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Section: 7.00 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS

Sub Section: 7.01 Introduction

This section describes the general procedures for operating and managing any property funded by HTFC (HOME, Housing Trust Fund, and Turnkey Programs). Owners should refer to the Regulatory Agreement for project specific obligations. Projects with LIHTC are also subject to certain post-construction operating requirements as set forth in the LIHTC statute and Regulatory Agreement. If requirements of different programs overlap, **the most restrictive provisions shall apply**. Where the requirements for the LIHTC, 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)/Statewide Asset Management Unit (SAMU) monitors direct project recipients.

If you have any questions regarding compliance issues, please contact your Asset Management Representative or call the Statewide Asset Management Unit (518) 474- 9583 or write:

NYS Division of Housing and Community Renewal

Statewide Asset Management Unit 5th Floor

38-40 State Street

Albany, NY 12207

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Section: 7.00 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS

Sub Section: 7.02 Required Operating Accounts

7.02.01 Establishing 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; and,
- (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.

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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7.02.02 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 7.02.05.

7.02.03 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.

7.02.04 Reserve Fund Accounts

At the time of the permanent 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 SAMU. 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.

Owners should be aware of the various reserve timing requirements associated with funding programs. For HTFC funded projects that also received an allocation under the federal and/or NYS Low-Income Tax Credit Program, reserve accounts will likely need to be established prior to permanent HTFC loan closing pursuant to the provisions of the LIHTC Regulatory Agreement. The

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LIHTC Regulatory Agreement requires that monthly deposits in reserve accounts must start no later than the first month after the project's Placed-In-Service date, which typically occurs prior to the permanent loan closing (the timeframe for HTFC reserve capitalization).

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).

The owner may be required to deposit project reserves 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.

HCR reserves the right to require Custodial Agreement Account(s) for problem projects at any time.

7.02.05 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). An Operating Deficit Guarantee is required for LIHTC and/or SLIHC projects with a developer fee over ten percent of the acquisition and improvement cost associated with the LIHTC/SLIHC portion of the project. This guarantee must be set forth in the project owner's organizational documents. These documents must provide a commitment to pay any operating deficits incurred during the first 36 months after the project is placed in service. The amount of such guarantee shall not be less than one-fifth of the developer's fee approved by HCR. For multiple building projects, the operating deficit guarantee period shall begin on the date the first building is placed in service and shall end thirty-six (36) months from the date the last building is placed in service.

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For projects that do not include LIHTC or SLIHC as a financing source, 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 SAMU 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 SAMU 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 2.01.04.D as applicable; or,
- (v) fund the purchase of furnishings or equipment essential for project operation and management; or to improve the enjoyment of the building.

7.02.06 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 SAMU. See your assigned Asset Manager 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 SAMU after initial project occupancy.

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All expenditures from the Replacement Reserve Account will require the prior approval of SAMU. The signatures of SAMU 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 SAMU. The request must include, but is not limited to, a description/scope of work or replacement, three bids (if possible) for any expenditure exceeding \$5000, the proposed bidder's Liability Insurance Certificate, copy of existing warrantee, and a current copy of the Replacement Reserve Account bank statement.

7.02.07 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.

7.02.08 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

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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.

Pursuant to New York State law, security deposits may not exceed the amount of one month's rent, with limited exceptions. State law also mandates that prior to occupancy tenants be offered the opportunity to inspect the unit and are entitled to an inspection report detailing any defects or damages. Upon vacancy, the tenant must be offered the opportunity to request, and be present for, an inspection. Security deposits must be fully refunded to the tenant within 14 days of vacating the unit, less any reasonable and itemized costs due to non-payment of rent, moving and storage of the tenant's belongings, and damage beyond ordinary wear and tear.

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Sub Section: 7.03 Insurance Requirements for Owners

The project owner is required to maintain the following insurances throughout the project's regulatory period. The ACORD Certificate of Liability Insurance Form should always be used. **The project's SHARS ID MUST be on each ACORD form.**

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; and,
- 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; and,
- 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; and,
- 30-day prior written notice to HTFC of cancellation, non-renewal or change in coverage.

Worker's Compensation and Disability Benefits

Insurance Blanket Position Fidelity Bond

- amount of coverage equal to at least three month's rent roll and all project reserve funds;
- HTFC as loss payee/obligee; and,
- 30-day prior written notice to HTFC of cancellation, non-renewal or change in coverage.

