

Office of Finance and Development*

Capital Programs Manual

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Section: 1.0 INTRODUCTION

Sub Section: 1.01 About This Manual

This manual is designed to provide program participants and Office of Finance and Development (F&D) staff with a comprehensive handbook which explains the processes, procedures, and requirements of F&D 's capital programs. It supersedes Capital Programs Manual (CPM) issued December 2010. Please note that the Capital Program Manual does not apply to bond financed transactions. The provisions of this document take effect for all F&D capital programs immediately.

The manual is organized under the following headings:

Section 1.00: Introduction

Section 2.00: Program Descriptions

Section 3.00: Unified Funding Process

Section 4.00: General Program Requirements and Policies

Section 5.00: Development Requirements

Section 6.00: Construction Processing Requirements

Section 7.00: Project Operating and Management Requirements

Glossary

Please also note that the Housing Trust Fund Corporation (HTFC) Design Handbook is published separately. Design requirements must be addressed in the design of projects by most program participants. Applicants are strongly urged to consult the Design Handbook before completing an application. The current version is available online at: www.nyshcr.org/Publications/DesignHandbook/.

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This Manual describes the requirements and procedures for the following capital programs:

Division of Housing and Community Renewal-Administered Programs

- Housing Development Fund (HDF)
- Low Income Housing Credit (LIHC)
- New York State Low Income Housing Tax Credit Program (SLIHC)

Housing Trust Fund Corporation-Administered Programs

- Low Income Housing Trust Fund (HTF)
- New York State HOME Program (HOME)
- Urban Initiatives (UI)
- Rural Area Revitalization Projects Program (RARP)

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Section: 1.0 INTRODUCTION

Sub Section: 1.02 Office of Finance & Development - Capital Programs

The Office of Finance & Development - Capital Programs (F&D- CP) is an administrative office located within New York State Homes and Community Renewal (HCR) and also serves as staff for the Housing Trust Fund Corporation (HTFC), a public benefit corporation. F&D- CP is responsible for both DHCR and HTFC administered programs.

References to F&D- CP administrative policy shall refer to all programs covered in this manual while references to HTFC administrative policy pertains exclusively to programs funded through HTFC (see Sub-Section 1.01 for a list of all capital programs)

1.02.01 HCR Units Administering Capital Programs

Within F&D- CP, the following units are involved in the processes described herein:

The Regional Offices (Capital District, Buffalo, New York City, and Syracuse) are responsible for implementing the policies and programs of F&D- CP. This includes application review, project planning, project monitoring (from concept to completion of the construction/rehabilitation phase), working with community groups and outreach to needy communities. See Section 1.03 for regional office coverage areas and contact information.

Program Management staff is responsible for oversight of the individual F&D-CP programs. This includes ensuring that rules, regulations and program guidelines are consistent with the statutory intent of the Legislature as well as monitoring to ensure that all applicants and program participants are treated consistently according to standardized, clearly communicated program policies including policies on project underwriting.

The Underwriting Unit is responsible for assessing the financial feasibility of projects requesting funding from HCR. This includes analyzing project applications to ensure sufficient and appropriate

financing to complete a project; evaluating market demand; and considering rent structures and operating costs for long term operating feasibility. In addition, underwriting staff work with regional office staff on funded projects from the time of award until project completion, providing any required underwriting analysis of the project.

The Management Systems and Research Unit provides research and analytical support to F&D- CP's staff. The unit has responsibility for maintaining the Statewide Housing Activity Reporting System (SHARS) and other databases, preparing and updating all Legislative reports, and compiling program data into reports, manuals and other information pieces.

In addition to units within F&D- CP, other units within HCR are involved in the processes described in this Manual. These include:

The Architecture & Engineering Bureau (A&E) reviews and approves all plans and specifications plus provides on-site construction monitoring during the building phase of projects. Since Design reviews are a critical component of the application review process, A&E staff participates in Project Development Meetings with the applicant's development team and provide technical assistance on design issues to both DHCR staff and program participants. The A&E has one additional component:

- The Environmental Analysis Unit (EAU) conducts environmental review for housing construction and rehabilitation projects funded by the Housing Trust Fund Corporation (HTFC). Environmental review is conducted according to regulations under the State Environmental Quality Review Act (SEQR) at 6 NYCRR Part 617. Additionally, for HOME projects, environmental review must be conducted according to the National Environmental Policy Act (NEPA), as interpreted by HUD regulations at 24 CFR Part 58.

The Office of Fair Housing and Equal Opportunity (FHCO) oversees compliance with all affirmative action, equal employment opportunity and fair housing guidelines. FHCO works hand-in-hand with F&D- CP to ensure that the issues spelled out in Section 4 ("General Program Requirements and Policies") of this Manual are addressed by every participant in the capital programs.

The Office of Legal Affairs (OLA) provides comprehensive legal oversight for all of F&D- CP's programs. OLA staff review all legal documentation submitted by applicants and project sponsors, supervises all closings and prepares all contracts and formal documents utilized by F&D- CP in its administration of these programs.

The Asset Management Unit (AMU) reviews and supervises projects when the project is complete and the property is occupied. AMU also reviews and approves the Project Management Plans and management agent contracts prior to the closing on DHCR/HTFC financing. In addition, compliance with the requirements described in Section 7 ("Project Operating and Management Requirements") is overseen by the AMU.

1.02.02 Housing Trust Fund Corporation

The Housing Trust Fund Corporation (HTFC), a public benefit corporation established by Article 18 of the Private Housing Finance Law, was created to facilitate the development of low-income housing by providing funding and technical assistance to eligible projects. Although technically a subsidiary of the New York State Housing Finance Agency, the staff who administer the programs discussed in this manual are employed by the Division of Housing and Community Renewal. As a public benefit corporation, HTFC is governed by a Board of Directors, chaired by the Commissioner of DHCR.

All programs administered by HTFC are implemented by F&D- CP staff in accordance with the directives of the HTFC Board. This includes project selection (subject to Board approval), construction/rehabilitation monitoring, technical assistance and daily administration. The fiscal aspects of the HTFC programs are managed by DHCR's Office of Administration in accordance with the directives of the HTFC Board. This includes disbursement of funds and tracking statutory provisions on allocation of funds by region and type of applicant. The legal aspects of the programs are addressed by DHCR's Office of Legal Affairs including a document review and project closings. DHCR's Asset Management Unit oversees post-construction project management.

1.02.03 Administration of Federal Programs by F&D- CP

F&D- CP administers several housing programs funded by the federal government. Currently, the Low-Income Housing Credit (LIHC) is part of F&D- CP's Unified Funding Process (described in Section 3

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of this Manual), although a separate Notice of Credit Availability and application review are conducted for this program.

The precise nature of F&D- CP's involvement with these programs is defined by federal regulations but to the extent there is discretion, these programs are administered in a manner similar to HCR processes described above (Sub-Section 1.02.A.).

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Section: 1.0 INTRODUCTION

Sub Section: 1.03 Regional Offices

The regional offices are responsible for implementing the policies and programs of F&D- CP. This includes marketing and outreach to communities, providing technical assistance to project sponsors, conducting application clinics, application review, and other aspects of the State's housing delivery system. The appropriate regional office is the first point of contact for anyone interested in the capital programs of F&D- CP and should be contacted for information on:

- the application process
- submission deadlines;
- program eligibility; or,
- availability of funds.

Following are the Regional Offices and the counties they serve:

Capital District Regional Office

Hampton Plaza, 38-40 State Street, Albany, New York 12207 (518) 486-5044

Counties Served: Albany, Clinton, Columbia, Delaware, Dutchess, Essex, Fulton, Greene, Hamilton, Montgomery, Orange, Otsego, Putnam, Rensselaer, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren, Washington

Buffalo Regional Office

Electric Building, Suite 105, 535 Washington Avenue, Buffalo, New York 14203 (716) 847-7955

Counties Served: Allegany, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates

New York City Regional Office

25 Beaver St., 7th Flr, New York, NY 10004 (212) 480-7644

Counties Served: Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, Rockland and Westchester

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Syracuse Regional Office

620 Erie Blvd. West, Suite 312, Syracuse, NY 13204 (315) 478-7179

Counties Served: Broome, Cayuga, Chenango, Cortland, Franklin, Herkimer, Jefferson, Lewis,
Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga, Tompkins

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Section: 1.0 INTRODUCTION

Sub Section: 1.04 Waivers

In certain circumstances, applicants may wish to request a waiver of one or more of the requirements described in Section 3 ("Unified Funding Process"), Section 5 ("Development Requirements") or Section 6 ("Construction Processing Requirements") of this Manual. This can be done by placing a request in writing to the President of the Office of Finance & Development and/or his or her designee prior to submitting an application. Waiver requests will be considered on an individual basis, based on the rationale provided in the request. Applicants must receive written approval of a requested waiver prior to incorporating the terms of the waiver into an application. Documentation of any approved waiver(s) must be included in the application to which the waiver applies.

Please note: No requirement mandated by statute may be waived under any circumstance.

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Section: 2.0 PROGRAM DESCRIPTIONS

Sub Section 2.01 Low-Income Housing Trust Fund Program

2.01.01 Summary

The Low-Income Housing Trust Fund Program ("HTF Program") provides payments, grants and loans to eligible applicants to develop and complete housing projects for occupancy by persons of low income in eligible areas. Eligible applicants may receive up to \$125,000 per unit to pay for eligible costs that include: site acquisition; constructing, rehabilitating or converting an eligible project; and soft costs. HTF Program funds may be used as bridge or permanent financing for predevelopment costs, construction costs, working capital, and replacement reserves. Not-for-profit HTF applicants may also apply to receive Seed Money Awards which are described in Section 3.10. HTF construction loans to not-for-profit owners are not subject to an interest charge.

An eligible applicant may participate in the HTF Program as a direct project recipient, in which capacity it develops projects on its own, and/or as a local program administrator (LPA), whereby it assumes the role of HTFC and administers a program where projects are undertaken by other eligible applicants called subrecipients.

Applicants who participate in the HTF Program as private developers are required to make an equity contribution equal to two and one-half percent of the total project cost or 5 percent of the total project cost less all grants, whichever is greater. A portion of the equity contribution, equal to the lesser of 1 percent (1%) of the total development cost or 50% of project gross rent, must be made as a cash deposit to the project's Operating Reserve Account.

Per statute, allocations of HTF cannot exceed the following limits based on the total program appropriation in any fiscal year:

- 50 percent allocated to projects located within any single municipality
- 33⅓ percent allocated to private developers for projects within a city with a population of one million or more
- 33⅓ percent allocated to private developers for projects in the area outside cities with a population of one million or more

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To be considered a non-for-profit project under the HTF Program requirements, a not-for profit corporation or its wholly owned subsidiary must have an ownership interest in the project ownership entity equal to at least 50% of the controlling interest in the project and have a defined role in project management, evidenced by an equal say in the selection, hiring and firing of the management agent for the project, and in other decisions regarding the management of the project. The non-profit must also have an equal say in the management of the partnership as demonstrated by the partnership agreement.

Applicants who plan to use HTF Program funds in conjunction with the Low Income Housing Credit (LIHC) Program (Section 2.04), should be familiar with the eligibility requirements of both programs. Applicants and owners of projects involving the construction or rehabilitation of four or more DHCR/HTFC assisted housing units including Low Income Housing Credit Program Projects are required to submit affirmative marketing plans before rent-up, detailing specific actions to be taken to provide information and outreach to eligible persons of all racial, ethnic, gender and disabled groups from the housing market area.

HTFC has decided that all local program applications should be submitted under the HOME program since more funding is available for HOME local programs and the HOME program permits more varied activities to be undertaken with fewer restrictions. See Section 2.05 for information on the HOME program.

2.01.02 Statutory Provisions

2.01.02.A Purpose

The HTF Program was created by Article 18 of the Private Housing Finance Law (PHFL) for the purpose of making payments, grants or loans available to subsidize the cost of rehabilitating and constructing housing for persons of low income. The Legislature's intent in creating the HTF Program was to increase the housing opportunities of persons of low income by expanding the supply of affordable housing. The HTF Program is administered by the Housing Trust Fund Corporation (HTFC), a public benefit corporation established under Section 45-a of the PHFL.

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The following are the specific legislative findings on which the HTF Program is based:

- (i) there is a serious shortage of decent affordable housing in the State for persons of low income;
- (ii) the cost of providing such housing without public participation and assistance is prohibitively high;
- (iii) there exists throughout the State a significant number of dwellings which are deteriorating and are vacant or underutilized;
- (iv) the existence of such properties creates a serious threat to the health and safety of persons who live in or near them, limits the availability of decent affordable housing to others, contributes to the blight and deterioration of neighborhoods, and drains municipal resources and expenditures;
- (v) the rehabilitation of these properties would stem the deterioration of neighborhoods and promote the preservation and creation of safe and sanitary low-income housing;
- (vi) the potential exists to make such housing available to persons of low income through projects carried out by eligible applicants to rehabilitate these dwelling accommodations, bring them into compliance with all applicable laws and regulations, and remove all hazardous code conditions;
- (vii) the new construction of housing for persons of low income in areas in which rehabilitation opportunities are limited or where new construction would prove to be more effective would also help serve the purposes of Article 18;
- (viii) the implementation of such projects serves a significant public purpose and may appropriately be performed by eligible applicants;
- (ix) payment for such services, tax exemptions and other public participation in such projects would bring down the cost of such housing and make it affordable to persons of low income; and
- (x) it is the policy of the State to preserve and create such housing and to provide for the aid, care and support of the needy.

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2.01.02.B Definitions

The following program-specific terms are defined by Article 18 of the PHFL and the HTF Program's Rules and Regulations:

1. Conversion: All work necessary to convert nonresidential property into residential property.

2. Cooperative Project or Condominium Project: An eligible property, which subsequent to construction, conversion or rehabilitation under Article 18 of the PHFL will be owned as an approved residential cooperative or condominium. All cooperative or condominium units assisted through the (HTF or HOME) Program must be occupied by eligible owners as their primary residence; Units may not be sold or sub-leased to staff or board members of the applicant, developer or sponsor organization.

3. Distressed Residential Property: (a) a residential property, the rehabilitation of which would preserve affordable housing currently serving a population whose housing need would justify its replacement if it ceased to be available, (b) a residential property which has an occupancy rate by lawful occupants of less than 60%, (c) a portion of a residential property described in paragraph (b) of this definition provided that such portion also has an occupancy rate by lawful occupants of less than 60%, (d) a residential property which consists of one or two residential units prior to rehabilitation and which, subsequent to rehabilitation, will contain at least one additional residential unit.

4. Eligible Applicant:
 - (a) person of low income, provided, however, such people cannot be a direct recipient of any payment, grant or loan from the Corporation, but may receive such funds from another eligible applicant;
 - (b) a Housing Development Fund Company (HDFC) incorporated pursuant to Article 11 of the PHFL;

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- (c) a not-for-profit corporation which has the improvement of housing for persons of low income as a primary purpose, and which has been in existence for at least one year prior to application;
 - (d) a charitable organization which has the improvement of housing for low-income persons as a primary purpose;
 - (e) a wholly-owned subsidiary of a not-for-profit corporation or a charitable organization which has the improvement of housing for low-income persons as a primary purpose;
 - (f) a partnership of which at least 50 percent of the controlling interest is held by an eligible not-for-profit corporation or charitable organization or wholly-owned subsidiary thereof, and which has agreed to limit its profits or rate of return of investors in accordance with a formula approved or established by the Corporation;
 - (g) a private developer which has agreed to limit its profits or rate of return of investors in accordance with a formula approved or established by the Corporation;
 - (h) a municipality or county;
 - (i) a municipal housing authority, provided that: the purchase of the eligible property shall not have been financed pursuant to provisions of the Public Housing Law; and the eligible property was not owned by such authority prior to July 1, 1986.
5. Eligible Property: Any vacant residential or vacant or underutilized non-residential property or any distressed residential property, or any portion of any of the above, or any site suitable for construction, which is located in an eligible area.
6. Homesteading Project: An eligible property which, subsequent to construction, conversion or rehabilitation under Article 18, will contain no more than four residential units, have at least one owner occupant and will not be owned as a cooperative or condominium.

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7. Non-residential Property: Any property which is not residential property and is vacant or underutilized. If any non-residential property or portions of the property are occupied at the time an application for funding is submitted, HCR may consider the following factors in determining whether a conversion of the non-residential property may be eligible for HTF, including but not limited to: 1) revenue from leased space compared to the cost to operate the property; 2) whether the owner provided the occupant with an acceptable plan for the occupant's relocation; 3) the percentage of leased space compared to the total amount of space available for lease; 4) whether the current occupant of the non-residential space provides a critical service to the community which would be left unmet if the current occupant was displaced by the proposed project; and, 5) whether the land and/or structure(s) are currently not used or used at a lower density than the local land use plan permits and may potentially be developed, recycled, or converted into a higher density residential, commercial or mixed-use development as defined in a local land use plan.
8. Persons of Low Income:
- (a) in cities with a population of 1,000,000 or more persons, those persons or families whose incomes do not exceed 80 percent of the median income for the Metropolitan Statistical Area (MSA) in which a project is located; provided however, that in the case of an owner/occupant of a homesteading project, "persons of low income" shall also mean those persons or families whose household incomes do not exceed 80 percent of the median income for New York State if this measurement is greater than the measurement previously stated; or,
 - (b) in the portion of the State outside cities with a population of 1,000,000 or more:
 - (i) and within a MSA, those persons and families whose household incomes do not exceed 90 percent of the median income for the MSA in which a project is located or 90 percent of the median income for the State, whichever is greater; or,

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- (ii) and located outside a MSA, those persons and families whose household incomes do not exceed 90 percent of the median income for the county in which a project is located, or 90 percent of the median income for the State, whichever is greater.
9. Private Developer: A person, firm, partnership (of which less than 50 percent of the controlling interest is held by a not-for-profit corporation or charitable organization or wholly-owned subsidiary thereof) or corporation which is not otherwise included in the definition of "an eligible applicant."
10. Project: The construction, rehabilitation or conversion of an eligible property or properties by an eligible applicant hereunder into a cooperative, condominium, homesteading or rental project. In cases where the project consists of less than the entire property, the term project shall mean that portion which is assisted under Article 18 of the PHFL.
11. Rehabilitation: All work necessary to bring a residential property into compliance with all applicable laws and regulations including, but not limited to, the installation, replacement or repair of heating, plumbing, electrical and related systems and the elimination of all hazardous violations in the structure. Rehabilitation may also include reconstruction or work to improve the habitability or prolong the useful life of a residential property.
12. Rental Project: An eligible property, which subsequent to construction, conversion or rehabilitation under Article 18 of the PHFL, will be owned and operated as rental residential property.
13. Residential Property: Any real property in which all or part of the space is used for residential purposes prior and subsequent to construction, rehabilitation or conversion. Residential purposes shall be dwelling accommodations and such facilities as may be deemed by the Corporation to be incidental and appurtenant thereto.

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2.01.03 Eligibility Requirements

This Section describes the eligibility requirements that are specific to the HTF Program.

2.01.03.A Eligible Applicants

As set forth in Article 18 of the PHFL, eligible applicants for the HTF Program include municipalities, counties, municipal housing authorities, not-for-profit corporations, charitable organizations, wholly-owned subsidiaries of not-for-profit corporations or charitable organizations, partnerships, private developers and HDFCs.

Persons of low income may not be direct recipients of payments, grants or loans from the Corporation, but may receive such funds from another eligible applicant.

With the exception of municipalities, counties and private developers, an applicant must have been in existence as a bona fide organization for at least one year prior to submission of an application, and must have the improvement of housing for persons of low income as a primary purpose, as evidenced in their articles of incorporation or by-laws. Municipalities, counties and private developers must demonstrate prior experience in the production of affordable or low income housing.

A partnership's term of existence is determined by that of the partner with controlling interest. The term of existence for wholly-owned subsidiaries of not-for-profit corporations or charitable organizations is determined by that of the parent corporation.

Applicants must have the experience and capacity to develop and complete a project of the size and type proposed in a timely and cost-effective manner. They also need to be capable of maintaining financial records in accordance with Generally Accepted Accounting Principles. Applicants must also be able to secure any additional financing that may be necessary to complete the project as proposed. Additionally, applicants must be able to assume responsibility for providing management of the HTF Program units during the regulatory period.

An applicant may apply directly to the HTF Program as a project recipient, in which case HTFC administers funding, and/or as a local program administrator (LPA). However, HTFC prefers that applicants consider other funding sources to carry out a local program. Funding alternatives are discussed in Section 2.01.03.C.

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2.01.03.B Eligible Projects

Newly constructed and rehabilitated rental, cooperative, condominium and homesteading projects are eligible projects under Article 18 of the PHFL. The HTF Statute and Rules and Regulations set forth the following criteria with regard to rehabilitation projects:

Under-occupied residential property must be more than 40 percent vacant at the time of application. In addition, occupied one- and two-unit properties are eligible only if they result in the creation of at least one additional unit. Distressed residential properties are also eligible projects, see Section 2.01.02.B, #3;

Conversion projects, in which nonresidential property is converted into residential property, are eligible, provided that the nonresidential property is entirely vacant or underutilized at the time of application;

A property is classified as residential property if 50 percent or more of its gross floor space is residential prior to rehabilitation. The pre-rehabilitation residential space must be at least 40 percent vacant at the time of application to be considered under-occupied;

A property is classified as nonresidential property if less than 51 percent of the gross floor space is residential prior to conversion; the non-residential property must be completely vacant at the time of application.

NOTE: A structure will be considered vacant if the applicant can demonstrate that a) (the occupancy is temporary in nature and b) that the occupant does not have a statutory or contractual right to occupy the property at the anticipated time for commencement of activities. A property will not be considered vacant if the occupant's obligation to vacate is conditioned upon the applicant securing funding from New York State. While there are no project size restrictions, factors such as site characteristics, community need, and project feasibility should be considered when determining project scope. Projects should be primarily for residential use, but other space may be included if it is determined by the Corporation to be appurtenant or incidental to the residential dwelling accommodations, and is intended for the exclusive use of project occupants. Depending on the nature of the project, such other space may include: community space, on-site management offices, common laundry rooms, social service space, dining and cooking areas, and recreational areas.

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The use of HTF Program funds with tax exempt bonds and 4% low income housing tax credit is not permitted. Applicants interested in using tax exempt bonds and 4 % tax credit for a project should consider requesting funding from the Homes for Working Families Program which is discussed in 2.06 of this manual.

2.01.03.C Eligibility Requirements for Homesteading Projects

It is HTFC's policy that applicants requesting funds for 1-4 family owner-occupied properties seek funds from a source other than HTF. Not-For-Profit applicants are encouraged to submit a HOME Local Program Application. For profit applicants are encouraged to consider the NYS Affordable Housing Corporation programs.

2.01.03 D Requirements For Cooperative and Condominium Projects

For applicants seeking HTF funds for cooperative or condominium projects HTFC will expect that the applicant will assume and retain the role of monitor over the management and operation of the cooperative or condominium to ensure that all HTF requirements are complied with for the duration of the HTF regulatory agreement.

2.01.03.E Eligible Areas

Article 18 of the PHFL requires projects to be located in an area which is: blighted, deteriorated, or deteriorating, or has a blighting influence on the surrounding area, or is in danger of becoming a slum or a blighted area because of the existence of substandard, unsanitary, deteriorating or deteriorated conditions, an aged housing stock, or vacant non-residential property, or other factors indicating an inability or unwillingness of the private sector unaided to cause the rehabilitation, construction or conversion which is contracted for under this Article.

In addition, areas which have been designated by any federal, State, or local law, rule, or regulation as blighted, deteriorated or deteriorating or as having a blighting influence on the surrounding area or as being in danger of becoming a slum or blighted area are eligible for HTF Program funds. Designations that meet these criteria include, but are not limited, to the following:

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- (i) Federal Designation
 - a. Areas which are designated by the Secretary of the Department of Housing and Urban Development (HUD) of the United States as areas in which concentrated housing, physical development and public service activities are being or will be carried out in a coordinated manner, pursuant to a locally developed strategy for neighborhood improvement, conservation and preservation;
 - b. Areas which have been proposed by the locality and approved by HUD as Community Development Block Grant (CDBG) target areas;
 - c. Areas which have been proposed by the locality and approved by HUD as Rental Rehabilitation target areas; and
 - d. Neighborhoods in which Community Housing Development Organizations are carrying out activities pursuant to Title II of the National Affordable Housing Act.

- (ii) State Designation
 - a. Areas which are designated under Articles 15 and 16 of the General Municipal Law (The Urban Renewal Law and the Urban Development Action Area Act);
 - b. Census tracts in which at least 70 percent of the families have incomes which are 80 percent or less than the Statewide median income;
 - c. Areas of chronic economic distress as designated by the State and as approved by the Secretary of the Treasury and the Secretary of HUD;

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- d. Neighborhoods in which neighborhood preservation activities are being carried out pursuant to Article 16 of the PHFL;
- e. Rural preservation and revitalization regions in which preservation activities are being carried out pursuant to the provisions of Article 17 of the PHFL;
- f. Neighborhoods where median income does not exceed 80 percent of the median income of the MSA in which the neighborhood is located, or that does not exceed 80 percent of the median income of the county, if the county is not part of a MSA (for purposes of this section, "Neighborhood" means an area that surrounds a project and tends to determine, along with the condition and quality of the project, selling prices and/or rent levels of housing units); and
- g. State designated Economic Development Zones.

(iii) Local Designation

- a. An area designated by the chief executive officer or the appropriate legislative body as blighted, deteriorated or deteriorating, or as having a blighting influence on the surrounding area, or as being in danger of becoming a slum or a blighted area because of the existence of substandard, unsanitary, deteriorating or deteriorated conditions, an aged housing stock, or vacant non-residential property, or other factors indicating an inability or unwillingness on the part of the private sector, unaided, to undertake the activities mandated under Article 18.

2.01.03.F Eligible Occupants

To be eligible for funding, housing projects must serve persons of low income, defined as:

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- (i) in cities with populations of 1,000,000 or more, those whose incomes do not exceed 80 percent of the median income for the MSA in which the project is located; provided however that in the case of owner/occupants of homesteading projects, persons of low income shall also mean those whose incomes do not exceed 80 percent of the median income for the State; or,

- (ii) in the portion of the State located outside cities with a population of 1,000,000 or more persons, and,
 - a. located within a MSA, those persons and families whose incomes do not exceed 90 percent of the median income for the MSA in which the project is located, or 90 percent of the median income for the State, whichever is greater; or,

 - b. located outside a MSA, those whose incomes do not exceed 90 percent of the median income for the county in which a project is located, or 90 percent of the median income for the State, whichever is greater.

For rehabilitation or conversion projects, Article 18 of the PHFL provides that legal occupants who remain in possession of their unit, or who are temporarily relocated during rehabilitation or conversion, are entitled to continue occupancy after project completion. All additional occupants who move into the project subsequent to rehabilitation or conversion must be persons of low income, as defined above.

Those who are persons of low income at initial occupancy, but whose incomes later exceed eligibility requirements may remain in the HTF Program unit, but must pay 30 percent of their income as rent - not to exceed the established market rent. (See Section 7.06.02 for a discussion of rents). Units vacated by over-income tenants must be subsequently rented to eligible occupants.

Pursuant to the HTF Program Rules and Regulations, preference in tenant selection shall be given to persons or families with the lowest possible incomes required to meet the operating,

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maintenance, debt service and reserve contribution costs (the income requirements) of the project. Preference for occupancy shall also be given to those whose current housing fails to meet basic standards of health and safety and who have little prospect of improving the condition of their housing except by residing in a project assisted pursuant to Article 18 of the PHFL.

By statute, preference in the awarding of funds shall be given to economically feasible projects which contain a substantial number of persons whose income does not exceed 50 percent of the area median income. While projects may contain units intended for occupancy by tenants who are not persons of low income, Article 18 of the PHFL prohibits HTFC funds from being used to rehabilitate, convert or construct these units.

2.01.03.G Eligible Project Costs

Pursuant to Article 18 of the PHFL, the HTF Program cost may not exceed \$125,000 per unit. Eligible project costs shall consist of the actual and necessary cost of rehabilitation, construction, or conversion, including, but not limited to, the following, as set forth by the HTF Program Rules and Regulations:

- (i) construction or rehabilitation costs;
- (ii) architectural, engineering or professional services fees;
- (iii) financing costs;
- (iv) fees charged for disbursement of funds by lenders;
- (v) temporary relocation costs;
- (vi) property acquisition costs (not to exceed 50 percent of the HTF Program award);
- (vii) carrying costs during construction;
- (viii) Working Capital Fund;
- (ix) a Replacement Reserve;
- (x) LPA fees for technical services rendered on behalf of the subrecipient;
- (xi) fees for construction audit;
- (xii) Non-Profit Developer's Allowance (NPDA), if applicable; and
- (xiii) Community Service Facility costs (not to exceed 10% of the HTF residential funding request, with the total HTF request not exceeding the per unit funding cap).

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HTF Program funds may not be used for the administration costs of the applicant, or to capitalize an operating reserve, or for the construction, conversion or rehabilitation of units, which, upon project completion, are to be occupied by other than persons of low income. By statute, no more than 50 percent of any HTFC payments, grants or loans provided for the project may be used for acquisition costs (including closing costs).

2.01.03.H Eligible Predevelopment Costs

Once a Funding Commitment has been issued, a non-profit applicant may request funds for predevelopment expenses. By policy, the HTF Program will not fund more than \$5,000 per unit in predevelopment expenses, though other sources may be used to fund additional predevelopment costs. Predevelopment funds are included in the amount of the Funding Commitment, and any predevelopment funds awarded are included in the maximum funding amounts discussed above. The use of predevelopment funds is restricted to non-construction expenses, including, but not limited to:

- (i) site option costs and site carrying charges;
- (ii) architectural and engineering fees;
- (iii) appraisal fees;
- (iv) fees for title search and survey;
- (v) planning and consultant fees;
- (vi) demolition and clean out expenses necessary to complete the design of the project;
- (vii) legal and organizational expenses;
- (viii) accounting and application fees;
- (ix) market and environmental studies;
- (x) feasibility studies; and,
- (xi) site option expenses.

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2.01.04 Program Requirements

This section describes private developer and regulatory period requirements specific to the HTF Program. Utilization of LIHC may have an effect on certain requirements set forth in this section.

2.01.04.A Private Developer Minimum Equity Requirements

Article 18 requires that HTF applicants which are acting as private developers must make a minimum equity contribution to the project equal to either: (a) two and one-half percent of the total project cost; or (b) five percent of the total project cost minus all grants, whichever is greater. For the purposes of the HTF Program, a grant is defined as financing which does not require payment of principal or interest during the project's regulatory period. Balloon mortgages which do not require amortization of principal or payment of interest during the loan period are considered grants.

Program policy requires that a portion of the equity contribution be in the form of cash, with a minimum of the lesser of one percent of the total development cost or 50% of project gross rents made as a cash deposit to the project's Operating Reserve Account. To the extent that the cash contribution to the Operating Reserve Account exceeds the Operating Reserve Account cap set by OCD's Underwriting Unit, any amount above that cap shall be placed into the project's Replacement Reserve Account.

Any equity above and beyond the required one percent cash contribution must be in the form of cash, land, or real property unless there is an identity of interest between the applicant and the builder. In this case, a portion of the builder's profits, up to ten percent of the actual cost of construction, may be waived or treated as equity subject to the approval of the Corporation. Not-for-profit organizations wishing to receive a return on equity for a project will be treated as private developers if they make the minimum required equity investment. The return on equity that a private developer is permitted to receive on its qualified equity investment is described in Section 2.01.04.D.

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2.01.04.B Real Estate Contributions

Any land or real property contributed as equity must be owned by the applicant and must be free and clear of liens. Real property acquired pursuant to public funding shall have no equity value for the purpose of satisfying the HTF Program's equity requirement.

The value of property acquired two years or less before submission of a Unified Funding Application that may be counted as equity shall be calculated as the lesser of either the preconstruction appraised value or the purchase price.

The value of property acquired more than two years prior to submission of a Unified Funding Application that may be counted as equity shall be the property's pre-construction appraised value.

HTF Program funds used to acquire the property on which the project is located shall be deducted from its value when calculating the equity investment.

2.01.04.C Payment of Equity

A private developer's equity investment must be made at or prior to the project's Contract Closing. If the private developer has syndicated the project and is to receive future syndication proceeds, the amount of such future proceeds must be funded by some other source, without encumbering the project.

Cash equity contributions must be in the form of a certified check equal to the amount of equity to be invested in the project. In lieu of a certified check, an irrevocable letter of credit (LOC) may be submitted. The certified check or LOC must be submitted at or prior to the Contract Closing. The LOC should cover the term of the construction phase of the project. If the construction phase of the project takes longer than expected, the term of the LOC must be extended within 30 days of its expiration date to cover the extended period of the construction phase. It is the developer's responsibility to extend the LOC, if necessary. HTFC will deposit all cash equity contributions into interest-bearing accounts, and any interest earned will be returned to, or credited to, the developer.

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2.01.04.D Return on Equity

If, after providing for all expenses, taxes and deposits to the reserve funds, there are funds available, an annual portion of the project earnings will be paid to the private developer as a return on equity.

In order to receive a return on equity, there must be a cash surplus in the project's General Operating Account after payment of all expenses for the applicable fiscal year.

The annual return on equity is limited to six percent of the total qualified equity contributions.

If unpaid, payment will accrue for return on equity and shall be made at such time as a cash surplus is available in the General Operating Account or in the Operating Reserve Account (subject to the conditions previously described). The maximum payment of return on equity in any one fiscal year is limited to the current year's return on equity and one prior year's accrued amount.

Return on equity payments will be made following the end of each fiscal year. Payments from the General Operating Account for return on equity require prior approval of the Asset Management Unit (AMU). Payments from the Operating Reserve Account also require prior approval of AMU. AMU and HTFC finance staff review the annual audit report to ensure that return on equity is paid properly.

Payments will not be approved if it is determined that the project is not in compliance with HTFC regulations and applicable housing occupancy and maintenance laws, codes, and regulations.

2.01.04.E Regulatory Period

HTF Program projects must be operated in accordance with a Regulatory Agreement for the duration of the applicable regulatory period described below:

- (i) for homesteading projects, the regulatory period is the greater of:
 - a. the 15-year period following the date of final disbursement for the project during which the resale, rental and occupancy restrictions specified in the Regulatory Agreement are applicable; or,

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- b. the period, not to exceed 30 years, during which any loan or indebtedness incurred pursuant to Article 18 of the PHFL is outstanding.

- (ii) for rental, condominium or cooperative projects, the regulatory period is the greater of:
 - a. the 20-year period following the date of final disbursement for the project in which the resale, rental and occupancy restrictions specified in the Regulatory Agreement are applicable; or,
 - b. the period, not to exceed 30 years, during which any loan or indebtedness incurred pursuant to Article 18 of the PHFL is outstanding.

HTF projects may not be sold during the regulatory period except, with HTFC approval, to another eligible applicant who agrees to carry out the provisions of the Regulatory Agreement. During the regulatory period, the resale price will be established based on the value of the HTFC loan, project sponsor's equity and other relevant considerations.

At the end of the regulatory period, the project may be resold or refinanced. Except for those projects financed under Grant Enforcement Mortgages, projects which are resold or refinanced, and which will not continue to provide housing units for persons of low income, must repay the amount of the outstanding mortgage principal and accrued interest, if not previously paid to HTFC. If the project is to be sold or refinanced, but will continue to provide units for persons of low income, a new mortgage and regulatory period can be negotiated and HTF Program funds will not have to be repaid to HTFC. These provisions apply to all housing types - rental, homesteading, cooperative and condominium

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2.01.04.F Accessibility and Adaptation of Units

HTF program policy requires that new construction multi-family projects containing 5 or more units be designed and constructed to be readily accessible to and useable by individuals with disabilities. (Townhouse configuration projects are excluded from this requirement).

Accordingly, a minimum of five percent (5%) of the total dwelling units or at least one unit in a project, whichever is greater, shall be made accessible for and marketed to persons with mobility impairments. An additional two percent (2%), or at least one unit in such a project, shall be accessible for and marketed to persons with hearing or vision impairments. The project owner will be responsible for the reasonable costs of any alterations necessary to accommodate an eligible tenant.

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Section: 2.00 PROGRAM DESCRIPTIONS

Sub Section 2.02 Housing Development Fund Program

2.02.01 Summary

The Housing Development Fund (HDF) is a revolving loan fund which provides loans to eligible applicants who will construct or rehabilitate housing projects for low-income occupants. HDF loans provide temporary, interim financing and are generally repaid from permanent financing provided by another public or private funding source.

Temporary, interest-free HDF interim loans are divided into three categories - predevelopment, acquisition and construction - which may be made alone or in conjunction with one another. These loans generally have terms of up to three years.

HDF predevelopment loans may be utilized for project soft costs including: legal expenses, feasibility and planning studies, site suitability analysis, environmental reviews, market studies, engineering and architectural services. Generally, HDF pre-development loans are repaid from the first receipts of the construction financing.

HDF acquisition loans may be used for the purchase of the project site, including financing fees and closing costs. Generally, HDF acquisition loans are repaid from the first receipts of the construction financing.

HDF construction loans may be used for the costs of rehabilitation or construction of an eligible project including: site improvement, demolition and/or site preparation, infrastructure, professional and legal fees during construction, labor, materials, equipment, approved developer fees and builders' overhead, project carrying costs and working capital, and the development of non-residential facilities, provided such space is incidental or appurtenant to the residential property, and allowed and reimbursable under the project's permanent financing. HDF loan funds may also be used to provide construction financing for NYS HOME Program-assisted projects. Generally, HDF construction loans are repaid from the first receipts of the permanent financing.

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HDF loan funds may also be used to provide interim financing for longer periods for projects funded through the Low-Income Housing Credit program (LIHC). These HDF loans are called equity or bridge loans, because they bridge the time during the project's development and/or initial operating years until sufficient equity proceeds become available to repay the HDF loan. HDF equity loans are generally made at a simple one percent interest rate, and usually have terms of up to seven years. HDF equity loans may be used to pay for any mortgageable project costs.

Restrictions on project size and scope and the exact income levels of the project's low-income occupants are generally determined by the permanent funding source. In addition, all project costs financed with HDF loans must be mortgageable (i.e., reimbursable under the permanent project financing).

2.02.02 Statutory Provisions

2.02.02.A Purpose

The HDF program was created under Article 11 of the Private Housing Finance Law (PHFL) for the purpose of establishing a revolving loan fund to provide temporary loans to eligible applicants to facilitate the development of housing for low-income households. It is the further purpose of HDF to coordinate activities aided under existing municipal, State and federal programs with other public and private actions in order to provide the most effective and economical concentration of federal, State, local and private efforts to increase the supply of low-income housing accommodations, and thereby improve the quality of life for all people of the State. HDF is administered by the Division of Housing and Community Renewal (DHCR).

2.02.02.B Definitions

The following pertinent program-specific terms are defined by Article 11 of the PHFL.

1. **Development Cost:** The costs approved by the Commissioner of DHCR as appropriate expenditures which may be incurred prior to commitment and initial advance of the proceeds of a mortgage. These include, but are not limited to:

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- (a). payments for options to purchase properties on the proposed housing project site, deposits on contracts of purchase, or, with prior approval of the Commissioner of DHCR, payments for the purchase of such properties;
 - (b). legal and organizational expenses, including payment of attorneys' fees;
 - (c). payment of fees for preliminary feasibility studies, advances for planning, engineering and architectural work;
 - (d). expenses for community needs and market studies;
 - (e). necessary application and other project-related fees;
 - (f). bridge loans which provide temporary financing for the development of residential properties and will be repaid out of equity including proceeds from the syndication of a LIHC allocation; and
 - (g). such other expenses incurred by the project owner as the Commissioner of DHCR or the supervising agency, as the case may be, deems appropriate to effectuate the purposes of Article 11 of the PHFL.
2. Federally-Aided Mortgage: A mortgage made or insured by the federal government or instrumentality thereof, or a mortgage loan entered into in conjunction with a housing assistance payments contract in connection with new construction or substantial rehabilitation pursuant to Section 8 of the United States Housing Act of 1937, as amended.
3. Fund: The Housing Development Fund created by Section 574 of the PHFL.

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4. Housing Corporation: A not-for-profit or charitable corporation which has as one of its primary purposes the improvement of housing for persons of low income, or a wholly-owned subsidiary of such corporation or organization.
5. Housing Development Fund Company or HDFC: A company incorporated and organized pursuant to Section 573 of the PHFL.
6. Housing Project: A specific work or improvement undertaken to provide dwelling accommodations, including the acquisition, construction and/or rehabilitation of lands, buildings and improvements, and such commercial, social, recreational, communal or other non-housing facilities as may be incidental or appurtenant to the project.
7. State-Aided Mortgage: A loan made by the State of New York or any agency or instrumentality of the State.

2.02.03 Eligibility Requirements

This Section describes the eligibility requirements that are specific to HDF.

2.02.03.A Eligible Applicants

Eligible HDF applicants include HDFCs incorporated pursuant to Article 11 of the PHFL, not-for-profit and charitable corporations, and their wholly-owned subsidiaries, which have the improvement of housing for persons of low income as a primary purpose.

Applicants do not have to be HDFCs to be eligible for HDF funding; however, DHCR recommends that applicants incorporate as HDFCs as a vehicle to develop and/or own low-income housing projects. Applicants must have the experience and capacity to develop, rehabilitate and/or construct a project of the size and type proposed in a timely and cost-effective manner. Additionally, applicants must be able to secure the appropriate permanent financing needed to complete the project and repay the HDF loan.

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2.02.03.B Eligible Projects

Eligible projects for HDF loan financing are those that involve the construction or rehabilitation of cooperative, condominium, owner-occupied or rental housing for occupancy by low-income persons or households. Restrictions on project type and size are generally determined by the project's permanent funding provider.

2.02.03.C Eligible Areas

All areas of the State are eligible for HDF financing. However, priority for funding is given to projects which are located in an area which is or may become blighted or deteriorated, as designated by a federal, State or local agency.

2.02.03.D Eligible Occupants

To be eligible for HDF funding, a project must be occupied by low-income individuals or households. Generally, the permanent funding provider regulates tenant eligibility, project rents, sale prices and/or disposition of property. If permanent financing is not provided by a governmental source, DHCR may regulate the project subsequent to repayment of the HDF loan. In such instances, Article 11 of the PHFL restricts project occupancy to households with incomes not exceeding six times the total housing cost (rent plus utilities), except that for households with three or more dependents, the income must not exceed seven times the total housing cost.

2.02.03.E Eligible Loan Costs

Eligible loan costs are described in the Summary (2.02.01).

2.02.04 Program Requirements

This Section describes the loan and incorporation requirements specific to HDF.

2.02.04.A HDF Loan Requirements

All HDF loans are evidenced by a promissory note or mortgage note which, among other things, requires that the temporary loan will be due and payable on demand if DHCR determines

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that permanent financing may not be obtained for the project, or if the HDF loan is in jeopardy of not being repaid.

In general, no HDF loan repayment terms can be extended beyond the last receipts of the permanent financing, or in the case of HDF equity loans for LIHC projects, the last installment of syndication proceeds paid to the project owner pursuant to a syndication or partnership agreement. A closing is usually required prior to, or concurrent with, the disbursement of loan proceeds for acquisition and construction. HDF loans are generally interest-free although HDF equity loans may have a one percent interest rate. A six percent interest rate may be charged in the event of default on repayment.

Contracts for HDF loans may not be authorized until either conditional commitments, in the case of predevelopment, or firm commitments, in the case of acquisition and construction, are in place from all project funding sources, including the source of repayment for the loan. Generally, projects utilizing HDF loans meet all eligibility requirements and design, legal and underwriting specifications of the public or private funding source providing permanent financing.

Prior to authorizing an HDF loan contract, DHCR must make the following findings:

- (i) the HDF applicant proposes to finance the housing in whole or in part with a federal, State or municipal mortgage loan, or, if otherwise financed, will provide housing for low-income persons or families;
- (ii) the project site is suitable;
- (iii) there is a need for the type of housing proposed in the service area;
- (iv) the project is feasible;
- (v) there is a reasonable expectation that financing will be obtained; and
- (vi) the character and competence of the applicant is sound.

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All HDF loan funding commitments are subject to the availability of funds in the HDF revolving loan fund, as well as to an annual authorization by the Legislature to use such funds.

