



# COAH Continues Affordable Housing Controversy with Proposed New Rules

## Client Advisories

05.16.2014

On April 30, 2014, the New Jersey Council on Affordable Housing (COAH) approved and authorized publication of new substantive and procedural rules. The substantive rules include a separate set of technical appendices for determining any municipality's three-component "fair share," *i.e.*, the town's obligation to provide its share of the regional need for low- and moderate-income housing units. These three components are:

1. "Rehabilitation Share," previously known as indigenous or present need. This component is existing, deficient housing occupied by low- and moderate-income householders. See Appendix B;
2. "Unanswered Prior Obligation" is the previously determined housing obligation for the period of 1987 through 2014, reduced by the number of constructed low- and moderate-income housing units. See, Appendix D; and
3. "Fair Share of Prospective Need," previously known as growth share or prospective need, is the town's share of the projected regional need for low- and moderate-income housing for the period of 2014 through 2024. See, Appendix C.

Statewide fair share under the proposed rules is summarized below:

	Proposed COAH Rules	
Rehabilitation Share	62,859	
Unanswered Prior Obligation	21,558	(only half, or 10,779, required through 2024)
Fair Share	30,633	(adjusted down from 61,101)
Total	104,271	(includes only 2014-2024)

The proposed rules are found on the COAH website at [www.nj.gov/dca/services/lps/hss/ruleproposal.html](http://www.nj.gov/dca/services/lps/hss/ruleproposal.html) and will be published in the New Jersey Register on June 2, 2014. The public comment period closes on June 1, the public hearing is scheduled for July 2, with adoption by November 14, 2014.

The proposed rules came as a surprise to some COAH members, who saw the proposal for the first time the day before the April 30 approval vote. The Fair Share Housing Center, a nonprofit dedicated to enforcement of New Jersey's landmark *Mount Laurel* Supreme Court decisions, reports that the effort behind the rules "is being run with high-level members of the Attorney General's office working closely, and secretly, with Rutgers Professor Robert Burchell."

Many concerns about the new rules have already been raised by interested parties. One inevitable outcome is will be more litigation over the numbers and methodology.

Among the issues are:

- Concern about the significant reduction in statewide fair share numbers, including multiple automatic reductions and questionable credits and adjustments. For example, statewide and municipal fair share obligations are reduced by over 60,000 units of credit for "filtering," the process by which higher-priced housing may become more affordable over time. According to COAH, filtering occurs only in an active housing market with a significant influx of new housing.
- The methodology utilized, which has been described as opaque and full of black boxes, i.e., experts cannot repeat the calculations or understand the methodology.
- The apparent failure to follow the New Jersey Supreme Court's direction to utilize the fair share approach in place before the growth share rules were adopted.
- Inclusionary housing, re-defined to include only 10% low- and moderate-income units, down from the 20% standard set-aside announced in the State Supreme Court's "Mount Laurel II" decision.
- The failure to focus on redevelopment as a source of new housing, including low- and moderate-income units.
- A provision that a town is not required to address more than 50% of its prior round obligation until all of its future fair share has been constructed. Given the fact that much of the prior round obligation is need that was supposed to be satisfied by 1999, this provision authorizes what is widely viewed as an unjustified delay in satisfying prior need.
- The potential that towns may get three bites at the apple for vacant land reductions to fair share: reductions built into the methodology, permitted reductions under the rules, and automatic vacant land adjustments utilizing Appendix E.

We will be closely monitoring the ongoing process and will continue to advise you as the rules evolve.

For more information on the proposed COAH rules and potential impacts, or other development-related issues, please contact Guliet D. Hirsch, Partner in [Archer's Land Use, Environmental Permitting and Compliance Group](#), at [ghirsch@acherlaw.com](mailto:ghirsch@acherlaw.com) or (609) 580-3790; Robert W. Bucknam Jr., Group Chair, at [rbucknam@archerlaw.com](mailto:rbucknam@archerlaw.com) or (856) 354-3025; or a member of the Group at any of our offices listed below.



*DISCLAIMER: This client advisory is for general information purposes only. It does not constitute legal or tax advice, and may not be used and relied upon as a substitute for legal or tax advice regarding a specific issue or problem. Advice should be obtained from a qualified attorney or tax practitioner licensed to practice in the jurisdiction where that advice is sought.*

© 2025 Archer & Greiner, P.C. All rights reserved.

