

**CHAPTER 80  
NEW JERSEY HOUSING AND MORTGAGE  
FINANCE AGENCY**

**Authority**

N.J.S.A. 55:14K-5g.

**Source and Effective Date**

R.2000 d.132, effective February 28, 2000.  
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

**Executive Order No. 66(1978) Expiration Date**

Chapter 80, New Jersey Housing and Mortgage Finance Agency, expires on February 28, 2005.

**Chapter Historical Note**

Chapter 80, Housing Finance Agency, was adopted as R.1977 d.71, effective march 4, 1977. See: 9 N.J.R. 62(c), 9 N.J.R. 164(c).

Chapter 80, New Jersey Housing and Mortgage Finance Agency, was adopted as R.1985 d.241, effective May 20, 1985. See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).

Pursuant to Executive Order No. 66(1978), Chapter 80, New Jersey Housing and Mortgage Finance Agency, was readopted as R.1990 d.248, effective April 20, 1990. See: 22 N.J.R. 277(b), 22 N.J.R. 1556(a).

Pursuant to Executive Order No. 66(1978), Chapter 80, New Jersey Housing and Mortgage Finance Agency, was readopted as R.1995 d.247, effective April 17, 1995. See: 27 N.J.R. 265(a), 27 N.J.R. 1977(a).

Subchapter 33, Low Income Housing Tax Credit Qualified Allocation Plan, was adopted as R.1995 d.281, effective June 5, 1995. See: 27 N.J.R. 986(a), 27 N.J.R. 2190(a).

Subchapter 33, Low Income Housing Tax Credit Qualified Allocation Plan, was repealed and Subchapter 33, Low Income Housing Tax Credit Qualified Allocation Plan, was adopted as new rules by R.1996 d.255, effective June 3, 1996. See: 28 N.J.R. 1443(b), 28 N.J.R. 2843(a).

Pursuant to Executive Order No. 66(1978), Chapter 80, New Jersey Housing and Mortgage Finance Agency, was readopted as R.2000 d.132, effecting February 28, 2000. See: Source and Effective Date. See, also, section annotations.

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#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 5:80-1.1 Authority

These regulations are issued under and pursuant to the authority of the New Jersey Housing and Mortgage Finance Agency Law of 1983 constituting Chapter 530 of the Laws of 1983, N.J.S.A. 55:14K-1 et seq.; specifically N.J.S.A. 55:14K-5(g).

**5:80-1.2 Purpose and objective**

(a) These regulations are established to effectuate and shall be applied to accomplish the general purposes of the New Jersey Housing and Mortgage Finance Agency including:

1. Assuring the availability of rental and owner occupied housing;
2. Stimulating the construction, rehabilitation and improvement of adequate and affordable housing in the State so as to increase the number of housing opportunities for New Jersey residents particularly those of low and moderate income;
3. Enhancing the production capacity of the private sector in meeting the housing needs of residents of New Jersey;
4. Assisting in the revitalization of the State's urban areas; and
5. Responding to changing housing demographic and economic circumstances for the development of innovative and flexible financing vehicles.

**5:80-1.3 General definitions**

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

"Act" shall mean the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq.

"Assisted living" means a coordinated array of supportive personal and health services, available 24 hours per day, to residents who have been assessed to need these services, including residents who require formal long-term care. Assisted living promotes resident self direction and participation in decisions that emphasize independence, individuality, privacy, dignity, and homelike surroundings.

"Assisted living residence" (ALR) means a housing project which is a facility licensed by the 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.

"Collateral" shall mean with respect to any loan those securities, mortgages or other instruments defined as eligible pursuant to the terms of the Assignment of Collateral and Trust Agreement relating to such loan.

"Collateral requirement" shall mean, as of any date of calculation and with respect to any loan the amount at which collateral securing such loan is required to be maintained pursuant to the terms of the Assignment of Collateral and Trust Agreement relating to such loan.

"Home Improvement Loan Program Commitment" shall mean the aggregate unpaid principal amount of home improvement loans which a mortgage seller offers to deliver and sell to the Agency and the Agency agrees to purchase, such sale and purchase to be made under a Note Purchase Agreement.