All applicants must enter into an HDF Regulatory Agreement and Loan Contract. HDF contracts must be executed by the applicant and DHCR, and approved by the State Attorney General's Office and the Office of the State Comptroller prior to disbursement of the HDF loan proceeds.

2.02.04.B HDFC Incorporation

A Housing Development Fund Corporation (HDFC) must be incorporated pursuant to the provisions of Article 11 of the PHFL and the provisions of either Section 402 of the Not-For-Profit Corporation Law, or, in the case of low-income cooperatives, Section 402 of the Business Corporation Law. An HDFC Incorporation package may be obtained by contacting the HDF Program Manager at DHCR, 38-40 State Street, 6th Floor, Albany, New York 12207.

HDFCs are either State- or municipally-supervised. State supervised HDFCs are organized with the consent of DHCR. DHCR will consent to the incorporation of an HDFC either for a term of three years or in perpetuity. DHCR will consent to the perpetual incorporation only if the HDFC has secured initial funding commitments for a low-income housing project. If the HDFC has not secured such funding commitments, the HDFC term is limited to three years; however, the Certificate of Incorporation may be amended at a later date to revise the term to perpetual should the project receive the necessary funding commitments. DHCR must give its consent to all proposed amendments to the Certificate of Incorporation.

DHCR will consent to the incorporation of an HDFC only after review and approval of the HDFC Incorporation package submission which includes the following items:

- (i) an executed original of the proposed HDFC Certificate of Incorporation, which shows that the HDFC is organized in accordance with the not-for-profit law and Section 573 of the Private Housing Finance Law.

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- (ii) a copy of the sponsor's Certificate of Incorporation, or, if unincorporated, a copy of the sponsor's by-laws;
- (iii) proof of the sponsor corporation's good standing in the form of a Certificate of Good Standing from the Secretary of New York State, or an attorney's opinion letter;
- (iv) a board resolution authorizing the sponsor to organize the proposed HDFC;
- (v) an executed original previous participation certificate;
- (vi) the sponsor's current financial statement;
- (vii) an Organization's Relevant Experience exhibit which is completed for the sponsor corporation. If the sponsor corporation does not have prior housing experience, the form must be submitted for other pertinent members of the project development team. Corporate resumes which outline specific housing development experience will be accepted in lieu of this form.
- (viii) a brief narrative which describes and details the proposed housing project and the sponsor; and
- (ix) evidence of permanent funding commitment(s) if the HDFC term is proposed as perpetual.

The process for DHCR consent to incorporate as an HDFC is as follows:

- (i) the documents listed above are reviewed for compliance with Article 11 of the PHFL and DHCR's policies;
- (ii) Prior to consenting to the incorporation, DHCR must find that:

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- a. the HDFC is duly organized pursuant to Article 11 of the PHFL;
 - b. a plan has been submitted for the development of a low-income housing project;
 - c. the character and competence of the sponsor has been demonstrated to the satisfaction of DHCR; and
- (iii) the consent to incorporate and the findings must be approved by the Commissioner and/or his or her designee including the Assistant Commissioner of Capital Programs.

Once DHCR has consented to incorporation, the Certificate of Incorporation is returned to the sponsor or its legal representative for the sponsor to continue its processing. The following steps must be taken to complete the filing of the Certificate of Incorporation:

- (i) the certificate of incorporation must be filed with the Secretary of State; and
- (ii) a certified copy of the Certificate of Incorporation must be submitted to the HDF Program Manager, together with a copy of the filing receipt from the Secretary of State.

2.02.05 Farmworker Housing Program

The Farmworker Housing Program was authorized in 1995 through an amendment to Article 11 of PHFL which made HDF program funds available for this new purpose.

The Farmworker Housing Program is a low-cost revolving loan program to assist agricultural producers in improving existing housing or constructing replacement housing for farmworkers so that the housing will comply with applicable code (that is, the New York State Sanitary Code and/or the Building Codes of New York State). The loans are also used for the new construction of farmworker housing and the expansion of existing facilities.

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The Farmworker Housing Program is administered by DHCR and participating local farm credit institutions with the cooperation of the New York State Department of Health and/or county health departments which conduct inspections and provide permits for farmworker housing. DHCR contracts with farm credit institutions to serve as a Local Loan Administrator (LLA). These LLAs originate and service the loans to agricultural producers, utilizing their underwriting standards. Upon completion of LLA review, the application packages are forwarded to DHCR for final approval and the disbursement of loan funds.

Under the program, an agricultural producer (a producer or entity which owns or operates land eligible for an agricultural assessment under Sections 305 and 306 of the Agriculture and Markets Law and which produces food by the tillage of the soil, or raises, shears, feeds or manages animals or other dairying processes) can apply to borrow up to \$100,000 per year for a project. If more than \$100,000 in loan funds are needed to satisfactorily complete the construction, repair or improvement of one farmworker housing project, the agricultural producer can seek funds from other sources, including a blended loan (i.e., a combination of a program loan and a conventional loan).

LLAs may require a one-time servicing fee from the borrower at the time of loan closing of no more than five percent (5%) of the loan amount. There are no interest or inspection fees. All loans to borrowers must be repaid in equal annual payments of principal; the term of the loan may not exceed ten (10) years. All loans, however, must be fully repaid by January 1, 2020, when the Farmworker Housing Program is currently scheduled to expire.

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Section: 2.00 PROGRAM DESCRIPTIONS
Sub Section: 2.03 Rural Rental Assistance Program

The Rural Rental Assistance Program (RRAP) is now administered by HCR's Office of Housing Preservation, and has therefore been removed from this manual. Any references to this program remaining in other sections of this manual may no longer be operative. RRAP awardees and prospective applicants should therefore consult with Office of Housing Preservation staff.

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Section: 2.0 PROGRAM DESCRIPTIONS

Sub Section: 2.04 Low-Income Housing Credit Program

2.04.01 Summary

The Low-Income Housing Credit (LIHC or the Credit) Program involves the allocation of a federal tax credit which provides a dollar-for-dollar reduction in federal tax liability for eligible applicants/owners who develop qualified low income rental housing projects that meet the requirements of Section 42 of the Internal Revenue Code (IRC or the Code).

LIHC is available to project owners who acquire, construct, and/or rehabilitate rental housing that is reserved for low-income households. The amount of Credit allocated to a project is directly related to the costs associated with the acquisition, construction, and/or rehabilitation of rental housing that is reserved for low-income households; those earning 60% or less of area median income. The amount of Credit allocated to an owner represents the Credit amount the owner may receive for each of the next ten years subsequent to the Credit allocation. In addition, the amount of Credit a project may receive is determined by applying the applicable federal credit percentage to the project; in general, approximately 9% is applied to the cost of new construction or rehabilitation and approximately 4% is applied to the cost of building acquisition or development costs for projects which receive federal financing.

New York State is provided with an annual allocation of LIHC, which is called the State Housing Credit Ceiling. As the State's lead Housing Credit Agency (HCA), DHCR is responsible for the allocation of a portion of the Credit Ceiling to other State and local housing agencies serving as HCAs. These HCAs, in turn, sub-allocate their portion of the Credit Ceiling to eligible applicants/owners of qualified housing projects. DHCR also retains a significant portion of the Credit Ceiling, which it directly allocates for qualified housing projects.

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2.04.02 Statutory Provisions

2.04.02.A Purpose

The Federal Tax Reform Act of 1986, as amended (the Act), established the LIHC Program to be administered by state housing agencies for the purpose of promoting investment in the production and retention of rental housing units which are reserved for low-income households. The LIHC Program replaced other tax incentives that existed prior to the passage of the Act in 1986.

The Act authorized the governor of each state to allocate the low-income housing tax credit ceiling among governmental units and other issuing authorities in the state with a single HCA coordinating the allocation of Credit to owners of low income housing. In New York, the Governor's Executive Order #135 designated DHCR as the State's lead HCA. The Executive Order authorized DHCR to allocate Credit in a manner which maximizes the public benefit by addressing the State's need for low-income housing and community revitalization incentives and to sub-allocate the Credit Ceiling among State and local entities involved with housing.

The Act further required each agency allocating Credit to adopt a Qualified Allocation Plan (the QAP) to provide for the effective coordination of the State's LIHC Program with Section 42 of the Internal Revenue Code (the Code). The QAP sets forth the threshold eligibility, scoring criteria and preferences by which LIHC will be awarded and allocated to projects by DHCR.

2.04.02.B Definitions

The following program-specific terms are defined by Executive Order 135, which designates DHCR as the State's lead HCA pursuant to the Federal Tax Reform Act of 1986. Additional program definitions are contained in the Section 2040.2 of the QAP:

- Code: The United States Internal Revenue Code of 1986, as amended.

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- Director of Housing or Director: Any Director of Housing so designated by the Governor. If the position of Director of Housing is vacant, during the period of such vacancy, the Commissioner of Housing and Community Renewal of the State of New York shall exercise the powers, functions and duties of the Director for the purposes of Executive Order 135.

- Housing Credit Agency or HCA: Any State Housing Credit Agency or Local Housing Credit Agency.

- Low-Income Housing Tax Credit Ceiling or Ceiling: The dollar amount of allocation authority apportioned to the State by the Federal Tax Reform Act of 1986 for a calendar year under Section 42(h)(3)(c) of the Code.

- State Housing Credit Agency: The New York State Division of Housing and Community Renewal (DHCR) or any other State agency, governmental unit or public benefit corporation concerned with housing and designated by the Director as an HCA, within the meaning of Section 42(h)(7)(A) of the Code. DHCR is the lead HCA in the State.

- Tax Credit or Credit: The Low-Income Housing Tax Credit allocated to specific projects pursuant to Section 42 of the Code.

2.04.03 Eligibility Requirements

This Section describes the eligibility requirements that are specific to the LIHC Program.

2.04.03.A Eligible Applicants

Eligible applicants/owners for the LIHC Program include for-profit developers, not-for profit developers, individuals, corporations, limited partnerships and limited liability corporations which will own rent-restricted rental housing after the project is acquired and improved, rehabilitated or constructed.

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2.04.03.B Eligible Projects

Credit allocations may only be made to rental housing projects which meet the minimum set-aside requirements for rent-restricted low-income units. Generally, eligible (or qualified) projects must contain a minimum number of low-income units (the minimum set-aside) in accordance with one of the following formulas:

- at least 20 percent of the units in a project must be occupied by households with incomes at or below 50 percent of the area median income; or,
- at least 40 percent of the units must be occupied by households with incomes at or below 60 percent of the area median income; or,
- in New York City, at least 25 percent of the units must be occupied by households with incomes below 60 percent of the area median income.

To be eligible, the project's low-income units must be rent-restricted, so that low-income households occupying the unit do not pay rent (including tenant-paid utilities) which is greater than 30 percent of the area median income imputed for the unit based on the number of bedrooms the unit contains.

Eligible project activities under the LIHC Program include new construction, building acquisition with rehabilitation and rehabilitation.

The QAP sets forth additional eligibility requirements which must be met by Credit projects. Pursuant to Section 2040.3(E) of the QAP, at each stage of processing (i.e., application, reservation, binding agreement or allocation) Credit applications will be subject to a threshold eligibility review, which will include, but not necessarily be limited to, whether the project meets certain minimum requirements set forth in this section. The threshold eligibility requirements contained in the QAP follow:

- (1). The project meets the occupancy, rent restrictions and any other requirements of the code.

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(2). The project applicant has site control consistent with the code, for the project real estate through a lease, option, purchase contract or deed.

(3). The project applicant has taken all steps necessary at each stage of processing to secure the required governmental approvals to construct and operate the project and the applicant demonstrates that the project is eligible for all necessary governmental approvals.

(4). Evidence is provided that the project is consistent with the applicable HUD approved consolidated plan for the locality in which the project will be located.

(5). The project applicant has taken reasonable steps to address the objections to the proposed project, if any, raised by the chief executive officer of the locality where the project is proposed.

(6). The project developer, owner and/or manager have successfully developed and operated projects comparable to the proposed project and have the capacity and experience to undertake, complete and operate the proposed project.

(7). The project developer, owner and/or manager and their principals do not include anyone who owns or manages an existing project for which an IRS Form 8823 has been issued and has not been corrected or otherwise resolved as determined by the supervising agency.

(8). The project developer, owner and/or manager and their principals do not include anyone who has participated in a publicly assisted capital project that has been determined to be out of compliance with statutes, rules, regulations, policies or agreements and has not been corrected or otherwise resolved as determined by the public agency responsible for supervising the project.

(9). The amount of requested annual credit allocation does not exceed either the maximum per project or per unit amounts specified in the notice of credit availability issued by the division. Such amounts will be established based upon the expected availability of credit allocation authority. The applicants may request and the commissioner may grant a waiver of this requirement if the commissioner determines that there is sufficient credit available, the project is in furtherance of the State's housing goals and in the best interests of the citizens of the State of New York (this paragraph is not applicable to applications reviewed under section 2040.4 of this Part).

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(10). A comprehensive market study, conducted by a market study analyst who has been pre-approved by the division, which demonstrates at a minimum that the proposed number and type of units meet an existing and identified need of low-income individuals and can be readily absorbed by existing need in the local area.

(11). There will be no adverse impact on the occupancy rates of other publicly-assisted housing in the local area.

(12). The project does not involve the permanent involuntary displacement of existing tenants in order to qualify for credits.

(13). The number of bedrooms in the units in the proposed project are appropriate for the type of occupancy proposed.

(14). All LIHC-assisted first floor units in new construction projects without an elevator, all LIHC-assisted units in new construction projects with an elevator, and as many LIHC-assisted units as feasible in adaptive reuse or rehabilitation projects shall meet visitability standards, except when such standards are demonstrated to be irreconcilable with federal, state or local statutes, regulations, ordinances or codes..

(15). If the project includes the rehabilitation of any building(s) the acquisition costs of the building(s) may not exceed 25 percent of the total development costs of the project unless:

- (i) it is preservation project (as defined at section 2040.2(q) of this Part); or
- (ii) the Commissioner has determined that the preservation of the building(s) is in the best interest of the State (not applicable to applications reviewed under section 2040.4 of this Part).

(16). Project construction has not started without prior authorization by the division.

(17). The project will:

- (i) be a qualified low-income housing project for no less than 30 years; or
- (ii) be conveyed pursuant to an effective plan for existing tenants to purchase the project at the end of the compliance period.

(18). The project must meet the green building and energy efficiency standards listed in the Qualified Allocation Plan.

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In addition, while Credit projects may contain commercial space and market-rate units, Credit can only be taken against and utilized for the financing of the project's low-income residential space.

One important exception to the above is in the case of a residential project containing a Community Service Facility (CSF). A CSF is defined as any facility designed to serve primarily individuals who reside in the Credit project or in the immediate community whose income is 60% or less of area median income. The CSF may include space for such activities as Head Start, child care, job training, primary health care, youth recreation and support services for seniors. Pursuant to the federal Housing and Economic Recovery Act of 2008 (HERA) which amended certain provisions of the Code in regard to Credit, the allowable percentage of development costs of the CSF portion of the qualified low-income project which can be included in basis is 25 percent. In addition, to be eligible, the subject project must be located in a qualified census tract. Credit applicants must describe and clearly document the programmatic relationship between the occupant(s) of the CSF and the project tenants and community residents served by the CSF, carefully apportioning all project development costs, hard and soft, and real estate expenses between the CSF and the residential units of the project.

Credit allocations may not be used for projects which will be used for transient housing, defined as units with an initial lease of less than six months. However, an exception is permitted for single room occupancy (SRO) projects, which are eligible for Credit. Further, transitional housing projects for homeless persons and/or families are eligible for Credit.

Credit allocations may not be used for rental dwelling units that are or will be part of a health facility, mobile home park or student dormitory.

In addition to eligibility standards, the QAP sets forth project scoring and ranking criteria (Section 2040.3(F) of the QAP), which incorporate both Code-mandated project selection criteria and preferences and DHCR project preferences. The preferences are described in detail in the QAP.

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Subject to the annual availability of Credit and the issuance of a Notice of Credit Availability, DHCR may provide a set-aside of Credit on an annual basis for additional types of projects, including but not limited to:

a. Preservation Projects

A Preservation Project is a project in which residential property is rehabilitated to extend its useful life to serve as affordable housing and averts the loss of affordable housing currently serving the housing needs of a population whose housing need would justify the replacement of the housing if it ceased to be available to that population. The project must meet the preservation project definition in Section 2040.2 of the QAP. The scope of the rehabilitation must be sufficient for the project to function in good repair as affordable housing for a period equal to at least thirty years from the date of issuance of the final credit allocation. [Note: applicants proposing a Preservation Project must demonstrate how the project averts the loss of affordable housing and must: a) describe any regulatory and economic circumstances which could precipitate the loss of or risk the availability of the project to low income households, and; b) provide a compelling rationale for preserving the existing project based upon economic conditions including the availability of alternative affordable housing, street rents, vacancy rates and current and future demand]. Preservation Projects which involve the redevelopment of state-assisted public housing must meet the criteria and conditions for approvals under the New York State Public Housing Law. Such projects may include the economic restructuring and rehabilitation of an existing public housing project. Applicants are encouraged to consult with DHCR regarding the review and approval of the redevelopment plan prior to submitting an application to DHCR.

b. High Acquisition Cost Projects

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As defined in Section 2040.2 (j) of the QAP, a High Acquisition Cost Project is a Preservation Project in which the acquisition costs of the building(s) is twenty five percent or more of the project's total development cost. Such projects must meet the Preservation Project definition referenced above to be eligible for funding. In a High Acquisition Cost Project, the amount of the developer's fee shall be based upon an assessment of risk assumed by the project owner, considering factors including, but not limited to, rent subsidies or other project operating support, location, financing sources, occupancy level, project type and identities of interest.

c. Supportive Housing Projects

A Supportive Housing Project, as defined in Section 2040.2 (u) of the QAP, is a project which gives preference in tenant selection to persons with special needs (defined in Section 2040.2(p) of the proposed QAP), for at least thirty percent of the total units in the project.

For a proposed LIHC-financed project to be considered Supportive Housing:

- i. The need for housing for the targeted population within the primary market area must be documented;
- ii. The applicant must ensure the delivery of appropriate services, for which a documented need exists, to the targeted population as evidenced in a comprehensive service plan and an agreement in writing with an experienced service provider;

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- iii. The project must be located in close proximity to public transit service or the applicant must include a transportation plan as a component of the comprehensive service plan to ensure access to necessary services;
- iv. The applicant must demonstrate that funding is in place or identify a viable plan for the funding of appropriate services;
- v. The applicant must provide for an ongoing rental subsidy or other form of subsidy to ensure that rents paid by the targeted population remain affordable; and
- vi. The applicant must identify, and have a written agreement with, a public agency or experienced service provider that will refer eligible persons and families for the targeted units.

In addition, Section 42(h)(5) of the Code requires that the States set-aside 10% of the Ceiling (see 2.04.04.A below) for qualified non-profit organizations which own an interest in the project and materially participate in the development and operation of the project throughout the compliance period.

In regard to multiple-building developments, DHCR will treat these as one project provided it is consistent with the Code, the QAP and meet the following requirements:

- Buildings on Adjacent Sites:
 - on same or adjacent tracts of land
 - have the same ownership entity and common construction/permanent financing sources
- Buildings on Scattered Sites:
 - in non-metropolitan counties, such projects must be located in the same municipality (i.e., town, city or village)

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- in metropolitan counties, such projects must be located in the same neighborhood, or if recognized neighborhood boundaries do not exist, in no more than two adjacent census tracts
- have the same ownership entity and common construction/permanent financing sources

2.04.03.C Eligible Areas

All areas of New York State are eligible.

2.04.03.D Eligible Occupants

Eligible occupants are low-income households earning up to 60% of area median income.

LIHC may only be utilized on units that are occupied at the time of initial occupancy by eligible occupants. To be eligible for LIHC, project occupancy must meet the minimum set-aside requirement discussed in 2.04.03B above.

Units must be available for use by the general public and cannot be restricted to members of a particular organization or to employees of a specific employer. Project owners may, however, give preference in renting units, or limit occupancy to, categories of persons with special needs (e.g., persons who are elderly, persons or families who are homeless persons with HIV/AIDS) provided such preferences are in accordance the U.S. Department of Housing and Urban Development's (HUD) policy on non-discrimination in housing and Federal and State fair housing laws and regulations. A complete listing of the populations which DHCR and HTFC recognize as persons with special needs is provided in Section 5.14 of this manual. Also, pursuant to a provision in HERA, a project which otherwise meets this general public use requirement may have occupancy preferences that favor tenants who are members of a specified group under a federal program or state program or policy that supports housing for such a specified group or tenants who are involved in artistic and literary activities.

2.04.03.E Eligible Project Costs

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Eligible project costs include the actual and necessary costs of residential construction, building acquisition and/or rehabilitation, customary hard costs and related soft costs, excluding the expense associated with the syndication of the Credit.

Additional DHCR standards for calculating the maximum amount of Credit necessary for a project are detailed in Section 2040.3(G) of the QAP. These standards include but are not limited to the following maximum allowable construction-related costs in relation to the contractor's contract:

- Builder's profit of 6 percent;
- Builder's overhead of 2 percent; and,
- General requirements of 6 percent.

PROGRAM NOTE: UF 2013 early Award applicants may use the higher builder's fees (4% overhead, 6% general requirements, and 10% profit) allowed under the current Qualified Allocation Plan (QAP). UF 2013 Standard round applicants must use the reduced builder's fee limits (14% total) in the proposed 2013 QAP.

Section 2040.3 of the QAP also sets forth the amount of developer's fee compensation for services, overhead and profit recognized by DHCR. The developer's fee is limited to 10 percent of the acquisition and improvement costs associated with the low-income portion of the Credit project, **excluding project contingency**. This can be increased up to a maximum of 15 percent of improvement cost for the low-income portion when either the developer or affiliate provides both a satisfactory cost completion guarantee and an operating deficit guarantee as those guarantees are set forth in the project owner's organizational documents. Notwithstanding any other provision in the QAP, the amount of the developer's fee for a high acquisition cost project shall be based upon DHCR's assessment of the risk assumed by the project owner, considering factors including, but not limited to, rent subsidies or other project operating support, location, financing sources, occupancy level, project type, and identity of interest.

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DHCR may also reduce allowable costs, including but not limited to the developer's fee, where an identity of interest exists among the parties to the Credit transactions involving the syndication, development and/or operation of the project.

DHCR charges processing fees for 9% Credit projects which include application and Credit allocation fees, as specified in Section 2040.3(C) of the QAP.

2.04.04 Program Requirements

This section describes the Ceiling Allocation, DHCR Credit Allocation Process and the LIHC Extended Use Period.

2.04.04.A LIHC Ceiling Allocation

New York State receives an annual allocation of Credit called the Low-Income Housing Tax Credit Ceiling. The Ceiling for any calendar year is defined as the sum of:

- a per capita amount based on the State's population (this figure can be changed by Congress and has trended upwards in recent years);
- the National Pool, which represents the unused portion of the Credit of other States which did not fully allocate their Ceiling in the previous calendar year (the National Pool funds are distributed to States which fully allocated their Ceiling based on a formula derived by State population size); and,
- the amount of the Ceiling returned in the calendar year from projects which did not require all or a portion of their Credit allocation.

Ceiling Allocation to HCAs

DHCR is authorized to apportion the Ceiling to other State and Local HCAs, which in turn make allocations to eligible projects. The Ceiling is apportioned in a manner to insure that each HCA has sufficient Credit allocation authority to undertake a program of Credit activity and to assist, through the appropriate HCA, any project which represents an important initiative or unique opportunity to meet State and local housing needs.

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As noted above, each agency allocating Credit is required to adopt a Qualified Allocation Plan to provide for the effective coordination of the State's LIHC Program with Section 42 of the Code. The DHCR QAP sets forth the eligibility and scoring criteria and preferences by which LIHC will be awarded and allocated to projects by DHCR as well as certain underwriting standards and compliance monitoring requirements. In order to receive an apportionment of the Ceiling from DHCR, each HCA must adopt and submit a QAP which is consistent with the Code.

In addition to adopting a QAP which sets forth its guidelines and requirements in allocating Credit, HCAs are responsible for:

- underwriting each project to limit the amount of the credit allocation to the amount needed to make the project feasible;
- executing and recording as a restrictive covenant, a Low-Income Housing Extended Use Agreement (also known as a Regulatory Agreement) with the project owner for the **minimum** term of **at least** a 30-year extended use period to maintain the project in good repair for low-income households; and,
- making a good faith effort to find a qualified buyer as a successor to the original owner, if the owner requests a Qualified Contract for the purchase of the project at the end of the 15-year compliance period.

DHCR's Credit Allocation Authority

The portion of the Ceiling which is not allocated to other State and local HCAs represents DHCR Allocation Authority. DHCR allocates Credit on a competitive basis as defined in DHCR's QAP to projects which:

- utilize Credit in conjunction with its other capital financing programs (e.g., Low-Income Housing Trust Fund, NYS Low-Income Housing Tax Credit Program, NYS HOME Program, Homes for Working Families Program, Rural Rental Assistance Program, Urban Initiatives Program, Rural Area Revitalization Projects Program);

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- receive other federal, state and local government financing (e.g., Community Development Block Grant, local government HOME Program, NYS Homeless Housing Assistance Program, tax-exempt bond financing allocated from the State's Private Activity Bond Volume Cap); and,
- which do not receive any other governmental funding assistance.

The projects in the second and third categories are also termed LIHC standalones, since they do not have other DHCR/HTFC financing.

2.04.04.B DHCR Credit Allocation Process

DHCR's process for the allocation of Credit to projects is set forth in detail in Section 2040.3 of the QAP and includes descriptions of the DHCR:

- funding cycle;
- LIHC application and allocation fees;
- requirements for issuance of Credit reservations, binding agreement, carryover allocations and the Internal Revenue Form 8609;
- threshold eligibility review criteria;
- project scoring and ranking criteria; and
- process for determination of the Credit allocation amount for a project.

The DHCR Notice of Credit Availability and Unified Funding Request for Proposals which are issued on an annual basis also provide the detailed parameters and criteria of Credit application review, the Credit financing available including per unit and per project maximum annual allocation amounts, DHCR's stated expectations and project preferences and the format for applicant notification of the outcome of DHCR's review.

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2.04.04.C Extended Use Period

As noted above, pursuant to the Code, the owner must execute an Extended Use Agreement (also referred to as a Regulatory Agreement) with the HCA that issued the Credit allocation which requires that a building's Credit-assisted units be available for low-income households for an Extended Use Period of 30 years. The Regulatory Agreement (described in Section 2040.5 of the QAP), which is binding on all successors, provides an enforcement mechanism for both the HCA, which performs a compliance monitoring function, and residents to assure that the Credit-assisted units will be maintained for this purpose through the Extended Use Period. The Extended Use Period may terminate early if the building is acquired by foreclosure, or if the HCA cannot find a qualified buyer for the building within one year of the owner's written request to do so. The owner cannot make such a request until the end of the fourteenth year of the 15-year Compliance Period.

DHCR's responsibilities and requirements for Credit project monitoring, the tenant income certification process and compliance inspections are set forth in Sections 2040.7 - 2040.10 of the QAP.

2.04.04.D Consolidating Multiple LIHC Reservations

DHCR will consider an applicant's request for approval to combine two or more reservations provided:

- the applicant's request to combine project reservations does not occur prior to issuance of the reservation for the individual projects nor subsequent to issuance of the binding agreement/carryover allocation;
- each project is independently viable from both design and underwriting perspectives through construction and the regulatory period;
- each project possesses the same ownership entity and the same construction/permanent financing sources;

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- the sites are adjacent (that is, abutting on at least one side); and,
- the combination of project reservations results in a reduction of project-related costs which provides a benefit to the tenants in terms of lower rents, increased amenities, security or other features and/or to DHCR through a reduction in necessary funding levels.

2.04.04.E Low Income Housing Credit Program - Commissioner's Findings and Determination

DHCR will consider an applicant's request for approval to extend a Credit reservation deadline subject to the following policy:

It is the policy of New York State and the purpose of federal housing programs to provide housing opportunities to all persons and areas of the State. Although the conditions and needs may vary in different areas of the State, these housing programs are intended to be flexible and to address a variety of needs and the unique circumstances of the various communities across the State.

DHCR, in its role as Housing Credit Agency, has administered the Low-Income Housing Credit (LIHC) program in a manner which strives for an equitable distribution of credits across the State based upon need and population. The LIHC has experienced success in assisting projects in urban areas and also has been successful in facilitating the development of projects in non-urban areas.

The LIHC program is designed to facilitate the timely completion of affordable housing projects and credits that are not used by the State in a timely fashion are forfeited. To avoid the threat of forfeiture, the State has administered the program in a manner which requires applicants to strictly comply with all development time frames and projects which do not meet these time frames have had their allocation revoked with no provision for extensions or exceptions.

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However, there are substantial differences in the local review and approval processes implemented and carried out by the non-urban communities in which projects have been proposed. It is a main objective of the State to assist and allow these non-urban communities to properly and adequately review these project proposals for appropriateness for the areas in which the property is located.

In particular communities have taken additional time to carefully review proposed family projects and their impact on their communities. It has been DHCR's experience that these reviews may take more time to complete than was initially anticipated.

In light of the importance of the development of projects for families in non-urban areas, DHCR has determined that it is necessary to establish a policy whereby projects which are designed to serve families in non-urban areas which are involved in the local review and approval process may be granted additional time necessary to complete the process for obtaining local approvals.

A request may be made and granted by the Deputy Commissioner under the following circumstances:

1. Project is designed to serve families and is located in a non-urban area;
2. Local Approval Process has been timely commenced and is still ongoing; (including any judicial review proceedings); and,
3. All other conditions for the LIHC have been met, including but not limited to site control and financing commitments.

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2.04.05 Projects Financed by Private Activity Bonds

Pursuant to Section 2040.4(f) of the QAP, as of March 1, 2008, DHCR no longer accepts applications for 4% Credit applications for projects financed by private activity bonds. The New York State Housing Finance Agency (HFA) has been designated the State Housing Credit Agency with the responsibility for the review of all 4% Credit applications and the issuance of allocations for such projects on a statewide basis. Such allocations will be made by HFA pursuant to HFA's QAP and its 4% Credit requirements and standards.

2.04.06 Instructions for Issuance of Final Credit Allocation (IRS Form 8609 or NYS DTF-625)

In order for a Credit project to obtain the final credit allocation (i.e. IRS Form 8609 Credit allocation for a LIHC project), the applicant must comply with following requirements and submit application exhibits and documentation as noted. (These submission requirements are applicable for both 9% and 4% Credit projects, as well as for SLIHC project applicants obtaining a final credit allocation through receipt of the NYS DTF-625 allocation document):

I. Compliance Monitoring Requirements

Section 42(m) of the Code requires DHCR, as a Housing Credit Agency, to implement a monitoring procedure to ensure an owner's compliance with Credit requirements.

Any project receiving at least one IRS Form 8609 Credit Allocation Certification Document for an improvement to a building will be subject to DHCR's monitoring plan certification and annual monitoring fee charged by DHCR which shall not exceed 0.5 percent of the maximum restricted rents for the low-income units.

Further information on DHCR's Credit project compliance monitoring and operating and management requirements is included in Section 7.00 of this Manual and DHCR's LIHC Compliance Monitoring Guide.

II. IRS 8609: Credit Allocation Certification Document Requirements

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If a project has entered service, to obtain the Low-Income Housing Credit Allocation Certification Document (“IRS 8609”), the project owner must submit the following documents, attachments and exhibits from DHCR’s Unified Funding Application to their DHCR Project Manager. Any document, attachment or exhibit that has already been submitted in its final form does not have to be resubmitted. However, the owner must ensure that any changes in financing or project configuration are fully updated on all documents, attachments or exhibits that reference that change.

A. For the Project as whole:

1. Copy of the Limited Partnership Agreement or Limited Liability Corporation Operating Agreement (which includes the “pay-in” schedule if the project is subject to one);
2. An updated “Proposal Summary” (**Unified Funding Project Application, Attachment F9**);
3. An updated “Development Budgets/Funding Sources” – **separate Project Summary and building specific exhibits (Exhibit 3)**;
4. An updated “Unit Rent/Maintenance Fees & Affordability” (**Exhibit 4**);
5. An updated “Project Income & Operating Budget”; (**Exhibit 5**);
6. An updated “LIHC/SLIHC Qualified Building Information” (**Exhibit 9**) Sections B,C and D - Project Summary and building specific - see item B.3. below;

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7. An updated “LIHC/SLIHC Project Summary” (**Exhibit 10**) including an updated Section C. “Use of Credit Proceeds”;

8. Evidence of Compliance with special instructions (if applicable) as specified in a reservation, carryover allocation and/or regulatory agreement including, but not limited to;
 - Agreement(s) giving preference in tenant selection for the LIHC regulated units to persons from public housing waiting lists or other existing waiting lists for subsidized housing, and/or to persons and families whose current housing fails to meet basic standards of health and safety and who have little prospect of improving the conditions of their housing except in a project receiving LIHC.
 - An agreement with a not-for-profit 501(C)(3) or its wholly owned subsidiary to acquire the low-income portion of the project at a cost equal to or below the minimum permitted pursuant to the Internal Revenue Code for the purposes of a Qualified Contract.
 - An effective plan for existing tenants to purchase the project as part of a buy-out plan at the end of the compliance period.
 - An agreement or commitment in writing with an experienced service provider to provide supportive services to project tenants with special needs, as set forth in the original application.

9. For projects which have received funding under one of New York City's Department of Housing Preservation and Development multi-family rehabilitation finance programs, please submit proof that the fee requirement of such program has been paid;

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10. A Copy of an executed LIHC Regulatory Agreement. The LIHC Regulatory Agreement (Extended Use Agreement) will be prepared by DHCR after the documents, attachments and exhibits in this section have been found to be satisfactory and after completion of the third underwriting. Documentation of the authority of the person who will sign a LIHC Regulatory Agreement with DHCR on behalf of the project owner, must be submitted in order to prepare the regulatory agreement. (Secretary's certificate of resolution for corporations, partnership agreements for partnerships. All levels of authorization must be documented.) Proof of recording of the Regulatory Agreement in the county clerk's office will be required. The Executed Regulatory Agreement and proof of recording must be forwarded to the LIHC Program Manager prior to release of the IRS 8609;

 11. A Cost Certification, as described in item B.2. below, which includes an overall summary of project costs; and,

 12. Evidence that the project owner has closed on all sources of permanent financing.
- B. For each Building in the project:
1. Evidence that each building in the project has entered service;
 - a. For new construction or rehabilitation of a vacant building a Certificate of Occupancy is acceptable;

 - b. For a building that is undergoing rehabilitation and was occupied at the time of acquisition there are two different "placed in service" dates and each requires separate evidence.

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- (i) For an occupied rehabilitated building claiming Credit for the acquisition portion of the building, the “placed in service” date for the acquisition is the date the building was acquired and the applicant must submit evidence that the acquisition has occurred. Acceptable evidence would be a deed.
 - (ii) For an occupied rehabilitated building, the “placed in service” date for the rehabilitation portion of the building can be any point in a period of up to 24 months during which eligible rehabilitation expenditures are aggregated. Acceptable evidence for the rehabilitation portion of an occupied building is a statement by the owner indicating the date the owner has selected for “placed in service”.
- 2. Evidence of Costs:
 - a. Certifications of Costs by an independent accountant indicating costs by the same line items as shown in the “Development Budget” for the project as a whole and each building in the project. Costs associated with the non-residential portion of a building should be specifically identified as non-residential. Certification by an accountant must include all costs that the owner expects DHCR to include in a determination of eligible basis (including soft costs and developer’s fee). Any costs not included or referenced in the accountant’s certification or the owner’s statement or under “build out cost” (see paragraph c below) will not be included in the final calculation of eligible costs for the IRS 8609.

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- b. If the project has included acquisition costs as part of the eligible basis, an accountant should include a statement indicating the value assigned to the land and the value assigned to the building.
 - c. If “build out costs” are included in eligible basis, the owner should submit a statement listing such items and the amounts. The items should be the same line item categories as shown on the “Development Budget”. “Build out costs” are development or construction costs incurred after a building is placed in service but which will be made through the end of the first year of the Credit period. “Build out costs” plus the Certification of the Costs should total the costs shown in the “Development Budget”.
 - d. If a building has multiple sources of financing and one or more of the financing agreements restrict the use of the funds to certain costs (e.g., commercial, non-rent restricted units, acquisition, etc.) such costs shall be separately identified and allocated to the appropriate source of financing.
3. As noted above, an updated “LIHC/**SLIHC** Qualified Building Information” (Exhibit 9); including Section B “Determination of Qualified Basis”;
 - an updated Section C “Declaration of Public Subsidies”; and,
 - an updated Section D “Unit Information”.
4. An updated “Site & Building Information” (Exhibit 8); and,
5. As-built drawings for the entire project;

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The following item applies only to LIHC standalone projects proposing the renovation of existing housing which received a reservation or consistency/determination letter dated July 1, 2004 or later:

6. For projects financed by LIHC only (i.e., no other Housing Trust Fund Corporation or DHCR funding) which include the renovation of an existing structure(s), the Physical Needs Assessment Form, Part A and B, must be completed and submitted.

The following item applies only to LIHC standalone projects proposing the renovation of existing housing for tenants other than solely senior citizens:

7. For projects financed by LIHC only which include the renovation of an existing structure(s), an updated certification that all work was completed in compliance with all applicable federal, state and municipal laws, regulations or ordinances, as amended, pertaining to lead-based paint abatement must be completed and submitted.

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Section: 2.0 PROGRAM DESCRIPTIONS

Sub Section: 2.05 The New York State HOME Program

2.05.01 Summary

The New York State HOME Program (HOME) provides loans and grants to eligible applicants to undertake activities eligible under one or more of the three basic project types: Rental projects, Homeownership Assistance projects and Tenant-Based Rental Assistance (TBRA) projects. Rental projects may involve the acquisition, new construction, substantial rehabilitation and/or moderate rehabilitation of units for low-income tenants. There are two types of Homeownership Assistance projects: Home Repair projects, under which owner-occupied housing is rehabilitated, and Home Purchase Assistance projects which involve either direct assistance to low-income homebuyers, or the new construction or rehabilitation of housing for sale to low-income homebuyers. TBRA projects involve the payment of rental subsidies on behalf of eligible low-income tenants.

PLEASE NOTE: The HOME Program is currently administered in two parts by HCR. This manual should only be used for Rental projects receiving Capital funding from HCR's Office of Finance & Development. All other HOME activities are administered by HCR's Office of Community Renewal (OCR).

All HOME projects must benefit low-income households, defined as those with incomes at or below 80 percent of the area median. Rental projects which are assisted by the HOME Program are required to remain affordable to low-income households for the applicable regulatory period, the term of which is based on several factors, including the amount of the HOME subsidy and the type of activity funded.

The New York State HOME Program is administered by the New York State Housing Trust Fund Corporation (HTFC). However, HTFC's degree of involvement varies depending on the type of activity proposed. Site-specific (or single-site) projects, which may involve acquisition, new construction or substantial rehabilitation of low-income housing on a site or sites under common ownership may be undertaken by all eligible applicants, and are administered directly by the Housing Trust Fund Corporation. Local HOME Programs (formerly termed multi-site projects) may be undertaken only by non-profit organizations or municipalities

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who assume certain administrative duties on behalf of the State, and involve TBRA, Home Purchase Assistance, and Moderate Rehabilitation projects.

New York State is required to reserve a minimum of 15 percent of HOME funds for locally-based non-profit entities that qualify as Community Housing Development Organizations (CHDOs). All areas of the State are eligible for HOME projects; however, in addition to the 15 percent CHDO set-aside, at least 80 percent of the State's HOME allocation must be spent on projects that are not in localities designated by HUD as participating jurisdictions.

2.05.02 Statutory Provisions

2.05.02.A Purpose

The HOME Program was authorized by Title II of the National Affordable Housing Act (NAHA) of 1990, for the purposes of increasing the number of families served with affordable housing and to expand the supply of such housing. The Final Rule for the program was published by HUD on September 16, 1996, at 24 CFR Part 92.

2.05.02.B Definitions

The following definitions apply to the New York State HOME Program:

1. Awardee: An applicant which has been informed by HTFC of the decision to fund the proposed project and which has executed, or will execute, a written agreement with HTFC.

2. Community Housing Development Organization (CHDO): A private, non-profit organization which:
 - (a) has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons;

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- (b) has demonstrated its capacity for carrying out activities assisted with HOME funds;
- (c) has a history of serving the community within which the housing to be assisted with HOME funds is located;
- (d) is organized under State law;
- (e) has standards of financial accountability;
- (f) has a tax exemption under Section 501(c) of the Internal Revenue Code;
- (g) is not controlled by a private, for-profit entity whose primary purpose is the development or management of housing;
- (h) is not controlled by a private, for-profit entity that has the right to appoint one-third or more of the non-profit organization's governing board, or has control over appointment of the remaining two-thirds;
- (i) is not controlled by a public body that has the right to appoint one-third or more of the non-profit organization's governing board; and
- (j) maintains accountability to low-income community residents by:
 - (i) providing a formal process for low-income program beneficiaries to advise the organization in its decisions regarding the design, siting, development, and management of affordable housing;
 - (ii) maintaining at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income community

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residents, or elected representatives of low-income neighborhood organizations; and

- (iii) for organizations with a multi-county services area, has low-income residents from each county on the governing board.

3. Developer: Any entity which organizes and supervises all phases of a project, including acquisition, construction, and final sale or rental. In the case of a CHDO, to be considered a developer, the CHDO must, regardless of ownership, have the contractual authority to acquire, finance, rehabilitate or maintain/manage a project for the term of affordability.
4. Federal Home Regulations: 24 CFR part 92 of the Federal Register.
5. Local Home Program (multi-site project): A HOME Program undertaken by a subrecipient or State recipient involving the moderate rehabilitation of rental properties or owner-occupied housing, rental assistance or home purchase assistance.
6. New Construction: Newly-built projects, rehabilitation projects that include new construction of one or more units outside the existing walls of the structure, or any project which will receive its first certificate of occupancy within one year of receiving HOME assistance.
7. Owner: An entity which owns, or which will own, a project at completion.
8. Participating Jurisdiction: A unit of general local government designated by HUD to receive HOME funds through a formula allocation.
9. Site-Specific Project (single-site project): A site or an entire building (including a manufactured housing unit), or two or more buildings, together with the site or (when permissible) sites on which the building or buildings are located, that are under common ownership, management and financing and are to be assisted with HOME funds for new

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construction or substantial rehabilitation of housing, under a commitment by the owner, as a single undertaking. A site-specific project includes all of the activities associated with the site and building.

10. Sponsor: An entity which assists another entity to own, by acquisition or otherwise, develop and manage a project. The sponsor may initially apply for and receive a loan commitment with the requirement that a designated entity will assume the grant/loan obligation and other responsibilities of the project at a specified time.
11. State Recipient: A county, city, town or village which has signed an agreement with HTFC to carry out a Local Home Program.
12. State HOME Program: The New York State HOME Program.
13. Subrecipient: A not-for-profit corporation or housing authority that administers a coordinated set of eligible activities, pursuant to an agreement with HTFC to carry out a local HOME Program.

2.05.03 Eligibility Requirements

This Section describes the eligibility requirements that are specific to the HOME Program. Sub- Sections 2.05.04 set forth in detail the specific requirements of the various types of HOME projects that may be undertaken.

2.05.03.A Eligible Applicants

Eligible applicants for the New York State HOME Program include individuals and private for profit and non-profit organizations with a demonstrated capacity to develop feasible projects. Additionally, units of local government which are not participating jurisdictions, either directly or as part of a HOME consortium, are also eligible applicants, as are agencies under their control.

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While any eligible applicant may undertake a site-specific project, Local HOME Programs may be undertaken only by not-for-profit corporations and housing authorities (termed subrecipients) and units of general local government, including counties, cities, towns and villages, (termed state recipients). Subrecipients and state recipients generally serve an administrative function and do not typically act as the project developer or hold any ownership interest in an assisted property. They are required to conduct environmental reviews and periodically report on site activities. Section 2.05.03.C discusses site-specific projects and Local HOME Programs.

Please refer to Section 2.05.03.B for a discussion of CHDOs and their special eligibility requirements. A minimum of 15 percent of New York State's HOME funds must be set aside for CHDOs.

2.05.03.B Eligibility Requirements for Community Housing Development Organizations (CHDOs)

New York State is required to reserve at least 15 percent of its HOME funds for housing that will be developed, sponsored or owned by CHDOs which are community based, non-profit organizations with experience in providing low-income housing assistance, and which are fully defined in Section 2.05.02.B. The HOME Program provides for some exceptions to its requirements and eligibility standards when an entity is a CHDO. These special circumstances are discussed below.

