

FREQUENTLY ASKED QUESTIONS ABOUT A.500/S.1783 AND THE COAH THIRD ROUND RULES

1. How are towns' new COAH obligations different from the previous ones?

Municipal housing obligations under the new COAH rules fall into three basic categories:

- One of every 5 residential units added through new development must be affordable
- One affordable housing unit for every 16 jobs added through new development
- Rehabilitation of existing substandard housing occupied by lower income families

In addition, municipalities that failed to meet their fair share obligations from earlier rounds (1986-1999) must also make up the missing affordable units.

The new third round fair share figures are much higher than the numbers published in 2004, but they are not that high compared to some of COAH's earlier numbers. In fact, they are actually lower on an annual basis than many earlier numbers. They *seem* higher for two reasons: first, because the 2004 Third Round numbers from COAH were extremely low – much lower than any numbers ever used before – and second, because they cover a longer period than the first or second round numbers. The 2004 numbers low-balled obligations to such an extent that they were thrown out by the Appellate Division in 2006.

As the chart below shows, in its first round in 1986, COAH's allocations added up to nearly 11,000 units per year, while their second round allocations were 6,465 units per year. The third round numbers set a goal of 6,088 units per year, making it lower than either the first or second round.

TABLE: COAH FAIR SHARE GOALS 1986-2008

	Duration of fair share round	Rehabilitation obligation	New Construction Obligation	
			Total	Annual
COAH, 1986	6 years	80,614	65,063	10,849
COAH, 1994	6 years	40,623	77,580	6,465
COAH, 2004	15 years	33,312	52,726	3,515
COAH, 2008	19 years	51,891	115,666	6,088

Because of the state’s delay in coming up with third round numbers, and then the fact that the first set of numbers were so bad that they were rejected by the courts, the third round covers an 18 year period, from 2000 through 2018. Some towns may argue that the figures are unrealistic, because they require the municipality to meet their 18 year goal in 10 years – from 2009 to 2018. Looked at that way, they argue that the annual target is not 6,088, but 11,567.

This is a very substantial obligation, particularly at a time when the housing market is so weak. The full burden of these numbers only falls on a town, however, if it did *absolutely nothing* between 2000 and 2008 to address its fair share obligations. For a town to have done that, however, was clearly irresponsible. Even though they may not have known precisely what their fair share obligation might be, they certainly knew that they had a fair share obligation. Thus, for those towns that continued to address their affordable housing needs during those years, the obligation going forward should be more manageable.

2. Now that RCAs are no longer an option, how will this affect towns’ COAH obligations?

In the past, towns have been able to move up to half of their fair share obligation to other towns through Regional Contribution Agreements. Now, towns have to meet their full obligation within the municipality.

This will create some difficulties at first, as municipalities adapt to these new rules. In the past, it was well-known that the per unit amount that sending municipalities paid in an RCA was far less than the actual cost of creating an affordable unit. As a result, it was the receiving municipality that had to make up the difference. Now, the municipality where the obligation is created must figure out how to meet the obligation, rather than simply pass the responsibility on to another community.

3. If RCAs are no longer an option, won't towns have to raise taxes to meet their fair share obligation?

Towns have many ways to meet their fair share obligation that do not involve raising taxes. The most straightforward is through inclusionary development. Municipalities can rezone sites (usually at 6-8 units per acre) for residential development, subject to a requirement that a percentage of all the new units are set-aside for low and moderate income households. Since the developer benefits from the rezoning, no financial contribution is required from the municipality. This has been the most common way that towns have met COAH obligations for more than two decades.

Realistically, if a municipality is experiencing a lot of non-residential development, it may not be able to use inclusionary housing to meet its entire obligation. Most of the obligation from commercial development, as well as any unmet obligations generated since 2000 or left over from the COAH first or second rounds, may largely have to be met through other means.¹

A town with a COAH-approved plan can implement a development fee ordinance, and use the proceeds to support other ways of creating affordable housing. This can include the construction of municipally-sponsored affordable housing developments in partnership with non-profit or for-profit developers; building group homes and other congregate living arrangements; construction of assisted living residences; assistance to homeowners to create accessory apartments inside existing single family houses; and buying existing units for subsidized sale or rent to income eligible households.

Over and above the money that a municipality can collect from a development fee ordinance, towns have access to a variety of funding sources for affordable housing. Through the HMFA, non-profit developers working with municipalities can access Low Income Housing Tax Credits, which can pay for construction of affordable rental housing projects. Other funding sources include the state Affordable Housing Trust Fund (formerly the Balanced Housing Program), and the Federal Home Loan Banks' Affordable Housing Program. We must recognize, however, that the magnitude of the need means that there will be a significant increase in the demand for these public sources of funding over the coming years. Additional sources of funding from the public and private sector are likely to be necessary if the full fair share targets are going to be met.

