

Borough of Mountain Lakes

Affordable Housing Administrative Agent Policies & Procedures Manual

AUGUST 2020

Administration of Affordable Units



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Borough of Mountain Lakes Administration of Affordable Units Operating Manual

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Executive Summary

This **Operating Manual**, prepared for Borough of Mountain Lakes hereafter referred to as “Municipality”, (1) sets forth the policies and procedures for placing eligible individuals and families into the Municipality’s affordable units and (2) provides instructions for working with developers, owners and landlords as new affordable units become available. This document is designed to ensure compliance with the State’s Uniform Housing Affordability Controls (“**UHAC**”) (N.J.A.C. 5:80-26.1 et seq.) and with the Municipality’s Affordable Housing Ordinance, its Affirmative Marketing Plan if applicable, and other local laws and requirements. In addition to being a valuable tool for the Municipality’s Administrative Agent and Municipal Housing Liaison as we implement Affordable Housing in the Municipality, it will also be a resource for other Affordable Housing professionals and interested members of the public to understand the intricacies of implementing a program such as this.

This manual details the tasks involved in the day-to-day administration of Affordable Housing units under the direct control and oversight of the Municipality. This document covers how new units are created and priced and how units are marketed to prospective applicants. Other information includes the following: waiting list and random selection procedures; required and permitted preferences; procedures for determining income eligibility; resale by income-eligible owners of affordable property to other eligible buyers; process for property managers to fill affordable rental vacancies; refinancing and mortgage modification procedures; waivers of program requirements. The administrative steps outlined in this manual are the thread that holds the fabric of the entire program together, setting out the fundamental obligations and responsibilities of the program administrators.

The **Glossary** at the end of this Operating Manual provides definitions of terms, abbreviations and acronyms used throughout the Operating Manual.

I. INTRODUCTION

The purpose of this manual is to describe the policies and procedures used to create Affordable Housing units in the Municipality and fill them with income-eligible families.

The policies outlined in this manual are derived from UHAC (N.J.A.C. 5:80-26.1 et seq.) This manual does not include all provisions of UHAC, and UHAC is a companion document to this manual. Instead, this manual highlights instances where additional guidance is provided by the New Jersey Department of Community Affairs' staff or by local ordinance. The manual also provides additional clarification and direction on items that are not in UHAC in order to ensure fairness to applicants, owners, and renters.

A. What is Affordable Housing?

Affordable Housing, unlike market-rate housing, has affordability controls establishing initial set prices and rents, and then controlling annual increases for many years. For example, new units that fall under these controls will be restricted for at least 30 years. The New Jersey Affordable Housing rules consider housing to be “affordable” if the household¹ expends approximately 28% or less of the household's gross income on housing costs. See footnote below and Glossary for definition of “Household.” Affordable Housing is priced to be affordable to households earning up to 80% of the area median income for the region in which the Affordable Housing is located.

An Affordable Housing unit for the purposes of this manual can be specifically defined herein as “a housing unit proposed or created pursuant to the [Fair Housing] Act, credited pursuant to N.J.A.C. 5:97-4, and/or funded through an affordable trust fund.” (“**Affordable Unit**”).

The Affordable Units referenced in this manual are not the same as public housing units that are funded largely by governmental programs such as those administered by the U.S. Department of Housing and Urban Development (“**HUD**”) programs and that are owned, operated and managed by a public housing authority (“**PHA**”). As defined by HUD, “public housing was established to provide decent and safe rental housing for eligible low-income families, the elderly, and persons with disabilities. Public housing

¹ In accordance with US Department of Housing and Urban Development (“**HUD**”) definitions and UHAC practice, “**household**” references the number of persons in the unit and not the size of the unit. See for example, HUD's definition of household as “[o]ne or more persons occupying a housing unit” -- in other words, the number of persons in the home. HUD website accessed June 13, 2016. http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/library/glossary/, HUD accessed June 13, 2016. See also, UHAC regulation N.J.A.C. 5:80-26.4, “In determining the initial rents and initial sales prices for compliance with the Affordability Average requirements for restricted units ... the following standards shall be used: 1. A studio shall be affordable to a one-person household.” (Emphasis added).

comes in all sizes and types, from scattered single-family houses to high rise apartments for elderly families. There are approximately 1.2 million households [in the US] living in public housing units[.]”² Some municipalities create their own PHAs which operate and manage public housing within the municipality.

B. Who Qualifies for Affordable Housing?

To be eligible for Affordable Housing in New Jersey, a household’s income must be below the established income limit for the region in which the Affordable Housing is located. There are three eligibility levels: very low, low, and moderate. A moderate-income household is classified as earning less than 80 percent of the area median income. A low-income household is classified as earning less than 50 percent of area median income, and a very low-income household is classified as earning less than 30 percent of median income. See Glossary for definitions of “**Low- Income Household**” and “**Very Low-Income Household**”. There are different median incomes in each of the six Affordable Housing regions shown in Figure 1 below, with the Borough of Mountain Lakes located in Region 2. The income limits are adjusted annually.

Figure 1: Affordable Housing Regions

Regions	Counties
1	Bergen, Hudson, Passaic, Sussex
2	Essex, Morris, Union, Warren
3	Hunterdon, Middlesex, Somerset
4	Mercer, Monmouth, Ocean
5	Burlington, Camden, Gloucester
6	Atlantic, Cape May, Cumberland, Salem

C. Equal Housing Opportunity

Title VIII of the Civil Rights Act of 1968 (the “**Fair Housing Act**”), as amended, prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18), and disability.

² http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph, US HUD Website, accessed June 7, 2016.

The New Jersey Law Against Discrimination (“**LAD**”) prohibits discrimination when selling or renting property. The law covers owners, agents, employees and brokers and makes it unlawful to refuse to rent, show or sell property based on a person's race, creed, color, national origin, nationality, ancestry, marital status, domestic partnership or civil union status, familial status, affectional or sexual orientation, gender identity or expression, sex, or mental and physical disability, including AIDS and HIV-related illness. In addition, the LAD prohibits discrimination in the housing context based on one's source of lawful income or rent subsidy.

II. CREATION OF NEW UNITS

This manual applies to UHAC eligible units whether for rent or for purchase, 100 percent affordable developments, market-to-affordable projects, gut-rehab projects, and other innovative Affordable Housing mechanisms. It does not apply to projects exempt from UHAC including low income housing tax credit projects and group homes. (See UHAC for a full list of exempt programs.)

A. Review Project Requirements

When a new project is planned, the administrative agent designated by the Municipality for the administration of Affordable Units (the “**Administrative Agent**”) will gather the information outlined in Figure 2. The first step is to review development approvals and/or developer agreements, the Housing Element and Fair Share Plan, and the municipal Affordable Housing Ordinance including its Affirmative Marketing Requirements if applicable.

B. New Purchase Units

1. Initial Pricing and Bedroom Distribution of Purchase Units

The Administrative Agent will determine the initial pricing stratification in compliance with UHAC³. The pricing calculation will take into consideration costs that exist at that time including such factors as the mortgage rate, tax rate, equalization ratio, condominium/homeowner association fee, and Private Mortgage Insurance (“**PMI**”). PMI must be included in the pricing calculation even if a new development will provide financing that will not require PMI. This will ensure that the price is affordable at future sales when PMI will be required. The maximum restricted sales price (“**MRSP**”) will be affected by mortgage interest rates when an affordable Unit is initially priced. At resale,

³ Under UHAC, the maximum sales price of restricted ownership units within each affordable development “shall be affordable to households earning no more than 70 percent of median income” (hereafter “**Maximum Restricted Sales Price**”).

the prevailing mortgage interest rate will be used to determine the affordability of that particular unit to the applicant household.

Figure 2: New Development Checklist



New Development Checklist

CONTACT INFORMATION

Development Name: _____
 Contact Person: _____ Email: _____
 Address: STREET _____ CITY _____ STATE _____ ZIP CODE _____
 Phone: (office) _____ (mobile) _____ (fax) _____

GENERAL INFORMATION

Funding Source of Units *(to determine if exempt from UHAC)*: _____

Affordable Housing Requirements Stipulated: *Circle either "Yes" or "No" and provide explanation*

Development Approval &/or Developer's Agreement	Yes / No	
Fair Share Plan	Yes / No	
Local Ordinance	Yes / No	

Affordable Units Phasing Requirements: _____

Property Type *(circle one):* **RENTAL** or **SALE** Anticipated date first unit ready: _____

Location of Affordable Units in Project: _____

Number of **Market** Units: _____

Number of **Affordable** Units: _____

Is there a **Regional Preference**? _____

Are any units **Age Restricted** (55+)? _____

Requirements for **Deposit**: _____

Parking Details: _____

Income Distribution Requirements		Bedroom Requirements	
Very Low:		Studio / 1br:	
Low:		2 Bedroom:	
Moderate:		3 Bedroom:	

OWNERSHIP ONLY

RENTAL ONLY

Tax Rate: _____ Equalization Rate: _____
 Condo/Homeowner Association Dues: _____
 Special Financing Provided by Developer? Yes No
If yes, explain: _____
 Policy on Upgrades: _____

Incorporation Documentation Provided:

Master Deed
 Declaration of Covenants
 Other: _____

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Utilities Included in Rent: *(check all that apply)*

Water Electric Sewer Trash
(for the following utilities, if no, list type)

Heat *type:* _____
 Cooking *type:* _____
 Hot Water *type:* _____

Application Fee: _____
 Mandatory Fees: _____
 Optional Fees: _____

Rental Very Low Income Requirement
 (13% of units at 30% AMI or 10% at 35% AMI)

Pets Policy:

2. Upgrades from Builder

The builder may offer buyers of new Affordable Units the opportunity to purchase upgrades such as granite countertops or hardwood flooring at additional cost. If upgrades are offered, the following guidelines apply:

- a. These upgrades must be optional. The buyer must be able to choose NOT to purchase the upgrades and be able to buy the base home at or below the MRSP.
- b. The sale price of the home will be at or below the MRSP without the cost of the upgrades.
- c. All future sales will be based on the sale price without the upgrades. In other words, the buyer will not be able to recoup the cost of the upgrades at the next sale.
- d. The buyer cannot finance more than the MRSP. As a result, the buyer will not be able to finance the cost of the upgrades.

3. Deed Restriction

Affordable Units created under this program will be deed restricted as affordable for a period of at least 30 years and thereafter until the municipality takes action to release the affordability controls. All legal instruments to secure the affordability will be modeled after the applicable instruments published in the UHAC Appendices. When there is a Master Deed, one restrictive covenant will be filed for all Affordable Units but the affordability control period start date for each unit begins with the date that each particular unit is initially occupied. This should be filed in advance of the initial Affordable Housing closing for each project or unit.

A market-rate appraisal will be required to calculate the repayment amount on the affordable Recapture Mortgage Note. (This amount is the difference between the market appraisal and the affordable sale price and is due at the first non-exempt sale at the end of the control period.) The developer is responsible for providing the market rate appraisal. One appraisal can be used for similar unit types (all one bedrooms that are the same models, for example) if the appraisal is less than six months old. If the buyer's mortgage company completes a market-rate appraisal, that appraisal can be used instead. (See additional discussion in Section V.)

4. Earnest Money (Deposit) for Ownership Properties

The Affordable Housing rules do not specify a minimum or a maximum amount that a buyer must put down on a property when the Purchase Agreement and/or Contract of Sale is executed. However, while not required, a down payment is recommended because banks will almost never lend without a 5% minimum contribution.

C. New Rental Units

1. Initial Pricing and Bedroom Distribution of Rental Units

Rents will be set according to the pricing guidelines outlined in UHAC. In order to comply with 2008 amendments to the Fair Housing Act, 13 percent of all affordable rental units in a project will be priced at 30 percent of median income (N.J.S.A. 52:27D-329.1.) (This requirement is more stringent than the UHAC guidelines which stipulate that at least 10 percent of all

Affordable Units in the development be affordable to households earning no more than 35 percent of median.) In all cases, the more stringent of the two requirements will prevail.

