

THIRD ROUND RULES

certification or in accordance with the municipality's implementation schedule pursuant to N.J.A.C. 5:97-3.2(a)4:

1. A pro-forma for any proposed acquisition and/or rehabilitation costs;
2. Documentation demonstrating the source(s) of funding;
3. A municipal resolution appropriating funds or a resolution of intent to bond in the event of a shortfall of funds;
4. A draft or adopted operating manual that includes a description of the program procedures and administration in accordance with UHAC;
5. An affirmative marketing plan in accordance with UHAC; and
6. Designation of an experienced administrative agent, including a statement of his or her qualifications, in accordance with N.J.A.C. 5:96-18.

5:97-6.15 Other innovative approaches

- (a) A municipality may propose innovative programs or mechanisms, or any combination of mechanisms included in this subchapter, for the creation of affordable housing, provided that the following performance standards can be achieved and clearly demonstrated:
1. The units shall comply with N.J.A.C. 5:97-9 and UHAC;
 2. All sites to be developed with new units shall meet the site suitability criteria set forth in N.J.A.C. 5:97-3.13;
 3. Rehabilitated and converted units shall meet all local building codes;
 4. The municipality shall demonstrate source(s) of funding; and
 5. Units shall not be restricted to youth under 18 years of age.

SUBCHAPTER 7. REGIONAL CONTRIBUTION AGREEMENTS

5:97-7.1 General provisions

- (a) A municipality that intends to enter into regional contribution agreements (RCAs) as a receiving municipality shall notify the Council of its interest and of any proposed conditions or requirements for its participation.
- (b) The Council shall maintain current lists of municipalities which have notified it of the intent to enter into RCAs as receiving municipalities and shall provide copies of such lists to potential sending municipalities as requested.
- (c) A municipality that is a defendant in an exclusionary zoning lawsuit or that is under the jurisdiction of the court for its housing obligation may request permission from the court to fulfill a portion of its fair share obligation by entering into an RCA. Pursuant to the Act, the court shall request that the Council review and make a recommendation concerning the proposed RCA.

- (d) The minimum per unit transfer amount for each housing region, which may be reconsidered by the Council periodically, shall be the following:

<u>Housing Region</u>	<u>Amount Per Unit</u>
1	\$80,000
2	\$67,000
3	\$67,000
4	\$70,000
5	\$71,000
6	\$80,000

- (e) If resolutions of intent or a signed agreement were adopted by both the sending and receiving municipalities between December 20, 2004 and December 17, 2007, the per unit transfer amount may be less than the minimums in (d) above, but not less than \$35,000 per unit, provided the project plan is feasible pursuant to N.J.A.C. 5:97-7.6. If resolutions of intent or a signed agreement were adopted by both municipalities on or before December 20, 2004, the per unit transfer amount may be less than the minimums in (d) above, but not less than \$25,000 per unit, provided the project plan is feasible pursuant to N.J.A.C. 5:97-7.6. If the RCA resolutions or contracts are amended to add additional units after December 17, 2007, the additional units shall be transferred at the minimums in (d) above.

5:97-7.2 Submission requirements

- (a) The sending municipality shall notify its county planning board of its intent to enter into an RCA prior to submission of its plan to the Council.
- (b) Statements of intent shall be submitted at the time of petition or in accordance with the municipality's implementation schedule pursuant to N.J.A.C. 5:97-3.2(a)4 by the sending municipality and the receiving municipality and shall be in the form of a duly adopted resolution. Resolutions of intent are not binding upon either municipality and shall not preclude a receiving municipality from negotiating with any other potential sending municipality or renegotiating the per unit transfer amount.
- (c) A draft contractual agreement shall be submitted to the Council by the sending municipality at the time of petition or in accordance with the municipality's implementation schedule pursuant to N.J.A.C. 5:97-3.2(a)4 and shall specify, at a minimum, the receiving municipality, the number of units to be transferred, the type of housing activity anticipated by the receiving municipality and the amount of compensation to be paid to the receiving municipality in return for such a transfer. The Council's Executive Director may require revisions to the initial contract upon review of the RCA and prior to the Council's approval.
- (d) The receiving municipality's completed RCA Project Plan shall be submitted to the Council by the receiving municipality no later than 90 days from the date the sending municipality's petition is submitted to the Council or in accordance with the municipality's implementation schedule pursuant to N.J.A.C. 5:97-3.2(a)4.
- (e) The sending municipality shall submit documentation demonstrating source(s) of funding.