Finally, it is important to note that a municipality never has to raise taxes to develop affordable housing. Municipalities have to put zoning in place, help apply for available resources, and bond if those resources are not received, but cannot be required to raise taxes to fund the construction of affordable housing. The Fair Housing Act specifically provides that "nothing in this act shall require a

¹ Not entirely, however. The growth share obligation for residential development is 1 to 5 or 20%. Where the rezoning is sufficient, COAH permits municipalities to require up to a 25% affordable housing setaside. As a result, a municipality under some conditions could generate enough affordable housing units from inclusionary development to offset at least some of their other fair share obligations.

municipality to raise or expend municipal revenues in order to provide low and moderate income housing” (N.J.S.A.52:27D-311(d))

4. Why should municipalities have to provide affordable housing when they bring jobs into the community?

Whenever a new commercial development – whether an office building, shopping center, or warehouse – is built in a community, it creates the demand for housing. Because many of the jobs are low wage jobs, many of the people working there will need affordable housing if they are to be decently housed, within a reasonable distance of their jobs. These people have to live somewhere. With rising energy costs, low-wage workers who cannot find a place to live close to their jobs will bear increasingly heavy burdens to cover both housing and transportation costs.

In the past, towns simply went after commercial development to gain property tax revenues – known as the ‘rateable chase’ – without considering the impact of that development on surrounding communities, where the workers would have to live. Now, when towns zone for commercial development, or review commercial projects, they will have to take into consideration the housing impacts that grow out of those projects.

While it will make life more complicated for some municipalities in the short run, it is an important positive step. Towns will now have to plan for both housing and jobs, and focus on how to build more balanced communities. This makes good sense, for both social and environmental reasons.

5. Will the 2.5% non-residential development fee pay for the full cost of building the affordable housing created by job growth?

The development fee is not expected to cover the full cost of building a new affordable unit from scratch with no other public or private sources of funding. The \$160,000 per unit figure that has been widely reported in the media is misleading. This number refers to the *total* cost of subsidizing a single unit of newly constructed housing. The town is usually not required to bear this entire cost, however, and in many cases does not have to bear any of it.

As we have discussed above, municipal fair share housing obligations can be met in a variety of ways, with varying costs. A town may obtain COAH credit for accessory apartments by providing a minimum subsidy of \$20,000/unit. A town may also obtain credit for converting market-rate homes to affordable housing, a program which requires a minimum subsidy of \$25,000/unit per moderate income unit and \$30,000 per low income unit. While this level of per unit costs can potentially be covered entirely through the non-residential development fee, we must recognize that these are minimum figures set by COAH, which may not be realistic in all communities. Some communities have existing houses whose market price is not that much above affordable housing levels, while others do not.

For more expensive developments, non-profits and private developers can apply for federal and state subsidies for affordable housing; land donations and tax abatements can also help make projects economically viable without direct cash outlays. Inclusionary zoning, by giving the developer the benefit of rezoning at higher density, can create affordable housing without using any development fee money or other public funds.

The new law actually increases the amount of money towns can get to help build affordable housing. The 2.5% fee established by A500/S.1783 is more than the fees that towns were allowed to collect under the prior COAH rules. The revised Third Round rules also allow higher development fees on residential development than were allowed in prior rounds. So, in reality, the potential pool of funding for affordable housing has grown, not decreased, even though it may not always be adequate to meet the increase in municipal obligations. Whether it is or not will depend on the particular circumstances of each town.

6. Won't the new fee stop development when New Jersey needs it to help boost the economy?

From a development standpoint, having no fees is always better than having any fees at all. Reasonable fees, which meet important public purposes, are necessary, however, something that developers understand. Non-residential developers supported the enactment of this statewide fee and strongly supported A.500/S.1783, as did the state's construction unions. These groups were seeing that, in the absence of a single consistent statewide fee some communities were imposing far higher fees, or requiring non-residential developers to build affordable housing, two actions that were discouraging development. Both groups agreed that having a uniform, predictable fee was far better for new non-residential development than having to deal with widely varying and unpredictable requirements that changed from town to town. With a single fee across the board, it will be easier for developers to plan and build the projects that the state needs to maintain a healthy economy.

7. What about school kids? Won't this law add more kids to local schools without providing resources to pay for them?

The way in which New Jersey's school districts depend on property taxes has created a dangerously unhealthy situation where municipalities scrutinize every development to make sure it won't bring school children into town, or will "pay its way". As a result, we see entire towns building nothing but age-restricted senior citizen developments and expensive "McMansions" on big lots. School kids from middle class or working class families have to live somewhere. Affordable housing is like most other housing. It does not necessarily 'pay its way' in terms of school costs. However, there are two important points that should be made about affordable housing and school costs.

First, no municipality is being hit with a disproportionate burden compared to other municipalities. That is the whole point of the fair share process. The

amount of affordable housing added is in direct proportion to each town's overall growth and development.

Second, the new state school aid funding formula will mitigate a substantial part of the cost of additional school children from low income families. Under that formula, every added child from a family eligible for a free or reduced lunch under the federal program triggers an increase in school aid that can range from \$4,500 to \$6,500 per pupil over and above the base school aid.²

8. Will the new COAH rules force towns to allow housing to be built on environmentally sensitive lands in order to meet their affordable housing requirements?

