

# RULE PROPOSALS

## INTERESTED PERSONS

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

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

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

## COMMUNITY AFFAIRS

### (a)

#### OFFICE OF THE COMMISSIONER, LOCAL PLANNING SERVICES

#### Procedural Rules of the New Jersey Department of Community Affairs for the Period Beginning on June 2, 2008

**Proposed Amendments: N.J.A.C. 5:96-5, 12.1, 12.2, 12.3, 12.4, 13.1, 16, 17.1, 17.2, 17.3, 17.4, 18, 19, 20.1, 20.2, and 20.3**

**Proposed Repeals and New Rules: N.J.A.C. 5:96-13.2 and 13.3**

**Proposed Repeals: N.J.A.C. 5:96-13.4, 13.5, 15, and 20.4**

**Proposed New Rules: N.J.A.C. 5:96-12.5 and 16.5**

Authorized By: Lori Grifa, Commissioner, New Jersey Department of Community Affairs.

Authority: N.J.S.A. 52:27D-301 et seq., and Reorganization Plan No. 001-2011.

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

Proposal Number: PRN 2011-243.

Submit comments by January 20, 2012 to:

Sean Thompson  
NJ Department of Community Affairs  
PO Box 813  
Trenton, NJ 08625-0800  
Fax No. (609) 633-6056  
[lpsmail@dca.state.nj.us](mailto:lpsmail@dca.state.nj.us)

All comments should be identified by the applicable New Jersey Administrative Code citation and submitted in the following format:

“5:96-1.4 Comment: The definition of household should be changed to delete the reference to persons under age 18.” This may be followed with any supporting reasons, references, and any other additional information that the commenter wishes to provide.

The New Jersey Department of Community Affairs (Department) encourages comments to be submitted in electronic form to [lpsmail@dca.state.nj.us](mailto:lpsmail@dca.state.nj.us) to enable an expeditious review and response. Such comments should include the words “Rule Comments” in the subject box. The Department 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 agency proposal follows:

#### Summary

Pursuant to the Governor’s Reorganization Plan for the Council on Affordable Housing, Reorganization Plan No. 001-2011 (Reorganization Plan), the New Jersey Council on Affordable Housing (COAH) ceased to exist after August 29, 2011. The Reorganization Plan’s consolidation of the statutory functions, powers, and duties of COAH with those of the Department streamlines the activities of the Department and reduces bureaucracy and repetition of functions. Committed to affordable housing for low- and moderate-income residents of New Jersey, the Department will continue to implement the Fair Housing Act (FHA) and the powers and duties previously assigned to COAH through the Office of the Commissioner, Local Planning Services. The Office of the Commissioner will provide assistance to municipalities and developers of affordable housing and will implement and administer the FHA.

As required by the FHA at N.J.S.A. 52:27D-307.5, the Commissioner has the authority to adopt all rules necessary for effectively carrying out the provisions and purposes of the act and the Reorganization Plan. Procedural rules, which became effective on June 2, 2008 as N.J.A.C. 5:96, and were subsequently amended on October 20, 2008, currently govern the process to be followed by municipalities and developers involved with implementation and administration of the FHA. As a result of the Reorganization Plan, the process and procedures previously employed by COAH are being updated to reflect the transfer of authority to the Commissioner and to increase regulatory flexibility and efficiency through streamlined protocols.

P.L. 2008, c. 46 amended the FHA at N.J.S.A. 52:27D-329.9, to require certain developments in specified special resource areas that are under the jurisdiction of certain regional planning entities to reserve at least 20 percent of the residential units constructed for occupancy by low- or moderate-income households. An exception to the law applies where it can be demonstrated that it is not economically feasible to comply. Similarly, P.L. 2008, c. 46 amended the FHA at N.J.S.A. 52:27D-311(i), to authorize the joint application of a municipality and a developer to seek approval of reduced affordable housing set-asides or increased densities to ensure the economic feasibility of an inclusionary development. The proposed amendments, repeals and new rules set forth procedures whereby the Department will consider and act on requests for such determinations.

The specific proposed amendments, new rules, and repeals follow:

Throughout the chapter, references to the “Council” are replaced with “Department” or “Commissioner” as appropriate and references to “Council’s Executive Director” are replaced with “municipal governing body.”