2. Mandatory and Optional fees

If the landlord charges a *MANDATORY* fee for rental units such as an amenity fee or association fee, this fee will be subtracted from the permitted maximum rent. *At no time should the rent plus required fees exceed the maximum rent allowed.* (Utility allowances are factored into the initial pricing and are not considered mandatory or optional fee. See above.)

The developer may require that all renters purchase *rental insurance*. The rental insurance cost is not considered a mandatory fee and will not be included in the initial rental calculation or part of the minimum income calculation.

The landlord may charge optional fees to tenants. However, the landlord is not permitted to charge affordable tenants these fees and waive them for market units. *For example, if parking is included in the rent for market units, the landlord cannot charge affordable tenants for parking.* Example of optional fees include:

- Optional parking fee
- Optional amenity fee
- Optional pet fee
- Optional month-to-month fee

The Administrative Agent will review and approve all leases to determine that the rent plus required fees do not exceed the maximum rent allowed.

3. Deed Restriction

Affordable Units created under this program will be deed restricted as affordable for a period of at least 30 years and thereafter until the Township takes action to release the affordability controls. All legal instruments to secure the affordability will be modeled after the applicable instruments published in UHAC.

The rental deed restriction will list the income level designation as well as the bedroom size of each Affordable Unit. The units cannot be “swapped” during the control period. *For example, after the deed restriction is filed, the affordable designation of the unit cannot be changed from a Low-Income to a Moderate-Income unit.* Moreover, it is important to note that the prevailing regulations (UHAC) do not require annual recertification, and therefore while the unit remains as a Low/Moderate-Income unit during the term of the deed restriction, the income of the current tenant is no longer relevant following initial eligibility. The same rules relating to initial eligibility certification and no annual recertifications will continue to apply to each subsequent tenant throughout the duration of the deed restriction.

4. Application Fees

Affordable units are “private” market units (as opposed to public housing units) where rents are set (and deed restricted as to time) to be affordable to very low, low, and moderate income persons. Although deed restricted, the units still are under the “control” of the private

owner/landlord, with oversight by the Administrative Agent. Accordingly, other than the set rent and deed restriction requirement, the landlord may establish its own non-discriminatory legal criteria for tenant selection. Such tenant selection criteria must be the same in renting Affordable Units as for leasing market rate units. With respect to the landlord's tenant selection criteria, the Administrative Agent's responsibility is to ensure that (1) the criteria for the Affordable Units is consistent with the market-rate criteria, and (2) the application fee is deemed to be reasonable.

The landlord may choose to collect an application fee from households interested in applying for Affordable Housing. UHAC rules limit the application fee to 5 percent of the monthly rent of the applicable rental unit.

After the household passes the landlord's tenant selection criteria, the landlord *may* choose to collect an additional fee from the applicant to process the Affordable Housing application. Landlords may choose to implement this optional fee so only serious applicants move through the income certification process. If this optional fee is collected, the following rules apply:

- The fee cannot be higher than one month's rent.
- If the applicant is income-certified and rents the unit, the fee will be applied to the first month rent and/or down payment.
- If the applicant is income certified and they choose not to rent the unit, the landlord is not required to return the fee.
- If the applicant is determined to not be income eligible, the landlord must return the fee.

5. Security Deposit

Security deposits for Affordable Units are governed by New Jersey Landlord-Tenant regulations. The requirements are the same for Affordable Units as they are for market-rate units.

6. Tenant Selection Criteria

As explained in Section 4 above, the landlord is permitted to set tenant selection criteria and screen applicants on criteria such as credit score and criminal history, subject to approval by the Administrative Agent. All tenant selection criteria must comply with all New Jersey landlord tenant laws and the landlord is required to provide the Administrative Agent with a written copy of its tenant selection criteria. The tenant selection criteria must be applied uniformly to all applicants, and the landlord cannot impose stricter criteria on affordable tenants than market-rate tenants.

D. Project Monitoring

All new units will be added to the online New Jersey Council on Affordable Housing ("COAH") Tracking and Monitoring ("CTM") system after the initial sale or initial rental. (In the event, that the CTM system is discontinued or not accepting new monitoring information, all unit information will be compiled and maintained by the Administration Agent.)

III. Marketing of Units, Waiting List, and Matching Households to Available Units

The following section describes the steps that will be taken to identify very low, low, and moderate income families that may be interested in renting and purchasing Affordable Units created by the Municipality. All marketing initiatives must comply with the Affirmative Marketing rules established by UHAC, as presently set out in NJAC 5:80-26.15 and in accordance with any additional Affirmative Marketing Plan developed by the Municipality.

Development-specific Affirmative Marketing Plans would outline required marketing, including paid advertising that must be conducted before a random selection is completed. (See Random Selection and Waiting List Priority in Section B, below.)

While the waiting list is open, Affirmative Marketing will continue in the form of listing of units on NJHRC.gov, affordablehomesnewjersey.com, and/or quarterly mailings to community groups, major employers, and government agencies in the New Jersey Affordable Housing region where the Municipality is located. If the waiting list is ever closed because of the long length of the list, paid advertising as outlined in the Affirmative Marketing Plan will be required to reopen the waiting list.

A. Preliminary Application

All households that wish to be considered for Affordable Housing must submit a preliminary application. Households will be encouraged to submit their preliminary application online. For those applicants who do not have internet access, the Administrative Agent will work with interested applicants by phone and mail. The preliminary application will include questions about household income and its composition in order to determine preliminary eligibility. Please note that preliminary eligibility is based solely on self-reported information by the applicant and is in no way a guarantee of eligibility.

If the applicant indicates that their total household income is below the moderate income limit for their family size, they will be eligible for placement in the applicant pool. The Administrative Agent will also set a minimum income that is required to be added to the waiting list. (See *Minimum Income Requirements* in this Chapter.) Applicants will be required to provide written documentation of their income at the time of the full income certification as discussed in *Chapter IV*.

B. Random Selection and Waiting List Priority

For new projects and when random selection is utilized, the Administrative Agent will assign random numbers to each applicant through a computerized random number generator thereby creating a waiting list.

After the list of applications submitted during the initial lottery period is exhausted, the priority of preliminary applications is established by the date that the household submits their preliminary application (“**Interest Date**”).

A separate waiting list will be kept for ownership versus rental units, resulting in a total of two waiting lists for the Municipality. Households waiting for age-restricted and family rental units will be part of the same waiting list. Likewise, households waiting for age-restricted and family ownership units will be part of the same waiting list. In filling an age-restricted property, households that do not meet the age requirements will be skipped.

When brand new Affordable Units become available for rent or sale in a new development, a lottery will be conducted UNLESS there are households on the existing waiting list with lottery numbers that have not been contacted. In these cases:

- Those applicants with lottery numbers will be contacted first.
- Households that submitted a preliminary application after the last lottery (and do not have lottery numbers) will be included in the next lottery if it is required to fill the units.
- Affirmative Marketing will be required before this lottery is held since these are new Affordable Units and the public must be made aware of the new Affordable Housing opportunity.

As an example, if a new housing opportunity arises that will create 150 new Affordable Units and the existing waiting list has only 50 applicants on it (who hold numbers 1 to 50), a new lottery will be held with Affirmative Marketing. If an additional 50 applications are submitted as a result of this marketing effort, then these “new” applications will be assigned numbers 51 to 100 on the waiting list.

The household with the highest lottery number (or oldest Interest Date) may not always be the next person contacted for a specific available unit because of factors impacting waiting list priority. In addition to age-restricted requirements already discussed, these factors include the number of persons in the household, household income level, households with a person with physical disabilities, veterans preference and regional preference as may be established in the Municipal Affordable Housing Ordinance. The Borough of Mountain Lakes has selected to use a regional preference and not to use a veterans preference, which appears in the Borough of Mountain Lakes' Affordable Housing Ordinance. Each of these six waiting list priority factors are further described in *Figure 3*.

C. Property Questionnaire

When an applicant becomes eligible to be offered an Affordable Unit, they will be asked to complete a Property Questionnaire. The Property Questionnaire will assess whether they continue to meet the income requirements and whether they remain interested in purchasing or renting a specific unit or unit type.

In order to match households to available units as quickly as possible, the Administrative Agent will choose whether to limit the outreach to the next group of applicants on the waiting list (private outreach) or outreach to all eligible households (public outreach), as discussed in the following section.

1. Private Outreach

When there is a long waiting list, the Administrative Agent will only outreach to a limited group of applicants who are next on the waiting list. This approach is typically taken with rental projects and new ownership units.

The Administrative Agent will invite approximately five to 10 households that meet the eligibility requirements to complete a Property Questionnaire for each available unit. Waiting list priority will be established by the factors outlined in *Figure 3*.

Households will have 24 hours to request to visit the unit at some future, mutually agreed upon time. If they request to visit, they will then be prompted to update a simple Property Questionnaire. If they do not want to pursue the unit or even if they do not respond at all, they will **not** be removed from the waiting list and will be notified of the next available vacancy.

The interested household will be referred to the landlord/developer to view the unit(s) and pay the application fee, if required. New ownership developments may require a mortgage preapproval be submitted prior to viewing the home. If more than one household qualifies and is interested, the household with the highest priority (lottery number or Interest Date) will be offered the unit.

Figure 3: Additional Factors Impacting Waiting List Priority

1. Age-Restricted	Only households that meet the age-restricted requirements will be offered age-restricted units. <u>See Glossary</u> for definition of “ Age-Restricted Units. ”
2. Regional Preference	Municipalities may choose to give preference to households that live or work in the local Affordable Housing region. Mountain Lakes has elected to give preference to households that live or work in the local Affordable Housing region, such regional preference shall be established by ordinance. In such instance, applicants who indicate that they live or work in the Affordable Housing region will be contacted before those outside the region. Once those applicants are exhausted, applicants outside the region will be contacted. <u>See Glossary</u> for definition of “ Regional Preference. ”
3. Household Size (Number of Members)	Whenever possible, there will be at least one person for each bedroom. If the waiting list is exhausted and there are no households with a person for each bedroom, units will be offered to smaller sized households that do not have a person for each bedroom. An applicant household cannot be required to take an Affordable Unit with a greater number of bedrooms as long as overcrowding is not a factor. (A maximum of two people are permitted per bedroom.) A household can be eligible for more than one unit category.
4. Maximum Income Limit and Minimum Income	Only households that are under the income limit of the Affordable Unit AND meet the minimum income requirements will qualify to apply for the next Affordable Unit. <u>See Figure 5</u> for a full discussion of minimum income requirements.
5. Fully Accessible Units	A household with a person with physical disabilities will get preference on the waiting list for accessible units because of the very limited number of handicapped accessible units. Applicants must provide a letter from their doctor stating what kind of accommodation they require as a result of their disability.
6. Veterans Preference	The Municipality and developer may enter into an agreement to provide preference to very low, low, and moderate income veterans who served in time of war or other emergency, as defined in section 1 of P.L.1963, c. 171 (C.54:4-8.10), of up to 50 percent of the affordable units in that particular project. If applicable, veterans who apply within 90 days of the initial marketing period shall receive preference for the rental of the agreed-upon percentage of affordable units. After the first 90 days of the initial 120-day marketing period, if any of those units subject to the preference remain available, then applicants from the general public shall be considered for occupancy. <u>See Glossary</u> for definition of “ Veterans Preference. ”

2. Public Outreach

The Administrative Agent will contact all eligible households for a specific unit when the waiting list is short or when there are several properties available. Public outreach is typically conducted for the resale of existing units. It allows the Administrative Agent to move through the waiting list as quickly as possible.