7.03.01 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; and,
- 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; and,
- DHCR or HTFC (as applicable), and the LPA to be named as additional certificate holders.

7.03.02 Notification Required for Insurance Claims

Owners are required to notify their assigned DHCR asset management representative regarding any claim on a project's insurance policy. Notification to the SAMU must be made within 24 hours of the event. Owner must provide a description of loss, copy of insurance claim and scope

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of work, if applicable, and any additional information, that may be required by the Agency in accordance with the terms and conditions of the project's Regulatory and/or Mortgage and Security Agreement.

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Sub Section: 7.04 Annual Reporting Requirements

Projects funded by the HTFC are required to provide an annual audit report to SAMU. The audit report must be prepared by a Certified Public Accountant (CPA) in accordance with accepted audit and accounting practices, and is due no later than 120 days after the end of the project's fiscal year. Electronic submission via email to the project's assigned HCR Asset Management Representative is encouraged. HTF sub recipients must submit their financial statements to LPAs within 120 days of the end of the sub recipient's fiscal year; the LPAs, in turn, must submit those statements received to SAMU 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 amount of excess income identified by your accountant is due within 30 days of the completion of the audited financial statement – no more than 5 months from the end of the projects fiscal year. The cost of the annual audit should be an itemized expense in the project's annual operating budget.

Owners who do not receive HCR 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 SAMU.

7.04.01 Performance Report

HTF project recipients **not receiving LIHTC** are required to provide an annual performance report. The performance report is due within 120 days of the close of the project's fiscal year. Performance 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 SAMU 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.

7.04.02 Operating Budget

An annual operating budget, submitted on HCR forms is due no later than three months before the start of the project's fiscal year. Forms can be found online at <https://hcr.ny.gov/asset-management>. 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.

7.04.03 Annual HOME Monitoring Requirements

To demonstrate on-going project compliance with HOME Program regulations, Project Owners are required to submit annually to HCR, HUD form HOME Monitoring Checklist 6-D entitled "Project Compliance Report: Rental Housing" (the Form), found at: hud.gov/sites/documents/20121_6D.PDF

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The Form must be submitted to your assigned DHCR Asset Management Representative within 120 days of the close of the project's fiscal year.

In addition, per §92.504(d)(1)(ii)(C) project owners must submit an annual certification to HCR that each building and all HOME units are suitable for occupancy. The Form (found at: hcr.ny.gov/asset-management#forms) along with the annual certification 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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Sub Section: 7.05 Benchmarking

The purpose of benchmarking buildings within the HCR portfolio is to gain a better understanding of how the buildings use energy and water, and whether the energy efficiency measures that have been implemented within HCR's buildings have realized their expected energy savings **or operate as underwritten**. It will also help HCR understand how buildings are performing compared to similar buildings in New York and in other states. Most importantly, benchmarking is an essential first step to help owners and property managers to better understand and manage energy and water costs. Projects subject to benchmarking requirements must use the U.S. Environmental Protection Agency (EPA) ENERGY STAR Portfolio Manager tool, an on-line energy tracking system, **and enter the data under the HCR portfolio ID, or other HCR identified benchmarking solution**. The most efficient and accurate method of complying with the benchmarking requirement for submitting energy usage is with a service provider that collects the data directly from the local utility company. The cost of a benchmarking service is offset by the benefits and potential savings and represents a modest operational expense, based on the number of buildings, or a given property's utility accounts. The cost of the service provider is an HCR approved operating expense.

Outside of New York City, participation in benchmarking is required for all properties larger than 25,000 square feet that have received funds through the 9% Multifamily Finance RFP. For properties located in New York City, properties subject to New York City Local Law 84 will be requested to share data with the HCR Portfolio Manager account. Energy use data for your property is due to HCR, once a year, **no later than May 1st** to report the previous year's energy use.

Additional information on benchmarking requirements, including the documents to be submitted to HCR, are available here: <https://hcr.ny.gov/steps-hcr-benchmarking-program>.

