



October 28, 2022

Via Online Feedback Form

New Jersey Economic Development Authority
P.O. Box 990
Trenton, New Jersey 08625
aspire@njeda.com

Re: Fair Share Housing Center's October 28, 2022 Comments on the Draft Aspire Program Rules Proposal for Public Comment

Dear Program Development Staff,

Please accept this correspondence from Fair Share Housing Center (FSHC) as our written comments and recommendations for the draft Aspire Program rules proposal that was published for public comment by the New Jersey Economic Development Authority (NJEDA).

The Legislature in enacting the Aspire program made provision of affordable housing a key component of revamping NJEDA's programs to ensure that the development funded by them equitably benefited a broad range of New Jerseyans. The Legislature further strengthened this intention in its amendments to the Aspire program in mid-2021, which strengthened the affordable housing requirements for inclusionary projects and provided new funding options for 100% affordable projects.

We thus write today in support of many of the proposed changes to the Aspire Program which implement these statutory requirements, and for the first time clearly state what affordable housing requirements will attach to the significant public investment in Aspire-funding programs and ensure that the requirements of the legislation are carried out. We believe overall these changes significantly strengthen the program's ability to create affordable housing at a time when the state faces its worst affordability crisis in generations. In some areas, we also respectfully suggest how NJEDA can clarify

and strengthen the proposed rules to ensure that the projects funded therein provide the twenty percent (20%) affordable housing required by the statute; and that the rules are consistent with the statute's purpose and language, which requires compliance with the New Jersey Fair Housing Act so that affordable housing is provided in a manner that is in the best interest of the State's very-low-, low-, and moderate-income households.

We believe that these proposed changes on affordable housing are an important step forward in making EDA's programs better serve and be more responsive to communities of color and lower-income communities. We look forward to working with EDA to build on these changes and find ways to use Aspire as an opportunity to help rebuild public and assisted housing, which have been underfunded by past administrations at both the federal and state level. And we also hope that we can work with EDA to help Minority and Women Business Enterprises access EDA funds in both residential and non-residential projects. By continuing to take these steps, EDA can ensure that its funds truly invest broadly in the future of our state.

I. About Fair Share Housing Center

Since the founding of FSHC in 1975, we have been dedicated to protecting the housing rights of working families in New Jersey, primarily through the enforcement of the Mount Laurel doctrine. FSHC's mission is to end discriminatory or exclusionary housing patterns that deprive the poor of the opportunity to reside in an environment which offers safe, decent, affordable housing near well-paying jobs and adequate schools. We also strive to ensure that New Jersey's resources are used in a manner that will ensure equity and inclusion.

FSHC's role as a representative and advocate for working families has been repeatedly recognized by the New Jersey Supreme Court, among others. Notably, in Mount Laurel IV, the Supreme Court specifically held that FSHC is entitled "to protect its and third parties' interests in municipal compliance with constitutional affordable housing obligations." In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 19 (2015) (Mount Laurel IV). There, the Court required that attempts by municipalities to obtain

declarations of constitutional compliance with their affordable housing obligations to be done “on notice and opportunity to be heard to FSHC.” Id. at 23.

Since 2015, FSHC has entered into agreements with over 300 municipalities in New Jersey as to how they will satisfy their constitutional obligations. These agreements have led and will lead to tens of thousands of desperately needed new homes that are affordable to New Jersey’s working families, seniors, and those with disabilities.

Relatedly, FSHC has worked for decades to ensure that when the State provides resources and uses its regulatory powers to develop housing, lower-income families are included. See, e.g., In re N.J.A.C. 19:3, 19:4, 19:5 & 19:6, 393 N.J. Super. 173 (App. Div. 2007); see also In re Adoption of Reg’l Affordable Hous. Dev. Program Guidelines, 418 N.J. Super. 387 (App. Div. 2011).

We do this work and advocate for the interests of lower-income households because we recognize that there is a “vital need . . . to provide legal voices for those muted by poverty.” Mount Laurel Twp. v. Dep’t of Pub. Advocate, 83 N.J. 522 (1980).

Recently, FSHC released a report entitled “[Untapped Resources: How New Jersey Can Leverage State Financing and Land for Affordable Housing](#),” which points out how state requirements for affordable housing attaching to financing, which were implemented by the Legislature in amendments to the New Jersey Fair Housing Act in 2008 and specifically incorporated into and expanded by the New Jersey Economic Recovery Act of 2020, have been too often not implemented by state agencies. In the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, as amended by P.L. 2021, c. 160, the New Jersey Legislature requires that “for a residential project consisting of newly-constructed residential units to qualify for an incentive reward, the developer shall reserve at least 20 percent of the residential units constructed for occupancy by low- and moderate-income households with affordability controls as required under the ‘Fair Housing Act,’ P.L. 1985, c. 222 (C.52:27D-301 et al.).”