When the Administrative Agent is notified of a pending rental vacancy or the intent of the owner of a single-family unit to sell, the Administrative Agent then will set a deadline by which all applicants that have indicated an interest in this development or in the Municipality must return a Property Questionnaire. Waiting list priority will be established by the factors outlined in *Figure 3*. Interested households will be provided the contact information of the owner/seller to be provided an opportunity to view the home. If more than one household qualifies and is interested, the household with the highest priority number will be offered the unit first.

If the unit is still available after this initial outreach, the Administrative Agent will contact households not previously contacted in the first outreach such as smaller-sized households and out-of-region households (if applicable.) If the home still does not have a buyer, the Administrative Agent will open the listing up to all household sizes.

Households will not be removed from the waiting list if they do not choose to purchase a unit they are offered during public outreach.

D. Determining Preliminary Eligibility

The Administrative Agent will review the Property Questionnaire to determine whether the applicant meets or continues to meet the requirements to rent or purchase the unit. All information will be verified during the full application process. The following sections describe the factors that will be reviewed to determine preliminary eligibility as well as final eligibility during the full income certification process.

1. Regional Preference

Should a municipality determine that households that live or work within the Municipality's Affordable Housing Region are to be given Regional Preference in being contacted, such Regional Preference shall be set out in the municipality's Affordable Housing Ordinance. Upon the adoption of such an ordinance, the Administrative Agent will confirm that the household either lives or works within the region. If they no longer live or work within the region, they will remain on the waiting list for consideration after all in-region applicants have been considered. The Borough of Mountain Lakes does have a regional preference.

2. Determining Household Composition

The household is composed of all permanent members of the household, and the composition will determine both the size of the unit needed by the household and the maximum income limit of that household. Some household members may be considered in the bedroom calculation who are not counted in the maximum income calculation as show in *Figure 4*. If applicant's divorce decree states that both parents share legal and residential custody but the former spouse has primary custody for school purposes, the child may be included in the applicant's household when determining household size during the income certification process.

Figure 4: Determining Household Size (Number of Members)

	Maximum Household Income Limit	Bedroom Size Calculation
Foster Children	Do not count in household (do not include foster care income either)	Count
Live in Health Aid or Nanny (<i>This must be a paid position and proof of contract with caregiver is required</i>)	Do not count (Must provide proof that person is hired)	Count
Child Whose Primary Residence is Not the Applicant Household	Do not count unless custody is 50/50 (see narrative)	Count
Unborn Child	Count (Cannot ask for documentation because of privacy)	Count
Child Being adopted	Count	Count
Full time college student not living at home (<i>Full time student is a member of the household reported to the IRS as a dependent who is enrolled in a degree seeking program for 12 or more credit hours per semester</i>)	Count (Do not count any part time income earned where part time is any income earned on less than a 35 hour work week)	Count

3. Maximum Income Limits

The Administrative Agent will confirm that the household's income reported on the Property Questionnaire falls under state mandated maximum income limit for the unit for which they are applying. Maximum income limits are provided annually by the State for each of the six Affordable Housing regions. See Appendix A for updated maximum income limits.

4. Minimum Income Requirements

Unlike maximum income limits, the State does not set minimum income limits. Instead, the State provides different income-to-housing expense ratios for rental and purchase units and different standards for age-restricted homes. The purpose of these ratios is to provide guidelines so applicants will be able to sustain their monthly housing expenses in the Affordable Units.

Evaluating minimum income requirements is complicated because the permitted ratio of monthly income that can be spent on housing expenses varies for different unit types and waivers are permitted. *Figure 5* details the minimum income ratios that will be utilized at each stage of the outreach process as well as during the full income certification. Since waivers from

UHAC are allowed (see below), outreach is extended to households that do not quite meet the minimum income requirements. *For example, UHAC stipulates that households must not pay more than 33 percent of their monthly income for housing expenses if they are purchasing a home unless they meet a waiver requirement. When a specific home is for sale, outreach is expanded to all households whose housing expenses are under 35 percent instead of 33 percent. At the time of income certification, the exact percentage and whether they meet a waiver requirement is confirmed.*

Precise waiver requirement standards are not stipulated in UHAC, and *Figure 5* provides guidance when evaluating waiver requests. The State permits the Administrative Agent to give waivers to households to purchase a unit when their existing monthly housing expenses exceed 33 percent of their monthly income under the following conditions:

- The household can provide evidence that they have completed a HUD-certified home budgeting course; and
- The household obtains a firm mortgage loan commitment at the higher housing expense percentage of income level from a licensed financial institution.

Likewise, rental waivers may be given under the circumstances described below, and the household must receive a budgeting counseling class.

- The household can document that the housing expense of the Affordable Unit is less than the housing expenses of their current housing; or
- The household currently pays more in rent and the proposed rent will reduce the household's housing costs; or
- 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; or
- The household is currently in substandard or overcrowded living conditions;
- The household documents the existence of assets, with which the household proposes to supplement the rent payments; or
- 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. (This includes applicants with a Section 8 Voucher.)

When reviewing a waiver request, the Administrative Agent may take into consideration whether the applicant is receiving other assistance such as SNAP Benefits (Food Stamps).

5. Minimum Down Payment (Ownership Only)

For all purchase units, the Administrative Agent will review how much the applicant self-reports as having available for a down payment. If the down payment is less than 5% of the purchase price, the applicant will be advised that they may not be able to obtain a mortgage to purchase the home because most banks require at least a 5% down payment.

6. Regional Asset Limit

If an applicant owns a home without a mortgage, the value of the home must be less than the Regional Asset Limit set by the State annually. See Appendix A for updated regional asset limit. An appraisal or listing with real estate agent is required to verify value.

This Regional Asset Limit test does not apply to:

- Properties with a mortgage even if the applicant's equity exceeds the asset limit;
- Cash or other assets; and
- Applicants whose property taxes and fees on the property are more than 38 percent of the household's income.

Figure 5: Minimum Income Calculations ¹

RENTALS		
<i>Monthly Housing Expense Calculation is rent + utilities not included in rent – monthly rental Assistance (if accepted by landlord)</i>		
	Family Units	Age-Restricted Units
To Submit Preliminary Application	Any household with income over \$8,000/year	Any household with income over \$8,000/year
To Be Invited To Submit Property Questionnaire	37% of income toward housing expenses 45% of income toward housing expenses with rental waiver ²	42% of income toward housing expenses 45% of income toward housing expenses with rental waiver ²
To Be Invited To Submit Full Application	37% of income toward housing expenses 45% of income toward housing expenses with rental waiver ²	42% of income toward housing expenses 45% of income toward housing expenses with rental waiver ²
To Be Income Certified To Rent Unit	35% of income toward housing expenses 45% of income toward housing expenses with rental waiver ² If applicant meets minimum income requirement with rent only, case manager will review utility allowance ³	40% of income toward housing expenses 45% of income toward housing expenses with rental waiver ² If applicant meets minimum income requirement with rent only, case manager will review utility allowance ³
UHAC Requirement (Without Waiver)	35% of income toward Housing Expenses	40% of income toward housing expenses
OWNERSHIP		
<i>Monthly Housing Expense Calculation is monthly mortgage cost +HOA fee + property tax + insurance</i>		
	Family and Age-Restricted Units	
To Submit Preliminary Application	Any household with income over \$8,000/year . No minimum down payment required.	
To Be Invited To Submit Property Questionnaire	35% of income toward housing expenses No minimum down payment required	
To Be Invited To Submit Full Application	35% of income toward housing expenses 5% minimum down payment required (no loans or grants)	
To Be Income Certified To Purchase Unit	33% of income toward housing expenses 35% of income toward housing expenses with ownership waiver ²	
UHAC Requirement (Without Waiver)	33% of income toward housing expenses	
¹ Minimum income and percentages may be adjusted as needed to administer the program. Minimum income should not restrict eligible applicants and is designed to prevent applicants who do not have enough income from being added to the waiting list. All minimum income requirements will be clearly posted on the Administrative Agent's website. ² Rental and Purchase waiver requirements are explained in the <i>Minimum Income</i> Section of this Chapter (see Section 4). ³ The utility allowance review will determine whether the applicant will be able to afford the monthly expenses. This is sometimes required because the new utility allowance greatly exceeds the original utility pricing or their household's actual utility costs may be less because of energy improvements.		

7. Minimum Credit Score

For all purchase units, the Administrative Agent will review the self-reported credit score of the applicants when determining preliminary eligibility. The Administrative Agent will determine the minimum determined credit score (such as 600) based on the current credit requirements of banks, and the same standard will be applied to all applicants.

There will be no minimum credit score for applicants paying cash for their homes since they do not need to qualify for a mortgage.

Applicants for rental units will be advised of the minimum credit score required by the landlord. As stated above, Affordable Units are “private” market units where rents are set, and while deed restricted as to time, they are still under the “control” of the private owner/landlord, with oversight by the Administrative Agent. Accordingly, other than the set rent and deed restriction requirement, the landlord may establish its own non-discriminatory legal criteria for tenant selection. Such tenant selection criteria must be the same as (and not more stringent than) the selection criteria for leasing market rate units.

8. Separated Applicants

Separated applicants who have not finalized their divorce settlement agreement cannot purchase an affordable home until the spouse signs a form stating that they are releasing any claim right or interest in the affordable home being purchased. If the spouse refuses to sign the release, the applicant can request a judge to require the spouse to sign the form.

In order to calculate the household income of separated applicants at the time of the full income certification for both rental and sale properties, the applicant will need to provide a settlement agreement, divorce decree, or a division of assets signed by both parties.

E. Annual Updates

In order to keep the waiting list current, households will be asked to update their contact and other qualifying information on the waiting list annually. Households that do not update their information will be removed from the waiting list.

F. Full Application

Households will be invited to submit a full application to purchase or rent an affordable unit in order for the Administrative Agent to determine the income eligibility of the household. Applicants will have seven (7) days to submit the income application and seven (7) day extensions are permitted for a total of two weeks (14 days). Once the full application is received, the Administrative Agent will complete a determination of the household’s eligibility within seven days.

G. Removal from the Waiting List

Applicants on the waiting list for Affordable Housing can be removed from the list for any of the following reasons:

1. The applicant's income exceeds the income guidelines;
2. The applicant does not have the minimum income to purchase or rent any units in the portfolio;
3. The applicant owns an asset that exceeds the Regional Asset limit;
4. The applicant requests to be removed;
5. The applicant submits fraudulent information during the income certification process;
6. The applicant fails to submit the complete application on time (this includes failure to provide documentation needed to verify income and other required documents);
7. The applicant fails to respond to an inquiry in a timely manner;
8. The applicant does not cooperate or is abusive with staff, property managers, or the sellers of Affordable Units;
9. The applicant does not meet the credit requirements or other tenant selection criteria required by the landlord;
10. The applicant is unable to secure a mortgage;
11. The applicant does not attend a budgeting/home buyer counseling class if such is required (e.g., for a waiver);
12. The applicant does not respond to requests to purchase or rent a unit;
13. The applicant does not submit an annual update; or
14. The applicant has been approved to rent or purchase a unit in the Municipality.

Applicants who are removed from the waiting list may reapply. If approved to rent or purchase a unit in the Municipality, they may reapply for other opportunities in the Municipality.

H. Income Certified Applicants on the Waiting List

Under certain circumstances, an applicant may be fully income certified but they do not proceed with the purchase or renting of the unit. In this case, the applicant will resume their original position on the waiting list. They will be contacted in the same priority outlined in this Chapter. In other words, being fully income certified will not result in any priority on the waiting list over other applicants. If the applicant does not sign a contract or lease within six months of the income certifications, the certification will expire.

IV. Determining Income Eligibility

To be eligible for consideration for an Affordable Unit, a household must be determined to be income eligible. This income eligibility is modeled after the US Department of Housing and Urban Development's process known as Part 5. This system for determining eligibility is to sum the gross amount of income of all adult household members that is anticipated to be received during the coming 12-month period.

A. What is Considered Income

Figures 6 and 7 detail what sources of income are included in the income calculation and what sources of income are excluded as a source of income.

