

THIRD ROUND RULES

2. The affordable units are provided on-site;
 3. At least 50 percent of the affordable units are family units; and
 4. The development meets the zoning criteria pursuant to N.J.A.C. 5:94-6.4.
- (b) If the affordable units have not been constructed as of the date of petition, the municipality shall submit evidence of a firm commitment for the construction of the units in conformance with N.J.A.C. 5:94- 3.6(a)3ii.

5:97-3.19 Redevelopment bonus

- (a) A municipality may receive 1.33 units of credit for each affordable housing unit addressing its growth share obligation that was or will be created and occupied in the municipality or received preliminary or final approval, after June 6, 1999 that is included in a designated redevelopment area or rehabilitation area pursuant to the Local Redevelopment and Housing Law, N.J.S.A 40A:12A-1 et seq., when:
1. The preliminary and/or final approval provides for a minimum set-aside of 15 percent of the total number of units in the development, unless the development meets the criteria of N.J.A.C. 5:97-3.15. In this case, the development shall have a minimum 20 percent affordable housing set-aside, to the extent economically feasible;
 2. The affordable units are provided on-site;
 3. At least 50 percent of the affordable units are family units; and
 4. The development meets the redevelopment criteria pursuant to N.J.A.C. 5:97-6.6.
- (b) If the affordable units have not been constructed as of the date of petition, the municipality shall submit evidence of a firm commitment for the construction of the units in conformance with N.J.A.C. 5:94- 3.6(a)3ii.

5:97-3.20 Bonus caps

- (a) In no event shall a municipality receive more than one type of bonus for each unit (for example, a very-low income bonus or a rental bonus for one unit).
- (b) In no event shall the total number of bonuses for the growth share obligation granted in a municipal fair share plan exceed 25 percent of the projected growth share obligation.



SUBCHAPTER 4. CREDITS

5:97-4.1 General

- (a) At the time of petition, credits and corresponding bonuses for previous housing activity shall be applied toward the prior round obligation before the credits may be applied toward the growth share obligation, provided such activity complies with the applicable criteria in this subchapter and the applicable formulas set forth in N.J.A.C. 5:97-3. If the municipality's second round substantive certification included a vacant land adjustment,

the credits shall be applied toward the realistic development potential (RDP) before the credits may be applied toward unmet need or the growth share obligation.

- (b) A municipality shall document new construction activity with certificates of occupancy, rehabilitation with final inspections, and RCA units with evidence of the required transfer of funds to the receiving municipality, according to the payment schedule in the approved RCA contract. A municipality shall submit information regarding the units on forms provided by the Council.
- (c) All credits shall be subject to the applicable formulas set forth in N.J.A.C. 5:97-3. In the case of municipalities that received second round substantive certification or judgment of compliance, the Council shall honor the number of age-restricted credits, the credits addressing the rental requirement and RCA credits included in the previously certified plan or judgment of compliance if the mechanisms that were included in that certification or judgment still present a realistic opportunity pursuant to N.J.A.C. 5:97-6.5.
- (d) All credits shall be subject to verification and validation when a municipality petitions for substantive certification, or during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11.

5:97-4.2 Prior cycle credits

- (a) A housing unit created and occupied between April 1, 1980 and December 15, 1986 is eligible for one credit when it has been developed specifically for households whose income does not exceed 80 percent of median income and the unit was governed by controls on affordability that are not less than 20 years. The units shall be administered and affirmatively marketed in accordance with N.J.A.C. 5:97-9 and UHAC.
- (b) A municipality may receive one credit against its prior round obligation for each unit that does not have the controls on affordability described in (a) above provided the unit satisfies the following criteria:
 1. The unit shall have been constructed between April 1, 1980 and December 15, 1986. The municipality shall document the date of construction with a certificate of occupancy date;
 2. The unit shall have been certified to be in sound condition as a result of an exterior inspection;
 3. The unit is currently occupied by a low- or moderate-income household. The municipality shall document household income eligibility with a certification of household income in a form adopted by the Council. Such certification shall be signed by a head of household. It shall be reviewable only by the Council or its staff and shall not be a public record;
 4. If the unit is a for-sale unit, at the time the municipality files its petition for substantive certification, the unit shall have a market value that is affordable to a moderate income household, as follows:
 - i. The affordable sales price shall be determined pursuant to N.J.A.C. 5:97-9 and UHAC and shall utilize the homeowner or condominium fees chargeable to the unit on the date of the petition for substantive certification; and

