

# Quarter Notes



By **Guliet D. Hirsch**  
Archer & Greiner, P.C.



## COAH Ramps Up The Controversy

The saga continues! On July 2, 2014, the Council on Affordable Housing (COAH) responded to a New Jersey Supreme Court Order by proposing new substantive and procedural rules. COAH has not had valid rules since 1999 – creating uncertainty and providing towns with an excuse not to zone for affordable housing. The new rules were immediately criticized by housing advocates, towns and environmental groups, and have generated three court filings by the Fair Share Housing Center.

Municipal fair share under the proposed rules includes three components:

1. “Rehabilitation Share” (dilapidated housing, previously known as indigenous need or present need);
2. The “Unanswered Prior Obligation” (need for the period of 1987 through 2014); and
3. “Fair Share of Prospective Need” (previously known as prospective need or growth share), for the period 2014 through 2024.

Statewide fair share has been drastically reduced from previous calculations:

	2014	2008
<b>Rehabilitation Share</b>	62,859	51,891
<b>Unanswered Prior Obligation</b>	21,558 (only half, or 10,779, required through 2024)	85,964 (1987-1999)
<b>Fair Share</b>	30,633 (adjusted down from 61,101)	115,666 (adjusted down from 131,297)
<b>Total</b>	104,271	253,521

Here are some of the concerns raised to date:

- **Questionable Credits and Reductions.** For example, statewide and municipal fair share obligations are reduced by over 60,000 units for “filtering,” the process by which higher-priced housing may become more affordable over time. According to COAH, filtering occurs only when there is an active housing market with a significant influx of new housing, factors clearly not applicable since the 2006 housing market decline. Additionally, Statewide fair share would be further reduced by 30,000 units due to “buildable limits” as calculated by COAH.

- **The Black Box Methodology.** The methodology utilized has been described as opaque and full of black boxes, i.e., experts cannot repeat the calculations or understand the methodology. Additionally, documents explaining the fair share calculations have disappeared.

- **Non-Compliance with the Court’s Order.** COAH has failed to follow the New Jersey Supreme Court’s direction to utilize the fair share approach in place before the prior growth share rules were adopted.

- **Approach to Inclusionary Development.** Inclusionary housing has been re-defined to include a 10% low- and moderate-income set-aside, down from the 20% standard set-aside in place since the 1983 “Mount Laurel II” decision. No minimum density is set and “economic feasibility” must be demonstrated.

- **Delayed Zoning for Pre-1999 Housing Need.** Allowing towns to address only 50% of their prior round obligations until all of future fair share has been constructed. Given the fact that the prior round obligation has existed before 1999, this provision is widely viewed as an unjustified delay.

- **Rental and Age-Restricted Housing.** Rental housing is no longer required and bonuses are not provided. The 25% cap on age-restricted housing can be exceeded with proof of a regional demand.

- **Prior Options Eliminated.** Redevelopment, rehabilitation, accessory apartments, etc. have been eliminated except for towns which receive vacant land adjustments.

Public comments were due by August 1, 2014. The rules must be adopted no later than November 17, 2014.