Section: 5.00 DEVELOPMENT REQUIREMENTS

Sub Section: 5.01 Introduction

This Section describes the general development requirements of HCR for projects funded under the 9% RFP Process.

Section: 5.00 DEVELOPMENT REQUIREMENTS

Sub Section: 5.02 Environmental Requirements

All funded projects must undergo an environmental review, with the exception of projects funded solely under the LIHTC/SLIHC Program; or such other exceptions as described in the RFP. Site suitability threshold items must be addressed in the application for funding or the project application will be eliminated from further review (See 5.02.05 (site contamination) and 5.02.06 and 5.03(8) (site suitability)).

5.02.01 HCR Environmental Review Summary

HCR conducts an environmental review pursuant to the requirements of the State Environmental Quality Review Act (SEQRA), and for Section 8 Project Based Vouchers (PBVs) and HCR HOME federally funded projects, the National Environmental Policy Act (NEPA). Although SEQRA and NEPA have somewhat different procedural requirements, both require HCR to complete an environmental review and issue an environmental clearance letter before an action commences including site acquisition (if the site has not been acquired prior to application) and/or physical alteration of a project site, such as demolition, construction, rehabilitation, site clearance or grading, excavation, or any change in use.

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

For federally funded projects, HCR classifies each project according to categories established by SEQRA regulations at 6 NYCRR 617, and NEPA regulations at 24 CFR Part 58. Regarding SEQRA, if the municipality or another agency has or will conduct a coordinated SEQRA review, or in the case of a New York City Agency, a New York City Environmental Quality Review (CEQR) process review, HCR may be able to concur with that determination. If the municipality or another agency has not or will not conduct a coordinated review, a determination by the HTFC will be required for all Unlisted and Type I Actions, which adds time to the review process.

Regarding NEPA, HCR is not able to rely upon another entity's NEPA review unless HCR was included in that entity's publication. HCR can incorporate another entity's review into HCR's determination, which may significantly shorten the amount of time required to conduct the review; however, HCR would still be required to publish a notice and receive authority from HUD prior to providing environmental clearance. Note that no choice limiting actions shall take place based upon another entity's NEPA clearance.

Choice-limiting actions under 24 CFR 58.22 prohibit any activity that commit the project to the action, including acquisition of the site, contracts, and any actual project work. This does not include studies (such as Phase II Environmental Site Assessments, structural study borings) or pursuing necessary permits. The prohibition commences with the application for federal funding. The prohibition is lifted once either (a) the application is denied; or (b) the application is awarded and there has been a complete NEPA review, including necessary publications, sign-off from HUD, and the project receives an environmental clearance letter. The prohibition pertains to any actions funded by any funding source, including private sources, because related actions must be aggregated for purposes of NEPA (pursuant to 24 CFR 58.32).

HCR *must* conduct its own NEPA review for federal funding that it allocates to a project. Failure to wait for HCR's NEPA clearance letter will result in the loss of the federal funds in the project. HCR will require any significant environmental impacts identified by this assessment to be mitigated as a condition for proceeding with project construction.

5.02.02 General Scope of Review

In general, HCR environmental review addresses the following issues:

- classification of the project according to SEQRA, and for PBV and HOME projects, NEPA, whether rehabilitation or new construction or being combined with another federal source requiring a NEPA review;
- assessment of potential impacts of the proposed action on public health or the natural environment and whether surrounding uses pose potential impacts on the project or its occupants;
- review by the State Historic Preservation Office (SHPO) to determine the potential impact of proposed activities on archaeological, cultural or historic resources;
- compliance with specific environmental regulations (i.e., flood plain management, HUD noise regulations); and,
- investigation of liability associated with prior use of the site and adjacent sites which may have involved storage, treatment or disposal of hazardous materials, along with site contaminants such as asbestos-containing materials, lead based paint, mold, and radon.

5.02.03 Historic Review

Project sponsors must initiate the SHPO review process prior to applying for funds by submitting an application through the Office of Parks, Recreation and Historic Preservation's Cultural Resource Inventory System (CRIS) at cris.parks.ny.gov/Login.aspx?ReturnUrl=%2f. SHPO may ask the applicant for further information regarding the existing site or proposed project design in order to make its determination. The project *must* be constructed in accordance with the designs submitted to SHPO or the project may become ineligible for funding.

The application must include a SHPO impact determination letter or, if the determination is pending, the CRIS confirmation notice acknowledging that an application has been filed. If SHPO's response includes conditions or an adverse determination, the application must attach a narrative description of how the project complies with the conditions and/or the approximate schedule of determining compliance with the conditions.

If the project is applying for historic tax credits, the application must attach a schedule of anticipated application to the National Park Service and any approved Part 1 or Part 2 forms that have been received.

5.02.04 Compliance With Other Specific Environmental Regulations

In addition to obligations under SEQRA and SHPO review, HCR is also required to review projects according to the following specific environmental review regulations:

- Floodplain Management Criteria for State Projects (6 NYCRR Part 502);
- New York State Coastal Zone Program (19 NYCRR Part 600);
- Agricultural District Determination: Section 305 (4) of the Agriculture and Markets Law;
- Smart Growth Public Infrastructure Policy Act; and,
- For HOME and PBV projects, activities must also be reviewed according to related environmental regulations listed at 24 CFR 58.5 and 58.6.

5.02.05 Site Contamination

At application, all project sponsors must submit a Phase I Environmental Site Assessment (ESA) report which shall meet, at a minimum, the American Society for Testing and Materials standard for site assessment. The ESA must be dated twelve months prior to the application for funding. Any project receiving HUD Federal Funding must have an updated Phase I ESA dated within six months of the environmental review public notice. After Award Letter issuance, the HCR Environmental Unit will request an updated ESA as required.

The Phase I ESA shall include an acceptable vapor intrusion screen. If the ESA reveals any category of Recognized Environmental Conditions and/or other issues of concern, the application must also include either a Phase II ESA or other follow-up investigation or attach a narrative describing how all issues of concern will be further characterized, including a timeline and budgeted costs for corrective action/remediation. If all issues of concern have already been characterized, the application must attach a narrative description of how those issues of concern will be resolved (including a timeline and budgeted costs for corrective action/remediation) and/or attach Brownfield Cleanup Program application materials or Remedial Action plans, or other relevant remediation documents. These are threshold review requirements and if not submitted in the application for funding the application will be eliminated from consideration.

All relevant regulations must be adhered to concerning site contaminant assessment, remediation, and clearance. In addition, all HCR projects must address the following (see HCR Design Guidelines for further information):

- In reference to lead paint, HCR requires compliance with HUD's most current edition of "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing";
- concerning mold, HCR requires compliance with New York State Department of Labor Mold Rules; and,
- for state-funded projects located in counties with moderate to high radon areas per the EPA map of Radon Zones or for projects receiving HOME and/or PBVs, where mean pre-mitigation state data reported by CDC is above 2 pCi/L, radon mitigation systems must be designed in accordance with relevant EPA Standards of Practice.

Prospective applicants are encouraged to explore funding for hazardous materials remediation from state and federal funding sources.

