality's Housing Element and Fair Share Plan. Objections shall be filed with the Council and the municipality. The Council shall consider only those objections that the Executive Director has determined to be valid pursuant to N.J.A.C. 5:98-4.2. An objection shall include, at a minimum, the following:

1. A clear and complete statement as to each aspect of the municipality's Housing Element and Fair Share Plan to which an objection is made;

2. An explanation of the basis for each objection including, where appropriate, citations to expert reports, studies or other data relied upon to support each objection;

3. Copies of all referenced expert reports, studies, or other data relied upon by the objector;

4. Proposed modifications, changes, or other measures which the objector contends will resolve the objection and an explanation of how the objector's proposals are consistent with the Council's criteria and guidelines;

5. A statement documenting the objector's prior efforts at pre-mediation, participation in conferences or public hearings and a summary of the results of any such efforts; and

6. Identification and a description of any site proposed by the objector for inclusion in the Housing Element and Fair Share Plan, including a history of development applications (if any), and a demonstration that the site is suitable in accordance with N.J.A.C. 5:99-7.1(b).

5:98-4.2 Review of objections

(a) The Council's Executive Director shall review objections subject to the requirements of N.J.A.C. 5:98-4.1 to determine completeness and validity. The Executive Director shall notify the objector who has filed an objection and the service list whether the objection is complete and valid and that the objector is permitted to participate in the Council's administrative process beginning with mediation as set forth in N.J.A.C. 5:98-8.

(b) Objections that are determined to be incomplete or invalid shall be returned to the objector who shall have 14 days to correct deficiencies and resubmit them in a manner conforming to N.J.A.C. 5:98-4.1. If the objections are not resubmitted within the 14 days, the Council's Executive Director shall consider the objections to be withdrawn.

(c) The municipality shall submit a written response to all items delineated in the objector's objection. Such written response shall be submitted to the Council and service list within 20 days of the notification letter issued in accordance with (a) above.

(d) The Executive Director or designee may issue a pre-mediation report in accordance with N.J.A.C. 5:98-7.2(a).

SUBCHAPTER 5. REVIEW OF DEVELOPMENT FEE ORDINANCES AND SPENDING PLANS FOR AFFORDABLE HOUSING TRUST FUNDS

5:98-5.1 General

After the public review period pursuant to N.J.A.C. 5:98-3.6, the Council may review and approve development fee ordinances and spending plans.

5:98-5.2 Development fee ordinance review

(a) Pursuant to N.J.S.A. 52:27D-329.2, the Council may authorize a municipality that has petitioned for substantive certification, or that has been so authorized by a court of competent jurisdiction, to impose and collect development fees from developers of residential property.

(b) The Council may review a development fee ordinance once the municipality has submitted:

1. A copy of the proposed ordinance designed to collect development fees; and

2. A request in the form of a resolution by the governing body for the Council to review and approve the development fee ordinance, unless the development fee ordinance was submitted as part of a petition pursuant to N.J.A.C. 5:98-3.

(c) Once the Council has approved the development fee ordinance, the municipality's governing body may adopt the development fee ordinance, which shall be filed with the Council within seven days of adoption.

5:98-5.3 Amendment to an approved development fee ordinance

(a) A municipality may not adopt an amendment to a development fee ordinance approved pursuant to N.J.A.C. 5:98-5.3 or impose any fees pursuant to an amendment until the Council reviews and approves any such amendment.

(b) A municipality shall submit a request in the form of a resolution by the governing body for the Council to review and approve an amendment to an approved development fee ordinance.

(c) Once the Council has approved the development fee ordinance amendment, the municipality's governing body may adopt the amendment to the development fee ordinance, which shall be filed with the Council within seven days of adoption.

5:98-5.4 Spending plan review

(a) Pursuant to N.J.S.A. 52:27D-329.2, a municipality may not spend or commit to spend any affordable housing development fees, including Statewide non-residential fees collected and deposited into the municipal affordable housing trust fund, without first obtaining the Council's approval of the expenditure.

(b) A municipality shall submit a resolution by the governing body endorsing the spending plan compliant with N.J.A.C. 5:99-11.12 and requesting review and approval by the Council, unless the spending plan was submitted as part of a petition pursuant to N.J.A.C. 5:98-3.

5:98-5.5 Amendment to an approved spending plan

(a) An amendment to an approved spending plan shall be reviewed and approved by the Council prior to the spending of funds and/or to the commitment to spend funds, pursuant to the amendment.

(b) A municipality shall submit a request in the form of a resolution by the governing body endorsing the amendment to the approved spending plan and requesting review and approval by the Council.