"Housing project" or "project" shall mean any work or undertaking other than a continuing care retirement community, whether new construction, improvement, rehabilitation or acquisition of existing buildings or units, which is designed for the primary purpose of providing multi-family rental housing or acquisition of sites for future multi-family rental housing, including an assisted living residence.

"Housing sponsor" shall mean any person, partnership, corporation or association to which the Agency has made or proposes to make a loan, either directly or indirectly through an institutional lender, for a housing project.

"Mortgage Purchase Agreement" shall mean an agreement, entered into between a mortgage seller and the Agency, under which the mortgage seller agrees to deliver and sell to the Agency and the Agency agrees to purchase mortgage loans.

"Mortgage Servicing Agreement" shall mean an agreement entered into between a mortgage seller or other person acceptable to the Agency, under which the mortgage seller or other person agrees to service the mortgage loans purchased by the Agency from such mortgage seller under a Mortgage Purchase Agreement.

"Note Purchase Agreement" shall mean an agreement, entered into between a mortgage seller and the Agency, under which the mortgage seller agrees to deliver and sell to the Agency and the Agency agrees to purchase single family home improvement loans.

"Notice of Acceptance" shall mean the Notice of Acceptance by the Agency to the mortgage seller of an application.

"Primarily residential in character" as set forth in N.J.S.A. 55:14K-3(e) shall mean:

1. With regard to an individual unit, structure, or property, that at least 60 percent of the net sheltered area, not including areas for circulation, utilities and common space, is or will be upon completion of scheduled improvements used exclusively as a residence for one or more persons; or

(b) Each lease-purchase agreement with an eligible buyer shall contain the following terms and conditions, in addition to such other terms and conditions that the Agency may from time to time deem appropriate for a particular agreement:

1. The eligible buyer shall agree to rent at a fair market rental a housing unit in an eligible development for a fixed period as determined by the Agency, not to exceed 36 calendar months, and to pay the monthly rental promptly and fully. Failure to make such rental payments promptly and fully, or physical abuse of the unit, shall result in prompt eviction and the termination of the option described in (b)3 below;

2. The eligible buyer shall agree that such housing unit be used solely as a principal residence, and shall further agree that the unit shall not be used for seasonal use, as an investment property, or for business purposes;

3. The eligible buyer shall pay upon the execution of the lease-purchase agreement, a nonrefundable option fee of \$1,000 for an option to purchase for cash the housing unit which is the subject of the lease-purchase agreement, on the expiration date of the lease period set forth therein. If the eligible buyer does not exercise the option, the lease will terminate at the expiration of the lease period, the eligible buyer will immediately vacate the unit, and the Agency will retain the option fee;

4. In return for the option fee, the Agency shall grant the eligible buyer an option to purchase the subject housing unit at a fixed price; each price being the unit's estimated fair market value at the end of the lease period, such estimate being set pursuant to an appraisal prior to the execution of the lease-purchase agreement;

5. The Agency shall accumulate in a segregated fund a percentage (calculated at the time of execution of the lease-purchase agreement) of the fair market monthly rent it will receive during the lease period set forth in the lease-purchase agreement at a rate calculated by the Agency to be sufficient, together with the option fee, and its projected profit on the sale of the unit, if the option is exercised, to enable it to make the grant. The grant will be applied towards closing costs and the downpayment on the sales price for such housing unit for which the eligible buyer has otherwise obtained or is expected to obtain his or her own financing. The amount of the grant to be made will be calculated by the Agency (at the time the lease-purchase agreement is executed) as the amount, given anticipated market conditions, to be necessary, taking into account the assets of the eligible buyer, to induce a mortgage lender to finance the balance of the sales price for the housing unit. Such calculation by the Agency shall not constitute a representation or warranty to the eligible buyer of the availability of mortgage financing and the eligible buyer shall have no recourse against the Agency in the event such eligible buyer fails to obtain mortgage financing or is otherwise unable to exercise the option to purchase the housing unit which is subject to

the lease-purchase agreement. If, for any reason, the eligible buyer is unable to or chooses not to exercise the option to purchase, all monies so set aside shall be retained by the Agency.

i. Notwithstanding anything to the contrary contained in these rules, the percentage rent to be set aside by the Agency to fund a portion of the grant shall not reduce the unrestricted portion of the rent to an amount less than the amount sufficient to maintain and operate the rental housing and to meet debt service on the portion of the securities issued by the Agency to finance the purchase of such housing, and all monies set aside with respect to such downpayment and/or closing costs shall be subject to application to pay required debt service on such securities; and

6. The eligible buyer shall acknowledge that the Agency may give a mortgage and/or other security interests in the housing unit to secure repayment of the financing undertaken by the Agency to finance the purchase price for the eligible development.