5.02.06 Schedule of Submissions

For the project application see Exhibit E-1: Environmental Requirements Affirmation:

- The SEQRA Short EAF, Part 1, signed. Or, if another entity has assumed lead agency designation for a coordinated review, a copy of the EAF-Part 1 (in New York City, the EAS) submitted to that entity and any additional SEQR documents submitted to or received from that entity;
- Phase One Environmental Site Assessment and follow-up documentation (See 5.02.05);
- New York State Historic Preservation Office (SHPO) (See 5.02.03);
- Smart Growth Impact Evaluation Form – Completed Exhibit E-5;
- Site Suitability Narrative – provide an environmental justice narrative, explaining how the surrounding area is suitable for the development of affordable housing, as described in Application Attachment E-6;

If the project is funded, the Environmental Unit (EU) will provide a detailed letter, called a Follow-Up Letter (FUL), to awardees discussing other necessary requirements and their scope. The FUL may include a request for the following submissions, which must be sent to EU if they were not included in the project application and are applicable to the project:

(a) Zoning change or variance;

(b) Subdivision and/or Site Plan Approval;

(c) Archaeological survey;

(d) Village/Town/City Council Review/Approval;

(e) Floodplain/Waterfront/Coastal Zone Approval;

(f) Wetlands permits;

(g) Endangered species habitat survey;

(h) Lead Agency Designation for Coordinated Review;

(i) Full EAF;

(j) SPDES General Stormwater Permit;

(k) For federally funded projects, HUD NEPA requirements in 24 CFR Part 58.5 & 58.6 (potentially including cost of repairs, replacement cost of building (if rehab), Sole Source Aquifer information, a HUD Noise analysis, a HUD thermal explosive hazard analysis);

(l) A Phase I Environmental Site Assessment (ESA) that meets ASTM and all remedial reports; and,

(m) Asbestos, lead, mold surveys and removal specifications.

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

5.02.07 Completion of Environmental Review

For projects with State funding only, environmental review for HCR projects is deemed complete when a SEQRA determination is made by the SEQRA Officer, approved by the HTFC Board of Directors, if necessary, and an environmental Clearance Letter has been issued by HTFC. The Clearance Letter will usually be accompanied by a Site Alteration Letter (SAL), which identifies close-out items that must be submitted as construction progresses.

For HOME and PBV funded projects, HTFC must also publish an appropriate public

notice to the HCR environmental review website. Once environmental review for HOME and PBV projects is complete, EU will issue a Clearance Letter and SAL, the later when the SEQRA process is complete or when the NEPA comment periods following public notices have expired and HUD issues an Authority to Use Grant Funds form for the project. No site acquisition (if the site has not been acquired prior to application) or physical alteration to the site can occur until the project has received an environmental clearance letter from HTFC.

Any Uniform Relocation Act (URA) issues must be resolved prior to EU's submittal of a Request for Release of Funds (RROF) to HUD. EU is unable to coordinate URA submittals to HUD and HUD will not approve RROFs if there are potential URA issues therefore resolution of URA issues must be completed to ensure timely environmental clearance.

Section: 5.00 DEVELOPMENT REQUIREMENTS

Sub Section: 5.03 Site Requirements

The site requirements set forth below apply to new construction and substantial rehabilitation on all sites for all funded projects.

Applicants should select sites which are suitable for residential use. The suitability of the site selected will be an important factor in the Agency's considerations. Low-income housing projects located within an urban neighborhood must meet the following minimum requirements:

1) The site must be free from hazardous materials or remediation of such materials is part of the project scope. There are no environmental conditions that significantly impair the intended residential purposes.
2) The site has power, telephone, water and sewer connections adjacent to the site.
3) The site has local/public transportation or is within walking distance to community services and retail establishments including a grocery store.
4) The site has adequate space to accommodate local off-street parking requirements.
5) The site is not larger than necessary to accommodate the proposed project.
6) The site grading will accommodate accessible route criteria.
7) If the site is located within one-quarter mile of a surface rail line not exclusively used for passenger travel, documentation must be provided demonstrating that the rail line poses little potential risk for prospective residents after considering the volume and speed of traffic on the line; types of cargo carried; physical features in the surrounding area that would mitigate any potential risk; and any project design features that would mitigate any potential risk.
8) If the site is located within the threshold distances of uses described in application Attachment E-6, the application must include a map identifying the location of the uses in relation to the central point of the site, a narrative explanation of site suitability, environmental justice conformity, and, if relevant, a hazard mitigation plan as described in the application instructions at Attachment E-6.

Low-income housing projects located in non-urban areas must meet the requirements of Items 1, 2, 5, 6, 7 and 8 as enumerated above; and also include the following:

1) Where public utilities are not included, the site must have the capacity to provide a cost effective on-site water and/or septic system.
2) For family projects, the site must be within a five-mile distance of a municipality that provides community services and retail establishments including a grocery store.
3) The site must be accessible from a public road. For phased projects which include common infrastructure and access, please see Section 5.05 Project Costs (iii) Construction Costs and Soft Costs.
4) Elderly projects located within a rural community must have local public transportation or be within walking distance, (i.e., one-half mile) of essential services including a grocery store.

The HOME Program also has a requirement for site and neighborhood standards that is published in the HOME Regulations at 24 CFR 92.202.

5.03.01 Site Control

HCR requires that applicants have site control for all buildings and/or sites included when applying under any program. Single-family homes in a specific subdivision are not excluded from HCR's site control requirements provided they meet all tax credit eligibility requirements (e.g. income restricted rental housing).

NOTE: SITE CONTROL DOCUMENTATION IN THE FORM OF A CONTRACT OF SALE, OPTION, OR LEASE MUST BE IN THE NAME OF THE APPLICANT OR AN AFFILIATE OF THE APPLICANT AND BE LEGALLY BINDING AT THE TIME OF APPLICATION. FOR PURPOSES OF DETERMINING SITE CONTROL, AN AFFILIATE SHALL BE DEFINED AS AN ENTITY CONTROLLED BY OR IN CONTROL OF THE APPLICANT. THE RELATIONSHIP BETWEEN THE APPLICANT AND THE AFFILIATE MUST BE PRECISELY DESCRIBED AND DOCUMENTED IN THE APPLICATION FOR FUNDING.

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

- A deed evidencing ownership by applicant or affiliate;
- A title report not more than 90 days old at the time of submission showing that the applicant or affiliate holds title;

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

HCR reserves the right to accept other evidence of site control for State or Federally owned sites, sites owned by local municipalities or those owned by entities affiliated with the State or Federal government. If a site is owned by any governmental entity, the applicant should describe the current status of the project site in the land disposition process. Any deed restrictions or restrictions on use must be affirmatively declared at application submission. HCR reserves the right to object to any restrictions which may negatively impact agency statutes, rules or regulations.

5.03.02 Site Acquisition

If the project includes the acquisition of property, the applicant must document the absence of encumbrances which would impair the applicant's ability to complete the project. The

applicant is required to disclose any liens on the property and/or if the seller is subject to a bankruptcy proceeding or if the property is subject to a foreclosure proceeding. The site purchase price must be documented in a fixed price purchase contract or a fixed price option to purchase the property. Such contracts or options must allow for the site acquisition to occur in a timely manner.