While CHDOs may undertake any of the activities eligible under the HOME Program, only those projects developed, owned, or sponsored by qualified CHDOs count towards the 15 percent CHDO set-aside requirement. The activities which do not count toward the set-aside are: TBRA, rehabilitation of owner-occupied property, direct home purchase assistance to low-income homebuyers not involving rehabilitation, moderate rehabilitation programs that benefit existing private owners, and CHDO operating costs. CHDOs are eligible to apply for HOME Program loans of up to \$5,000 a unit to establish site control and initial feasibility and to cover eligible pre-construction costs. Site control and preconstruction loans may only be used for non-

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construction activities, and are limited to \$45,000 per project. While site control loans may be requested via the Unified Funding Application Process, preconstruction loans may only be requested by an applicant who has been selected for funding, pursuant to an Application Review Letter (ARL). Site control loans may be forgiven if the project is later determined to be infeasible, otherwise they must be repaid from the proceeds of the construction financing. Only CHDOs are eligible to receive these loans.

The expenses which are eligible for site control and pre-construction loans are those customary costs that the CHDO has incurred, or will incur, prior to construction, including:

- (i) expenses necessary to determine project feasibility, including an initial feasibility study;
- (ii) consulting fees;
- (iii) costs of preliminary financial applications;
- (iv) legal fees;
- (v) preliminary architectural or engineering fees;
- (vi) costs to engage a development team; and
- (vii) costs to obtain site control or title clearance.

In addition to the above, the following are eligible pre-construction loan expenses only. (These are not eligible expenses for a HOME site control loan):

- (i) costs to obtain construction loan commitments;
- (ii) costs for architectural plans and specifications;

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- (iii) costs to obtain zoning approvals;
- (iv) costs for engineering studies; and
- (v) legal fees.

Administrative costs are not an eligible pre-construction expense.

HOME Program regulations provide that up to five percent of the annual federal HOME allocation may be used for CHDO operating expenses; however, these funds may not be used to pay the operating expenses incurred by a CHDO while acting as a subrecipient. CHDO's that do receive operating funds must enter into a written agreement with DHCR stating that the CHDO is expected to be funded as a subrecipient within 24 months of receiving the operating expense funds. In any given fiscal year, a CHDO may not receive HOME funds which exceed the greater of \$50,000 or 50 percent of the CHDO's total operating expenses for that fiscal year. This includes HOME operating expense funds as described above, as well as any other HOME funds for operating expenses, including organization support, housing education and administrative funds.

CHDOs are required to develop and follow a plan for tenant participation in management decisions and must adhere to a fair lease and grievance procedure for any housing developed with HOME Program funds.

CHDOs must meet the following re-certification requirements to remain an eligible DHCR CHDO:

- (i) After a CHDOs initial certification, re-certification to maintain CHDO status must be conducted every 3 years. The re-certification information submitted by the entity should include similar documents, materials and requirements as the original certification, and should be submitted to the appropriate regional office for a full review;

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- (ii) If a CHDO applies to DHCR/HTFC for funding in the years between re-certifications, it must include a letter from the CHDO president or chairperson stating that no organizational changes have been made since the date of the original certification or most recent re-certification. If organizational changes occur in a certified CHDO, the CHDO must submit an explanation of those changes to their Regional Office and a determination will be made regarding the CHDO's continued eligibility as a CHDO.

- (iii) CHDO certifications, re-certifications and "no change" letters must include the name of each NYS county in which the applicant has or will have eligible CHDO status."

2.05.03.C Eligible Projects

Certain activities undertaken with HOME Program funds are termed site-specific projects, which may be undertaken by any eligible applicant. While site-specific projects may involve more than one site, all sites comprising a site-specific project must be under common ownership, management and financing, and are to be assisted with HOME funds as a single undertaking. Site-specific projects may involve new construction, substantial rehabilitation or acquisition of low-income housing only.

Local HOME Programs may be undertaken by non-profit organizations (subrecipients) or municipalities (state recipients) only, and involve the moderate rehabilitation of rental or owner occupied properties, as well as TBRA and direct home purchase assistance to low-income homebuyers. For projects undertaken under Local HOME Programs, the per unit development cost minus the cost of acquisition must be less than \$30,000.

Eligible applicants may apply for HOME Program funds to engage in more than one type of activity provided that all eligibility requirements for each activity are met.

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Section 2.05.04 sets forth the specific general and eligibility requirements of the various project types which may be undertaken with HOME funds, including Rental projects, Homeownership Assistance projects and TBRA projects.

2.05.03.D Eligible Areas

While all areas of the State are eligible for HOME Program funding, New York State requires that, in addition to the 15 percent CHDO set-aside, 80 percent of the State's HOME funds must be spent on projects located outside of HUD-designated Participating Jurisdictions (PJs). A list of current New York State PJs may be obtained from HTFC upon request.

2.05.03.E Eligible Occupants

HOME Program funds may only be used to assist low-income households, defined as those with incomes at or below 80 percent of the area median. In addition, the federal HOME regulations require that HOME rental projects must primarily serve households with incomes at or below 60 percent of area median. All cooperative or condominium units assisted through the HOME program must be occupied as the owner's primary residence and units may not be sold or sub-leased to investors, or to staff or board members of the applicant, developer or sponsor organization.

2.05.03.F Eligible Project Costs

HOME Program funds may be used to pay for the eligible project costs set forth below, subject to the per unit cost limitations published for the HOME Program which are available from HTFC upon request. Federal HOME regulations also require a minimum per-unit investment of \$1,000, excluding any matching funds.

HOME Program funds will be made available as grants, no-interest loans, or interest-bearing loans, depending upon the economics of the project and the type of assistance requested.

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Local HOME Program applications may not request HOME funds of more than \$30,000 per unit, unless a waiver with supporting justification is included.

Eligible costs include:

- A. Development Hard Costs: The actual cost of constructing or rehabilitating housing, including:
- (i) for new construction projects, costs to meet the applicable new construction standards of the various codes referenced in the HOME Program Request for Proposals (RFP);
 - (ii) for rehabilitation projects, costs to meet applicable rehabilitation standards, correct substandard conditions, and make essential improvements, including energy related repairs or improvements, improvements necessary to permit use by handicapped persons, the abatement of lead-based paint hazards and the elimination of other hazardous substances, and to repair or replace major housing systems in danger of failure;
- (NOTE: HOME funds may not be used for the new construction or rehabilitation of a free standing community building in a multi- building project.)
- (iii) where HOME funds are loaned to rehabilitate a single-family, owner-occupied unit, costs to refinance the owner's existing debt on the unit, in order to increase affordability;
 - (iv) demolition costs;
 - (v) costs to make utility connections; and
 - (vi) costs for site improvements that are in keeping with improvements of surrounding, standard projects, including on-site roads and sewer and water lines necessary to the project's development.

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- (vii) Federal Labor Standards (Davis-Bacon Related Acts) which become applicable for projects with 12 or more units of HOME funding

- B. Acquisition Costs: the costs of acquiring improved or unimproved real property, which will provide rental units or will be transferred to an eligible low-income homebuyer.

- C. Related Soft Costs: other reasonable and necessary costs incurred by the owner related to the financing and/or development of new construction, rehabilitation or acquisition of HOME housing projects, including:
 - (i) architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups;

 - (ii) settlement and financing costs, such as private lender origination fees, credit reports, fees for title evidence, recording and filing fees, building permits, attorney fees, private appraisal fees, independent cost estimate fees, and builder/developer fees;

 - (iii) the cost of a project audit when required by HTFC;

 - (iv) costs for providing information services, such as affirmative marketing and fair housing information to prospective homeowners/tenants, as required by the Federal HOME Regulations;

 - (v) costs to establish an Operating Deficit Reserve for new construction or substantial rehabilitation projects; this reserve differs from a typical Operating Reserve, in that it may only be used to pay the project's operating expenses in the event of a shortfall in project income during the project's rent-up period, which may not exceed 6 months; any

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unspent HOME funds remaining in the Operating Deficit Reserve at the end of the 6 months must be returned to HTFC;

- (vi) staff and overhead costs which are directly related to implementing the project, such as preparing work specifications and loan processing inspections, or which are provided to assist potential tenants and homebuyers, such as housing counseling, only if the project is funded and the individual assisted becomes the owner or tenant; applicants must document that such costs were reasonably allocated among all HOME-assisted units in a multi-unit project; and
- (vii) for new construction and substantial rehabilitation projects, costs for the payment of impact fees that are charged for all projects within a jurisdiction.
- (viii) costs for testing and risk assessment for lead hazard control and other health and safety testing and assessment costs, and costs for conducting an energy audit.

D. Project-Specific Assistance to CHDOs: Within the restrictions more fully set forth in the federal HOME regulations, HOME funds may be used to provide technical assistance, site control loans and pre-construction loans to CHDOs, provided that the costs are related to a specific eligible project. These costs are more fully discussed in Section 2.05.03.B.

E. Relocation Costs: Costs resulting from the displacement of persons by a HOME project, including:

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- (i) relocation housing payments, payments for moving expenses, and payments for reasonable out-of-pocket costs incurred in temporarily relocating people; and
 - (ii) staff and overhead costs directly related to the provision of advisory and other relocation services to persons displaced by the project, including timely written notices to occupants, referrals to comparable and suitable replacement property, property inspections, counseling and other assistance necessary to minimize hardship.
- F. Tenant-Based Rental Assistance (TBRA) Costs: Eligible costs related to TBRA, including rental assistance and security deposit payments.
- G. Local HOME Program Administrative Costs: Such costs may not exceed eight percent (8%) the HOME award amount (applies to LPAs only).

HOME Program funds may not be used to provide a replacement reserve account or an operating reserve account; nor may HOME Program funds be used to provide project-based rental assistance. **HOME funds may not be used for the new construction or rehabilitation of a free-standing community building in a multi- building project. HCR will not allow HOME funds to be used for the purchase of furniture and equipment.**

2.05.03.G Eligible Activities

There are a number of activities which are eligible for funding under the HOME Program. These include: new construction and substantial rehabilitation of rental housing and/or housing for purchase by low-income homebuyers, acquisition of rental projects which does not involve rehabilitation, rehabilitation of owner-occupied housing, moderate rehabilitation, rehabilitation of rental properties, home purchase assistance to low-income homebuyers, and TBRA.

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HOME Program funds may not be used for the following activities:

- (i) to provide a project reserve account for replacements, a project reserve account for unanticipated increases in operating costs, or operating subsidies;
- (ii) to provide TBRA for the special purposes of the existing Section 8 Program, or to prevent displacement from projects assisted with Rental Rehabilitation funds (Part 511);
- (iii) to provide non-federal matching contributions required under any other federal program;
- (iv) to provide assistance authorized under federal regulations - Part 965, Public Housing Authority-Owned or Leased Projects - Maintenance and Operation;
- (v) to provide assistance for activities authorized under the Public Housing Modernization and the Comprehensive Improvement Assistance Programs, Part 968 of the Federal Regulations;
- (vi) to provide assistance to housing which is eligible for prepayment of mortgages by owners of low-income housing under the Low Income Housing Preservation and Resident Homeownership Act of 1990;
- (vii) to provide assistance to a project previously assisted with HOME funds during the period of affordability established by the PJ (except that housing previously assisted with HOME funds may receive further HOME assistance in the form of TBRA or Purchase Assistance to low-income homebuyers; additionally, a project may receive additional HOME funds up to one year after completion so long as the per-unit HOME subsidy for the project has not been exceeded); and
- (viii) to pay for the acquisition of property owned by the PJ, except for property acquired with HOME funds or acquired with the intention of carrying out a HOME project.
- (ix) Although a HOME Program application may request funding to engage in a variety of eligible activities, there are requirements which are specific to each of three basic project types: Rental projects, Homeownership Assistance projects and

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TBRA projects, each of which is discussed below. Combination projects, such as those with both rental and owner-occupied units, must comply with the requirements for all project types as set forth below.

2.05.04 Rental Project Requirements

This Section describes the eligibility and other general requirements that are specific to HOME Program projects involving rental housing units.

2.05.04.A General Requirements for Rental Projects

Applicants may use HOME Program funds to assist rental housing in site-specific projects and in local programs. Site-specific rental projects may involve acquisition, new construction, or rehabilitation. Local programs that assist rental projects may provide up to \$30,000 in HOME funds per unit to rehabilitate rental units. Both rental and home ownership units may be assisted in the same project or program, provided that requirements for each activity are met.

Applicants for HOME funds involving rental projects may assume a number of different roles: they may retain ownership of completed projects, transfer ownership to another entity which agrees to meet the HOME Program's long-term affordability and monitoring requirements, or may simply provide rehabilitation assistance to private owners of rental housing who agree to meet with the HOME Program affordability requirements. In all cases, the applicant is responsible for ensuring compliance with all rental project requirements set forth herein for the duration of the period of affordability, as detailed below in Section 2.05.04.D.

All housing assisted with HOME funds must, at a minimum, meet Federal Housing Quality Standards (HQS), see the OCD Design Handbook for information on where to obtain a copy of the HQS. Newly constructed or substantially rehabilitated HOME projects must meet all applicable local codes, rehabilitation standards, and zoning ordinances. Local programs providing rehabilitation assistance for rental housing must comply with HUD Regulations at 24 CFR Part 35 for Lead Based Paint Hazard Reduction.

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2.05.04.B Eligible Rental Properties

Eligible HOME Program rental properties include the following:

- (i) residential buildings that are in need of rehabilitation in order to meet the rehabilitation standards set forth in the OCD Design Handbook;
- (ii) residential properties acquired to provide rental housing for eligible occupants;
- (iii) commercial properties that can be converted into residential rental housing for eligible occupants; and
- (iv) mixed-income and mixed-use properties are eligible, provided that all units receiving HOME Program funds meet all rental project requirements set forth herein.

When proposing to assist an occupied building with HOME Program funds, applicants must comply with all HOME Program requirements regarding relocation, displacement and acquisition, which are set forth in HUD Handbook 1378. Notices to tenants in occupied buildings to be assisted with HOME funds (required by 49 CFR 24.101) and to owners of such buildings (required by 49 CFR 24.101) must be submitted prior to the issuance of the HTFC funding commitment letter described in Section 3.02.07.

2.05.04.C Eligible Tenants/Rents

HOME-assisted rental units must be primarily occupied by low-income households (those with incomes at or below 60 percent of area median income, or AMI). Multi-family projects (projects with five or more units) must reserve 20 percent of the units in the project for occupancy by very low-income families (those with incomes at or below 50 percent of AMI).

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HTFC may grant waivers to permit owners to assist units occupied by households with incomes between 60 and 80 percent of AMI. Such waivers may not be granted for more than 10 percent of the total number of rental units assisted with funds made available.

No tenant may be excluded from leasing a HOME rental project because they hold a certificate, voucher or comparable document from any rental assistance program.

Rents for HOME-assisted units may not exceed the rent published by HUD for the applicable unit size, adjusted for any applicable utility allowance (known as the "High HOME Rent"). Additionally, for projects with five or more units, at least 20 percent of the project's units must either be occupied by very low-income households paying 30 percent or less of their monthly adjusted gross income for rent, or must bear rents which are not greater than 30 percent of the gross income of households with incomes equal to 50 percent of AMI (known as the "Low HOME Rent").

If a unit receives federal or state project-based rental subsidy and the very low-income family pays no more than 30% of the family's adjusted income as a contribution toward rent, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the federal or state project-based rental subsidy program. Low HOME Rents for units receiving project based rental subsidies may be set at the maximum allowable under the Federal or State project-based rental subsidy program. HTFC will make copies of High and Low HOME Program rents available to applicants and owners.

Tenants whose incomes increase to more than 80 percent of AMI may continue to occupy their HOME-assisted unit provided they pay 30 percent of their adjusted monthly income for rent.

2.05.04.D Regulatory Periods for Rental Projects

HOME-assisted Rental projects must remain affordable for the applicable minimum term listed below, based on the project's average per-unit subsidy from the HOME Program.

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Rehabilitation/acquisition less than \$15,000:	5 years
Rehabilitation/acquisition between \$15,000 -\$40,000:	10 years
Rehabilitation/acquisition over 40,000:	15 years
New Construction of any amount:	20 years

For HOME-assisted projects with multiple funding sources, the regulatory period will be the longest required by any of the sources.

2.05.04.E Regulatory Restrictions of HOME LPA Rental Rehabilitation Projects

Rental projects assisted with HOME funds, including assisted rental units in two-four unit owner-occupied buildings where the owner is provided with HOME funds for purchase assistance, must remain affordable for a period of between five and 20 years, and must meet all applicable requirements of 24 CFR 92.252 and 253. These sections require recipients to secure assistance provided to rental housing by means of a deed restriction or other similar mechanism that runs with the land.

While the affordability restrictions terminate in the event of foreclosure or transfer of deed in lieu of foreclosure, the State - and by contractual agreement, any recipient that receives funds for this purpose - is responsible for recovering all HOME funds invested into the project. For projects containing four or fewer units, where the owner receives assistance to purchase the building, the resale/recapture requirements of 24 CFR 92.254 apply. For all other rental projects receiving HOME funds, deed restrictions or covenants running with the land must be used to preserve affordability.

To ensure that recipients have an opportunity to preserve affordability in the event of foreclosure or transfer in lieu of foreclosure, HTFC will provide recipients with sample first mortgagee waiver agreements that they can use to negotiate with the owners' primary lenders to secure their approval of these agreements. Recipients are also encouraged to negotiate purchase options, rights of first refusal, or other preemptive rights to purchase the housing before foreclosure or deed in lieu of foreclosure.

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Recipients should regularly review the management and financial condition of projects so that they can intervene before projects reach the point of default and foreclosure. In the event that a project is found to be encountering financial difficulties, or if a recipient is notified that foreclosure proceedings have been initiated against an assisted rental project, the recipient must notify their DHCR regional office immediately, and must work with the project owner and the primary lenders to maintain the project as affordable housing for the remaining affordability period, or repay the full amount of HOME funds invested in the project to HTFC. Re-subordination of HOME financing to permit refinancing of the primary mortgage is generally not permitted in assisted rental projects.

2.05.04.F CHDO Multi-Family Rental Projects

In order for a HOME multi-family rental project to be considered a CHDO project, the project ownership structure must comply with the terms of 24 CFR 92.300 (a) (1). This section states that funds may be provided to a CHDO, its subsidiary or a partnership of which the CHDO or its subsidiary is the managing general partner. If a CHDO owns the project in partnership, it or its wholly owned for-profit or non-profit subsidiary must be the managing general partner. In acting in any of the capacities specified, the community housing development organization must have effective project control. A CHDO applicant must state in its application and document in the project owner's organizational documents that the CHDO has effective project control.

2.05.05 HOME LPA Roles/Responsibilities

- (i) providing adequate staff to carry out the program;

- (ii) program marketing, including compliance with all State and Federal equal opportunity, fair housing, and affirmative marketing requirements;

- (iii) conducting eligibility determinations and ensuring that all income targeting requirements are met;

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- (iv) ensuring that HOME funds are only expended for eligible activities consistent with State and Federal requirements, with respect to property requirements, rehabilitation standards, appraised value, subsidy limits, and qualification as affordable housing;
- (v) for home buyer assistance, loan underwriting, loan processing, home ownership counseling, and other activities necessary to reduce the risk of default, consistent with the LPA's Administrative Plan, and enforcing HOME resale requirements for assisted properties (see 24 CFR 92.254 (a) (4));
- (vi) for tenant-based rental assistance, determining the amount of subsidy provided on behalf of each assisted household, determining tenant contributions, conducting Housing Quality Standards inspections and rent reasonableness determinations, and taking actions to minimize adverse impacts on tenants as a result of the expiration of the rental assistance subsidy;
- (vii) conducting, or assisting HTFC in conducting, environmental reviews, determinations, and action for each activity that it carries out with HOME funds, in accordance with 24 CFR part 58, and submission of Requests for Release of Funds or other documentation, as required, to HTFC for approval. Environmental Review Procedures for Local Program Administrator (LPA) Programs is available on the DHCR website.
- (viii) following an anti-displacement plan to minimize displacement, and compliance with Federal displacement, relocation, and acquisition, requirements concerning temporary relocation, relocation assistance, identification of displace persons, real property notification of non-displacement for existing tenants, and proper notification to sellers when acquiring properties with HOME funds (see 24 CFR 92.353 and 49 CFR part 24);

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- (ix) financial management of all HOME funds, establishing a local HOME Investment Trust Fund account, if applicable, disbursing funds to owners or contractors, coordinating payment of HOME Program funds with funds from other sources, tracking and reporting on repayments and other program income, and data entry and maintenance of the recipient's account in HUD's Integrated Disbursement Information System;
- (x) compliance with requirements for encouraging minority/women-owned business (M/WBE) utilization, and submission of reports on M/WBE outreach and utilization, and equal opportunity, fair housing, and M/WBE participation in the local community;
- (xi) post-occupancy monitoring to ensure regulatory compliance for assisted units, including annual HQS and income verifications, if applicable;
- (xii) compliance with all uniform administrative requirements, as described in 24 CFR 92.505;
- (xiii) adherence to the conflict of interest requirements of 92.356, 24 CFR 85.36, and 24 CFR 85.42, as applicable;
- (xiv) record-keeping and reporting, including submission of an Annual Performance Report.

For more information on the role of HOME LPAs, see Section 6.02.09.A.

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Section: 2.00 PROGRAM DESCRIPTIONS

Sub Section: 2.06 Homes for Working Families

The Homes for Working Families Program (HWF) is now administered by the New York State Housing Finance Agency through HCR's MultiFamily Finance Office, and has therefore been removed from this manual. Any references to this program remaining in other sections of this manual may no longer be operative. HWF awardees and prospective applicants should consult the following web page for additional information:

www.nyshcr.org/Topics/Developers/MultifamilyDevelopment/HomesForWorkingFamilies/

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Section: 2.00 PROGRAM DESCRIPTIONS

Sub Section: 2.07 RESTORE Program (Residential Emergency Services to Offer (Home)
Repairs to the Elderly)

The RESTORE Program is now administered by HCR's Office of Community Renewal (OCR), and has therefore been removed from this manual. Any references to this program remaining in other sections of this manual may no longer be operative. RESTORE awardees and prospective applicants should therefore consult with OCR staff.

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Section: 2.00 PROGRAM DESCRIPTIONS

Sub Section: 2.08 New York State Low-Income Housing Credit Program

2.08.01 Summary

The New York State Low-Income Housing Credit (SLIHC or State Tax Credit) Program was created in 2000 by Article 2-A of the Public Housing Law (The Law). The Law authorizes the Commissioner of NYS DHCR to administer the SLIHC Program according to procedures established in 9 NYCRR Part 2040.14 (the SLIHC regulation) and in the same manner as the federal Low-Income Housing Credit (LIHC) Program authorized by Section 42 of the U. S. Internal Revenue Code (the Code). Owners/investors can receive a dollar-for-dollar reduction in certain New York State income taxes to be taken over a 10-year period in return for building and maintaining affordable housing for income eligible tenants for at least 30 years.

The SLIHC Program differs from the federal LIHC Program by serving tenants having an income level of up to 90% of area median income, as opposed to the federal limit of 60% of area median income. This assists low-income senior and non-senior households where the rents of conventionally financed dwellings are not affordable. Scoring preference will be given to those projects that propose serving households in multiple income bands (see Unified Funding Application for delineation of household income bands).

All processes, policies and procedures applicable to the LIHC Program shall apply to the SLIHC Program except as modified below:

2.08.02 Additional Definitions:

- (1) Eligibility Statement shall mean a statement issued by the Commissioner certifying that a building that has been placed in service as an eligible low-income building with a certain amount of SLIHC allowable. For purposes of SLIHC, all references to the IRS Form 8609 shall be deemed to be references to NYS Department of Taxation and Finance Form DTF-625 which is an eligibility

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statement for the SLIHC and is the document which is used to make the final allocation of state tax credit to the project.

- (2) Eligible Low-Income Building shall mean any building located in New York State which either is a qualified low-income building as defined in Sections 42(c) of the Code, or would be a qualified low-income building under such section if the 20-50 test specified in subsection (g)(1) of Section 42 of the Internal Revenue Code (the Code) were disregarded and the 40-60 test specified in such subsection (requiring that at least 40% of the residential units be both rent-restricted and occupied by individuals whose income is 60% or less of area median gross income) were a 40-90 test.
- (3) Qualified Basis of an eligible low-income building shall mean the qualified basis of such building as determined under Section 42(c) of the Code or which would be determined under such section if the 40-90 test specified above applied under Section 42 to determine if such building were part of a qualified low-income housing project (see Section 2.08.04.B – Eligible Projects below).
- (4) De Minimus Determination - The Commissioner of New York State Taxation and Finance in consultation with the Commissioner of DHCR may exempt from recapture any SLIHC which is allocated to a project or unit which is otherwise eligible but is not an eligible low-income building due to an error by the owner in calculating the low-income eligibility test.
- (5) Notice of Non-Compliance shall mean a statement issued by the Commissioner and sent to the project owner notifying the project owner that the project is not in compliance with the provisions of this Section 2040.14. For the purposes of SLIHC, all references to IRS Form 8823 shall be deemed references to the Notice of Non-Compliance.

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2.08.03 Funding Rounds

A Notice of Credit Availability (NOCA) will be issued by the DHCR within six months of enactment of the statute providing credit allocation authority. Such notice shall remain in effect until such time as the SLIHC credit allocation authority is expended or expired. Therefore, SLIHC applications which do not include a request for financing under other HTFC/DHCR programs may be submitted at any time during the calendar year subject to the availability of SLIHC allocation authority. State tax credit authority is not year-specific. Therefore, any unused credit authority from one year may be carried forward by DHCR for use in the next calendar year.

2.08.04 Eligibility Requirements

This Section describes the eligibility requirements that are specific to the SLIHC Program.

2.08.04.A Eligible Applicants/Owners

Eligible applicants/owners for the SLIHC Program include individuals, partnerships, limited partnerships, limited liability corporations and Chapter S corporations which will own rent-restricted rental housing after the project is acquired and improved, developed or rehabilitated. DHCR provides a scoring preference for projects which include the participation of a local tax-exempt organization (501(c)(3) or (c)(4)) as set forth in the SLIHC scoring criteria (see Section 2040.14 (d)(13) of the SLIHC regulation).

Priority for funding is given to those applicants who have experience in the development and/or operation of low-income housing. Additionally, priority may be given to projects which are designated by the Commissioner as important initiatives or unique opportunities to meet State or local housing needs, including mixed income projects, which are provided with a scoring preference to the extent the project serves a mixture of income levels (see Section 2040.14(d)(5)).

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Applicants are charged an allocation fee, equal to six percent of the State Tax Credit allocation amount (first year's State Tax Credit amount). The fee must be paid prior to State Tax Credit allocation and is recognized as a project cost, but is not eligible for inclusion in the project's qualified basis.

2.08.04.B Eligible Projects

State Tax Credit allocations may only be made to rental housing projects which meet the minimum set-aside requirements for rent-restricted units. Generally, eligible (or qualified) projects must contain a minimum number of low-income units (the minimum set-aside) in accordance with the following formulas:

- (i) At least 40 percent of the units must be occupied by households with incomes at or below 90 percent of the area median income, or

- (ii) In New York City, at least 25 percent of the units must be occupied by households with incomes below 90 percent of the area median income.

In addition, to be eligible, the project's low-income units must be rent-restricted, so that the low-income households occupying the unit do not pay rent (including tenant-paid utilities) which is greater than 30 percent of the area median income imputed for the unit based on the number of bedrooms the unit contains. The QAP sets forth additional eligibility requirements which must be met by SLIHC projects. Pursuant to Section 2040.3(E) of the QAP, at each stage of processing (i.e., application, reservation, binding agreement or allocation), applications will be subject to a threshold eligibility review, which will include, but not necessarily be limited to, whether the project meets certain minimum requirements set forth in this section. The LIHC threshold eligibility requirements, which apply to SLIHC projects, are contained in the QAP and referenced in Section 2.04.03 B above.

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Further, in SLIHC projects which are not jointly financed with LIHC, no more than 40% of the units assisted by SLIHC can serve households with incomes at or below 60% of area median income.

2.08.04.C Eligible Activities

New construction, substantial and moderate rehabilitation, and acquisition are all eligible activities under the SLIHC Program. Project applications which address the type of housing activity (new construction, substantial or moderate rehabilitation, or acquisition in conjunction with rehabilitation) appropriate to the location, will be given preference for funding.

While projects may contain commercial space and market-rate residential units, the amount of State Tax Credit can only be based on the project's low-income residential space. State Tax Credit allocations may not be used for projects proposing:

- transient housing, defined as units with an initial lease of less than six months. However, an exception is made for transitional housing and single room occupancy (SRO) projects, which are eligible for Credits.

- rental dwelling units that are or will be part of a health facility, trailer park or dormitory;

2.08.04.D Eligible Areas

All areas of New York State are eligible.

2.08.04.E Eligible Occupants

SLIHC can only be taken on units that are occupied at the time of initial occupancy by households with incomes at or below 90 percent of the area median income. Units must be available for use by the general public and cannot be restricted to members of a particular organization, ethnic group, or religion. Project owners may, however, give preference in renting units or limit occupancy to, persons with special needs such as persons who are frail elderly, disabled and persons or families who are homeless, provided such preferences are in accordance

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with federal and state laws and regulations barring discrimination in housing. Also, the pertinent provisions of the federal Housing and Economic Recovery Act of 2008, described in Section 2.04.03.D above, apply to SLIHC.

2.08.05 Project Scoring and Ranking Criteria

Project applications which pass completeness and threshold eligibility review are scored based upon the following criteria, which are set forth in Section 2040.14 (d) of the SLIHC regulation. The SLIHC scoring criteria are synchronized with the LIHC scoring parameters to the extent possible; the only variation in the two scoring criteria is for Mixed Income (LIHC) and Income Mixture (SLIHC). The SLIHC criteria for Income Mixture is discussed in the SLIHC Regulations while the other pertinent LIHC/SLIHC scoring preferences are described in the QAP.

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Section: 2.00 PROGRAM DESCRIPTIONS
Sub Section: 2.09 Urban Initiatives (UI) Program

2.09.01 Summary

PLEASE NOTE: The Urban Initiatives Program (UI) is currently administered in two parts by HCR. This manual should only be used for UI when incorporated with other funds as part of a larger Unified Funding Capital project proposal administered by HCR's Office of Finance & Development. All other UI funding is administered by HCR's Office of Community Renewal (OCR).

The purpose of the Urban Initiatives program is to provide financial/technical resources to New York communities for the restoration and improvement of housing, commercial areas and public/community facilities in urban neighborhoods. This program will provide grants to not-for-profit community based organizations and charitable organizations that have a direct interest in improving the health, safety and economic viability of a distressed urban neighborhood or other aspects of the area environment that is related to community preservation or renewal activities.

2.09.02 Eligible Applicants

Eligible applicants include not-for-profit corporations or charitable organizations, organized for a period of one or more years, which is either incorporated under the not-for-profit corporation law together with any other applicable law) or, if unincorporated, is not organized for the private profit or benefit of its members and has been engaged primarily in community preservation activities and will serve a population with incomes at 80% or below of median annual income. The applicant's officers, directors and members must be representative of the residents and other legitimate interests of the neighborhood.

2.09.03 Eligible Projects

1. Creation, preservation or improvement of residential housing units in a neighborhood.

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2. Preservation or improvement of local commercial facilities and public facilities or other aspects of the area environment which include as part of its project the creation, preservation or improvement of residential housing units in a neighborhood, when carried out in connection with or incidental to a program of housing activities.
3. Applicants must have an ownership interest in a project during the contract period.

2.09.04 Eligible Areas

Neighborhood - An area within a municipality having a population of 25,000 or more identified by recognized or established boundaries consistent with a determination of neighborhood eligibility under article 16 of the Private Housing Finance Law. A substantial proportion of the residential population of the neighborhood must be persons of low income, and may include populations with persons of special needs with unmet housing needs. The neighborhood must contain a substantial number of deteriorating or substandard buildings.

2.09.05 Eligible Occupants/Beneficiaries

Eligible occupants of UI Program projects are persons and families whose income does not exceed 80% of the area median income for the MSA or county or municipality in which the project is located based on family size. Non-residential projects must benefit municipalities in which at least 50% of the population has incomes of 80% or less of the median income of the municipality.

2.09.06 Eligible Project Costs

UI funds may be used for material expenses related to the proposed project incurred subsequent to contract execution including:

- (i) the costs of acquisition, construction, repair, renovation, rehabilitation, demolition, clearance and sealing of any building or other structure, provided that such funds may not be used for planning of any such activity or for operating an office to be used by the qualified

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applicant and, provided further that no funds shall be used for acquisition unless such acquisition is in conjunction with the construction, repair, renovation, rehabilitation, demolition, clearance, or sealing of any building or of the structure.

(ii) fees to consultants retained by the qualified applicant to provide the eligible services listed in subdivision (a) of this section.

In no event shall program funds be used for:

(i) payment of salaries and wages to employees of the qualified applicant, unless specifically authorized and set forth in the UI Program contract; or

(ii) Other costs or expenses directly related to the applicant's employees or consultants, including office rentals, office equipment, fringe benefits, office expenses or other administrative expenses.

2.09.07 Regulatory Term

The regulatory term for a project with urban initiatives funds is a minimum period of seven years.

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Section: 2.00 PROGRAM DESCRIPTIONS

Sub Section: 2.10 Rural Area Revitalization Program (RARP)

2.10.01 Summary

PLEASE NOTE: The Rural Area Revitalization Program (RARP) is currently administered in two parts by HCR. This manual should only be used for RARP when incorporated with other funds as part of a larger Unified Funding Capital project proposal administered by HCR's Office of Finance & Development. All other RARP funding is administered by HCR's Office of Community Renewal (OCR).

The purpose of the program is to provide financial/technical resources to New York communities for the restoration and improvement of housing, commercial areas and public/community facilities in rural communities. This program will provide grants to not-for-profit community based organizations and charitable organizations that have a direct interest in improving the health, safety and economic viability of a rural area or other aspects of the area environment that are related to community preservation or renewal activities.

2.10.02 Eligible Applicants

Eligible applicants include not-for-profit corporations or charitable organizations, organized for a period of one or more years, which is either incorporated under the not-for-profit corporation law together with any other applicable law) or, if unincorporated, is not organized for the private profit or benefit of its members and has been engaged primarily in community preservation activities and will serve a population with incomes at 90% or below of median annual income. The applicant's officers, directors and members must be representative of the residents and other legitimate interests of the rural region.

2.10.03 Eligible Projects

Projects that are designed to construct, maintain, preserve, repair, renovate, upgrade, improve, modernize, rehabilitate or otherwise prolong the useful life of housing accommodations; to restore abandoned and vacant as well as occupied housing accommodations to habitable and viable condition; to demolish structurally unsound or unsafe or otherwise

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unsightly or unhealthy residential structures which no longer serve or can economically be made to serve a useful purpose consistent with stabilizing or improving a region; to acquire and renovate buildings which contain housing accommodations; and to conduct similar activities with respect to retail, commercial, cultural, civic and community establishments within a region when carried out in connection with or incidental to program of housing activities. Applicants must have an ownership interest in a project during the contract period.

2.10.04. Eligible Areas

Rural Area of the State shall mean cities, towns and villages having a population of less than 25,000. A substantial proportion of the residential population of the region must be persons of low income and may include population groups for persons with special needs with unmet housing requirements.

2.10.05 Eligible Occupants/Beneficiaries

Eligible occupants of RARP projects are persons and families whose income does not exceed 90% of the area median income for the MSA or county in which the project is located based on family size. Non-residential projects must benefit municipalities or rural area in which at least 50% of the population has incomes of 90% or less of the MSA or county median income.

2.10.06 Eligible Project Costs

RARP funds may be used for material expenses related to the proposed project incurred subsequent to contract execution including:

- (i) the costs of acquisition, construction, repair, renovation, rehabilitation, demolition, clearance and sealing of any building or other structure, provided that such funds may not be used for planning of any such activity or for operating an office to be used by the qualified applicant and, provided further that no funds shall be used for acquisition unless such acquisition is in conjunction with the construction, repair, renovation, rehabilitation, demolition, clearance, or sealing of any building or of the structure.
- (ii) fees to consultants retained by the qualified applicant to provide the eligible services listed in subdivision (a) of this section.

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- (iii) In no event shall program funds be used for:
- payment of salaries and wages to employees of the qualified applicant, unless specifically authorized and set forth in the RARP Program contract; or
 - other costs or expenses directly related to the applicant's employees or consultants, including office rentals, office equipment, fringe benefits, office expenses or other administrative expenses.

2.10.07 Regulatory Term

The regulatory term for a project with RARP funds is a minimum period of seven years.

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Section: 2.00 PROGRAM DESCRIPTIONS
Sub Section: 2.11 Small Projects Program

The Small Projects Program (SPP) is no longer an active HCR initiative, and has therefore been removed from this manual. Any references to this program remaining in other sections of this manual may no longer be operative. Previous SPP awardees should consult with their HCR Project Manager for additional information.

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Section: 2.00 PROGRAM DESCRIPTIONS
Subsection 2.12 Access to Home Program

The Access to Home Program is now administered by HCR's Office of Community Renewal (OCR), and has therefore been removed from this manual. Any references to this program remaining in other sections of this manual may no longer be operative. Access to Home awardees and prospective applicants should therefore consult with OCR staff.

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Section: 3.0 UNIFIED FUNDING PROCESS

Sub Section: 3.01 Introduction

The Unified Funding (UF) Process has been adopted by the HTFC and DHCR to efficiently administer capital programs supporting affordable housing. The UF process is the method by which applicants may request full or partial funding and/or seed money from the HTFC and/or DHCR to undertake housing projects, and by which staff evaluates, recommends and processes projects for funding.

Through the UF process applicants may apply for funding from a number of DHCR/HTFC administered programs. However, application content, submission timeframes, and specific review steps will vary, depending upon the program(s) from which funds are being requested.

Applications for funds from the following programs will be held until the deadline date specified in the most recent DHCR/HTFC-issued Notice of Funding Availability (NOFA) (or NOCA for LIHC) and Request for Proposals (RFP), at which point they will be competitively reviewed with awards made according to specific timeframes as discussed later in this section:

- (i) Low Income Housing Trust Fund Program (HTF);
- (ii) New York State HOME Program (HOME);
- (iii) Low Income Housing Credit Program (LIHC);

Subject to the availability of funds, additional programs may be made available through the UF process.

In addition to project funding from the above programs, subject to the availability of funds, DHCR/HTFC will accept applications at any time of the year for seed money. Seed money is available to not-for-profit applicants to assess the feasibility of a potential project, and/or retain professional services to assist in applying for capital project funding. Seed money is available only from the HTF and HOME Programs, and the specific programmatic requirements pertaining to seed money awards is discussed in the Program Descriptions contained in Section 2.00. The application review and funding process for seed money is described in Section 3.10.

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Technical assistance may be requested at any time by not-for-profit applicants who wish to discuss a project or program that may result in a UF application or a UF project/program that may require additional assistance. Section 3.09 provides specific details on the various types of technical assistance which may be provided by DHCR and the process for technical assistance.

Applications submitted to undertake projects under the HTF and HOME Programs require a more detailed series of reviews than do other applications. Additionally, the volume of requests for funds from these programs requires DHCR/HTFC to use a competitive ranking system for these applications so that feasible and cost effective projects meeting State priorities are chosen. The application review and funding process for HTF and HOME projects is described in Section 3.02 below.

The application review and funding processes for the HDF and LIHC Programs are described in Sections 3.04 and 3.05 respectively.

The application review and funding processes for UI and RARP are set forth in the latest addition of HTFC/DHCR's Unified Funding Programs Request for Proposals, which is issued annually. The application review process for these programs, as well as SLIHC, is also briefly described in Section 3.07.

In some instances (i.e., demonstration projects, response to disaster) some projects may be funded outside of the UF process if sufficient funds are available from program income or reappropriated recaptured funds. This is discussed in Section 3.11.

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Section: 3.0 UNIFIED FUNDING PROCESS

Sub Section: 3.02 Application Review and Funding Process for HTF and HOME Projects

The application review and funding process described below in Sections 3.02 and 3.03 is that which is followed for applications requesting project funding from the HTF and HOME Programs only. It consists of the following steps, depending on the outcome of the various reviews conducted by DHCR/HTFC staff:

- (i) completeness review;
- (ii) eligibility review;
- (iii) rating and ranking;
- (iv) feasibility review;
- (v) project recommendations;
- (vi) HTFC Board Approval
- (vii) Application Review (AR) Letters;
- (viii) funding commitment;
- (ix) project development meeting; and,
- (x) development track process.

All Review steps are subject to quality control and supervisory reviews which occur on an on going basis to arrive at a list of award recommendations.

3.02.01 Completeness Review

Each application undergoes a completeness review by DHCR/HTFC staff to ensure that all required documents have been completed and submitted. Complete applications will go on to an Eligibility Review. Incomplete applications are those which are missing required exhibits and/or attachments, contain incomplete or illegible documents, and/or contain unsigned certifications. DHCR/HTFC will refrain from requesting any missing item which would affect the rating of the application, e.g., funding commitment documentation. Applicants will be notified that their application is incomplete within ten business days of the application

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submission deadline. The Notice of Incomplete Application will itemize all missing, incomplete and illegible documents.

The applicant has ten business days from the date the incomplete notification is received to provide all of the itemized documents to DHCR/HTFC. Only those documents requested in the Notice will be accepted for review. Any material submitted by the applicant which was not requested in the Notice will not be reviewed. Submissions of missing documents which reflect a change in the scope, location, funding request, funding sources, or other aspect of the original application will not be accepted. If the applicant fails to supply DHCR/HTFC with any of the itemized documents within the ten-day period, DHCR/HTFC will not review the application any further. The applicant will receive an Application Review Letter from DHCR/HTFC as discussed in Section 3.02.06 below, stating that the application was incomplete, and not selected for funding.

3.02.02 Eligibility Review

Applications which pass the completeness review are then reviewed for eligibility to ensure that the proposed project meets all statutory requirements of the program(s) from which funds are being requested. DHCR/HTFC staff must ensure that the application has demonstrated the eligibility of the:

- (i) applicant/owner;
- (ii) area in which the proposed project is to be located;
- (iii) proposed use;
- (iv) property; and
- (v) proposed occupants.

Applications which fail to meet all programmatic eligibility requirements will not be reviewed further. The applicant will receive an Application Review Letter from DHCR/HTFC, as discussed in Section 3.02.06, stating that the application was not selected for funding and citing the specific eligibility criterion/criteria which was/were not met.

Applications which are determined to be eligible will go on to the next review stage - rating and ranking.

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3.02.03 Rating and Ranking

All applications which pass the eligibility review are rated according to the statutory, regulatory, and policy considerations of the applicable program(s).

HTF and HOME projects are rated according to the general criteria listed in (i) through (v) below:

- (i) income served;
- (ii) subsidy cost;
- (iii) community impact/revitalization
- (iv) leveraging;
- (v) green building initiative;
- (vi) energy efficiency initiative;
- (vii) persons with special needs;
- (viii) fully accessible and adaptable move-in-ready units;
- (ix) project readiness; and
- (x) successful development performance

After all the applications for each Program are rated, they will be ranked in order of score; those which rate competitively will go on to a feasibility review. Applications that do not rate competitively will not be reviewed further. The applicant will receive an application review letter from DHCR/HTFC, as discussed in Section 3.02.06 stating that the application did not have sufficient scoring priority to be selected for funding.

3.02.04 Feasibility Review

Applications which are in the competitive scoring range will undergo a feasibility review, in which staff members from the Architecture & Engineering Bureau (A&E), Environmental Analysis Unit (EAU) and Underwriting staff conduct technical assessments on the feasibility of the project as proposed. Staff from Program Management and the Office of Legal Affairs may also participate as necessary. Applications must also demonstrate the suitability of the proposed project site. Project sites must meet the minimum site requirements outlined in Section 5.03 of this Manual. The Project Manager will assess whether or not the housing that is being developed

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is based upon a demonstrated need consistent with the State's or locality's Consolidated Plan. Additionally, the Project Manager and A&E Architect may conduct a site visit, if one was not conducted previously, to assess:

- (i) the condition of the neighborhood, project site, and existing structures (if applicable);
- (ii) the accuracy of the design documents in reflecting existing site conditions;
- (iii) the suitability of the site with regard to the proposed occupants, accessibility to shopping, community facilities, transportation, etc.; and
- (iv) site eligibility.