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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 2.04.05.E

LIHTC 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, state and local and fair housing and non-discrimination laws, Title VIII of the Federal Civil Rights Act of 1968, the New York State Human Rights Law and the New York State Housing Stability and Tenant Protection Act of 2019. See Section 4.00, General Requirements, for further discussion of fair housing requirements, including the submission of a Fair Housing Marketing Plan.

In selection of households for admission to an Assisted Project, or to occupy a unit in an Assisted Project, the Participating Owner is responsible for screening suitability for tenancy. All preferences and set asides proposed by the Participating Owner must be approved by the Fair and Equitable Housing Office prior to the closing of financing (see Section 4 for more information).

The Owner may only begin tenant selection after the final approval of an Affirmative Fair Housing Marketing Plan by HCR's Fair and Equitable Housing Office, a Project Rent-Up Conference, a 60-day marketing and application period before the application is due, and a public lottery.

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Fees

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 or HOME-funded project. For all other projects, under New York State law, housing providers may not charge fees in connection with the processing, review, or acceptance of a prospective tenant's application, except for fees in connection with a background check or credit check. Background check and credit check fees, to the extent they are allowed pursuant to the credit policy described below, are limited to the lesser of \$20, cumulatively, or the actual cost of the credit and background check. No other fees in relation to the application may be charged. If a prospective tenant provides the housing provider with a copy of a background check or credit check conducted within the past 30 days, the housing provider must waive these fees. More generally, Owners must comply with the New York State Housing Stability and Tenant Protection Act of 2019, which among other things, limits security deposits to one months.

Occupancy Standards

At initial rent-up and throughout tenancy, owners of HTFC funded projects are required to conform to the following occupancy chart:

NUMBER OF BEDROOMS	OCCUPANT DENSITY RANGE*	
	MINIMUM	MAXIMUM
0	1	2
1	1	2
2	2	4
3	3	6
4	5	8
5	7	10

*For projects involving funding through NYC's Department of Housing Preservation and Development (HPD), HCR will defer to HPD's occupancy standards.

It is suggested that owners establish a Transfer Policy to outline procedures for required transfers to comply with occupancy standards above, as well as to address internal transfers.

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The HTF or Turnkey-assisted unit must be the principal residence of its occupant(s).

Credit & Justice-Involvement Applicant Assessment Policies Owners are not required to conduct credit and criminal justice system background checks, but to the extent they do, Owners must implement HCR's policies for assessing applicants based on credit or their history of justice involvement found at: hcr.ny.gov/marketing-plans-policies#credit-and-justice-involvement--assessment-policies. This means that Owners must conduct an individualized assessment based on various limited factors laid out in the two policies. Worksheets are available to guide the tenant selection process based on credit and justice involvement. Use of these worksheets will be monitored on all site visits.

Blanket rejections based on credit or justice involvement are prohibited except in extremely limited circumstances. Applicants must be provided 14 business days before being rejected on either of these factors to provide additional explanatory or mitigating information. Examples of factors cannot be the basis of rejections include, but are not limited to:

- A history of landlord-tenant court action or summary proceeding
- Credit factors when applicant can show they have paid their last 12 months of rent on time
- Bankruptcies that occurred more than 12 months ago
- Youthful offender adjudications
- Pending arrests with adjournments in contemplation of dismissal and a variety of sealed convictions listed in section 296(16) of the New York State Human Rights Law
- Student or medical debt
- A low credit score without looking at other required factors pursuant to the assessment policy
- Collections, money judgements or liens that are for less than \$5,000
- Any prior arrests or criminal accusations that have been resolved in the applicant's favor,
- A record of justice involvement that do not involve physical danger or violence to persons or property, or that adversely affected the health, safety, and welfare of other people

Project Specific Requirements

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.

HTF Projects undergoing Rehabilitation or Conversion

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.

HOME Projects undergoing Rehabilitation or Conversion

Please See Section 2.04.04 for requirements under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the URA).

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.

Lottery Requirement

Owners must establish a waiting list for persons of low-income by following their Affirmative Fair Housing Marketing Plan, which includes the requirement that a public randomized lottery be conducted for initial lease-up.

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

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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 LIHTC blended projects, the previous sentence does not apply.

See Sub-Section 7.10.01.

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 individuals with disabilities.

General Tenant Selection from Waiting List

HTF/Turnkey Projects: During initial project rent-up, and thereafter, owners must select applicants from the waiting list(s) 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 will be selected via a lottery at initial rent up. After initial rent up, applicants will be selected in chronological order as they are placed on the waitlist.