SUBCHAPTER 6. CONSIDERATION OF A MUNICIPALITY'S HOUSING ELEMENT AND FAIR SHARE PLAN WHEN NO OBJECTIONS ARE FILED

5:98-6.1 Overview

This subchapter outlines the procedures for the review of a Housing Element and Fair Share Plan to which no objections have been filed.

5:98-6.2 Council review

(a) After the expiration of the 45-day public review period pursuant to N.J.A.C. 5:98-3.6, the Council staff shall conduct a review of the petition and prepare a report that shall be circulated to the municipality and to the service list. The report may:

1. Recommend substantive certification;
2. Recommend conditional substantive certification; or

3. Recommend denial of substantive certification.

(b) Reports recommending substantive certification or conditional substantive certification shall be submitted to the municipality and the service list for a 14-day comment period prior to Council action on the petition for substantive certification.

(c) Reports recommending denial of substantive certification shall be submitted to the municipality and the service list for a 14-day comment period prior to Council action on the petition for substantive certification. If, within 60 days of the Council's denial, the municipality submits its petition with changes addressing the Council's reasons for denial, the Council shall grant substantive certification. If the municipality fails to do so, the municipality shall be automatically dismissed from the Council's jurisdiction.

5:98-6.3 Grant of substantive certification

(a) Upon review of a municipality's Housing Element and Fair Share Plan and consideration of the staff's recommendation, the Council shall grant substantive certification of a municipality's Housing Element and Fair Share Plan if:

1. The municipality's proposed Housing Element and Fair Share Plan complies with this chapter and N.J.A.C. 5:99;

2. The Housing Element and Fair Share Plan is consistent with the achievement of the low and moderate income housing needs of the region pursuant to this chapter and N.J.A.C. 5:99; and

3. The affordable housing delivery techniques proposed in the Housing Element and Fair Share Plan make the achievement of the municipality's fair share of low- and moderate-income housing realistically possible.

(b) A grant of substantive certification shall run for a period of 10 years beginning on the date that a municipality files a Housing Element and Fair Share Plan with the Council in accordance with N.J.S.A. 52:27D-313, and not extending beyond December 31, 2024.

(c) A grant of substantive certification may contain such conditions and terms as the Council considers necessary to make the achievement of a municipality's fair share obligation realistically possible. Any conditions for approval shall be in writing and shall set forth the reasons for the conditions. If, within 60 days of the Council's conditional approval, the municipality submits changes satisfactory to the Council, the Council shall grant substantive certification. If the municipality fails to submit changes satisfactory to the Council within the 60-day period, the municipality shall be automatically dismissed from the Council's jurisdiction.

(d) Within 45 days of the grant of substantive certification, the municipality shall adopt its ordinances or take other actions necessary for the implementation of the affordable housing delivery techniques designed to satisfy the fair share obligation, as approved by the Council. The Council's grant of substantive certification shall be void and of no force and effect in the event that the municipality fails to adopt its ordinances or take required actions within 45 days.

5:98-6.4 Dismissal

If the Council dismisses or revokes a petition for substantive certification, the municipality shall no longer receive the benefits outlined in N.J.A.C. 5:98-1.2. Such a municipality may revise its Housing Element and Fair Share Plan and submit a new petition to the Council. Such new petition shall not extend the total period for which a municipality may receive either substantive certification or the benefits outlined in N.J.A.C. 5:98-1.2.

SUBCHAPTER 7. CONSIDERATION OF A MUNICIPALITY'S HOUSING ELEMENT AND FAIR SHARE PLAN WHEN OBJECTIONS ARE FILED

5:98-7.1 Overview

This subchapter sets forth the procedures for the review of a Housing Element and Fair Share Plan when one or more objections have been filed.

5:98-7.2 Municipalities that petition for substantive certification simultaneously with or within two years of filing their Housing Element and Fair Share Plan

(a) After the expiration of the 45-day public review period pursuant to N.J.A.C. 5:98-3.6, the Council's Executive Director shall notify the municipality and the service list that one or more objections were filed, and the Executive Director or designee may issue a pre-mediation report to be circulated to the municipality and to the service list.

(b) The mediation process shall commence in accordance with the procedures set forth in N.J.A.C. 5:98-8.

5:98-7.3 Other municipalities

(a) The class of other municipalities includes those sued for exclusionary zoning either prior to filing a Housing Element and Fair Share Plan or after filing a Housing Element and Fair Share Plan where a petition for substantive certification was not submitted within two years, and municipalities transferred by the court to the Council.

(b) Once a petition is filed pursuant to N.J.A.C. 5:98-3.3, the Executive Director or designee may issue a pre-mediation report pursuant to N.J.A.C. 5:98-7.2(a).

(c) The mediation process shall commence in accordance with the procedures set forth in N.J.A.C. 5:98-8.