Figure 6: Income Sources Counted in Income Eligibility

Sources Considered Income	Description of Income Source
1. Income from wages, salaries, tips, etc.	The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips, and bonuses and other compensation for personal services.
2. Business Income	The net income from the operation of a business or profession.
3. Interest & Dividend Income	Interest, dividends, and other net income of any kind from real or personal property. Assets not earning a verifiable income shall have an annual imputed interest income using a current, average annual savings interest rate. (Use average daily balance of bank accounts for the calculations).
4. Retirement & Insurance Income	The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in #14 of Income Exclusions).
5. Unemployment & Disability Income	Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay (except as provided in #3 of Income Exclusions).
6. Welfare Assistance	Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program.
7. Alimony, Child Support, & Gift Income	Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling. (Child support is not counted as income if it is not being paid even though there is a court order.)
8. Armed Forces Income	All regular pay, special day and allowances of a member of the Armed Forces (except Armed Forces Hostile Fire Pay as stipulated in the Sources Not Considered Income Exclusions).
9. Rental Income From Real Estate	Rental income from real estate. Only the mortgage interest payment, insurance, taxes, and management expenses can be a deductible expense. (Mortgage principal payments cannot be deducted.) If the applicant owns real estate and does not receive rental income, the Administrative Agent may determine the fair market rent of the property to determine the potential rental income for the purposes of the application. If actual rent is less than fair market rent, the Administrative Agent shall impute a fair market rent unless rent control applies.
10. Imputed Interest from non-income producing assets such as real estate	Imputed interest is calculated on the equity of the asset. This applies to the equity of all non-income producing assets.
11. Property or Money Given Away in last 2 yrs	A percentage of the value of such assets based on the current passbook savings rate, as determined by HUD. Value of property will be based on tax assessment records using the following ratio: (land + improvements) / equalization ratio.

Only child support and alimony paid to another household by the applicant can be deducted from a household's income. Court ordered payments which are paid for alimony or child support to another household, whether or not it is being paid regularly, shall be excluded from income for purposes of determining income eligibility.

Figure 7: Income Sources NOT Counted in Income Eligibility (Per HUD Regulations)

Sources Not Considered Income	Description of Income Exclusions
1. Income of Children	Income from employment of children (including foster children) under 18 years.
2. Foster Care Payments	Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone).
3. Inheritance and Insurance Income	Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property.
4. Medical Expense Reimbursements	Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member.
5. Income of Live-in Aides	Income of a live-in aide (as defined in 24 CFR 5.403).
6. Disabled Persons	Certain increases in income of a disabled member of qualified families residing in HUD funded HOME-assisted housing or receiving HOME tenant-based rental assistance (24 CFR 5.671(a)). ⁴
7. Student Financial Aid	The full amount of student financial assistance paid directly to the student or to the educational institution.
8. Armed Forces Hostile Fire Pay	The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.
9. Self-Sufficiency Program Income	<ul style="list-style-type: none"> • Amounts received under training programs funded by HUD. • Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS). • Amounts received by a participant in other publicly assisted programs that are specifically for, or in reimbursement of, out-of-pocket expenses incurred (special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program. • Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for a public housing authority ("PHA") or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the

⁴ The HUD funded HOME Investment Partnerships Program ("**HOME**") provides formula grants to States and localities that communities use - often in partnership with local nonprofit groups - to fund a wide range of activities including building, buying, and/or rehabilitating Affordable Housing for rent or homeownership or providing direct rental assistance to low-income people. HOME is the largest Federal block grant to state and local governments designed exclusively to create Affordable Housing for Low-Income Households.

Sources Not Considered Income	Description of Income Exclusions
	same period of time. <ul style="list-style-type: none"> Incremental earnings and benefits inuring to any family member from participation in qualifying state or local employment training programs (including training not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and any such amounts are excluded only for the period during which the family member participates in the employment training program.
10. Gifts	Temporary, nonrecurring, or sporadic income (including gifts).
11. Reparations	Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era.
12. Income from Full-time Students	Part time income of non-head of household persons enrolled as full time student. HOWEVER, all income from the head of household will be included even if he/she is a full time student.
13. Adoption Assistance Payments	Adoption assistance payments in excess of \$480 per adopted child.
14. Social Security & SSI Income	Deferred periodic amounts from SSI and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts.
15. Property Tax Refunds	Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit.
16. Home Care Assistance	Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep this developmentally disabled family member at home.
17. Other Federal Exclusions	Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions of 24 CFR 5.609(c) apply, including: <ul style="list-style-type: none"> The value of the allotment made under the Food Stamp Act of 1977; Payments received under the Domestic Volunteer Service Act of 1973 (employment through VISTA, Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions); Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program; Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under the Federal work study program or under the Bureau of Indian Affairs student assistance programs; Payments received from programs funded under Title V of the Older Americans Act of 1985 (Green Thumb, Senior Aides, Older American Community Service Employment Program); Earned income tax credit refund payments received, including advanced earned income credit payments; The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990; Payments received under programs funded in whole or in part under the Job Training Partnership Act (employment and training programs for Native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, state job training programs and career intern programs, AmeriCorps); Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990; Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a

Sources Not Considered Income	Description of Income Exclusions
	crime against the applicant under the Victims of Crime Act; and <ul style="list-style-type: none"> • Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998.
18. Rental Assistance / Gifts For Housing Expenses	Sporadic or reoccurring gifts for housing expenses from family, friends, or community groups.
19. Repayment of Loan	Sporadic or reoccurring payments that are repayment of a loan from to the household.

B. Proof of Income and Other Supporting Documents

Extensive supporting documents are required to document the household's income and other qualifying criteria. The full list of required supporting documentation is provided in *Figure 8*.

During the course of the income certification, applicants may be required to submit additional documentation to establish the household composition and income. While it is impossible to list all examples of additional documentation, some examples of additional documentation are described below. The Administrative Agent may require that documentation is notarized.

- Private mortgage documentation (bank statement of party lending the money, letter with terms of private mortgage);
- Proof of gift for down payment (bank statement of party gifting the money, letter with terms of private mortgage);
- Proof of rental assistance from family, friend, or community group;
- Death Certificate of spouse when applicant is a recent widow or widower;
- Notarized letter from employer explaining overtime that will be offered to employee;
- Itemized explanation of deposits in bank accounts;
- If there are other household members that appear to be living in the household now but are not part of the household as it was when applying for housing, the applicant will have to provide a notarized letter explaining the current and existing household composition;
- If there is someone listed on the applicant's bank statement that is not included in their household applying for Affordable Housing, the applicant will be required to show proof that the person does not reside with the applicant; and

Notarized letter regarding withdrawal from 401K accounts or pensions (For example, if funds were withdrawn last year, will the applicant be making a withdrawal this year?)

Figure 8: Required Supporting Documents

Identification
<input type="checkbox"/> Personal photo identification: Driver's License, passport, or State ID
Income Related Documents – Provide All That Apply
<input type="checkbox"/> Employment Income: 4 most recent consecutive pay stubs for all employed household members
<input type="checkbox"/> Social Security: Most recent award letter
<input type="checkbox"/> Temporary Assistance for Needy Families (TANF): Voucher or other verification
<input type="checkbox"/> Pension: Letter from pension fund setting forth outlays and benefits received
<input type="checkbox"/> Child Support: Current statement from NJ child support website, court order or notarized letter re: child support status
<input type="checkbox"/> Alimony: Current statement from NJ website or notarized letter regarding alimony support status
<input type="checkbox"/> Military Pay: Verification of military pay
<input type="checkbox"/> Workers' Compensation: Statement showing benefits
<input type="checkbox"/> Unemployment Benefits: Statement showing benefits
<input type="checkbox"/> Self Employed or Own Business: Year to date profit & loss statement (not required if submitting K-1 with taxes)
<input type="checkbox"/> 1099 for Independent Contractors (Profit and loss statements are not permitted)
Bank Statements & Other Accounts (Including JOINT ACCOUNTS)
<input type="checkbox"/> Checking Account: All pages of statements for the last 6 consecutive months
<input type="checkbox"/> Savings Account Statements Including CD's: All pages of statements for the last 6 consecutive months
<input type="checkbox"/> Other Account Statements: Most recent statement for other assets such as retirement accounts, 401k's, stocks, bonds, & trusts
Tax Returns
<input type="checkbox"/> Federal Tax Return: All pages of 1040 Federal Tax Return for the past 3 consecutive years (copies of signed returns to validate the copy)
<input type="checkbox"/> State Tax Return: All pages for the past 3 consecutive years
<input type="checkbox"/> Notarized tax waiver letter if unable to provide taxes
If Applicant Owns A Home, Condo, And/ Or Rental Property, The Following Is Required
<input type="checkbox"/> Current mortgage statement
<input type="checkbox"/> Investment property lease agreement (if applicable)
<input type="checkbox"/> Current year tax assessment record
<input type="checkbox"/> Real estate listing if this property is for sale
<input type="checkbox"/> Contract with the realtor listing property if property is for sale
<input type="checkbox"/> Foreclosure notice (LIS PENDENS, etc.) if the property is in foreclosure
Other
<input type="checkbox"/> Divorce Decree: All pages of divorce decree & settlement agreement
<input type="checkbox"/> Full Time Student Over 18: School schedule to document full time status
<input type="checkbox"/> Section 8: Voucher (RENTAL ONLY)
<input type="checkbox"/> Mortgage Preapproval (OWNERSHIP ONLY)

C. Final Eligibility Determinations

After the household's annual income and composition is determined and verified, the Administrative Agent will make the final eligibility determination. Requirements related to household composition, Regional Asset Limit, down payments, etc. outlined in *Chapter III* will also be verified.

Households determined to be eligible will receive an eligibility letter notifying them of their eligibility determination, in writing. When a household is determined ineligible, an internal peer review of the income certification will be completed by the Administrative Agent. If the peer review confirms the ineligibility determination, the household will be notified in writing

and advised that it may submit additional proof and request that the decision be reconsidered by the Administrative Agent. Such request for reconsideration shall be made by the applicant within five (5) business days of receipt of notice of denial of ineligibility. If an applicant for affordable housing is again determined to be ineligible by the Administrative Agent, then the Municipal Housing Liaison (see Chapter 7) will attempt to mediate the decision or policy to the satisfaction of all parties. Any situation that the Municipal Housing Liaison is unable to resolve will be forwarded to the New Jersey Mortgage and Finance Agency (“**Agency**”) (or its successor) for further appeal and review. The determination of the Agency (or its successor) shall be a final administrative action (i.e., decision) subject to review of the courts.

D. Misrepresentation of Information in Application

When the applicant submits their full application, the applicant certifies that all information provided in the application is complete and true as to the entire household. If the applicant makes false statements or provides fraudulent documentation, the applicant will be determined ineligible immediately. They may reapply for Affordable Housing but they will lose their position on the waiting list.

E. Changes to Income and/or Household Composition after Submittal

Prior to the certification process and a determination of eligibility, a household may supplement its application. Once the full application has been submitted with the applicant certifying that all information is complete and true, the applicant enters the Eligibility Period. During this one to two-week timeframe during which the household’s eligibility is being reviewed, the applicant is not permitted to change the employment status of any household member in order to become eligible for Affordable Housing nor change the household composition from what is listed on the application. *For example, the applicant cannot add a member to their household, subtract a member, quit a job, or get a new job, or a raise during the Eligibility Period. See Glossary for definition of “**Eligibility Period**”.* If the applicant does make changes during this Eligibility Period, the household will be determined ineligible and lose their position on the waiting list. However, the applicant may reapply with their new income and/or household composition and will be assigned a new position on the waiting list.

V. Ownership Program

At each purchase, Affordable Housing documents are executed that restrict units as Affordable Units. The process of finding a buyer is explained in depth in *Chapter III*. In addition, the buyer must be income certified as outlined in *Chapter IV* and information about establishing new ownership projects is also included in *Chapter II*.