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SUBCHAPTER 25. (RESERVED)

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SUBCHAPTER 26. HOUSING AFFORDABILITY CONTROLS

**Authority**

N.J.S.A. 52:27D-321f, 52:27D-324 and 55:14K-5g.

**Source and Effective Date**

R.2001 d.360, effective October 1, 2001.  
See: 33 N.J.R. 230(a), 33 N.J.R. 3432(b).

**Subchapter Historical Note**

Subchapter 26, Housing Affordability Controls, was repealed and a new Subchapter 26, Housing Affordability Controls, was adopted as new rules by R.2001 d.360, effective October 1, 2001. See: Source and Effective Date.

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

(a) 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; or with respect to which a municipality or developer contracts with the Agency or HAS

for the administration of affordability controls pursuant to the Fair Housing Act; 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 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.

(b) This subchapter shall be effective on October 1, 2001 with respect to all restricted units described in (a) above, subject to the following exceptions:

1. Any unit subject to a grant agreement or other contract with either the State or a political subdivision thereof, in effect on or before January 1, 2001, and which provides for a control period different from that otherwise applicable under either N.J.A.C. 5:80-26.5 or 26.11 shall have its control period governed by said grant agreement or contract; and

2. Condominium units subject to an adopted municipal ordinance which provides for condominium fees and/or assessments different from those provided for in N.J.A.C. 5:80-26.6(d), shall have such fees and assessments governed by said ordinance.

### 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.

“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 Department of Community Affairs.

“Balanced Housing” means the Neighborhood Preservation Balanced Housing Program of the Department of Community Affairs as set forth at 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 Department of Community Affairs, established under the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.).

“Division” means the Division of Housing and Community Resources in the Department of Community Affairs.

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

“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.

“Range of affordability” 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 development were affordable at 48, 50, 52, 54 and 56 percent of median income, respectively, the range of affordability for those units would be 52 percent of median income.

“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.

“Restricted unit” means a dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of this subchapter.

**5:80-26.3 Range of affordability**

(a) The restricted units in each affordable development that receives COAH credit under the Fair Housing Act shall be subject to the range-of-affordability requirements set forth in the COAH rules at N.J.A.C. 5:93-7.4. The restricted units in each affordable development that receive Balanced Housing assistance but do not receive COAH credit shall be subject to the range-of-affordability requirements of the Balanced Housing program set forth in N.J.A.C. 5:43. Restricted units that receive neither COAH credit nor Balanced Housing assistance are subject to the range-of-affordability requirements of this section.

(b) 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.

(c) The maximum rent of restricted units within each affordable development shall be affordable to households earning no more than 60 percent of median income. Each affordable development must achieve a range of affordability of 52 percent for restricted rental units. In achieving this range of affordability, developers and/or municipal sponsors of rental units may establish one rent for a low-income unit and one rent for a moderate-income unit for each bedroom distribution.

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

**5:80-26.4 Occupancy standards**

(a) In determining the initial rents and initial sales prices for compliance with the range of affordability requirements for restricted units, 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) 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) Restricted ownership units shall remain subject to the affordability requirements of this subchapter for a period of at least 30 years; provided, however, that units located in a municipality that receives State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) shall remain subject to these affordability requirements for a period of at least 10 years.

(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 upon the 10th or 30th anniversary of such transfer, whichever anniversary is applicable under (a) above. Upon the termination of the affordability control period, the affordability controls set forth in this subchapter shall no longer be applicable to the unit.