5:98-7.4 Substantive certification

(a) Upon review of a Housing Element and Fair Share Plan that responds to a mediation report pursuant to N.J.A.C. 5:98-8.4 or an initial decision from OAL pursuant to N.J.A.C. 5:98-9.2, the Council may grant substantive certification in accordance with N.J.A.C. 5:98-6.3.

(b) In conducting its review set forth in this section, the Council's Executive Director or a designee may meet with the municipality and/or any objector thereto.

SUBCHAPTER 8. MEDIATION

5:98-8.1 General

Once an objection to a municipality's petition for substantive certification is deemed valid and complete pursuant to N.J.A.C. 5:98-4.2(a), the Council's Executive Director may engage in mediation. The Executive Director may appoint a designee to act as the mediator in his or her place. The mediator shall meet with the representatives of the municipality and/or the objectors and attempt to mediate a resolution of the objections.

5:98-8.2 Participants to mediation

(a) The mediator shall have full and complete discretion to permit any person to participate in mediation upon a determination that such participation may facilitate mediation and/or help resolve an objection to a municipality's petition for substantive certification. A person invited to participate pursuant to this subsection shall be deemed a participant to mediation and shall be permitted to participate in mediation to the extent the mediator determines appropriate.

(b) Prior to the commencement of mediation, objectors and owners of sites in accordance with N.J.A.C. 5:98-3.7 and the municipality shall, in writing to the Council, designate their representatives, authorize the representatives to negotiate on their behalf, and also authorize one or more of the representatives to execute any written agreement reached during mediation on their behalf.

(c) Additions or replacements to mediation teams shall be made only with the approval of the mediator and shall be immediately submitted to the Council in writing by the objector, property owner, or the municipality.

5:98-8.3 Scope of mediation

(a) The Executive Director or designee shall meet with the municipality and the objectors after the end of the 45-day objector period or after a matter is referred to the Council for mediation, and as often thereafter as the Council or its designee shall determine necessary, and may impose such deadlines for the submission of information, reports, studies, or other documentation as the Executive Director or designee shall find necessary.

(b) The mediator may, upon notice to the participants during the course of mediation, rely upon or use any interim adjudications

previously entered by a trial court in the matter or any stipulations previously entered into by the participants in any such litigation.

(c) During mediation, the Council may choose to hear and decide an issue itself if, in the Council's determination, such an inquiry would facilitate a satisfactory conclusion to the mediation process.

(d) The mediator shall have the widest possible discretion as to the manner by which mediation is conducted.

5:98-8.4 Conclusion of mediation; mediation report

(a) The mediator may, for any reason, including, but not limited to, a lack of progress in the mediation proceedings or a determination that mediation cannot resolve a dispute, declare an end to mediation.

(b) At the conclusion of mediation, the Council's Executive Director may, in appropriate instances, require all participants to submit affidavits or certifications from individuals with personal knowledge of the facts at issue. If the Council determines there are contested issues of material fact, the Council may elect to either consider the contested issues of material fact at a scheduled Council meeting and render a final decision in the matter or refer the matter to OAL pursuant to N.J.A.C. 5:98-9.

(c) At the conclusion of mediation, if the participants have reached an agreement, the participants shall submit the executed agreement to the Council within 45 days from the last mediation session. If the executed agreement is not submitted within 45 days, the Council may issue an Order to Show Cause at the next scheduled Council meeting to explain why the agreement has not been executed. The Council shall take whatever action it deems appropriate.

(d) The mediator shall prepare a mediation report at the conclusion of mediation. The report shall, at a minimum:

1. Review any objections that have been successfully resolved and the status of any remaining unresolved issues, including a recommendation as to whether there are contested issues of material fact that necessitate consideration by the Council or the transfer to OAL; and

2. Present the stipulations or other agreements reached by the municipality and the objectors.

(e) The mediation report shall be submitted to the municipality and all participants to the mediation.

5:98-8.5 Revision of Housing Element and Fair Share Plan as a result of mediation

(a) Revisions to the originally filed municipal Housing Element and Fair Share Plan that are determined to be substantial in accordance with N.J.A.C. 5:98-3.4(b) shall require a re-petition pursuant to N.J.A.C. 5:98-3.4.

(b) If the revisions to the municipal Housing Element and Fair Share Plan are not substantial in accordance with N.J.A.C. 5:98-3.4(b), the municipality may request that the revision be done by motion pursuant to N.J.A.C. 5:98-13.

(c) If the mediation proceedings fail to progress or mediation cannot resolve a dispute and the municipality's Fair Share Plan does not create a realistic opportunity pursuant to N.J.A.C. 5:99 and the objector's site is in conformance with N.J.A.C. 5:99-7.1(b), the Council may either direct the municipality to amend its Housing Element and Fair Share Plan to include the objector's site to address any shortfall or deny substantive certification pursuant to N.J.A.C. 5:98-12.2. The Council will take into consideration the length of time the municipality has been under the Council's jurisdiction and whether or not the municipality was previously granted substantive certification.