No. The amendments to the COAH rules proposed on May 6, 2008 "revise COAH's vacant land analysis to incorporate new DEP spatial data to expand the definition of C-1 streams, remove environmentally sensitive lands from current sewer service areas and recompute the development capacity of lands supported by septic systems pursuant to the pending DEP Water Quality Management Act Rule (WQMR), and use recently released Highlands spatial and other data to recompute the development capacity of lands in the Highlands Planning Area". In addition the Executive Order by Governor Corzine on the Highlands issued on September 5, 2008 directs the Council on Affordable Housing to work with the Highlands Council to ensure that "nothing – not even affordable housing needs – impedes the protection of Highlands water."

9. How can we help eliminate some of the obstacles that are making it difficult for towns to meet their fair share obligations?

The ultimate goal for all of us is to see the largest number of affordable housing units that can realistically be produced come into being. Large numbers on paper mean little unless they result in real homes on the ground. First and foremost, if achieving COAH's fair share goals is an important element of state policy, the state must do its part to make this possible. We believe that three key steps are required:

- The state Department of Environmental Protection should facilitate municipal infrastructure extension and expansion in appropriate locations to permit development of housing at the densities set forth in the COAH rules. Where developments will provide a significant amount of affordable

² Since the numbers used to determine free or reduced lunch are based on one set of figures and the COAH definition of low and moderate income on another, the extent to which children in a project meeting COAH income requirements will also qualify for additional state school aid will vary widely, depending on the housing region and the size of the family. The Appendix shows how eligibility for additional school aid compares to COAH median income levels by housing region and household size.

housing, they should be given priority for state infrastructure assistance and their applications given expeditious review and approval.

- Housing production is down, and is unlikely to return to the levels of the early 2000's. ³ COAH's rules should recognize realistic constraints affecting many municipalities, particularly those flowing from market conditions as well as infrastructure constraints, and permit appropriate adjustments to fair share obligations.
- More resources continue to be needed. The new non-residential development fee will help, but is not enough. We must continue to make the case that additional funding for affordable housing should be a priority for the state.

10. If there are problems with the COAH third round rules and A.500/S.1783, what should municipalities and others do?

First, lawsuits are not the answer. They are divisive, they further delay production of much-needed housing units, and they give cover to those communities that are looking for excuses to avoid providing any affordable housing. Second, municipalities should be encouraged to develop fair share plans that represent their realistic capacity to provide affordable housing. If it falls short of the COAH numbers, they should provide solid documentation of the reasons for the shortfall. Many municipalities might find it quite feasible to produce the fair share targets set by COAH. Finally, once we really understand the nature and magnitude of the problems, we can work together to solve them, whether through legislative or regulatory changes. The Network is ready to work with local governments and others to advocate changes to rules or legislation, as long as everybody is making a genuine commitment to providing affordable housing.

APPENDIX: AFFORDABLE HOUSING AND SCHOOL AID

The State of New Jersey has adopted a new school aid formula that “follows the child”; that is, aid is now adjusted based on the number of low income or “at-risk” children in the school district. State aid on a per pupil basis is increased by 47 to 57% based on the percentage of children in the district eligible for a free or reduced price lunch. That figure, in turn, is based on 185% of the federal poverty level, adjusted for family size. These figures for 2008 are as follows:

2 person household	\$25,900
3 person household	\$32,560

³ The preliminary tally of building permits for new construction statewide in 2007 was just under 25,000, while based on data for the first five months of 2008, this year's total will be under 20,000. Not all building permits, of course, result in actual construction.

4 person household \$39,220
 5 person household \$45,880

Since the poverty level is a national figure that has no direct relationship to the regional AMI figures used by COAH, the table below converts it into AMI for each of the six COAH regions. The figure in each box represents the maximum income *as a percentage of AMI* that renders a child eligible for reduced/free lunch, and therefore triggers the increase in state school aid. So, in the region that includes Bergen and Hudson Counties (region 1), a child in a 2 person household at or below 42% of AMI would trigger an increase in state aid. In Cumberland County (region 6), however, the comparable figure would be 50% of AMI. Because the household size adjustments used in the poverty level are different from those used to calculate AMI, the school aid trigger level as a percentage of AMI varies significantly with household size. Thus, depending on the region and the distribution of units by size, the percentage of children in a project developed to meet COAH requirements who also triggered additional state aid could vary from as little as 20 percent to over 65 percent.

MAXIMUM INCOME AS PERCENTAGE OF AMI THAT TRIGGERS SCHOOL AID INCREASE

	BER HUD PASS SUS	ESS MOR UN WAR	HUNT MID SOM	MER MON OC	BUR CAM GLO	ATL CM CUM SAL
2 person	42%	39%	34%	38%	44%	50%
3 person	47	43	37	43	49	56
4 person	51	47	41	46	53	61
5 person	55	51	44	50	57	66

For detailed information on the new state school aid formula, a publication entitled *A Formula for Success: All Children, All Communities* is available on the NJ Department of Education web site at <http://www.state.nj.us/education/sff/reports/AllChildrenAllCommunities.pdf>.