The following outlines the process of selling and purchasing an affordable home.

A. Selling an Affordable Home

1. Request an Intent to Sell Package

When an owner wants to sell its affordable home, the first step is to request an Intent-To-Sell package. The owner, as “**Seller**”, cannot start the process of selling its home until it makes this request and receives the package from the Administrative Agent.

2. Calculate the MRSP (Maximum Restricted Sales Price)

The Administrative Agent will calculate the MRSP of the affordable home based on the last sale price and the last sale date. The annual increase issued by the State of New Jersey is applied for each year the owner has owned the home. See Appendix A for updated maximum restricted sales price annual increase. However, there is no increase if the owner has owned the home for less than a year. *For example, if an owner purchased an affordable home in March 2015 and requested to sell the home in January 2016, the MRSP is the price the owner paid for the home.*

In addition, if the owner requests to sell their home and the state has not released the annual increase for that year yet, no annual increase for the current year will be applied. *For example, if an owner requests to sell their home in February 2015, and the 2015 increase has not been released, the MRSP will not include an increase for 2015.*

The Administrative Agent will prepare the Intent to Sell Package and send it to the Seller. This package will include:

- Form for the owner to sign and return, formally requesting to sell home;
- The MRSP of the unit;
- An overview of the process of selling an affordable home in this program;
- Blank Purchase Agreement;
- Summary of fees charged by the Administrative Agent/Municipality related to selling of the affordable home;
- Request for digital photographs to be utilized in the marketing of the home; and
- Request for additional information about the home to be utilized in marketing the home such as recent renovations and unit amenities.

3. Start Affirmative Marketing Process

When the Administrative Agent receives the signed Intent to Sell Form back, it will begin the process of looking for a buyer for the unit. This process is outlined in *Chapter III* of this manual. The Administrative Agent will refer interested buyers directly to the Seller. The Seller

will be responsible for showing the home to interested buyers. These buyers will be pre-screened by the Administrative Agent. However, since they will not be income certified, the Seller CANNOT enter into a contract with the buyer until the buyer is income certified by the Administrative Agent. When a household decides to purchase the affordable home, the buyer will be sent a full income certification application. (See the *Purchase Agreements and Contracts* later in this Chapter.)

B. Buying an Affordable Home

1. Preliminary Application and Prescreen

In order to be considered to purchase an affordable home, interested buyers must submit a preliminary application. The process outlined in *Chapter III* will be followed even if the Seller has found a buyer interested in purchasing the property. The unit must be affirmatively marketed to other eligible households on the waiting list first.

2. Income Certification

When a household would like to purchase the home, it will notify the Administrative Agent, and if it is next on the waiting list, it will be invited to submit a full application. The income certification process is described in detail in *Chapter IV*. A mortgage pre-approval must be submitted with the application as well as proof that the buyer has the recommended minimum down payment if required by the bank or provided at buyer's option. Buyers will be advised that they will also be responsible for closing costs, but they will not be required to show proof of funds at the time of the income certification. Closing costs cannot be added to their mortgage principal because the buyer can only finance 95 percent of the MRSP of the home.

3. Mortgage Provider

The Administrative Agent will provide prospective buyers with a list of mortgage companies that have financed deed restricted Affordable Units recently. If the prospective buyer chooses to utilize a different lender, the Administrative Agent will provide the lender copies of the Affordable Housing documents for their review after the buyer is income certified.

A buyer may borrow money to purchase the home from a friend or family member (sometimes referred to as a "*Private Mortgage*".) To proceed with the application, the Administrative Agent will require proof that the lending party has the funds (bank statement of the party who is lending the money, for example) and a notarized letter signed by both parties with the terms of the loan (monthly payment, interest, etc.). If the money is a gift, this should be noted in the letter. The lending party in a Private Mortgage situation MAY NOT be on the deed to the Affordable Unit.

4. Down Payment

In order to encourage homeowner investment and a sense of direct involvement in the homeownership process, it is strongly recommended that the buyer provide 5 percent of the purchase price as down payment. In addition, as a practical matter, applicants are highly unlikely to receive a mortgage without at least a 5% down payment. The funds may be provided

as a gift (e.g., from a family member or friend) if the funds do not have to be repaid, and proof of the gift must be provided at the time of income certification (see above).

Some municipalities offer a down payment assistance grant program. In such cases, the minimum down payment requirement is governed by specific program requirements. The Administrative Agent will maintain a list of down payment assistance programs that may become available and provide program information to buyers.

5. Separated Spouses

Separated applicants who have not finalized their divorce settlement agreement cannot purchase an affordable home until the spouse signs a form stating that they are releasing any claim right or interest in the affordable home being purchased. If the spouse refuses to sign the release, the applicant can request a judge to require the spouse to sign the form.

6. Cosigners on Deeds and/or Mortgages Are Not Permitted

If a buyer for Affordable Housing cannot obtain a mortgage, a family member or friend CANNOT obtain a mortgage and allow the affordable buyer to reside in the home. Anyone on the deed and/or mortgage is considered part of the buyer's household and must be included in the income certification and must reside in the home as its primary residence.

However, not all household members are required to be on the mortgage and/or deed. *For example, if a household is composed of the buyer and its roommate, both the buyer and the roommate will be included in the income certification. The roommate is not required to be on the deed or the mortgage.*

C. Purchase Agreement and Contracts For Sale

As the buyer and seller enter into negotiations, the purchase agreement is an "internal", not legally binding, COAH generated document between them to establish and ensure that the unit will be affordable to the buyer. It stipulates such terms as the MRSP of the unit, the agreed upon purchase price, the amount of good faith deposit, and the items to be included in the sale price of the unit ("**Purchase Agreement**"). All these terms are then set out in the contract for sale. Typically, the Purchase Agreement is signed after the buyer has been income certified, however under certain circumstances the Purchase Agreement may be amended and signed after the income certification process (see Section 4 below).

The contract for sale is a legal contract between the buyer and seller, finalizing the negotiations between buyer and seller and setting out all material terms of the transaction ("**Contract for Sale**"). The Contract for Sale can only be executed after the household is income certified.

Copies of both the Purchase Agreement and Contract for Sale should be sent to the Administrative Agent immediately upon execution.

1. MRSP and "Extras"

The Purchase Agreement includes a section for the Seller to list items that may be sold separately at a price agreed upon by the buyer and seller. The price to be paid for items of personal property shall not be used as a mechanism to avoid or circumvent the limitations on

the resale price of the unit itself. The personal property for sale cannot become a contingency of the house sale. If this separate transaction occurs, it cannot be incorporated into the Mortgage or Contract of Sale.

These “extras” do not include items of property that are permanently affixed to the unit such as countertops and flooring or were part of the original sale. These permanently affixed items are to be included in the MRSP and no additional compensation is permitted to the owner. As stated in UHAC, N.J.A.C. 5:80-26.9: “Upon the resale of a restricted 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.”

2. Accepting and Rejecting Offers

The Seller of the home must accept offers from the next buyer on the waiting list whose income is certified and who offers to purchase the home for the MRSP. The Seller cannot reject an offer at the MRSP from the first eligible person on the waiting list for any reason such as the buyer not making a cash purchase. In the contract, the Seller can include a requirement that the buyer be able to close in a reasonable amount of time, such as two months.

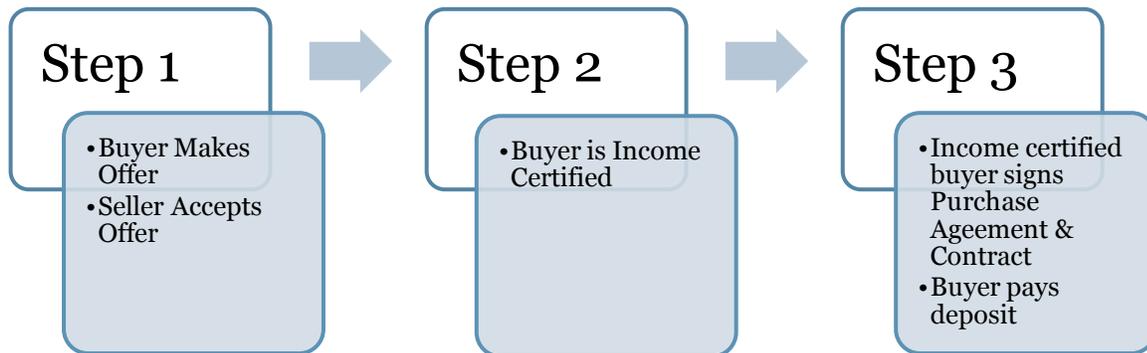
Buyers may make offers at less than the MRSP. The seller may choose to accept such an offer but is not required to accept such lower offers.

3. Good Faith Deposit/Earnest Money

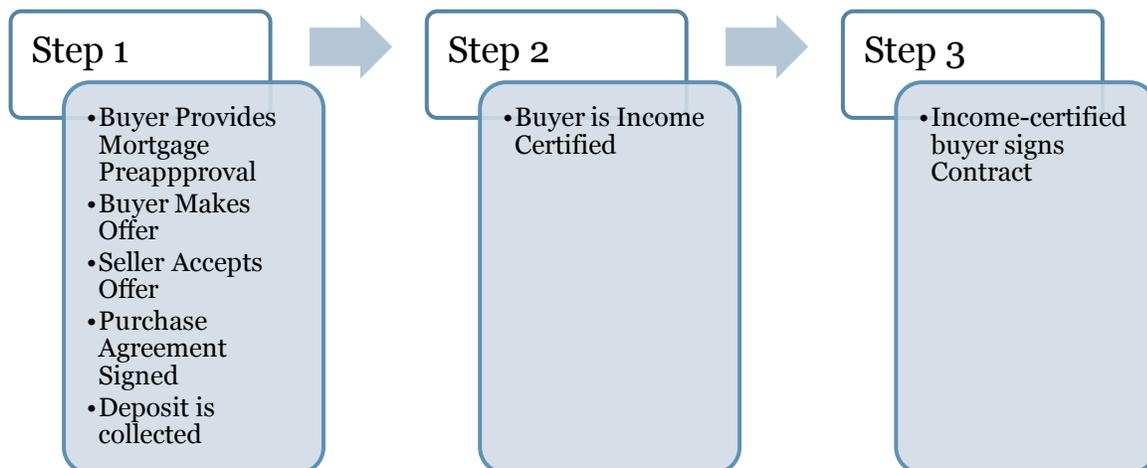
It is not required, but the seller may choose to collect a good faith deposit or earnest money at the time the Purchase Agreement is signed.

4. Purchase Agreement and Income Certification

The Purchase Agreement is typically signed only after the household is income certified. (*See Figure 9 below.*) Under this process, the Purchase Agreement clearly states that only an income certified household may sign a purchase agreement. See Glossary for definition of “**Certified Household**”. This process will be utilized for most resales, and it is the most effective process for selling homes if there is not a high demand for the home.

Figure 9: Purchase Agreement Signed After Income Certification

However, under certain circumstances, the Administrative Agent may amend the Purchase Agreement to permit a buyer who is not yet income certified to sign the Purchase Agreement. These circumstances include new developments where demand is very high for the units. Under this approach, as shown *Figure 10*, the Purchase Agreement will clearly state that the Purchase Agreement is contingent on the income certification by the Administrative Agent of the buyer as a Low or Moderate-Income household and, in the event that the household is determined not to be income eligible or does not submit a complete application, then the Purchase Agreement is invalid.

Figure 10: Purchase Agreement with Non-Income Certified Buyer

D. Attorneys

New Jersey does not require that attorneys participate in real estate transactions. However, while not a requirement, it is recommended that both the buyer and seller hire an attorney to draft the contract and represent them during the transaction.