Only that portion of the site's value which is necessary for the project may be recognized as a project cost. If a parcel larger than is necessary for the proposed project is to be purchased in anticipation of future development, the acquisition cost must be apportioned between all potential phases. The applicant must provide a clear rationale for the basis of the apportionment. The specific amount of the site purchase price to be recognized as a project cost is limited to the lesser of the purchase price or the value established by an appraisal acceptable to HCR (see Section 5.03.03). Notwithstanding the appraisal's determination of value, HCR reserves the right to reduce acquisition cost based upon cost containment considerations. Costs related to acquisition which also may be eligible project costs, depending on the specific program, include: legal fees; financing costs; mortgage recording tax; tax escrow payments; insurance premiums; water and sewer charges prior to construction; recording and filing fees; appraisal fees; title search and insurance costs; site surveys; and other related costs. If the seller has an identity of interest with any participant involved with the project, then it must be disclosed in the application. Applicants must submit evidence prior to the Construction Closing that the following activities have occurred, regardless of whether or not the site is already owned by the applicant or owner:

(i) all necessary site acquisition documents have been recorded and filed;

(ii) a title search has been conducted;

(iii) all required insurances have been obtained; and,

(iv) site survey-certified to the applicant/awardee, HTFC and the Title Insurance Co. A survey of the premises prepared by a registered land surveyor in accordance with American Land Title Association/National Society of Professional Surveyors (ALTA/NSPS) Minimum Standard Detail Requirements for Land Title Surveys and dated or re-dated not more than 30 days before the closing. The following

additional items, which should be considered government agency survey-related requirements, shall be shown on the survey:

a. legend of all symbols and abbreviations used with statement of scale;
b. vicinity map;
c. flood zone designation;
d. all improvements with current zoning classification and setback lines;
e. parking areas and, if striped the striping and number of parking places;
f. indication of access to the public way such as curb cuts, driveways marked;
g. location of all utilities serving the property, including manholes, catch basins, valve vaults or other surface indications of subterranean uses;
h. all wires and cables (including their function) crossing the surveyed premises, and the poles on or within ten feet of the surveyed premises, and the dimensions of all cross wires or overhangs affecting the surveyed premises;
i. directionals (bearings), courses, curved data and measured distances of the premises necessary to compute a mathematical closure;
j. observable evidence of cemeteries;
k. address(es) of improvement(s) as observed from fieldwork;
l. distance from point of beginning to nearest intersecting public street;
m. wetland delineation markers or that none were observed;
n. plottable on and off-site (appurtenant) easements or servitudes delineated; and,
o. significant fieldwork observations not otherwise disclosed by a title report or abstract of title.

For projects requesting LIHTC/SLIHC, acquisition costs of an existing building(s) to be rehabilitated may not exceed twenty-five percent of the total development cost of the project unless it meets the definitions of a High Acquisition Cost Project and a Preservation Project, as set forth in Sections 2040.2(i) and 2040.2(q) of the 9% LIHTC QAP, respectively, and the threshold eligibility criteria at Section 2040.3(e)(15) of the QAP. The standards which a project involving the acquisition of an existing building(s) must meet in order to qualify as a Preservation Project are described in Section 5.05.01 below.

5.03.03 Appraisals

Appraisals are required for any project with a total budgeted acquisition cost of more than $100,000. If there is an identity of interest between the seller and any project participant, or if an applicant proposed the use of HOME funds, an appraisal must be provided even if the acquisition cost is below $100,000.

Post award, if necessary, HCR may require a second appraisal for further documentation of site value. In any case, the applicant should reference the types of certifications below to determine the minimum qualifications necessary. All appraisals should be conducted pursuant to a contract between the applicant and the appraiser or pursuant to a contract between a lender and an appraiser which meets HCR appraisal standards.

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

The following are the minimum requirements for an acceptable appraisal:

1) Must be certified to NYS Division of Housing and Community Renewal/Housing Trust Fund Corporation.
2) Must be prepared no earlier than six months prior to the application due date specified in the Request for Proposals. Appraisals prepared more than six months, but less than one year, prior to the application due date will be accepted, if the appraiser provides a letter confirming that the appraisal remains valid given current market conditions. In no instance, will HCR accept an appraisal prepared one year or more prior to the application due date.
3) Appraiser must have the appropriate certification/license to undertake the scope of the project:
    a. NYS Licensed Real Estate Appraiser: non-complex, residential properties with a transaction value of less than $1 million and non-complex, nonresidential properties with a transaction value of less than $250,000.

b. NYS Certified Real Estate Residential Appraiser: all residential, noncomplex properties and non-residential, non-complex properties with a transaction value of less than $250,000.

c. NYS Certified Real Estate General Appraiser: appraisals on all types of real property regardless of transaction value or complexity.

4) Must comply with the Uniform Standards of Professional Appraisal Practice.

5) Must use the income, market, and replacement cost approaches (see Glossary under "Appraisal") in estimating the fair market value of the site. For vacant land, or where both the prior and proposed use of the property is a one to four-unit dwelling, only the market approach is required.

6) For vacant land outside the City of New York the “as is” value should be documented on a per acre basis AND on a per unit basis. In the City of New York, vacant land should be valued on a per buildable square foot basis.

7) In selecting comparable sales, appraisers should not use prior sales of property sold to be developed as affordable housing. Significant deviations in value from comparable sales must be fully explained in the appraisal.

8) Must describe local economic conditions and analyze physical, demographic, economic and governmental factors affecting the highest and best use of the site except where transaction values for the acquisition of vacant land are less than $100,000.

9) Must provide a sales and ownership history for the last three sales, or the last 10 years, whichever is the shorter time period.

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

5.03.04 Integrated Physical Needs Assessment

All applicants who are requesting funding for the moderate rehabilitation of an existing structure(s) must complete and submit an Integrated Physical Needs Assessment (IPNA) utilizing the IPNA Standard for New York City and State Low/Moderate Income Multifamily Buildings available at: https://hcr.ny.gov/multifamily. The completed IPNA shall be submitted

with the 9% RFP application. The applicant must request a site visit from HCR to enable staff to observe the building's existing condition and discuss proposed renovations no later than 30 days PRIOR to the application submission. Buildings that will undergo a substantial, "gut" rehabilitation are exempt from submitting an IPNA in an application for funding.

Section: 5.00 DEVELOPMENT REQUIREMENTS

Sub Section: 5.04 Design and Sustainability Requirements

5.04.01 Design Requirements

The design criteria contained in the HCR Design Guidelines apply to all projects funded through the 9% Multifamily RFP. The goal of the design criteria is to encourage the development of housing units that have a long-life expectancy and that are durable, accessible, adaptable, relatively maintenance free, and provide quality living facilities.

5.04.01 Sustainability Requirements

The sustainability criteria contained in the HCR Sustainability Guidelines apply to all projects funded through the 9% Multifamily RFP. The goal of the sustainability criteria is to put current and future affordable housing projects on the path to meeting New York State's Climate Leadership and Community Protection Act, which mandates at least a 40% reduction in greenhouse gas emissions by 2030 and at least 85% reduction by 2050, compared to New York State's 1990 carbon emission levels. HCR's priority is delivering building envelopes that are well sealed and insulated, and removing or significantly reducing onsite carbon emissions from fossil-fuel burning appliances.

