

## Office of Finance and Development

### Capital Programs Manual

Page 1 of 42

Section: 6.00 ADMINISTRATIVE PROCESSING REQUIREMENTS

Sub Section: 6.01 Introduction

#### 6.01.01 Summary

This Section describes HCR's general administrative and construction processing procedures and requirements; the roles and responsibilities of the project participants; procedures for change orders, budget modifications, award increases, and escrow accounts; HCR's disbursement process; and cost certification requirements, where applicable.

## Office of Finance and Development

### Capital Programs Manual

Section: 6.00 ADMINISTRATIVE PROCESSING REQUIREMENTS

Sub Section: 6.02 Administrative Procedures and Requirements

#### 6.02.01 Project Development Meeting

Once a project has received an Award Letter, the assigned HCR project manager will contact the primary contact person identified in the application (Form A-4) within 14 business days to schedule the Project Development Meeting. The primary contact person will be the primary contact and coordinator for the project. The Project Development Meeting will be held within 30 days of receipt of the Award Letter. All award conditions (if any); project requirements, submissions, and deadlines related to the project's economics, design, and ownership will be discussed, as will the roles and responsibilities of the various project participants.

The discussions at the Project Development Meeting will result in a Development Timetable Letter which will provide specific deadlines based upon the Development Track of the project. There are three Development Tracks, each of which involves different levels of review and DHCR/HTFC involvement, based upon the project's funding sources. The processes for the three Development Tracks are discussed in Section 6.05. If issues at the Project Development Meeting cannot be resolved, or if the applicant can no longer provide the project in the application without any substantial changes, the State expects to terminate its commitment to the project.

#### 6.02.02 Funding Commitment Letter (FCL)

After the Project Development Meeting is held and all issues related to the FCL are resolved to HCR's satisfaction, a FCL will be issued to successful applicants. The FCL describes the project, as well as defines the relationship between the State and the applicant. It will set forth, as applicable, the following specifics on project scope:

- (i) the number, configuration, and addresses of units in the project, and information about the project owner;
- (ii) income groups to be served;
- (iii) project financing and equity requirements;

## Office of Finance and Development

### Capital Programs Manual

- (iv) operating economics;
- (v) development timetable and schedule of submissions;
- (vi) minority and women-owned business participation;
- (vii) environmental submissions;
- (viii) design and sustainability requirements;
- (ix) marketing and management plans, fair housing-affirmative marketing plan;
- (x) special needs requirements, if applicable;
- (xi) closing requirements;
- (xii) HOME project Federal requirements (if applicable); and,
- (xiii) Community Housing Development Organization (CHDO) Requirements, if applicable.

The terms of the FCL will provide for the delivery of the proposed housing product. Where an applicant is unwilling or unable to comply with terms of the FCL, 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 FCL, and to return an original signed copy of the FCL to Hampton Plaza. The signature and return of the FCL by the applicant will indicate the acceptance of all terms and conditions set forth therein. If the applicant is unable to sign and return the FCL within the 30-day timeframe, HCR will consider this a failure to accept all terms and conditions contained in the FCL. This will have the effect of terminating the FCL and all terms and conditions will have to be reconsidered.

Applicants are expected to comply with the terms of the executed FCL; failure to comply with such terms is likely to result in its termination. In general, HCR is reluctant to consider changes to the terms of the FCL once it has been issued. Requests for nominal or de minimis changes in rents, or operating and development costs specified in the FCL may be considered with a clear, detailed narrative describing the reasons for the requested changes. Significant changes, including but not limited to changes in tenancy, ownership to unrelated parties, use, amount of HCR financing, project timetables, sites, etc. will require a clear, detailed narrative describing the reasons for the requested changes and the impact on project budgets etc. Any significant revisions to conditions set forth in the FCL must be evaluated by staff, and the applicant must receive prior approval by HCR before implementation. This reevaluation will

**Office of Finance and Development**

**Capital Programs Manual**

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. HCR will not approve changes in a FCL which affect the project's competitiveness or in other ways that would affect the outcome of the funding competition. HTFC Board approval will be required for any significant change(s), including any requests to increase HOME/HTF funding by more than ten percent or more above the award amount already approved by HTFC Board.

## Office of Finance and Development

### Capital Programs Manual

Section: 6.00 ADMINISTRATIVE PROCESSING REQUIREMENTS

Sub Section: 6.03 Funding Increase Under HCR Programs

#### 6.03 Funding Increase Under HCR Programs

HCR 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 or because of loss of other funding sources identified in the application development budget. HCR expects that such cost increases or funding losses will be funded through completion guarantees, contingency funds, developer's fees and/or builder's profit. In projects where there is an identity of interest between the general contractor and the project sponsor, no increases in builder's fees will be recognized in HCR's evaluation of the increase request. 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, consistent with HCR design requirements. Additionally, improved terms by banks, syndicators and builders should also be considered. The owner/sponsor must demonstrate to HCR's satisfaction that they have explored alternatives to reduce, offset and/or fund increases in costs.

HCR 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 Davis-Bacon wage rates; 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, HCR 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 HCR 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 HCR approval. HCR 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 QAP and the CPM.

6.03.01 Evaluation Milestones

Applicable laws require that HCR underwrite each LIHTC project three times: prior to issuing a credit reservation, at binding agreement/carryover and at the time of submission for IRS Form 8609. In order to enhance HCR 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. HCR will not entertain more than one request for additional funding for any one project unless there is a demonstrable error by HCR. 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 LIHTC reservation – within 10 days of receipt of the reservation letter, if the Owner/Sponsor should have any issues with the HCR recommended funding level; a revised underwriting will be considered by HCR upon written request. The Owner/Sponsor must demonstrate to HCR, in writing, that HCR misinterpreted information in the application.
- 2) Prior to requesting a binding agreement/carryover – request for additional funding should be made no more than 45 days and no less than 30 days prior to binding agreement/carryover.
- 3) At the time of submission for IRS Form 8609 – HCR will not accept requests for additional funding during the time period between carryover allocation and submission for IRS Form 8609 unless HCR determines that emergency remedial action is required. At the time of the IRS 8609 submission, HCR will only consider for additional funding those additional costs that resulted from events that were completely beyond the control of the Owner/Sponsor.

6.03.02 Underwriting Parameters

HCR underwriters will employ the following review methodology for all requests for additional funding:

- 1) The HCR project underwriter, in conjunction with the HCR supervising underwriter and HCR architect, if applicable, will make recommendations to the OF&D Executive Staff as to whether the additional expenses or loss of funding are necessary to the project and

## Office of Finance and Development

### Capital Programs Manual

whether the additional project costs are reasonable based on HCR experience with similar projects. Costs not deemed essential to the project will be required to be paid for by the Owner/Developer and will not be considered eligible for additional funding.