(c) To ensure that the affordability controls of this subchapter remain in effect for the applicable control period, all conveyances of restricted ownership units shall use deed restriction language substantially in the form set forth in Appendix A 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 the original recorded instrument shall be provided promptly to the administrative agent. The preparer of the foregoing instrument shall certify to the administrative agent that the deed restriction language in Appendix A has been included therein.

(d) The affordability controls set forth in this subchapter and incorporated in instruments in the form presented in Appendix A shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.

(e) As soon after the expiration of the control period for a restricted unit as is reasonably practicable, the administrative agent shall execute a release, substantially in form set forth in Appendix C 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.

**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 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 a market rate of interest), taxes, homeowner and private mortgage insurance and condominium 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 range of affordability requirement of N.J.A.C. 5:80-26.3.

(c) The maximum resale price for a restricted ownership unit, if the resale occurs prior to the one-year anniversary of the date on which title to the unit was first transferred to a certified household, is the initial purchase price. If the resale occurs on or after such anniversary date, the maximum resale price may increase annually based on the next published COAH-adopted increase for that year. The administrative agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.

(d) 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.

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

(a) Low-income ownership units may be purchased and occupied only by low-income households; provided, however, that 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. Moderate-income ownership units may be purchased and occupied only by low- or moderate-income households. 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 association fees as applicable) does not exceed 33 percent of the household's eligible monthly income. The administrative agent, however, shall 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 financial institution.

**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 for 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 prorated price 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 Sale of ownership units upon expiration of control period**

(a) Upon the expiration of the control period for a restricted ownership unit established in N.J.A.C. 5:80-26.5, the owner of the unit shall be entitled to sell it to any purchaser at the fair market price.

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

(a) Restricted rental units shall remain subject to the affordability requirements of this subchapter for a period of at least 30 years; provided, however, that such units shall remain subject to these affordability requirements for a period of at least 10 years in any of the following circumstances:

1. The units are located in a municipality that receives State aid pursuant to P.L. 1978 (N.J.S.A. 52:27D-178 et seq.);
2. The units are included in a Neighborhood Rehabilitation Project pursuant to N.J.A.C. 5:43-4.4(b); or
3. The units are alternative living arrangements, as defined by COAH; provided, however, that to be eligible for a rental bonus pursuant to N.J.A.C. 5:93-15.5(d), the controls must extend for at least 30 years.

(b) Affordability controls on restricted rental units may exceed the prescribed periods if the unit owner agrees to a longer period.

(c) 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 upon the 10th or 30th anniversary of such initial occupancy, whichever anniversary is applicable under (a) above. Upon the termination of the affordability control period, the affordability controls set forth in this subchapter shall no longer be applicable to the unit.

(d) To ensure that the affordability controls of this subchapter remain in effect for the applicable control period, the deeds of all real property that includes restricted rental units shall contain deed restriction language substantially in the form set forth in Appendix B 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 the original recorded instrument shall be provided promptly to the administrative agent. The preparer of the foregoing instrument shall certify to the administrative agent that the deed restriction language in Appendix B has been included therein.

(e) 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.

(f) As soon after the expiration of the control period for a restricted unit as is reasonably practicable, the administrative agent shall execute a release, substantially in form set forth in subchapter Appendix B, 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.

#### **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 range of affordability 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 next published COAH-adopted increase for that year 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 multipli-

cation 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 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. 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 10 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 HUD for use in New Jersey.

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

(a) Low-income rental units may be occupied only by low-income households. Moderate-income rental units may be occupied only by low-or moderate-income households.

(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. 5:80-26.13; provided, however, that this limit shall 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, as applicable to any specific restricted units, 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;

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

3. Conducting interviews at locations within the municipality 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. Obtaining applicant authorization for, and performing, credit checks through one of the major credit information services;

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

6. 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;

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 pro-rated cost of central air conditioning systems;

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

14. 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;

15. Providing annual reports to COAH as required; and

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

(b) A municipality itself (through a designated municipal employee, department, board, agency or committee) may 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 to serve as administrative agent for some or all restricted units in the municipality. When a municipality selects an experienced private entity to serve as administrative agent for specific restricted units, the administrative agent must be approved by the Division, 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.