Section: 5.00 DEVELOPMENT REQUIREMENTS

Sub Section: 5.05 Project Costs

All funded projects are subject to the project cost standards set forth below.

A project must provide housing which represents good value for the State's investment. In making this determination, HCR reviews the total development cost (as defined in the Glossary) to ensure that acquisition and development costs fall within established guidelines. Applicants should note the following standards for the various costs included in the total development cost. These standards should be used as a guide only, over or under budgeting of costs will impact the project's underwriting assessment, eligibility review and/or scoring. The applicant should also refer to Section 2.00 of this Manual to determine eligible costs for the specific funding program(s).

(i) Applicants are required to submit separate underwriting pro formas for any component of the overall project which is being separately financed. The development budgets submitted must reflect the costs of the entire project, even if portions of the project are not financed by HCR or are owned by an entity other than the LP/LLC owner of the residential project. For example, a project proposing non-residential space, unfinanced by HCR, and to be owned by a separate owner under a condominium structure, must provide a separate pro forma for that space. HCR must see a viable plan of finance for the entire building/project. The development costs of non-residential space which is not separately financed must be included and broken out in the HCR underwriting pro forma.

(ii) Acquisition Costs - The HOME and the HDF Programs are the only HCR programs for which the total program award may be used for acquisition costs. The HTF statute prohibits using more than fifty percent of the HTF award for site acquisition. For projects requesting LIHTC/SLIHC, acquisition costs of an existing building(s) to be rehabilitated may not exceed twenty-five percent of the total development cost of the project unless the project meets the definitions of a High Acquisition Cost Project and a Preservation Project, as set forth in Sections 2040.2(i) and 2040.2(q) of the 9% LIHTC QAP, respectively, and the threshold eligibility criteria at Section 2040.3(e)(15) of the QAP. The standards which a project involving the acquisition of

an existing building(s) must meet in order to qualify as a Preservation Project are described in Section 5.05.01 below.

(iii) Total Development Cost (TDC) - should reflect the reasonable and necessary cost of producing low-income housing; cost effectiveness will be an integral part of the technical reviews.

(iv) Construction Costs and Soft Costs - generally, the ratio of construction costs to soft costs should be eighty percent (construction costs) to twenty percent (soft costs).

PLEASE NOTE: For off-site costs, only those off-site costs directly associated with the project will be considered eligible for funding through HCR programs. For projects proposing future phases at the same site, which include shared infrastructure, access roads, and/or common use facilities, only the costs attributable to the project seeking funding will be recognized by HCR as an eligible project cost. As with land cost associated with multi-phased project site work development, costs that will benefit other phases must be equitably prorated. Generally, only the costs associated with the scope of work necessary for the project being considered for funding should be included in the development budget. If it is necessary to include costs attributable to future phases (e.g., single contract for site work), the applicant must show those costs being paid for by a developer/sponsor equity contribution. The applicant must provide a summary of shared costs and explain the basis of the pro-ration of costs among phases. Future developments and/or phases may be subject to reimbursing site development costs to HCR, if such future development obtains a benefit from the subject project's development.

Office space costs included in residential costs must be limited to the space necessary for project management staff, and in the case of supportive housing projects, space required to provide necessary services to residents with special needs. Any proposed office space to be used for purposes not directly related to the project, e.g., general administrative office space of a Public Housing Authority or a non-profit service agency, is non-residential space, and it must be identified as such in the development budget.

General Requirements – see Glossary for definition and examples.

(v) Builder's Fees - up to two percent of construction costs may be used for builder's overhead; up to six percent of construction costs may be used for general conditions (see Glossary for definition and examples); and up to six percent of construction costs may be used for builder's profit. To the extent allowed by other project funding sources, HCR will allow flexibility within these three categories as long as the 14% cap is not exceeded. Increases in builder's fees from the time of award for projects which have an identity of interest between the general contractor and owner/applicant will not be allowed.

(vi) Payment and Performance Bond Premium – generally one to two percent of construction costs are allowed for a Payment and Performance Bond Premium (see Section 5.10, Insurance Requirements). Projects utilizing HCR for construction financing must include a Payment and Performance Bond.

(vii) Developer's Fee – projects financed by LIHTC and/or SLIHC are allowed a maximum fee that ranges from ten percent to fifteen percent of the development cost; the applicant should refer to the QAP (Section 2040.3 (g)(2)(ii)) for more specific information. The following restrictions on developer fee apply:

a. Developer fee **may not** be earned on project contingency.
b. Developer fee may not be claimed on any units which will not be regulated by HCR.
c. In projects proposing non-residential space, developer fee will not be allowed on that space except for IRS Section 42 qualified Community Service Facilities.
d. In preservation projects where the acquisition of a building includes the assumption of existing debt, no developer fee may be earned on those loans.
e. In multi-phases projects where a prior phase was previously awarded tax credits, the developer fee will be limited to no more than 10% of the developer fee eligible costs recognized by HCR.
f. For High Cost projects that exceed the 130% of the cost region median for the funding round, the following developer fee limits apply:
    i. Costs > 130% and < 140%: median: 13% maximum
    ii. Costs > 140% and < 150% median: 12% maximum
    iii. Costs > 150% and < 160% median: 11% maximum

iv. Costs > 160% median: 10% maximum

HCR many consider a higher percentage fee based upon specific project characteristics.

The HCR approved developer fee is set at the time of the initial underwriting assessment, and subsequent increases in fee will not be allowed. All projects that include PBVs, regardless of the agency providing the vouchers, will be limited to a maximum fee of twelve percent (see Section 5.07 Subsidy Layering Review Process for detailed information). Allowable developer fees in projects using PBVs in connection with a mixed-finance project involving the development or modernization of public housing pursuant to 24 CFR 905 Subpart F are subject to an SLR performed by HUD. HUD safe harbor for developer fee in such projects is 9%. In no event will HCR allow a fee above 12%.

Developer fees provide a cushion against construction, lease up risks, and other unforeseen expenses. Therefore, at initial application review, requests for funding which require that greater than one third of the anticipated fee be deferred will be deemed not to have satisfied HCR's underwriting standards, provided however, that the agency reserves the right to award projects with deferral of fees in excess of this standard based on an overall assessment of the financial risk and/or the availability of funding. If the required developer fee deferral for projects with cash flow over $45 pu/pm (see Section 5.07 (iii.) Operating Budget) exceeds 1/3 of the developer fee, HCR will allow this. For projects involving significant financing under a program financed by a housing agency of the City of New York, HCR will allow the deferral of more than 1/3 of the developer fee as a permanent source of financing, if the deferral is an underwriting requirement of the City agency. Any applicant who proposes to defer a portion of their development fee must include a schedule of repayment in the 15-year operating budget projection. This repayment must be made from funds available after the payment of project expenses, all debt service (including HCR subsidy debt), and payments to required reserves.