(d) If the municipality fails to revise its Housing Element and Fair Share Plan as a result of mediation within 60 days from the conclusion of mediation, the Council shall dismiss the municipal submission by administrative order or deny it pursuant to N.J.A.C. 5:98-6.2(c).

5:98-8.6 Reopened mediation

(a) If during the public review period pursuant N.J.A.C. 5:98-3.6, an objection is filed to a previously mediated and revised Housing Element and Fair Share Plan, mediation may be reopened for a period not to exceed 60 days.

(b) The mediator shall consider only those objections to the portions of the Housing Element and Fair Share Plan that have been revised following mediation.

(c) If mediation is reopened, the municipality and objectors to both the initial Housing Element and Fair Share Plan and to the proposed mediated Housing Element and Fair Share Plan shall be given the opportunity to participate in the reopened mediation.

(d) At the end of the reopened mediation or the date the Council receives the executed agreement between the participants, whichever is later, the mediator shall prepare another mediation report. The report shall list all issues that remain in dispute between the municipality and the objectors and shall present the stipulations or other agreements reached by the municipality and the objectors.

(e) Following a reopened mediation, the procedures in N.J.A.C. 5:98-8.5 shall be followed.

SUBCHAPTER 9. REFERRAL TO THE OFFICE OF ADMINISTRATIVE LAW

5:98-9.1 General

(a) In the event contested issues of material fact remain following mediation, the Council, upon the motion of any party or in its own discretion, shall determine whether to consider the issues at a scheduled Council meeting or refer the matter to the Office of Administrative Law (OAL) for resolution as a contested case pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) Upon determining that the matter shall be referred to OAL for adjudication as a contested case, the Council shall transmit the matter to OAL together with the mediation report, the municipality's petition for substantive certification and any objections thereto, and any other documentation pertinent to the adjudication.

(c) The cost of the transcript of all oral testimony transmitted to OAL from the Council shall be shared equally by the municipality and the objectors.

5:98-9.2 Review

Within 45 days after the issuance of an initial decision from OAL, the Council shall review the initial decision of the Administrative Law Judge, the record upon which it is based, and all exceptions to the initial decision. The Council shall then accept, reject, or modify the decision and issue its final decision on the matter. For good cause shown, the time limit established under this subchapter may be extended pursuant to N.J.A.C. 1:1-16.6.

SUBCHAPTER 10. REALISTIC OPPORTUNITY REVIEW

5:98-10.1 Realistic opportunity review

(a) The Council shall conduct a realistic opportunity review at the midpoint of a municipality's certification period. The purpose of the review is to verify that the affordable housing delivery techniques included in the municipality's certified Fair Share Plan continue to make the achievement of the municipality's fair share of low- and moderate-income housing realistically possible and, in the case of a municipality that received a vacant land adjustment pursuant to N.J.A.C. 5:99-5, to assess whether new opportunities are available.

(b) The Council's Executive Director shall issue a report to the municipality and the service list after a review that considers, at a minimum, the following information:

1. The status of the affordable housing delivery techniques included in a municipality's certified Housing Element and Fair Share Plan, including:

i. The number of units that have been rehabilitated to address the municipality's rehabilitation share;

ii. The implementing ordinances designed to address the fair share obligation, including the ongoing viability of the affordable housing delivery techniques; and

iii. The number and type of very-low income affordable units that have been created or for which certificates of occupancy have been issued to address the 13 percent very-low-income requirement pursuant to N.J.S.A. 52:27D-329.1; and

2. Any other information pertaining to the review of the municipality's progress in addressing its fair share obligation.

5:98-10.2 Notice

(a) Within seven days of the issuance of the results of the Council's review, the municipality shall publish notice in a newspaper of general circulation within the municipality and county. If the Council's Executive Director determines that notice was not published in a newspaper of general circulation, the municipality shall be required to re-publish in another appropriate newspaper.

(b) Notice shall be provided in the following format:

NOTICE OF THE COUNCIL ON AFFORDABLE HOUSING
REALISTIC OPPORTUNITY REVIEW

NOTICE is hereby given that the New Jersey Council on Affordable Housing, pursuant to N.J.S.A. 52:27D-313b, has issued a Realistic Opportunity Review report for (MUNICIPALITY). A copy the Realistic Opportunity Review report is available for public inspection at the office of the (MUNICIPAL CLERK, etc.), Municipal Building, located at (STREET ADDRESS), during the hours of _____.

Municipal Clerk

5:98-10.3 Public review

The municipality shall make copies of the results of the Council's review available for public inspection during regular business hours within the municipality. The Council shall publish the results on its website.