(c) It is recommended that in approving a private entity as administrative agent, a municipality may obtain and review the following:

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. A statement, signed by the experienced private entity, the municipality in which the restricted units to be monitored are located and the developer of the restricted units, of intent to administer long-term affordability controls and to comply with all monitoring requirements as contained in this subchapter;

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.

(d) The administrative agent shall have the authority to discharge and release any or all instruments filed of record to establish the affordability controls of this subchapter.

#### **5:80-26.15 Household certification and referral**

(a) To ensure that restricted units are occupied by households with the required income levels, the administrative agent shall certify applicant households as low-income households or moderate-income households after verifying household income.

1. 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 provided 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.

4. Income from assets that have delayed earnings, such as IRAs or annuity programs, shall not be included in current income until such payments are being received. However, these assets must be reported and verified.

5. Net rent from real estate is considered income, after deduction of any mortgage payments, real estate taxes and property owner's insurance. Other expenses are not deductible. In addition, equity in rented real estate is considered an asset and will have imputed interest income on the calculated equity added to income.

6. Income does not include payments, rebates or credits received under 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 family assets such as inheritances, one-time lottery winnings, and insurance settlements, except for additional income earned from these additions, and casual, sporadic or irregular gifts and bonuses.

(b) 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.

(c) Income verification documentation may include, but is not limited to, the following:

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 years;
3. A letter or appropriate reporting form verifying 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;

6. Evidence or reports of income from assets such as real estate or businesses that are directly held by any household member;

7. Evidence or reports that verify assets that do not earn regular income, such as non-income producing real estate or savings that do not earn interest; and

8. A notarized statement of explanation in a form satisfactory to the administrative agent.

(d) Court ordered payments for alimony or child support to another household shall be considered a regular monthly debt, whether or not it is being paid regularly.

(e) When certifying a household's income, the administrative agent may use standard credit information services that provide conventional credit and tenant reports, if the administrative agent provides the household with a written disclosure of any and all adverse consequences from requesting a credit report and, after reviewing the disclosure, the household consents in writing. Credit report examination includes review of:

1. Extent of past due obligations;
2. Judgments, including discharges in bankruptcy;
3. Chargeoffs;
4. Child support arrearages;
5. Tax liens;
6. Unemployment liens for overpayment;
7. Repossessions;
8. New Jersey Division of Motor Vehicles arrearages;
9. Foreclosures;
10. Rent arrearages;
11. Collection accounts;
12. Student loan delinquencies;
13. Existence of real estate owned;
14. Debt resulting from cosigning others' loans;
15. Two-year pattern of debt payment; and
16. Such other appropriate information on a standard credit report which may assist the administrative agent in evaluating applicant status.

(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) The administrative agent shall prepare a standard form of certification and shall sign and date one for each certified household. Only certified households shall be referred to restricted units. Certification shall be valid for no more than 180 days unless a valid sales contract or lease has been executed within that time period. In this event, certifications shall be valid until such time as the sales contract 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.

(h) When a certificate of eligibility is withheld based on information contained in a credit report, the administrative agent shall in all cases provide the applicant with the opportunity to correct or explain negative information causing such a result. A firm mortgage approval from a lender after such withholding of eligibility certification shall require that a certification be issued.

(i) 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.

(j) 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.

(k) 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.

(l) 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 low-and moderate-income limits adopted for that year by COAH. The administrative agent shall notify applicants as to their eligibility status and shall enter their names onto a referral list.

(m) The administrative agent shall establish and maintain a prescreened list of applicants for available new and re-occupancy housing units.

1. The administrative agent shall select applicants at random from:

- i. Any list established for that housing region and developed in response to prior developments; and
- ii. Any list developed by the municipality, the developer or any other source.

2. The administrative agent shall analyze the income and household sizes of applicants to determine which applicants have requirements which match the characteristics of available housing units.

(n) The administrative agent shall interview each selected applicant who responds to a notice of opportunity to interview, and shall utilize the procedures outlined in this subchapter in order to verify the applicant's income and household size, determine the applicant's asset availability and review the applicant's credit history. Applicants shall be required to submit income verification for all household members. This process shall be utilized to establish the final certified applicant group. Information indicating certification of applicants shall be forwarded to the landlord or developer.