E. Realtors

A realtor is not required for the sale of the affordable home because the Administrative Agent will refer interested buyers from the waiting list. However, some Sellers may choose to hire a realtor to conduct additional marketing and show the home. This is permitted under the following circumstances:

- The Seller provides the realtor's contact information to the Administrative Agent so that the Administrative Agent can inform the realtor of the MRSP, preliminary application, income certification process, and other Affordable Housing requirements;
- All interested buyers referred by the realtor, must submit a preliminary application and will be contacted following the process outlined in Chapter III; and
- Any realtor fee is subtracted from the MRSP. In no circumstances will the price of the home exceed the MRSP.

F. Coordination of Closing

After the home goes under contract, the Administrative Agent will maintain regular contact with the buyer, seller, and/or their attorneys as well as the mortgage provider. The Administrative Agent will answer questions about the Affordable Housing documents and assist to resolve any issues that arise before closing.

1. Required Legal Documents

The Administrative Agent will prepare the Affordable Housing documents summarized in *Figure 11*. If 95/5 is currently being used, we will continue to use 95/5 for resales. However, in all other cases, we will use Round III deed restrictions.

2. Resale of Affordable Units: Requirement for a Market Rate Appraisal

A market rate appraisal will be required to calculate the repayment amount on the affordable Recapture Mortgage Note. (This amount is the difference between the market appraisal and the affordable sale price and is due at the first non-exempt sale at the end of the control period. The repayment amount is paid to the Municipality.)

For new units, the developer is responsible for providing the market rate appraisal. If the buyer's mortgage company completes a market-rate appraisal, that appraisal can be used instead.

For resales, the buyer must provide the market rate appraisal. If the buyer's mortgage company will not be completing a market rate appraisal or it is a cash deal, the buyer must pay for a market rate appraisal. *This buyer will be notified of this requirement as soon as the Purchase Agreement is signed because the unit cannot close without the market appraisal.*

Figure 11: Legal Documents for Ownership Units

	No Master Deed	Master Deed
Not a 95/5 Unit	<ul style="list-style-type: none"> ◆ Deed “A” ○ Certification “J” ○ Recapture Note “L” (DCA), “N” (Municipality), or “P” (Agency) ◆ Recapture Mortgage “M” (DCA), “O” (Municipality), or “Q” (Agency) 	<ul style="list-style-type: none"> ◆ Deed “D” ◆ Restrictive Covenant “C-1” ○ Certification “J” ○ Recapture Note “L” (DCA), “N” (Municipality), “P” (Agency) ◆ Recapture Mortgage “M” (DCA), “O” (Municipality), or “Q” (Agency)
95/5 Unit	<ul style="list-style-type: none"> ◆ Deed “B” ○ Certification “J” ○ Recapture Note “G” ◆ Recapture Mortgage “H” 	<ul style="list-style-type: none"> ◆ Deed “D” ◆ Restrictive Covenant “C-2” ○ Certification “J” ○ Recapture Note “G” ◆ Recapture Mortgage “H”
<ul style="list-style-type: none"> ○ Must be filed with Administrative Agent / Municipality ◆ Must be recorded with County 		
<p><i>95/5 Unit:</i> Existing projects (generally completed before 2004) are considered 95/5 units and the Legal Instruments for 95/5 units will be utilized.</p>		

3. Closing Fees

If applicable, required closing fees paid by the Seller are due at the time of closing and must be included on the Settlement Statement. The fee cannot be waived.

The only exception is if the unit is bank owned as the result of a foreclosure action and the lenders (such as FHA, Fannie Mae, or Freddie Mac) are statutorily prevented from paying closing fees.

4. Closing Checklist

At the closing, the Administrative Agent will review the Affordable Housing rules with buyer including the following:

- When the unit is sold in the future, the owner must contact the Administrative Agent. The unit cannot be sold for more than the MRSP, and it must be sold to an income Certified Household;
- All refinancing, including lines of credits, secured by the Affordable Unit, must be approved in advance and in writing by the Administrative Agent. The total amount of all debt may not exceed 95 percent of the MRSP of the home;
- The Affordable Unit must be the owner’s primary residence;

- No renting of this unit is permitted except on a short-term hardship basis as approved in advance and in writing by the Administrative Agent (see Waiver section for more information); and

Improvements made to the unit will not increase the MRSP. However, as permitted under UHAC (N.J.A.C. 5:80-26.9), an owner “may apply to the Administrative Agent to increase MRSP 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 [additional bedroom, cost of central air conditioning ... see N.J.S.A. 5:80-26.9]. In no event shall the MRSP or an improved housing unit exceed the limits of affordability for the larger household.”

Prior to closing, the Administrative Agent will obtain a copy of the Closing Disclosure for the Affordable Housing file that is executed at closing between the buyer and seller to confirm that:

- The sale price listed on the Closing Disclosure does not exceed the MRSP; and
- The buyer has not financed more than 95 percent of the sale price and that the buyer is not receiving cash back at closing.

Following closing, the Administrative Agent will obtain one original set of documents and distribute the copies as follows:

- Original of Mortgage, deed, discharges and Restrictive Covenant (if applicable) to the attorney or title company that handled the closing for recording.
- Copy of all documents is provided to the buyer.
- Original of Mortgage Note and copies of all other documents are kept by the Administrative Agent for the Affordable Housing file.

G. Refinance Requests

Affordable home owners are permitted to refinance their mortgages or incur some form of additional debt on their home, such as a home equity loan. The owner must notify the Administrative Agent who will review the request to confirm that the total debt is not more than 95 percent of the current MRSP. If the total debt exceeds 95 percent of the MRSP, the request will be denied. If the request is under 95 percent, the request will be approved.

Reverse mortgages are not prohibited by UHAC. However, lenders have historically not approved reverse mortgages on deed restricted affordable properties because of the refinance limits. Any requests for reverse mortgages should be carefully reviewed to ensure that there is no way the loan amount will exceed 95 percent of the MRSP.

If there is a fee to review the refinance request, the refinance review will not be started until the fee is submitted via certified check or money order.

As clearly stated in the Restrictive Covenant, the owner is forbidden from refinancing or taking an equity loan, a secured letter of credit, or any other mortgage obligation or other debt without advanced, written approval from the Administrative Agent.

H. Annual Mailing

The Administrative Agent will send a mailing to each of the affordable owners annually. This newsletter will provide the owner with information about how to get in touch with the Administrative Agent if they want to sell their home or refinance their mortgage. It will also remind them of other important Affordable Housing requirements.

The envelope will be marked “do not forward”, and if it is returned by the post office, the Administrative Agent will follow-up with the owner to determine if the owner is no longer living in the home.

I. Report that Owner is Not Living in the Unit and/or Renting Unit

When the Administrative Agent obtains indications that an owner is not living in the unit, the Administrative Agent will investigate the allegation. The Administrative Agent will gather as many details as possible such as how long the owner has not been living in the unit; if anyone else is living there (i.e. renters); and if there is anyone else that will corroborate the allegations.

The Administrative Agent will also contact the Municipal Division of Tax Collection to determine where the tax bills are being sent. If they are sent to a different address than the property address on file with the Administrative Agent, then this is an indication that the owner is leasing the Affordable Unit.

The Administrative Agent will send a letter to the owner asking that it call the Administrative Agent within seven days. If the letter is returned, this will also suggest that the owner is not living in the unit. If the owner receives the letter and calls the Administrative Agent, the Administrative Agent will ask the owner about the allegations and request that they provide proof of residency, including copies of their driver’s license and utility bills. The Administrative Agent may also determine it is necessary to do an address search on the owner.

If it is determined that the owner is not living in the home, the enforcement provisions outlined in *Chapter VIII* will apply.

J. Non-payment of Condominium/Homeowner Association Dues, Taxes, Mortgages, and Foreclosure

When the Administrative Agent receives a report that the owner is falling behind in home owner association dues, taxes, and/or mortgage payments, it will immediately reach out to the owner. The purpose of this outreach is to:

- Educate the owner on the risks of not paying their condominium or homeowner association dues, taxes, and/or mortgage payments;
- Determine whether the owner has experienced a temporary or permanent loss of income;
- Recommend that they contact their condominium/homeowner association and/or mortgage company to see if they can set-up a repayment plan;
- Refer them to foreclosure prevention resources; and

- Advise them of the MRSP of their home if they are interested in selling the home before they become further behind.

The Administrative Agent will track the status of the unit and coordinate closely with the Municipality through its Tax Collection and/or Assessor's Office, as well as its Corporation Counsel, in order to be updated as to any water and sewer fees that are in arrears and any foreclosures on Affordable Units. Additionally, the Administrative Agent will notify the Municipal Corporation Counsel if it becomes aware that the home is in foreclosure or a lien has been placed on the unit by the condominium/homeowner association.

All deed restrictions must clearly specify that the affordability controls remain in effect despite the entry and enforcement of any judgment of foreclosure.

K. Waivers

The Administrative Agent has authority to grant waivers from some of the Affordable Housing rules. The Administrative Agent will complete a waiver request form for each request it receives outlining the details of the request and its decision to approve or deny the request.

1. Request to Rent Affordable Unit

Requests to rent a unit will only be approved on a temporary basis if the owner will be required to leave the area for a temporary period of time, such as military deployment. Each request will be reviewed by the Administrative Agent (as permitted by UHAC) based on the specific circumstances of the request. *Another example of where a request for waiver possibly would be approved is where the owner needs to go to another area to care for a sick relative for a short period (such as three months or less). A request for a waiver in order to move to another city to "try out" a new job for six months most likely would not be a basis for an approval.*

The Administrative Agent will determine the maximum rent based on the initial affordability pricing of the unit, and will select the tenant through Affirmative Marketing and random selection.

Other requests to rent units will be denied. These include requests from owners who would like to rent their home because they are unable to sell the unit for the full MRSP.

2. Request to Sell to a Higher Income Household

After an Affordable Unit has been for sale for over 90 days, the owner may request that it be sold to someone in a higher income level. The first factor the Administrative Agent will consider in reviewing these requests is how long it takes to sell a similar Affordable Unit in the current housing market. It is not unusual for an Affordable Unit to be offered for sale for six months or more before a qualified buyer is found. The waiver request will not be considered until the Affordable Unit has exceeded the "typical" time period it takes to sell a home under current market conditions.

Next, the Administrative Agent will review the sale price of the Affordable Unit. The inability to sell a unit for the MRSP shall not, in and of itself, be considered an appropriate reason for granting a waiver. The Administrative Agent will review the sale price of recent, comparable

affordable homes and determine if the owner should consider lowering the price. The condition of the unit and whether the Seller has consented to show the Affordable Unit to interested applicants will be factored into this analysis.

If the home has been for sale longer than other Affordable Units typically take to sell with the sale price comparable to other sales, and the owner has shown the Affordable Unit to interested buyers, the waiver may be approved. This waiver will only apply to this sale, and the original income restriction will remain for future sales.

L. Requests for Improvements

The Administrative Agent will review requests to increase the MRSP of the Affordable Unit on the basis of capital improvements. Eligible capital improvements shall be an increase in the number of bedrooms only.

Owners may make other improvements to their Affordable Units, and they are not required to request approval from the Administrative Agent. This includes improvements such as new countertops or flooring that do not increase the MRSP.

M. Transfer of Ownership to Non-Income Certified Owner

Under the following circumstances, ownership of an Affordable Unit can be transferred to another owner without the new owner being income certified. These circumstances include:

- Transfer of ownership between husband and wife;
- The transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; or
The transfer of ownership through an executor's deed to a Class A beneficiary (father, mother, grandparents, descendants, spouses, and, generally, civil union partners, or domestic partners).

This waiver will only apply to this sale, and the original income restriction will remain for future sales.

N. Enforcement

The guidelines for the enforcement of the affordable rules are outlined in *Chapter VIII*.

VI. Rental Program

The following is an overview of the process of filling a rental vacancy. See *New Rental Units* in *Chapter II* for a discussion of allowable fees and landlord-tenant selection criteria and *Chapter III* for a full discussion of management of the waiting list.