In general, applicants are encouraged to contact a Project Manager or A&E Architect prior to starting the application process to schedule a site visit so that each potential site can be assessed for eligibility and suitability.

In addition to assisting with the site assessment, an A&E Unit Architect will conduct a review of project drawings; outline specifications; owner/architect agreement; zoning compliance and environmental compliance. The total development cost and construction cost estimates will also be reviewed. (Please refer to the Design Handbook for further discussion on site requirements).

Environmental Analysis Unit staff members will assist the A&E staff with the review of projects with potential environmental impacts.

An Underwriting staff member will review the application for feasibility, with a primary focus on: the Market Study; Project Income and Operating Budget; Unit Rents, Maintenance Fees and Affordability; Development Budget/ Funding Sources; and any exhibits specific to the use of LIHC.

In some cases, involving complex projects, such as those involving historical rehabilitation, independent cost estimates will be required. The feasibility review is the final review conducted prior to making funding recommendations to HTFC's Board, or the DHCR Commissioner, as applicable.

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3.02.05 Project Recommendations

After all reviews have been completed by DHCR/HTFC staff, the DHCR Commissioner/HTFC Board will make a final selection of applications which will be funded for each program, based upon the following considerations:

- i) the scoring/ranking of all competitive and feasible applications to each program;
- ii) the program's statutory requirements, as discussed below;
- iii) the state's housing goals including but not limited to the preservation of affordable housing; community renewal; green building technologies and practices; and collaboration with other government agencies and the development community; and,
- iv) the availability of program funds.

The HOME and HTF Programs both have statutory requirements governing the distribution of program funds. These are outlined below.

HOME Program applications must be selected according to the following statutory and policy criteria:

- (i) first, all applications involving CHDOs will be selected based upon their score, until the 15 percent CHDO set-aside requirement discussed in Section 2.05.03.B is met;
- (ii) next all applications involving non-participating jurisdictions (PJs) will be placed in rank order (including the CHDO projects not previously chosen) and selected based on their score, until the minimum 80 percent non-PJ requirement is met (see Sub-Section 2.05.03.D for a discussion of this requirement); and
- (iii) finally, all remaining projects will be placed in rank order and selected based upon their scores until program funds have been exhausted.

Per statute, allocations of HTF cannot exceed the following limits based on the total program appropriation in any fiscal year:

- (i) 50 percent allocated to projects located within any single municipality
- (ii) 33 $\frac{1}{3}$ percent allocated to private developers for projects within a city with a population of one million or more
- (iii) 33 $\frac{1}{3}$ percent allocated to private developers for projects in the area outside cities with a population of one million or more

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Preference in making awards to eligible applicants is given to projects which involve not-for-profit corporations or their wholly-owned subsidiaries. For limited partnership or limited liability company applicants, the ownership interest of the not -for-profit or its wholly-owned subsidiaries must be "at least 50% of the controlling interest" of the partnership as directed by Article XVIII of the Private Housing Finance Law.

The development and property management experience of the applicant or their proposed property manager will be a threshold issue for DHCR/HTFC in making project funding recommendations and awards. If an applicant is not in compliance with existing state contracts and has not taken satisfactory steps to remedy such non-compliance, DHCR/HTFC reserve the right to not award funding to such applicants.

3.02.06 Application Review Letters

Once the application review process has been completed, and funding decisions have been made, Application Review Letters will be prepared and sent to all applicants within 150 calendar days of the application submission deadline informing them of one of the three possible review statuses their application has achieved: 1) selected for funding; 2) not selected for funding; or 3) placed on a waiting list (see note below).

Applications which are incomplete, ineligible, infeasible or non-competitive will not be selected for funding. The Application Review Letter will cite the specific reason(s) that the application was not funded, and invite the applicant to meet with the appropriate Regional Office to review their application.

Applicants with applications which are complete, eligible, competitive and feasible, but for which there are insufficient funds, may receive an Application Review Letter informing them that the application has been placed on a waiting list. The waiting list is established so that funded applications which do not go forward for any reason can be replaced by another competitive, feasible project. The waiting list will remain in effect until the next request for proposals is issued, or until the waiting list is discontinued, at which time a new waiting list will be established. It should be noted, however, that a waiting list is not utilized every funding round and its use is subject to DHCR's determination of the need to use this mechanism.

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Applicants whose applications are selected for funding, will receive an Application Review Letter congratulating them on their successful proposals, and notifying them that they will receive a Funding Commitment within approximately 45-60 business days, as discussed in Section 3.02.07.

3.02.07 Funding Commitment

Within approximately 45-60 business days of the Application Review Letter date, a Funding Commitment will be issued to successful applicants. The Funding Commitment describes the project, as well as defines the relationship between the State and the applicant. It will set forth the following specifics on project scope:

- (i) the number and configuration of units in the project and information about the project owner;
- (ii) project rents, housing expenses and household income ranges;
- (iii) populations to be served;
- (iv) operating cost and project financing assumptions;
- (v) critical timeframes for project development, including deadline for construction start and marketing, management, fair housing and environmental submissions.
- (vi) cost overrun guarantee from applicants expecting to receive LIHC;
- (vii) marketing and management plan requirements;
- (viii) documentation required to complete the environmental review;
- (ix) Office of Fair Housing and Equal Opportunity Minority and Women-Owned Business Participation goals for the project;
- (x) persons of special needs requirements, if applicable;
- (xi) closing requirements;
- (xii) HOME project Federal requirements; and
- (xiii) Community Housing Development Organization (CHDO) Requirement, if applicable.

The terms of the Funding Commitment will provide for the delivery of the proposed housing product. Where an applicant is unwilling or unable to comply with terms of the Funding

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Commitment, funds for the project will be terminated, unless it is in the State's best interest to continue.

Applicants will be given 30 days from receipt of letter to review the Funding Commitment, and return it signed by one of the applicant's principals. The signature and return of the Funding Commitment by the applicant will indicate the acceptance of all terms and conditions set forth therein. Upon DHCR/HTFC's receipt of the executed Funding Commitment, a project development meeting may be scheduled for members of the applicant's project development team and DHCR/HTFC staff to discuss the project.

Applicants are expected to comply with the terms of the executed Funding Commitment; failure to comply with such terms is likely to result in its termination. In general, DHCR/HTFC is reluctant to consider changes to the terms of the Funding Commitment once it has been issued. Requests for nominal or de minimis changes in rents, or operating and development costs specified in the Funding Commitment can be considered. Any change in tenancy, ownership, use, amount of DHCR/HTFC financing or changes in project timetables are considered significant revisions. Any significant revisions to conditions set forth in the Funding Commitment must be evaluated by staff, who will make recommendations for either project termination or approval of project revisions with supporting rationale. This reevaluation will ensure that no other alternatives to the requested changes(s) exist, and that the project would have scored highly enough to merit funding given the change in project scope. DHCR/HTFC will not approve changes in a Funding Commitment which affect the project's competitiveness or in other ways would affect the outcome of the funding competition. HTFC Board approval will be required for any significant change in project scope, or a ten percent or more change in HOME/HTFC funding.

3.02.08 Project Development Meeting

The Project Development Meeting is held to review the terms of the Funding Commitment agreed to by the applicant. All issues, requirements and submissions related to the project's economics, design, and ownership will be discussed, as will the roles and responsibilities of the various project participants.

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The Project Development Meeting will also include a review with the applicant's team of the various technical reviews, processes and timetables for the particular Development Track that the project will follow. There are three Development Tracks, each of which involves different levels of review and DHCR/HTFC involvement, based upon the project's characteristics. The processes for Development Tracks One, Two and Three are discussed below in Sections 3.02.9 through 3.02.11. Applicants must designate one person to be the primary contact and coordinator for the project.

If the Project Development Meeting turns up issues that cannot be resolved, or if the applicant can no longer adhere to the terms agreed to in the Funding Commitment, the State expects to terminate its commitment to the project. Applicants whose projects are terminated would be able to apply in future funding rounds without prejudice.

3.02.09 Development Track One Process (HTF/HOME Permanent Loan Takeout)

Development Track One is for projects involving HTF or HOME which require permanent take-out financing only. This track is generally followed by applicants who have their own development team in place, and have pre-selected a general contractor. Projects will require regular contact with the Architecture & Engineering Bureau (A&E) and occasional oversight by F&D-CP project staff.

For projects following this Development Track, a complete and thorough review of construction drawings and final cost estimates and environmental review will be conducted prior to the loan closing with the construction lender, to ensure that they meet the design requirements of DHCR and the HTFC. Applicant will be required to submit changes to approved documents for review and approval prior to implementation. In addition the HTFC SEQRA review as described in Section 5.02 must be completed prior to the closing on the HTF or HOME financing.

At the time of construction loan closing the project manager will be responsible for collecting any documentation required for the second LIHC underwriting, or if necessary, documentation for the project to secure a binding agreement of LIHC if required for the closing. The Underwriting Unit is responsible for reviewing this material and providing information to Program Management for the preparation of the binding agreement.

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The next contact with DHCR/HTFC will be approximately 90 days prior to project rent-up, when the applicant and/or owner meet with staff from the Asset Management Unit of the office of Housing Management at a Rent-Up Conference. The purpose of this meeting is to review any statutory and/or regulatory requirements regarding rent-up, tenant selection, and occupancy requirements of the project.

The permanent loan closing will occur upon satisfactory completion of the project in accordance with the terms and conditions set forth in the Funding Commitment. It is the responsibility of the owner to satisfy DHCR/HTFC's determination of satisfactory completion of the project. Cost certification requirements, as well as other close-out requirements are discussed in Section 6.00 of this Manual. If construction or permanent lenders are providing project financing, the submission of an intercreditor agreement will be incorporated as a requirement in the DHCR/HTFC Funding Commitment.

3.02.10 Development Track Two Process (HTF/HOME Construction Loan)

This process is followed by projects involving LIHC, which require HOME/HTF construction financing. Sponsors of these projects will be required to cover any increases in total project costs above the amount recognized in the funding commitment letter. The contractor will have to guarantee a fixed price for construction. In addition to the requirements identified in the Funding Commitment, Development Track Two project sponsors must submit final plans and specifications, as well as all contract documents listed in Section 3.03 of the Design Handbook prior to a construction loan closing. The project manager is responsible for receiving the construction documents and forwarding to the following units for their review and approval:

- Architecture & Engineering Bureau (A&E)
- Underwriting
- Environmental Analysis
- OLA
- Office of Fair Housing
- Persons with special needs

Upon receiving approval of the documents from all units the project manager and the OLA attorney assigned to the project can schedule the construction loan closing.

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As discussed in Section 3.02.09 above, the applicant/owner will be required to attend a Rent-Up Conference. Upon completion of construction, a cost certification will be required. HTFC does not provide construction financing through the HOME Program. HOME funds are utilized for permanent financing only. Applicants requiring HOME funds for construction should simultaneously submit a request for a Housing Development Fund loan in amount equal to the HOME construction financing need, as part of their application for HOME permanent financing.

3.02.11 Development Track Three Process (HTF Predevelopment Loan)

Not-for-profit applicants which state in their application that they are seeking predevelopment funds for their project, and which do not involve a LIHC-funded developer's fee, may follow this process.

Predevelopment funds may be requested by the applicant after they have received a Funding Commitment, provided that all programmatic eligibility requirements are met and only those expenses required to ready a project for a construction closing are requested (See Section 2.00 Program Descriptions for information on predevelopment requirements for the applicable program). DHCR/HTFC may conduct elective reviews on projects seeking predevelopment funds.

A bid document submission is required for Development Track Three projects, unless they have received DHCR/HTFC approval of the project builder, and do not intend to bid the project. The bid document review consists of an examination of all construction-related materials included in the list of submission requirements outlined in the Design Handbook, as well as any bid documents listed in the Funding Commitment.

Upon its approval of final plans and specifications and cost estimates, and completion of environmental review, DHCR/HTFC will execute a construction loan agreement and other closing documents with the applicant. The Rent-Up Conference described in Section 3.02.09 above is required no later than 90 days prior to project rent-up. A cost certification and other close-out documentation as outlined in Section 6.00 are also required for Development Track Three projects.

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Section: 3.0 UNIFIED FUNDING PROCESS

Sub Section: 3.03 Application Review and Funding Process for HOME and RESTORE
Programs

HOME Local Programs and the RESTORE Program are now administered by HCR's Office of Community Renewal (OCR), and have therefore been removed from this manual. Any remaining references in other sections of this manual may no longer be operative. Previous awardees and prospective applicants should therefore consult with OCR staff.

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Section: 3.0 UNIFIED FUNDING PROCESS

Sub Section: 3.04 Application Review and Funding Process for HDF Program

The HDF Program utilizes the Unified Funding capital project application to accept and evaluate requests for program assistance. Applications are reviewed for completeness, and any missing or incomplete documents must be submitted prior to undergoing an eligibility review. HDF applications are subject to the same eligibility review as is set forth in Section 3.02.02, except that they have the additional criterion that commitments from other funding sources must exist that will enable the project to be completed as proposed, and will assure repayment of the HDF loan.

Eligible HDF applications are rated based upon the following criteria:

- (i) project readiness;
- (ii) development team capacity;
- (iii) cost effectiveness; and,
- (iv) need and affordability.

HDF applications are reviewed for feasibility, with more detailed reviews occurring if DHCR is acting as the project's lead agency.

A contract will be issued to funded HDF applicants. Upon satisfaction of all requirements set forth in the contract transmittal letter, DHCR will execute a HDF Regulatory and Loan Agreement and any necessary security instruments with the applicant.

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Section: 3.0 UNIFIED FUNDING PROCESS

Sub Section: 3.05 Application Review and Funding Process for LIHC and SLIHC Programs

Applications for the federal Low-Income Housing Credit Program (LIHC) and the New York State Low Income Housing Credit Tax Program (SLIHC) will be evaluated for completeness, program eligibility, feasibility and the extent to which the applicant meets the threshold and selection criteria contained in DHCR's Low-Income Qualified Allocation Plan (QAP) and, for SLIHC projects, the scoring criteria set forth in the SLIHC Regulation.

In addition, applicants should refer to Sec. 42 of the Internal Revenue Code and Section 2.04 for LIHC and Article 2-A of the New York State Public Housing Law and Section 2.08 for SLIHC. (Additionally, the application review process for SLIHC is further elaborated upon in Section 3.05.)

These documents are available on DHCR's website: www.nysdhcr.gov

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Section: 3.0 UNIFIED FUNDING PROCESS

Sub Section: 3.06 Application Review and Funding Process for Rural Rental Assistance
Program (RRAP)

The Rural Rental Assistance Program (RRAP) is now administered by HCR's Office of Housing Preservation, and has therefore been removed from this manual. Any references to this program remaining in other sections of this manual may no longer be operative. RRAP awardees and prospective applicants should therefore consult with Office of Housing Preservation staff.

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Section: 3.0 UNIFIED FUNDING PROCESS

Sub Section: 3.07 Application Review and Funding Process for Applications Accepted
Under Open Window

Open Window applications are not currently being accepted by the Office of Finance & Development - Capital Programs (F&D- CP), and this section has therefore been removed from this manual. Any references to the Open Window Application and/or Funding process remaining in other sections of this manual may no longer be operative.

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Section: 3.0 UNIFIED FUNDING PROCESS

Sub Section: 3.08 Application Review and Funding Process for HWF Program

The Homes for Working Families Program (HWF) is now administered by the New York State Housing Finance Agency through HCR's MultiFamily Finance Office, and has therefore been removed from this manual. Any references to this program remaining in other sections of this manual may no longer be operative. HWF awardees and prospective applicants should consult the following web page for additional information:

www.nyshcr.org/Topics/Developers/MultifamilyDevelopment/HomesForWorkingFamilies/

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Section: 3.0 UNIFIED FUNDING PROCESS

Sub Section: 3.09 Application Review and Funding Process for Technical Assistance

Technical Assistance may be requested at any time from the DHCR regional office serving the area in which the applicant is considering a project, or a UF application may be used by applicants who have a project or site in mind that they wish to develop with funding assistance from DHCR/HTFC but who require assistance to pull the project together. Requests for technical assistance may be submitted at any time of the year.

Technical Assistance may include, but is not limited to, the following:

- (i) guidance on DHCR/HTFC program requirements and policies, as they pertain to a specific project;
- (ii) assistance in determining the most appropriate funding sources for the proposed project;
- (iii) assistance in establishing a Housing Development Fund Company for a specific project;
- (iv) assistance in formulating development and/or operating budgets for a specific project;
- (v) assistance with reviewing and selecting a site or sites for a specific project;
- (vi) assistance in assessing the cost effectiveness of a specific site or building;
- (vii) referrals to other governmental agencies for funding and/or support services for a specific project;
- (viii) referrals to other applicants who have successfully undertaken projects similar to the one proposed; and,
- (ix) assistance through DHCR/HTFC Development Technical Assistance contracts.

DHCR/HTFC will schedule a project assessment meeting with the applicant after review of the technical assistance application. Representatives of agency technical units may attend the meeting, depending on the nature of the request.

In some instances, DHCR's/HTFC's ability to provide technical assistance may be limited by lack of staff and/or resources. Priority will be given to not-for-profit applicants.

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Section: 3.0 UNIFIED FUNDING PROCESS

Sub Section: 3.10 Application Review and Funding Process for Seed Money Projects

Seed Money is available from the HTF and HOME Programs to not-for-profit applicants with a full-time staff which have been operating for at least one year prior to application. Applicants for HOME seed money must be an established New York State certified Community Housing Development Organization (CHDO). Eligibility requirements for CHDO's are outlined in Section 2.05.03B. HTF and HOME eligibility requirements are discussed in detail under the Program Descriptions contained in Sections 2.01 and 2.05, respectively. Seed Money applications may be submitted at any time of the year, and will be funded on an ongoing basis, subject to funding availability. HOME seed money awards are made as loans and repayment may be waived if it is determined that the project is infeasible or if there are impediments to project development which are determined to be beyond the CHDO's control. Seed money awards from HTF are made as grants and therefore no repayment is required.

Seed Money applications must undergo an eligibility review to demonstrate that:

- (i) the applicant meets all eligibility requirements of the applicable program;
- (ii) a site has been identified for which site control has been, or may be obtained;
- (iii) the population to be served by the proposed project has been identified;
- (iv) the approximate number of units to be assisted has been determined;
- (v) the project is eligible for permanent funds from an identified funding source, and the funds are likely to be available from such source; and
- (vi) the proposed project demonstrates a likelihood to meet rating criteria.

Seed Money applications are reviewed in a manner which is similar to the process outlined in Section 3.02. An abbreviated project rating system is employed to assist in the selection of seed money projects meeting HTFC's priorities. Regional offices may recommend an award of seed money for complete, eligible and competitive applications which appear to be feasible. The HTFC Board makes the final determination on seed money awards. If the application is selected for funding, HTFC will send the applicant an Application Review Letter specifying any required documents which must be submitted in order to complete execution of a

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Seed Money Agreement. Within 45 business days of HTFC's receipt and approval of all such required documents HTFC will notify the applicant of approval along with any conditions. The Seed Money Agreement will establish the amount and uses of the Seed Money Award, as well as the timeframes for the applicant to perform specific functions and/or deliver specific products. Should the applicant later submit a successful application for full project funding from the HOME program, or receive funding from another government agency, the HOME Seed Money Award will be incorporated into the project's permanent financing (e.g., HOME Award Amount: \$1,045,000 includes a previously provided \$45,000 seed money award and a full project funding award of \$1,000,000). Since HTF seed awards are made as grants, the HTF seed money will not be incorporated into the permanent financing. Receipt of a seed money award should not be construed as a commitment from HTFC to provide further funding for the project. In addition, no priority for full project funding is given to projects that have received seed money awards.

In some instances, seed money may be awarded in lieu of full project funding if a determination is made that the seed money would assist the applicant in developing a more feasible project. HTFC will determine which program will provide the seed money based on eligibility requirements and funding availability.

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Section: 3.0 UNIFIED FUNDING PROCESS

Sub Section: 3.11 Reallocated Fund Process

DHCR/HTFC may provide funds to projects in a manner which differs from the UF Application Process described above. There are two instances when this may occur, including:

- (i) money may be recovered from the Program's current fiscal year appropriation, and reallocated to project(s) on the Program's waiting list (as described in Section 3.02.06 above); and
- (ii) funds other than those described in (i) above may become available to fund projects, chosen at the discretion of the DHCR Commissioner, or the HTFC Board.

In general, these funds will only be made available to:

- (i) projects which provide disaster relief; or
- (ii) demonstration projects which address publicly announced priorities.

Projects which are funded through the reallocated funds process will receive a Funding Commitment as described in Section 3.02.07, and will follow the review and funding process described in Section 3.02 above.

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Section: 3.0 UNIFIED FUNDING PROCESS

Sub Section: 3.12 Funding Increase Under DHCR/HTFC Programs (Currently Under Review/Pending Revision)

3.12.01 Introduction

DHCR/HTFC will, in general, not approve any requests for funding increases in an amount above the project reservation or award amount due to costs that were not in the original development budget. DHCR expects that such cost increases will be funded through completion guarantees, contingency funds, developer's fees and/or builder's profit. To the greatest extent possible, project architects and/or engineers should review proposed changes to ensure maximum cost efficiency have been obtained with all design changes. Additionally, improved terms by banks, syndicators and builders should also be considered.

DHCR/HTFC may consider requests for additional funding above the amount awarded due to unusual circumstances such as acts of God; changes in the laws applicable to low-income housing programs, changes in building codes, changes in local ordinances or regulations or other circumstances that could not have been foreseen by the Owner/Sponsor.

In the event there are circumstances that would justify additional funding, DHCR/HTFC will only increase its funding when the economic viability of the project is in jeopardy and when all the budgeted resources identified above have been exhausted.

Such a request for additional funding by the Owner/Sponsor shall be subject to a rescoring of the application by the DHCR/HTFC to ensure that it would not have affected the project's status in the relevant funding round. When appropriate, any additional funding will also be subject to HTFC approval. DHCR/HTFC may consider other factors including, but not limited to: availability of funds, the timing of requests, assessment of responsibility for cost increases, minimizing increases, cost sharing and identity of interest between the developer and builder. Any increases granted shall conform to the terms of the DHCR Qualified Allocation Plan ("QAP") and the Capital Programs Manual.

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3.12.02 Evaluation Milestones

Applicable laws require that DHCR underwrite each LIHC project three times: prior to issuing a credit reservation, at carryover/binding agreement and at the time of submission for IRS Form 8609. In order to enhance Agency efficiency and to eliminate redundant procedures, all requests for additional funding should, within the limitations provided below, be coordinated with one of the three milestone underwrites. DHCR/HTFC will not entertain more than one request for additional funding for any one project unless there is a demonstrable error by the Agency. Requests for additional funding can be made in coordination with each of the aforementioned three milestones pursuant to the following guidelines:

1. Prior to accepting a LIHC reservation – all Owner/Sponsors that are offered a reservation by the Agency have a minimum of 45 days within which to accept the offer. Within 10 days of receipt of the reservation letter, if the Owner/Sponsor should have any issues with the DHCR recommended funding level, a revised underwriting will be considered by the Agency upon written request. The Owner/Sponsor must demonstrate to DHCR, in writing, that the Agency misinterpreted information in the application.
2. Prior to requesting a carryover/binding agreement – request for additional funding should be made no more than 45 days and no less than 30 days prior to carryover/binding agreement.
3. At the time of submission for IRS Form 8609 – DHCR will not accept requests for additional funding during the time period between carryover allocation and submission for IRS Form 8609 unless DHCR determines that emergency remedial action is required. At the time of the IRS 8609 submission, DHCR will only consider for additional funding those additional costs that resulted from events that were completely beyond the control of the Owner/Sponsor.

3.12.03 Underwriting Parameters

DHCR underwriters will employ a highly disciplined review of all requests for additional funding. The following methodology will be followed:

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1. The underwriter, in conjunction with the DHCR architect, if applicable, will make recommendations to the Assistant Commissioner for Capital Programs as to whether the additional expenses that were incurred were deemed necessary to the project and whether total project costs and the additional project costs are reasonable based on Agency experience with similar projects. Costs not deemed essential to the project will be required to be paid for by the Owner/Sponsor and will not be considered eligible for additional funding.
2. DHCR staff, including the underwriter, architect, if applicable, and project manager will make recommendations to the Assistant Commissioner for Capital Programs as to whether cost increases for items deemed necessary for the project resulted from events that were within or beyond the control of the Owner/Sponsor using the categories below as a guide.

Category A – Increases in costs originating with DHCR/HTFC such as:

- (a) issues which may arise from staff interpretation of applications;
- (b) changes in plans and specifications that were requested by DHCR, and/or;
- (c) changes in prevailing wage rates arising from a decision by DHCR/HTFC to award funding under a program not applied for by the Owner/Sponsor;
- (d) changes mandated by revisions in the applicable building codes, regulations, and laws governing the construction of housing.

Category B – Increases in costs that were beyond the exclusive control of the Owner/Sponsor such as:

- (a) changes in plans and specifications required in connection with local approval;
- (b) municipal impact fees;
- (c) change in prevailing wage rates;
- (d) compliance with SHPO that could not have been foreseen by the Owner/Sponsor;
- (e) acts of God (flood, earthquake) and/or;
- (f) change in financing caused by changes or other factors beyond the Owner/Sponsor's control (i.e. change in prime rate or bank failure); and/or,

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Category C – Cost increase issues that were within the control of the Owner/Sponsor such as:

- (a) refinement or amendment of plans and specifications;
- (b) updated development cost line items;
- (c) addressing environmental issues that were known or should have been known by the developer;
- (d) addressing site conditions that were known or should have been known by the developer;
- (e) increases in costs due to work stoppage resulting from actions or inaction by the Owner/Sponsor;
- (f) replacement of financing previously committed;
- (g) required increases in operating reserves to compensate for loss of operating subsidies (could be Category B depending on circumstances) and/or,
- (h) required increases in replacement reserves to cover inadequate warranties.

3.12.04 Methodologies for Determining Cost Sharing

1. Funding increases will be treated based on the appropriate categories as described in Section III in the following manner:

Category A – DHCR/HTFC will generally allow for additional funding, if appropriate, without requiring the Owner/Sponsor to increase deferred developer fees.

Category B – DHCR/HTFC will utilize cost sharing techniques to allocate responsibility for any additional costs as follows:

- (a) any developer fees in excess of 10% of total development cost, as defined in the commitment letter, will first be contributed back to the project by the Owner/Sponsor to pay for cost increases. Any additional cost increases will be paid for by equal cost sharing (50/50) between DHCR/HTFC through additional funding by DHCR/HTFC and by the Owner/Sponsor through deferred developer fees or other contributions. However, DHCR/HTFC may elect to require the Owner/Sponsor to pay a larger share

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of any cost increase that the Agency determined could have been mitigated by the Owner/Sponsor.

Category C – DHCR will utilize cost sharing techniques to allocate responsibility for any additional costs as follows:

- (a) any developer fees in excess of 10% of total development costs, as defined in the original award, will first be contributed back to the project by the Owner/Sponsor to pay for cost increases.
 - (b) any additional cost increases will be paid for by cost sharing between DHCR/HTFC and the Owner/Sponsor. DHCR/HTFC may contribute up to 20% of such costs as determined by the Agency through additional allocations and the balance of all cost increases shall be paid for by the Owner/Sponsor.
2. For purposes of additional allocations, DHCR/HTFC may, in its discretion, make such allocations through LIHC, HOME, and/or HTF awards, or by permitting rent increases as it deems appropriate.
 3. DHCR/HTFC may, in its discretion, consider additional underwriting solutions in order to efficiently facilitate project completion.

3.12.05 Process for Requesting Additional Allocations

1. The Owner/Sponsor will make a formal written request to the HCR Project Manager. The request shall include:
 - Original Exhibits (Development Budget, Rent Plan, Affordability Plan, Operating Budget, proposed amended Exhibits).
 - Chart indicating items that changed, original cost, actual cost, change in cost and a concise narrative explaining the reason for each change.
 - For any cost increases resulting from events driven by forces outside the Owner/Sponsor's control, clear documentation demonstrating the need for the change (i.e. letter from local zoning official, request from financing entity).

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- For standalone tax credit projects that have not undergone design review by DHCR/HTFC, additional documents may be required.
 - Based on the Owner/Sponsor's request for additional funding, the project manager will determine the impact that such additional funding would have had on project scoring. In the event that the project would not have been funded as a result of modified scoring, no further action will be required by DHCR/HTFC and the Owner/Sponsor will be notified accordingly. However, if the project remains eligible for funding, scoring will be reviewed a second time based on the outcome of the modified underwriting.
2. If the request for an increase is denied, the HCR Project Manager will notify the Owner/Sponsor and all other involved parties of the action. If the request is approved, Program Management will prepare the revised exhibits with input, as necessary, from A&E and Underwriting.

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3.13 Assignment and Transfer of Awards and Commitments

Funding awards or commitments may be transferred or assigned from one eligible applicant to another eligible applicant if the following conditions pertain:

- 1) the applicant to which the funding award or commitment is to be transferred can satisfy the criteria for eligible applicants established by HTFC;
- 2) the applicant to which the funding award or commitment is to be transferred can satisfy the operational standards established by HTFC; and
- 3) the applicant to which the funding award or commitment is to be transferred will be:
 - (A) operated by substantially the same staff or staff with expertise equivalent to the staff of the original applicant; or
 - (B) governed by substantially the same board as the original applicant; or
 - (C) a new entity that was formed to satisfy the requirements of other federal, state or local regulations and can demonstrate that it has, or will hire, the needed expertise to successfully complete and operate the project.

All transfers or assignments must be pre-approved by HTFC. No transfer or assignment can occur unless it is demonstrated that the new applicant has sufficient development and management experience. If a project is transferred to homesteaders or a self-managed cooperative or condominium association, HTFC will require that regulatory monitoring responsibilities remain with the original applicant.

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Section: 4.0 GENERAL PROGRAMS REQUIREMENTS AND POLICIES
Sub Section 4.01 Introduction

This Section describes the general program requirements and policies concerning Minority/Women-Owned Business Enterprises (M/WBE), equal opportunity, and fair housing. It is organized under the following headings:

- 4.01 Introduction
- 4.02 M/WBE Requirements
- 4.03 Equal Opportunity Requirements
- 4.04 Fair Housing Requirements

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Section: 4.0 GENERAL PROGRAMS REQUIREMENTS AND POLICIES
Sub Section 4.02 M/WBE Requirements

Article 15-A of the State Executive Law was promulgated to ensure that certified M/WBEs shall be given the opportunity for meaningful participation in the performance of State-assisted contracts, and to facilitate the award of a fair share of State-assisted contracts and subcontracts to such enterprises. In accordance with Article 15- A, New York State Homes and Community Renewal (HCR) encourages contractors to make good faith efforts to ensure that M/WBEs have opportunities for meaningful participation on projects to be undertaken and financed with funds provided by HCR.

Recommended levels for M/WBE participation on State-assisted contracts have been established for contractors to use as a reference. Participation levels are based upon the availability of certified M/WBE to perform the work in the region in which the contract is to be performed and the total dollar value of the work to be performed in relation to the dollar value of the components of the contract scope. Contractors on HCR projects are required to submit reports detailing the utilization of M/WBE in performing the contract.

Article 15-A of the Executive Law and the M/WBE Regulations requires contractors to take affirmative steps to encourage the utilization of M/WBEs. Contractors are notified by HCR of such requirements.

A copy of the Directory of Certified Minority and Women Owned Businesses can be downloaded from the NYS Empire State Development web site at: www.empire.state.ny.us. Technical assistance is offered by HCR's Office of Fair Housing and Equal Opportunity which may be reached via email at OFHEO@nyshcr.org or telephone at (212) 872-0393.

4.02.01 Utilization Plan

Applicants are required to submit a Utilization Plan for the participation of State-certified M/WBEs in connection with their project. The Utilization Plan must include a list of the names and federal identification numbers of M/WBEs which the applicant intends to use in connection with the project, the dollar amount and the scope of work to be performed, the date when such work will commence and the estimated completion date for each contract.

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4.02.02 Methods for the Participation of M/WBEs

The following steps are recommended for contractors to pursue participation by M/WBEs on State-assisted contracts. Contractors are encouraged to use these steps in drafting any policy statements which will guide their efforts in meeting the applicable M/WBE goals.

- (i) actively and affirmatively solicit bids for contracts and subcontracts from certified M/WBE, including the marketing efforts to minority and women contractor associations;
- (ii) identify NYS Certified MWBEs by using ESD's online MWBE directory;
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>
- (iii) ensure that plans, specifications, requests for proposals and other documents used to secure proposals for the performance of work or supply of materials will be made available in sufficient time for review by prospective M/WBEs;
- (iv) encourage, where economically and technically feasible, the formation of joint ventures, partnerships or other similar arrangements among contractors to enhance participation by M/WBE;
- (v) partner with other governmental agencies to further outreach to M/WBE firms;
- (vi) ensure that payments to M/WBE firms are made on a timely basis and with such frequency that undue financial hardship is avoided and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation;

In compliance with the requirements of Article 15-A, applicants must provide HCR with assurances that they will require contractors to take specific affirmative action steps, including, but not limited to, the above-mentioned items, in the form of the Agency's M/WBE Utilization Plan; www.nyshcr.org/Forms/FairHousing/UtilizationPlan.pdf

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Section: 4.0 GENERAL PROGRAMS REQUIREMENTS AND POLICIES
Sub Section 4.03 Equal Employment Opportunity

Equal employment opportunity (EEO) is guaranteed by Title VII of the Federal Civil Rights Act of 1964, as amended, and the New York State Human Rights Law which prohibits discrimination in employment on the basis of race, creed, color, disability, national origin, age, sex, marital status, or arrest record. In addition, Executive Order #28 prohibits discrimination on the basis of sexual orientation in the provision of any service or benefits by State agencies or departments.

Affirmative action is generally defined as any positive action that is intended to:

- (i) correct the effects of past discrimination (whether such actions were intentional or unintentional);
- (ii) identify and seek to eliminate current discriminatory practices; and
- (iii) seek to prevent discrimination by actively initiating and implementing policies and procedures designed to promote greater employment opportunities for protected class individuals in the work force.

Affirmative action plans are written documents outlining the specific steps to be taken by an employer to accomplish the aforementioned objectives; though they may vary in content and design, they must be consistent with Federal and State EEO laws. The following will be required of all HCR applicants (owners, builders and other major project participants):

- (i) EEO and MWBE Policy Statements
(www.nyshcr.org/Forms/FairHousing/EEO_MWBE_PolicyStatements.pdf) signed by the organization's president, chair or CEO.
- (ii) a description of the organization's personnel policies and practices for recruitment, hiring, promotion, separations, training and grievance procedures with assurances that such are consistent with applicable laws and affirmative action policies; and
- (iii) a description of how the organization will communicate its affirmative action and non-discriminatory policy to contractors, subcontractors, vendors and suppliers.

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Applicants are encouraged to give priority in hiring to residents of the project area. However, precautions must be taken to ensure that such priorities do not result in qualified persons being denied employment opportunities because of sexual orientation, race, creed, color, national origin, age, sex, disability or marital status.

Under Section 312 of Article 15-A of the New York State Executive Law, contractors under State contract must state in all solicitations or advertisements for employees that equal employment opportunity will be afforded to all qualified applicants. In addition, contractors must include in every subcontract the provisions of Article 15-A § 312.1 except as relates to employment outside of New York State.

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Section: 4.0 GENERAL PROGRAMS REQUIREMENTS AND POLICIES
Sub Section 4.04 Fair Housing Requirements

Funded applicants are required to comply with Title VIII of the Federal Civil Rights Act of 1968, also referred to as the "Fair Housing Act," which prohibits discrimination against applicants to and occupants of housing on the basis of race, color, religion, sex or national origin. In addition, the Federal Fair Housing Amendments Act of 1988 prohibits discrimination in housing on the basis of disability or "familial status". "Familial Status" refers to one or more individuals who have not attained the age of 18 years and are domiciled with (a) a parent or another person having legal custody of such individual(s); or (b) the designee of such parent or other person having such custody with the written permission of such parent or other person. The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

Moreover, discrimination on the basis of disability (or handicap as referred to in Federal Regulations) is also prohibited under the provisions of Section 504 of the Federal Rehabilitation Act of 1973 which provides that no individual with a disability shall be excluded from participation in, the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance.

The New York State Human Rights Law also makes it an unlawful practice to discriminate against any person because of his/her race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status or familial status in the terms, conditions or privileges of sale, rental or lease of any housing accommodation or in the furnishing of facilities or services in connection therewith.

Additionally, it is unlawful discriminatory practice for the owners, lessees, assignees, or managing agents of publicly-assisted housing accommodations, or other persons having the right, ownership or possession of, or the right to rent or lease such accommodations, to cause to be made any written or oral inquiry, or record concerning the race, creed, color, disability, national origin or marital status of a person seeking to rent or lease any publicly-assisted housing accommodation.

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Discrimination in housing is also prohibited under Section 602 of the New York State Private Housing Finance Law. Applicants and owners must incorporate the provisions of these laws into the development of marketing plans, tenant selection plans, admission standards and policies, and waiting lists for housing units to be constructed or rehabilitated with State funds. Applicants and owners of projects involving the construction or rehabilitation of four or more HCR assisted housing units including Low Income Housing Credit Program Projects are required to submit affirmative marketing plans which must be approved by HCR prior to construction finance closing. Affirmative Marketing Plan Guidelines may be found at www.nyshcr.org/Forms/FairHousing/ under the “Affirmative Marketing” header. NOTE: No later than 90 days prior to engaging in marketing activities, you must register your project at www.nyhousingsearch.gov.

Marketing plans for elderly projects should also indicate how elderly projects will be structured, either as a 55 or over project, where at least 80% of occupied units are occupied by at least one person who is 55 years of age or older; OR as a 62 or older project, where all occupants are persons 62 years of age or older. (See Section 5.14 for further details). In HTFC projects which are jointly financed with the US Department of Agriculture Rural Housing Services, an elderly project may be occupied by persons 62 years of age or older, or by handicapped persons of any age.

Please note that the "Fair/Equal Housing Opportunity" and the "Accessibility" logos must be displayed on all affordable housing advertisements. These logos can be found at: www.nyshcr.org/Forms/FairHousing/ under the section titled “Logos”.

Affirmative marketing requirements do not apply to certain types of activities administered under the federal HOME Program. *Please refer to Section 2.00 of the Capital Programs Manual for more information and if necessary discuss with your HCR Project Manager.*

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Section: 5.0 DEVELOPMENT REQUIREMENTS
Sub Section 5.01 Introduction

This Section describes the general development requirements of the DHCR/HTFC for projects/programs funded under the Unified Funding Process. Unless otherwise noted at the top of each heading, the development requirements apply to all programs:

- (i) the Low-Income Housing Trust Fund (HTF) Program;
- (ii) the New York State HOME Program (HOME)
- (iii) the Housing Development Fund (HDF) Program;
- (iv) For LIHC and SLIHC only, i.e. standalones, Please refer to Sub-section: 5.08

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Section: 5.0 DEVELOPMENT REQUIREMENTS
Sub Section 5.02 Environmental Requirements

All funded projects must undergo an environmental review, with the exception of:

- (i) projects funded solely under the LIHC/SLIHC Program;
- (ii) projects receiving HDF loans for predevelopment;
- (iii) projects receiving only HTF or HOME Program awards for predevelopment or seed money; and
- (iv) tenant based rental assistance.

An environmental review may include any or all of the following independent reviews, depending upon the specific project proposed:

- (i) State Environmental Quality Review Act (SEQRA) - for all projects;
- (ii) City Environmental Quality Review (CEQR) - for all projects located in New York City where the City of New York Department of Housing Preservation Development (HPD) is a funding source or has site control;
- (iii) State Historic Preservation Office (SHPO) review - for all projects;
- (iv) Flood Plain Management Criteria - for all State projects; and
- (v) Waterfront Revitalization and Coastal Resources Review - for all projects located in, or adjacent to, any Waterfront Revitalization Area
- (vi) Agricultural District Determination: Section 305 (4) of the Agriculture and Markets Law.

In addition, any expenditure of HOME funds is subject to the provisions of the National Environmental Policy Act (NEPA) of 1969. Implementing regulations are found at 24 CFR Parts 50 and 58.

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5.02.01 DHCR/HTFC Environmental Review Procedures

DHCR/HTFC conducts an environmental review according to requirements of the State Environmental Quality Review Act (SEQRA) and, for federally funded projects, the National Environmental Policy Act (NEPA). Although SEQRA and NEPA have somewhat different procedural requirements, both require DHCR/HTFC to complete an environmental review and issue an environmental determination before an action commences involving physical alteration of a project site, such as construction, rehabilitation, site clearance or grading, excavation, or any change in use.

DHCR/HTFC is responsible to certify environmental determinations made for HOME projects directly funded by the agency. Local Program Administrators which are units of general local government assume environmental review responsibilities for HOME local programs. DHCR/HTFC cannot delegate the responsibility to certify HOME environmental review to nonprofit organizations, CHDOs, private developers or lending institutions. These entities may assist in information collection necessary for the review but only DHCR/HTFC can certify that environmental review requirements have been properly completed.

The DHCR/HTFC environmental review does not substitute for an environmental review which may be required by other State agencies, municipalities or lenders to obtain any necessary approval, permit or loans. If a coordinated SEQRA review is conducted, DHCR/HTFC will not assume lead agency status unless requested by the local municipality. Any situations where DHCR/HTFC might be requested to be lead agency should be identified by the project sponsor. If another agency is conducting coordinated SEQRA review, DHCR/HTFC must be identified as an involved agency, and a Full EAF submitted to DHCR/HTFC. DHCR/HTF encourages developers to have their project's local municipality conduct a coordinated SEQRA review in the earliest stage possible of a project's development. As an involved agency of a coordinated SEQRA review, the DHCR/HTF SEQRA review may be expedited.

Significant issues identified by environmental review may be subject to verification or require further investigation. DHCR/HTFC will require any significant environmental impacts identified by this assessment to be mitigated as a condition for proceeding with project construction.

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5.02.02 City Environmental Quality Review (CEQR)

New York City has established an environmental review process for all projects located in the five boroughs of the City, which is to be utilized in addition to the SEQRA and NEPA process. The City Environmental Quality Review (CEQR) provides for the selection of a single lead review agency, and enhances the public's opportunity to comment on a project in the early stages of the environmental review process. HPD will assume lead agency status for all NYS projects which involve HPD approval or disposition of city-owned property. For more information regarding CEQR, contact: Director of Environmental Review, 100 Gold Street, Room 9H-4, New York, New York 10038.

5.02.03 General Scope of Review

In general, DHCR/HTFC environmental review addresses the following issues:

- classification of the project according to SEQRA and, for federally funded projects, NEPA categories;
- assessment, where required, of potential impacts of the proposed action on public health or the natural environment;
- review by the State Historic Preservation Office (SHPO) to determine the potential impact of proposed activities on archaeological, cultural or historic resources;
- compliance with specific environmental regulations (i.e., flood plain management, HUD noise regulations); and,
- investigation of liability associated with prior use of the site which may have involved storage, treatment or disposal of hazardous materials.

5.02.04 Project Classification and Environmental Assessment

DHCR/HTFC classifies each project according to categories established by SEQRA regulations at 6 NYCRR 617, and NEPA regulations at 24 CFR Part 58.

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Under SEQRA, a project can be classified as Type II, Unlisted or Type I. A Type II action requires no Determination of Significance to be made. For Unlisted actions, an environmental assessment must be prepared, referencing the criteria for determining significance found at 6 NYCRR 617.7(c). A Determination of Significance is then made, either a Negative Declaration or a Positive Declaration. A Negative Declaration ends the SEQRA process. A Positive Declaration requires that an Environmental Impact Statement (EIS) be prepared. Agency review for Unlisted actions may be uncoordinated, where each agency conducts its own SEQRA review, or coordinated, where one agency becomes the Lead Agency, and makes a Determination of Significance binding upon all involved agencies. Type I actions require coordinated review as described above, leading to either a Negative Declaration or a Positive Declaration. Whenever a project is anticipated to undergo a coordinated SEQRA review, and is seeking DHCR/HTFC funding (except LIHC or SLIHC stand-alone), DHCR/HTFC should be identified as an involved agency and a Full EAF submitted. No matter how a project is classified under SEQRA, it must still comply with related regulations or review processes (e.g., floodplain management, SHPO review).