- 2) HCR staff, including the underwriter, architect, if applicable, and project manager will make recommendations to the OF&D Executive Staff as to whether cost increases for items deemed necessary for the project or the loss of funding resulted from events that were within or beyond the control of the Owner/Developer using the categories below as a guide.

Category A – Increases in costs originating with HCR such as:

- a) issues which arise from staff interpretation of applications;
- b) changes in plans and specifications that were requested by HCR, and that go beyond the established requirements in the HCR Design Guidelines or the QAP;
- c) changes in wage rates arising from a decision by HCR to award funding under a program not applied for by the Owner/Developer; and/or,
- d) changes mandated by revisions in the applicable building codes, regulations, and laws governing the construction of housing that occur after the time of award of HCR funding.

Category B – Increases in costs or the loss of funding that were beyond the control of the Owner/Developer and that could not have been foreseen prior to award (e.g., the owner/sponsor can demonstrate that the established requirements for local approval were changed after award of funds) such as:

- a) changes in plans and specifications required in connection with local approval because the stated requirements were changed after the award of funds;
- b) acts of God (flood, earthquake); and/or,
- c) change in financing resulting from non-project specific factors that could not have been foreseen by the Owner/Developer's (i.e., change in prime rate or bank/market failure).

Category C – Cost increases or losses in funding that could or should have been foreseen by the Owner/Developer such as:

## Office of Finance and Development

### Capital Programs Manual

Page 8 of 42

- a) refinement or amendment of plans and specifications;
- b) changes in plans and specifications required in connection with local approvals;
- c) municipal impact or recreation fees;
- d) updated development cost line items;
- e) addressing environmental issues that were known or should have been known by the developer;
- f) addressing site conditions that were known or should have been known by the developer;
- g) increases in costs due to work stoppage resulting from actions or inaction by the Owner/Developer;
- h) replacement of financing previously committed;
- i) required increases in operating reserves to compensate for loss of operating subsidies; and/or,
- j) required increases in replacement reserves to cover inadequate warranties.

Category D – Cost increases arising from significant, unexpected increases in mandated Davis-Bacon Wage Rates post-award and prior to construction contract execution and wage rate lock in.

#### 6.03.03 Methodologies for Determining Cost Sharing

Funding increases will be treated based on the appropriate categories as described above in the following manner:

Category A – HCR will generally allow for additional funding, if appropriate and subject to the availability of funds, without requiring the Owner/Developer to increase, defer, or contribute developer fees.

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

- a) any developer fees in excess of a 10% fee, based upon developer fee eligible costs (as described in the Qualified Allocation Plan Section 2040.3(g)(2)(ii)



## Office of Finance and Development

### Capital Programs Manual

and CPM Section 5.05(vi)) and as recognized in the original award, will first be contributed back to the project by the Owner/Developer to pay for cost increases. In addition, if there is an identity of interest between the project owner/developer and the builder, at least 50% of builder's profit, as recognized in the original award, will first be contributed back to the project. Any remaining financing gap after accounting for these actions and any other actions taken will be paid for by equal cost sharing (50/50) between HCR through additional funding by HCR and by the Owner/Developer through deferred developer fees or other contributions. However, HCR may elect to require the Owner/Developer to pay a larger share of any cost increase that HCR determined could have been mitigated by the Owner/Developer.

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

- a) any developer fees in excess of a 10% fee, based upon developer fee eligible costs (as defined in the Qualified Allocation Plan Section 2040.3(g)(2)(ii) and CPM Section 5.05(vi)) and as recognized in the original award, will first be contributed back to the project by the Owner/Developer to pay for cost increases. In addition, if there is an identity of interest between the project owner/developer and builder, at least 50% of builder's profit, as recognized in the original award, will first be contributed back to the project; and,
- b) any remaining financing gap after accounting for these actions and any other actions will be paid for by cost sharing between HCR and the Owner/Developer. HCR may contribute up to 20% of such costs as determined by HCR through additional allocations, and the balance of any remaining financing gap for all cost increases shall be paid for by the Owner/Developer or through non-HCR funds.

Category D - HCR will utilize cost sharing techniques to allocate responsibility for any additional costs as follows:

- a) the financing gap attributable to significant, unexpected increases in mandated Davis-Bacon wage rates will be paid for by cost sharing between HCR and the

## Office of Finance and Development

### Capital Programs Manual

Page 10 of 42

Owner/Developer. HCR may contribute up to 80% of such costs as determined by HCR through additional allocations, and the balance of any remaining financing gap for all cost increases shall be paid for by the Owner/Developer or through non-HCR funds.

For purposes of additional allocations, HCR may, in its discretion, make such allocations through LIHTC, HOME, and/or HTF awards, or other resources for which the project is eligible, or by permitting rent increases as it deems appropriate. HCR may, in its discretion, consider additional underwriting solutions in order to efficiently facilitate project completion.

#### 6.03.04 Process for Requesting Additional Allocations

The Owner/Developer will make a formal written request to the HCR project manager.

The request shall include:

- Original Forms (Underwriting Application Worksheet) and the proposed amended Forms.
- 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/Developer's control, clear documentation demonstrating the need for the change (i.e., letter from local zoning official, request from financing entity).
- For standalone tax credit projects that have not undergone design review by HCR, additional documents may be required.
- In the case of requests for additional funds due to unexpected increases in mandated Davis-Bacon Wage Rates, these additional requirements will also apply:
  - The cost increases must be documented to HCR's satisfaction to be **solely** attributable to the revision of the applicable Wage Rate; and,
  - The owner/sponsor must document that the project has proceeded without delay to construction contract execution, and wage rate lock-in, consistent with the development timeline proposed in the application for funding,

**Office of Finance and Development**

**Capital Programs Manual**

Page 11 of 42

If the request for an increase is denied, the HCR project manager will notify the Owner/Developer and all other involved parties of the action. If the request is approved, Program Management will prepare the revised FCL exhibits with input, as necessary, from the Design Unit and Underwriting.

## Office of Finance and Development

### Capital Programs Manual

Section: 6.00 ADMINISTRATIVE PROCESSING REQUIREMENTS

Sub Section: 6.04 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:

- the applicant to which the funding award or commitment is to be transferred can satisfy the criteria for eligible applicants established by HTFC;
- the applicant to which the funding award or commitment is to be transferred can satisfy the operational standards established by HTFC; and,
  - the applicant to which the funding award or commitment is to be transferred will be operated by substantially the same staff or staff with expertise equivalent to the staff of the original applicant;
  - governed by substantially the same board as the original applicant; or,
  - 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.

The assignment package must be submitted at least 60 days prior to the project's construction closing. It remains the project sponsor's responsibility to satisfy the above conditions. The project sponsor must ensure that the single asset limited liability company or limited partnership duly formed and validly existing under the laws of New York will be owned, operated and managed by substantially the same entities and individuals who operate and manage the applicant entity. The following documents must be included in the incorporation document package:

- 1) a letter from the applicant requesting the assignment of the award including the name of the new entity.
- 2) an organizational chart, along with a narrative of the proposed ownership structure.
- 3) Whether the project is required to have a not-for-profit entity hold at least 50% of the controlling interest in the general partner/managing member of the ownership entity and have a defined role in project management.