SUBCHAPTER 11. MONITORING

5:98-11.1 Applicability

(a) Municipalities that are under the jurisdiction of the Council, are RCA receiving municipalities, maintain affordable housing trust funds, or are under the jurisdiction of the court and have been ordered to submit monitoring to the Council shall provide monitoring information in accordance with this subchapter at such time and in such form as the Council requires, but at least once a year.

(b) Municipalities with expired, revoked, or dismissed plans shall provide monitoring information until the expiration of the controls on affordability of affordable units.

5:98-11.2 Monitoring of affordable housing programs and affordable units

(a) The municipal housing liaison shall provide information to the Council setting forth the status of all affordable housing programs and affordable units, which may include proposed units, rehabilitated units, or newly constructed units.

(b) Where applicable, this information shall be provided to the New Jersey Meadowlands Commission, the Highlands Water Protection and Planning Council, or the Pinelands Commission.

5:98-11.3 Monitoring of Regional Contribution Agreements

The RCA administrator shall provide RCA monitoring information pursuant to N.J.A.C. 5:99-9.2(e).

5:98-11.4 Monitoring of affordable housing trust funds

Municipalities that maintain affordable housing trust funds shall provide monitoring information pursuant to N.J.A.C. 5:99-11.14.

5:98-11.5 Monitoring of affirmative marketing plans

The municipal housing liaison or RCA administrator shall provide information regarding the municipality's affirmative marketing pursuant to UHAC.

5:98-11.6 Audits

Audits of municipal affordable housing files may be conducted to ensure that all affordable housing programs and trust funds are administered in accordance with the Council's rules.

5:98-11.7 Enforcement

(a) Municipalities that fail to provide monitoring information within the time and in the form required by the Council may be subject to Council action.

(b) If it is determined that the affordable housing programs are not being administered in accordance with the Council's rules, the municipality may be subject to Council action. Such action may include, but is not limited to, one or more of the following:

1. Revoking credit for the affordable housing programs and/or affordable units that are in violation of the Council's rules;

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

3. Directing the municipality to amend its plan to address any shortfall;

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

5. Such other actions as the Council may determine necessary.

SUBCHAPTER 12. GENERAL POWERS

5:98-12.1 Orders to restrain scarce resources

At any time, upon its own determination or upon the application of any interested person, and after consideration of that application by the Council, the Council may issue such orders as may be necessary to require that a municipality take appropriate measures to reserve scarce resources that may be essential to fulfill the municipality's fair share obligation. The Council may require additional information or documentation necessary to determine whether the issuance of a scarce resource restraint is appropriate.

5:98-12.2 Accelerated denial of substantive certification

At any time, upon its own determination, or upon the application of any interested person, the Council may deny substantive certification without proceeding further with the mediation and review process.

5:98-12.3 Administrative orders

At any time, upon its own determination, or upon the application of an interested person, the Council may issue an administrative order for a municipality to provide information or take an action that expedites the Council's administrative process and/or the production of low- and moderate-income housing. The Council may dismiss a municipal Housing Element and Fair Share Plan or revoke substantive certification by administrative order. The order shall set forth in detail the reasons for the dismissal or revocation and the actions the municipality shall take before it may refile its Housing Element and Fair Share Plan.

5:98-12.4 Orders to show cause

At any time, upon its own discretion, the Council may issue an Order to Show Cause for a municipality to appear before the Council, provide any information requested by the Council, and show cause why the Council should not limit or terminate the benefits of the Council's jurisdiction or take any other action it deems necessary.

SUBCHAPTER 13. MOTIONS

5:98-13.1 Form of motion

(a) An application to the Council for an order shall be by motion. A motion shall be by notice of motion in writing unless the Council permits it to be made orally. Every motion shall state the grounds upon which it is made, and the nature of the relief sought. When a matter becomes a contested case, motions shall generally be made to OAL pursuant to N.J.A.C. 1:1-12.

(b) A party shall submit one original of all motions, answering papers, and accompanying papers in hard copy and electronic format. All papers shall be accompanied by a certification of service.

(c) The Council shall not accept motions for reconsideration unless such reconsideration is requested due to previously unknown facts or circumstances.

(d) The Council shall not accept a motion if an objection has been filed pursuant to N.J.A.C. 5:98-4.1 by the same party on substantially the same matter. After the participants have completed mediation, a motion may be filed on the matter. The mediator shall determine if the motion presents a substantial change in facts or law and, upon a positive finding, shall refer the matter to the Council.

(e) A party seeking emergent relief shall contact the Council's Executive Director to request an emergency hearing by the Council. A determination to proceed with emergent relief shall be made by the Executive Director.