Existing N.J.A.C. 5:96-5 is proposed for amendment to expedite the review and approval of development fee ordinances and amendments;

rather than submit a resolution, municipalities may submit a letter requesting review and approval of development fee ordinances or amendments. The draft ordinance submitted will be reviewed and the municipality will be notified whether the development fee ordinance and/or amendment has been approved. The change removes an unnecessary step in the development fee ordinance review and approval process. A further amendment clarifies that municipalities are prohibited from collecting fees unless the ordinance has been approved by the Department and adopted by the municipality. The proposed amendments at N.J.A.C. 5:96-5.3 and 5.4 eliminate the requirement for a resolution requesting review and approval of a spending plan or amendment to a spending plan. The proposed amendments allow municipalities to request a spending plan and a spending plan amendment approval via letter, and the municipality will be notified whether the spending plan or amendment has been approved.

The proposed amendments to N.J.A.C. 5:96-12, General Powers, require all applications to follow the procedures set forth in N.J.A.C. 5:96-13. New N.J.A.C. 5:96-12.5 sets forth how a determination of economic feasibility will be determined.

Existing N.J.A.C. 5:96-15, Waivers, is proposed for repeal. The proposed amendments and new rules contained in N.J.A.C. 5:96-13 create a new process for waiver requests and requests for agency review of issues, other than a waiver of rules (previously referred to as motions). The request is to be made in letter form. This new process will reduce the cost of requesting relief. Prior to submitting any request for relief, the party requesting relief shall contact the Department to obtain a list of interested parties that must be served via hard copy. The Department shall be responsible for providing notification to interested parties who wish to be notified electronically. The request and any comments received will then be reviewed and the parties notified of the relief granted. Existing N.J.A.C. 5:96-13.1(b), (c), and (d) are proposed for deletion as new (b) and (c) set forth that requests for relief shall be submitted electronically and state what information must be submitted to the Department. N.J.A.C. 5:96-13.2 is proposed for repeal as that information is now contained in N.J.A.C. 5:96-13.1(b).

New N.J.A.C. 5:96-13.2(a) states that upon receipt, the request will be posted on the Department website and, where applicable, on the municipality's website. New N.J.A.C. 5:96-13.2(b) state that comments to the request will be accepted within two weeks (10 business days) of the posting. New N.J.A.C. 5:96-13.2(c) states the requirements for expedited review and emergent relief.

Existing N.J.A.C. 5:96-13.3, Oral argument, 13.4, Time for service and filing motions and affidavits or briefs, and 13.5, Orders, are proposed for repeal. New N.J.A.C. 5:96-13.3 sets forth the review process and criteria for requests for review.

Existing N.J.A.C. 5:96-16 through 20 are recodified as 15 through 19, as a result of the proposed repeal of existing N.J.A.C. 5:96-15. These subchapters are discussed below using their as proposed to be recodified locations. Further, several internal cross-references are also proposed to be updated. The proposed amendments to N.J.A.C. 5:96-16, 17, and 18 also permit municipalities to designate or appoint municipal housing liaisons (MHL), administrative agents (AA), and regional contribution agreement (RCA) administrators, respectively, without Departmental approval. Municipalities will only have to notify the Department of any new appointments or designations. N.J.A.C. 5:96-16.4, 17.3, and 18.4 are proposed for amendment to delete all timeframes to complete the mandated education requirements for existing employees, as those timeframes have passed. As a result of the proposed amendments to N.J.A.C. 5:96-17 and 18, existing N.J.A.C. 5:96-17.2(c) through (e) and 18.3(d) are proposed for deletion. In addition, existing N.J.A.C. 5:96-16.4(c), 17.3(b), and 18.4(c) are proposed for deletion to remove the requirement that Administrative Agents, Municipal Housing Liaisons and RCA Administrators attend continuing education courses above and beyond the completion of their required Education Programs.

Proposed new N.J.A.C. 5:96-16.5 allows municipalities to revise and approve affordable housing operating manuals and submit them to the Department.

Existing N.J.A.C. 5:96-20.4, which sets forth the standards for determining satisfactory completion of the Department's Education Programs for Municipal Housing Liaisons, Administrative Agents, and

RCA Administrators is proposed for deletion as a result of amendments to N.J.A.C. 5:96-16.4(a), 17.2(b)3, 17.3(a), and 18.4(a) that amend the rules to require the "completion," rather than the "successful completion" of the Education Programs.