Under NEPA, projects are classified as Exempt, Categorically Excluded, or Requires Environmental Assessment. Except for Exempt actions, all projects and LPA programs funded under the HOME Program require publication of a public notice and HUD clearance prior to project construction start.

5.02.05 Historic Properties

The State Historic Preservation Office (SHPO) is required to review all state or federally funded new construction or rehabilitation projects to determine whether the proposed project is of historic, architectural or archaeological value or would adversely affect any district, site, building or other structure which is listed, or eligible to be listed, in the National Register of Historic Places. SHPO is also required to make recommendations on issues of design or construction that best protect the historic quality of a building, site or district. Once a site has been listed, or is eligible for listing in the Register, or is within an existing or eligible historic district, no site action affecting historic resources can proceed once application is made, or is

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anticipated to be made by the project sponsor, for state or federal funding, without consultation of the SHPO.

Project sponsors must initiate the SHPO review process prior to applying for funds by submitting a Project Review Cover Form, and a Historic Resources Inventory Form (if applicable) directly to SHPO together with the SHPO Transmittal Letter provided in the project application. The SHPO may ask the applicant for further information regarding the existing site or proposed project design in order to make its determination.

Projects with SHPO conditions related to the design and specifications of the project must take into consideration the cost impacts upon the project. The potential impact of SHPO conditions on operating costs must also be addressed. For example, if satisfying SHPO conditions results in inefficient energy conservation, excessive common areas, excessive heating costs due to high ceilings, or increased maintenance due to special design finishes, the increase in operating costs should be estimated and where possible, a means of cost containment and/or mitigation should be proposed. Project sponsors may be asked to provide a life cycle cost analysis for rehabilitation projects which have been determined to be adversely impacted by historic preservation costs.

OCD may act as mediator between the project sponsor and SHPO to resolve project conditions. OCD's mediation role is greatly diminished if federal funds are involved.

5.02.06 Compliance With Specific Environmental Regulations

Proposed construction activities must be in compliance with applicable environmental regulations and receive all necessary approvals and permits prior to physical alteration to the site (6NYCRR Part 617 State Environmental Quality Review, Section 617.3(a)). In addition to obligations under SEQRA, DHCR/HTFC is also required to review projects according to the following specific environmental review regulations:

- The New York State Historic Preservation Act of 1980 (Chapter 354 of Parks, Recreation and Historic Preservation Law)
- Floodplain Management Criteria for State Projects (6 NYCRR Part 502)
- New York State Coastal Zone Program (19 NYCRR Part 600)
- Agricultural District Determination: Section 305 (4) of the Agriculture and Markets Law

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For HOME projects, activities must also be reviewed according to related environmental regulations listed at 24 CFR 58.5 and 58.6.

5.02.07 Site Contamination

A Phase I Environmental Site Assessment (ESA) will be required for all single-site projects when the project receives a funding award, to determine the likely presence on the site of hazardous materials, soil or water contamination, underground storage tanks, PCBs, asbestos, mold and lead-based paint. Suspected hazards must be characterized by follow-up testing and analysis. DHCR/HTFC will require remediation of identified hazards in accordance with regulations or guidance of agencies with jurisdiction over the hazard(s) present on the site. Prospective applicants are encouraged to explore funding for hazardous materials remediation from state and federal funding sources.

5.02.08 Schedule of Submissions

Project Application

- (a) The SEQRA Short EAF, Part 1, completed, dated and signed by the project sponsor;
- (b) A copy of the SHPO Historic Resources Inventory Form, Project Review Cover Form and the SHPO Transmittal Letter submitted to SHPO;
- (c) A letter from the Code Enforcement Office, other municipal agency or insurance company indicating the flood zone of the project site, and the location of the project site relative to the designated coastal zone (for projects near a designated coastal zone);
- (d) Evidence of compatibility with existing zoning, or request for variance;
and
- (e) Any prior SEQRA or NEPA environmental findings issued by a local or other State Agency.

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- (f) Any other existing environmental documentation or permits, i.e., environmental site assessments, wetland investigations, State Pollution Discharge Elimination System (SPDES) permits, etc.

Post Application Submissions

The Funding Commitment Letter sent to successful applicants will outline additional submission requirements to complete the environmental review. A Phase I Environmental Site Assessment (ESA) will be required for all awarded projects. The Environmental Analysis Unit (EAU) will provide a detailed letter to awardees discussing other necessary requirements and their scope.

The following submissions must be sent to the Environmental Analysis Unit if they were not included in the project application and are applicable to the project:

- (a) Zoning change or variance
- (b) Subdivision Approval
- (c) Archaeological survey
- (d) Village/Town/City Council Review/Approval
- (e) Flood Plain/ Waterfront/Coastal Zone Approval
- (f) Lead Agency Designation for Coordinated Review
- (g) Full EAF
- (h) SPDES General Storm Water Permit

Technical studies or other information may be requested to satisfy concerns identified in previous submissions and to develop any necessary mitigation strategies so that a final environmental determination can be made. Awardee will be responsible for costs associated with any significant environmental impacts that require mitigation measures as a condition for proceeding with project construction.

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5.02.09 Completion of Environmental Review

Environmental review for HTFC projects is complete when a SEQRA determination is made by the SEQRA Officer, approved by the HTFC Board of Directors, and an environmental clearance letter has been issued by HTFC. For HOME funded projects, HTFC must publish an appropriate public notice in a newspaper of general circulation in the project area. Environmental review for HOME projects is complete when comment periods following public notices have expired and HUD issues an Authority to Use Grant Funds form for the project. No physical alteration to the site can occur until the project has received an environmental clearance letter from HTFC.

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Section: 5.0 DEVELOPMENT REQUIREMENTS
Sub Section 5.03 Site Requirements

The site requirements set forth below apply to new construction and substantial rehabilitation on all sites for all funded projects with the exception of those funded solely with LIHC and/or SLIHC.

Applicants should select sites which are suitable for residential use; the suitability of the site selected will be an important factor in determining project eligibility and feasibility. The HOME Program also has a requirement for site and neighborhood standards that is published in the HOME regulations at 24 CFR 92.202. Applicants must select project sites in accordance with fair housing requirements and to promote a greater choice of housing opportunities. Newly constructed projects must not be located in areas of minority concentration, except as permitted by 24 CFR 882.705. Low-income housing projects located within an urban neighborhood must meet the following minimum requirements:

1. The site must be free from hazardous materials and incompatible adjacent uses. There must be no environmental conditions that significantly impair the intended residential purposes.
2. The site must have power, telephone, water and sewer connections adjacent to the site.
3. The site must have local/public transportation or be within walking distance to community services and retail establishments including a grocery store.
4. The site must have adequate space to accommodate local off-street parking requirements.
5. The site must be relatively level and of no greater size than that which is necessary to accommodate the proposed project.

Low-income housing projects located in non-urban areas must meet the following minimum requirements: Items 1, 4 and 5 as numerated above.

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1. Where public utilities are not included, the site must have the capacity to provide a cost effective on-site water and/or septic system.
2. For family projects, the site must be within a five mile distance of a municipality that provides community services and retail establishments including a grocery store.
3. Family projects must have adequate space to accommodate an on-site play area for children.
4. The site must be directly accessible from a public road.
5. Elderly projects must be located within a rural community and have local public transportation or be within walking distance, (i.e., one-half mile) of essential services including a grocery store.

5.03.01 Site Control

DHCR/HTFC requires that applicants have site control for all buildings and/or sites included when applying for projects. Single-family homes in a specific subdivision are not excluded from DHCR/HTFC's site control requirements. Applicants that propose to use HOME funds for HOME programs are not required to identify sites at the time of application.

NOTE: SITE CONTROL DOCUMENTATION IN THE FORM OF A CONTRACT OF SALE, OPTION OR LEASE MUST BE IN THE NAME OF THE APPLICANT AND BE LEGALLY BINDING AT THE TIME OF APPLICATION.

Acceptable forms of site control, in order of DHCR/HTFC preference, include:

- A deed evidencing ownership by applicant;
- A title report not more than 90 days old at the time of submission showing that the applicant holds title;
- A contract of sale which describes the terms and conditions for the conveyance of title of the site at a designated price during a specific period;

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- An option to purchase which is renewable or with a term that continues at least six months beyond the date of application. For HOME projects, purchase options must be conditioned on completion of HUD environmental review prior to closing;
- A local Land Disposition Agreement;
- A letter from a public agency providing a site to the applicant under specified conditions within a time frame consistent with the proposed Development Timetable;
- A letter from the NYC Department of Housing Preservation and Development (HPD) which specifies expiration date and clearly matches property included in plans and project summary; or
- A lease with a term that equals the applicable program's regulatory period.

DHCR/HTFC reserves the right to accept other evidence of site control for State- or federally-owned sites, or those owned by entities affiliated with the State or federal government. If a site is owned by any governmental entity, the applicant should describe the current status of the project site in the land disposition process.

5.03.02 Site Acquisition

If the project includes the acquisition of property, the applicant must document the absence of encumbrances which would impair the applicant's ability to complete the project. All site acquisitions at a market price must be arms-length transactions between the seller and the applicant. The site purchase price must be documented in a fixed price purchase contract or a fixed price option to purchase the property. Such contracts or options must allow for the site acquisition to occur in a timely manner.

Only that portion of the site's value which is necessary for the project may be recognized as a project cost. The specific amount of the site purchase price that will be recognized as a project cost is limited to the lesser of: the purchase price, or the value established by an appraisal acceptable to DHCR/HTFC (see Section 5.03.03). Costs related to acquisition which also may be eligible project costs, depending on the specific program, include: legal fees, financing costs,

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mortgage recording tax, tax escrow payments, insurance premiums, water and sewer charges prior to construction, recording and filing fees, appraisal fees, title search and insurance costs, site surveys, and other related costs. If the seller has an identity of interest with any participant involved with the project then it must be disclosed in the application. Valuation must be documented via an acceptable appraisal. In lieu of an appraisal the price of the subject property from the last sale by an unrelated seller, if within 24 months from the date of application, plus associated carrying costs, will be used to determine the approved sales price.

Applicants must submit evidence prior to the Contract Closing that the following activities have occurred, regardless of whether or not the site is already owned by the applicant or owner:

- (i) all necessary site acquisition documents have been recorded and filed;
- (ii) a title search has been conducted;
- (iii) all required insurances have been obtained; and
- (iv) site survey-certified to the applicant/awardee, HTFC and the Title Insurance Co.

A survey of the premises prepared by a registered land surveyor in accordance with American Land Title Association/American Congress on Surveying and Mapping (ALTA/ACSM) Minimum Standard Detail Requirements for Land Title Surveys and dated or re-dated not more than 30 days before the closing. The following additional items shall be shown on the survey: a) legend of all symbols and abbreviations used; b) vicinity map; c) contours; d) flood zone designation; e) all improvements including proposed improvements; f) parking areas and, if striped the striping and number of parking places; g) indication of access to the public way such as curb cuts, driveways marked; h) location of all utilities serving the property, including manholes, catch basins, valve vaults or other surface indications of subterranean uses; i) all wires and cables (including their function) crossing the surveyed premises, and the poles on or within ten feet of the surveyed premises, and the dimensions of all cross wires or overhangs affecting the surveyed premises; j) observable evidence of cemeteries; and k) significant observations not otherwise disclosed.

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5.03.03 Appraisals

The site appraisal requirement set forth below may be waived for sites funded under the HDF Program if the permanent/construction financing source agrees to the site purchase price.

For LIHC/SLIHC funded projects only, i.e. standalones, see Section 5.08.

Acquisition costs for any individual site which exceed \$100,000 must be supported by an acceptable appraisal(s). If site acquisition costs exceed \$250,000, DHCR/HTFC may require two appraisals. If there is an identity of interest between the seller and any project participant, an appraisal must be provided even if the acquisition cost is below \$100,000.

In addition, DHCR/HTFC may also engage a review appraiser for further documentation of site value. If HOME funds are used to assist with the purchase of a unit by a first-time home buyer, an appraisal must be conducted by a state-certified appraiser. In any case, the applicant should reference the types of certifications below to determine the minimum qualifications necessary. All appraisals should be conducted pursuant to a contract between the applicant and the appraiser.

An acceptable appraisal must document and conclusively estimate the "as is" fair market value of the site and provide separate evaluation for the land and structure in a rehabilitation project. Fair market value is the price which a property will most probably bring in a competitive and open market under all conditions requisite to a fair sale, assuming the price is not affected by undue stimulus including special public financing amounts or terms, and that the buyer and seller act prudently and knowledgeably.

The following are the minimum requirements for an acceptable appraisal:

1. Must be certified to NYS Division of Housing and Community Renewal/Housing Trust Fund Corporation.
2. Must be prepared no **more** than six months prior to the date of the application.
Appraisals prepared more than six months, but less than one year, prior to the date of the application will be accepted, if the appraiser provides a letter confirming that the appraisal remains valid given current market conditions. In no instance will DHCR/HTFC accept an appraisal prepared one year or more prior to the date of application.

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3. Appraiser must have the appropriate certification/license to undertake the scope of the project:
 - NYS Licensed Real Estate Appraiser: non-complex, residential properties with a transaction value of less than \$1 million and non-complex, nonresidential properties with a transaction value of less than \$250,000.
 - NYS Certified Real Estate Residential Appraiser: all residential, noncomplex properties and non-residential, non-complex properties with a transaction value of less than \$250,000.
 - NYS Certified Real Estate General Appraiser: appraisals on all types of real property regardless of transaction value or complexity.
4. Must comply with the Uniform Standards of Professional Appraisal Practice.
5. Must use the income, market, and replacement cost approaches (see Glossary under "Appraisal") in estimating the fair market value of the site. For vacant land, or where both the prior and proposed use of the property is a one to four unit dwelling, only the market approach is required.
6. For vacant land the “as is” value should be documented on a per acre basis (in NYC on a per buildable square foot basis) **AND** on a per unit basis. In selecting comparable sales, appraisers should not use prior sales of property sold to be developed as affordable housing. Significant deviations in value from comparable sales must be fully explained in the appraisal.
7. Must describe local economic conditions and analyze physical, demographic, economic and governmental factors affecting the highest and best use of the site except where transaction values for the acquisition of vacant land are less than \$100,000.
8. Must provide a sales and ownership history for the last 5 years and /or the last two sales, whichever represents a shorter time frame.

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Other comments such as extraordinary assumptions and type of transaction (i.e., arms-length) together with a table of contents and pagination will assist in the determination of site value.

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Section: 5.0 DEVELOPMENT REQUIREMENTS
Sub Section 5.04 Design Requirements

The design requirements contained in the OCD Design Handbook apply to all projects, with the exception of those funded solely with:

- (i) LIHC
- (ii) SLIHC
- (iii) HOME substantial rehabilitation projects where the total development cost is less than \$25,000 per unit
- (vii) RARP
- (viii) UI.

In addition, the design requirements apply to projects developed under the following programs only if DHCR/HTFC is the lead review agency:

- (i) HDF
- (ii) HOME
- (iii) HTF;

The goal of the design requirements is to encourage the development of housing units that have a long life expectancy and that are durable, accessible, adaptable, relatively maintenance free, and provide quality living facilities. Housing planned for historic neighborhoods should reflect the historic and cultural environment in size, scale and material, while housing planned for rural areas should be developed to reflect the character of the environment.

For project awards in which DHCR/HTFC is not the lead review agency, Applicants are encouraged to incorporate the design requirements into local procedures.

For detailed information refer to the current HTFC Design Handbook.

In an effort to promote the continued marketability of the housing units we finance, the DHCR/HTFC would like to encourage applicants/developers to include in their designs the provision of high speed internet access in all residential units.

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Section: 5.0 DEVELOPMENT REQUIREMENTS
Sub Section 5.05 Project Costs

All funded projects are subject to the project cost standards set forth below, with the following exceptions:

- (i) projects financed under the HDF Program must meet DHCR/HTFC underwriting criteria only if DHCR/HTFC has been designated as the lead review agency;
- (ii) projects receiving an allocation under the LIHC/SLIHC Program should refer to Section 5.08

A project must provide housing which represents good value for the State's investment. In making this determination, DHCR/HTFC reviews the total project cost (as defined in the Glossary) to ensure that acquisition and development costs fall within established guidelines.

Applicants should note the following standards for the various costs included in the total project cost. These standards should be used as a guide only -- over or under budgeting of costs will impact on both feasibility and/or scoring. The applicant should also refer to Section 2.00 of this Manual to determine eligible costs for the appropriation program(s).

- (i) Acquisition Costs - The HOME and the HDF Programs are the only DHCR/HTFC programs for which the total program award may be used for acquisition costs. The HTF statute prohibits using more than 50% of the HTF award for site acquisition;
- (ii) Total Development Cost (TDC) - should reflect the reasonable and necessary cost of producing low-income housing; cost effectiveness will be an integral part of the technical reviews; HOME new construction and rehabilitation projects which contain 12 or more HOME-assisted units are subject to the provisions of the Davis-Bacon Related Act and must pay prevailing wages;
- (iii) Construction Costs and Soft Costs - generally, the ratio of construction costs to soft costs should be 80% (construction costs) to 20% (soft costs); PLEASE NOTE: Only off site costs directly associated with the project will be considered eligible for funding through the DHCR/HTFC programs.

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- (iv) Builder's Fees - up to 2% percent of construction costs may be used for builder's overhead; up to six percent of construction costs may be used for general requirements; and up to 6% percent of construction costs may be used for builder's profit. **PROGRAM NOTE: UF 2013 Early award applicants may use the higher builder's fees (4% overhead, 6% general requirements, and 10% profit) allowed under the current Qualified Allocation Plan (QAP). UF 2013 Standard round applicants must use the reduced builder's fee limits (14% total) in the proposed 2013 QAP.**
- (v) Payment and Performance Bond Premium - in addition to a ten percent retainage held throughout construction, generally one to two percent of construction costs is allowed for a Payment and Performance Bond Premium (see Section 5.10, Insurance Requirements); where applicable, the bonding requirement must be satisfied at the Contract Closing;
- (vi) Project Contingency - up to ten percent of the sum of total soft costs and contractor's cost (excluding builder's fees) for projects involving the rehab of a vacant building and small non-tax credit projects, and up to five percent for new construction projects and occupied- rehab preservation projects .
- (vii) Professional Fees - these include all professional services which are necessary to project completion, e.g., fees for project architect, legal counsel, engineer, surveyor, accountant, environmental monitoring, energy efficiency modeling & testing etc. as required. The following specific limits apply to architect's and legal counsel fees:
 - (a) Architect's Fees - up to five percent of construction costs for project design, and two percent of construction costs for construction supervision, depending on the project size. The fees for design should be lower if the project has multiple buildings of the same design.
 - (b) Legal Fees – project sponsor attorney's fees are limited to one percent of the total development cost.

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(viii) Housing Consultant Fees – This refers to fees charged by housing consultants to perform development activities on behalf of the developer, e.g. packaging of applications for funding; advising developer on the use of historic tax credits or brownfield tax credits; assisting with obtaining real property tax abatement etc. Housing consultant fees are an allowable cost only for projects that do not include LIHC/SLIHC equity as a funding source. The maximum in total that will be allowed for a housing consultant (s) is the lesser of 5% of the HCR requested financing or \$100,000.

(a) Nonprofit Developer's Allowance (NPDA) - a not-for-profit organization which acts as the developer on a project which will be owned and operated on a not-for-profit basis may be paid a NPDA as compensation for functions not otherwise funded. An NPDA is not available to a not-for-profit which is in partnership with a for-profit developer on a project. The NPDA is not available to applicants which receive only seed money awards. It is only available to applicants which receive development funding awards.

Not-for-profit applicants seeking a developer's allowance or fee must ensure that such fee or allowance is an eligible expense under the permanent financing source. An HDF applicant cannot receive a developer's allowance from both HDF and the permanent financing source. The NPDA is not compensation for an organization's administrative overhead, which is frequently funded from another source, or for out-of-pocket project costs, which may be invoiced as an eligible development expense. DHCR/HTFC has established standards for NPDA compensation based upon the complexities of the project's development and the costs associated with a project's geographical location. DHCR/HTFC standards also provide for an adjustment when a consultant's services are used to undertake functions which would otherwise be undertaken by the nonprofit developer. The amount of the NPDA is limited to the greater of:

1. ten percent of total development cost less the amount of acquisition; or

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2. \$2,400 per low-income unit. Single Room Occupancy (SRO) units are counted as 75% of a low-income unit for the purpose of calculating the NPDA. For projects located in the high cost New York Metropolitan Area and Nassau, Westchester and Suffolk Counties, the NPDA is increased to \$3,000 per low-income unit.
3. For projects financed with 501(c)(3) tax exempt bonds, the greater of ten percent of TDC or \$5,000 per unit.

When a housing consultant's services are used in connection with the project, the housing consultant's fee will be subtracted from the NPDA cap to arrive at the NPDA that the applicant is entitled to receive.

Under an executed contract with DHCR/HTFC, the nonprofit developer must meet specific milestones tied to the completion of the project in order to earn the NPDA. No more than 80% of the NPDA may be paid during the project's development as a project cost for the performance of development duties. The remaining 20% must be held back as an incentive payment for successfully completing the project. Specifically, percentages of the approved NPDA are earned in accordance with the following schedule:

Scope	Deliverables/Milestones	Fee
1. Preliminary Approvals	Site Control & DHCR/HTFC Notice of Review Action – Competitive	10%
2. Preconstruction	Local Approvals & All Funding Commitments	20%
3. Bid Process	Selection of Contractor	5%
4. Contract Finalization	Initial Endorsement of DHCR/HTFC Contract and Regulatory Agreement	20%
5. Construction	Certificate of Occupancy Issuance	25%
6. Cost Certification	DHCR/HTFC Approval of Project Cost Certification	10%
7. Start Up	Rent Up Completed	10%

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- (ix) Construction Manager's Fee - this fee is only available to projects without a general contractor, is limited to five percent of project construction cost, and builder's overhead and profit may not be claimed.

- (x) Working Capital - up to two percent of the total development cost is allowed for Working Capital; escrows for taxes and insurance are generally limited to six months expense, supplemental management fees should be no more than one quarter of the monthly gross rent roll; applicants must itemize all items included in working capital and demonstrate need; any working capital remaining after the project has been in operation for one year should be transferred to the operating reserve;

- (xi) Reserve Funds - an initial deposit to project reserve funds may be required in certain programs. The applicant should review the Underwriting Criteria (Sub-Section 5.06(iii) and Project Operating and Management Requirements (Sub-Sections 7.03.03 and 7.03.04) of this Manual. HOME funds may not be used to provide capitalization of either an operating or replacement reserve account. HTFC funds may be used to capitalize a replacement reserve, but may not be used to capitalize an operating reserve.
 - (a) Replacement Reserve (see Glossary for definition) - The replacement reserves are generally funded from an annual contribution included in the operating budget. For HTF and HOME-funded projects which include Low-Income Housing Tax Credits (LIHC) and/or State Low-Income Housing Tax Credits (SLIHC) as a financing source, an initial capitalization of the replacement reserve equal to \$1,000 per unit is required. HOME projects must utilize a non-HOME source, such as LIHC equity, to cover the replacement reserve capitalization. No initial capitalization is required for HTF or HOME projects that do not include LIHC or SLIHC in the financing plan.

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Additionally, the DHCR/HTFC will recognize the capitalization of up to \$4000 per unit to be set aside to cover the post-construction cost to fully adapt an accessible residential unit to meet the specific needs of a prospective handicapped household.

- (b) Operating Reserve (see Glossary for definition) - The operating reserve may be funded with annual contributions or an initial capitalization. The applicant should review specific program requirements for each program under which the application is submitted to determine if the initial capitalization of operating reserves is allowed and under what circumstances.

Applicants participating as private developers in the HTF and HOME Programs are required to make a cash equity contribution to the Operating Reserve equal to the lesser of one percent of the total development cost or 50% of project gross rent. Those projects which capitalize the reserve in an amount equal to one percent of total development cost will be required to make annual contributions until the Operating Reserve reaches the cap of 50 percent of project gross rent.

- (c) Debt Service Reserve - In the case of HWF or 501(c)(3) bond financed projects, a debt service reserve may be funded based on the requirements of the bond issuer or the source of credit enhancement.

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Section: 5.0 DEVELOPMENT REQUIREMENTS
Sub Section 5.06 Underwriting Criteria

All funded projects are subject to the underwriting criteria set forth below, with the following exceptions:

- projects financed under the HDF Program must meet only the underwriting criteria specified for determining market support for the project, and the appraisal criteria for acquisition and construction loans, where DHCR has been designated as the lead review agency for the project; and
- LIHC/SLIHC funding only, i.e. standalone (see Section 5.08)

Where federal programs are involved (e.g. HOME, LIHC), DHCR/HTFC may be required to certify to the federal agency that these projects receive only the level of funding that is necessary to provide affordable housing. To comply with these requirements, applicants that propose projects involving other federal subsidies (i.e., CDBG or Section 8) may be requested to provide additional information. For projects involving Project-Based Section 8 Voucher assistance and LIHC, the Federal Housing and Economic Recovery Act of 2008 authorizes DHCR as a housing credit agency to perform the HUD- required subsidy layering review for such projects. Please refer to CPM Section 5.07 for detailed information on the subsidy layering review process.

Applicants must establish that a project is financially feasible by demonstrating the following: that there is market support for the project; in general the proposed rents are equal to or less than comparable rents for the area; the estimated project income is sufficient to pay the estimated operating expenses, including any reserve fund contribution and debt service contained in the financing plan; and the reasonableness of operating and development budgets. In doing so, the applicant must address the following:

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- (i) Market Support of Project - Applicants must firmly establish that a sufficient number of income-eligible households exist in the proposed market area who can afford the project rents and who can be expected to live in the project. To do this, applicants shall submit a market analysis or a comprehensive market study.

Applicants proposing a project of fifteen units or less may submit a market analysis to establish market support for the project. Any project of more than fifteen units, which does not involve the preservation of existing, affordable housing, will require the submission of a comprehensive market study or in the case of projects in the City of New York, a market analysis utilizing data from the most current New York City Rent Guidelines Board Report.

Preservation projects of more than fifteen units located outside of the City of New York may submit a market analysis, if the project's average occupancy for the twelve months prior to application submission is 90% or greater. If the average occupancy level is below 90%, a comprehensive market study is required for these projects. Applicants proposing preservation projects located in the City of New York may submit a market analysis regardless of occupancy level

A market analysis must consider the geographic area from which households are expected to be drawn (Primary Market Area or PMA), the number of income-eligible households within that area able to afford the required monthly housing expense, current vacancy rates, the impact of the project on other housing stock (including other publicly assisted housing), rents of similar housing in close proximity to the proposed project, identification of other comparable housing that is planned or under development, and the availability of project-based rent subsidies. In areas having comparable housing under development, DHCR/HTFC may wait until any project under development is built and rented prior to funding an additional project in the market area. The exception to this will be those projects that are part of a housing/community development strategy or serving a special needs population.

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- (a) Evidence of Market Support - which must be submitted at the time of Small Project Initiative, Urban Initiative (UI), and Rural Area Revitalization Program (RARP) applications, should include:
- i. surveys identifying potential tenants and/or housing studies recently conducted by public agencies documenting need for the proposed units.
 - ii. information on waiting lists from other projects in the market area providing housing of the same general type and with comparable rents;
 - iii. commitments on leases and/or referral of households financially assisted by social services or public health programs; and
- (b) Comprehensive Market Studies - applicants utilizing LIHC and/or SLIHC must submit a professional market study which:
- i. is conducted by a disinterested pre-qualified market analyst approved by the Division and demonstrates that the proposed number and type of units meet an existing and identified need of low-income individuals and can be readily absorbed by existing need in the local area. Alternatively, applicants proposing projects located within the City of New York may prepare an analysis utilizing data from the most current “Housing NYC: Rents, Markets and Trends” report issued by the New York City Rent Guidelines Board for inclusion in their application. (Note: In all cases market demand must be documented from within New York State.)
 - ii. The comprehensive market study should include the Scope of Work contained in the following guidelines:

HTFC/DHCR Market Study Content Guidelines

- A. Executive Summary. Each market study must include a concise summary of the data, analysis and conclusions, including the following:
- A concise description of the site, adjacent parcels and the immediately surrounding area.

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- A brief summary of the project including the type of construction, number of buildings, number and type of units, proposed rents and the proposed population to be served.
- Precise statement of key conclusions reached by the analyst.
- Precise statement of analyst's opinion of market feasibility including the prospect for long term performance of the property given housing and demographic trends and economic factors.
- Provide recommendations and/or suggest modifications to the proposed project.
- Provide a summary of market related strengths and/or weaknesses which may influence the subject development's marketability, including compatibility with surrounding uses, the appropriateness of the subject property's location, unit sizes and configuration, and number of units.

B. Project Description. The market study should include a project description to show the analyst's understanding of the project at the point in time the market study is undertaken. The project description should include:

- Proposed number of units by: number of bedrooms and baths, income limit as a percent of Area Median Income (AMI), unit size in square feet and utility allowances for tenant paid utilities, proposed rents, and target population, including income restrictions and any special needs set-asides.
- The utilities expected to be paid by tenants and energy sources for tenant paid hot water, heat, cooking.
- For existing occupied properties, identification of any existing assisted housing program at the property such as Section 8, Section 202, Section 811, Section 236, etc, as well as current occupancy levels, current rents and proposed rents.

C. Location and Market Area Definition

The Primary Market Area (PMA) is the geographic area from which a property is expected to draw the majority of its residents.

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- Define the Primary Market Area, including a map that clearly delineates the area, and provide a clear explanation of the basis for the boundaries of the PMA. Identify PMA boundaries by municipality (ies), census tracts/block groups, street/highway names, or other appropriate geographic features (a river for example) forming the boundaries. Also define the larger geographic area in which the PMA is located (i.e. city, county, Metropolitan Statistical Area (MSA), etc.). Projects in the City of New York should indicate the Community Board in which the project is located. Applicants are strongly encouraged to use entire census tracts or block groups in defining the PMA.
- Provide photographs of the site and neighborhood, and a map clearly identifying the location of the project and the closest transportation linkages, shopping, schools, medical services, public transportation, places of worship, and other services such as libraries, community centers, bank, etc. In situations where it is not feasible to show all the categories on a map, the categories may be addressed in the narrative.
- Describe the marketability of the proposed development.
- Provide information or statistics on crime in the PMA relative to data for the overall area. Address any local perceptions of crime or problems in the PMA.

D. Population and Households

- Provide total population, age and income target data for the Primary Market Area using the **2010** Census, current year estimates, and a five year projection. Data from other legitimate studies, such as Claritas, CACI and similar demographic information companies, with detail on household size, tenure, age and other relevant categories may be provided. Provide the same information for the SMA, if one has been defined. Indicate the source for all data and provide a methodology for estimates.
- Provide a breakdown of households by tenure for **2010** Census, current year and five year projection.
- Provide an analysis of trends indicated by the data and include reference sources for the data and methodology for analyzing the data.
- Provide a breakdown of households by incomes in \$5,000-\$10,000 increments, by household size and by tenure for **2010** Census, current year, and five year projection.

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E. Employment and Economy. Provide data and analysis on the employment and economy of the PMA to give an understanding of the overall economic health of the community in which the PMA is located. List sources for the data and methodology for the analysis.

- Provide a description of employment by industry sector for the PMA or smallest geographic area available that includes the PMA and compare the data to the larger geographic area, e.g. the city, county, labor market area, or MSA.
- List major employers in the PMA, the type of business and the number employed and compare the data to the larger geographic area (i.e. MSA, County, etc.).
- Show the historical unemployment rate for the last ten years (or other appropriate period) for the PMA and compare to the larger geographic area (i.e. MSA, County,, etc.).
- Show employment trends over the same period or a more recent, shorter period (last 5 years). Compare to the larger geographic area.
- Comment on trends for employment in the PMA in relation to the subject development.
- If relevant, comment on the availability of affordable housing for employees of businesses and industries that draw from the PMA.
- Provide a breakdown of typical wages by occupation.
- Provide commuting patterns for workers such as how many workers in the PMA commute from surrounding areas outside the PMA.

F. Existing Rental Housing. Provide information on other multifamily rental housing in the PMA and any rental housing proposed to be developed in the PMA. This section of the study should include:

- If relevant in the market, a 10-year, or other appropriate period, history of building permits, if available, by housing type and comments on building trends in relation to household trends.

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- Identify a list of existing comparable and competitive properties, including: name, location, population served, type of design, age and condition, number of units by bedroom type, rent levels, number of bedrooms and baths for each unit type, size in square footage of units, kitchen equipment, type of utilities (state whether paid by tenant or owner and energy sources for hot water, heat and cooking), unit and site amenities included. Also, if available, site staffing, occupancy rate, and absorption history for the property (if recently completed). Provide the name, address and phone number of property contact. Attach photos of each comparable property. Include a map showing the location of each comparable property in relation to the subject.
- A comparable property is one that is representative of the rental housing choices of the PMA and that is similar in construction, size, amenities, location, and/or age. A competitive property is comparable to the proposed project **and** competes at nearly the same rent levels and tenant profile, such as age, family or income.
- Describe the size of the overall rental market in the PMA, including the percentage of market rate and affordable housing properties.
- Provide a narrative evaluation of the subject property in relation to the comparable properties, and identify the competitive properties, which are most similar to the proposed development. The analyst should state why the comparables referenced have been selected, which are the most directly comparable, and explain why certain projects have not been referenced.
- For each comparable property, provide comparisons to the subject rents based on the comparable property amenities, tenant paid utilities, location, parking, concessions and rent increase or decrease trends.
- Only the **directly comparable projects** should be used to derive the market rents in the PMA for use in evaluating the competitive advantage of the project rents. Market rents should be adjusted for owner paid utilities included in the rent. Including conventional projects with superior amenities, location, design, and larger unit sizes in determining the market rent is **not** acceptable. For example, the use of 1200 sq ft townhome style apartment units as comparables for a project with 850 sq ft, two bedroom units with limited amenities is not reasonable or acceptable.

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- Discuss the availability of affordable housing options, including purchase or sale of homes.
- When relevant, include a list of LIHC/SLIHC, USDA RD, HUD 202 and other subsidized projects with allocations/awards in or near the market area that are not placed in service, giving as much known detail as possible on estimated placed-in-service dates, unit mix and income to be served.
- Discuss the impact of the subject development on the existing housing stock.
- Describe the market vacancy rate for the PMA rental housing stock by population served (i.e. market rate, LIHC, and Project Based Rental Assistance) and type of occupancy (i.e. family, seniors, special populations) and unit size.
- Identify the number of people on waiting lists for each project. Indicate if the households have been income qualified, and when the wait list was last updated.

G. Local Perspective of Rental Housing Market and Housing Alternatives. The market study should include a summary of the local perspective on the rental market, need for the proposed housing and unmet housing needs in the market. The local perspective should consider:

- Interviews with local planners, housing and community development officials and market participants to estimate proposed additions to the supply of housing that would compete with the subject development and to evaluate the local perception of need for additional housing.
- Interview local Public Housing Authority (PHA) officials and seek comment on need for housing and possible impact of the proposed development on their housing inventory and waiting lists for assisted housing. Include a statement on the number and availability of Housing Choice Vouchers and the number and types of households on the waiting lists for Housing Choice Vouchers. Compare subject development's proposed rents to local payments standards or median rents.
- The cost and availability of home ownership and mobile home living, if applicable.

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H. Analysis.

- Derive a market rent **using appropriate comparables as discussed in Section F above**, an achievable restricted rent given the project income limits, and then compare them to the developer's proposed rent. Quantify and discuss the market advantage of the proposed development and impact on marketability.
- Provide a detailed analysis of the income levels of the potential tenants for the proposed units. Eligible households will pay no less than 30% and no more than 48% of their income for gross rent (rent plus utilities). (See CPM, Section 7.06.04, for additional information).
- Calculate separate capture rates **for each targeted income limit by unit type** in the subject property, incorporating DHCR/HTFC restrictions such as age, income, renters versus home owners, household sizes, etc. For example, if a project has 30 one bedroom units targeted at 50% of AMI, 10 one bedroom units targeted at 60% of AMI , and 20 two bedroom units targeted at 60% of AMI, three separate capture rates must be calculated. In calculating the capture rates the analyst should subtract all existing affordable housing in the PMA (supply) from the number of income eligible, age appropriate households (demand). Note: For senior projects, only **10% of the eligible homeowners** may be included in the demand calculation.
- The unmet demand for additional housing units must be more than 5 times the number of units proposed. Capture rates must be 20% or less for each targeted income limit by unit type.
- Define and justify the absorption period and absorption rate for the subject property.
- Project and explain any future changes in the housing stock within the market area.
- Identify risks (i.e. competitive properties which may come on line at the same time as the subject property; declining population in the PMA, etc.), unusual conditions and mitigating circumstances. Evaluate need for voucher support or HUD contracts.
- Provide documentation and descriptions that show the methodology for calculations in the analysis section and relate the conclusions to the data.

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I. Other Requirements

- Date report was prepared, date of inspection and name and telephone number of analyst preparing study.
- Certification of no identity of interest between the analyst and the entity for whom the report is prepared.
- Certification that recommendations and conclusions are based solely on professional opinion and best efforts.
- Statement of qualifications.
- List of sources for data in the market study.

(ii) Project Income - Applicants must demonstrate that the project will generate sufficient income to cover its operating expenses.

- (a) Rent Plan - the applicant must submit with the UF application, a rent plan for the project estimating rental income, adjusted by a 5% vacancy and arrears loss. The rents approved by DHCR/HTFC for the purposes of the HTF or HOME commitment letter or LIHC reservation may be increased by the annual percentage increase in the area median income prior to initial rent up with DHCR/HTFC approval, subject to the receipt and review of operating cost documentation supporting the need for the increase.
- (b) Non-Residential Income - if the project building also contains non-residential space, the budget for the non-residential space must be self-sustaining and accounted for separately. DHCR/HTFC funds may not be used to subsidize the non-residential portions of the project unless deemed appurtenant to the residential portion of the project. The feasibility of the project should not be predicated upon income from non-residential rents. Any non-residential income to be used to support the project operations should be conservatively estimated. Such income should be considered only on a net basis after deduction of vacancy loss and arrears, operating and maintenance expense, and debt service. The estimate for vacancy loss and arrears should be in the

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range of five percent for pre-leased space, to 15% for space which has not been leased.

- (iii) Operating Budget - the applicant must submit an estimated project operating budget which reflects as accurately as possible the expected rental income and operating costs of the project. The accuracy of the projections will be an important factor in feasibility.

The operating budget should take into account the project's design and construction, utility configuration, and type of population to be served (i.e., elderly, family, homeless individuals, etc). The applicant must submit an operating budget and supporting documentation at the time of application and, if there are changes, again at the time of Contract Document Submission. The applicant may use information from comparable projects as the basis for estimating expenses, such as maintenance, management, and various services (i.e., trash or snow removal, extermination, etc.) provided they are similar to the proposed project in type and located in the same market area. The applicant should identify the comparable projects used as a basis for their projections. Utility allowances, common utilities and heating expense (i.e., electric, gas, or fuel oil) should be estimated on the basis of consumption and rate schedules or vendor price. A utility estimate prepared by the project architect is also acceptable. Utility costs must be supported by a written estimate from the architect or vendor and should cover utilities paid directly by the tenant. The estimated insurance expenses should be documented by a written quote from an insurance broker including both the coverage and price. The applicant's estimate of property tax expenses should be documented by a counsel's letter confirming the legal basis for any exemption or abatement to be received by the project. If the project is to be fully taxed, the estimate should be documented by a letter from the assessor having jurisdiction, stating the basis for estimation and estimated amount of the post-construction value.

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DHCR/HTFC will not recognize more than a nominal initial cash flow (e. g., \$35 per unit per month) unless a debt service coverage is imposed for purposes of a conventional loan or bond financing.

For LIHC/SLIHC projects that propose to defer a portion of their developer fee please see Section 5.05 viii(f).

Project owners must provide for annual contributions to the Reserve Account(s) in the operating budget as detailed below.

- (a) Replacement Reserve Contributions - The following replacement reserve contributions are required for all HTF and/or HOME projects that do **not** include Low-Income Housing Tax Credits (LIHC) and/or State Low-Income Housing Tax Credits (SLIHC) as a financing source:
1. Family and non-senior projects: annual contributions equal to .50 percent of total construction cost, including builder's fees, up to a maximum of \$800 per unit
 2. Senior Projects: annual contribution of \$400 per elderly projects

HTF and/or HOME projects which include LIHC and/or SLIHC as a financing source must provide for a minimum annual contribution of \$250 per unit. If a project requires a higher annual contribution, e.g. preservation projects, a higher per unit contribution may be allowed, if the project operating economics can support it.

All required annual contributions will continue throughout the life of the project with no ceiling. HTF stand-alone projects, i.e. projects that do not involve LIHC or SLIHC, may be permitted to capitalize a replacement reserve if the project's operating economics cannot support the annual contributions required for these projects. Projects permitted to capitalize the replacement

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reserve must demonstrate that the initial capitalization will provide sufficient funds to cover expenses throughout the regulatory period. All assumptions (i.e., initial cost, annual inflation rate, life expectancies, etc.) should be included on a spreadsheet which shows that such capitalization will be adequate.

- (b) Operating Reserve Contributions - where applicable, and unless otherwise approved by DHCR/HTFC, the operating budget should provide for a minimum of three percent of the project's gross rents to be contributed annually to the Operating Reserve account. Annual contributions to the Operating Reserve are required when the balance in the reserve is less than 50% of the gross rents. All excess cash flow from the project should be deposited in the Operating Reserve account.

- (iv) Financing Plan - the financing plan for the project must meet the following requirements:
 - (a) the total project cost must be financed by grants, loans, or equity, or a combination of the three;
 - (b) all project financing must be contractually obligated at or before the Contract Closing;
 - (c) grants and/or equity financing cannot encumber the project in a manner which is inconsistent with the requirements of the applicable DHCR/HTFC program;
 - (d) debt service for loans must be supportable by the project's annual operating budget;
 - (e) **loan terms are expected to be at a fixed rate of interest for a 30 year term;**
 - (f) balloon payments of loan principal prior to the end of the regulatory period are permissible only if it can be demonstrated that refinancing is possible without affecting project rents;
 - (g) the terms and conditions of construction and/or permanent financing must be economical and reasonable. The interest rates must be no more than the

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average rate level offered in the marketplace and the conditions (i.e. requirements on security, credit enhancement and debt service coverage factors) must be typical and advantageous;

- (h) debt service coverage factors required by lenders should be provided by the applicant at the time of the Contract Document Submission; and,
- (i) in the case of tax exempt bond and 501(c)(3) bond financed projects, HTFC may waive or alter these requirements based upon the applicant's satisfactory demonstration of its necessity or may adopt the standards required by the bond issuer.

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Section: 5.0 DEVELOPMENT REQUIREMENTS

Sub Section 5.07 Subsidy Layering Review Process

A. Introduction: The Federal Housing and Economic Recovery Act of 2008 (the Act) authorizes changes to the Federal Low Income Housing Credit Program in order to simplify its use and enhance its value in creating and preserving affordable housing. Among these changes, the Act states that when project-based voucher assistance is proposed for newly constructed and rehabilitated structures the subsidy layering review (SLR) required in accordance with section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 shall be satisfied if a Housing Credit Agency (HCA) conducts an SLR. This section of the Capital Programs Manual outlines the purpose of performing SLRs, as well as the procedures that the Division of Housing and Community Renewal will utilize, consistent with the Department of Housing and Urban Development (HUD) administrative guidelines issued July 9, 2010 (75 FR 39561), for conducting these reviews.

B. Purpose of Subsidy Layering Reviews: The purpose of a subsidy layering review is to ensure that the amount of HUD assistance shall not be greater than is necessary to provide affordable housing.

C. Timing of Reviews:

An initial subsidy layering review will be performed by DHCR underwriting staff at the time of application review in order to determine the appropriate number of project-based vouchers, tax credits and/or DHCR capital funding to recommend for award.

A second, and in most cases final, subsidy layering review will be conducted prior to construction start. The second SLR will be based upon updated development and operating budgets submitted by the project sponsor. The Division's Section 8 Office will not execute an Agreement to Enter into Housing Assistance Payments (AHAP) contract until an SLR has been completed as evidenced by a certification from the Office of Community Development that the project is in compliance with HUD requirements.