During the construction period, which is defined as the period from construction financing closing through conversion to permanent financing, the amount of

developer fee that may be paid during construction is limited to a maximum of 25%. Further, no more than 10% (for profit developers) or 15% (not-for-profit developers) of the total budgeted developer fee may be paid prior to the issuance of a Certificate of Occupancy (CO) or Temporary Certificate of Occupancy (TCO) for **all** project units. Once a CO/TCO has been issued for all project units, up to 25% of the developer fee may be paid. The remainder of the fee may be paid at the time of permanent financing conversion. Applicants must show 75% of the proposed developer fee deferred as a construction financing source in the development budget. These requirements must be reflected in financing commitments submitted at the time of application, and if funded, prior to construction financing closing.

(viii) Soft Cost Contingency - five percent of the sum of total soft costs, excluding the following items: initial operating deficit, supplemental management fee, marketing, and maintenance & equipment. Please see the glossary for the definition of Soft Cost Contingency.

(ix) Hard Cost Contingency- minimum of five percent, up to a maximum of ten percent of total hard costs for projects involving the rehabilitation of a vacant building and small non-tax credit projects, and five percent for new construction projects and tenant occupied-rehabilitation/preservation projects. Please see the glossary for the definition of Hard Cost Contingency.

(x) Professional Fees – in general, HCR expects the project developer to perform all work necessary to bring the project to completion. HCR may recognize fees for professional services for highly technical and/or specific project activities which are not traditionally performed by the project developer, including fees for the project architect, legal counsel, engineer, surveyor, accountant, environmental monitoring, energy efficiency modeling and testing, and green building consultant as required. The following specific limits apply to architect's and legal counsel fees:

a. Architecture/Engineering Fees – up to 5% of total construction cost may be allowed for project design and 2% of total construction cost for construction supervision, with higher fees allowed for smaller projects, historic preservation projects or projects with other unique/difficult issues. Lower fees

are expected for projects that are large scale, new construction, multiple buildings of the same design, and/or subsequent phases of a similar project.

b. Legal Fees – project sponsor attorney's fees are limited to one percent of the total development cost.

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

(xii) Developer's Allowance – projects that do not involve financing with SLIHC or LIHTC may budget a developer's allowance as a project cost. The amount of the Developer's Allowance is limited to ten percent of total development costs, excluding acquisition and project contingency. Developer's allowance may not be claimed on any units which not regulated by HCR. When a housing consultant's services are used in connection with the project, the housing consultant's fee will be subtracted from the Developer Allowance cap to arrive at the amount that the participant is entitled to receive.

If HCR funds are provided during construction, which is defined as the period from construction financing closing through conversion to permanent financing, the maximum amount of developer allowance that may be paid during construction is limited to 25%. For projects with a for-profit developer, no more than 10% of the allowance may be paid prior to the issuance of a CO or TCO, for **all** project units. For projects with a not-for-profit developer, the limit is 15%. Once a TCO/CO is issued for all units the remainder of the 25% may be paid. The 75% balance must be held back until the time of the permanent financing conversion as an incentive payment for successfully completing the project.

(xiii) Construction Manager's Fees (CM) - this fee is only available to projects without a builder as defined in the glossary and when the CM responsibilities include all traditional, non-builder, administrative services. CM fees shall be limited to five percent of total construction cost, and builder's overhead and profit may not be claimed. CM's will only be recognized in this role when the developer has shown the capacity to guarantee the completion of construction and has the sophistication to manage multiple prime contracts on one construction project.

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

(xv) Reserve Funds - an initial deposit to project reserve funds may be required under certain programs. The applicant should review the Underwriting Criteria for Operating Budgets (Sub-Section 5.06(iii)) and Project Operating and Management Requirements (Section 7) of this Manual. HOME funds may not be used to provide capitalization of either an operating or replacement reserve account. HCR funds may be used to capitalize a replacement reserve, but may not be used to capitalize an operating reserve.

a. Replacement Reserve (see Glossary for definition) - replacement reserves are generally funded from an annual contribution included in the operating budget. An initial replacement reserve capitalization equal to $1,000 per unit is required for all preservation rehabilitation projects including LIHTC and/or SLIHC as a financing source. No initial capitalization is required for all other projects financed with LIHTC/SLIHC or, for projects which do not include LIHTC/SLIHC as sources.

b. Operating Reserve (see Glossary for definition) - The operating reserve may be funded with annual contributions and/or with an initial capitalization (as reflected in the development budget). Applicants

participating as private developers in the HTF and HOME Programs, and all applicants proposing projects funded with LIHTC/SLIHC, are required to make a cash equity contribution to the Operating Reserve equal to three months of operating expenses and debt service for projects of 60 units or more, and six months of operating expenses and debt service for projects of less than 60 units.

(xvi) Adjusters – HCR must be notified of any equity adjusters to a project in the investor/syndication letter required for 8609 submission. For any project receiving an upward adjuster, HCR must be notified of the final upward adjuster amount within five (5) business days of receipt of notification from the investor. The upward adjuster must be documented in a letter from the investor confirming the final amount of the adjuster. To the extent any amount of the adjuster exceeds the amount of the permanent deferred developer fee identified at the final underwrite of the project, the excess adjuster proceeds must be placed into the project replacement reserve account no later than five (5) days of receipt. HCR must be provided with evidence of the deposit of the funds into the replacement reserve account.

Section: 5.00 DEVELOPMENT REQUIREMENTS

Sub Section: 5.06 Preservation Projects

In order for DHCR/HTFC to consider a project as a Preservation Project, the project must meet the definition for a Preservation Project as set forth in Section 2040.2(r) of the DHCR 9% LIHTC QAP, as further elaborated upon herein.

Meeting the criteria for a Preservation Project is required if a project application requesting LIHTC/SLIHC includes the rehabilitation of any building(s) in which the acquisition cost of the building(s) exceeds 25% of the project's total development cost. Pursuant to the LIHTC/SLIHC threshold eligibility standard at Section 2040.3(e)(15) of the QAP, acquisition cost may not exceed 25% of the total development costs of the project unless it meets the QAP definition (Section 2020.2(q)) or receives a determination by the Commissioner of DHCR that the preservation of the building(s) is in the best interest of New York State.

A Preservation Project is one in which residential property is rehabilitated to extend its useful life to serve as affordable housing, and averts the loss of currently government regulated affordable rental housing serving the housing needs of a population whose housing need would justify the replacement of the housing if it ceased to be available to that population. The scope of the rehabilitation and proposed operating budget must be sufficient for the project to function in good repair as affordable housing for a period equal to at least 30 years from the date of issuance of the final credit allocation. Applicants proposing a Preservation Project must demonstrate how the project averts the loss of affordable housing, including submission of an IPNA, and must describe and document: a) any regulatory, financial and economic circumstances which impact the project's operating viability and could precipitate the loss of or risk the availability of the project to low-income households; and b) a compelling rationale for preserving the existing project based upon economic conditions including the availability of alternative affordable housing, market rents, vacancy rates, and current and future demand.

IPNA's shall utilize the IPNA Standard for New York City and State Low/Moderate Income Multifamily Buildings available at: https://hcr.ny.gov/multifamily. Preservation projects that propose a substantial, "gut"-rehabilitation are not required to submit an IPNA. See the HCR Sustainability Guidelines: Existing Buildings for additional information and requirements related to the IPNA.