We view the draft rules as a significant step towards fulfilling the legislative requirements of ensuring that when the state uses its resources to create housing, 20 percent of the housing is affordable consistent with the Fair Housing Act.

II. FSHC's Comments on Draft Aspire Program Rules

A. Comment on N.J.A.C. 19:31-23.3(b): FSHC Supports Including Soft Costs for Project Feasibility as Project Costs.

FSHC supports increasing the available tax credit award based on soft costs. Affordable projects can be stalled when sites need remediation, for example. Covering these costs is important because more affordable housing projects in general, and especially more complex public housing preservation, will now have access to the Aspire Program.

B. Comments on N.J.A.C. 19:31-23.23.8(c)(22): The Rules Strengthen that the 20% Affordable Housing Must be Provided in Compliance with the Uniform Housing Affordable Controls and the Fair Housing Act; the Very-Low-Income Standards Should be Updated.

In order to implement the Fair Housing Act, the Department of Community Affairs enacted the Uniform Housing Affordability Controls (“UHAC”), N.J.A.C. 5:80-26.1, et seq., in 2001, to govern the administration of affordable units and affordability controls in New Jersey. These regulations were amended in 2004 and remain binding.

The regulations set forth that they are “designed to implement the New Jersey Fair Housing Act . . . by assuring that low- and moderate-income units created under the Act are occupied by low- and moderate-income households for an appropriate period of time.” N.J.A.C. 5:80-26.1. Fair Share Housing Center supports the incorporation of several key components of the UHAC into the Aspire regulations and believes that the draft regulations help address the need for providing affordable housing to a range of family sizes and income levels; ensure fair affirmative marketing policy including posting on the Housing Resource Center; make it clear that affordable housing needs to be integrated into market rate development and include the same access to amenities as market rate housing. The proposed regulation also ensures that affordable housing is fairly distributed so that for example homes affordable to low income families are included in one-bedroom, two-bedroom, and three-bedroom homes. The regulation incorporates a number of critical safeguards to ensure affordable housing is truly fair and affordable.

That said, we respectfully suggest including an additional provision to ensure affordability and consistency with the Fair Housing Act. When affordable units are created in New Jersey under the Fair Housing Act, UHAC's terms govern the creation of the new affordable units, including the required bedroom and income distribution of those units, with the sole exception being that 13 percent of affordable units must be reserved for very-low-income units in accordance with the amendments to the Fair Housing Act enacted by the Legislature in 2008. See N.J.S.A. 52:27D-329.1 (“[A]t least 13 percent of the housing units made available for occupancy by low-income and moderate-income households will be reserved for occupancy by very low-income households, as that term is defined pursuant to section 3 of P.L. 1985, c. 222 (C.52:27D-304).”).

The area median income requirements set forth in N.J.A.C. 5:80-26.3(d) predate the Fair Housing Act. In the Fair Housing Act, the Legislature has specified that 13 percent of affordable units should be available to families that make 30 percent of the area median income. It is important that N.J.A.C. 19:31-23.8(c)(22) adopt the Legislature's exception to the UHAC area media income requirement so that affordable housing rules are uniform and ensure that the needs of working families are met.

Overall, N.J.A.C. 19:31-23.8(c)(22) significantly strengthens the affordable housing component of EDA's regulations, and would be even stronger with that change.

C. Comment on N.J.A.C. 19:31-23.9(b)8: FSHC Supports the Requirement that HMFA Confirm Compliance with the Affordability Controls.

FSHC supports requiring affirmative enforcement of compliance with the affordability controls as set forth in N.J.A.C. 19:21-23.8(c)22 by HMFA. Requiring HMFA to confirm compliance with affordability controls is a necessary check on developers and maintains affordable housing on the backend.

D. Comment on N.J.A.C. 19:31-23.10(n): FSHC Supports the Withdrawal of all EDA Assistance if a Developer is not in Compliance with Dead Restrictions Pursuant to N.J.A.C. 19:31-23.8(c)22iii.

FSHC supports EDA's decision to strengthen compliance with the regulations adopting UHAC. Affordability controls ensure that families are able to remain in their affordable units. We have already seen tenants who are unable to afford increased rents after controls have expired. Committing new projects to 45-year deed restrictions will begin to make up for what we've lost.

E. Comment on N.J.A.C. 19:31-11(e): FSHC Supports Applying the Standards set forth in N.J.A.C. 19:31-23.8(22) to Transformative Projects.

FSHC supports EDA's decision to apply the UHAC standards to EDA's Transformative Projects. Since Transformative Projects are the largest projects that EDA funds, we appreciate the large impact this regulation will have on moderate-income, low-income, and very-low-income families.