5:98-13.2 Affidavits, briefs, and supporting statements

Motions and answering papers shall be accompanied by all necessary supporting affidavits, briefs, and documents. All motions and answering papers shall be supported by affidavits for facts relied upon which are not of record or which are not subject to official notice. Such affidavits shall set forth only facts to which the affiants are competent to testify. Properly verified copies of all papers referred to in such affidavits shall be annexed thereto.

5:98-13.3 Oral argument

A movant's request for oral argument shall be made either in the moving papers or in the reply. A respondent's request for oral argument shall be made in the answering papers. All requests for oral argument shall state the reasons therefore. The Council's Executive Director shall determine whether motions shall be heard on the papers or through oral argument.

5:98-13.4 Time for response

Any response to the motion shall be filed with the Council within 13 days after the date of the certification of service.

5:98-13.5 Orders

The Council shall render a decision on the motion and may instruct the prevailing party to prepare and submit an appropriate order. If the Council has made findings of fact and conclusions of law explaining its disposition of the motion the order shall so indicate.

SUBCHAPTER 14. AMENDMENT OF SUBSTANTIVE CERTIFICATION

5:98-14.1 General

(a) A municipality may amend the terms of substantive certification. Amendments may be approved by the Council at any time following a grant of substantive certification. Amendments may be required by the Council at any time if it is determined that the municipality is no longer meeting the affordable housing obligation set forth in N.J.A.C. 5:99.

(b) A municipality seeking an amendment to substantive certification that requires a change in site, substantial change in density, a change in other zoning requirements that results in a change of housing type on a specific site, or a fundamental change in approach to its low- and moderate-income housing obligation shall petition for such an amendment pursuant to N.J.A.C. 5:98-14.2.

(c) All parties to the substantive certification, including the municipality and all objectors, shall be permitted to comment on any proposed amendment by motion.

(d) A municipality shall not amend zoning on sites included in the certified Housing Element and Fair Share Plan without notice to the affected property owner. In amending zoning, a municipality shall adhere to the criteria outlined in N.J.A.C. 5:99-7.2.

5:98-14.2 Municipal petition to amend

(a) A municipal petition to amend the terms of its certification shall at a minimum include the following information, as well as any other information requested by the Council's Executive Director:

1. A copy of the amended Housing Element and Fair Share Plan;
2. A duly adopted resolution of the municipal planning board adopting the amended Housing Element and Fair Share Plan, conditioned upon approval by the Council; and
3. A certified copy of the resolution of the municipal governing body endorsing the amended Housing Element and Fair Share Plan and requesting Council review and approval of the amended petition.

(b) The municipality shall also submit, within seven days of the date of the municipality's petition to amend, the following:

1. Proof of notice of the petition to the service list pursuant to N.J.A.C. 5:98-3.7; and
2. Proof of public notice pursuant to N.J.A.C. 5:98-14.3(a).

5:98-14.3 Notice of petition to amend

(a) A municipality that has petitioned to amend its substantive certification shall publish notice of the amended petition in a newspaper of general circulation within the municipality and the county in the following format:

NOTICE OF PETITION TO AMEND SUBSTANTIVE CERTIFICATION

NOTICE is hereby given that (MUNICIPALITY) has petitioned the New Jersey Council on Affordable Housing to amend its Substantive Certification pursuant to N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:98-14 et seq. The (MUNICIPALITY) Planning Board, subsequent to public hearing, adopted a revision to its Housing Element and Fair Share Plan on (DATE). The adopted plan is a revision of a previously adopted Housing Element and Fair Share Plan for which the (TOWNSHIP/BOROUGH/TOWN/CITY) received substantive certification on (DATE).

(INSERT BRIEF DESCRIPTION OF AMENDMENT)

A copy of the amended and adopted Housing Element and Fair Share Plan and supporting documentation is available for public inspection at the office of the (MUNICIPAL CLERK, etc.), Municipal Building, located at (STREET ADDRESS), during the hours of _____. Comments or objections to said petition to amend shall be filed with the Council on Affordable Housing, 101 South Broad Street, PO Box 813, Trenton, New Jersey 08625-0813 and with the municipal clerk by (DATE), which is within 45 days of publication of this notice.

Municipal Clerk

(b) An updated list of all petitions for amendments to substantive certification received by the Council, as well as electronic copies of the amended Housing Elements and Fair Share Plans submitted, shall be published monthly on its website.

5:98-14.4 Objections to petitions to amend

(a) Within 45 days of the publication of a notice of a petition to amend the terms of substantive certification, any person may file objections to the terms of the proposed amendment with the Council. Objections shall be filed with the Council and the municipality.

(b) Objections to petitions to amend are subject to the provisions of N.J.A.C. 5:98-4.