Preservation projects that are still subject to regulatory agreements with HCR or any of its agencies must also provide a compelling rationale explaining why it is in the State's interests for HCR to release the current ownership from their existing obligations to the State if a transfer of ownership is proposed in the application. Preference in the award of Preservation projects will be given to applications that minimize transaction costs, including acquisition costs and developer's fees, and that maximize the amount of resources devoted to physical improvements and rehabilitation.

Applicants must request a site visit from HCR to observe the existing conditions of the property, and to discuss proposed renovations PRIOR to submission of the application. Requests for site visits must be made no later than 30 days prior to the application deadline under which the applicant intends to submit. A draft IPNA must accompany this request, unless the project is exempt from providing an IPNA. All projects shall include a preliminary set of design documents conveying the planned scope of work for the project with the site visit request. HCR reserves the right to require modifications of a proposed scope of work based on the results of this site visit and review of the submitted documents.

Note: a project which includes the rehabilitation of any building(s) in which the acquisition costs exceed 25 percent of the total development costs of the project is ineligible for funding under Section 2040.3(e)(15) of the 9% LIHTC QAP unless the project meets the Preservation project definition under Section 2040.2(r) or HCR has otherwise determined that the preservation of the building(s) is in the best interest of the State.

Where project acquisition cost includes the assumption of existing loans, HCR will not allow a developer fee to be earned on the portion of acquisition attributable to such loans.

Preservation Projects proposing the redevelopment of public housing must meet the criteria and conditions for approvals under the New York State Public Housing Law. Such projects may include the economic restructuring and rehabilitation of an existing public housing project. Applicants must have a pre-application meeting with HCR's Finance & Development and Public Housing units regarding the review and approval of the redevelopment plan **prior** to submitting an application for funding.

For Preservation Projects, which are also High Acquisition Cost Projects, the amount of the developer's fee recognized by HCR shall be based on an assessment of risk assumed by the project

owner, considering factors including, but not limited to: rent subsidies or other project operating support, location, financing sources, occupancy level, project type, and identities of interest.

Section: 5.00 DEVELOPMENT REQUIREMENTS

Sub Section: 5.07 Underwriting Standards

All funded projects are subject to the underwriting criteria set forth below. Where federal programs are involved (e.g. HOME, LIHTC), HCR may be required to certify to the pertinent federal agency that these projects receive only the level of funding necessary to develop the specific affordable housing project. To comply with these requirements, applicants that propose projects involving other federal capital funding requirements or rental/operating subsidies (i.e., CDBG or Section 8) may be requested to provide additional information. For projects involving Project–Based Section 8 Voucher assistance and LIHTC, the Federal Housing and Economic Recovery Act of 2008 authorizes HCR, as a housing credit agency, to perform the HUD-required subsidy layering review for such projects. Please refer to CPM Section 5.08 for detailed information on the subsidy layering review process.

Applicants must establish the following: that there is market support for the project; in general, the proposed rents are equal to or less than comparable rents for the area; the estimated project income is sufficient to pay the estimated operating expenses, including any reserve fund contribution and debt service contained in the financing plan; and the reasonableness of operating and development budgets. In doing so, the applicant must address the following in the 9% RFP application:

I. Market Support of Project

Applicants must firmly establish that a sufficient number of income-eligible households exist in the proposed market area who can afford the project rents and who can be expected to live in the project. In areas with comparable housing under development, HCR may wait until any project under development is built and rented prior to funding an additional project in the market area. The exception to this will be those projects that are part of a coordinated housing/community development or neighborhood revitalization strategy or projects serving a special needs population. To establish market, applicants must submit a market analysis or a comprehensive market study, depending on the project type and location as indicated in the chart below.

Comprehensive Market Study Required	Market Analysis Required
• LIHTC/SLIHC projects **outside** of the New York City	• Projects located in NYC regardless of size or type
• Non-tax credit projects of more than 15 units **outside** of the New York City	• Non- tax credit projects of 15 units or less
• Non-tax credit preservation projects of more than 15 units with average occupancy **below** 90% for the 12 months prior to application submission	• Non-tax credit preservation projects of more than 15 units with average occupancy of 90% or higher for the 12 months prior to application submission

(a) A **comprehensive market study** must be performed by a disinterested, professional market analyst who has been pre-qualified by HCR. The study must comply with the HCR Market Study Content Guidelines detailed below in this section. A listing of the currently approved analysts is maintained on the agency website. Market studies performed by an analyst not on the pre-approved list will not be accepted. The market study must demonstrate that the proposed number and type of units meet an existing and identified need of low-income individuals and can be readily absorbed by existing need in the local area. Applicants proposing projects located within the City of New York may prepare a market analysis utilizing data and housing trends from the most current report issued by the New York City Rent Guidelines Board.

(b) A **market analysis** is prepared by the project applicant. The market analysis should include:

i. surveys identifying potential tenants and/or housing studies recently conducted by public agencies documenting need for the proposed units;

ii. information on waiting lists from other projects in the market area providing housing of the same general type and with comparable rents; and,

iii. commitments on leases and/or referral of households financially assisted by social services or public health programs.

The analysis must consider the geographic area from which households are expected to be drawn (Primary Market Area or PMA), the number of income-eligible households within that area able to afford the required monthly housing expense, current vacancy rates, the impact of the project on other housing stock (including other publicly assisted housing), rents of similar housing in close proximity to the proposed project, identification of other comparable housing that is planned or under development, and the availability of project-based rent subsidies. Applications for projects in the City of New York must submit a market analysis utilizing data from the most current New York City Rent Guidelines Board Report.

HCR Market Study Content Guidelines

A. Executive Summary. Each market study must include a concise summary of the data, analysis and conclusions, including the following:

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

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

- Proposed number of units specifying the number of bedrooms and baths, income limit as a percent of Area Median Income (AMI), unit size in square feet and utility allowances for

tenant paid utilities, proposed rents, and target population, including income restrictions, and any special needs set-asides;

- The utilities expected to be paid by tenants and energy sources for tenant paid hot water, heat, and cooking; and,
- For existing occupied properties, identification of any existing assisted housing program under which the property is currently regulated such as Section 8, Section 202, Section 811, Section 236, etc., as well as current occupancy levels, current rents, and proposed rents.

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

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

D. Population and Households

- Provide total population, age, and income target data for the PMA using the most recent US Census, current year estimates, and a five-year projection. Data from other legitimate studies, such as Claritas, CACI and similar demographic information companies, with detail on

household size, tenure, age, and other relevant categories may be provided. Provide the same information for the Secondary Market Area (SMA), if one has been defined. Indicate the source for all data and provide a methodology for estimates. Demand for the proposed units must come from within the PMA. The SMA should not be considered in the calculation of capture rates.

- Provide a breakdown of households by tenure for most recent US Census, current year, and five-year projection.
- Provide an analysis of trends indicated by the data and include reference sources for the data and methodology for analyzing the data.
- Provide a breakdown of households by incomes in $5,000-$10,000 increments, by household size and by tenure for the most recent US Census, current year, and five-year projection.