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For projects requesting voucher assistance subsequent to receiving a carryover allocation of credit, the subsidy layering review will be conducted at the time the voucher request is received.

Per HUD guidelines, if prior to execution of the Housing Assistance Payment (HAP) contract, or during the period of the HAP contract, the owner receives additional HUD or other governmental assistance that results in an increase in project financing of 10% or more of the development budget used for the original subsidy layering review, the owner must report this change to the Division and a further subsidy layering review is required.

- D. Guidelines for Conducting Subsidy Layering Reviews: In conducting SLRs, DHCR underwriting staff will utilize the administrative guidelines issued by HUD in its notice of July 9, 2010 (75 FR 39561). The guidelines state that the required SLR may be fulfilled by the IRC section 42(m)(2) gap analysis review, if the review substantially complies with the SLR requirements detailed in the HUD notice. In addition, the HUD guidelines require the HCA to evaluate the effect of the project- based voucher income on project operating economics in order to assure that the amount of voucher assistance is no more than necessary to make the project feasible.

Specifically, the HUD notice requires that certain development and operations standards be applied by the HCA in conducting the SLR. These standards are summarized below.

1) Development Standards:

Net syndication proceeds to the project must be at or above the amount generally contributed by investors based upon current equity market conditions.

Development costs must be evaluated for reasonableness based upon HUD safe harbor standards and maximum allowable amounts.

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- (a) Safe harbor: These are generally applicable development cost standards. If project costs and fees are within the safe harbor standards, the project can move forward without the need for additional justification. If project costs exceed the safe harbor limits, the owner must provide additional documentation and justification that demonstrate the need for costs that exceed the safe harbor standards.
- (b) Maximum allowable amounts: These are firm limits which cannot be exceeded under any circumstances. Where HUD and DHCR maximum allowable costs or cash flow differ, the more stringent limit is applicable.
- (c) Safe Harbor Percentage Allowances & Maximum Allowable Amounts
- (i) **Builder's Fees** (as a percentage of the construction contract)
1. Safe Harbor:
 - a. General Requirements: 6%
 - b. Overhead: 2%
 - c. Profit: 6%
 2. Maximum:

The maximum combined costs for general requirements, overhead, and profit cannot be more than 14% of the construction contract.
- (ii) **Developer's Fee**:
1. Safe Harbor 12% of total development cost
 2. Maximum 15% of total development cost

To the extent that any of the fees exceed the safe harbor limits, the excess above the safe harbor must be justified to the Division's satisfaction based upon project size, characteristics, location and risk factors. If unjustified, the underwriter will reduce fees to the safe harbor standard, and perform the tax credit gap analysis based upon reduced project costs.

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(iii) Net Syndication Proceeds: The LIHC equity going into the project must be at or above the market price. The safe harbor minimum for the LIHC equity pricing will be established by DHCR based upon its assessment of the market price for similar projects. If the amount of equity is below the current market price without satisfactory documentation of the reasons for the lower amounts, DHCR will reduce the allocation of LIHC to bring the value of the tax credits at or above the minimum LIHC equity price.

(2) **Operations Standards:** The impact of project-based voucher assistance on the project's fifteen year operations pro forma must be evaluated as part of the subsidy layering review. HUD requires the following standards to be applied:

- (a) **Debt Coverage Ratio (DCR):** In any year the DCR cannot be more than 1.45 or less than 1.10.
- (b) **Cash Flow:** In any year, the cash flow cannot exceed 10% of the total project operating expenses.
- (c) **Trending Parameters:** The HCA may use the trending assumptions that it deems appropriate and reasonable to the project market area. Generally, operating expenses should be trended between 3% - 7% per year, and annual rent increases between 2% -5%.

To the extent that the project exceeds the DCR and cash flow limits, DHCR will do further trending analysis of the 15 year pro forma to determine whether the project is receiving more governmental assistance than is necessary to make the project feasible. If that is found to be the case, then the owner will be asked to revisit the operating pro forma to bring cash flow and/or DCR down to allowable levels. If the owner declines, the number of vouchers proposed will be reduced or the proposed rents will be lowered as required by the HUD guidelines.

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Please note that per HUD guidelines, if the PBVs are requested subsequent to the issuance of a carryover allocation of credit, the SLR will be limited to only a review of the project's 15-year operations pro-forma as described above.

E. Basis of Review:

DHCR underwriters will review the following to conduct the subsidy layering review:

- (1) DHCR Forms:
 - (a) Residential Development Budget with all proposed sources and uses of funds;
 - (b) Rent and Affordability Plan;
 - (c) Income and Operating Budget; and
 - (d) Tax credit exhibits- Qualified Building Information and LIHC Project Summary.

- (2) Other Documents:
 - (a) Commitment letters from all financing sources disclosing significant terms;
 - (b) Tax credit equity investment commitment letter, or if available, limited liability corporation operating agreement/limited partnership agreement;
 - (c) Appraisal supporting budgeted acquisition cost; and
 - (d) Letter from entity allocating Project Based Vouchers authorizing/approving the PBV assistance.

In addition, applicants must submit to the Division, a completed copy of HUD form 2880 Applicant/Recipient Disclosure/Update Report with original signature. DHCR reserves the right to request other documents as needed in performing the subsidy layering review. All documents required for the subsidy layering review must be submitted to the Regional Office project manager. The project manager will forward the material to the underwriter for evaluation.

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- F. Completion of Review: If upon completion of the SLR, the DHCR underwriter finds that the project is in compliance with HUD requirements, the Office of Community Development will issue an HCA certification that the Section 8 project-based voucher assistance awarded to the project is not more than necessary to provide affordable housing. The certification will be sent to the Division's Section 8 Office and to HUD. If the underwriter finds the project to not be in compliance, the project owner will be contacted to discuss any necessary changes.

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Section: 5.0 DEVELOPMENT REQUIREMENTS
Sub Section 5.08 LIHC Program Development Requirements

This sub-section describes the general development requirements of the DHCR for projects funded by LIHC/SLIHC ONLY, i.e., standalone credit projects. (No other capital financing required from DHCR/HTFC.)

5.08.01 Site Control

DHCR requires that applicants have some form of site control for all buildings and/or sites included when applying for projects.

Acceptable forms of site control, in order of DHCR preference, include:

- Executed Deed evidencing ownership by applicant or owner;
- A title report not more than 90 days old at the time of submission showing that the applicant holds title;
- A contract of sale between applicant and the property owner which describes the terms and conditions for the conveyance of title of the site at a designated price during a specific period.
- An Option to Purchase which is renewable or with a term of no less than six months from the date of application.
- A local Land Disposition Agreement;
- A letter from a public agency providing a site to the applicant under specified conditions within a time frame consistent with the proposed Development Timetable;
- A letter from the NYC Department of Housing Preservation and Development (HPD) which specifies expiration date and clearly matches property included in plans and project summary; or
- A lease with a term that equals the applicable program's regulatory period.

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DHCR reserves the right to accept other evidence of site control for State-or-federally-owned sites, or those owned by entities affiliated with the State or federal government. If a site is owned by any government entity, the applicant should describe the current status of the project site in the land disposition process.

5.08.02 Site Acquisition

If the project includes the acquisition of property, the applicant must document the absence of encumbrances which would impair the applicant's ability to complete the project. All site acquisitions at a market price must be arms-length transactions between the seller and the applicant.

The site purchase price must be documented in a fixed price purchase contract or a fixed price option to purchase the property. Such contracts or options must allow for the site acquisition to occur in a timely manner.

Only that portion of the site's value which is necessary for the project may be recognized as a project cost. The specific amount of the site purchase price that will be recognized as a project cost is limited to the lesser of: the purchase price; or the value established by an appraisal acceptable to DHCR (see Sub-Section 5.08.03). Costs related to acquisition which also may be eligible project costs, depending on the specific program, include: legal fees, financing costs, mortgage recording tax, tax escrow payments, insurance premiums, water and sewer charges prior to construction, recording and filing fees, appraisal fees, title search and insurance costs, site surveys, and other related costs. If the seller has an identity of interest with any participant involved with the project then it must be disclosed in the application. Valuation must be documented via an acceptable appraisal. In lieu of an appraisal the price of the subject property from the last sale by an unrelated seller, if within 24 months from the date of application, plus associated carrying costs, will be used to determine the approved sale price.

5.08.03 Appraisals

Acquisition costs for any individual site which exceed \$100,000 must be supported by an acceptable appraisal(s). If site acquisition costs exceed \$250,000, DHCR may require two appraisals. If there is an identity of interest between the seller and any project participant, an appraisal must be provided even if the acquisition cost is below \$100,000.

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In addition, DHCR may also engage a review appraiser for further documentation of site value. The applicant should reference the types of certifications below to determine the minimum qualifications necessary. All appraisals should be conducted pursuant to a contract between the applicant and the appraiser.

An acceptable appraisal must document and conclusively estimate the “as is” fair market value of the site and provide separate evaluation for the land and structure in a rehabilitation project. Fair market value is the price which a property will most probably bring in a competitive and open market under all conditions requisite to a fair sale, assuming the price is not affected by undue stimulus including special public financing amounts or terms, and that the buyer and seller act prudently and knowledgeably.

The following are the minimum requirements for an acceptable appraisal:

1. Must be certified to NYS Division of Housing and Community Renewal.
2. Must be prepared no **more** than six months prior to the date of the application.
Appraisals prepared more than six months, but less than one year, prior to the date of the application will be accepted, if the appraiser provides a letter confirming that the appraisal remains valid given current market conditions. In no instance will DHCR accept an appraisal prepared one year or more prior to the date of application.
3. Appraiser must have the appropriate certification/license to undertake the scope of the project.
 - NYS Licensed Real Estate Appraiser: non-complex, residential properties with a transaction value of less than \$1 million and non-complex, non-residential properties with a transaction value of less than \$250,000.
 - NYS Certified Real Estate Residential Appraiser: all residential, non-complex properties and non-residential, non-complex properties with a transaction value of less than \$250,000.
 - NYS Certified Real Estate General Appraiser: appraisals on all types of real property regardless of transaction value or complexity.
4. Must comply with the Uniform Standards of Professional Appraisal Practice.

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5. Must use the income, market, and replacement cost approaches (see Glossary under “Appraisal”) in estimating the fair market value of the site. For vacant land or where both the prior and proposed use of the property is a one-to-four unit dwelling, only the market approach is required.
6. For vacant land the “as is” value should be documented on a per acre basis (in NYC on a per buildable square foot basis) **AND** on a per unit basis. In selecting comparable sales, appraisers should not use prior sales of property sold to be developed as affordable housing. Significant deviations in value from comparable sales must be fully explained in the appraisal.
7. Must describe local economic conditions and analyze physical, demographic, economic and governmental factors affecting the highest and best use of the site except where transaction values for the acquisition of vacant land are less than \$100,000.
8. Must provide a sales & ownership history for the last 5 years and /or the last two sales, whichever represents a shorter time frame.

Other comments such as extraordinary assumptions and type of transaction (i.e., arms-length) together with a table of contents and pagination will assist in the determination of site value.

5.08.04 Physical Needs Assessment

The goal of the design requirements is to encourage the development of housing units that have a long life expectancy and that are durable, accessible, adaptable, relatively maintenance free, and provide quality living facilities.

All applicants who are requesting funding from LIHC/SLIHC/LIHB only and are renovating an existing structure(s) must complete and submit the Physical Needs Assessment Form which is an attachment in the Unified Funding Project Application. The applicant must request a site visit from the Division to enable staff to observe the building’s existing condition and discuss proposed renovations PRIOR to the application submission.

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5.08.05 Project Costs

A project must provide housing which represents good value for the State's investment. In making this determination, DHCR reviews total project cost (as defined in the Glossary) to ensure that acquisition and development costs fall within established guidelines.

- (i) Acquisition Costs – Projects with the acquisition costs of the building(s) may not exceed twenty five percent (25%) of the total development costs of the project unless it meets the parameters set forth in the QAP at Section 2040.2(N).
- (ii) Total Development Cost (TDC) – should reflect the reasonable and necessary cost of producing low-income housing; cost effectiveness will be an integral part of the technical reviews;
- (iii) Builder's Fees – up to **two** percent of construction costs may be used for builder's overhead; up to six percent of construction costs may be used for general requirements; and up to six **percent** of construction costs may be used for builder's profit.

PROGRAM NOTE: UF 2013 Early award applicants may use the higher builder's fees (4% overhead, 6% general requirements, and 10% profit) allowed under the current Qualified Allocation Plan (QAP). UF 2013 Standard round applicants must use the reduced builder's fee limits (14% total) in the proposed 2013 QAP.

- (iv) Developer's Fee – a developer's fee will range from 10% to 15% of the development cost; the applicant should refer to the QAP (Section 2040.3 (G)(2)(b)) for more specific information. **Developer fee may not be earned on project contingency. The HCR approved developer fee is set at the time of the initial feasibility review, and subsequent increases in fee due to higher project costs will not be allowed.**

Developer fees provide a cushion against construction, lease up risks and other unforeseen expenses. Therefore, at initial application review, requests for funding which require that greater than one third of the anticipated fee be deferred will be deemed not feasible.

Any applicant who proposes to defer a portion of their development fee must include an operating budget projection which supports the reasonable expectation that these fees can be paid within 15 years of the development's placed in service date. This repayment must

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be made from funds available after the payment of project expenses, including all debt service, according to the annual budget and payments to required reserves.

- (v) Project Contingency - up to ten percent of the sum of total soft costs and contractor's cost (excluding builder's fees) for projects involving the rehab of a vacant building and up to five percent for new construction projects and occupied- rehab preservation projects.
- (vi) Professional Fees – these include all professional services which are necessary to project completion, e.g. fees for project architect, legal counsel, engineer, surveyor, accountant, environmental monitoring, energy efficiency modeling & testing etc. as required. The following specific limits apply to architect's and legal counsel fees:
 - (a) Architect's Fees – up to five percent of construction costs for project design, and two percent of construction costs for construction supervision, depending on the project size. The fees for design should be lower if the project has multiple buildings of the same design.
 - (b) Legal Fees - project sponsor attorney's fees are limited to one percent of the total development cost.

NOTE: Housing Consultant Fees – fees charged by housing consultants to perform development activities on behalf of the developer (e.g. packaging of applications for funding; advising developer on the use of historic tax credits or brownfield tax credits; assisting with obtaining real property tax abatement etc.) are **NOT** an allowable cost in projects funded by LIHC and/or SLIHC.

- (vii) Construction Manager's Fees – (this fee is only available to projects without a general contractor) limited to five percent of project construction cost, and builder's overhead and profit may not be claimed
- (viii) Working Capital - up to two percent of the total development cost is allowed for Working Capital; escrows for taxes and insurance are generally limited to six months expense, supplemental management fees should be no more than one quarter of the monthly gross rent roll; applicants must itemize all items included in working capital and demonstrate need; any working capital remaining after the project has been in operation for one year should be transferred to the operating reserve;

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- (ix) Reserve Funds – The following initial deposit to project reserve funds are required.
- (a) Replacement Reserve (see Glossary for definition) –An initial replacement reserve capitalization of \$1,000 per unit is required for all LIHC/SLIHC funded projects. Additionally, the DHCR will recognize the capitalization of up to \$4,000 per unit to be set aside to cover the post-construction cost to fully adapt an accessible residential unit to meet the specific needs of a prospective handicapped household.
 - (b) Operating Reserve – (see Glossary for definition) – An initial operating reserve capitalization equal to the lesser of one percent of the total development cost or 50% of project gross rent is required for all LIHC/SLIHC funded projects.
 - (c) Debt Service Reserve – In the case of tax exempt bond financed projects, a debt service reserve may be funded based on the requirements of the bond issuer or the source of credit enhancement.

5.08.06 Underwriting Criteria

Applicants must establish that a project is financially feasible by demonstrating the following: that there is market support for the project; in general, that the proposed rents are equal to or less than comparable rents for the area; the estimated project income is sufficient to pay the estimated operating expenses, including any reserve fund contribution and debt service contained in the financing plan; and the reasonableness of operating and development budgets. In doing so, the applicant must address the following:

- (i) Comprehensive Market Studies - an applicant utilizing LIHC, SLIHC or LIHB must submit a professional market study conducted by an analyst pre-qualified by DHCR and in compliance with the guidelines described in Section 5.06 (i). Note: Applicants proposing projects located within the City of New York may prepare an analysis utilizing data from the most current “Housing NYC: Rents, Markets and Trends” report issued by the New York City Rent Guidelines Board for inclusion in their application. :
- (ii) Project Income – Applicants must demonstrate that the project will generate sufficient income to cover its operating expenses.

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- (a) Rent Plan – the applicant must submit with the UF application, a rent plan for the project estimating rental income, adjusted by a 5% vacancy and arrears loss. The rents approved by DHCR for the purposes of the LIHC reservation may be increased by the annual percentage increase in the area median income prior to initial rent up with DHCR approval, subject to the receipt and review of operating cost documentation supporting the need for the increase.

- (b) Non-Residential Income – if the project building also contains non-residential space, the budget for the non-residential space must be self-sustaining and accounted for separately. DHCR funds may not be used to subsidize the nonresidential portions of the project unless deemed appurtenant to the residential portion of the project. The feasibility of the project should not be predicated upon income from non-residential rents. Any non-residential income to be used to support the project operations should be conservatively estimated. Such income should be considered only on a net basis after deduction of vacancy loss and arrears, operating and maintenance expense, and debt service. The estimate for vacancy loss and arrears should be in the range of five percent for pre-leased space, to 15% for space which has not been leased.

- (iii) Operating Budget – the applicant must submit an estimated project operating budget which reflects as accurately as possible the expected rental income and operating costs of the project. The accuracy of the projections will be an important factor in feasibility. The operating budget should take into account the project’s design and construction, utility configuration, and type of population to be served (i.e., elderly, family, homeless individuals, etc). The applicant must submit an operating budget and supporting documentation at the time of application and, if there are changes, again at the time of binding agreement/carryover allocation. The applicant may use information from comparable projects as the basis for estimating expenses, such as maintenance, management, and various services (i.e., trash or snow removal, extermination, etc.) provided they are similar to the proposed project in type and located in the same market area. The applicant should identify the comparable projects used as a basis for their

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projections. Utility allowances, common utilities and heating expense (i.e., electric, gas, or fuel oil) should be estimated on the basis of consumption and rate schedules or vendor price. A utility estimate prepared by the project architect is also acceptable. Utility costs must be supported by a written estimate from the architect or vendor and should cover utilities paid directly by the tenant. The estimated insurance expenses should be documented by a written quote from an insurance broker including both the coverage and price. The applicant's estimate of property tax expenses should be documented by a counsel's letter confirming the legal basis for any exemption or abatement to be received by the project. If the project is to be fully taxed, the estimate should be documented by a letter from the assessor having jurisdiction, stating the basis for estimation and estimated amount of the post-construction value.

DHCR will not recognize more than a normal initial cash flow (e.g., \$35 per unit per month) unless a debt service coverage is imposed for purposes of a conventional loan or bond financing.

For LIHC/SLIHC projects that propose to defer a portion of their developer fee, see Section 5.08.05 (iv).

- (a) Replacement Reserve Contributions – Annual Replacement Reserve Contributions of a minimum of \$250 per unit are required for all projects. The annual contribution will continue throughout the life of the project with no ceiling.
- (iv) Financing Plan – the financing plan for the project must meet the following requirements:
 - (a) the total project cost must be financed by grants, loans, or equity, or a combination of the three;
 - (b) all project financing must be in place at or before the issuance of a binding agreement/carryover allocation;

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- (c) grants and/or equity financing cannot encumber the project in a manner which is inconsistent with the requirements of the applicable DHCR program;
- (d) debt service for loans must be supportable by the project's annual operating budget;
- (e) loan terms are expected to be at a fixed rate of interest for a 30 year term;
- (f) balloon payments of loan principal prior to the end of the regulatory term are permissible only if it can be demonstrated that refinancing is possible without affecting project rents;
- (g) The terms and conditions of construction and/or permanent financing must be economical and reasonable. The interest rates must be no more than the average rate level offered in the marketplace and the conditions (i.e. requirements on security, credit enhancement and debt service coverage factors) must be typical and advantageous.

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Section: 5.0 DEVELOPMENT REQUIREMENTS
Sub Section 5.09 Financing Requirements

These financing requirements apply to all funded projects with the exception of projects funded solely under LIHC/SLIHC

The applicant must provide firm commitments from all sources of loan and equity financing necessary for the project as part of the Contract Document Submission. Documentation of firm financing commitments must include at least the following:

- (i) identification of the applicant and other parties to the proposed financial transaction;
- (ii) evidence that the commitment is legally in effect until a date which is on or after the anticipated date of Contract Closing;
- (iii) evidence that the commitment is not subject to any conditions other than the availability of other proposed project financing and/or the implementation of the project as described in the application submitted to DHCR/HTFC; and
- (iv) interest rate and principal repayment terms.

All financing for the project, including that necessary for capitalization of reserve funds, must be made available on or before the Contract Closing. DHCR/HTFC may request copies of superior notes and mortgages for review and their use must be approved before execution of the documents or such lien occurs. Applicants may decide if they wish to apply for both construction and permanent financing or permanent financing only. Construction financing for private developers will be structured as recourse financing.

HTFC is permitted by statute to subordinate HTF loans to other loans made for eligible uses- i.e., residential. Housing Trust Fund resources may not be subordinated to financing for noneligible (non-residential) property. The underlying principle is that HTF resources may not be used as collateral for an ineligible use under the HTF statute. The most direct solution for a mixed use property is to create a separate condominium for the commercial/non-residential use.

DHCR is precluded by statute from providing financing for non-residential/commercial space development under both the HTF and HOME programs.

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There is an exception however, for HTF projects with non-residential/commercial space which qualifies as a community service facility (CSF). A CSF is a non-residential facility within an HTF-eligible project which provides services to the low-income residents of the neighborhood/area in which the project is located. Up to 10% of the HTF residential award amount may be used to finance costs associated with development of the CSF.

Recipients of HTF and HOME funds who plan to develop mixed use properties are advised to secure separate financing for the development of non-residential/commercial space which will not encumber the residential space. Under certain limited circumstances, DHCR will permit a residential project to be encumbered by a mortgage which also finances non-residential/commercial development, provided that the non-residential/commercial space is master leased for the length of the HTFC/HOME regulatory term to an entity controlled by or under common control of the applicant and a payment guarantee acceptable to DHCR to secure the payment of all rent obligations and expenses of the master lessee under the master lease is supplied to DHCR at or prior to the funding of its loan.

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Section: 5.0 DEVELOPMENT REQUIREMENTS
Sub Section 5.10 Insurance Requirements

The insurance requirements discussed below apply to all funded projects with the following exceptions:

(i) with regard to HDF's Program projects, the insurance requirements set forth here apply only to HDF interim acquisition and construction loans; and the fidelity bond requirement listed below also applies to HDF predevelopment loans; and

(ii) projects financed solely under the LIHC/SLIHC programs are not required to comply with any of the insurance requirements set forth herein.

Applicants (and their contractors and architects) are required to maintain appropriate insurance coverage during the development of the project as specified below. Binders or certificates for the following insurance policies must be submitted for review no later than three weeks prior to the scheduled date of the Contract Closing.

5. 10.01 Insurance Requirements for Applicants

Liability Insurance

Comprehensive General Liability:

- monetary limits of not less than \$1,000,000 for each occurrence (homesteading projects should obtain a \$1,000,000 "umbrella" liability policy);
- contractual coverage;
- DHCR/HTFC to be named as additional insured;
- 30 days prior written notice to DHCR/HTFC of cancellation, non-renewal, or change in coverage;
- single family HTF homesteading projects are required to obtain not less than \$300,000 in liability insurance

Property Insurance

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- monetary limits commensurate with the project's replacement value;
- DHCR/HTFC as mortgagee/loss payee (as applicable);
- 30 days prior written notice to DHCR/HTFC of cancellation, non-renewal, or change in coverage
- Builder's Risk Form - All Risk Coverage

Automobile Liability Insurance

Liability:

- to cover vehicles owned and operated by the applicant;
- monetary limits of not less than \$1,000,000;
- coverage for owned (if applicable), hired and non-owned vehicles;
- 30 days prior written notice to DHCR/HTFC of cancellation, non-renewal, or change in coverage

Blanket Position Fidelity Dishonesty Bond

- amount of coverage equal to the amount of the largest anticipated disbursement;
- DHCR/HTFC as sole loss payee/obligee;
- 30 days prior written notice to DHCR/HTFC of cancellation, non-renewal, or change in coverage

Workers' Compensation and Disability Benefits Insurance

- Must be provided by the employer for all employees performing work related to the project.

Title Insurance

- insuring DHCR/HTFC's interest as mortgagee in the maximum amount of the DHCR/HTFC financing to be provided;
- required for all projects in which a mortgage securing the DHCR/HTFC financing is required;
- property description must match a survey certified to DHCR/HTFC, the applicant and the title insurance company (survey must plot the proposed project and all existing easements); and
- an insurance binder must be delivered at closing insuring DHCR/HTFC's interest in the property, free and clear of all liens, encumbrances and restrictions except as may have been previously approved.

5.10.02 Insurance Requirements for Builders Under Direct Contract with Applicants

Liability Insurance

Comprehensive General Liability:

- monetary limits of not less than \$1,000,000 for each occurrence;
- contractual coverage;
- applicant to be named as additional insured;
- DHCR/HTFC to be named as additional insured;
- 30 days prior written notice to DHCR/HTFC of cancellation, non-renewal, or change in coverage

Builder's Risk Insurance

- monetary limit to cover cash value of completed work on the project;
- DHCR/HTFC as mortgagee/loss payee (as applicable);
- 30 days prior written notice to DHCR/HTFC of cancellation, non-renewal, or change in coverage

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Automobile Liability Insurance

Liability:

- coverage of owned (if applicable), hired and non-owned vehicles;
- monetary limits of not less than \$1,000,000;
- 30 days prior written notice to DHCR/HTFC of cancellation, non-renewal, or change in coverage

Workers' Compensation and Disability Benefits Insurance

- Must be provided for all employees performing work related to the project.

Performance and Payment Bond(s)

- coverage for 100% of value of construction contract;
- applicant and DHCR/HTFC as obligees/loss payees.

5.10.03 Project Architect's Insurance

DHCR/HTFC recommends that applicants require their project architects to meet the applicable insurance coverage parameters specified below, depending upon the dollar amount of the project construction costs:

- (i) for projects with construction costs of less than \$750,000, no professional liability insurance is required;
- (ii) for projects with construction costs of at least \$750,000, but less than \$2,500,000, a minimum of \$1,000,000 professional liability insurance should be required; and
- (iii) for projects with construction costs of \$2,500,000 or more, a minimum professional liability insurance coverage of one-half the construction costs should be required.

Coverage should extend from the date of the Owner/Architect Agreement to one year after the substantial completion of the project. If a project architect does not carry professional liability insurance, project professional liability insurance coverage may be carried in lieu of blanket coverage.

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The permanent lender on HDF Program projects must certify that architect's liability insurance is an eligible expense.

Applicants are encouraged to pursue tax exemptions or abatements with local municipalities for all or a portion of the project. Any anticipated tax exemptions or abatements should be documented as outlined in Section 5.06(I)(iii). At the time of Contract Document Submission a signed payment-in-lieu of tax agreement must be submitted in support of this operating budget expense.

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Section: 5.0 DEVELOPMENT REQUIREMENTS
Sub Section 5.11 Real Property Tax Exemption

Applicants are encouraged to pursue tax exemptions or abatements with local municipalities for all or a portion of the project; particularly the benefits available under Section 581-A of the NYS Real Property Tax Law. This tax provision provides that affordable housing be assessed on the basis of the income approach for determining value. Applicants who pursue tax exemptions or abatement may receive additional points in the rating and ranking of their application(s) if tax exemptions or abatements have been obtained and documented.

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Section: 5.0 DEVELOPMENT REQUIREMENTS
Sub Section 5.12 Professional Service Contract Requirements

These requirements apply to all funded projects with the exception of :

- (i) projects funded solely under LIHC/SLIHC;
- (ii) projects funded from the HDF Program for which DHCR is not the lead review agency.

Applicants must comply with the provisions of this Section when selecting project architects, engineers, attorneys, construction managers, housing consultants, managing agents, or other professionals to provide all or a portion of the professional services required to develop a project. Professionals should be selected based on their professional and technical competence, relevant experience, knowledge of local laws, regulations and codes, price, and capacity to provide services in a timely manner. Formal bids are not required when selecting contractors for professional services; however, informal bids are required from at least three-to-four firms or individuals. The lowest, qualified bidder should be selected, or a detailed explanation of the reasons for not selecting the lowest qualified bidder must be provided.

DHCR/HTFC encourages applicants to utilize the services of M/WBEs in the performance of contracts. Please see Section 4.00 for a discussion of M/WBE requirements, and for details on how to obtain a M/WBE Directory.

In the event of inconsistencies between this Section and the federal HOME regulations, the HOME regulations shall apply.

5.12.01 Selection of an Architect/Engineer/Construction Manager

All agreements between applicants and project architects or engineers must reflect a fixed fee compensation for all services required by DHCR/HTFC. The fixed fee should be structured so that payment is tied to successful completion of the various phases of work proposed (i.e., preliminary design, bid design, construction documents, etc.). Applicants should make OCD's Design Handbook available to the project architect as early as possible to ensure that the cost of services reflect the documentation required by DHCR/HTFC. All Owner/Architect agreements must be signed by the

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architect and submitted to DHCR/HTFC for review. Agreements that are already signed by both the architect and owner may require amendments if not acceptable to DHCR/HTFC. The following basic services and terms should be included in the Owner/Architect Agreement:

- (i) for rehabilitation projects, measured drawings showing all pertinent existing conditions of the building;
- (ii) for projects with construction costs greater than \$250,000, full-size as-built drawings and CD Roms(3) indicating the actual construction work performed on the project, including all change orders, addenda and modifications to the bid documents;
- (iii) detailed cost estimates for the UF application and bid documents; and
- (iv) no interest payable for unpaid balances.

The cost for any additional services required from the project architect must also be included in the fixed fee. Additional services may include the following:

- (i) providing structural, mechanical, electrical and/or landscaping services beyond basic services;
- (ii) providing site surveys, soil tests, and asbestos reports and tests;
- (iii) preparing asbestos removal plans and specification documents; and
- (iv) providing services for the project owner's construction manager.

All reimbursable costs, including printing, travel, meetings, and fees for securing governmental approvals should be separately itemized and included in the fixed-fee price. Fees may be charged on an hourly basis, provided that a maximum upset price is given

If the project architect has an identity of interest with the applicant/owner, or builder, the architect cannot perform construction monitoring services.

The percentage of fee by phase will be reviewed for compliance with the following schedule:

- Preliminary Phase < 15% Fee
- Design Development Phase < 20% Fee
- Construction Documents < 40% Fee
- Bidding/Negotiating < 5% Fee
- Construction Monitoring > 20% Fee

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- Total Fee - 100% Fee (Including submission of As Built drawings)

It is the project sponsor's and architect's responsibility to ensure that the Agreement has the proper dates, names, project address(es), project description and authorized signatures.

The use of AIA Document B141 (current edition) is required by DHCR/HTFC for all Owner/Architect agreements. If an architect's or engineer's contract fee is over \$25,000, the applicant must submit a M/WBE Utilization Plan prior to the contract execution.

The project sponsor and architect will be required to certify to DHCR/HTFC that care was taken to ensure compliance with all of the Design Handbook's requirements.

Please Note: Construction cost overruns will not be the responsibility of DHCR or HTFC.

5.12.02 Selection of a Construction Manager

Applicants which propose to act as their own General Contractor or plan to utilize a construction manager in lieu of bidding for a general contractor must document that they have:

- (i) a minimum of five years of successful experience administering construction;
- (ii) the in-house staff capacity and experience to negotiate and direct the functions of both the project architect, construction, and/or construction manager; and,
- (iii) the financial capacity to provide a 100% performance and payment bond for the entire construction cost.

The applicant must document a proposed construction manager's ability and experience in managing the type and size of project proposed by demonstrating the following:

- (i) a minimum of five years experience as a construction management firm;
- (ii) three years of management experience in the field of residential construction; and,
- (iii) two years of experience with not-for-profit organizations and/or governmental agencies.

The construction management firm must also document and certify that there is no identity of interest between the firm and the applicant/owner and/or the project architect.

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The owner/construction manager contract must detail the responsibilities to be performed and the fee charged for each major activity, as well as due dates for all deliverables. Projects using a construction manager may not include builder's overhead or profit in the development budget nor have a general contractor. The functions detailed in the owner/construction manager contract must not duplicate any of the functions of the project architect.

A fixed price, limited to five percent of the estimated construction costs, is the generally accepted construction manager's fee. Applicants which plan to use a construction manager must ensure that the project architect prepares bid documents which allow for trade work to be bid separately. The construction manager may not act as a subcontractor on the project. The applicant must bid all work prior to the Contract Closing and must guarantee the total construction cost of the project. If the project employs a construction manager, DHCR/HTFC will not recognize the cost of a general contractor and no builder's profit or overhead may be requested.

AIA Document B801 (current edition) for owner/construction manager agreement is required unless justification is submitted for not doing so, and is approved in advance by DHCR/HTFC. Applicants must provide the owner/construction manager agreement with detailed cost estimates with the UF Application and Bid Document Submissions. If the contract amount for the construction manager fee is over \$25,000, the applicant must submit a M/WBE Utilization Plan prior to execution of the contract.

5.12.03 Selection of a Housing Consultant

The applicant's agreement with a housing consultant to provide services related to the project's planning, marketing, housing management, and/or development must reflect a fixed fee arrangement based upon defined services to be provided by the consultant. Payment should be structured into phased progress payments associated with the percentage of work completed for each phase (i.e., planning phase, marketing phase, construction phase, occupancy phase, etc.). OCD's project manager will review all consultant agreements for reasonableness of costs and clarity of the scope of work to be performed. DHCR/HTFC reserves the right to require an amendment to the agreement before funding is provided.

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Housing consultant fees are not allowed for projects funded with LIHC and/or SLIHC equity.

For those non-LIHC/SLIHC funded projects receiving a nonprofit developer's allowance (NPDA), the housing consultant fee will be deemed to be a part of the NPDA.

5.12.04 Selection of Attorneys

The applicant should identify the scope of legal services to be provided throughout the development of the project, and request that the attorney prepare and submit an agreement specifying the legal services to be performed at a fixed fee compensation. The following legal services may be included in the applicant/attorney agreement:

- (i) preparation and review of all applicant agreements;
- (ii) representation of the applicant at all closings;
- (iii) title examination and curing of title defects; and
- (iv) preparation of legal descriptions of property, and recording of title papers.

If the contract amount for the Attorney's fee exceeds \$100,000, the applicant must submit an M/WBE Utilization Plan prior to execution of the contract.

5.12.05 Selection of a Builder

5.12.05.a Construction Contracting Requirements

DHCR/HTFC has two tracks for the contracting of construction work for its low-income housing projects. At the time of application funding, a project sponsor must identify which method of securing a construction contractor will be utilized. The first track is for a project sponsor seeking construction bids through a publicized, competitive process. The second track is for a project sponsor to identify and select a builder at the time of application submission. Under either track, should a project sponsor elect to produce housing through the use of a manufactured housing company, the purchase contract and supervision of such housing must be done as a sub-contract to the general contractor's/construction manager's contract. The requirements for both tracks are enumerated in the sections below.

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1. Publicized, Competitive Bidding

Project sponsors electing to publicly and competitively bid the construction portion of their low-income housing projects must indicate this intent at the time of application submission.

This type of contractor selection will require the project sponsor to openly advertise in a well-known local newspaper for a period of four days and have a minimum bidding period of four weeks before bids are closed. MBE/WBE outreach requirements will be part of the bidding process. HOME funded projects with 12 or more units or projects with 9 or more units of project based assistance are subject to Federal Labor Standards (Davis-Bacon Related Acts) regulatory requirements. The labor standards procedures for competitive bidding must be followed for these projects. Upon receipt of bids, the project sponsor and architect must notify DHCR/HTFC of the bidding results and the name of the selected lowest qualified bidder. The contractor's schedule of values must also be submitted to DHCR/HTFC at that time. DHCR/HTFC reserves the right to rebid a project or to negotiate a reduction in the scope of work, if all bids received are higher than the project's estimated total construction cost.

Since no contractor is available at the time of application submission, the project sponsor must ensure that the terms of the Owner/Architect Agreement include services for a detailed construction cost estimate prepared by a cost estimator based upon the preliminary drawings and specifications.

2. Pre-Selected Contractor/Construction Manager Requirements

Project sponsors who elect to include a construction manager (CM)/contractor with their application for funding will be required to indicate the selection criteria that was used to hire the CM/contractor, the CM/contractor's previous professional experience in producing low-income housing units, the role the CM/contractor will play during the development and construction phases of the project and that the CM/contractor or project sponsor is capable of obtaining a 100% Payment and Performance Bond for the entire construction project.

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In addition, a pre-selected contractor will be responsible for providing a detailed cost estimate of the construction work based upon the preliminary drawings and specifications with the project sponsor's application submission. If the Davis-Bacon Related Acts apply to a project the Federal Labor Standards clauses for the relevant federal program and the most current wage rate for the location and type of construction must be incorporated into the contractor/construction manager agreement. The construction cost estimate must include general requirements (3% to 6% of the labor and material costs); builder's overhead (up to 2% of construction amount allowed); and builder's profit (up to 6% of the construction amount allowed). General requirements that are special conditions such as security, impact fees, etc. to a project should be detailed on a separate itemized listing.

At the time of application submission, the project sponsor must provide a guaranteed price for the total development costs of the project. Any construction cost overruns incurred during the development and construction phases of the project shall be borne by the project sponsor and shall be paid for from the developer's fee amount. Using a pre-selected contractor permits the project sponsor to "by-pass" the Bid Document Submission stage; thus creating only one set of submission requirements, the Contract Documents.

All MBE/WBE requirements applicable to the pre-selected contractor must be documented through the contractor's selection process for sub-contractors and suppliers.

Applicants must maintain documentation of bid procedures, including invitations to bid, bid tabulations, M/WBE solicitation procedures, and written justification should a low bidder not be selected.

References should be carefully checked to ensure that the bidders and the selected builder have prior experience with comparable size projects, the financial capacity to complete the work, including sufficient working capital to cover carrying charges, and have satisfied any letter of credit/bond premium/retainage requirements.

The standard AIA A101 Owner/Contractor Agreement Form (current edition) should be used to execute construction contracts.

It is advised that per-unit costs be included in the bid documents in the event that unforeseen problems occur. For multi-site construction projects, the bid documents should also provide clear instructions for the builder to provide bids on an individual site basis.

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All projects must provide a summary bid tabulation prior to the execution of Contract Documents to be reviewed for cost reasonableness. The selected builder must submit a detailed cost estimate/trade payment breakdown at the time of Contract Document Submission.

Any applicant which proposes to act as the builder or general contractor on its own projects must show successful prior experience, bear the responsibilities, and meet the requirements of builders or contractors.

Municipal applicants may be required to abide by the Wicks Law, which requires separate bidding and contracts for a minimum of four major construction trades. Non-municipal applicants may bid project work using a single builder. If the contract between the builder and the applicant is for an amount greater than \$100,000, the applicant must submit an M/WBE Utilization Plan prior to execution of the contract, or within 90 days of the date assigned for the return of the HTFC commitment letter, whichever is sooner.

Contractors will not be allowed to obtain a profit and overhead unless they are performing actual construction. "Actual construction" means "work" as defined in American Institute of Architects (AIA) documents: "...labor, materials, equipment, and services provided by the contractor to fulfill the contractor's obligations." Under this definition contractors who choose to subcontract out construction of the project to another contractor will not obtain a builder's fee (general overhead and profit) when:

- (i) More than 50 percent of the contract sum in the construction contract is subcontracted to one subcontractor, material supplier, or equipment lessor, and/or
- (ii) Seventy-five percent or more with three or fewer subcontractors, material suppliers, and/or equipment lessors.

Note: If two or more subcontractors have common ownership, they are considered one subcontractor.

5.12.06 Selection of a Managing Agent

Owners which propose to utilize a managing agent must document that the agent holds a New York State real estate broker's license. Both owners which propose to utilize a managing agent and those which are planning to manage the project with their own staff must:

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- (i) document that any person authorized to receive, handle or disburse any monies of the project, is covered by a blanket position fidelity bond which is issued by the Superintendent of Insurance of the State of New York, which names the owner as obligee, and an amount of coverage equal to three months rent role and all project reserve funds;
- (ii) document their experience in managing similar low-income housing projects of the same size and complexity;
- (iii) maintain an office or place of business within the State of New York at no cost to the project owner;
- (iv) establish a monthly fee if a managing agent is to be used for services set forth in the Management Plan;
- (v) provide an organization plan setting forth lines of responsibilities and authority among those persons assigned to the housing project, including the owner's staff;
- (vi) provide an operational plan that details the staff member(s) or agent's functions with regards to marketing, physical maintenance, financial administration, resident relations and general administration; and
- (vii) provide an affirmative action plan to ensure that the staff member(s) or agent recruits, selects and retains employees in such a manner as to ensure equal employment opportunities and that the agent solicits bids from minority and women-owned business enterprises.

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Section: 5.0 DEVELOPMENT REQUIREMENTS
Sub Section 5.13 Private Developer Requirements

The following requirements apply only to private developers of projects funded under:

- (i) HTF; and,
- (ii) LIHC.

Please see Section 2.01 for a discussion of the private developer minimum equity contribution requirement specific to the HTF Program.

5.13.01 Guarantee of Construction Contract Costs

Private developers will be required to adhere to the award amount in their Funding Commitment (see Sub-Section 3.02.08). Any additional costs or cost increases must be paid for by the developer.

5.13.02 Construction Loans Made to Private Developers

For projects administered by HTFC, interest, legal closing, and construction monitoring fees will be charged when construction loans are provided to private developers. Construction loan interest will generally be six percent simple interest on the outstanding loan principal. It is calculated as follows:

- (i) the principal amount of the loan is multiplied by 0.5 to arrive at the average outstanding balance;
- (ii) three months is added to the number of months in the construction period (for cost certification and HTFC approval of conversion of construction loan to permanent loan) and the total then is divided by 12;
- (iii) the product of step 2, is multiplied by 0.06 (six percent); and
- (iv) the product of step 1 is multiplied by the product of step 3 to produce total construction period interest.

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A construction loan closing fee, generally \$2,500, will be charged to reimburse DHCR/HTFC legal expenses. A construction inspection fee, generally \$15,000, (* Exceptions will be made for small projects whose development costs are less than \$1 million and whose developers are not for profit organizations). Fees may be increased for complicated projects, such as those with environmental or historic preservation issues. Such fees will be specified in the HTFC commitment letter and will be charged to reimburse a portion of such cost to HTFC. Construction interest, closing cost and inspection fees will be paid at the time of construction loan closing.

HTFC may reduce or waive some or all of the above charges if it decides that imposition of such charges would significantly impact either project feasibility or the affordability of project rents.

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Section: 5.0 DEVELOPMENT REQUIREMENTS

Sub Section 5.14 Persons with Special Needs Requirements

5.14 Persons with Special Needs Requirements

A project is considered a project for persons with special needs if it targets 15% to 24% of its total units to one, or more, of the following populations and includes a supportive service plan where off-site services are to be delivered by either an independent service provider or by the housing sponsor:

- Persons with AIDS/HIV Related Illness;
- Persons and Families who are in long term recovery from Alcohol/Substance abuse;
- Persons with Psychiatric Disabilities;
- Persons and Families who are Homeless Persons and Families including Youth aging out of foster care and Veterans who are Homeless;
- Persons with Physical Disabilities;
- Persons who are Victims of Domestic Violence;
- Persons with Mental Retardation/Developmentally Disabled, and Persons who are Frail Elderly

If the project is also an elderly project, an aging-in-place plan is required.