5:98-14.5 Review of objections

(a) After the expiration of the 45-day public review period pursuant to N.J.A.C. 5:98-14.4, the Council's Executive Director shall notify the municipality and the service list that one or more objections were filed, and the Executive Director or designee may issue a pre-mediation report to be circulated to the municipality and to the service list.

(b) The mediation process shall commence in accordance to the procedures set forth in N.J.A.C. 5:98-8.

SUBCHAPTER 15. WAIVERS

5:98-15.1 General

Any person may request a waiver from a specific requirement of the Council's rules at any time. Such a waiver shall be requested as part of a municipal petition or submitted in writing to the attention of the Executive Director. A waiver not requested as part of a municipal petition shall be sent to the service list. The Council also may determine to grant a waiver on its own motion. Waivers may be granted by the Council only where the provisions of the Act would not be contravened and would foster the intent of, if not the letter of, the Council's rules.

SUBCHAPTER 16. JURISDICTIONAL AND TRANSITIONAL PROCEDURES

5:98-16.1 All municipalities currently under COAH's jurisdiction

To remain under the jurisdiction of the Council, all municipalities under the Council's jurisdiction as of (the effective date of these rules)

jurisdiction shall either file a newly adopted Housing Element and Fair Share Plan addressing the affordable housing obligation with the Council or petition for third round substantive certification in accordance with this chapter and N.J.A.C. 5:99 within six months of (the effective date of these rules).

5:98-16.2 Municipalities that received third round substantive certification

To remain under the jurisdiction of the Council, municipalities that received third round substantive certification under N.J.A.C. 5:94 and 5:97 shall conform to the requirements of N.J.A.C. 5:98-16.1.

SUBCHAPTER 17. MUNICIPAL HOUSING LIAISON

5:98-17.1 Requirement for a municipal housing liaison

(a) All municipalities that have created or will create affordable housing programs and/or affordable units shall establish the position of a municipal housing liaison by ordinance and, subject to the approval of the Council's Executive Director, appoint a municipal employee to serve in this position.

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

5:98-17.2 Responsibilities of the municipal housing liaison

(a) The following responsibilities of the municipal housing liaison may not be contracted out:

1. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, administrative agents, and interested households;
2. Monitoring the status of all proposed and completed affordable housing programs and affordable units in the municipality's Fair Share Plan;
3. Compiling, verifying, and providing monitoring information at such time and in such form as the Council requires;
4. Coordinating meetings with affordable housing providers, developers, municipal officials, and administrative agents, as applicable; and
5. Where applicable, providing to an administrative agent a copy of the adopted municipal operating manual(s), Housing Element and Fair Share Plan and ordinances relating to the creation and administration of the municipality's affordable housing programs and/or affordable units.

(b) The municipal housing liaison may also serve as the administrative agent pursuant to N.J.A.C. 5:98-18 for some or all of the affordable units in the municipality. These duties shall be outlined in the municipal ordinance establishing the position of the municipal housing liaison. All applicable tasks not performed by the municipal housing liaison, shall be contracted to an administrative agent pursuant to N.J.A.C. 5:98-18.

5:98-17.3 Approval of the municipal housing liaison

(a) The appointment of the municipal housing liaison is subject to review and approval by the Council's Executive Director.

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

(c) If the municipal housing liaison is to perform the duties of an administrative agent, the municipality shall also submit evidence of the municipal housing liaison's history of successful management of affordable housing units, particularly those produced as a result of the New Jersey Fair Housing Act or through a Mount Laurel court settlement, which shall include:

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

(d) The Council shall monitor the performance of the approved municipal housing liaison. In the event the municipal housing liaison does not administer the municipality's affordable housing program and/or

affordable units in accordance with the Council's rules, the Council may revoke its approval.

5:98-17.4 Education requirements

(a) In order to receive approval, all appointed municipal housing liaisons shall successfully complete the Council's Education Program for Municipal Housing Liaisons as described in N.J.A.C. 5:98-20 within six months of their appointment, provided the classes are occurring regularly.

(b) If the municipal housing liaison is to perform the duties of an administrative agent, the municipal housing liaison shall also successfully complete the Council's Education Program for Administrative Agents as described in N.J.A.C. 5:98-20.

(c) Approved municipal housing liaisons shall also attend continuing education opportunities related to the creation, preservation, and administration of affordable housing programs and/or affordable units provided by the Council.

SUBCHAPTER 18. ADMINISTRATIVE AGENT

5:98-18.1 Requirement for an administrative agent

(a) All municipalities that have created or will create affordable housing programs and/or affordable units may designate one or more administrative agent(s) to administer the affordable housing program and/or affordable units in accordance with the Council's rules and UHAC.

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

(c) The administrative agent may perform some or all of the duties and responsibilities of an administrative agent as set forth in UHAC.

5:98-18.2 Approval of administrative agent

(a) The designation of the administrative agent is subject to review and approval by the Council's Executive Director.