E. Employment and Economy.

- Provide data and analysis on the employment and economy of the PMA to give an understanding of the overall economic health of the community in which the PMA is located. List sources for the data and methodology for the analysis.
- Provide a description of employment by industry sector for the PMA or smallest geographic area available that includes the PMA and compare the data to the larger geographic area (e.g., the city, county, labor market area, or MSA).
- List major employers in the PMA, the type of business, and the number employed, and compare the data to the larger geographic area (i.e. MSA, County, etc.).
- Show the historical unemployment rate for the last ten years (or other appropriate period) for the PMA and compare to the larger geographic area (i.e., MSA, County, etc.).
- Show employment trends over the same period or a more recent, shorter period (last 5 years). Compare to the larger geographic area.
- Comment on trends for employment in the PMA in relation to the subject development.
- If relevant, comment on the availability of affordable housing for employees of businesses and industries that draw from the PMA.
- Provide a breakdown of typical wages by occupation.

- Provide commuting patterns for workers such as how many workers in the PMA commute from surrounding areas outside the PMA.

F. Existing Rental Housing.

- Provide information on other multifamily rental housing in the PMA and any rental housing proposed to be developed in the PMA. This section of the study should include:
- If relevant in the market, a 10-year, or other appropriate period, history of building permits, if available, by housing type and comments on building trends in relation to household trends.
- Identify a list of existing comparable and competitive properties, including: name; location; population served; type of design; age and condition; number of units by bedroom type; rent levels; number of bedrooms and baths for each unit type; size in square footage of units; kitchen equipment; type of utilities (state whether paid by tenant or owner and energy sources for hot water, heat and cooking); and unit and site amenities included. Also, if available, site staffing, occupancy rate, and absorption history for the property (if recently completed). Provide the name, address and phone number of the property contact. Attach photos of each comparable property. Include a map showing the location of each comparable property in relation to the subject.
- Provide a separate map with the PMA clearly delineated, which shows only the existing regulated affordable housing properties in the PMA.
- A comparable property is one that is representative of the rental housing choices of the PMA and that is similar in construction, size, amenities, location, and/or age. A competitive property is comparable to the proposed project and competes at nearly the same rent levels and tenant profile, such as age, family, or income.
- Describe the size of the overall rental market in the PMA, including the proportion of market rate and affordable housing properties.
- Provide a narrative evaluation of the subject property in relation to the comparable properties, and identify the competitive properties, which are most similar to the proposed development. The analyst should state why the comparables referenced have been selected, which are the most directly comparable, and explain why certain projects have not been referenced.

- For each comparable property, provide comparisons to the subject rents based on the comparable property amenities, tenant paid utilities, location, parking, concessions, and rent increase or decrease trends.
- Only directly comparable projects should be used to derive the market rents in the PMA for use in evaluating the competitive advantage of the project rents. Market rents should be adjusted for owner paid utilities included in the rent. Including conventional projects with superior amenities, location, design, and larger unit sizes in determining the market rent is not acceptable. For example, the use of 1200 sq. ft. townhome style apartment units as a comparable for a project with 850 sq. ft., two bedroom units with limited amenities is not reasonable or acceptable.
- Discuss the availability of affordable housing options, including purchase or sale of homes.
- When relevant, include a list of LIHTC/SLIHC, USDA RD, HUD 202, and other federal, State or locally funded projects with allocations/awards in or near the market area that are not placed in service, giving as much known detail as possible on estimated placed-in-service dates, unit mix, and income to be served.
- Discuss the impact of the subject development on the existing housing stock.
- Describe the market vacancy rate for the PMA rental housing stock by population served (i.e., market rate, LIHTC, and Project Based Rental Assistance) and type of occupancy (i.e., family, seniors, and special populations) and unit size.
- Identify the number of people on waiting lists for each project. Indicate if the households have been income qualified, and when the wait list was last updated.

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

- Interviews with local planners, housing and community development officials, and market participants to estimate proposed additions to the supply of housing that would compete with the subject development and to evaluate the local perception of need for additional housing;
- Interview local Public Housing Authority (PHA) officials and seek comment on need for housing and possible impact of the proposed development on their housing inventory and

waiting lists for assisted housing. Include a statement on the number and availability of Housing Choice Vouchers and the number and types of households on the waiting lists for Housing Choice Vouchers. Compare subject development's proposed rents to local payments standards or median rents; and,

- The cost and availability of home ownership and mobile home living, if applicable.

H. Analysis.

- Derive a market rent using appropriate comparables as discussed in Section F. above, an achievable restricted rent given the project income limits, and then compare them to the developer's proposed rent. Quantify and discuss the market advantage of the proposed development and impact on marketability.
- Provide a detailed analysis of the income levels of the potential tenants for the proposed units. Eligible households will pay no less than 30% and no more than 48% of their income for gross rent (rent plus utilities). See Section 7 for additional information.
- For projects funded under MIHP: units above 60% AMI may be rented to households paying less than 30% of their income to rent **if** the project is in a HUD-designated QCT or the project is part of a downtown revitalization effort. (If not located in a QCT or part of a downtown revitalization effort, the analysis must use the minimum 30% rent burden stated above.) For these projects, units above 60% AMI may be rented to households with income levels that are up to 20% higher that 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 of 110% of AMI; it could not be rented to any households over 110% AMI. The market study must limit the income eligible households included in the demand pool for these units, accordingly.
- HCR requires HCR issued Project-Based Section 8 Voucher units to be targeted to households at or below 30% AMI, as such analysts should restrict the income eligible households for the PBV units to a maximum of 30% AMI.
- 100% of the income eligible renter households should be included in the project demand pool; homeowners may not be included as prospective tenants in non-senior projects.

- In senior projects, no more than 10% of income eligible senior homeowners may be included in the demand pool.
- Calculate a total project capture rate based upon all units.
- Calculate separate capture rates for each targeted income limit by unit type in the subject property, incorporating HCR restrictions such as age, income, renters versus home owners, household sizes, etc. (For example, if a project has 30 one bedroom units targeted at 50% of AMI, 10 one bedroom units targeted at 60% of AMI, and 20 two bedroom units targeted at 60% of AMI, three separate capture rates must be calculated.)
- Capture rates are to be calculated as "net" capture rates which account for the existing supply of affordable housing in the PMA in arriving at unmet demand.
- The unmet demand for additional housing units must be more than 5 times the number of units proposed. Capture rates must be twenty percent or less for each targeted income limit by unit type as well as for the total project.
- Define and justify the absorption period and absorption rate for the subject property.
- Project and explain any future changes in the housing stock within the market area.
- Identify risks (i.e., competitive properties which may come on line at the same time as the subject property, declining population in the PMA, etc.) unusual conditions, and mitigating circumstances. Evaluate the need for voucher support or HUD contracts.
- Provide documentation and descriptions that show the methodology for calculations in the analysis section and relate the conclusions to the data.

I. Other Requirements

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

II. Project Income

Applicants must demonstrate that the project will generate sufficient income to cover its operating expenses.

(a) Residential Income - The applicant must submit a units and income plan for the project estimating rental income, adjusted by a five percent vacancy and arrears loss. Ancillary income from parking, and laundry fees must also be adjusted by a 5% vacancy factor. The rents approved by HCR for the purposes of the HTF, HOME or other HTFC funding commitment letter or LIHTC/SLIHC reservation letter may be increased by the annual percentage increase in the AMI prior to initial rent up with HCR approval, subject to the receipt and review of operating cost documentation supporting the need for the increase.