## Office of Finance and Development

### Capital Programs Manual

- 4) all legal and organizational documents which support the structure of the newly proposed ownership which must establish the organizational tie-in of the original applicant (Articles of Incorporation, Certificate of Incorporation, etc.).

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. If an HTF or HOME award granted to a not-for-profit or Community Housing Development Organization (CHDO) is requested to be assigned to a private developer, the approval of the assignment is conditioned upon HCR's annual HTF awards being below the private developer limit per the HTF statute, and HCR's annual HOME awards meeting the HOME Final Rule requirement that at least 15% of NYS HOME allocation is made to CHDO's.

## Office of Finance and Development

### Capital Programs Manual

Page 14 of 42

Section: 6.00 ADMINISTRATIVE PROCESSING REQUIREMENTS

Sub Section: 6.05 CHDO Determination Process

A Community Housing Development Organization (CHDO) is a private nonprofit, community-based organization that has staff with the capacity to develop affordable housing for the community it serves. To qualify for designation as a CHDO, the organization must meet certain requirements pertaining to its legal status, organizational structure, and capacity and experience. To count towards the 15 percent CHDO set-aside required by HUD in funding site-specific NYS HOME-financed projects, a CHDO must engage in an eligible set-aside activity. Please see 24 CFR 92.208, 24 CFR 92.300, CFR 92.301.

A CHDO determination is made on a project specific basis. Each time NYS HOME funds are committed to a project, the applicant's non-profit qualifications to be a CHDO must be certified by HCR. Required submissions to obtain a CHDO determination from HCR include the items contained in the HUD CHDO checklist.

It is HCR's preference and in the applicants best interest to submit the items on the HUD CHDO checklist a minimum of 60 days prior to the funding round application deadline. The HUD CHDO checklist items must be submitted to [9%RFP@hcr.ny.gov](mailto:9%RFP@hcr.ny.gov). Once HCR has completed the CHDO review and issued a determination letter based upon the applicants' organizational characteristics, the letter must be submitted as part of the 9% RFP application for the project the CHDO designation is being sought for. The HCR determination letter must have been issued no more than six months prior to the pertinent 9% RFP application submission deadline, provided there have been no material changes to the organizational subsequent to the determination letter issuance which would affect CHDO status. Any such material changes to the organization must be identified and communicated to HCR prior to application by sending an email describing the changes and appropriate documentation to HCR through [9%RFP@hcr.ny.gov](mailto:9%RFP@hcr.ny.gov).

## Office of Finance and Development

### Capital Programs Manual

Page 15 of 42

Section: 6.00 ADMINISTRATIVE PROCESSING REQUIREMENTS

Sub Section: 6.06 Development Team Member Change

Should there be a change in a development team member, or if a general contractor/builder is identified after funding, the following documents must be submitted within five (5) business days of the change:

- 1) Project Summary;
- 2) Development Budget and Sources & Uses;
- 3) Development Team Summary, and any other pertinent Application Items that have been impacted by the change;
- 4) A written explanation of the rationale for the change and any impact to the current budget;
- 5) Development Team Omnibus Certification;
- 6) Consent and Release for Nonpublic Personal Information; and,
- 7) Proposed contract or written agreement with the new proposed development team member, such as Owner-Architect contract, Proposed Owner-GC contract, Management Agreement, Consultant Contract, or the contract with proposed partner delineating roles and responsibilities.

Contact your assigned project manager for the forms listed above.

## Office of Finance and Development

### Capital Programs Manual

Section: 6.00 ADMINISTRATIVE PROCESSING REQUIREMENTS

Sub Section: 6.07 Project Development Tracks

Development Track One is for projects involving HTF/HOME for permanent financing. This may also include HTF/HOME projects financed in combination with LIHTC/SLIHC (See 6.07.02).

#### 6.07.01 Development Track One Process (HOME/HTF Permanent Financing Only)

For projects following this Development Track, the following HCR technical units need to provide approvals in order for a construction closing to be scheduled:

- 1) Design, Construction & Environmental Unit and [Sustainability Team](#): complete review of construction drawings, [specifications](#), [third-party program compliance](#) and final cost estimates, along with an environmental review. The Design Unit, [in coordination with the Environmental Unit and Sustainability Team](#), will not provide clearance to close unless all requirements listed in Exhibit 8 and 9 of the FCL have been met.
- 2) Underwriting: complete review of the financing requirements contained in Exhibits 2, 3 and 4 of the FCL in order to provide clearance to close on construction financing.
- 3) FHEO: all requirements contained in Exhibit 10 of the FCL must be submitted and approved (as applicable) in order to provide clearance for construction closing.
- 4) AMU: all requirements contained in Exhibit 11 of the FCL must be submitted and approved (as applicable) in order to provide clearance for construction closing.
- 5) Special Needs: all requirements contained in Exhibit 12 of the FCL must be submitted and approved (as applicable) in order to provide clearance for construction closing.

All submissions are required to be received by HCR by the dates in the Project Development Timetable Letter.

After the construction closing, the majority of the construction related correspondence will occur through the HCR Design Unit architect. At approximately 75% construction completion, the applicant/owner must request a Rent-Up Conference through the project



## Office of Finance and Development

### Capital Programs Manual

Page 17 of 42

manager with staff from the Asset Management Unit of the Office of Housing Preservation. 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. Please see Section 7 for all Project Operating and Management Requirements.

The HTF/HOME permanent loan closing will occur upon satisfactory completion of the project in accordance with the terms and conditions set forth in Exhibit 12 of the FCL. It is the responsibility of the owner to satisfy HCR's determination of satisfactory completion of the project per the Closing Requirements Checklist in the Legal Documents Manual Index XVI, Permanent Loans. The project owner will be required to enter into a HTF Regulatory Agreement, HTF/HOME Mortgage and Security Agreement, HTF/HOME Promissory Note, HTF/HOME Subordination Agreement (requires a request from the applicant/lending institution if provisions of HTFC Regulatory Agreement are proposed to be waived, and HTFC's approval), and/or HOME Deed Restriction and Match Addendum as applicable. See Section 6.10 for the disbursement of HTF/HOME funds from HTFC.