- ii. The market value of the unit shall be determined by averaging the reported actual sale prices of three comparable housing units from the municipality that can be documented as being arms length, closed sales transactions and which occurred within one year of the date of filing of the petition. Documentation sources for such sales may include county tax records, TRW REDI Property Data or other such sources, or multi-list records;
 - 5. If the unit is a rental unit, at the time the municipality files its petition for substantive certification, the unit shall have a monthly rent that is affordable to a moderate income household pursuant to the requirements of N.J.A.C. 5:97-9 and UHAC and the rental must be an arms length transaction; and
 - 6. The application shall be in such a form and contain such information as the Council may require. Such information may include a questionnaire on household composition and unit type, a worksheet to calculate household income, a certification, an exterior survey and a sheet for listing comparables for each eligible unit.
- (c) If the credit is to be applied toward the growth share obligation, the controls on affordability shall be in place through December 31, 2018 or, if expiring during the third round period, shall be renewed in conformance with N.J.A.C. 5:97-9 and UHAC.

5:97-4.3 Post-1986 credits

- (a) A municipality may receive one credit for each affordable housing unit within an inclusionary development, a municipally sponsored development or a 100 percent affordable development, subject to the applicable provisions of this subsection.
- 1. Affordable units that received preliminary or final approvals on or after December 15, 1986 and before June 6, 1994 shall meet the following criteria:
 - i. The units were subject to controls on affordability of not less than 20 years; 10 years for municipalities that received State Aid during that period pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.);
 - ii. The development demonstrated the appropriate low/moderate income split, bedroom distribution, and sales/rental prices in accordance with chapter Appendix E, incorporated herein by reference; and
 - iii. The units are administered and affirmatively marketed in accordance with N.J.A.C. 5:97-9 and UHAC.
 - 2. Affordable units that received preliminary or final approvals on or after June 6, 1994 and before October 1, 2001 shall meet the following criteria:
 - i. The units were subject to controls on affordability of not less than 30 years; 10 years for municipalities that received State Aid during that period pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.);
 - ii. The development demonstrated the appropriate low/moderate income split, bedroom distribution, and sales/rental prices in accordance with Appendix E; and

- iii. The units are administered and affirmatively marketed in accordance with N.J.A.C. 5:97-9 and UHAC.
 - 3. Affordable units that received preliminary or final approvals on or after October 1, 2001 and before December 20, 2004 shall meet the following criteria:
 - i. The units were subject to controls on affordability of not less than 30 years; 10 years for municipalities that received State Aid during that period pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.);
 - ii. The development demonstrated the appropriate low/moderate income split, bedroom distribution, and sales/rental prices in accordance with N.J.A.C. 5:97-9 and UHAC; and
 - iii. The units are administered and affirmatively marketed in accordance with N.J.A.C. 5:97-9 and UHAC.
 - 4. Affordable units created and occupied on or after December 20, 2004 shall meet the criteria in N.J.A.C. 5:97-6.4, 6.6 or 6.7, as applicable.
- (b) A municipality may receive one credit for each affordable unit created through an accessory apartment program, subject to the applicable provisions of this subsection.
 - 1. An accessory apartment created and occupied on or after June 6, 1994 and before June 2, 2008 shall meet the following criteria:
 - i. The apartment was subject to controls on affordability of not less than 10 years, 30 years if the unit is receiving a bonus credit toward the prior round obligation pursuant to N.J.A.C. 5:97-3.5;
 - ii. The program demonstrated the appropriate low/moderate income split in accordance with Appendix E;
 - iii. The average initial rent of all apartments in the program, including utilities and based on the number of bedrooms, was affordable to a household earning no more than 57.5 percent of median income;
 - iv. The apartment is administered and affirmatively marketed in accordance with N.J.A.C. 5:97-9 and UHAC; and
 - v. At least \$10,000 was provided to subsidize the creation of the accessory apartment, unless the accessory apartment was created prior to the municipal adoption of an accessory apartment ordinance or was otherwise illegal.
 - 2. Accessory apartments created and occupied on or after June 2, 2008 shall meet the criteria in N.J.A.C. 5:97-6.8.
- (c) A municipality may receive one credit for each bedroom in supportive and/or special needs housing (formerly known as alternative living arrangements), subject to the applicable provisions of this subsection.
 - 1. Supportive and special needs housing created and occupied on or after December 15, 1986 and before December 20, 2004 shall meet the following criteria:

- i. Supportive and special needs housing may include: transitional housing, Class A, B, C, D, and E boarding homes as licensed and/or regulated by the New Jersey Department of Community Affairs and/or the New Jersey Department of Health and Senior Services; residential health care facilities as licensed and/or regulated by DCA or the New Jersey Department of Health and Senior Services if the facility is located with, and operated by, a licensed health care facility; group homes for people with developmental disabilities and/or mental illness as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements; and.
 - ii. The facility was subject to controls on affordability of not less than 10 years, 30 years if the unit is receiving a bonus credit toward the prior round obligation pursuant to N.J.A.C. 5:97-3.5.
 - 2. Supportive and special needs housing created and occupied after December 20, 2004 and before June 2, 2008 shall meet the criteria in N.J.A.C. 5:97-6.10, with the following exception:
 - i. Units with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, provided said contract is in effect through the period of third round certification, are exempt from the requirement for affordability controls of not less than 30 years.
 - 3. Supportive and special needs housing created and occupied on or after June 2, 2008 shall meet the criteria in N.J.A.C. 5:97-6.10.
- (d) A municipality may receive one credit for each apartment in an assisted living residence that received preliminary or final approvals on or after December 15, 1986, subject to the provisions of N.J.A.C. 5:97-6.11.
- (e) A municipality may receive one credit for each affordable unit created through a market to affordable program (formerly known as a write-down/buy-down program), subject to the applicable provisions of this subsection.
- 1. A unit created and occupied on or after June 6, 1994 and before December 20, 2004 shall meet the following criteria:
 - i. The unit was subject to controls on affordability of not less than 30 years, 10 years for municipalities that received State Aid during that period pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.);
 - ii. The program demonstrated the appropriate low/moderate income split in accordance with Appendix E;
 - iii. The average initial sales price of all units in the program, based on the number of bedrooms, was affordable to a household earning no more than 57.5 percent of median income, unless the range of affordability was accommodated elsewhere in the Fair Share Plan;
 - iv. The unit is administered and affirmatively marketed in accordance with N.J.A.C. 5:97-9 and UHAC; and

- v. A minimum of \$20,000 was provided to subsidize the creation of the unit.
- 2. Market to affordable units created and occupied on or after December 20, 2004 shall meet the criteria in N.J.A.C. 5:97-6.9.
- (f) A municipality may receive one credit for each affordable unit that received preliminary or final approvals on or after December 20, 2004 through an affordable housing partnership program, subject to the provisions of N.J.A.C. 5:97-6.13.
- (g) If the credit is to be applied toward the growth share obligation, the controls on affordability shall be in place through December 31, 2018 or, if expiring during the third round period, shall be renewed in conformance with N.J.A.C. 5:97-9 and UHAC.
- (h) Any affordable units where funding was allocated for construction by the Low-Income Housing Tax Credit Program (Internal Revenue Code Section 42h) or Balanced Housing Program (N.J.A.C. 5:43) during the period beginning on or after December 15, 1986 and before June 6, 1999, and not included in a Housing Element and Fair Share Plan submitted to the Council as of May 6, 2008, shall not be eligible for credit against any portion of the fair share obligation.