A. Filling Affordable Rental Vacancy

1. Landlord Notices of Vacancy

Landlords will notify the Administrative Agent when there will be a vacancy. Because of the Affirmative Marketing and income certification requirements, landlords will be advised that it may take up to two months to find a qualified tenant and longer if there is not high demand for a unit.

2. Calculating the Maximum Rent at Vacancy

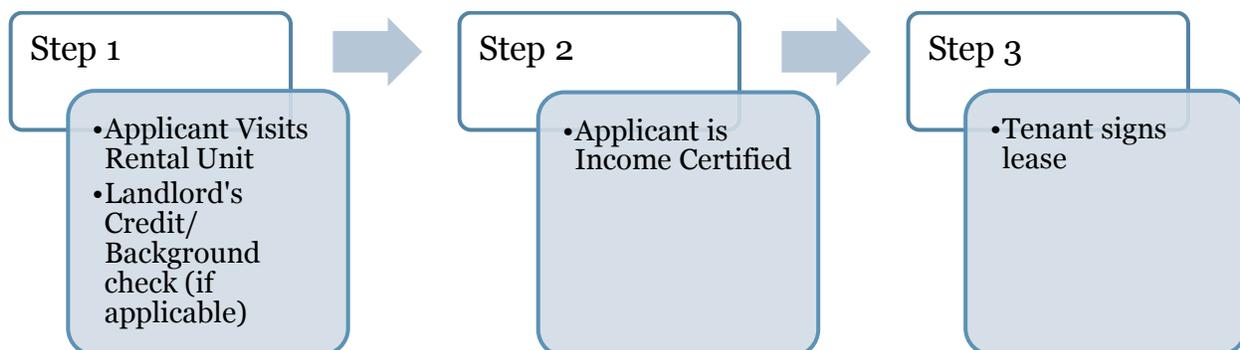
The Administrative Agent will determine the Maximum Rent that can be charged to the new tenant. This will be based on initial rent when the first tenant occupied the unit and the annual increases permitted by the State. See Appendix A for updated maximum annual rent increase. (Annual rental increases will be calculated even if the landlord did not take all permitted annual increases for the previous tenant.) At the landlord's discretion, the landlord can choose to rent the unit for less than the Maximum Rent determined by the Administrative Agent.

3. Referring Applicants to Landlord

The Affirmative Marketing process is outlined in *Chapter III* of this manual. After the next household on the waiting list passes the Administrative Agent's preliminary screen, the applicant is referred to the landlord to see the unit. If the applicant wants to rent the unit, they will complete the landlord's application and pay any required landlord fees. (See *New Rental Units* in *Chapter II* for discussion of fees and landlord-tenant selection criteria.)

If the landlord approves the applicant, the landlord will notify the Administrative Agent and the Administrative Agent will invite the applicant to submit a full application (*Figure 12*).

Figure 12: Rental Income Certification Process



4. Income Certification and Signing the Lease

After the applicant is fully income certified, the landlord will be notified that they may execute a lease with a tenant. *Co-signers* are permitted if allowed by landlord. Applicants who are separated and do not have settlement agreements are permitted to rent an Affordable Unit. However, in order to calculate the household income at the time of the full income certification, the applicant will need to provide a division of assets signed by both parties.

A copy of the executed lease must be sent to Administrative Agent.

B. Lease Renewals

The Administrative Agent will calculate the allowable maximum rent each year (please see Appendix A entitled “Methodology for Calculating Regional Income Limits and Rental Increases”). The Administrative Agent will advise the landlord what the maximum amount of rent is and request the copy of the executed lease for the file. And, unlike some forms of Public Housing, the tenant’s right to tenancy at the allowable rent does not vary with any increases or decreases in the tenant’s income.

If the landlord chooses not to take the annual increase, the landlord may not take a larger increase the following year. *For example, if the landlord does not take the 2015 increase in 2015, they may not take the 2015 and 2016 increase the following year if the current tenant does not move out.*

Month-to-month leases are permitted. Additional fees for month-to-month leases are considered “optional fees.” See discussion of optional fees in *Chapter II*.

Income certification of tenants is NOT required at the time of lease renewal. Upon leasing an Affordable Unit to a new tenant, the landlord will be permitted to lease at the allowable rent level permitted at that time.

C. Adding Additional Household Members to the Lease

The household composition of the rental household may change over time. The Affordable Housing rules do not prohibit the tenant from changing the number of household members on the lease following occupancy. However, all changes to the lease must be approved by the landlord.

However, an applicant cannot change their household composition after they submit the full application or immediately after they are income certified. The household members on the new tenant’s lease must match the household members listed on the income certification. This is to prevent applicants from changing their household composition in order to qualify for an Affordable Unit.

D. Income Designation of Units Are Fixed

The income designation and pricing tier of units are fixed and cannot be changed during the affordability period for any reason. *For example, if Unit 301 is a 3 bedroom Low-Income Unit and unit 201 is a 3 bedroom Moderate-Income unit, the landlord CANNOT change Unit 201 into the Low- Income unit and unit 301 into the Moderate-Income unit.*

E. Evictions

If the affordable tenant fails to pay rent or violates the terms of the lease, the landlord may take action as permitted by New Jersey Landlord Tenant laws.

F. Enforcement

The guidelines for the enforcement of the rental rules are outlined in *Chapter VIII*.

VII. Appeals

If an applicant for affordable housing is determined to be ineligible by the Administrative Agent, the applicant may submit additional proof and request reconsideration. Such request for reconsideration shall be made by the applicant within five (5) business days of receipt of notice of denial of ineligibility.

If a policy or decision regarding this program is appealed by an outside party, the Municipal Housing Liaison (a position established by Municipal Ordinance) will attempt to mediate the decision or policy to the satisfaction of all parties. Any situations that the Municipal Housing Liaison is unable to resolve will be forwarded to the Executive Director of the Agency (or its successor) for review or to the Superior Court of New Jersey, Morris County.

VIII. Enforcement

The Municipality's Affordable Housing Ordinance provides specific guidelines in the event of breach of any of the guidelines governing the Affordable Units by an owner, developer, or tenant. Please refer to Municipality's Ordinance for the complete list of enforcement activities upon the occurrence of a breach of any of the regulations governing the affordable unit by an owner, developer or tenant. Some of these remedies may include, but are not limited to:

- Foreclosure;
- Tenant eviction;
- Municipal fines;
- A requirement for household recertification;
- Acceleration of all sums due under a mortgage;
- Recoupment of any funds from a sale in violation of the regulations;
- Injunctive relief to prevent further violation of the regulations; and
- Entry on the premises.

A. Written Notice

In accordance with the Municipality's Affordable Housing Ordinance, the Municipality will provide written notice of a violation to a household, developer or tenant of an Affordable Unit advising them of the violation and the related penalty for the violation. If the violation is not corrected within sixty (60) days after the written notice, the Municipality may take the actions outlined in this Chapter.

B. Penalties

The Municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the Affordable Unit. If the owner, developer, or tenant is found by the court to have violated any provision of the regulations governing Affordable Units, the owner, developer, or tenant shall be subject to one or more of the following penalties, at the discretion of the court:

- A fine of not more than \$500 or imprisonment for a period not to exceed 90 days, or both. Each day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
- In the case of an owner who has rented his or her very low, low, or moderate income unit in violation of the regulations governing Affordable Units, payment into the Municipality's Affordable Housing Trust Fund of the gross amount of rent illegally collected; and
- In the case of an owner who has rented his or her very low, low, or moderate income unit in violation of the regulations governing Affordable Units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.

The Municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the owner's equity or other interest in the Affordable Unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a

judgment of default of the first purchase money mortgage and shall constitute a lien against the low- and moderate-income unit.

C. Sheriff Sale

Such judgment shall be enforceable, at the option of the Municipality, by means of an execution sale by the Sheriff, at which time the very low, low, or moderate income unit of the violating owner shall be sold at a sale price which is not less than the amount necessary to satisfy and pay off any first purchase money mortgage and prior liens and the costs of the enforcement proceedings incurred by the Municipality fully, including attorneys' fees. The violating owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.

The proceeds of the Sheriff's sale shall first be applied to satisfy the first purchase money mortgage lien and any prior liens upon the very low, low, or moderate income unit. The excess, if any, shall be applied to reimburse the Municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the Municipality in full as aforesaid, the violating owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the Municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the Municipality for the owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the owner shall make a claim with the municipality for such. Failure of the owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the Affordable Housing Trust as established by the Municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the owner or forfeited to the municipality.

Foreclosure by the municipality due to violation of the regulations governing Affordable Units shall not extinguish the restrictions of the regulations governing Affordable Units as the same apply to the very low, low, or moderate income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the Affordable Unit.

The owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.

If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the first purchase money mortgage and any prior liens, the municipality may acquire title to the very low, low, or moderate income unit by satisfying the first purchase money mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the first purchase money mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the MRSP for which the very low, low, or moderate income unit could have been sold under the terms of the regulations governing Affordable Units. This excess shall

be treated in the same manner as the excess which would have been realized from an actual sale as previously described.

Failure of the very low, low, or moderate income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the owner to accept an offer to purchase from any qualified purchaser which may be referred to the owner by the municipality, with such offer to purchase being equal to the MRSP of the very low, low, or moderate income unit as permitted by the regulations governing Affordable Units.

The owner shall remain fully obligated, responsible, and liable for complying with the terms and restrictions governing Affordable Units until such time as title is conveyed from the owner.

In the event that any provision in this Manual differs from the terms or penalties identified in the most current Affordable Housing Ordinance, then the Affordable Housing Ordinance (as may be from time to time modified, amended and/or revised by relevant New Jersey State laws and/or regulations) shall prevail. The invalidity or nonenforceability of any provision of this Manual in any respect shall not affect the validity or enforceability of any other provision of this Manual in any other respect.

GLOSSARY

“**Administrative Agent**” means the entity responsible for the administration of Affordable Units in accordance with the Municipality’s Affordable Housing Ordinance and as defined and with the responsibilities specified at N.J.A.C. 5:96, N.J.A.C. 5:97 and N.J.A.C. 5:80-26.1 et seq., as may be amended and supplemented.

“**Affirmative marketing**” means a regional marketing strategy designed to attract buyers and/or renters of Affordable Units pursuant to N.J.A.C. 5:80-26.15.

“**Affordable**” means a sales price or rent within the means of a very low, low- or moderate-income household as defined in N.J.A.C. 5:97-9; 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, as may be amended and supplemented, 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, as may be amended and supplemented.

“**Affordable housing**” means housing units restricted to income-eligible very-low, low and moderate income households.”

“**Affordable Housing Development**” means a development included in the Housing Element and Fair Share Plan, and includes but is not limited to, an inclusionary development, a municipal construction project or a one-hundred-percent Affordable Housing development.

“**Affordable Housing Unit**” for the purposes of this manual means a housing unit proposed or created pursuant to the Fair Housing Act, for which credits are obtained pursuant to COAH regulations, and/or funded through an affordable housing trust fund.

“**Affordability Average**” means the average percentage of median income at which new restricted units in an Affordable Housing development are affordable to very low, low- and moderate-income households.

“**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.).

“**Age-Restricted Unit**” means a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development wherein the unit is situated are 62 years of age or older; or 2) at least 80 percent of the units are occupied by one person who is 55 years of age or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as “housing for older persons” as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

“**Application**” means both the Preliminary Application and the Full Application submitted by an interested renter or potential homeowner for Affordable Units in the Municipality.

- “**Preliminary Application**” means the initial application submitted by all households that wish to express their interest in and be considered for Affordable Housing. This

Preliminary Application includes information about household income and composition in order to determine preliminary eligibility.

- **“Full Application”** means once an Affordable Unit appropriate for the Household (either to rent or buy) has been identified and the Household is nearing or next on the waiting list, the Household will be asked to submit a full application which requires that the income and household composition be updated and verified. The Administrative Agent will make a determination of the Household’s eligibility.