(o) With regard to low-and moderate-income units, developers shall be required to provide the following information to the administrative agent:

1. Verification of the exact number of affordable units and the low-income/moderate-income breakdown;
2. Identification of price/rent levels;
3. Realistic identification of timing and phasing of construction and resulting availability of units;
4. Proposed allocation of marketing responsibility between developer and administrative agent;
5. Identification of any options or extras included in sale or rent prices;
6. Identification of availability and placement of storage, parking, included appliances, air conditioning and amenities with regard to affordable units;
7. Identification of adaptable or accessible units;
8. Unit configurations and square footages with breakdowns as to the number of units containing specific numbers of bedrooms with floor plans;
9. Number of bathrooms per unit;
10. The location of low-income, moderate-income and market units in an affordable development;
11. Information as to the attorney or title company performing closings, or the property manager responsible for leasing;
12. Amount of condominium fees or fees charged for services not included in basic maintenance or rent;
13. Estimated taxes for sale units;
14. Sewer/trash disposal assessment, if applicable;
15. Flood insurance requirement, if applicable;
16. Type of heating and HVAC fuel arrangement;
17. Location of common areas and elevators, if applicable; and
18. Any other information relevant to future occupants.

(p) In referring certified households to specific restricted units, the administrative agent shall endeavor, as nearly as practicable, to match the household's income to the price or rent for the unit. For example, if the purchase price or rent for a moderate-income unit is calculated to be affordable at 55 percent of median income, the administrative agent shall refer a certified household earning 60 percent of median income to the unit before referring a certified household earning 70 percent of median income.

#### 5:80-26.16 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 steps to be taken are provided for guidance in the transition:

1. A letter advising of the change should 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 should 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, should be physically transferred to the custody of the incoming or new administrative agent; and
4. The new administrative agent shall be provided with:
  - i. A written methodology 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, a copy of the master deed and public offering statement.

Amended by R.1988 d.331, effective July 18, 1988.  
See: 20 N.J.R. 862(a), 20 N.J.R. 1688(b).  
(c) added.

#### 5:80-26.17 Enforcement

The Agency, COAH and the Division 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.

#### 5:80-26.18 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. The Executive Director's review of an appeal need not comply with the requirements for the conduct of a contested case under the New Jersey Administrative Procedure Act. A written decision of the Executive Director upholding, modifying or reversing an administrative agent's decision shall be a final administrative action, subject to judicial review.

### APPENDIX A

#### AFFORDABILITY DEED RESTRICTION FOR OWNERSHIP UNITS

In this Deed Restriction, the real estate described in this deed, including the land and all buildings and improvements, is called the "Property." The person (or persons) transferring ownership of the Property is called the "Grantor," and the person (or persons) receiving ownership of the Property is called the "Grantee."

This Deed Restriction consists of two promises made by the Grantor and the Grantee:

1. The Property will be used as an owner-occupied dwelling for a low-income household or a moderate-income household [*if applicable, add: as well as an associated rental dwelling*].
2. The Property will be governed by the regulations known as the Uniform Housing Affordability Controls that appear in the New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80-26.1 et seq.), as those regulations may be revised from time to time.

This Deed Restriction shall remain in effect until [*supply the date that is 30 years (or 10 years, if applicable) from the date on which the first certified household took title to the Property*]. On that day, and afterward, this Deed Restriction will have no validity; until that day, it will remain in effect despite any judgment of foreclosure rendered in connection with any mortgage or other lien on the Property.

This Deed Restriction will be considered, for legal purposes, to consist of "covenants running with the land." While it is in effect, this Deed Restriction will be binding on any person who may come to own the Property, and every deed, contract, mortgage or other legal instrument concerning the Property will be considered to include this Deed Restriction, and be governed by it, whether or not the Deed Restriction is actually mentioned in the legal instrument. If the ownership of only a part of the Property is transferred to anyone while this Deed Restriction is in effect, this Deed Restriction will still apply to every part of the Property.