7.06.02 Tenant Affordability 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. However, if the household is a participant in a housing subsidy program (e.g., HOPWA, Section 8, City FHEPS) which has its own programmatic rent to income ratio requirements, the rent to income ratio described in this paragraph shall be waived as necessary to admit the applicant with the subsidy. For projects funded under the Middle Income Housing Program (MIHP), units above 60% AMI may be rented to households paying less than 30% of their income to rent if the project is located in a HUD-designated QCT or the project is

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part of a downtown revitalization effort. (If not located in a QCT or part of a downtown revitalization effort, a 30% rent burden is required.) For projects located in a QCT or downtown revitalization effort, units above 60% AMI may be rented to households with income levels that are up to 20% higher than the proposed rent affordability level. For example, a MIHP unit affordable to a household at 90% AMI, may be rented to a household up to 110% AMI; it could not be rented to any households over 110% AMI.

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 affordability requirements set forth above, the owner may submit a written request to SAMU for a waiver of these requirements.

7.06.03 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 HCR/HTFC approved rent plan establishes the initial basic rent for each of the units in the project. The basic rent must be set so that project income is sufficient to support the project's expenses.

The project owner is to 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

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segments of the target population may be reached, based upon 30 percent of tenants' income being devoted to housing costs;

- (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 7.05.04 for a discussion of initial rents for projects located in areas subject to RSL or ETPA);
- (iv) for tenants whose incomes rise above the persons of low-income level as determined by the owner's annual income verification procedure, the 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, but will not be lower than the approved basic rent 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. Persons of low income shall mean: for those cities with a population of one million or more persons, those persons or families whose household incomes do not exceed 80% of the median income for the metropolitan statistical area in which that project is located. For other portions of the State: a) and within a metropolitan statistical area, those persons and families whose household income do not exceed 90 percent of the median income for the metropolitan statistical area in which that project is located or 90% of the median income for the State, whichever is greater; or b) and without a metropolitan statistical area, those persons and families whose household income do not exceed 90 % of the median income for the county in which a project is located or 90% of the median income for the State, whichever is greater. Tenants who do not submit, or falsify their income verification documents, will pay the market rent (described below); and,
- (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).

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- c. a current rent roll.
 - d. last audit report if not previously submitted (see Sub-Section 7.04).
 - e. if Managing Agent is submitting request, letter from Owner indicating their approval of the proposed rent increase.
- (vi) The proforma operating budget approved at project conception provides for a 2% annual increase in operating income. With the exception of initial rent increases, rent increases of 2% per annum will not require prior review/approval of Statewide Asset Management staff. For projects that withheld implementation of a rent increase during 2020 or 2021 in consideration of financial hardships experienced by households during the COVID-19 pandemic, a 4% increase may be implemented during 2022 without our review/approval. Please submit a copy of the new rent schedule(s) prior to implementation and with the annual budget submission for our records. It is the owner's responsibility to ensure that gross rents do not exceed applicable rent limits when tenant rent amounts or utility allowance amounts change.

Budget and Rent Plan forms have been developed by SAMU's Accounting Staff to streamline the review process. These forms are found at: <https://hcr.ny.gov/asset-management>. These forms must be used for item a. and for the current and proposed rents in item b. above. Rent increase submissions should include a cover letter addressed to the project's assigned Asset Management Representative summarizing the items in b. above so that for each unit type in the project, there is listed the current rent; utility allowance; rent increase amount; and proposed new rent. Project owners are responsible for ensuring requested amounts do not exceed applicable rent limits, and tenant notification is provided in accordance with the timeframes required under the Housing Security and Tenant Protection Act of 2019. For LIHTC Standalone or LIHTC blended projects see sub-section 7.09.02(ii) and Sub-Section 7.09.03(iv).

At the time of contract closing, OF&D 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 a function of the basic rent for the unit, plus an additional amount which would be payable if all

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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.

7.06.04 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 HCR'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 HCR'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 LIHTC blended projects, owners shall not charge rents which exceed the lesser of the rents contained in the Rent Order or the applicable LIHTC restricted rent.