“Certified Household” means a Household that has been certified by an Administrative Agent as A Very Low, Low-Income or Moderate-Income Household.

“Closing Disclosure Form” means the form which in October 2015 replaced the commonly used HUD-1 Settlement Statement for residential real estate closings. The Closing Disclosure Form provides details about the mortgage loan selected by the buyer which includes the loan terms, projected monthly payments, and how much the buyer will pay in fees and other costs to obtain the mortgage (“closing costs”).

The lender is required to provide the Closing Disclosure Form to the buyer at least three business days before the closing on the mortgage loan. The Administrative Agent will review the Closing Disclosure Form to confirm that the sale price does not exceed the MRSP and that the buyer is not receiving cash back at closing.

“COAH” means the Council on Affordable Housing, or successor agency, which is in, but not of the Department of Community Affairs of the State of New Jersey, that was established under the New Jersey Fair Housing Act “to have primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in this State” N.J.S.A. 52:27D-304 (a).

“Contract for Sale” means a legally binding agreement between a buyer and seller for the sale or transfer of real estate. See also, **“Purchase Agreement”**.

“CTM” means the online COAH Tracking and Monitoring system to which new units are added after initial sale or initial rental.

“DCA” means the State of New Jersey Department of Community Affairs.

“Developer” means any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land proposed to be included in a proposed development, including the holder of an option to contract to purchase, or other person having an enforceable proprietary interest in such land.

“Development” means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1, et seq.

“Eligibility Period” means once the Full Application for an Affordable Unit has been submitted with the applicant certifying that all information is complete and true, the applicant enters the Eligibility Period. During this one to two-week time frame, as the Household’s eligibility is being reviewed, the applicant is not permitted to change the employment status of any Household member in order to become eligible for Affordable Housing nor change the Household composition from what is listed on the Full Application. *For example, the applicant cannot add a member to their Household, subtract a member, quit a job, or get a new job, or a raise during the Eligibility Period.* If the applicant does make changes during this Eligibility Period, the Household will be determined ineligible and lose their position on the waiting list. However, the applicant may reapply with their new income and/or Household composition and will be assigned a new position on the waiting list.

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

“Full Application” (see **“Application”**).

“Housing Authority” means the Public Housing Agency which manages and operates publicly assisted units in the Municipality.

“Affordable Housing Ordinance” means that chapter or section of the municipal ordinance (the rules, regulations and codes enacted by a local government) addressing local affordable housing programs and procedures, as may be amended and supplemented.

“HOME Program” means the HUD funded HOME Investment Partnerships Program that provides formula grants to States and localities that communities use - often in partnership with local nonprofit groups - to fund a wide range of activities including building, buying, and/or rehabilitating Affordable Housing for rent or homeownership or providing direct rental assistance to low-income people. HOME is the largest Federal block grant to state and local governments designed exclusively to create Affordable Housing for Low-Income Households.

“Household” means, in accordance with HUD definitions and UHAC practice, the number of persons in the Affordable unit and not the size of the Affordable unit. See for example, HUD’s definition of household as “[o]ne or more persons occupying a housing unit” -- in other words, the number of persons in the home. HUD website accessed 6/13/2016. http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/library/glossary/ See also UHAC regulation N.J.A.C. 5:80-26.4, “In determining the initial rents and initial sales prices for compliance with the affordability average requirements for restricted units ... the following standards shall be used: 1. A studio shall be affordable to a one-person household.”

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

“**HUD**” means the US Department of Housing and Urban Development. “**Interest Date**” means the date on which a Household submits its Preliminary Application thereby establishing its place on the priority list for consideration of Affordable Units.

“**LAD**” means the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., prohibits, among other discriminatory actions, discrimination when selling or renting property.

“**Low-income Household**” means a household with a total gross annual household income equal to 50 percent or less of the median household income for the housing region.

“**Low-income unit**” means a restricted unit that is affordable to a low-income household.

“**Market-rate units**” means housing not restricted to very low, low- and moderate-income households that may sell or rent at any price.

“**Maximum Restricted Sales Price**” or “**MSRP**” means the maximum sales price of restricted ownership units within each affordable development upon resale of the Affordable Unit in accordance with N.J.A.C. 5:80-26.3(e) which states that such units “shall be affordable to households earning no more than 70 percent of median income. Each affordable development must achieve an affordability average of 55 percent for restricted ownership units. See Glossary for definition of “**Affordability Average.**” In achieving this Affordability Average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.” *For example, a two-bedroom moderate income unit originally sold for \$85,000 and another exactly similar unit originally sold for \$105,000. There always will be a disparate MSRP for resales of these two units. Both moderate income units are priced differently to reach different income levels of moderate income households.*

“**Median income**” means the median income by household size for the applicable housing region as adopted annually by COAH or a successor entity approved by the Court.

“**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 household income for the housing region.

“**Moderate-income unit**” means a restricted unit that is affordable to a moderate-income household.

“**Municipal Housing Liaison**” means a position established by ordinance of the Municipality where the individual as a part time or full time employee of the Municipality is responsible for the oversight and administration of the Affordable Housing program for the Municipality

“**PHA**” means Public Housing Authority. See below for definition.

“**PMI**” means private mortgage insurance. PMI is a type of mortgage insurance used with conventional loans. Like other kinds of mortgage insurance, PMI protects the lender (not the homebuyer) if the homebuyer stops making payments on the loan. PMI is arranged by the

lender and provided by private insurance companies. PMI is usually required when the homebuyer has a conventional loan and makes a down payment of less than 20 percent of the home's purchase price. PMI also is usually required when a homeowner is refinancing with a conventional loan and the owner's equity is less than 20 percent of the value of the home. <http://www.consumerfinance.gov/>, US Consumer Financial Protection Bureau, accessed August 10, 2016.

“Preliminary Application” (see **“Application”**).

“Public Housing” “Public Housing Authority” means those public housing units which are funded largely by governmental programs such as those administered by HUD programs which are owned, operated and managed by a public housing authority (**“PHA”**). As defined by HUD, “public housing was established to provide decent and safe rental housing for eligible low-income families, the elderly, and persons with disabilities. Public housing comes in all sizes and types, from scattered single family houses to high rise apartments for elderly families. There are approximately 1.2 million households [in the US] living in public housing units [.]” http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph, HUD Website, accessed June 7, 2016.

“Purchase Agreement” means a not legally binding, “internal” COAH generated document between a buyer and seller of residential real estate to establish and ensure that the Affordable Unit will be affordable to the buyer. It stipulates such terms as the Maximum Restricted Sale Price (or Maximum Permitted Resale Price) of the unit, the agreed upon purchase price, the amount of good faith deposit, and the items to be included in the sale price of the unit. (See **“Contract of Sale”**).

“Random selection process” means a process by which currently income-eligible households are selected for placement in Affordable Units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized Affordable Unit (e.g., by lottery).

“Redevelopment Plan” means a plan adopted by the Municipality for the redevelopment or rehabilitation of all or any part of a redevelopment area, or area in need of rehabilitation, pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.

“Regional Asset Limit” means the maximum housing value in each housing region affordable to a four-person household with an income at 80 percent of the regional median as defined by duly adopted Regional Income Limits published annually by COAH or a successor entity.

If a Household (seeking to be certified for an Affordable Unit) owns a primary residence (with no mortgage on the property) valued at or above the regional asset limit as published annually by COAH, a Certificate of Eligibility will be denied unless the Applicant's existing monthly housing costs (including principal, interest, taxes homeowner and private mortgage insurance, and condominium and homeowner association fees as applicable) exceed 38 percent of the household's eligible monthly income. N.J.A.C. 5:80-26.16(b)(3).

“Regional Preference” means that in accordance with UHAC, municipalities may wish to give preference to applicant households that live or work in their COAH housing region. If so, the municipality must state this preference as part of its affordable housing ordinance. This preference cannot be limited to families that live or work in the host municipality – if preference is given, it must be given to all households that live or work in their COAH housing region. COAH divides New Jersey’s 21 counties into six housing regions as outlined on COAH’s Annual Regional Income Limits Chart.

“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 computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

“Restricted Unit” means a dwelling unit, whether a rental unit or an ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as amended and supplemented, but does not include a market-rate unit financed under the Urban Homeownership Recovery Program (“UHORP”) or the Market Oriented Neighborhood Investment program (“MONI”) of the Agency.

“UHAC” means the Uniform Housing Affordability Controls adopted by the State of New Jersey and set forth in N.J.A.C. 5:80-26.1, et seq.

“Very Low-Income Household” means a household with a total gross annual household income equal to 30 percent or less of the median household income for the applicable housing region.

“Very Low-Income Unit” means a restricted unit that is affordable to a very low-income household.

“Veterans Preference” means the municipality and Developer or residential development owner may enter into an agreement to provide a preference for affordable housing to very low, low and moderate income veterans who served in time of war or other emergency, as defined in section 1 of P.L.1963, c. 171 (C.54:4-8.10), of up to 50 percent of the affordable units in that particular project. This provision is in accordance with N.J.S.A. 52:27D-311 (j). This preference shall be established in the applicant selection process for available affordable units so that applicants who are veterans who served in time of war or other emergency, as referenced in this subsection, and who apply within 90 days of the initial marketing period shall receive preference for the rental of the agreed-upon percentage of affordable units. After the first 90 days of the initial 120-day marketing period, if any of those units subject to the preference remain available, then applicants from the general public shall be considered for occupancy. After the 120 –day marketing period, veterans will continue to get preference over non-veterans, as the units become available, whenever the percentage of preference-occupied units falls below the agreed upon percentage.

Appendix A: Annual Information Update

The following information is subject to change annually:

- Regional Maximum Income Limits
- Regional Asset Limits
- Annual Maximum Restricted Sale Price Increase
- Annual Maximum Rental Increase Amount

In order to keep this manual current, Appendix A will be revised annually with updated numbers upon their general availability. See next page for the most recent information.

Methodology for Calculating Regional Income Limits and Rental Increase:

Income limits for all units that are part of the municipality's Housing Element and Fair Share Plan and for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 shall be updated by the municipality annually within 30 days of the publication of determinations of median income by HUD as follows:

- a. Regional income limits shall be established for the region that the municipality is located within, based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in the municipality's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low-income unit for a household of four shall be 30 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.
- b. The income limits attached hereto as Exhibit B are the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for the current year and shall be utilized until the municipality updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
- c. The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Municipality annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.

In establishing sale prices and rents of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC, utilizing the regional income limits established pursuant to the process defined above:

- a. The resale prices of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region determined pursuant to the process outlined above. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.
- b. The rent levels of very-low-, low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the Northeast Urban Area, upon its publication for the prior calendar year. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low income housing tax credit regulations shall be indexed pursuant to the regulations governing low income housing tax credits.

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Region 2 Maximum Income Limits

Essex, Morris, Union and Warren

Household Size	Very-Low Income	Low Income	Moderate Income	Median Income
1 Person	\$22,157	\$36,929	\$59,086	\$73,857
1.5 Person*	\$23,740	\$39,566	\$63,306	\$79,132
2 Person	\$25,322	\$42,204	\$67,526	\$84,408
3 Person*	\$28,488	\$47,480	\$75,967	\$94,959
4 Person	\$31,653	\$52,755	\$84,408	\$105,510
4.5 Person*	\$32,919	\$54,865	\$87,784	\$109,730
5 Person	\$34,185	\$56,975	\$91,161	\$113,951
6 Person	\$36,717	\$61,196	\$97,913	\$122,391
7 Person	\$39,250	\$65,416	\$104,666	\$130,832
8+ Person	\$41,782	\$69,637	\$111,419	\$139,273

* These columns are for calculating the pricing for one, two and three bedroom sale and rental units as per N.J.A.C. 5:80-26.4(a).

Region 2 Regional Asset Limit:

\$202,419

Region 2 Maximum Restricted Sale Price Increase:

4.71%

Region 2 Maximum Rental Increase:

1.90%