## APPENDIX B

### AFFORDABILITY DEED RESTRICTION FOR RENTAL UNITS

Grantor and Grantee covenant that the real estate conveyed by this deed, including the land and all improvements thereto, which shall be referred to hereinafter as the "Property," shall be used for the purpose of providing one or more rental dwelling units for low-or moderate-income households and shall be subject to the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq., as they may from time to time be amended, which shall be referred to hereinafter as the "Uniform Controls." The time period during which the Uniform Controls shall be applicable shall be determined separately for each rental unit, with the controls becoming applicable for a unit on the day on which the first certified household occupies the unit and expiring on the thirtieth (30th) [substitute, if applicable: tenth (10th)] anniversary date of such initial occupancy.

The covenants, reservations and restrictions set forth in this deed restriction shall be deemed covenants running with the land and shall pass to and be binding upon Grantee's assigns and successors in title to the Property. Each and every contract, deed, mortgage or other instrument hereafter executed covering, pertaining to or conveying the land or any improvements thereto, and any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed, mortgage or other instruments. If a portion or portions of the Property is conveyed, all such covenants, reservations and restrictions shall run to each portion of the Property.

This deed restriction shall remain in full force and effect despite the entry of any judgment of foreclosure with respect to any mortgage or other lien secured by the Property.

## APPENDIX C

### FORM OF RELEASE OF AFFORDABILITY DEED RESTRICTION

[Supply name of administrative agent], as administrative agent duly appointed pursuant to the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq., hereby

certifies that the applicability of said controls to this real estate, including the land and all improvements thereto, has expired and that the Affordability Deed Restriction [supply specific reference to recorded instrument] is no longer of any force or effect.

## SUBCHAPTER 27. (RESERVED)

## SUBCHAPTER 28. NONPUBLIC RECORDS

### 5:80-28.1 Nonpublic records

(a) The documents, files, data and other records of the New Jersey Housing and Mortgage Finance Agency which are listed below shall not be deemed to be public records pursuant to N.J.S.A. 47:1A-1 et seq. Such records shall not be available for inspection, examination or copying by members of the public or by any other individual except authorized members and employees of the Agency or except as provided by order of the Governor of New Jersey, a court of competent jurisdiction, or applicable law.

1. All confidential reports, executive memoranda and evaluations submitted to the Executive Director of the Agency, the members of the Agency or to any other State Agency;
2. All personnel records;
3. All records concerning applications for employment with the Agency;
4. All records concerning personal or financial information submitted by applicants for or tenants of rental housing units financed by the Agency;
5. All records concerning personal or financial information submitted by applicants for or recipients of any single family mortgage loan or home improvement loan of the Agency;
6. All records concerning personal or financial information, including Agency form, Certification and Questionnaire, submitted by individuals, corporations, partnerships and other entities doing or seeking to do business with the Agency; and
7. All reports, correspondence and other documents or data provided or discussed at the Executive Session of the meetings held by the members of the Agency, except that any action taken or other information required to be disclosed to the public pursuant to N.J.S.A. 10:4-6 et seq. shall not be deemed to be nonpublic records within the scope of this subchapter.

**SUBCHAPTER 29. INVESTMENT OF HOUSING  
PROJECT FUNDS****5:80-29.1 Permitted investments**

(a) Housing sponsors whose mortgages are insured by the U.S. Department of Housing and Urban Development (HUD), may, with prior Agency approval, invest available funds including escrow funds in taxable or tax free investments permitted by HUD, provided that they have not incurred operating losses for the past three years and provided that all escrows are fully funded at the time of the request.

(b) Housing sponsors of all other projects, with prior Agency approval, may invest available funds including escrow funds in the following, provided that they have not incurred operating losses for the past three years and provided that all escrows are fully funded at the time of the request:

1. State of New Jersey general obligation bonds;
2. New Jersey Housing and Mortgage Finance Agency bonds, which shall be rated A or higher;
3. Bonds of municipalities, instrumentalities or agencies of the State of New Jersey, which shall be rated A or higher and whose rating of A or higher has been confirmed within the past 12 months;
4. New Jersey bond funds (consisting of bonds of any of the entities in (b)1 through 3 above) of which at least 90 percent of the bonds within the fund are rated A or higher and whose ratings have been confirmed within the past 12 months;