Pursuant to N.J.A.C. 1:30-3.3(a)5, this notice of proposal is not required to be referenced in a rulemaking calendar since a public comment period of 60 days is being provided.

#### **Social Impact**

The Department's rules governing procedures associated with municipal plans to address affordable housing requirements pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., have an impact on a majority of the 566 municipalities in the State of New Jersey. The proposed amendments, new rules, and repeals will benefit the public by reducing municipal costs and administrative burdens thus creating a more effective and efficient means for the delivery of affordable housing. These efficiencies will also have a positive impact on developers of affordable housing by enhancing the predictability of administrative procedures associated with affordable housing production. A new procedure for determining the economic feasibility of complying with affordable housing set-asides required pursuant to statute or municipal zoning will reduce uncertainty and provide consistency and predictability for the developers of affordable housing. The new procedure will also reduce production delays impacting housing opportunities for low- and moderate-income households.

#### **Economic Impact**

The proposed amendments, new rules, and repeals will have a positive economic impact on municipalities and the developers of low- and moderate-income housing in that streamlined procedures will result in less administrative cost and reduced time delays. A procedure for determining the economic feasibility of complying with the current law or municipal zoning will ensure the economic viability of affordable housing proposals and will also provide consistency and predictability for applicants thus eliminating costs associated with uncertainty. The new procedures associated with the submission of requests for relief will reduce costs associated with such requests through reduced mailing and copying costs, as well as the possibility of reduced legal fees associated with the preparation of requests.

#### **Federal Standards Statement**

No Federal standards analysis is required because the amendments, repeals, and new 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 Department does not believe that the proposed amendments, repeals, and new rules will have any impact on jobs in New Jersey.

#### **Agriculture Industry Impact**

The Department does not anticipate that the proposed amendments, repeals, and new rules will result in any impact on the agricultural industry in New Jersey.

#### **Regulatory Flexibility Statement**

The proposed amendments, repeals, and new rules regulate municipalities, not small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and, therefore, the proposed amendments, repeals, and new rules affecting procedures for municipalities will not have an impact on small businesses. However, the proposed amendments, repeals, and new rules enhance flexibility in procedures followed by municipalities, which may benefit small businesses with which municipalities contract for services, since the proposed amendments, repeals, and new rules are designed to reduce bureaucracy and repetition of functions.

#### **Housing Affordability Impact Analysis**

The proposed amendments, repeals, and new rules will have a positive impact on housing affordability by reducing administrative costs to municipalities and the developers of low- and moderate-income housing.

Financial feasibility determinations will determine whether a developer can meet the required set-asides.

#### Smart Growth Development Impact Analysis

The proposed amendments, repeals, and new rules increase the efficiency and flexibility of administrative procedures regulating the implementation and administration of municipal affordable housing plans. The proposed amendments, repeals, and new rules may increase the availability of affordable housing throughout the State by streamlining request procedures and by creating a process for economic feasibility determinations. The substantive rules associated with these procedural rules, which are not the subject of this proposed rulemaking, contain numerous provisions to ensure that housing options are appropriately targeted within 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 New Jersey Administrative Code at N.J.A.C. 5:96-13.2, 13.3, 13.4, 13.5, 15, and 20.4.

**Full text** of proposed amendments and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

### CHAPTER 96

#### PROCEDURAL RULES OF THE NEW JERSEY [COUNCIL ON AFFORDABLE HOUSING] DEPARTMENT OF COMMUNITY AFFAIRS, OFFICE OF THE COMMISSIONER, LOCAL PLANNING SERVICES FOR THE PERIOD BEGINNING ON JUNE 2, 2008

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

##### 5:96-5.1 Development fee ordinance review

(a) Pursuant to N.J.A.C. 5:97-8.3, a municipality that seeks to impose mandatory development fees shall submit its proposed development fee ordinance to the [Council] **Department** for review and approval.

(b) The [Council] **Department** shall review a development fee ordinance once the municipality has submitted:

1.-3. (No change.)

[4. 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. 5:96-3; and]

**4. A letter requesting that the Department review and approve the development fee ordinance; and**

5. If applicable, a copy of the compliance plan, implementing ordinances, and information regarding the period of time encompassed by the judgment of compliance and a request for review by the court if the municipality has received a court ordered judgment of compliance. The court shall indicate if the [Council] **Department** is to monitor the development fees and authorize the [Council] **Department** to execute an escrow agreement pursuant to N.J.A.C. 5:97-8.2.