#### 6.07.02 Development Track One (HTF/HOME Permanent Financing with LIHTC/SLIHC)

Development Track One also includes projects involving HTF/HOME and LIHTC/SLIHC, which require permanent takeout financing with HTF/HOME and credit equity. Please see Section 6.07.04 for the HTF/HOME requirements for construction closing. If a LIHTC/SLIHC Binding Agreement is necessary, the submission requirements are contained within the project's LIHTC/SLIHC Reservation Letter Sections 1) and 2). The LIHTC/SLIHC Reservation Letter Section 1) deliverables are due a minimum of 60 days before the LIHTC/SLIHC Reservation Expiration date, while Section 2) deliverables are due a minimum of 30 days before the LIHTC/SLIHC Reservation Expiration date. Please note, not every project will require a LIHTC/SLIHC Binding Agreement and it is not an HCR requirement. It remains the project owner's responsibility to notify the assigned HCR project manager that a LIHTC/SLIHC Binding Agreement will be required prior to the submission dates. See Section 2.03 or the QAP for more information on LIHTC Binding Agreements.

## Office of Finance and Development

### Capital Programs Manual

After the construction closing, the project owner must submit the required documents for the LIHTC/SLIHC Carryover Allocation. The requirements for the LIHTC/SLIHC Carryover Allocation can be found in the LIHTC/SLIHC Reservation Letter Section 3) and 4). The LIHTC/SLIHC Carryover Allocation documentation must be submitted per the dates contained within the LIHTC/SLIHC Reservation Letter Section 3) and 4). The submission dates are also contained within the Development Timeline Letter. While a Binding Agreement is optional, a Carryover Allocation is a required for all LIHTC/SLIHC allocations.

During construction, the majority of the construction related correspondence will be through the HCR Design Unit architect. At approximately 75% construction completion, the applicant/owner must request a Rent-Up Conference through the project manager with staff from the Asset Management Unit of the Office of Housing Preservation. 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. Please see Section 7 for all Project Operating and Management Requirements.

See Section 6.07.01 for the HTF/HOME requirements for permanent closing. After the HTF/HOME permanent closing, the project owner must submit the 8609/DTF-625 package to the project manager in order to claim the LIHTC/SLIHC allocated to the project. The instructions and requirements for the 8609/DTF-625 can be found at the HCR website: [www.hcr.ny.gov/low-income-housing-credit-program-lihc](http://www.hcr.ny.gov/low-income-housing-credit-program-lihc).

Should the project sponsor require an 8609 to be delivered at the permanent closing table, a written request with a detailed explanation must be provided to the project manager no later than 60 days prior to the anticipated permanent closing date.

#### 6.07.03 Development Track Two Process (LIHTC/SLIHC Alone)

This process is followed by projects involving LIHTC/SLIHC only. If a LIHTC/SLIHC Binding Agreement is necessary, the submission requirements are contained within the project's LIHTC/SLIHC Reservation Letter Sections 1) and 2). The LIHTC/SLIHC Reservation Letter Section 1) deliverables are due a minimum of 60 days before the LIHTC/SLIHC Reservation Expiration date, while Section 2) deliverables are due a minimum of 30 days before the LIHTC/SLIHC Reservation Expiration date. Please note, not every project will require a

## Office of Finance and Development

### Capital Programs Manual

Page 19 of 42

LIHTC/SLIHC Binding Agreement and it is not a HCR requirement. It remains the project owner's responsibility to notify the assigned HCR project manager that a LIHTC/SLIHC Binding Agreement will be required prior to the submission dates. See Section 2.03 or the New York State Qualified Allocation Plan for further information on Binding Agreements.

After the construction closing, the project owner must submit the required documents for the LIHTC/SLIHC Carryover Allocation. The requirements for the LIHTC/SLIHC Carryover Allocation can be found in the LIHTC/SLIHC Reservation Letter 3) and 4). The LIHTC/SLIHC Carryover Allocation documentation must be submitted per the dates contained within the LIHTC/SLIHC Reservation Letter 3) and 4). The submission dates are also contained within the Development Timeline Letter. While a Binding Agreement is optional, a LIHTC/SLIHC Carryover Allocation is a required IRS project review point.

At construction completion, the project owner must submit the 8609/DTF-625 package to the project manager in order to claim the LIHTC/SLIHC allocated to the project. The instructions and requirements for the 8609/DTF-625 can be found at the HCR website: [hcr.ny.gov/low-income-housing-credit-program-lihc](http://hcr.ny.gov/low-income-housing-credit-program-lihc).

#### 6.07.04 Development Track Three Process (HCR Construction Loan)

This process is followed by projects utilizing HTFC construction financing. All the required submissions listed in the Construction Loan Closing Checklist in the Legal Documents Manual Index XVI must also be submitted to the project manager per the dates contained in the Development Timeline Letter. The construction loan closing will be scheduled once the assigned project manager and OLA attorney have received approval from all HCR technical units that the requirements of the FCL have been met. Project sponsors will be required to enter into a construction loan agreement which can be found in the Legal Documents Manual Index IV.

After the construction closing, the HTF construction funds can be requested from HTFC per the Construction Loan Progress Payment Request process detailed in Section 6.10.01. During construction, most the correspondence will be through the HCR Design Unit architect. At approximately 75% construction completion, the applicant and/or owner must request a Rent-Up Conference through the project manager with staff from the Asset Management Unit of the Office of Housing Preservation. The purpose of this meeting is to review any statutory and/or

## Office of Finance and Development

### Capital Programs Manual

Page 20 of 42

regulatory requirements regarding rent-up, tenant selection, and occupancy requirements of the project. Please see Section 7 for all Project Operating and Management Requirements.

If HOME/HTF funds are also being used for permanent financing, the HTF/HOME permanent loan closing will occur upon satisfactory completion of the project in accordance with the terms and conditions set forth in Exhibit 11 of the FCL. It is the responsibility of the owner to satisfy DHCR/HTFC's determination of satisfactory completion of the project per the Closing Requirements Checklist in the Legal Documents Manual Index XVI, Permanent Loans. The project sponsor will be required to enter into a HTF Regulatory Agreement, HTF/HOME Mortgage and Security Agreement, HTF/HOME Promissory Note, HTF/HOME Subordination Agreement, and/or HOME Deed Restriction and Match Addendum, as applicable.

## Office of Finance and Development

### Capital Programs Manual

Section: 6.00 ADMINISTRATIVE REQUIREMENTS

Sub Section: 6.08 Construction Processing Requirements

#### 6.08.01 Pre-Construction Meeting Requirements

A pre-construction meeting shall be held at the beginning of the construction period. In requiring the pre-construction meeting, HCR's goal is to expedite the project's construction by setting forth program regulations, procedures, and contract requirements, as well as clearly delineating the roles and responsibilities of each of the project participants. Preconstruction meeting attendees should include the following, as applicable:

- (i) the awardee/owner, or their representative;
- (ii) the builder, or their representative;
- (iii) the project architect;
- (iv) the Design Unit construction monitor;
- (v) the OF&D project manager;
- (vi) the Design Unit staff architect;
- (vii) the construction lender's representative, if applicable;
- (viii) the representative of any other funding source, if applicable;
- (ix) the construction manager, if applicable;
- (x) the energy efficiency/green building consultant;
- (xi) [CEI Technical Assistance Provider, if applicable](#);
- (xii) the HCR Fair Housing and Equal Opportunity representative; and,
- (xiii) the municipal representative.