5:97-4.4 RCA credits

- (a) A municipality may receive credit for units transferred through an RCA when the RCA contract has been approved by the Council, subject to the provisions of this section.
- (b) RCA credits shall be subject to the applicable formulas set forth in N.J.A.C. 5:97-3.
- (c) The sending municipality shall submit verification that all payments have been transferred to the receiving municipality in accordance with the payment schedule outlined in the RCA contract.
- (d) In order to maintain credit for the RCA, any remaining payments shall be made to the receiving municipality in accordance with the payment schedule outlined in the RCA contract.

5:97-4.5 Rehabilitation credits

- (a) A municipality may receive credit for rehabilitation of deficient housing units occupied by low- and moderate-income households performed subsequent to April 1, 2000, subject to the applicable provisions of this section. In order to receive a rehabilitation credit, the municipality shall submit information regarding the rehabilitated units on forms provided by the Council.
- (b) Units rehabilitated or subject to an executed contract for rehabilitation on or after April 1, 2000 and before December 20, 2004 shall meet the following criteria:
 - 1. The unit was rehabilitated up to the applicable code standard and the average capital cost expended on rehabilitating the unit was at least \$8,000;
 - 2. The unit is currently occupied by the occupants who resided within the unit at the time of rehabilitation or by other eligible low- or moderate-income households;
 - 3. Owner-occupied units were subject to controls on affordability of not less than six years and rental units were subject to controls on affordability of not less than

- 10 years. The controls on affordability may be in the form of a lien filed with the county;
4. The rehabilitation program is administered by an experienced administrator, pursuant to N.J.A.C. 5:97-9 and UHAC;
 5. Rental units must be included in the rehabilitation program; and
 6. The municipality shall submit its adopted rehabilitation manual which includes a description of the program procedures and administration in accordance with this section.
- (c) Units rehabilitated or subject to an executed contract for rehabilitation on or after December 20, 2004 and before June 2, 2008 shall meet the criteria in (b)1 and 2 and 4 through 6 above and the following:
1. The units were subject to 10-year controls on affordability on both owner-occupied units and rental units. On owner-occupied units, the controls on affordability may have been in the form of a lien filed with the appropriate property's deed. For rental units, the controls on affordability shall have been in the form of a deed restriction and may have also included a lien pursuant to N.J.A.C. 5:97-6.2(c).
- (d) Units rehabilitated or subject to an executed contract for rehabilitation on or after June 2, 2008 shall meet the criteria in N.J.A.C. 5:97-6.2.
- (e) A municipality may receive one credit against its rehabilitation share for each ECHO unit completed subsequent to April 1, 2000, in which a low- or moderate-income occupant is residing, provided the municipality purchased or leased the ECHO unit for a minimum of 10 years.
- (f) Credits for rehabilitation shall only be credited against the rehabilitation share.
- (g) If a municipality received a rehabilitation credit for the rehabilitation of a unit prior to April 1, 2000, as part of a previous round Fair Share Plan, and the controls on affordability have expired, the municipality may receive a rehabilitation credit if the unit is rehabilitated pursuant to the criteria set forth in this section.
- (h) If a municipality received a new construction credit for a deed restricted affordable unit that was built between 1987 and 1993, as part of a first round Fair Share Plan, the municipality may receive a rehabilitation credit if the unit is rehabilitated pursuant to the criteria set forth in this section.

CHAPTER 5. ADJUSTMENTS

~~5:97-5.1 Vacant land adjustment applicability~~

- ~~(a) A municipality may request a vacant land adjustment of its prior round obligation for the first time in accordance with N.J.A.C. 5:97-5.2.~~
- ~~(b) A municipality that is requesting a vacant land adjustment for the first time or whose vacant land adjustment was not granted as part of a second round substantive certification shall apply its eligible credits pursuant to N.J.A.C. 5:97-4 for units that are~~