(c) Once the [Council] **Department** has approved the development fee ordinance, the municipality's governing body may adopt the development fee ordinance, which shall be filed with the [Council] **Department** within seven days of adoption. **A municipality shall not collect development fees unless its ordinance has been approved by the Department and has been adopted by the municipality.**

##### 5:96-5.2 Amendment to an approved development fee ordinance

(a) A municipal amendment to an approved development fee ordinance pursuant to N.J.A.C. 5:96-5.1 shall be reviewed and approved by the [Council] **Department** prior to the adoption and imposition of fees pursuant to the 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. ]

**(b) A municipality shall submit a letter requesting that the Department review and approve an amendment to an approved development fee ordinance.**

(c) Once the [Council] **Department** 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] **Department** within seven days of adoption. **A municipality shall not collect development fees based on a development fee ordinance amendment unless its ordinance amendment has been approved by the Department and has been adopted by the municipality.**

##### 5:96-5.3 Spending plan review

(a) Pursuant to N.J.A.C. 5:97-8.1(d), a municipality that seeks to maintain an affordable housing trust fund shall submit its proposed spending plan to the [Council] **Department** for review and approval prior to the spending of funds.

(b) A municipality shall submit [a resolution by the governing body endorsing the spending plan compliant with N.J.A.C. 5:97-8.10 and] **a letter requesting review and approval of its spending plan** by the [Council] **Department**, unless the spending plan was submitted as part of a petition pursuant to N.J.A.C. 5:96-3].

##### 5:96-5.4 Amendment to an approved spending plan

(a) An amendment to an approved spending plan shall be reviewed and approved by the [Council] **Department** prior to the spending of 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 spending plan compliant with N.J.A.C. 5:97-8.10] **letter requesting that the Department review and approve an amendment to an approved development fee ordinance.**

#### SUBCHAPTER 12. GENERAL POWERS

##### 5:96-12.1 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] **Department**, the [Council] **Department** 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] **Department** may require additional information or documentation necessary to determine whether the issuance of a scarce resource restraint is appropriate. **In addition to the requirements set forth in this section, all applications from interested persons shall follow the procedures set forth in N.J.A.C. 5:96-13.**

##### 5:96-12.2 Accelerated denial of substantive certification

At any time, upon its own determination, or upon the application of any interested person, the [Council] **Department** may deny substantive certification without proceeding further with the mediation and review process. **In addition to the requirements set forth in this section, all applications from interested persons shall follow the procedures set forth in N.J.A.C. 5:96-13.**

##### 5:96-12.3 Administrative orders

At any time, upon its own determination, or upon the application of an interested person, the [Council] **Department** may issue an administrative order for a municipality to provide information or take an action that expedites the [Council's] **Department's** administrative process and/or the production of low- and moderate-income housing. The [Council] **Department** 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. **In addition to the requirements set forth in this section, all applications from interested persons shall follow the procedures set forth in N.J.A.C. 5:96-13.**

##### 5:96-12.4 Orders to show cause

At any time, upon its own discretion, the [Council] **Department** may issue an Order to Show Cause for a municipality to [appear before the Council.] provide any information requested by the [Council,] **Department** and show cause why the [Council] **Department** should not

limit or terminate the benefits of the [Council's] Department's jurisdiction or take any other action it deems necessary. In addition to the requirements set forth in this section, all applications from interested persons shall follow the procedures set forth in N.J.A.C. 5:96-13.

#### 5:96-12.5 Determinations of economic feasibility

(a) Pursuant to N.J.S.A. 52:27D-329.9(a) and (b), developers of sites where it is contended that it is not economically feasible to reserve at least 20 percent of the residential units constructed for occupancy by low- or moderate-income households, shall submit a request for a determination of economic feasibility to the Department.

(b) Pursuant to N.J.S.A. 52:27D-311(i), a municipality and a developer, may submit a joint request to approve reduced affordable housing set-asides or increased densities to ensure the economic feasibility of the requirements set forth in municipal zoning that has been established to create inclusionary development.