7.06.05 Tenant Income Verification

The owner is responsible for determining the income of tenants and verifying and certifying to HCR 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 chapter 5 of the HUD Handbook 4350.3 REV-1, CHG- 4 or its successor.

For LIHTC 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. For HOME or

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HOME blended with 100% LIHC, owners should follow § 92.203(a)(1)(i) as referenced in 24 CFR 92.252 (h), which requires a full recertification of income every sixth year of a tenant's occupancy.

7.06.06 HTF Tenant Income Recertification Waiver

The HTF is relieving the HTF regulated properties from the obligation to perform annual income recertifications with 3rd party income verifications. Projects may use a one-page resident self-attestation income verification form to ensure the project is complying with its area median income set-asides in accordance with its regulatory agreement. This form is available on our website. It is the identical form used for HOME funded projects. 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 7.00 of the CPM. As always, your cooperation during administrative and physical inspections performed by HCR staff is appreciated.

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Section: 7.00 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS

Sub Section: 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. This includes a Violence Against Women Act lease addendum available here: <https://hcr.ny.gov/marketing-plans-policies#affirmative-fair-housing-marketing-plan>.

Should the Owner wish to add language to the HTFC 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. During project operation, proposed revisions to the HTFC Lease and/or lease addenda must be submitted in the form of a Lease Addendum for review and approval to the assigned asset management representative prior to its use. 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: 7.00 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS

Sub Section: 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, SAMU must 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; and,
- (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. Selection of a qualified managing agent shall be subject to the approval of HCR. The owner shall solicit bids, review bids, select a prospective agent, and submit its selection to HCR together with all bids. HCR 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 HCR. If there are no other bidders, or no bidder acceptable to HCR, 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 SAMU. HTFC/SAMU reserves the right to remove/replace an owner as managing agent. HTFC/SAMU also reserves the right to approve, reject, or remove/replace an existing or proposed managing agent.

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Section: 7.00 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS

Sub Section: 7.09 Asset Management Performance Reviews

Throughout the term of the HTFC funded project's regulatory period SAMU 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 HCR agreements.

The following is a list of some of the items SAMU will review:

- Annual Audit Reports;
- General Operating Accounts (checking and savings);
- Reserve Accounts;
- Operating Budget;
- Insurance Certificates;
- Performance Report;
- Lottery Log;
- Waiting List(s);
- Rent Roll/Rent Plan/Schedule;
- Records of Individualized Assessments for those applicants with Justice Involvement;
- Records of Credit Policy Individualized Assessments (Worksheets);
- Lease Agreement/Addenda;
- Tenant Files;
- Management Agreement;
- Agent's Real Estate Broker License;
- On site physical inspections; and,
- Other such information as HCR 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: 7.00 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS

Sub Section: 7.10 HTF/Turnkey/LIHTC Blended Projects

The purpose of this Section is to highlight specific areas where LIHTC requirements differ from HTF/Turnkey requirements. In order to receive LIHTC, the property owner and property manager must follow the Regulatory Agreement and IRS 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 7.09.05) or inadequately documenting a tenant file) may result in the recapture of credit with interest and penalty.

7.10.01 Maximum Income Limits - LIHTC 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. Projects utilizing the LIHTC Income Averaging set-aside election may include qualifying tenants up to 80% AMI by household size, provided that the average imputed income limit for the entire project is at or below 60% AMI.

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 LIHTC 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 (NAUR)

Upon initial move-in certification, a household's annual income must not exceed the applicable area median income limit by household size. At recertification, if a tenant's income in a LIHTC 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 LIHTC unit occupied by a tenant whose income rises above 140% of the current maximum

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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 LIHTC tenant.

LIHTC/SLIHC blended projects with or without HTF: projects that are not 100% LIHTC must adhere to the NAUR and be able to document to the satisfaction of SAMU that the project is in compliance. SLIHC units designated for persons with incomes over 60% AMI do not qualify as LIHTC units.

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. 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 hud.gov or at 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 in projects not blended with HTF or HOME. HTF or HOME projects may use a one-page resident self-attestation. See paragraph 7.06.06.

7.10.05 Students

Per Internal Revenue Code (IRC) full time students cannot reside in a LIHTC unit unless they meet one of the exceptions outlined in IRC §42(i)(3)(D). Student status must be verified annually for any LIHTC or LIHTC blended project.