The Design Unit architect will lead and facilitate the pre-construction meeting. The following agenda sets forth the topics that will be discussed at the meeting:

- (i) introduction of project participants/signing of attendance sheet;
- (ii) roles and responsibilities of project participants;
- (iii) review of General Conditions:
  - (a) permits;
  - (b) progress schedule;
  - (c) list of subcontractors and suppliers;

## Office of Finance and Development

### Capital Programs Manual

- (d) schedule of Values;
  - (e) construction supervision;
  - (f) shop drawings and material submissions;
  - (g) payments;
  - (h) change orders;
  - (i) responsibility for damage;
  - (j) disputes;
  - (k) delays;
  - (l) as-built/record drawings and warranties;
  - (m) insurance;
  - (n) construction start and completion dates;
  - (o) temporary facilities; and,
  - (p) project sign.
- (iv) scheduling of construction meetings;
  - (v) scheduling of Design Unit site inspections;
  - (vi) [third-party sustainability program compliance and CEI funding commitments](#);
  - (vii) energy efficiency/green building site representation;
  - (viii) environmental concerns; and,
  - (ix) other issues.

The awardee or their representative 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.

#### 6.08.02 Roles/Responsibilities of the Project Owner/Awardee

The project owner/awardee has the following responsibilities including, but not limited to:

- (i) selection and general supervision and coordination of the builder during construction (the actions of the builder are the responsibility of the project owner/awardee);

## Office of Finance and Development

### Capital Programs Manual

Page 23 of 42

- (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;
- (v) processing and delivering all required paperwork regarding disbursement requests to the OF&D Project Manager;
- (vi) notifying the builder, private lender and any other funding source(s) (if applicable) and the Design Unit construction monitor of all construction work which is incomplete or incorrect;
- (vii) providing change orders for all changes in the work prior to enacting any changes;
- (viii) immediately notifying HCR if the contractor or subcontractor places a mechanic's lien upon the project;
- (ix) immediately notifying HCR if a stop work order is issued;
- (x) providing HCR as-built/record drawings and project warranties at the time of project close-out;
- (xi) ensuring that all required bonding, letters of credit, and/or retainages as required by the construction lender;
- (xii) ensuring that all environmental concerns are properly addressed;
- (xiii) participating in the project's final inspection; and,
- (xiv) ensuring compliance with all programmatic requirements triggered by public sources of funding.

Project owners should also review Section 6.08.08 for a list of responsibilities with regard to construction documents.

#### 6.08.03 Roles/Responsibilities of the Project Architect

The project architect's responsibilities include, but are not limited to:

## Office of Finance and Development

### Capital Programs Manual

Page 24 of 42

- (i) ensuring that the project is built in accordance with HCR approved construction documents and all applicable Federal, State, and local codes, rules and regulations;
- (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 HCR approved construction documents;
- (iii) issuing construction site visit reports to HCR and other interested parties;
- (iv) notifying the owner and Design Unit construction monitor of any deficiencies, and giving written notification to the contractor to correct deficiencies;
- (v) preparing and submitting any necessary reports advising the owner of problems, delays, changes, and disputes;
- (vi) preparing change orders;
- (vii) reviewing and approving shop drawings;
- (viii) participating in requisition meetings, punchlist, and final inspections;
- (ix) identifying punchlist items and amounts to be withheld pending their correction;
- (x) meet all requirements applicable to project architects under Section 5.10;
- (xi) certifying that the project has been completed in accordance with the HCR approved construction documents, including any change orders; and,
- (xii) preparing as-built/record drawings, if applicable.

The project architect also has responsibilities with regard to construction documents, which are discussed in Section 6.08.08.

#### 6.08.04 Roles/Responsibilities of the Builder

Builder's responsibilities include but are not limited to:

- (i) performing as specified in the Owner/Contractor or Owner/CM as Constructor Agreement;
- (ii) completing the project in accordance with HCR accepted construction documents;
- (iii) complying with Davis-Bacon Related Acts requirements, if applicable;
- (iv) working with the owner and the project architect to resolve construction changes, delays, and disputes;



## Office of Finance and Development

### Capital Programs Manual

Page 25 of 42

- (v) providing the project architect and owner with written detailed cost estimates for changes in the scope of work;
- (vi) participating in the requisition meetings, construction meetings, punchlist, and final inspections;
- (vii) providing and updating the Schedule of Values;
- (viii) coordinating site construction activities;
- (ix) providing on-site security;
- (x) completing construction on schedule and within HCR approved construction budget;
- (xi) meeting all requirements applicable to builders outlined in Section 5.11;
- (xii) immediately notifying the owner if a mechanic's lien or stop work order is placed upon the project;
- (xiii) providing adequate supervision of the work;
- (xiv) supervising all subcontractors and suppliers; and,
- (xiv) documenting all changes for incorporation into the as-built/record drawings.

Contractors should review Sections 6.08.08, 6.08.09, and 6.08.10 for a discussion of responsibilities with regard to construction documents, schedule of values, and stored materials.

#### 6.08.05 Roles/Responsibilities of the OF&D Project Manager

The OF&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 HCR from executing its permanent take-out; and

- agreement, or approving any change order requests, which may result in the reduction of HCR funds available for permanent take-out; and,
- (v) attending the project's final inspection.

6.08.06 Roles/Responsibilities of the Design Unit Construction Monitor

The Design Unit construction monitor is responsible for:

- (i) monitoring construction (HDF projects will be inspected as set forth above only if HCR is the lead review agency, or if HDF will fund 50% or more of the construction loan amount);
- (ii) monitoring and reporting to the Design Unit staff architect and OF&D project manager the progress and quality of the project construction;
- (iii) making recommendations to HCR for approvals of the contractor's payment requests, if applicable;
- (iv) assisting the Design Unit architect in reviewing change orders;
- (v) overseeing the resolution of construction problems;
- (vi) attend punchlist and final inspections to ensure that the project construction is acceptable and in compliance with all HCR accepted construction documents; and,
- (vii) assisting the Design Unit architect in reviewing as built/record drawing and warranty submissions.

6.08.07 Roles/Responsibilities of the Design Unit Architect

The Design Unit architect is responsible for:

- (i) lead and facilitate the pre-construction meeting;
- (ii) supervising the Design Unit construction monitor;
- (iii) overseeing the resolution of any construction issues or problems;
- (iv) reviewing and accepting change orders;
- (v) reviewing whether environmental concerns have been satisfactorily addressed;
- (vi) attend final close-out inspections; and,
- (vii) reviewing whether the project is acceptable for occupancy.