(c) Requests made pursuant to (a) and (b) above shall minimally include all of the following information:

1. The location of the project, including all block and lot parcels comprising the development;

2. The size, total number, and type of both market-rate units and affordable units included in the proposed development;

3. The total square footage of any non-residential components of the proposed development broken down by use type;

4. Details on all hard and soft costs associated with the proposed development;

5. Operating expenses for all rental components of the proposed development;

6. Anticipated revenues from the sale and/or lease of all structures proposed;

7. Dates specifying predevelopment project start, land acquisition, construction start and finish, and closing and/or lease-up schedules;

8. Construction and permanent financing terms;

9. Developer fees;

10. A narrative explaining the position of the developer, including the expected return on investment and the method used to evaluate the expected return on investment; and

11. Other information as may be required to make the determination being requested.

(d) Upon receipt of all requested information, the Department shall make a determination on the economic feasibility of providing the required set-aside, which may also include alternate solutions.

(e) In addition to the requirements set forth in this section, all requests for determination shall follow the procedures set forth in N.J.A.C. 5:96-13.

### SUBCHAPTER 13. [MOTIONS] REQUESTS FOR RELIEF

#### 5:96-13.1 Form and content of [motion] request

(a) [An application] A request for relief from rules shall be in the form of a letter 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] Commissioner. The letter shall state the [time and place when it is to be presented to the Council, the] grounds upon which [it] the request is made[,] and the nature of the relief sought. When a matter becomes a contested case, [motions] the contested issues shall [generally be made] be referred to OAL pursuant to N.J.A.C. 1:1-12.

(b) A party shall submit one original and 20 copies of all motions, answering papers and accompanying papers. Alternatively, a party may submit one original in a hard copy format and an electronic format. All papers shall be accompanied by a certification of service.

(c) The Council shall not accept motions for reconsideration.

(d) The Council shall not accept a motion if an objection has been filed pursuant to N.J.A.C. 5:96-4.1 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.]

(b) Requests for relief shall be accompanied by necessary supporting affidavits, briefs, and documents. Requests that rely on facts that are not of record or which are not subject to official notice shall be supported by an affidavit. 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.

(c) Prior to submitting any request for relief, the party requesting relief shall contact the Department to obtain a list of interested parties, if any, that must be served via hard copy. The Department shall be responsible for providing notification to interested parties who have asked to correspond electronically. A party seeking relief shall submit the request, including any supporting documentation, in electronic format to the Department. All requests shall be accompanied by a certification of service for interested parties that have been notified with hard copies.

#### 5:96-13.2 Notice and comment

(a) Upon receipt, the request for relief and any supporting documentation shall be posted on the Department website. In addition, if the party requesting relief is a municipality having a website, the municipality shall post the request and supporting documentation on its website.

(b) Comments to a request for relief will be accepted within two weeks (10 business days) of the posting. Requests for additional time to comment shall be made to the Commissioner.

(c) A party seeking emergent relief shall contact the Commissioner to request an expedited review. A determination to proceed with emergent relief shall be made by the Commissioner.

#### 5:96-13.3 Review process and criteria

(a) The request for relief, any supporting documentation, and any comments received shall be reviewed by the Commissioner. Additional information may be requested if deemed necessary.

(b) The Commissioner may grant relief from specific provisions of applicable Department rules if it is demonstrated that the strict application of the provision(s) would create an unnecessary financial, environmental, or other hardship; or granting the requested relief fosters the production of affordable housing and is consistent with the intent, if not the letter, of N.J.A.C. 5:96 and 5:97.

(c) The Department shall not accept requests for reconsideration.

(d) If mediation has been scheduled pursuant to N.J.A.C. 5:96-8.1 and such mediation is ongoing as set forth in N.J.A.C. 5:96-8.3, the Department shall not accept a request for relief if an objection has been filed pursuant to N.J.A.C. 5:96-4.1 by the same party on substantially the same matter. After the participants have completed mediation, a request for relief may be filed on the matter. The mediator shall determine if the request presents a substantial change in facts or law and, upon a positive finding, shall refer the matter to the Commissioner.

(e) The Commissioner shall render a decision and shall post the decision on the Department's website. The party seeking relief, as well as all known interested parties and objectors, shall be notified of the Commissioner's decision by email or hard copy when no email address is available.

### SUBCHAPTER [16.] 15. JURISDICTIONAL AND TRANSITIONAL PROCEDURES

5:96-[16.1]15.1 Municipalities that received second round substantive certification prior to December 20, 2004 that expires subsequent to June 2, 2008

(a) The [Council] Department shall continue to review and approve RCAs, conduct mediation that is in progress, and review and approve amendments to second round certified plans for municipalities that received second round substantive certification prior to December 20, 2004 that expires subsequent to June 2, 2008 until the expiration of substantive certification.