Supportive housing shall mean projects which give preference in tenant selection to persons with special needs for at least 25 percent of the LIHC-assisted units. To be considered supportive housing a project must meet all of the aforementioned persons with special needs criteria and comply with the following:

- (1) The applicant must document the need for housing for the targeted population within the primary market area;
- (2) The applicant must ensure the delivery of appropriate services, for which a documented need exists, to the targeted population as evidenced in a comprehensive service plan as evidenced by a commitment of funding for services or a viable plan for funding services and an agreement in writing with an experienced service provider;
- (3) The applicant must include a transportation plan to ensure access to necessary services;

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- (4) The applicant must have funding in place or identify a viable plan for the funding of appropriate services;
- (5) The applicant must include provision for an ongoing rental subsidy or other form of subsidy which will be available to ensure that rents paid by the targeted population remain affordable; and
- (6) The applicant must identify, and have a written agreement with, a public agency or experienced service provider that will refer eligible persons and families for the targeted units. The comprehensive service plan requirement for a written agreement with an experienced service provider may be satisfied by utilizing the DHCR/HTFC model Housing/Service Agreement which can be found on the DHCR website at <http://www.nysdhcr.gov/Forms/SpecialNeeds/index.htm>. The written agreement requirement may also be satisfied by using a document which incorporates all of the terms of the model Housing /Service Agreement.

5.14.01 Aging in Place Plan

Applications proposing to serve persons who are elderly must submit a plan to address the aging in place of elderly tenants. An elderly project is defined as one that excludes non-elderly persons based on age, and as prescribed by the Federal Fair Housing Act and the New York State Human Rights Law, Section 296 of the Executive Law.

This plan must identify the following:

- project staff functions related to tenant requests for information/assistance;
- what services are anticipated to be requested/required by elderly tenants;
- means for helping tenants access services which they may request/require;
- any community organizations that will address tenants' service needs; and,
- the design features which will be included to accommodate tenants' aging.

5.14.02 Identification of Elderly Project Structure

Applicants proposing projects serving the elderly must identify whether their project will be structured as a 55 or older project or as 62 or older project:

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- A 55 or older project is a project in which at least 80% of the occupied units are occupied by at least one person who is 55 years of age or older.
- A 62 or older project is a project in which ALL occupants are persons 62 years of age or older.

Under both structures, the projects must be intended and operated as an elderly housing project. For further details, reference the Fair Housing Law exemption found at 24CFR 100.

In HTFC projects which are jointly financed by the US Department of Agriculture Rural Housing Services, an elderly project can only be occupied by persons 62 or older, or by handicapped persons of any age.

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Section: 5.0 DEVELOPMENT REQUIREMENTS
Sub Section 5.15 Federal Labor Standards Requirements

5.15 Federal Labor Standards Regulatory Requirements (Davis-Bacon Related Acts)

Federal Labor Standards regulatory requirements (Davis-Bacon Related Acts) are enforced for certain Federal programs when projects meet specific threshold requirements such as HOME funded projects with 12 or more units or projects with 9 or more units of project based assistance.

The Federal Labor Standards regulatory requirements (described in Title 29 CFR Parts 1,3,5, 6,7) are comprised of the Davis-Bacon Related Acts, (DBRA); Contract Work Hours and Safety Standards Act (CWHSSA); the Copeland Act (Anti-Kickback Act); and the Fair Labor Standards Act (FLSA).

The DHCR Contracting Officer enforces the Federal Labor Standards requirements and rules promulgated by the HUD Office of Labor Relations. These requirements include providing initial information on wage rates, making determinations of appropriate rate schedules, locking in wage rates, and serving as a the depository for required federal payroll filings throughout the project.

- A. Project Owner requirements prior to executing an owner-general contractor agreement:
 - 1. Contact the DHCR Contracting Officer for a determination regarding application of appropriate wage rate schedule (residential or building) to the structures on the project.
 - 2. Review contractor eligibility (debarment status) for federal contracting prior to entering into a federally assisted construction contract subject to these requirements. Federal funds will not be paid for work performed by debarred contractors and sub-contractors.

- B. General Contractors/Construction Managers are required to:
 - 1. Lock in wage rates and file with the DHCR Contracting Officer copies of either: Documentation identifying: ‘start of construction’ date; copy of an owner –general contractor agreement containing both the federal program’s labor standards clause, and the most current wage rate for the schedule and location of construction; or variances or other similar communications from the U.S. Department of Labor.

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2. Ensure that all bid documents, contracts and subcontracts contain applicable Federal labor standards clauses and Davis-Bacon wage decision. No contract is awarded to an ineligible subcontractor, (e.g., debarred) for federally assisted work.
3. Post the applicable wage decision (or alternative Project Wage Sheet, HUD form 4720) and Department of Labor 'Notice to Employees' (WH-1321) at the job site at a location accessible to all employees. (Pre-printed copies of the WH-1321 with DHCR Contracting Officer contact information will be provided to each project.)
4. Provide appropriate staffing, capable of: reviewing weekly certified payroll reports and related documentation from employees and sub-contractors; identifying discrepancies and/or violations; ensuring that any needed corrections are made promptly; making discrepancies known to the DHCR Contracting Officer along with payroll submissions; and cooperating with on-site inspections.
5. Submit original payroll reports to the DHCR Contracting Officer promptly after each construction draw. This must be accompanied by a summary sheet listing all active subcontractors on site, the name of the project and the project SHARS number.

If any skilled trades or laborer rates are not listed on the published wage determination, but required for the project, file a HUD 4230a form with the DHCR Contracting Officer requesting Department of Labor approval of a wage rate for the missing wage classifications.

Any outstanding federal labor standards issues which remain unresolved at the end of the construction period may result in Federal funds not being released at finance closing. Contractors with U.S. Department of Labor penalties from previous Federal projects may have funds withheld from the current project's funding.

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Section: 6.0 CONSTRUCTION PROCESSING REQUIREMENTS
Sub Section 6.01 Introduction

6.01.01 Summary

Unless otherwise noted at the top of a specific heading, these requirements apply to the programs listed below. Some programs have additional requirements which are noted in the text; therefore, project participants should read this Section carefully.

- (i) the Low-Income Housing Trust Fund (HTF) Program;
- (ii) the Housing Development Fund (HDF) Program; and
- (iii) the New York State HOME Program (HOME).

This Section describes the DHCR/HTFC's: general construction processing procedures and requirements; the roles and responsibilities of the project participants; procedures for change orders, budget modifications, award increases and escrow accounts; the DHCR/HTFC disbursement process; and cost certification requirements, where applicable.

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Section: 6.0 CONSTRUCTION PROCESSING REQUIREMENTS

Sub Section 6.02 Construction Procedures and Requirements

6.02.01 Pre-Construction Meeting Requirements

A project's construction phase begins with a pre-construction meeting, which should be held within ten days of the Contract Closing. In requiring the pre-construction meeting, DHCR/HTFC's goal is to expedite the project's construction by setting forth all program regulations, procedures and contract requirements, as well as clearly delineating the roles and responsibilities of each of the project participants. Attendance at the pre-construction meeting is required of the project participants listed below:

- (i) the awardee, or its representative;
- (ii) the owner or its representative;
- (iii) the project contractor, or its representative;
- (iv) the project architect;
- (v) the A&E construction monitor;
- (vi) the F&D Project Manager;
- (vii) the A&E staff architect;
- (viii) The Davis-Bacon contracting officer, if applicable;
- (ix) the construction lender's representative, if applicable;
- (x) the representative of any other funding source, if applicable; and,
- (xi) the construction manager, or clerk of the works, if applicable.

It is the owner's responsibility to conduct the pre-construction meeting. The following agenda sets forth the topics that should be discussed during the meeting:

- (i) Introduction of project participants/signing of attendance sheet;
- (ii) Roles and Responsibilities of Project Participants:
 - (a) roles/responsibilities of owner;
 - (b) roles/responsibilities of contractor and construction manager/clerk of the works, if applicable;
 - (c) roles/responsibilities of project architect;

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- (d) roles/responsibilities of HCR project participants (F&D Project Manager, A&E construction monitor and A&E staff architect);
 - (e) roles/responsibilities of municipality's representative, if applicable; and
 - (f) roles/responsibilities of private lender and/or other funding source(s), if applicable;
- (iii) Review of General Conditions:
- (a) permits;
 - (b) progress schedule;
 - (c) list of subcontractors and suppliers;
 - (d) Schedule of Values;
 - (e) construction supervision;
 - (f) coordination between subcontractors;
 - (g) shop drawings and material submissions;
 - (h) payments;
 - (i) change orders;
 - (j) responsibility for damage;
 - (k) disputes;
 - (l) delays;
 - (m) as-built drawings;
 - (n) insurance;
 - (o) construction start and completion dates; and
 - (p) temporary facilities;
- (iv) Scheduling of construction meetings;
- (v) Scheduling of A&E site inspections; and
- (vi) Other issues

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The owner must prepare minutes of the meeting immediately thereafter, summarizing items discussed and specifying agreements made. Copies of the minutes must be distributed to each project participant, within 5 business days whether or not they attended the meeting. The project manager will review the minutes and respond to any discrepancies or errors, if necessary. Installation of DHCR project sign is a requisite for approval of first disbursement and photographic evidence of the sign shall be required. (See Design Handbook for sign specifications)

6.02.02 Roles/Responsibilities of the Project Owner

The project owner has the following responsibilities with regard to construction of the project:

- (i) selection and general supervision and coordination of the project contractor(s) during construction (the actions of the contractor(s) are the responsibility of the project owner);
- (ii) completing, within the time frame specified in the contract, a project which meets all program requirements;
- (iii) assuring compliance with all Minority and Woman Owned Business Enterprise (M/WBE) and Equal Opportunity requirements;
- (iv) if applicable, assure compliance with all Federal Labor Standards (Davis-Bacon Related Acts) regulatory requirements. In the selection of the general contractor/construction manager, assuring eligibility status of contractors on federally assisted contracts (not debarred).
- (v) processing and delivering all required paperwork regarding disbursement requests to the F&D Project Manager;
- (vi) notifying the project contractor, project owner, private lender and any other funding source(s) (if applicable) and A&E construction monitor of all construction work which is incomplete or incorrect and providing change orders for all changes in the construction documents prior to enacting any changes;
- (vii) immediately notifying DHCR/HTFC if the contractor or subcontractor places a mechanic's lien upon the project; and

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- (viii) for projects with total development costs greater than \$250,000, (or when required by DHCR/HTFC) providing DHCR/HTFC and the project owner with one set of as-built drawings at the time of project close-out, which include any significant deviations from the approved construction documents; and
- (ix) providing all required bonding, letters of credit, and/or retainages as required by the construction lender.
- (x) participating in the project's final inspection;
- (xi) operating and managing the project in accordance with all program requirements upon completion;
- (xii) complying with all program rules and regulations, and the provisions of DHCR's Audit and Accounting Manual. (With the exception of low-income homestead project owners, all project owners will be required to submit an annual CPA audit for the project within 120 days of the close of their fiscal year).

Project owners should also review Section 6.02.10 for a list of responsibilities with regard to construction documents.

HTF and HOME owners must meet cost certification requirements as described in Section 6.05 (Cost Certification). Applicants who will act as the project contractor are also responsible for performing the activities listed under Section 6.02.04 (Roles/Responsibilities of the Project Contractor). Applicants should also familiarize themselves with the project development responsibilities and requirements outlined in Section 5.00 (Development Requirements).

6.02.03 Roles/Responsibilities of the Project Architect

The project architect's responsibilities include, but are not limited to:

- (i) ensuring that the project is built in accordance with DHCR/HTFC approved construction documents and all applicable State and local codes, rules and regulations including the provision of adaptable and accessible requirements;
- (ii) making periodic site visits, but no less often than once every two weeks, to determine the quality and progress of the work, and its compliance with DHCR/HTFC approved construction documents;

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- (iii) notifying the owner and A&E construction monitor of any deficiencies, and giving written notification to the contractor to correct deficiencies;
- (iv) preparing and submitting any necessary reports advising the owner of problems, delays, changes and disputes;
- (v) preparing change orders;
- (vi) reviewing and approving shop drawings;
- (vii) participating in requisition meetings and punchlist and final inspections;
- (viii) identifying punchlist items and amounts to be withheld pending their correction;
- (ix) certifying that the project has been completed in accordance with the DHCR/HTFC approved construction documents, including any change orders; and
- (x) preparing as-built drawings, if applicable.

The project architect also has responsibilities with regard to construction documents, which are discussed in Section 6.02.10.

6.02.04 Roles/Responsibilities of the Project Contractor

The project contractor is responsible to the owner for performing the activities listed below. Project owners who also act as the project contractor must meet the contractor's responsibilities listed below, in addition to those of the owner listed in Section 6.02.02.

- (i) performing as specified in the Owner/Contractor Agreement (AIA A101 Form) including Davis-Bacon Related Acts requirements, if applicable;
- (ii) working with the owner and the project architect to resolve construction changes, delays and disputes;
- (iii) providing the Project architect and owner with written detailed cost estimates for all changes in the scope of work;
- (iv) participating in the requisition meetings, construction meetings, and punchlist and final inspections;
- (v) providing and updating the Schedule of Values;
- (vi) coordinating all on-site construction activities;
- (vii) providing on-site security (if applicable);

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- (viii) completing construction on schedule and within the DHCR/HTFC approved construction budget;
- (ix) meeting the bonding requirements outlined in Section 5.00 (Development Requirements);
- (x) meeting all contractor insurance requirements specified in Section 5.00 (Development Requirements);
- (xi) immediately notifying the owner if a mechanic's lien is placed upon the project;
- (xii) providing interim construction financing to meet all subcontractor payment requests;
- (xiii) supervising all subcontractors and suppliers; and,
- (xiv) documenting all changes for incorporation into the as-built drawings.

Contractors should review Sections 6.02.10, 6.02.11 and 6.02.12 for a discussion of responsibilities with regard to construction documents and stored materials.

6.02.05 Roles/Responsibilities of the Construction Lender

For some programs, DHCR/HTFC may, upon submission and approval of an escrow agreement, allow the construction lender to hold DHCR/HTFC funds in escrow for disbursement during the project's construction. This transfer of responsibility will take place only if there is no identity of interest between the construction lender and the owner or contractor, and provided the construction lender has the ability to perform bi-weekly project inspections. Other escrow account requirements are more fully discussed in Sub-Section 6.03.04.

In the event DHCR/HTFC agrees to the aforementioned arrangement, the construction lender will be responsible for performing one or more of the following activities (failure to perform designated activities will result in DHCR/HTFC freezing the escrow account or, in the case of permanent take-out, may result in the delay of settlement closing and/or a reduction in the permanent take-out amount):

- (i) administering the Construction Loan Agreement;
- (ii) making site inspections;
- (iii) approving construction work and change orders;
- (iv) disbursing progress payments and final payment;

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- (v) providing written monthly reports to the awardee, owner and DHCR/HTFC, detailing all deficiencies in construction work and/or delays and changes to construction documents;
- (vi) providing, at the time of project closeout, a final reconciliation of all transactions, fees, charges, and interest earned and paid out during construction;
- (vii) certifying to DHCR/HTFC that the required DHCR/HTFC closeout documents have been received and approved. DHCR/HTFC will not sign-off on the project's closeout or release the retainage until it receives such certification from the construction lender;
- (viii) returning all interest earned and/or unexpended funds to DHCR/HTFC within 90 days of project completion;
- (ix) releasing retainage only after DHCR/HTFC reviews and gives final approval of cost certification, if applicable; and
- (x) depositing any escrowed DHCR/HTFC funds in an interest-bearing account(s), the balance of each which does not exceed \$100,000, and agreeing to follow specific DHCR/HTFC policies for collateral and investment.

If the construction lender does not hold DHCR/HTFC funds in escrow, construction inspections will be done by DHCR/HTFC in conjunction with the construction lender's inspectors, and the monthly written reports on the construction work will be provided by DHCR/HTFC to the lender and owner.

6.02.06 Roles/Responsibilities of the F&D Project Manager

The F&D Project Manager has the following responsibilities during the project construction period:

- (i) coordinating all project correspondence with the owner, and with the HCR technical units;
- (ii) explaining to the owner all general disbursement and close-out procedures at the preconstruction meeting;
- (iii) reviewing and processing all payments, budget modifications, and award increase requests.

- (iv) notifying the owner and construction lender in writing of any construction problems that may prevent the DHCR/HTFC from executing its permanent take-out; and agreement, or approving any change order requests, which may result in the reduction of DHCR/HTFC funds available for permanent take-out; and
- (v) attending the project's final inspection.

6.02.07 Roles/Responsibilities of the A&E construction monitor

The A&E construction monitor is responsible for:

- (i) monitoring DHCR/HTFC Program's project construction on a pre-determined schedule based upon the size of the project, as discussed at the pre-construction meeting by the construction monitor, owner and contractor; (HDF projects will be inspected as set forth above only if DHCR/HTFC is the lead review agency, or if HDF will fund 50% or more of the construction loan amount);
- (ii) monitoring and reporting to the A&E staff architect and project manager the progress and quality of the project construction;
- (iii) making recommendations to the A&E staff architect for approvals of the contractor's payment requests based on the percentage and quality of work done;
- (iv) reviewing and assisting the A&E staff architect in approving change orders and resolving construction problems; and
- (v) performing punchlist and final inspections to ensure that the project construction is acceptable and in compliance with all construction documents (final project closeout cannot occur without the construction monitor's final inspection and report stating that the project is 100% complete).
- (vi) reviewing as built drawing submissions as requested by the A&E staff architect.

In case of tax exempt bond or 501(c)(3) Bond Financing, HTFC may consider having a joint construction monitor with other project lenders and/or the source of the credit enhancement or may assign this role to the bond issuer, if it is serving as lead agency for reviews and project monitoring

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6.02.08 Roles/Responsibilities of the A&E Staff Architect

The A&E staff architect is responsible for:

- (i) supervising the A&E construction monitor;
- (ii) assisting the construction monitor in performing the punchlist inspection;
- (iii) aiding in the resolution of any construction issues or problems;
- (iv) reviewing change orders and giving their approval or disapproval to the project manager; and,
- (v) assisting the owner/applicant in determining when the project is ready for occupancy.

6.02.08.A Roles/Responsibilities of the DHCR Federal Labor Standards (Davis-Bacon Related Acts) Contracting Officer

The DHCR Contracting Officer will:

- (i) Provide technical assistance and training;
- (ii) Make updated determinations on appropriate wage rate schedules, (residential or building);
- (iii) Review certified payroll reports and related documentation, identifying discrepancies and/or violations, and ensure that any needed corrections are made promptly;
- (iv) As required, conduct on-site inspections, performing interviews with laborers and mechanics employed on work sites;
- (v) Ensure that the applicable Davis-Bacon wage decision and US Department of Labor (US DOL) Notice to Employees notice is posted at the job site;
- (vi) Refer potential criminal or complex investigations, Contract Work Hours and Safety Standards Act assessments for overtime violations and debarment recommendations to HUD or US DOL;
- (vii) Maintain full documentation for Federal Labor Standards administration and enforcement activities;
- (viii) Comply with all HUD and US DOL requirements concerning special statutory, program, and/or other requirements.

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6.02.09 Roles/Responsibilities of the Local Program Administrator

For HTF program see Section 2.01.01

6.02.09.A Roles/Responsibilities of the HOME Local Program Administrator (LPA) State Recipients and Subrecipients

HOME LPA is now administered by HCR's Office of Community Renewal (OCR), and has therefore been removed from this manual. Any references to this program remaining in other sections of this manual may no longer be operative. Please consult with OCR staff for further information.

6.02.10 Responsibilities for Construction Documents

This Section does not apply to HDF Program projects unless DHCR/HTFC is the lead review agency.

The project owner has the following responsibilities with regard to construction documents:

- (i) ensuring that the project architect maintains up-to-date plans, specifications, addenda, modifications and change orders, and that the F&D Project Manager and staff architect receive such documents;
- (ii) ensuring that the contractor or any other designated representative of the project owner obtains all necessary building permits, local approvals, licenses, etc., prior to starting project construction, and that the F&D Project Manager and staff architect receive such documents;
- (iii) ensuring that the contractor's Schedule of Values is delivered to the A&E staff architect at, or prior to, the pre-construction meeting, and that it has been reviewed and approved by the owner's project architect;
- (iv) ensuring that the contractor's Schedule of Values is updated to reflect all change orders, and is then forwarded to the A&E staff architect;
- (v) providing the DHCR/HTFC with all change order requests for DHCR/HTFC approval prior to authorizing any changes to the contractor; and

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- (vi) submitting to the F&D Project Manager along with the final close-out payment request, mylar or 1 paper copy and 3 CDROMS of the as-built drawings, which reflect all significant deviations from the DHCR/HTFC approved documents, change order work, field conditions, and field directives performed on the project, including all shop drawings.

6.02.11 Schedule of Values

This Section does not apply to HDF Program projects unless HCR is the lead review agency.

Contractors must prepare and maintain a Schedule of Values for the project. This is a progress and payment schedule for each major trade item (as detailed in the contractor's trade item cost breakdown), listing the item's dollar value, and its percentage of completion for each payment request. Schedules of Value may also, on a month-by-month basis, project the estimated amount of work to be completed for each trade item. All change order work that has been performed must be reflected in the next monthly Schedule of Values submitted for a progress payment. The Schedule of Values is usually developed on the AIA G703 Form (Continuation Sheet), and must be reviewed and approved by the owner and project architect.

The Schedule of Values must be submitted to the A&E staff architect at or prior to the preconstruction meeting. Progress payment requests will not be processed by the F&D Project Manager until the A&E construction monitor compares the progress of construction to the estimates in the Schedule of Values, and recommends approval of the percentages of completion reflected in the schedule.

6.02.12 Stored Materials on Site

This Section does not apply to HDF Program projects unless DHCR/HTFC is the lead review agency.

Project contractors must provide DHCR/HTFC with the following items in order for stored on- or off-site materials to be recognized by DHCR/HTFC:

- (i) a letter to the F&D Project Manager and construction monitor, requesting a waiver of the DHCR/HTFC policy that disbursement requests may not include the cost of stored materials;

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- (ii) a letter certifying that the contractor will take responsibility for the loss of materials, and will not seek compensation from DHCR/HTFC for stolen materials;
- (iii) a letter certifying that the contractor has on/off-site security and insurance to protect the materials at the location where they are stored;
- (iv) invoices and pictures of the stored materials which are submitted with the disbursement request; and
- (v) stored materials have been visually inspected and photographed by the A&E construction monitor.

Contractors who do not provide the documentation set forth above may not count stored materials in the Schedule of Values percentage of completion, and may not claim payment for stored materials in their disbursement request.

6.02.13 Disputes, Claims, Delays and Time Extensions

It is the owner's responsibility to resolve any disputes and claims that arise between the project architect, contractor and subcontractors.

The owner must notify the F&D Project Manager and construction monitor within ten days of the occurrence of a dispute or claim. Any resolution of a claim which proposes either a change order or an increase in the contract must be reviewed and approved in writing by the F&D Project Manager. DHCR/HTFC may require that a "finding of fact" be prepared and submitted by the awardee/owner and its attorney so that DHCR/HTFC can review the circumstances surrounding the claim, and make an appropriate determination.

Owners must report delays in project construction within ten days to the F&D Project Manager and to the construction monitor. A written explanation for the delay, together with a request for a specific time extension must also be submitted within ten days. DHCR/HTFC will review all delays and additional costs incurred on a project-by-project basis.

The circumstances under which change orders, budget modifications and award increases will be considered by DHCR/HTFC are described below. Also discussed are the procedures and documentation which the owner must comply with in order to make changes to construction documents, budgets or awards.

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Section: 6.0 CONSTRUCTION PROCESSING REQUIREMENTS
Sub Section 6.03 Change Order/Budget Modifications/Escrow Accounts

6.03.01 Change Orders

A change order is a written agreement which describes any changes in the construction work to be performed. Change orders are prepared by the project architect, who submits them to the owner for approval. DHCR/HTFC will not recognize any change orders for consideration of project scope changes or requests for additional funding, if they are received for review after the issuance of the temporary certificate of occupancy. The owner should not sign a change order until it has been accepted by DHCR/HTFC. Change orders reflecting the following conditions must be submitted to the A&E construction monitor and staff architect for review and acceptance prior to the contractor enacting any changes to the scope of the work:

- (i) changes to the project scope, or adding work which was not in the approved construction documents;
- (ii) deleting work which was provided for in the construction documents;
- (iii) changes to material, placement or number of work items which were provided for in the construction documents;
- (iv) unforeseen field conditions, such as deteriorated material, not visible upon normal inspection of the building;
- (v) errors or omissions in the construction documents which must be corrected in order to complete the construction and obtain a Certificate of Occupancy;
- (vi) time extensions beyond the date specified in the Owner/Contractor Agreement for completion of construction; and,
- (vii) no-cost change orders, which substitute items or have no impact on the project cost or the completion date of the construction work.

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Change orders are prepared by the project architect, using Form AIA G701 (Change Order). All alterations to the project resulting from change orders must be reflected on Form AIA G703 (Continuation Sheet). All change orders, including those which are to be financed by non-DHCR/HTFC funding sources or by owner equity, must be reflected on the Disbursement Request Form and/or Form AIA G702 (Application and Certificate of Payment). All change order submissions must include the following:

- (i) a completed Form AIA G701 (Change Order), containing the number of the change order, the date initiated, a detailed description of the work to be performed, and/or the referenced change order drawing(s) to be added to the construction documents; all change order drawing(s) must be stamped and signed by the project architect;
- (ii) the cost of the work (credit, debit or no charge);
- (iii) the contractor's written proposal for the cost of the work, attached to the change order;
- (iv) the signatures of the project architect and contractor;
- (v) an estimate of additional time required to complete the work;
- (vi) architectural drawing(s) showing the proposed change; and,
- (vii) the project architect narrative description and explanation attached to the change order.

The change order review process begins when the owner, contractor and project architect discuss the proposed change or work with the A&E construction monitor at the construction meeting. The A&E construction monitor will review the change order paperwork to ensure it contains all necessary documents and that it is indeed a change from the contract documents accepted by the A&E staff architect. The staff architect will confer with the construction monitor and the F&D Project Manager prior to accepting the change order. Upon the staff architect's approval, the original order will be returned to the owner, authorized by the A&E staff architect. This authorizes the contractor to include the change order on Form AIA G702 (Application and Certificate for Payment) when it is submitted with the next progress payment request. No change in work should be performed by the contractor prior to DHCR/HTFC acceptance of the change order in which the change in work scope is detailed.

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For projects where the DHCR/HTFC is a permanent take-out lender, the owner should get change order approval prior to commencement of such work to ensure the DHCR/HTFC commitment for permanent financing is not jeopardized. Failure to provide change orders to the DHCR/HTFC during construction will, at a minimum, result in a time delay at the closing, as DHCR/HTFC will not execute permanent loan closing documents until all change orders are correctly submitted and reviewed by the A&E staff architect. The amount of the DHCR/HTFC loan will be reduced by the amount of change orders not approved by DHCR/HTFC.

All change order requests which exceed the contingency funds allocated in the project's development budget must be approved by the HTFC President. The owner must submit a letter and support documentation, explaining in detail the reason for the cost overrun, and demonstrating that no other funding sources are available to pay for the cost overrun.

DHCR/HTFC does not guarantee payment for any cost overruns or change orders which have been ordered by the owner and have not been submitted to and approved by DHCR/HTFC.

For HTF and HOME Program projects, any change order requests which would result in a greater than ten percent increase in the approved award amount must be submitted to the HTFC Board for approval prior to performing the change of work.

6.03.02 Emergency Change Order Requests

Emergency change orders are those that, if not approved, would force a complete shutdown of the job site for a period of more than one week. When making an emergency change order request, the owner must obtain the contractor's upset (or maximum) price for the work, which must be agreed upon by the owner and project architect. The owner must notify the A&E construction monitor immediately of the need to process an emergency change order, and provide the agreed upon upset price. The construction monitor will verify the emergency within 48 hours of notification by conducting a site visit or conferring with the A&E staff architect, if necessary. If the emergency is verified, the construction monitor and staff architect will review the upset price to ensure its appropriateness. The staff architect will confer with the project manager before approving any change order.

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Upon the staff architect's approval, the construction monitor will give verbal notification (followed in writing) to the owner to proceed with processing the change order. The owner will then give written notification to the project architect and contractor to proceed with the emergency change order work, stipulating that within seven days, the contractor must furnish a detailed written cost breakdown of the work to be performed, the total of which cannot exceed the agreed-upon upset price. If the contractor fails to submit the required written cost breakdown, the owner's future payment requests will not be processed. Upon receipt of the cost breakdown, the owner should submit the emergency change order request according to the standard change order procedures outlined herein.

Emergency change order requests with upset prices greater than the amount remaining in the contingency fund must be reviewed and approved before being processed. Emergency change order requests for projects funded under HTFC-administered programs must also receive the approval of the HTFC Board if greater than ten percent of the award amount.

6.03.03 Budget Modifications

Applicants seeking to modify their project's budget by redirecting funds between major budget line items, (e.g. between construction and soft costs) must submit written documentation substantiating the need to make the change. The justification will be reviewed by Program Management and Underwriting staff in concert with the F&D Project Manager, who will then recommend that the Assistant Commissioner of Capital Programs either approve or deny the budget modification. No DHCR/HTFC approved project budget may be modified without authorization from the Assistant Commissioner of Capital Programs.

Contingency funds should be requested only for approved construction change orders or construction-related cost overruns or other soft cost and item changes which have been approved by the Program Manager. Any funds remaining in the contingency fund will result in a reduction in the final disbursement.

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6.03.04 Escrow Accounts

On a case-by-case basis, F&D may permit the establishment of escrow accounts for DHCR/HTFC program projects which are financed in conjunction with other federal, State, private or municipal agencies. (See Sub-Section 6.02.05 for a detailed discussion of the construction lender's responsibilities with regard to escrow accounts).

For DHCR/HTFC program projects, funds may be deposited into the project's escrow account for disbursement during construction, in accordance with the owner's Construction Loan Agreement and the Escrow Agreement. The Escrow Agreement is a contract between the owner, DHCR/HTFC and an escrow agent, which establishes the terms and conditions under which the escrow agent may disburse funds, how the funds will be held on deposit, and in some cases, the terms of the construction loan management. Escrow account management fees are negotiated on a case-by-case basis. All unexpended funds and interest earned on HTF/HOME or HDF project escrow accounts must be returned to HTFC or DHCR, respectively, within 90 days of the Escrow Agreement's termination.

All escrow accounts holding DHCR/HTFC funds must be insured by the FDIC, with any funds in excess of the insured amount properly and adequately collateralized. Escrow accounts must be interest-bearing, with the interest accruing to DHCR/HTFC. Escrowed DHCR/HTFC funds must be invested in, or collateralized by, DHCR/HTFC approved instruments, in accordance with DHCR/HTFC's investment policies.

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Section: 6.0 CONSTRUCTION PROCESSING REQUIREMENTS
Sub Section 6.04 DHCR/HTFC Disbursement Procedures

The disbursement procedures set forth below do not apply to HDF projects for which DHCR/HTFC is not the lead review agency.

Since owners with projects having permanent DHCR/HTFC financing are required to submit a final Disbursement Request Form only, the progress payment disbursement procedures set forth herein do not apply. See Section 6.06 for discussion of permanent DHCR/HTFC financing close-out procedures.

DHCR/HTFC will only entertain payment requests for predevelopment or seed money funds from those awardees which have received a Funding Commitment, and which can document that costs have been incurred for eligible predevelopment expenses.

6.04.01 Progress Payment Requests

After contract execution, owners may make progress payment requests for the disbursement of funds to pay for completed construction work, professional services rendered, fees paid or charges incurred with regard to the project's soft costs, or working capital expenses as delineated in the owner's DHCR/HTFC approved Development Budget.

At the preconstruction meeting, the owner should establish a specific date and time that the monthly construction inspection and review of each disbursement request will take place by the owner, contractor, project architect and A&E construction monitor. The owner should submit monthly progress payment requests to the F&D Project Manager after each construction inspection meeting unless otherwise agreed to by DHCR/HTFC. If the monthly construction inspection meeting must be rescheduled, the owner must notify the project manager of the new date. This notification may occur via telephone, but must be confirmed in writing. Rescheduling or postponing the monthly construction inspection meeting may result in delayed processing of the disbursement request.

Each progress payment request for completed construction work must have the required minimum retainage of ten percent of the construction cost withheld. Depending upon the conditions of the 100% performance bond or letter of credit, the retainage percentage may be higher than ten percent.

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Requests for progress payments that include change order work will only be processed if the change order request has been approved by DHCR/HTFC and the work has been performed. DHCR/HTFC reserves the right to stop processing progress payment requests if change order work is performed without the express written approval of DHCR/HTFC.

6.04.02 Required Forms and Documentation for Progress Payment Requests

The owner must submit certain documents, which are detailed below, to the F&D Project Manager when making a progress payment request. Required documents may include, but are not limited to:

- (i) one original Request for Disbursement Form, reflecting updated disbursement amounts from all funding sources;
- (ii) one original Disbursement Request Support Documentation Form;
- (iii) one original AIA G702 Form (Application and Certificate for Payment);
- (iv) one original AIA G703 Form (Continuation Sheet);
- (v) for HDF and RRAP projects only, one Standard State Voucher;
- (vi) copies of DHCR/HTFC approved change orders for which work has been completed, together with appropriate support documentation;
- (vii) invoices for professional service fees, subcontractors, suppliers, vendors and utility companies, acquisition expenses (when the full acquisition amount is requested), relocation assistance expenses, and, if applicable, statements of finance charges for lines of credit and/or interim loans which were approved in advance by DHCR/HTFC;
- (viii) receipts for eligible working capital expenses; and
- (ix) the most recent bank statement for the checking account containing DHCR/HTFC funds.

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In addition to the above, owners of projects receiving HTF and HOME Program funds must obtain a notice of title continuation each time a disbursement is requested (except for predevelopment award disbursements). This assures HTFC that no liens have been placed upon the property since the last disbursement. Upon completion of the title update, the title company must directly notify the HTFC Finance Officer. The notification may initially occur via telephone, but must be confirmed in writing. The disbursement will only be released when the HTFC Finance Officer receives verbal notification of clear title from the title company. If, by the time the next disbursement request is submitted, the required written confirmation of clear title has not been received for the previous disbursement, the next disbursement will be held until written confirmation of clear title, current with the most recent disbursement request, is received (facsimiled confirmations are acceptable). The F&D Project Manager will notify the owner immediately should a problem arise with the title.

6.04.03 Progress Payment Requests for Multi-Site Projects

For projects with more than one site, owners must submit a separate Disbursement Request Form for each of the project sites, as well as a Disbursement Request Form summarizing all site costs for the project as a whole.

For multi-site projects with more than one contractor, disbursements will be processed, and close-outs will occur, on a site-by-site basis, rather than when all project sites are completed. This means that Final Payment Requests (Sub-Section 6.04.07) will be processed for each site in a multisite project as they are completed.

No project (as opposed to Program) will be closed out until all closing documents and cost certifications for all sites have been submitted and approved by DHCR/HTFC.

6.04.04 Progress Payment Processing Procedures

Upon receipt, the project manager will review all required documents as listed in Section 6.04.02 to ensure completeness, accuracy, and conformance with the latest approved budget. If the Disbursement Support Documentation Form is not completed, the Request for Disbursement will not be processed.

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If the Request for Disbursement Form is approved by the F&D Project Manager, he or she will sign and forward it to Program Management for their review. Based upon their review, Program Management will either recommend approval, denial or modification of the request. If approval is recommended, Program Management will forward the request to the Assistant Commissioner of Capital Programs for approval of the disbursement.

For projects funded under HTFC-administered programs, the disbursement will then be forwarded to the HTFC Finance Officer for final approval and processing. If the Request for Disbursement is complete and accurate, a check will be released to the owner within 10-14 calendar days of its receipt. However, for projects receiving HTF and HOME Program funds, this timetable is subject to the receipt of a timely verbal or written, if necessary, title continuation.

For projects funded under program administered by DHCR, the Request for Disbursement will, following approval by the project manager and Assistant Commissioner of Capital Programs, be forwarded to the Office of Financial Administration for processing through the Office of the State Comptroller. A check will be released to the owner within 30 calendar days of the Request for Disbursement's receipt.

Any inquiries regarding disbursements should be directed to the F&D Project Manager no earlier than one week after the above timeframes.

6.04.05 Final Payment Requests

Final payment requests are made only after the project's final inspection has occurred and the project architect has signed the AIA G704 Form (Certificate of Substantial Completion).

Additionally, the F&D Project Manager cannot begin to process a final disbursement request until the A&E staff architect determines that all punchlist items have been satisfactorily completed, and signs the final Request for Disbursement Form.

Final payment requests usually include disbursements for construction retainage, balances remaining in the working capital fund, and reserve funds. Contingency funds which are not needed will not be disbursed. Any interest earned will also be recaptured by DHCR/HTFC at this time. All change orders must be submitted and approved by DHCR/HTFC prior to processing a final payment request. DHCR/HTFC reserves the right to reduce the final award amount via the contingency fund if disputes arise from the result of unapproved but completed change order work. DHCR/HTFC also

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reserves the right to delay final payment to the awardee if all change orders have not been submitted for DHCR/HTFC approval.

HTFC may require the holdback of up to \$25,000 in addition to construction retainage. These additional funds will be disbursed upon submission of all project close-out documents including permanent Certificates of Occupancy, As-built Drawings and other items cited in Section 6.04.07 of the manual.

For projects involving tax exempt bonds or 501(c)(3) bonding, HTFC will require an escrow equal to 3% of total development cost (less the developer's fee) as a five-year guarantee on workmanship. Disbursement of the escrow is subject to verification of satisfactory workmanship through inspections by an HTFC-approved architect. However, there are exceptions to this program requirement and HTFC may reduce or eliminate the escrow requirement at its discretion for projects in which the bond issuer is serving as lead agency and for certain new construction projects. In addition, HTFC may waive the escrow requirement in consideration of the awardee having a construction contract with the general contractor which includes a guarantee of workmanship for five years beyond the construction completion date, and the awardee or its general contractor agrees to provide a payment and performance bond equal to 3% of TDC (less the developer's fee) for a term equivalent to the guarantee of workmanship.

6.04.06 Punchlist and Final Inspections

When the project's construction is 95% complete, the owner will schedule a punchlist inspection with the A&E construction monitor, project contractor, and project architect. The contractor, project architect, and A&E construction monitor, should agree upon which incomplete or incorrect construction items should be included on the punchlist, which will be formally prepared by the project architect, with copies given to all parties listed above.

If the project architect wishes to minimize the number of items included on the punchlist, he or she should draft a punchlist prior to the inspection so that the owner and contractor can begin correction or completion. The punchlist work items should not take more than five-to-seven work days to be completed or corrected. When all punchlist items have been corrected or completed, construction is 100% complete, and the owner has received a certificate of occupancy (C of O) or temporary C of O from the municipality having jurisdiction over the project, a final inspection will

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be scheduled by the owner. Those who must attend the final inspection include the owner, contractor, project architect, F&D Project Manager, A&E construction monitor and A&E staff architect.

If the project architect is satisfied with the quality of the construction work, and degree of completion, he or she will sign the AIA G704 Form (Certificate of Substantial Completion). The A&E staff architect will sign the final Request for Disbursement Form when all punchlist items have been completed or corrected, and the construction is 100% complete. The F&D Project Managers cannot begin to process the final Request for Disbursement Form until it has been signed by the A&E staff architect.

6.04.07 Required Forms and Documentation for Final Payment Requests

For each site for which the owner is submitting a final payment request, one signed original of each of the following documents must be submitted to the F&D Project Manager (LPA required documents are listed further below):

- (i) Request for Disbursement Form;
- (ii) Disbursement Request Support Documentation Form;
- (iii) final AIA G702 Form (Application and Certificate for Payment);
- (iv) final AIA G703 Form (Continuation Sheet);
- (v) AIA G704 Form (Certificate of Substantial Completion);
- (vi) AIA G706 Form (Contractor's Affidavit of Payment of Debts and Claims);
- (vii) AIA G706A Form (Contractor's Affidavit of Release of Liens) certified by the contractor, with general releases of liens from all major subcontractors and suppliers;
- (viii) construction monitor's Final Inspection Report;
- (ix) copies of all DHCR/HTFC approved change orders;
- (x) C of O issued by the local building authority; (a temporary C of O may be submitted for final payment with the stipulation that a permanent C of O must be issued prior to the release of the contractor's retainage, unless waived in writing by DHCR/HTFC);
- (xi) required licenses from governmental regulatory agencies, if applicable;
- (xii) a lien bond or indemnity bond for all outstanding claims in connection with the construction contract as identified in the Waiver of Mechanic's Liens, if applicable;

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- (xiii) a fire insurance policy and blanket position fidelity bond naming DHCR/HTFC and the State of New York as loss payees, and comprehensive general liability insurance and worker's compensation and disability insurance policies naming DHCR/HTFC and the State of New York as additionally insured parties;
- (xiv) for projects with construction costs in excess of \$250,000, or when required by DHCR/HTFC, as-built drawings indicating all changes and revisions to the bid documents;
- (xv) standard lease to be used for project rent-up, incorporating all Program requirements, if applicable;
- (xvi) four color 5" x 7" prints of the completed project;
- (xvii) for all projects governed by Rent Stabilization or the Emergency Tenant Protection Act (ETPA), evidence of registration with DHCR Rent Administration;
- (xviii) a copy of the Two-Tier Rent Form, if applicable;
- (xix) a copy of the Rent Registration Form, if applicable;
- (xx) verification that all material warranties have been delivered to the project owner;
- (xxi) verification that all permanent financing as indicated in the contract is in place;
- (xxii) Occupancy Status Report Form;
- (xxiii) for HTF and HOME Program projects only, a Project Cost Certification Audit on project expenditures, prepared by an independent Certified Public Accountant (see Section 6.05);
- (xxiv) if the Development Budget approved by DHCR/HTFC at the time of contract execution has changed, an updated Development Budget reflecting the final DHCR/HTFC approved amounts;
- (xxv) if the Rent Plan and/or Affordability Plan approved by DHCR/HTFC at the time of contract execution has changed, an updated Rent Plan and/or Affordability Plan reflecting DHCR/HTFC approved adjustments; and
- (xxvi) documentation that all required project operating and Reserve accounts have been established, as well as copies of dual signature cards for Reserve accounts.
- (xxvii) J-51 Certification

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- (xxviii) For HOME projects, a Rental Housing Completion Report Form (HUD-40097) which includes the requested information for all project units.
- (xxix) approved Minority/Women - Owned Business Enterprise Utilization Plan, if not submitted.
- (xxx) for HOME projects, Section 3 Summary Report
- (xxx) approved Marketing plan if not submitted.
- (xxxii) if the ownership of the project will be transferred to another entity for the regulatory period, an explanation of the need for the transfer, documentation showing that the new owner is an eligible applicant under the program providing funding for the project and information on the staff who will be involved in administering the project following the transfer.

6.04.08 Final Payment Processing Procedures

The F&D Project Manager will review all required documents described in Section 6.04.07 upon receipt for completeness, accuracy, required signatures, and conformance with the latest DHCR/HTFC approved budget. For projects which require it, the Cost Certification Audit will be sent to the F&D Project Manager as part of the close-out submission. (See Section 6.05) For the HTFC administered Programs, the F&D Project Manager, Program Management and Assistant Commissioner of Capital Programs will, upon review and approval of all required documents, sign the final Request for Disbursement Form, and forward the entire final disbursement package to the HTFC Finance Officer for final approval and processing.

For the HDF Program, the final Request for Disbursement Form and Support Documentation Form will be forwarded, following the same approvals, to CAU for processing through the State Comptroller's Office.

This Section applies to projects funded under all DHCR/HTFC administered Programs, with the following exceptions:

- (i) projects for which DHCR/HTFC program funds will be used only for a distinct purpose, such as acquisition, are exempt from DHCR/HTFC cost certification requirements;

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- (ii) projects for which another funding source is requiring a cost certification of all project funds, including DHCR/HTFC funds, are exempt from DHCR/HTFC cost certification requirements, provided that DHCR/HTFC is supplied with a copy of such certification; and
- (iii) projects which have only one funding source, and which have a total project cost less than or equal to \$100,000, are exempt from DHCR/HTFC cost certification requirements, but are subject to an independent closeout review.

The purpose of cost certification is to establish the project's actual total cost, including the construction cost, in order to determine the maximum DHCR/HTFC award amount for the project's final closeout. DHCR/HTFC requires that cost certifications be submitted as part of the project close-out package so that the final retainage may be released upon project completion.

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Section: 6.0 CONSTRUCTION PROCESSING REQUIREMENTS

Sub Section 6.05 Cost Certifications

Cost certification will be required of the following owner types:

- (i) for-profit owners;
- (ii) not-for-profit owners which have an identity of interest with the project architect, project contractor/developer, and/or project consultant;
- (iii) not-for-profit owners which have acted as the project contractor; and
- (iv) subrecipients which receive HTF awards from LPAs (except in cases where there is only one project funding source, and the total project cost is less than or equal to \$100,000).