6.08.08 Roles/Responsibilities of the CEI Technical Assistance Provider:

The CEI Technical Assistance Provider is responsible for:

- (i) attending the pre-construction meeting to discuss all CEI requirements, schedule of inspections, and functional performance tests with the Builder, Project Architect, and Owner/Awardee;
- (ii) reviewing approved MEP & façade submittals to verify CEI compliance.
- (iii) overseeing the resolution of any construction issues or problems related to CEI compliance;
- (iv) reviewing and accepting change orders related to CEI;
- (v) attending final commissioning and start-up;
- (vi) reviewing and resolving issues with measurement and verification (M&V) and operations and maintenance (O&M) project documentation; and,
- (vii) Gathering key project data from consultants, including cost summaries, estimated performance benchmarks, system information, and O&M manual at project hand-over.

6.08.09 Responsibilities for Construction Documents

This Section does not apply to HDF Program projects unless HCR is the lead review agency.

The project owner/awardee has the following responsibilities with regard to contract documents:

- (i) ensuring that the project architect maintains up-to-date plans, specifications, addenda, modifications and change orders, and that the OF&D Project Manager, Design Unit architect, and construction monitor receive such documents;
- (ii) ensuring that the builder 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 OF&D Project Manager and Design Unit architect receive such documents;

## Office of Finance and Development

### Capital Programs Manual

Page 28 of 42

- (iii) ensuring that the builder's Schedule of Values is delivered to the Design Unit architect prior to the start of construction, 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 Design Unit staff architect;
- (v) providing the HCR with all change order requests for HCR review and acceptance prior to authorizing any changes to the contractor;
- (vi) submitting the final close-out payment request to the OF&D Project Manager; and,
- (vii) submitting the as-built/record drawings and product warranties to the Design Unit architect, or construction monitor, as designated.

#### 6.08.10 Schedule of Values

This Section does not apply to HDF Program projects unless HCR is the lead review agency.

The Builder must prepare and maintain a Schedule of Values for the project. The Schedule of Values is preferred to be written on the AIA G703 Form (Continuation Sheet), and must be reviewed and approved by the owner/awardee and project architect. The Schedule of Values must be submitted to the Design Unit architect prior to the start of construction. Progress payment requests will not be processed by the OF&D project manager until the Design Unit 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.

#### 6.08.11 Payment for Stored Materials

This Section does not apply to HDF Program projects unless HCR is the lead review agency.

HCR policy is to process progress payments only when such work is completed and permanently installed in the project. Requests for a waiver of this policy may be considered only when there is a clear benefit to the agency. Circumstances, such as facilitating the builder's cash flow, are not considered benefits to the agency. Waiver requests occurring after the project is

selected for funding must demonstrate a tangible savings to the construction cost that corresponds to a reduction of the HCR award. Waiver requests occurring prior to or concurrent with the application must demonstrate a tangible savings to the construction cost that correspond to a reduction in the funding requested from HCR. If a waiver is granted, the following items must be satisfied to process progress payments that include the payment of stored materials:

- (i) a letter certifying that the builder will take responsibility for the loss of materials, and will not seek compensation from HCR for lost or stolen materials;
- (ii) a letter certifying that the builder has on/off-site security;
- (iii) proof of insurance to cover theft, damage, or other loss, of the materials at the location where they are stored;
- (iv) invoices and pictures of the stored materials that are submitted with the disbursement request;
- (v) inventory of the stored materials that are submitted with the disbursement request, which also describes the materials (e.g., product and model number) and where the materials are to be installed in the project;
- (vi) stored materials are to be listed on a separate line on the builder's application for payment for the amount on the invoice; and,
- (vii) materials must be suitably stored on-site, or at a nearby location at a distance acceptable to HCR.

After the above is received in a satisfactory manner, the Design Unit construction monitor will visually inspect the materials and will photograph them at the next scheduled visit to the project. The Design Unit construction monitor's report of these findings and photographs will be transmitted to the OF&D project manager with their recommendation for payment.

#### 6.08.12 Disputes, Claims, Delays and Time Extensions

It is the owner/awardees responsibility to resolve any disputes and claims that arise between the project architect, contractor and subcontractors. The owner/awardee must notify the OF&D project manager, Design Unit architect, and construction monitor within ten days of the occurrence of a dispute, claim, delay, time extension, stop work order, etc. Any resolution which proposes a change in the work, an increase in the contract, a time extension, or other substantial

**Office of Finance and Development**

**Capital Programs Manual**

change to the project or construction will be reviewed and responded to in writing by HCR. HCR may require that a "finding of fact" be prepared and submitted by the awardee/owner and its attorney so that HCR can review the circumstances surrounding the claim, and make an appropriate determination.

## Office of Finance and Development

### Capital Programs Manual

Section: 6.00 ADMINISTRATIVE PROCESSING REQUIREMENTS

Sub Section: 6.09 Change Orders/Escrow Accounts

#### 6.09.01 Change Orders

This section applies to all funded projects, unless solely funded by LIHTC/SLIHC (For projects involving LIHTC/SLIHC only, see Section 6.09.03).

Change orders are to be prepared by the project architect utilizing the AIA G701 Form, or equivalent alternative, who will submit them to the owner/awardee for approval. Change orders must be submitted in a timely manner to allow HCR to properly review conditions in the field. If delays in submission prevent HCR from properly reviewing the change order in the field, the change order may be denied. In no case will HCR 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 either a temporary or permanent certificate of occupancy.

Change orders are subject to the maximum builder fees allowed by the program funding. For work scope performed by subcontractors, builders may only charge up to 6% to cover additional general conditions, insurance and bonds.

The owner should not sign a change order until it has been accepted by HCR; otherwise the use of contingency or other funds for this work may be in jeopardy. Change orders must be submitted to the construction monitor and Design Unit architect for review and acceptance prior to the builder enacting any changes to the work.

All change order submissions must include the following:

- (i) a completed change order form containing the number of the change order, date, detailed description of the work;
- (ii) the cost of the work (credit, debit, or no charge);
- (iii) the builder's written proposal for the cost of the work, including their labor and material breakdown or subcontractor bids;
- (iv) the signatures of the project architect and builder;
- (v) an estimated time extension of the contract, if applicable;
- (vi) architectural drawing(s) showing the proposed change, if applicable; and,

- (vii) the project architect's narrative which describes the change from the accepted construction documents and provides a justification for the change. Costs should also be reviewed and commented on.

The change order review process begins when the owner, contractor, and project architect discuss the proposed change or work with the Design Unit construction monitor at the construction meeting. The Design Unit 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 Design Unit architect. The Design Unit architect will confer with the construction monitor and the OF&D project manager prior to accepting the change order. Upon the Design Unit architect's acceptance, the change order will be returned to the owner/awardee or their representative. Such work should not be performed by the contractor prior to the Design Unit architect's acceptance of the change order. HCR's approval of the change order authorizes use of the available contingency funds. Any change order which exceeds the contingency funds allocated in the FCL is the owner/awardee's responsibility.