(b) To remain under the jurisdiction of the [Council] Department for the third round fair share obligation, a municipality with second round substantive certification that expires subsequent to June 2, 2008 shall file

or petition with a third round Housing Element and Fair Share Plan by the earlier of the expiration date of its second round substantive certification or the date set forth in N.J.A.C. 5:96-[16.2]15.2.

5:96-[16.2]15.2 Municipalities that petitioned for but did not receive third round substantive certification

(a) To remain under the jurisdiction of the [Council] **Department**, a municipality that petitioned for but did not receive third round substantive certification shall re-petition with an amended third round Housing Element and Fair Share Plan on or before noon December 31, 2008.

5:96-[16.3]15.3 (No change in text.)

#### SUBCHAPTER [17.] 16. MUNICIPAL HOUSING LIAISON

5:96-[17.1]16.1 (No change in text.)

5:96-[17.2]16.2 Responsibilities of the municipal housing liaison

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

1.-2. (No change.)

3. Compiling, verifying, and providing monitoring information at such time and in such form as the [Council] **Department** requires;

4.-5. (No change.)

(b) The municipal housing liaison may also serve as the administrative agent pursuant to N.J.A.C. 5:96-[18]17 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. 5:96-[18]17.

5:96-[17.3]16.3 [Approval] **Appointment** 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] **municipal approval by the governing body**.

(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) (b) (No change in text.)

(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.]

(c) **Notification of an appointment of a municipal housing liaison shall be submitted to the Department immediately using forms available on the Department's website.**

5:96-[17.4]16.4 Education requirements

(a) [In order to receive approval, all] **All** appointed municipal housing liaisons shall [successfully] complete the [Council's] **Department's** Education Program for Municipal Housing Liaisons. [as described in N.J.A.C. 5:96-20 in the timeframes set forth below:

1. Any municipal employee already serving as municipal housing liaison as of June 2, 2008 shall be required to successfully complete the Education Program for Municipal Housing Liaisons by the later of December 2, 2008, or the date of the next Education Program for Municipal Housing Liaisons.

2. Any municipal employee appointed to serve as municipal housing liaison subsequent to June 2, 2008 shall be required to successfully complete the Education Program for Municipal Housing Liaisons by the later of six months from the date of appointment, or the date of the next Education Program for Municipal Housing Liaisons.]

(b) If the municipal housing liaison is to perform the duties of an administrative agent, in order to receive approval, the municipal housing liaison shall also [successfully] complete the [Council's] **Department's** Education Program for Administrative Agents. [as described in N.J.A.C. 5:96-20 in the timeframes set forth below:

1. Any municipal employee already serving as municipal housing liaison as of June 2, 2008 shall be required to successfully complete the Education Program for Administrative Agents by the later of June 2, 2009, or one year after the date of the first Education Program for Administrative Agents.

2. Any municipal employee appointed to serve as municipal housing liaison subsequent to June 2, 2008 shall be required to successfully complete the Education Program for Administrative Agents by the later of one year from the date of appointment, or the date of the next Education Program for Administrative Agents.]

(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.]

#### 5:96-16.5 Operating manuals

(a) **The municipality shall adopt and provide an operating manual for each type of program available in the municipality, which describes the administrative procedures that will be used to find and qualify affordable households for available units in the municipality.**

(b) **The municipal housing liaison shall submit municipally adopted operating manuals to the Department.**

#### SUBCHAPTER [18.] 17. ADMINISTRATIVE AGENT

5:96-[18.1]17.1 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] **applicable Department** rules and UHAC.

(b)-(c) (No change.)

5:96-[18.2]17.2 [Approval] **Appointment** of administrative agent

(a) The [designation] **appointment** of the administrative agent is subject to review and approval by the [Council's Executive Director] **municipal governing body**.

(b) An administrative agent may apply directly to the [Council] **municipality** for approval by submitting the following:

[1. All documentation required for designation of an administrative agent as set forth in UHAC:]

Recodify existing 2. and 3. as **1. and 2.** (No change in text.)

[4.] **3.** Evidence of [satisfactory] completion of the [Council's] **Department's** Education Program for Administrative Agents as described in N.J.A.C. 5:96-[20]19; and

[5.] **4.** Any additional documentation required by the [Council's Executive Director] **Department**.