(b) An administrative agent may apply directly to the Council for consideration for approval by submitting the following:

1. All documentation required for designation of an administrative agent as set forth in UHAC;
2. A sample contract;
3. A sample operating manual for each type of program and/or unit the administrative agent seeks to administer;
4. Evidence of satisfactory completion of the Council's Education Program for Administrative Agents as described in N.J.A.C. 5:98-20; and
5. Any additional documentation required by the Council's Executive Director.

(c) If the administrative agent is not currently approved by COAH, the municipality shall request all documentation required for designation of an administrative agent as set forth in UHAC and determine the capacity of the entity to act as administrative agent.

(d) The Council shall monitor the performance of all approved administrative agents. In the event the administrative agent does not administer a municipality's affordable housing program and/or affordable units in accordance with the Council's regulations, the Council may revoke its approval and/or require the municipality to retain a different administrative agent.

5:98-18.3 Education requirements

(a) All administrative agents shall successfully complete the Council's Education Program for Administrative Agents as described in N.J.A.C. 5:98-20.

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

(b) Approved administrative agents shall also attend continuing education opportunities related to the creation, preservation, and administration of affordable housing programs and/or affordable units provided by the Council.

SUBCHAPTER 19. RCA ADMINISTRATOR

5:98-19.1 Requirement for an RCA administrator

(a) All municipalities that have received funds through an RCA shall establish the position of RCA administrator by ordinance and, subject to the approval of the Council's Executive Director, appoint a municipal employee to serve in this position.

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

5:98-19.2 Responsibilities of the RCA administrator

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

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

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

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

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

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

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

(b) The RCA administrator may also serve as the administrative agent pursuant to N.J.A.C. 5:98-18 for some or all of the affordable units in the municipality funded through RCAs. These duties shall be outlined in the municipal ordinance establishing the position of the RCA administrator. All applicable tasks not performed by the RCA administrator, shall be contracted to an administrative agent pursuant to N.J.A.C. 5:98-18.

(c) A municipality that has also appointed a municipal housing liaison pursuant to N.J.A.C. 5:98-17, shall contract with an administrative agent pursuant to N.J.A.C. 5:98-18 for all applicable tasks not performed by the RCA administrator or municipal housing liaison.

5:98-19.3 Approval of the RCA administrator

(a) The appointment of the RCA administrator is subject to review and approval by the Council's Executive Director.

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

(c) If the RCA administrator is to perform the duties of an administrative agent, the municipality shall also submit evidence of the RCA administrator's history of successful management of affordable housing units, particularly those produced as a result of the New Jersey Fair Housing Act or through a *Mount Laurel* court settlement, which shall include:

1. A resume;

2. A statement of qualifications; and

3. A statement of intent to attend continuing education opportunities related to the creation, preservation, and administration of affordable housing programs and/or affordable units provided by the Council.

(d) The Council shall monitor the performance of the approved RCA administrator. In the event the RCA administrator does not administer the municipality's affordable housing program and/or affordable units in accordance with the Council's rules, the Council may revoke its approval.

5:98-19.4 Education requirements

(a) In order to receive approval, all appointed RCA administrators shall successfully complete the Council's Education Program for RCA Administrators as described in N.J.A.C. 5:98-20.

(b) If the RCA administrator is to perform the duties of an the administrative agent, the RCA administrator shall also successfully complete the Council's Education Program for Administrative Agents as described in N.J.A.C. 5:98-20.

(c) Approved RCA administrators shall also attend continuing education opportunities related to the creation, preservation and administration of affordable housing programs and/or affordable units provided by the Council.

SUBCHAPTER 20. EDUCATION PROGRAM

5:98-20.1 Purpose

The purpose of the Education Program is to provide a basic understanding of the roles and duties of any person or entity appointed or contracted with to serve as a municipal housing liaison pursuant to N.J.A.C. 5:98-17, an administrative agent pursuant to N.J.A.C. 5:98-18, and/or an RCA administrator pursuant to N.J.A.C. 5:98-19.

5:98-20.2 Cost and tuition

(a) The Council's Executive Director shall determine and approve the delivery of the Education Program. The providers may charge a reasonable tuition to cover the cost of offering the Education Program, not in excess of the expense of administration and delivery of the Education Program or parts thereof.

(b) Subject to the availability of funds, the Council shall provide tuition for municipal employees appointed to serve as the municipal housing liaison, administrative agent, and/or RCA administrator attending any session required by the Council pursuant to N.J.A.C. 5:98-17.4, 18.3, and 19.4. Such funding shall be limited to one municipal employee per year.

5:98-20.3 Curriculum and requirements

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

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

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

5:98-20.4 Standards for determining satisfactory completion

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

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

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