#### 6.09.02 Emergency Change Order Requests

Emergency change orders requests are for those circumstances that would force a shutdown of the work for an unreasonable amount of time or create a life safety hazard condition. When making an emergency change order request, the owner must obtain the builder's maximum price for the work, which must be agreed upon by the owner/awardee and project architect. The owner/awardee must notify the Design Unit construction monitor immediately of the need to process an emergency change order, and provide the agreed upon price. The construction monitor will endeavor to conduct a site visit as soon as possible and will confer with the Design Unit architect. Once the emergency has been addressed, the project architect shall initiate a change order in accordance with the standard change order process.

#### 6.09.03 Change Orders – Credit Standalones

This section applies to projects which are solely funded by LIHTC/SLIHC.

Change orders are to be prepared by the project architect utilizing the AIA G701 Form, or equivalent alternative. The project owner shall submit copies of all change orders to the OF&D



project manager within five (5) business days of execution by the project owner. Change orders will be reviewed for compliance with programmatic, [design and sustainability](#) standards and consistency with the approved project scope of work and project costs. Material changes that improve the quality of the project, and are acceptable to HCR, will be acknowledged in writing by HCR. Material changes that diminish the quality of the project will not be accepted.

Furthermore, changes in project design during construction which diminish project quality may result in reductions of one or more of the HCR funding sources, as applicable, and may be considered in evaluating future applications.

6.09.04      Escrow Accounts

On a case-by-case basis, OF&D may permit the establishment of escrow accounts for HCR projects which are financed in conjunction with other Federal, State, private, or municipal agencies. For HCR 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, HCR, 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 HCR within 90 days of the Escrow Agreement's termination.

All escrow accounts holding HCR 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 HCR. Escrowed HCR funds must be invested in, or collateralized by HCR approved instruments, in accordance with HCR's investment policies.

## Office of Finance and Development

### Capital Programs Manual

Page 34 of 42

Section: 6.00 ADMINISTRATIVE PROCESSING REQUIREMENTS

Sub Section: 6.10 HCR Disbursement Procedures

HCR makes HDF funds available directly to sub recipients. Therefore, the following disbursement procedures do not apply.

For Development Track Three projects, see Section 6.10.01, Construction Loan Progress Payment Requests. For all other Development Track projects that require HTFC funds to be disbursed, see Section 6.10.07.

#### 6.10.01 Construction Loan Progress Payment Requests

After executing the FCL and construction commencement, owners may request construction loan progress payments from HTFC 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 HCR approved Development Budget. If HTFC will be a co-construction financier with CPC or a bank lender, the budgets for all construction lenders should be consistent. Should changes in the budget be required, a Budget Modification Form (CD-139) must be submitted within 30 days to the OF&D project manager. A revised Development Budget showing the new proposed use of HTFC funds during construction must be submitted with the form. The Budget Modification Form can be found at:

[hcr.ny.gov/disbursement-forms-hcr-capital-projects](http://hcr.ny.gov/disbursement-forms-hcr-capital-projects)

HCR 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.

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 Design Unit construction monitor. The owner should submit monthly progress payment requests to the OF&D project manager after each construction inspection meeting unless otherwise agreed to by HCR. If the monthly construction inspection meeting must be rescheduled, the owner must notify the project manager of the new date.

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. Installation of the HCR project sign is a requisite for approval of first disbursement and photographic evidence of the sign must be provided.

Requests for progress payments that include change order work will only be processed if the change order request has been accepted by the Design Unit architect and the work has been completed. HCR reserves the right to stop processing progress payment requests if change order work has not been accepted by HCR.

#### 6.10.02 Required Forms and Documentation for Construction Progress Payment Requests

The owner/awardee must submit the following documents to the OF&D Project Manager when making a progress payment request:

- one original Request for Disbursement Form, reflecting updated disbursement amounts from all funding sources ([hcr.ny.gov/disbursement-forms-hcr-capital-projects](http://hcr.ny.gov/disbursement-forms-hcr-capital-projects)).
- Disbursement requests must be for whole dollar amounts only;
- one original AIA G702 Form (Application and Certificate for Payment);
- one original AIA G703 Form (Continuation Sheet);
- for HDF projects only, one Standard State Voucher;
- copies of HCR approved change orders for which work has been completed;
- 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 HCR; and,
- receipts for eligible working capital expenses.

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

## Office of Finance and Development

### Capital Programs Manual

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 OF&D Project Manager will notify the owner immediately should a problem arise with the title.

#### 6.10.03 Construction Progress Payment Requests for Multi-Site Projects

If the project has one financing plan and all sites are part of one construction contract, the project owner may submit one Request for Disbursement Form for all of the project sites. A separate G702/703 must be provided for each site, plus one master summary G702/703. No project will be closed out until all closing documents and cost certifications for all sites have been submitted and approved by HCR.

#### 6.10.04 Punchlist Inspection (All Development Tracks)

When the project's construction is at least 95% complete, the owner/awardee is to schedule a punchlist inspection with the Design Unit construction monitor, builder, project architect, and any other interested parties. Based on this inspection, the project architect is to prepare a list of incomplete and unsatisfactory items, which includes the value of such work. This punchlist shall be distributed to all parties listed above.

#### 6.10.05 Final Inspection (All Development Tracks)

When all items from the punch list inspection have been completed and/or corrected, and the local jurisdiction has issued a certificate of occupancy (C of O) or temporary C of O, a final inspection is to be scheduled by the owner/awardee. Owners must provide the OF&D project manager and the Design Unit architect with notification 45 days in advance of the final inspection. Those who must attend the final inspection include the owner/awardee, builder,

project architect, OF&D project manager, Design Unit construction monitor, and Design Unit architect.

If the project architect is satisfied with the quality of the construction work, and degree of completion, they may issue the AIA G704 Form (Certificate of Substantial Completion). Final payment will not be processed by HCR until all punchlist items have been completed or corrected, construction is 100% complete, and all other closeout procedures have been satisfied. Depending on the condition of the completed work, status of closeout submissions, including third party certifications, the Design Unit may agree to allow the dwelling units to be occupied.

6.10.06 Final Inspection Conference (All Development Tracks)

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;
- (ii) any incomplete or unsatisfactory work items, and when they will be completed or corrected; and,
- (iii) any outstanding or unsubmitted change order work, providing the work has not exceeded the time frame when change orders may be submitted, and a date when the permanent Certificate of Occupancy will be submitted for HCR review and approval (if not already submitted).

A mutually agreed upon final inspection report will be prepared by the owner, project architect, and Design Unit 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. A Permanent Loan Closing will not be scheduled if outstanding or unsubmitted change orders have not been received by the HCR.

The Design Unit will be able to provide their approval for permanent closing if all parties present at the final inspection conference agree to the incomplete/unsatisfactory work items. The disbursement at the permanent loan closing will be reduced by a sum of two and one half times the value of incomplete/unsatisfactory work, or 5% retainage, whichever is greater.