(c) The Council shall maintain and publish on its website a list of approved administrative agents, which includes the Agency in accordance with N.J.S.A. 52:27D-324.

(d) If the administrative agent is not currently approved, evidenced by (c) above, the municipality shall submit to the Council all documentation required for designation of each administrative agent as set forth in UHAC.

(e) 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.]

5:96-[18.3]17.3 Education requirements

(a) All administrative agents shall [successfully] complete the [Council's] **Department's** Education Program for Administrative Agents as described in N.J.A.C. 5:96-[20]19. [in the timeframes set forth below:

1. Any person or entity already serving as an administrative agent as of June 2, 2008 shall successfully complete the Education Program for Administrative Agents by June 2, 2010.

2. Any person or entity who anticipates serving as an administrative agent subsequent to June 2, 2008 shall successfully complete the Education Program for Administrative Agents prior to designation by a municipality.

3. If there is a delay in the availability of one or more sessions required to complete the Education Program for Administrative Agents, the Council may extend the period in which an administrative agent shall successfully complete the Education Program for Administrative Agents.]

[(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.] 18. RCA ADMINISTRATOR

##### 5:96-[19.1]18.1 Requirement for an RCA administrator

(a) All municipalities receiving 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.

##### 5:96-[19.2]18.2 Responsibilities of the RCA administrator

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

1. (No change.)
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] **Department**;
3. (No change.)
4. Compiling, verifying, and submitting reports at such time and in such form as the [Council] **Department** requires;
- 5.-6. (No change.)

(b) The RCA administrator may also serve as the administrative agent pursuant to N.J.A.C. 5:96-[18]17 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. 5:96-[18]17.

(c) A municipality that has also appointed a municipal housing liaison pursuant to N.J.A.C. 5:96-[17]16, shall contract with an administrative agent pursuant to N.J.A.C. 5:96-[18]17 for all applicable tasks not performed by the RCA administrator or municipal housing liaison.

##### 5:96-[19.3]18.3 Approval of the RCA administrator

(a) The appointment of the RCA administrator is subject to review and approval by the [Council's Executive Director] **municipal governing body**.

(b) Upon submission of an RCA Project Plan to the [Council] **Department**, 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.-2. (No change.)
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] **Department**.

[(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.]

##### 5:96-[19.4]18.4 Education requirements

(a) In order to receive approval, all appointed RCA administrators shall [successfully] complete the [Council's] **Department's** Education Program for RCA Administrators as described in N.J.A.C. 5:96-[20]19. [in the timeframes set forth below:

1. Any municipal employee already serving as RCA administrator as of June 2, 2008 shall be required to successfully complete the Education Program for RCA Administrators by the later of December 2, 2008, or the date of the next Education Program for RCA Administrators.

2. Any municipal employee appointed to serve as RCA administrator subsequent to June 2, 2008 shall be required to successfully complete the Education Program for RCA Administrators by the later of six months from the date of appointment, or the date of the next Education Program for RCA Administrators.]

(b) If the RCA administrator is to perform the duties of the administrative agent, in order to receive approval, the RCA administrator shall also [successfully] complete the [Council's] **Department's** Education Program for Administrative Agents as described in N.J.A.C. 5:96-[20]19. [in the time frames set forth below:

1. Any municipal employee already serving as RCA administrator as of June 2, 2008 shall be required to successfully complete the Education Program for Administrative Agents by the later of June 2, 2009, or one year after the date of the first Education Program for Administrative Agents.

2. Any municipal employee appointed to serve as RCA administrator subsequent to June 2, 2008 shall be required to successfully complete the Education Program for Administrative Agents by the later of one year from the date of appointment, or the date of the next Education Program for Administrative Agents.]

[(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.] 19. EDUCATION PROGRAM

##### 5:96-[20.1]19.1 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. 5:96-[17]16, an administrative agent pursuant to N.J.A.C. 5:96-[18]17, and/or an RCA administrator pursuant to N.J.A.C. 5:96-[19]18.

##### 5:96-[20.2]19.2 Cost and tuition

(a) The [Council's Executive Director] **Department** 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] **Department** 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] **Department** pursuant to N.J.A.C. 5:96-[17.4]16.4, [18.3]17.3 and [19.4]18.4. Such funding shall be limited to one municipal employee per year.

5:96-[20.3]19.3 (No change in text.)