5:97-7.3 Terms

- (a) All draft RCA contracts shall specify payment schedules that conform to a construction or rehabilitation schedule, relate to the receiving municipality's ability to deliver housing units in a timely fashion, and take place within the period of substantive certification of the sending municipality. For RCAs that include a scattered site rehabilitation program, all funds must be transferred one year prior to expiration of substantive certification.
- (b) The Council may, in its discretion, limit the number of RCA units that may be transferred to a receiving municipality based on a determination of the receiving municipality's capacity to administer the RCA units. The Council shall consider the municipality's past experience, if any, in administering affordable housing programs.
- (c) At least 50 percent of all units accepted by a receiving municipality shall be affordable to low income households. In the case of RCAs that include a scattered site rehabilitation program, the receiving municipality shall ensure, as best as practicable, that 50 percent of the rehabilitated units are occupied by low income households.
- (d) All units created or rehabilitated with RCA funds shall comply with N.J.A.C. 5:97-6, N.J.A.C. 5:97-9 and UHAC, as applicable.
- (e) No receiving municipality shall receive credit toward its fair share obligation for units provided pursuant to an RCA.
- (f) No municipality shall receive credit for any units provided for in the receiving municipality in excess of the units transferred pursuant to the RCA.
- (g) No municipality shall receive rental bonuses for rental units created with RCA funds.

5:97-7.4 Sending municipality

- (a) The number of age-restricted units that may be transferred shall be limited according to the sending municipality's age-restricted maximum pursuant to N.J.A.C. 5:97-3.8.
- (b) No funds shall be transferred by the sending municipality until COAH has reviewed and signed the escrow agreement required by N.J.A.C. 5:97-7.5(g).

5:97-7.5 Receiving municipality

- (a) A receiving municipality may use funds transferred through an RCA for any affordable housing activity including, but not limited to, the mechanisms set forth in N.J.A.C. 5:97-6. Rental obligations required by N.J.A.C. 5:97-3.4 or portions thereof that are transferred to a receiving municipality via an RCA must either create new rental housing units or meet the criteria for reconstruction.
- (b) If a receiving municipality intends to accept RCA units in excess of its rehabilitation share for a scattered site rehabilitation program, it shall demonstrate a need for rehabilitation by documenting an existing waiting list of eligible applicants or conducting an exterior housing survey in a form provided by the Council. The Council shall determine the proportion of deteriorated or substandard housing units that are occupied by low- and moderate-income households by applying the appropriate "Low-Moderate Deterioration Share" number found in chapter Appendix B.
- (c) The use of all funds shall be specified in an RCA Project Plan and shall be subject to Council approval. If there are funds in excess of the amount necessary to implement the RCA, the balance shall be used within the receiving municipality to produce additional

low- and moderate-income housing units or for capital or other expenditures benefiting low- and moderate-income households.

- (d) A maximum of \$6,000 per unit transferred may be expended on administration in the receiving municipality. These funds shall only be spent on expenses that are directly related to the administration of the RCA program and units. If additional units above the number transferred are created or rehabilitated, the receiving municipality may submit a request to COAH to expend additional funds on administration. The request shall document the need for the additional funds.
- (e) For RCA scattered site rehabilitation programs, the cumulative cost of major systems shall be no less than 50 percent of the hard costs for the unit.
- (f) RCA funds shall be deposited into a separate interest bearing escrow account for each RCA.
- (g) A receiving municipality shall enter into an escrow agreement with the Council and the bank that holds the escrow account, whereby the Council has access to the escrow account.
- (h) A receiving municipality shall create the position of RCA Administrator pursuant to N.J.A.C. 5:96-19 and, subject to the Council's approval, appoint a municipal employee to serve in that position.

5:97-7.6 Review by the Agency

- (a) The Agency shall review and provide the Council with a recommendation regarding the financial feasibility of the RCA Project Plan prior to the RCA receiving the Council's approval.
- (b) The receiving municipality shall submit a completed RCA Project Plan application to the Agency delineating the manner in which the receiving municipality shall create or rehabilitate low- and moderate-income housing in response to the RCA. The RCA Project Plan shall be in such a form and contain such information as the Council or the Agency may require, and shall include, but not be limited to the names of the project(s) and/or program(s) and the number of affordable units funded by the RCA, development costs, additional sources of funding for the projects or programs, applicability to COAH and UHAC rules and the agent responsible for administering the affordable units. The Council or the Agency may impose time limitations for the submission of an RCA Project Plan or any updates or conditions thereto.
- (c) The Agency may undertake such review as is necessary, including scheduling meetings or hearings and requiring further information, studies or reports, in order to render a timely report on the financial feasibility of the proposed plan for the Council. Failure of the receiving municipality to promptly or properly comply with the requirements of the Agency may result in the Agency's refusal to recommend the approval of the proposed project.