6.10.07 Permanent Loan Closing Payment Requests

For Development Track One projects in which HTFC is disbursing funds at the permanent loan closing, this section describes the process for both final payments with a holdback and payments with no holdback. Final payment requests are made only after all close out procedures have been satisfied. Upon substantial completion of the work, HCR may require the holdback of up to \$25,000 for administrative requirements in addition to the holdback determined as a result of the permanent financing final inspection conference. This administrative holdback will be added to the Design Unit construction holdback (if applicable) for items missing from the list of documents contained in the Final Payment Form ([hcr.ny.gov/disbursement-forms-hcr-capital-projects](http://hcr.ny.gov/disbursement-forms-hcr-capital-projects)). Final payment requests include disbursements for construction retainage, balances remaining in the working capital fund, and reserve funds. Requests to use contingency funds will not be recognized for items that are not justified as acceptable project expenses. All change orders must be submitted and accepted by the Design Unit architect prior to processing a final payment request. HCR reserves the right to reduce the final award amount if the project does not justify the use of all funds.

6.10.08 Required Forms and Documentation for Permanent Closing Payment Requests

One signed original of each of the following documents must be submitted to the OF&D project manager if the entire HTF/HOME award is being used for construction costs:

- (i) Request for Disbursement Form ([hcr.ny.gov/disbursement-forms-hcr-capital-projects](http://hcr.ny.gov/disbursement-forms-hcr-capital-projects)). Disbursement requests must be for whole dollar amounts only;
- (ii) Initial Occupancy Rent Status Report;
- (iii) Budget Modification Form (if applicable);
- (iv) Final Payment Form (for a final payment only);
- (v) Final AIA G702 Form/AIA G702(Application and Certificate for Payment) Form showing holdback for construction related items, if applicable; and,
- (vi) final AIA G703 Form/AIA G703 (Continuation Sheet) Form showing holdback for construction related items, if applicable.

If the HTF/HOME award is being used to pay for budget line items other than construction costs, evidence of those costs needs to be provided (e.g., acquisition costs will

require a closing statement to be submitted showing the purchase price, etc.). In addition, applicants must either provide wire instructions (wires can be paid the day of the closing), including the name and address of the bank receiving the HTFC wire, the electronic wire instructions, and the ABA number; or applicants can complete the ACH/Direct Deposit Authorization Form (paid within 2 days of the closing) at:

[hcr.ny.gov/system/files/documents/2019/02/htfdirectdeposit.pdf](http://hcr.ny.gov/system/files/documents/2019/02/htfdirectdeposit.pdf)

The original ACH/Direct Deposit Authorization Form must be received in Hampton Plaza at least 10 days prior to the scheduled closing date.

6.10.09 Permanent Loan Final Payment Requests with a Holdback

For projects which have either a construction holdback or an administrative holdback of \$25,000 at the time of the permanent loan closing, the owner must check the progress payment box in Request for Disbursement Form Section F, Awardee/Owner Certifications. Once the incomplete/unsatisfactory construction items have been verified to have been completed satisfactorily by the Design Unit architect, the owner may request the holdback monies. A Request for Disbursement Form, with Section F, Awardee/Owner Certifications final payment box checked, along with the Final Payment Form with all required documents, must be submitted to the OF&D Project Manager. Original signatures are required on both forms. Wire instructions or the ACH Direct Disbursement Form must accompany the Request for Disbursement and the Final Payment Form.

6.10.10 Permanent Loan Final Payment Requests with No Holdback

For projects moving to a permanent loan closing with no holdback, the owner must check the final payment box in Request for Disbursement Form Section F, Awardee/Owner Certifications. The Final Payment Form with all required documents must be submitted to the OF&D Project Manager. Original signatures are required on both forms in order for HTFC to provide the funds at the permanent loan closing.

## Office of Finance and Development

### Capital Programs Manual

Page 40 of 42

Section: 6.00 ADMINISTRATIVE PROCESSING REQUIREMENTS

Sub Section: 6.11 Permanent Loan Closing Procedures

#### 6.11.01 Permanent Loan Closing

Project owners must submit the documents listed in the Legal Documents Manual, Index XVI, Closing Requirements Checklist, Permanent Loan Closing Checklist. In addition, all requirements of the FCL must be satisfied before a permanent loan closing can be scheduled with OLA. Approximately two weeks after submission of all required documents in their final form, OLA will schedule the permanent loan closing with the project attorney. All signatories are required to be present at the closing table, unless prior arrangements have been made. Once OLA has scheduled the closing, the Final Payment Request may be submitted to the OF&D project manager.



## Office of Finance and Development

### Capital Programs Manual

Section: 6.00 ADMINISTRATIVE PROCESSING REQUIREMENTS

Sub Section: 6.12 Cost Certifications

This Section applies to projects funded under all HCR administered Programs, with the exception of projects funded only with UI or RARP. The purpose of cost certification is to establish the project's actual final total cost, including the construction cost, in order to determine the maximum HCR award amount for the project's final closeout. HCR requires that cost certifications be submitted so that HCR can perform the final underwrite to ensure that the project is not over subsidized. Cost certifications must be submitted at the following times:

- LIHTC/SLIHC stand-alone projects or LIHTC/SLIHC with HCR subsidy funds: with the IRS 8609/DTF 625 request package.
- Any HTF/HOME/CIF or other HCR subsidy project: with the permanent loan closing package.

All cost certifications must be performed by an independent New York State Certified Public Accountant (CPA). Project owners must ensure that all contingencies that were used for eligible hard and soft costs have been allocated as such. Projects funded with LIHTC and/or SLIHC must submit a cost certification utilizing the HCR–mandated format, which is available on the Agency website: <https://hcr.ny.gov/low-income-housing-credit-program-lihc>. With the 8609 submission package, the owner must provide a letter from the syndicator of the Tax Credits certifying that it has reviewed the cost certification and concurs with the contents. The letter should include the following information: the final amount of credit, the final amount of gross equity provided to the project, identification of all partnership/syndication fees, the final amount of equity net of all syndication/partnership fees, and any applicable tax credit adjusters. Owners should be sure that all costs have been included in the cost certification and that all information is correct prior to submitting the cost certification to HCR. It is the project owner's responsibility to review the cost certification in its entirety prior to its submittal to the Agency. Once the cost certification has been submitted in final form, the cost certification cannot be amended or supplemented except as may be required by the HCR.

## Office of Finance and Development

### Capital Programs Manual

Cost certifications for projects not funded with LIHTC/SLIHC 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; and,
- (ii) a schedule of costs in the same line item format as HCR's Development Budget.

HCR 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; and, all non-HCR funds which were to be used in developing the project, must have been received from the non-HCR funding source(s), and expended by the owner.