DHCR/HTFC reserves the right to request a cost certification in situations other than those described above based on the size and complexity of the project financing or other substantive factors.

All cost certifications must be performed by an independent New York State Certified Public Accountant (CPA). DHCR/HTFC may require that the cost certification be performed by an independent CPA under contract with DHCR/HTFC if there is an identity of interest between a for-profit owner and the project architect, contractor and/or consultant. If the owner is told that the cost certification must be done by a DHCR/HTFC contracted CPA, it must notify the project manager when the project is 75% complete so that the cost certification can be scheduled. Failure to do so may result in an inability to schedule the cost certification with the DHCR/HTFC contracted CPA in a timely manner, and thus, a delay in the project's closeout.

To meet cost certification requirements, for-profit owners must submit the following:

- (i) a certification by the owner that the cost certification was completed by an independent CPA who is acceptable to DHCR/HTFC, or by the DHCR/HTFC contracted CPA, and that the certification is for the total project cost, including all funding sources;

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- (ii) an accounting of all the major line items as detailed in the project's final approved Development Budget, and a listing of the actual dollar amount expended from every funding source (less any retainage) for each line item, compared against the approved total cost budgeted for each line item;
- (iii) copies of the final AIA G702 Form (Application and Certificate for Payment) for each prime contractor, indicating the final dollar amount of all construction work for that contractor, signed by the contractor, project architect and owner;
- (iv) a copy of the owner's final Request for Disbursement Form; and
- (v) a CPA's certification that the soft costs, acquisition costs and working capital expenses of the project are accurate, and adequately documented by actual invoices and payments by the owner to all vendors listed.

Owners who have an identity of interest with the project contractor/developer, architect and/or consultant must submit the following documents to meet the cost certification requirements:

- (i) all documents listed in (i)through (v) above;
- (ii) a detailed trade item breakdown of all the contractor's actual project costs, including overhead and profit, as listed on the AIA G703 Form (Continuation Sheet);
- (iii) unless performed by a CPA contracted by DHCR/HTFC, a CPA's certification that the project's actual construction costs have been adequately documented by invoices and payments by the owner to the contractor and all vendors; and
- (iv) verification by the contractor that there is no identity of interest between any project subcontractors and/or suppliers.

All cost certifications must utilize the following format:

- (i) an opinion letter prepared by the CPA, certifying that the project audit was performed in accordance with generally accepted auditing standards and practices, and that there is no identity or conflict of interest between the CPA, and the owner, contractor, project architect or any subcontractor;

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- (ii) a copy of the final Request for Disbursement Form prepared by the owner;
- (iii) a copy of the final AIA G702 Form (Application and Certificate of Payment) for the contractor, or for each prime contractor, prepared by the project architect;
- (iv) a copy of the AIA G703 Form (Continuation Sheet), prepared by the project architect, and listing all construction work, including all approved change orders;
- (v) a copy of the DHCR/HTFC approved Development Budget which was attached as an exhibit to the owner's Predevelopment Costs Agreement;
- (vi) a form similar to the Development Budget, which lists all line items in the Development Budget with columns showing the total cost budgeted for each item, the actual total cost for each item, and the actual corresponding amounts paid out from each funding source;
- (vii) a listing of all consultant and contractor payments for services rendered to the project; and
- (viii) a detailed breakdown of all construction work by subcontractors, vendors and suppliers, the total amount of each contract or invoice billed, and a summation of the total construction cost.

DHCR/HTFC will review all cost certifications for compliance with the following requirements:

- (i) the final AIA G702 Form (Application and Certificate for Payment) for the project's construction, or the total payment requests if more than one prime contractor was employed to construct the project, must equal the amount expended by the owner and/or contractor from all funding sources;
- (ii) any line item costs budgeted in the Development Budget which were not actually expended must be deducted from the actual total project cost;
- (iii) all non-DHCR/HTFC funds which were to be used in developing the project, must have been received from the non-DHCR/HTFC funding source(s), and expended by the owner; and,
- (iv) the contractor/developer fee cannot exceed ten - fifteen percent of the total project cost, or the contractor's profit cannot exceed ten percent of the total construction

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costs, depending on the relationship between the owner and contractor and what was approved at Contract Closing. (See Section 5.05 and the LIHC Allocation Plan for more information on this)

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Section: 6.0 CONSTRUCTION PROCESSING REQUIREMENTS

Sub Section 6.06 Permanent HTFC Financing Only Close-Out Procedures

6.06.01 Final Inspection

Owners receiving permanent financing only from HTFC must provide the project manager with written notification 45 days in advance of the anticipated substantial completion date by which project will be ready for final inspection. Prior to the project's final inspection, the owner must schedule a punchlist inspection for the project with the project architect and A&E construction monitor. A representative of the owner or contractor must be present at the punchlist inspection. The punchlist which results from such inspection will be prepared by the project architect and owner, and must contain the following information:

- (i) the inspection date;
- (ii) the name and title of the contractor's or owner's representative present;
- (iii) any incomplete or unsatisfactory work items; and
- (iv) the specific location of each incomplete or unsatisfactory work item.

The owner must provide copies of the punchlist to the A&E construction monitor. The final inspection will occur upon completion and/or correction of all punchlist items. Those whose attendance is required at the project's final inspection (collectively referred to as the "inspection participants") are: the owner, construction lender's inspector, project architect, and A&E construction monitor, A&E staff architect, and F&D Project Manager.

6.06.02 Permanent Financing Inspection Conference

An inspection conference must be attended by the inspection participants immediately following the project's final inspection. The inspection participants must reach agreement on:

- (i) whether or not work has been completed in accordance with the final documents;
and
- (ii) any incomplete or unsatisfactory work items, and when they will be completed or corrected.

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- (iii) any outstanding or unsubmitted change order work and a date when the permanent Certificate of Occupancy will be submitted for DHCR/HTFC review and approval (if not already submitted).

A mutually agreed upon final inspection report will be prepared by the owner, project architect and A&E construction monitor based upon the results of the Inspection Conference. The project architect will also prepare a Certificate of Substantial Completion showing the amount of money to be withheld if any for incomplete/unsatisfactory work and/or outstanding change order work. Upon receipt of the report and certificate, the project manager will immediately notify the owner and construction lender and schedule a date for the Settlement Closing. A Settlement Closing will not be scheduled if outstanding or unsubmitted change orders have not been received by the DHCR/HTFC. This may result in a time delay of the DHCR/HTFC settlement closing and/or a reduction in the final award amount or a holdback equal to the sum of two and one half times the value of unapproved work, any retainage, plus if there is an identity of interest between the owner and contractor, the project contractor's builders profit.

6.06.03 Settlement Closing

The owner must submit the following documents to DHCR/HTFC for prior review and approval before a Settlement Closing can occur:

- (i) a Certificate of Occupancy for each building, issued by the responsible local agency;
- (ii) submission of all change orders;
- (iii) a verified release and certification by the owner, stating that all contractors, subcontractors, vendors, suppliers, laborers and mechanics have been paid, or that the owner will satisfy all outstanding balances and obtain conditional waivers of mechanics liens from all parties with open accounts;
- (iv) Disbursement Request Form showing the total amount due the owner from DHCR/HTFC minus any unsettled claims;
- (v) assignments of all project guarantees and warranties to the owner and to DHCR/HTFC;

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- (vi) as-built drawings for the project;
- (vii) copies of receipts for real property taxes and utility bills paid by the owner during construction;
- (viii) an updated title report from a title company which is satisfactory to DHCR/HTFC, and which:
 - (a) states that the title is good and marketable;
 - (b) states that title is free of any mortgage, lease, lien or other encumbrance(s) which has not been approved by DHCR/HTFC; and,
 - (c) commits to the issuance of a title insurance policy at Settlement Closing, insuring DHCR/HTFC and the owner;
- (ix) project architect's certification letter;
- (x) evidence that bank accounts have been established for:
 - (a) working capital funds;
 - (b) replacement reserve funds;
 - (c) operating reserve funds;
 - (d) real estate tax and escrow account funds; and
 - (e) tenant security deposits;
- (xi) evidence that the following types of insurance are in place:
 - (a) comprehensive general liability;
 - (b) fire casualty insurance;
 - (c) worker's compensation & disability insurance; and
 - (d) blanket position fidelity bond;
- (xii) a copy of the proposed deed;
- (xiii) a copy of the proposed lease;
- (xiv) certified survey;
- (xv) rent registration forms, if applicable;
- (xvi) note and mortgage;
- (xvii) construction lender's pay out letter;
- (xviii) assignment/satisfaction of mortgage;
- (xix) four 5" x 7" color prints of the project;

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- (xx) Occupancy Status Report Form;
- (xxi) A&E construction monitor's final report;
- (xxii) required licenses from all involved governmental regulatory agencies, if applicable; and
- (xxiii) all other requirements, as specified in the Purchase Contract, which must be satisfied prior to DHCR/HTFC's purchase of the project.
- (xxiv) approved Minority/Women Owned Business Enterprise Utilization Plan, if not submitted.
- (xxv) for HOME projects Section 3 Summary Report, if not submitted.
- (xxvi) approved Marketing Plan, if not submitted.
- (xxvii) if the ownership of the project will be transferred to another entity for the regulatory period, an explanation of the need for the transfer, documentation showing that the new owner is an eligible applicant under the program providing funding for the project and information on the staff who will be involved in administering the project following the transfer.

Upon receipt of the documents listed above, DHCR/HTFC will schedule the Settlement Closing which must be attended by representatives of the owner, the construction lender and DHCR/HTFC. At the Settlement Closing, DHCR/HTFC will pay the owner the DHCR/HTFC Contract Price, less the required two and one-half percent holdback amount and any amounts required to be withheld to complete the project's construction.

Any monies withheld to complete outstanding construction work, such as landscaping, will be released to the owner upon a satisfactory inspection of the unfinished work by the A&E construction monitor and approvals by the A&E staff architect and project manager.

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The two and one-half percent holdback amount, which is required for all DHCR/HTFC administered projects pursuant to the DHCR/HTFC Purchase Contract or Commitment, will be released to the owner after the required holdback period (one year and 15 days or, if a letter of credit was provided, one year and 30 days) and a satisfactory inspection of the project by the A&E construction monitor and staff architect for compliance with the DHCR/HTFC approved construction documents (and to ensure that there are no material or construction defects which may have occurred during the holdback period). It is the owner's responsibility to schedule the inspection with the project manager 30 days prior to the holdback release date. The owner's failure to do so may delay the release of the holdback amount. If the inspection reveals any items which need correction, the cost of repairing such items may be paid out of the holdback amount; any money remaining after such repair(s) will be released to the owner after satisfactory reinspection by DHCR/HTFC.

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Section: 7.0 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS
Sub Section 7.01 Introduction

This section describes the general procedures for operating and managing **any property funded by the Housing Trust Fund Corporation, (HOME, Housing Trust Fund and Turnkey Programs). Owners should refer to the Regulatory Agreement for project-specific obligations.** Projects with Low Income Housing Credit (LIHC) are also subject to certain post-construction operating requirements as set forth in the LIHC statute and Regulatory Agreement. If requirements of different Programs overlap, **the most restrictive provisions shall apply.** Where the requirements for the LIHC, HTF, **HOME** and Turnkey Programs differ, it is noted in the text.

Local Program Administrators (LPAs) acting under the HTF Program are responsible for enforcing all requirements in this section and for monitoring sub recipient projects in the same manner that Office of Housing Management (**OHM**)/ **Asset Management Unit (AMU)** monitors direct project recipients.

If you have any questions regarding compliance issues, please contact your Asset Management Representative or call the **Asset Management Unit (518) 474- 9583** or write:

NYS Division of Housing and Community Renewal
Asset Management Unit 5th Floor
38-40 State Street
Albany, NY 12207

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Section: 7.0 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS
Sub Section 7.02 Required Operation Audits

7.02.01 Audit Requirements

To ensure **that all projects funded by the Housing Trust Fund Corporation (HTFC)** are being operated and managed in compliance with all program requirements, AMU will conduct periodic site visits and will review audit reports which must be submitted to DHCR **within 120** days of the close of the project's fiscal year. DHCR reserves the right to perform on-site audits, if deemed necessary.

7.02.02 Bank Accounts

Project owners must adhere to the following general requirements for establishing bank accounts for the project

- (i) all project funds must be held in accounts with banking institutions which are authorized to do business in New York State, which are insured by an agency of the federal government, and which have a proven record of investment in the community in which the project is located; project owners are responsible for ensuring that project funds maintained in such account(s) are within the insured amount limitations as established by the federal government;
 - (ii) **any account offset provisions are prohibited;** (the bank must waive any right to seize the account and cannot be used as collateral for other obligations)
 - (iii) project funds may only be used for authorized purposes as described in this section, the Regulatory Agreement, and all attachments thereto;
 - (iv) project funds must be maintained separately and distinctly from any other accounts maintained by the owner and/or managing agent for other projects or enterprises;
 - (v) on demand deposit checking account must be maintained for each project;
 - (vi) the interest earned on any interest-bearing accounts must remain in such account and may only be used for the specific purposes to which the account is dedicated;
- and

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Project owners must establish the following accounts for the operation of the project:

- (i) General Operating Account;
- (ii) Working Capital Fund Account;
- (iii) Operating Reserve Account;
- (iv) Replacement Reserve Account;
- (v) Real Estate Tax and Insurance Escrow Account; and
- (vi) Tenant Security Deposit Account. Each of the required operating accounts is described in the following sub-sections.

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Section: 7.0 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS
Sub Section 7.03 Required Operating Accounts

7.03.01 General Operating Account

The General Operating Account is used for the deposit of all project income (including rent receipts, housing subsidy payments and non-residential rental income), and for the disbursement of all necessary project expenses (including deposits to the Real Estate Tax and Insurance Escrow Account and the Reserve Accounts). Any cash in excess of three month's rent roll which remains on deposit in the account at the end of the project's fiscal year must be transferred to the Operating Reserve Account. See Section 7.03.04

7.03.02 Working Capital Fund Account

At the time of closing, funds will be deposited into the Working Capital Fund Account in an amount deemed adequate by HTFC to cover operating expenses during the project's initial rent-up period. Funds in this account may be used for expenses incurred in the project's first year of occupancy, such as fidelity bond and insurance premiums, real estate taxes, debt service, management fees, movable furnishings and equipment which is essential for project operation and management, utility charges, and/or other initial project-related expenses approved by HTFC. Should any funds remain in the Working Capital Fund Account after the project has been in operation for one year, those funds must be transferred to the Operating Reserve Account, and the Working Capital Fund Account must be closed.

7.03.03 Reserve Fund Accounts

At the time of Final Closing the owner must establish an Operating Reserve Account and a Replacement Reserve Account with an initial deposit and distribution in amounts to be determined by HTFC on a project-by-project basis. Any withdrawals from these accounts will require the advance approval of AMU. HTFC funded reserve accounts will be blocked and require a HTFC signature to withdraw funds. The owner will be required to make fixed monthly deposits to the Reserve Fund Accounts by transferring funds into them from the project's General Operating Account. The amount of such monthly deposits will be determined by HTFC on a project-by project basis.

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All Reserve Funds not currently required must be invested in insured certificates of deposit or United States securities, or invested in a manner which is wholly secured or collateralized by such securities. Any interest earned shall accrue to the Reserve Funds. Any HTFC-approved transfer or sale of the project during the Regulatory Period must include the transfer of all Reserve Funds to the new owner. (For more information on the sale or transfer of HTF or Turnkey Program projects see Section 2.01).

Projects funded with HTF or NYS HOME must utilize a Custodial Agreement Account if the combined amount of operating and replacement reserves will total \$100,000 or more adding together capitalized amounts and annual contributions to reserves over the first five years of operations. The owner may be required to deposit project reserves below \$100,000 pursuant to a Custodial Agreement Account **if** the owner or managing agent has one or more prior instances of fiscal irregularities including but not limited to:

1. withdrawals without required approvals from DHCR or from any other financing source;
2. failure to pay taxes or other obligations when due; or
3. **any element of default.**

The project owner must set up the Custodial Agreement Account(s) according to DHCR requirements listed below:

- All withdrawals require two party signature [one being DHCR staff];
- The bank must waive any right to seize the account and cannot be used as collateral for other obligations (no offset provisions);
- All deposited funds are collateralized, if not in US Government Treasury Securities or Certificates of Deposit, by DHCR approved investments.
- The owner/management agent shall make the required contributions as stated in the Regulatory Agreement into a Custodial Agreement Account.
- The reserve account(s) shall be established at a federally insured depositing institution in New York State.

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Withdrawals from Custodial Agreement Accounts will require the signatures of AMU and the owner for release of funds. The OCD Project Manager will approve withdrawals until the project is transferred to AMU. Specific requirements for each type of reserve account are given in Sub Section 7.03.04 and 7.03.05. DHCR reserves the right to require Custodial Agreement Account(s) for problem projects at any time.

7.03.04 Operating Reserve Account

The Operating Reserve Fund Account is established to provide the project with a source of funds in the event that the project cannot meet its monthly operating expenses. Withdrawals will not be approved until the terms of the Operating Deficit Guarantee have been satisfied (if applicable). Owners are required to make monthly deposits to the Operating Reserve Account in an amount to be determined by HTFC on a project-by-project basis. The monthly Operating Reserve deposit will be made with monies withdrawn from the General Operating Account. If necessary, the monthly deposits may be adjusted by AMU after initial project occupancy.

If, after paying the project's annual operating and maintenance expenses, there is annual rental income over and above an amount equal to three month's rent roll, such amount must be deposited into the Operating Reserve Account.

If there are Operating Reserve Funds in excess of the **maximum** reserve amount which is prescribed by the Regulatory Agreement, such excess funds may be used subject to the approval of AMU to either

- (i) lower the current tenant rental charge(s) (provide a rent subsidy);
- (ii) increase the number of Persons of Very Low Income residing in the project;
- (iii) repay the HTFC loan or grant;
- (iv) for HTF Program projects, pay the Return on Equity as described in Section 2.01, i applicable; or
- (v) fund the purchase of furnishings or equipment essential for project operation and management; or to improve the enjoyment of the building.

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7.03.05 Replacement Reserve Account

The Replacement Reserve Account is established to provide the project with a source of funds to replace such items as flooring, plumbing, heating, electrical, roof and security systems, appliances, window and door units, cabinetry, site apparatus, or other items approved, **in advance**, by AMU. See www.nyshcr.org/assets/documents/1646.doc for a more complete listing of eligible/ineligible items.

No release from the project's Replacement Reserve Account will be permitted within the first five years following the permanent closing of the HTFC loan. Owners must make monthly deposits to the Replacement Reserve Account in an amount which HTFC determines is necessary to maintain an adequate Replacement Reserve for the project. The monthly Replacement Reserve Account deposit will be made with monies withdrawn from the General Operating Account. If necessary, the monthly deposit established by HTFC may be adjusted by AMU after initial project occupancy.

All expenditures from the Replacement Reserve Account will require the prior approval of AMU. The signatures of AMU and the owner **are** required for the release of funds from any project account.

All requests for withdrawals from the Replacement Reserve Account must be submitted in writing to AMU. The request must include, but is not limited to, a description/scope of work or replacement, three bids (if possible), the proposed bidder's Liability Insurance Certificate, copy of existing warrantee and a current copy of the Replacement Reserve Account bank statement.

7.03.06 Real Estate Tax and Insurance Escrow Account

The Real Estate Tax and Insurance Escrow Account is established for the annual payment of real estate taxes and insurance. Each month, the owner must withdraw one-twelfth of the annual anticipated total of these obligations from the General Operating Account and deposit these funds into the Real Estate Tax and Insurance Escrow Account. Any interest earned becomes part of the Account. Withdrawals from the Account may only be made for the purpose of meeting real estate tax and insurance obligations.

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7.03.07 Tenant Security Deposit Account

Where tenant security deposits are required by a project's lease or are otherwise collected by the project owner, and the project contains six or more dwelling units, the project owner must place the tenant security deposits into an interest-bearing account in a banking organization with a place of business within New York State. The Account must earn interest at the prevailing rate earned by other such deposits made with banks in the area. **(See, General Obligations Law 7-108)**

For projects with less than six units, the tenant security deposits do not have to be placed in an interest bearing account, but must be held in a banking institution, until such time as they are repaid to the tenant, or applied toward damages.

The project owner must provide each tenant with written notification of the name and address of the bank where the money is deposited, as well as the amount of the tenant's deposit. If the account is interest-bearing, the project owner is entitled to an administration expense fee equal to one percent per annum on the security money deposited. This shall be in lieu of all other administrative and custodial expenses. The balance of the interest earned is the property of the tenant and it must be paid annually to the tenant. If a tenant's lease terminates at a time when the banking organization at which the security money is deposited does not regularly pay interest, the project owner must pay the tenant any interest that it is able to collect at the time that the lease terminates.

All tenant security deposits must be considered the property of the tenant, and may not be commingled with the personal monies, or become an asset, of the project owner.

7.03.08 Operating Budget

An annual operating budget must be submitted for each project no later than three months before the start of the project's fiscal year. **Extensions may be granted, for good cause, upon written request.**

Debt service on loans to the owner of the project or property from any principal of the project, general or limited partner, developer or other parties related to the project shall be payable only from project revenues after payment of all operating expenses, scheduled reserve payments and other approved mortgage debt service, unless otherwise provided for in the HTFC contract documents. Any expense payment to the owner of the project or property, principal of the project, a party related to the owner, partner or shareholder must be approved in advance by HTFC.

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Section: 7.0 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS

Sub Section 7.04 Insurance Requirements for Owners

The project owner is required to maintain the following insurances throughout the project's regulatory period. The DHCR Standard Insurance Certificate Form should always be used and may be obtained from the AMU.

Liability Insurance

Comprehensive General Liability

- monetary limits of not less than \$1,000,000
- contractual coverage
- DHCR and HTFC to be named as additionally insured
- 30-day prior written notice to HTFC of cancellation, non-renewal or change in coverage

Fire and Casualty Insurance

Fire and Casualty Insurance with Extended Coverage

- monetary limits commensurate with replacement value of the project
- HTFC as mortgagee/loss payee
- 30-day prior written notice to HTFC of cancellation, non-renewal or change in coverage

Flood Insurance

- Flood insurance is required when a project is located in a 100-year flood plain established by FEMA.

Automobile Liability Insurance

Liability

- monetary limit of not less than \$1,000,000
- coverage of owned (if applicable), hired and non-owned vehicles
- 30-day prior written notice to HTFC of cancellation, non-renewal or change in coverage

Worker's Compensation and Disability Benefits

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Insurance Blanket Position Fidelity Bond

- amount of coverage equal to three month's rent roll and all project reserve funds
- HTFC as loss payee/obligee
- 30-day prior written notice to HTFC of cancellation, non-renewal or change in coverage

7.04.01 For Homesteading Owners

A homesteader is required to maintain the following insurances throughout the project's regulatory period.

Liability Insurance

Comprehensive General Liability

- monetary limits of not less than:
 - \$300,000 for one or two units
 - \$500,000 for three or four units
- contractual coverage
- DHCR, HTFC and the LPA to be named as additionally insured
- 30-day prior written notice to HTFC and the LPA of cancellation, non-renewal or change in coverage

Fire and Casualty Insurance

Fire and Casualty Insurance with Extended Coverage

- monetary limits commensurate with replacement value of the project
- HTFC as mortgagee/loss payee
- 30-day prior written notice to HTFC and the LPA of cancellation, non-renewal or change in coverage
- DHCR or HTFC, and the LPA to be named as additional certificate holders

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Section: 7.0 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS
Sub Section 7.05 Annual Audit Reports

Projects funded by the HTFC are required to provide an annual audit report to AMU. **The audit report must be prepared by a Certified Public Accountant (CPA) in accordance with accepted audit and accounting practices, and is due 120 days after the end of the project's fiscal year.** .

Electronic submission via email to the project's assigned DHCR Asset Management Representative is encouraged. HTF subrecipients must submit their financial statements to LPAs within 120 days of the end of the subrecipient's fiscal year; the LPAs, in turn, must submit those statements received to AMU within 30 days.

Audit reports must include the status of the project's operations, income received, and deposits and withdrawals made to all required operating accounts. The CPA must certify that the owner has complied with all Program Rules and Regulations, the Regulatory Agreement, and any attachments thereto, including the maintenance of information and documentation regarding procedures for tenant selection and income verification. Mortgagors have been sent correspondence which describes the HTFC required additional disclosures and information to be included in the Annual Audit, as well as a notification that indicates that **failure to include this information and schedule will result in the audit report being considered incomplete upon its receipt by the HTFC.** The cost of the annual audit should be an itemized expense in the project's annual operating budget.

Owners who do not receive DHCR Neighborhood or Rural Preservation Program funds, and who own and operate HTF or Turnkey-funded projects comprised of 20 or fewer units in total, may submit a compilation in lieu of the certified annual audit report. The compilation must be as prescribed by the American Institute of CPAs. A certification by the owner of compliance with the Program Rules and Regulations must be submitted with the compilation. **If additional audits on the property are prepared, copies of each report must be provided to AMU.**

7.05.01 Performance Report

HTF project recipients not receiving LIHC are required to provide an annual performance report. The performance report is due within 120 days of the project's fiscal year. Performance

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reports must include a certification, signed by the owner, of the habitability of each unit. Also included in the report will be a description of the operation of the project including, but not limited to: marketing activities, status of waiting list, rents, vacancies, tenant or occupant selection activities, deposits to and withdrawals from reserve accounts, extraordinary repairs, replacements, or improvements.

An HTF sub recipient must submit its performance report to the LPA **within 120 days** of the end of the sub recipient's fiscal year; the LPA, in turn, must submit that report to AMU **within 30 days**. The LPA must also submit its Performance Report, which includes a certification of the projects financial stability, income eligibility of occupants, status of sales or transfers of properties, and an inspection report of the project.

7.05.02 HOME Monitoring Checklist

To demonstrate on-going project compliance with HOME Program regulations, Project Owners are required to submit annually to DHCR, HUD form HOME Monitoring Checklist 6-D entitled Project Compliance Report: Rental Housing (the Form). The Form must be submitted to your assigned DHCR Asset Management Representative **within 120 days** of the close of the project's fiscal year.

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Section: 7.0 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS
Sub Section 7.06 Tenant Management Requirements

This Section establishes tenant management requirements which are designed to:

- (i) meet the statutory provisions of the Programs;
- (ii) protect the State's investment in the units;
- (iii) establish a level of owner accountability which can be verified by DHCR; and
- (iv) provide a basis for ensuring the future viability of projects.

7.06.01 General Tenant Selection Process

Units shall only be made available to eligible occupants as set forth in the project regulatory agreement.

HOME:

Refer to Section 2.05.04C

LIHC blended project:

Income limits for qualifying tenants depend on the project set-aside election and the requirements set forth in the project regulatory agreement.

The selection of tenants for all projects must comply with all federal and State fair housing laws, Title VIII of the Federal Civil Rights Act of 1968, and the New York State Human Rights Law. (See Section 4.00, General Requirements, for further discussion of fair housing requirements).

Fees: i.e. application fees, apartment prep fees, credit check fees, advance security deposits, etc. may not be charged to prospective tenants for admission to any HTF and HOME funded project.

The Owner should begin the tenant selection process no later than the point at which the project's construction is 75% completed. This will ensure that there is adequate time to market, advertise and select the project's initial occupants. The Owner is required to describe the procedures which will be used to market the units in a marketing plan. The Owner must then follow this

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marketing plan. All owners of **HTFC funded projects are required to conform to the following occupancy chart:**

OCCUPANT DENSITY RANGE		
NUMBER OF BEDROOMS	MINIMUM	MAXIMUM
0	1	2
1	1	2
2	2	4
3	3	6
4	5	8
5	7	10

Owners must comply with all local, State, and federal codes pertaining to handicapped accessibility, including the Americans with Disabilities Act (ADA).

Owners of **HTFC** projects with handicapped-accessible units should include affirmative measures to identify sources of referrals for these units in their management plans. The owner should also establish linkages with local agencies or groups prior to the initial project rent-up for the ongoing referral of occupants to these units. Handicapped-accessible units should be reserved for persons with disabilities. Project owners with agencies and/or groups agreements for persons with special needs must adhere to their persons with special needs marketing plan.

Project owners should refer to the project regulatory agreement for project specific requirements. **Records must be available on site to document compliance with special needs programs and/or special population set-asides.**

General Tenant Selection From Waiting List

HTF/Turnkey Projects: During initial project rent-up, and thereafter, owners must select applicants from the waiting list which match the lowest income eligible applicant with the correct basic rent level(s). If the income amount is the same, then the earliest dated application is selected.

HOME Projects: Applicants must be selected in chronological order.

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NYHousingSearch Requirements

No later than 90 days prior to engaging in marketing activities, owners must register their project with www.NYHousingSearch.gov, a FREE service provided by New York State to advertise and search for affordable and accessible housing. The service is also available through a toll-free, bilingual call center at **1-877-428-8844**. Representatives are available to assist with listings and searches.

HTF Program Tenant Selection

The owner must give preference to eligible persons or families with the lowest possible incomes, taking into consideration the income requirements of the project. Preferences must also be given to persons or families whose current housing fails to meet basic standards of health and safety, and who have little prospect of improving the condition of their housing except by living in a project assisted by the HTF Program.

Owners must establish a waiting list for persons of low-income, which may be developed by advertising through the municipality's office newspaper or a newspaper of general circulation in the neighborhood or municipality in which the project is located, or from existing waiting lists for social service, charitable or philanthropic facilities. Owners must follow their approved Marketing Plan for project specific requirements.

Turnkey Program Tenant Selection

With regard to tenant selection for the Turnkey Program project units, the owner must ensure that, unless waived, in writing, by HTFC, at least 30 percent, but not more than 70 percent of the tenants are persons with incomes at public assistance level or persons or families receiving benefits pursuant to Section 131A of the Social Service Law. Furthermore, preference among the public assistance level tenants must be given to those who are referred by hotels, motels or shelters operated by, or receiving direct or indirect payment from, a social services district or any other philanthropic or charitable facility providing such accommodations. To the extent economically feasible, the remaining tenants must be persons of low-income.

For LIHC blended projects, the previous sentence does not apply.

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See Sub-Section 7.10.01.

HOME Program Tenant Selection:

Refer to Section 2.05.03.E

Owners of Turnkey Program projects must establish the following three waiting lists:

- (i) a waiting list for tenants with incomes at the public assistance level;
- (ii) a waiting list for tenants who are persons of low-income; and,
- (iii) a waiting list for tenants who are handicapped persons.

Such waiting lists should be developed in the same manner as outlined previously under General Tenant Selection From Waiting List criteria.

7.06.02 Establishing and Adjusting Project Rents

Project applicants/owners submit a rent plan with their application which sets the rental charge for each unit based upon tenant income levels, number of bedrooms per unit, and the project's operating budget. The DHCR/HTFC approved rent plan establishes the initial basic rent for each of the units in the project. For units which are to be occupied by persons with incomes above the public assistance level, the basic rent should be set so that project income is sufficient to support the project's expenses.

The project owner should use the following procedures for establishing the basic rent and the annual changes thereto:

- (i) the basic rent for tenants with incomes at the public assistance level must be set at the Shelter Allowance level, and is not subject to an annual increase unless the Shelter Allowance is also raised by the State of New York;
- (ii) The basic rent for tenants with income above the public assistance level, but below 90 percent of the Area Median Income (AMI), will initially be set so that the project's rental income is sufficient to cover all projected operating and maintenance expenses, including Reserve Fund deposits; these basic rents may be skewed so that various segments of the target population may be reached, based upon 30 percent of tenants' income being devoted to housing costs.

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- (iii) for projects in jurisdictions which are subject to the Rent Stabilization Law (RSL) or the Emergency Tenant Protection Act (ETPA), the applicable Rent Guidelines Board increase (see Section 7.06.03 for a discussion of initial rents for projects located in areas subject to RSL or ETPA); and,
- (iv) for tenants whose incomes rise above the persons of low-income level, as determined by the owner's annual income verification procedure, the basic rent will be adjusted to the lesser of the market rent or 30 percent of the tenant's annual income less the allowance for tenant paid utilities **except in HOME funded projects. In these properties tenants whose income exceeds 80% of AMI must comply with Section 92.252 (i) (2) of the final HOME rule.** Tenants who do not submit, or falsify their income verification documents, will pay the market rent (described below).
- (v) The following documents are needed to review a rent increase submission. Back-up documentation may be requested on a case by case basis.
 - a. Budget supporting the proposed rent increase with explanation of line item budget increases.
 - b. The schedule of current rents, proposed dollar amount of increase, proposed rents, and utility allowance per bedroom size (if applicable).
 - c. A current rent roll.
 - d. Last audit report if not previously submitted (see subsection 7.05).
 - e. If Managing Agent is submitting request, letter from Owner indicating their approval of the proposed rent increase.

Budget and Rent Plan forms have been developed by AMU's Accounting Staff to streamline the review process. Please contact your assigned AMU Representative to obtain these forms in order to expedite the project's request for rent increase.

For LIHC Standalone or LIHC blended projects see Sub-Section 7.10.02 regarding paragraph (ii) and Sub- Section 7.10.03 regarding paragraph (iv).

At the time of contract closing, OCD will establish the market rent for each unit. This is the maximum amount of rent that can be charged for the unit if a tenant's income increases to a point where they are no longer low-income, or if the tenant fails to submit or falsifies their income. No tenant may be charged more than the market rent to occupy a unit. The market rent is established as

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a function of the basic rent for the unit, plus an additional amount which would be payable if all HTFC payments, grants and/or loans made to the project were treated as a 30-year amortizing interest-bearing loan at the 30-year U.S. Treasury bond yield rate in effect at the time of the project's contract closing. The market rent will be adjusted annually by an amount equal to the basic rent increase; however, in jurisdictions which are subject to the RSL or ETPA, the increase may not exceed the lawful annual increase authorized under such laws. If the project's operating budget does not warrant it, the owner need not increase basic rents.

If, after paying all of the project's annual operating and maintenance expenses, there is excess annual income over and above an amount equal to three month's rent roll, such amount must be deposited into the project's Operating Reserve Account. See Operating Reserve Account Sub-Section 7.03.04 for details.

7.06.03 Initial Project Rents in Areas Subject to the Rent Stabilization Law (RSL) or Emergency Tenant Protection Act (ETPA)

Owners of projects located in areas which are subject to the RSL or ETPA are required to register all units in the project with DHCR's Office of Rent Administration. Owners are required to comply with the terms and conditions of a Rent Order which will be entered into between DHCR's Office of Rent Administration and HTFC at the time of Final Closing. The Rent Order establishes the market rent and registers the basic rent as the lawful registered rent. For projects located in areas subject to the RSL or ETPA, owners will also be required to include in all leases a Rent Rider, specifying the terms and conditions under which the owner is permitted to make adjustments to the basic rent in excess of the increases permitted under RSL or ETPA.

For LIHC blended projects, owners shall not charge rents which exceed the lesser of the rents contained in the Rent Order or the applicable LIHC restricted rent.

7.06.04 Tenant Occupancy Requirements

At initial project rent-up, no unit may be leased to a household which would be paying housing costs (basic rent plus the allowance for tenant-paid utilities) which are less than 25 percent, or more than 48 percent of that household's income.

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After initial occupancy, and as turnover of the units occurs, vacated units may be leased in accordance with the requirements set forth above, except that the units may not be leased to a household which, after occupancy, would be paying housing costs which are less than 30 percent, or more than 48 percent of that household's income.

Should the owner at any time be unable to lease the project's units in accordance with the occupancy requirements set forth above, the owner may submit a written request to AMU for a waiver of these requirements.

For **HTFC** projects, the maximum number of persons per bedroom is two. In addition, each HTF or Turnkey-assisted unit must be the principal residence of its occupant(s). The following apply to HTF Program projects only:

- (i) legal occupants of a property rehabilitated under the HTF Program who continue to occupy the property during the rehabilitation are entitled to continue such occupancy once the project is completed;
- (ii) legal occupants of a property rehabilitated under the HTF Program who are temporarily relocated during such rehabilitation may not be permanently displaced; and
- (iii) subsequent to rehabilitation or conversion, an eligible occupant must be a person of low-income at the time of application for occupancy of the unit.

7.06.05 Tenant Income Verification

The owner is responsible for determining the income of tenants and verifying and certifying to DHCR/HTFC that such tenants are eligible for project occupancy. Tenant income verification may include but is not limited to certification by the Department of Social Services, the Veteran's Administration, a public assistance agency, or a written statement from the tenant's employer (third party verification). **Refer to HUD Handbook 4350.3 Rev-1 dated 5/03.**

For LIHC blended projects, see Sub-Section 7.10.04 regarding tenant income certification and Sub-Section 7.10.05 regarding student eligibility.

Tenant recertification to determine continued eligibility, to verify income, and to establish rental amounts, will be on a yearly basis. In performing the project's annual audit, the CPA will be

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required to certify that the owner has sufficient documentation and procedures in place to accurately verify the income of tenants.

7.06.06 Recertification Waiver for 100% LIHC Buildings (removed)

7.06.07 HTF Tenant Income Recertification Waiver

The HTF has adopted a recertification waiver policy. HTF funded properties that (a) are not participating in other programs requiring annual verifications of income (i.e., HOME, Turnkey, Rural Housing, Section 8), (b) have been placed in service, (c) have completed one year of satisfactory annual compliance with the requirements set forth in Chapter 7 of the CPM, (d) **serve only one AMI, and are in good standing with DHCR, are eligible to apply for this waiver.**

The HTF waiver relieves the property only from the obligation to perform annual income recertifications. Still required are: initial move-in certification, recertification due to changes in household composition, and submission by owners of annual reports as required in Chapter 7 of the CPM and cooperation during record inspections as required by monitoring regulations.

The waiver will take effect beginning with the compliance monitoring cycle following the date of the letter of approval. The waiver covers all subsequent compliance monitoring cycles during the buildings compliance period. If DHCR determines at any time following the grant of the waiver that substantial noncompliance has occurred, the waiver may be revoked and the owner must complete full annual income recertifications with third party verifications.

Waiver requests must be sent to Asset Management, 38-40 State Street, Albany, New York 12207.

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Section: 7.0 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS
Sub Section 7.07 Tenant Lease Agreements

7.07 Tenant Lease Agreements

All tenants must sign written lease agreements with the owner or the owner's managing agent. A lease agreement is a contract which assures the tenant exclusive possession of a specific dwelling unit and reasonable use and protection of the property in exchange for payment of rent. Lease agreements should be written for a **minimum term of two-years**, although one-year leases are permitted at the request of the tenant.

Except where other more restrictive provisions are required by the RSL, ETPA or other applicable law, owners will use **the HTFC Lease**.

Should the Owner wish to add language to the HTF lease said language must be submitted for review and approval in the form of a Lease Addendum not later than 90 days following the date assigned for return of the executed HTFC commitment letter. In order to reduce processing time, review of proposed addendum/changes for compliance with applicable laws, by owner's counsel, is highly recommended.

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Section: 7.0 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS
Sub Section 7.08 Managing Agent/Tenant Management Services

7.08 Managing Agent/Tenant Management Services

Owners may manage their own project if they demonstrate management capacity. If, however, the services of a management agent are required, AMU should approve managing agent compensation and the type and frequency of the residential services to be provided by the managing agent; the owner must determine the following:

- (i) the staffing necessary to provide such services;
- (ii) the fee for the performance of such services pursuant to a written agreement (fee may not exceed the reasonable and customary fee for such services in the area in which the project is located);

The managing agent must be licensed as a Real Estate Broker by NYS; and, any employee of the agent who will show apartments, sign leases, or collects rents must be licensed as a Salesman or Associate Broker of the licensee.

Selection of a qualified managing agent shall be subject to the approval of DHCR. The owner shall solicit bids, review bids, select a prospective agent and submit its selection to DHCR together with all bids. DHCR shall review the bids, considering primarily the qualifications and quality of the bidders, and either approve the owner's proposed agent or disapprove the agent and direct the owner to select another agent from among those acceptable to DHCR. If there are no other bidders, or no bidder acceptable to DHCR, the owner will be directed to re-bid. Continued eligibility to self-manage the project will be conditioned upon the satisfactory operation of the project as determined by AMU. HTFC/AMU reserves the right to remove/replace an owner as managing agent. HTFC/AMU also reserves the right to approve, reject, or remove/replace an existing or proposed managing agent.

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Section: 7.0 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS
Sub Section 7.09 Asset Management Performance Reviews

7.09 Asset Management Performance Reviews

Throughout the term of the HTFC funded project's regulatory period AMU will conduct periodic reviews. These reviews may include reviewing the performance of the project recipient/sub-recipient through site visits, audits, review of specific records and documentation, and compliance with DHCR agreements.

The following is a list of some of the items AMU will review:

- Annual Audit Reports
- General Operating Accounts (checking and savings)
- Reserve Accounts
- Operating Budget
- Insurance Certificates
- Performance Report
- Waiting List(s)
- Rent Roll/Rent Plan/Schedule
- Lease Agreement/Addenda
- Tenant Files
- Management Agreement
- Agent's Real Estate Broker License
- Licenses of Broker's Staff
- On site physical inspections

and other such information as DHCR may require in order to determine project recipient's compliance with the terms of recipient agreements, loan documents, and the rules and regulations of the HTFC.

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Section: 7.0 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS
Sub Section 7.10 AHTF/Turnkey/LIHC Blended Projects

7.10 AHTF/Turnkey/LIHC Blended Projects

The purpose of this Section is to **highlight** specific areas where LIHC requirements differ from HTF/Turnkey requirements.

In order to receive LIHC, the property owner and property manager must follow the Regulatory Agreement and I.R.S. regulations and requirements. Failure to follow these requirements (e.g., renting a unit to an over-income tenant, charging rent in excess of the maximum allowable, renting to ineligible students (See Section 7.10.05) or inadequately documenting a tenant file) may result in the recapture of credit with interest and penalty.

7.10.01 Maximum Income Limits- LIHC Projects

Income limits for qualifying tenants depend on the projects set-aside election. On move-in, qualifying tenants in 20-50 set-aside projects may not have incomes which exceed 50% of the AMI by household size. Qualifying tenants in 40-60 and 25-60 set-aside projects may not have incomes which exceed 60% of the AMI by household size.

7.10.02 Restricted Rent Limit

The maximum rent which a project owner can charge for a low-income unit is called the restricted rent. If this limit is met, the unit is considered rent-restricted. Gross rent (tenant rent payment plus utility allowance) for LIHC units may not exceed 30% of the maximum area income limit using an assumed 1.5 persons per bedroom (1 person for units without a separate bedroom).

7.10.03 Increases In Tenant Income - Next Available Unit Rule

Upon initial move-in certification, a household's annual income must not exceed the applicable area median (50% or 60%) income limit by household size. At recertification, if a tenant's income in a LIHC unit has increased above the maximum allowable income limit, the unit continues to qualify for tax credit purposes as long as the tenant qualified on move-in and the unit remains rent restricted. A LIHC unit occupied by a tenant whose income rises above 140% of the current

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maximum allowable income limit continues to qualify for tax credit purposes as long as the unit remains rent restricted and the next vacant unit of comparable or smaller size in the building is rented to a qualified LIHC tenant.

7.10.04 Tenant Income Certification

On move-in (prior to occupancy) and annually thereafter, the tenant must submit to the owner a signed Tenant Income Certification. Third party source documentation/verification must be obtained for all income sources at initial move-in certification and at each annual recertification. The date of third party source documentation/verification of income and assets must be within one hundred and twenty days prior to the effective date of the tenant certification. Guidance on the types of acceptable forms of verification and definition of assets and income to be included/excluded may be found in HUD Handbook 4350.3 (or its successor). *A copy of the entire handbook and other HUD regulations can be obtained at www.hud.gov or at www.huduser.org. If all the low-income buildings in the project are 100% low income buildings, owners are not required to complete annual tenant *income* recertifications.*

7.10.05 Students

Full time students cannot reside in a LIHC unit unless they are in one of the following categories and are income eligible:

Unit occupied by an individual who is:

- 1) Receiving assistance under title IV of the Social Security Act (Aid to Families with Dependent Children)
- 2) Enrolled in a job training program under the Job Training Partnership Act, or other similar Federal, State, or local law;
- 3) A student formerly in a foster care program.

Unit occupied entirely by full time students who are:

- 1) Single parents and their children; and such parents are not dependents of another individual; and the children are not dependents of another individual other than a parent of such children.
- 2) Married and file a joint income tax return.