5:97-7.7 Review and approval by county planning board(s)

- (a) The receiving municipality's county planning board shall review and provide the Council with a recommendation regarding whether or not the RCA is in accordance with sound comprehensive regional planning and the goals and objectives of the State Development

and Redevelopment Plan and provides a realistic opportunity for low- and moderate-income housing within convenient access to employment opportunities prior to the RCA receiving the Council's approval.

- (b) A completed RCA Project Plan application, and the master plans and zoning ordinances of the sending and receiving municipalities, shall be forwarded to the county planning board of the county in which the receiving municipality is located for review and recommendation. The county planning board of the receiving municipality shall make a determination as to whether or not the RCA is in accordance with sound comprehensive regional planning and the goals and objectives of the State Development and Redevelopment Plan and provides a realistic opportunity for low- and moderate-income housing within convenient access to employment opportunities. If the RCA is between two municipalities in different counties, the county planning board of the receiving municipality may confer with or request information from the county planning board of the sending municipality.
- (c) All determinations of a county planning board shall be by resolution and shall be accompanied by a report detailing the reasons for the determination. No fee shall be paid to the county planning board for its review pursuant to this section.
- (d) The county planning board or agency shall file its review and recommendation with the Council within 45 days of receipt of a complete application for review. For good cause shown, a 15-day extension may be granted.

5:97-7.8 Review and approval by the Council

- (a) *An RCA shall be approved upon a finding by the Council that:*
 - 1. The project provides a realistic opportunity for low- and moderate-income housing within convenient access to employment opportunities as determined by the county planning board;
 - 2. The project is consistent with sound comprehensive regional planning and the goals, policies and objectives of the State Development and Redevelopment Plan as determined by the county planning board; and
 - 3. The receiving municipality's project is a financially feasible means of achieving the purposes of the RCA, as determined by the Agency.
- (b) Upon recommendation of the Agency, the Council may approve, as part of the RCA, a provision that the time limitations for contractual guarantees or resale controls for low- and moderate-income units included in the proposed RCA Project Plan may be for less than 30 years if the Agency determines that modification is necessary to assure the economic viability of the project.
- (c) The Council shall approve all RCAs by resolution. The Council shall set forth in its resolution a schedule for the contributions to be appropriated annually by the sending municipality. A copy of the adopted resolution shall be filed promptly with the Division of Local Government Services of the Department of Community Affairs. The Director of the Division, pursuant to N.J.S.A. 52:27D-312(d), shall thereafter not approve an annual budget of a sending municipality if it does not include appropriations necessary to meet the terms of the resolution.

- (d) An RCA that has been approved by the Council may be executed once the Council grants substantive certification to the sending municipality.

5:97-7.9 Monitoring

The RCA Administrator of the receiving municipality shall submit monitoring reports to the Council and with the Agency setting forth fiscal accountability and progress in implementing the projects to be produced under the RCA. These reports shall be submitted at such time and in such form as the Council and the Agency may require.

5:97-7.10 Enforcement

- (a) The Council shall take such actions as may be necessary to enforce an RCA with respect to the timely implementation of a project by the receiving municipality. Such actions may include, but are not limited to, one or more of the following:
1. Initiating a lawsuit to enforce an RCA contract;
 2. Preventing a delinquent receiving municipality from entering into further RCAs for a specified period of time;
 3. Ordering a sending municipality to temporarily or permanently cease payments to a receiving municipality;
 4. Recommending that the Agency and DCA withhold further assistance available under the Act from the receiving municipality;
 5. Ordering the receiving municipality's bank to cease disbursements from the RCA escrow account;
 6. Ordering the receiving municipality to amend its RCA Project Plan to include viable alternative housing activity;
 7. Directing the use of RCA funds to eligible housing activity in the municipality, county, or region; or
 8. Such other actions as the Council may determine necessary.

SUBCHAPTER 8. AFFORDABLE HOUSING TRUST FUNDS

5:97-8.1 Purpose

- (a) Affordable housing trust funds are intended to better enable municipalities to meet the low- and moderate-income housing needs in their municipality and region.
- (b) Affordable housing trust funds may contain mandatory development fees, payments in lieu of constructing affordable units on sites zoned for affordable housing, funds in a barrier free escrow, recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines and application fees, and any other funds collected by the municipality in connection with its affordable housing programs, as permitted by the Council.
- (c) A municipality may impose, collect and spend affordable housing trust funds only through participation in the Council's substantive certification process or through a comprehensive review designed to achieve a judgment of compliance.