(b) Non-Residential Income - if the project building also contains non-residential space, the non-residential space must be self-sustaining and not rely upon residential project income. Utility costs for residential and non-residential spaces must be separated; examples include separate HVAC systems and separate boilers/AC equipment, separate electrical systems, separate domestic hot water systems, etc. with separate utility meters or other measuring equipment to determine usage attributable to non-residential spaces. Exceptions will be allowed for: water service metering where the local utility limits the water service and metering to the building; and where a method of sub-metering is accepted by the agency. Residential rental income may not be used to subsidize the non-residential portions of the project. The ability of the residential project to cover operating expenses and debt service must not be predicated upon income from non-residential rents. Any non-residential income to be used to support the non-residential project operations should be conservatively estimated. Such income should be considered only on a net basis after deduction of a 10% vacancy loss and arrears.

III. Operating Budget

The applicant must submit an estimated project operating budget which reflects as accurately as possible the expected rental income and operating costs of the project. As stated in Section 5.05 above, applicants are required to submit separate underwriting pro formas for any component of the overall project which is being separately financed. For example, a project proposing non-residential space, unfinanced by HCR, and to be owned by a separate owner under a condominium structure, must submit a separate underwriting pro-forma for that space. HCR needs to review a viable operating plan for the entire building/project.

The accuracy of the operating cost projections will be an important factor in the underwriting assessment of the project and its successful operation through the funding program's regulatory period. The operating budget must trend at a 2% increase in annual income and a 3% increase in annual variable expenses. Management fees must be trended to increase 2% annually.

The operating budget must take into account the project's design and construction, utility configuration, and type of population to be served (i.e., elderly, family, homeless individuals, etc.). The applicant must submit an operating budget, and supporting documentation of proposed costs at the time of application and, if there are changes, again at Construction and Permanent Loan Closing. Please note that the operating budget must reflect **only** the costs of operating and managing the physical real estate. It **may not** include any cost related to the provision of social services to the tenants.

Utility Costs

All project utility costs (i.e. heat, electric, gas, water and sewer etc.) must be documented by a utility estimate prepared by the project architect or energy consultant. For projects participating in an energy efficiency program, utility estimates shall be based on the projected energy usage resulting from participating in that program. The estimates must clearly identify owner-paid utilities and tenant paid utilities. In mixed-use projects, the estimate must breakout the non-residential utility costs.

HOME projects are required to use a Utility Allowance (UA) that complies with the 2013 HOME Final Rule 24 CFR Part 92. The rule requires the Participating Jurisdiction to establish the Utility Allowances for HOME-assisted rental units by using either the HUD Utility Schedule Model or a project-specific methodology. (For purposes of the New York State HOME Program, the agency is considered the Participating Jurisdiction, but will **not be** the calculator of utility allowances.) At the time of application, HCR will accept a utility estimate based upon the architect's/energy consultant's estimate for projects requesting HOME. If funded, the project will be required, prior to construction start, and FCL issuance, to submit an IRS compliant Energy Consumption Model to establish the Utility Allowance as allowed under the 2013 HOME Final Rule. Applicants **must use** the Utility Allowance established by the Energy Consumption Model for all HOME funded units; Public Housing Authority (PHA) Section 8 utility allowances **may only** be used for HOME-funded units that will have project-based Section 8 rental assistance. Per IRS regulations (26 CFR 1.42-10(b)(4)(E)), the energy and water and sewage consumption and analysis model must be prepared by a properly licensed engineer or a qualified professional, who is independent of the property ownership. The regulations require that the model must, at a minimum, consider specific factors including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, characteristics of the building location, and available historical data.

Broadband Internet Costs

Broadband internet costs must be documented with a written quote from an Internet Service provider. The quote should indicate separately the cost of broadband service provision to the residential units, common areas, and management offices.

Projects located outside of New York City, Westchester, Suffolk and Nassau Counties, must comply with the broadband requirements for dwelling units where feasible. If the applicant considers meeting the requirement to be infeasible, no formal waiver request is necessary. Operating budgets submitted at the time of application may omit such broadband expenses. HCR will evaluate the feasibility of broadband expenses and reserves the right to explore a solution collaboratively following an award. However, applicants are still expected to comply with the requirement to provide high speed broadband services in common areas and/or community rooms, where provided,

at no additional cost to tenants. Applicants are also still expected to provide the infrastructure for access to high-speed broadband services in dwelling units per the Design Guidelines.

Insurance Costs

Insurance expenses must be documented by a written quote from an insurance broker including both the coverage and price. In the case of a mixed-use project, the insurance quote needs to identify the portion of insurance costs attributable to the non-residential project.

Property Taxes

Property tax expenses have a significant impact on project operating economics, as such, it is critical that applications estimates are appropriately supported. If a project is to receive a tax exemption or abatement, it must be documented by a counsel's letter confirming the legal basis for the exemption or abatement. If a Payment In lieu of Taxes (PILOT) is to be provided by the municipality, the applicant should provide as much evidence of the PILOT as is available at application, e.g. copy of actual PILOT approval and terms, a letter from the municipality in support of a PILOT and indicating possible terms and timeline for approval, or information on approved PILOTs for similar projects. For projects to be taxed utilizing Section 581-A of the Real Property Tax Law, the estimate must be substantiated by a letter from the assessor having jurisdiction in the project location, stating the basis for estimation, and estimated amount of the post-construction value. Where an assessor letter is not available, a similar letter from an appraiser is acceptable. The operating budget projections should also identify the cost of any special county or district taxes applicable to the project. Sponsors are expected to pursue all tax exemption or abatement programs for which the project is eligible.

As an advisory, negotiating Voluntary Payment Agreements, host community agreements or other similar agreements, at levels that exceed what is available through tax exemption programs, abatement programs, available PILOT programs and/or 581-A is not allowable. Further, HCR will not permit projects to use such an instrument to pay fees at an amount beyond standard property taxes, including special county or district taxes.

Cash Flow Policy

In projects with a conventional permanent loan, HCR will allow cash flow at the amount necessary to meet the lender's and/or mortgage insurer's debt service coverage requirements.

In projects without a conventional bank loan, HCR will allow cash flow at the amount necessary to maintain positive cash flow through the first fifteen years of operations. For LIHTC/SLIHC financed projects, HCR will require projects with cash flow over $45 pu/pm to defer as a permanent financing source developer fee equal to the aggregate amount of cash flow above $45 pu/pm over the project's initial 15 years of occupancy.

For projects financed without LIHTC/SLIHC the use of any rental income remaining after the payment of annual operating and maintenance expenses is subject to the approval of HCR's Asset Management Unit. See CPM Section 7.02.05. Please note that once a project is completed and rented-up, any income from Tenant Based Vouchers that exceeds the maximum rents for the targeted affordability levels will go to the Replacement Reserve account pursuant to the project regulatory agreement.

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

Replacement Reserve Contributions –

Projects that **do not** include LIHTC and/or SLIHC as a financing source:

a. Family and non-senior projects: fixed annual contributions equal to .50 percent of total construction cost, including builder's fees, up to a maximum of $800 per unit.
b. Senior Projects: fixed annual contribution of $400 per unit.

All projects which include LIHTC and/or SLIHC as a financing source must provide for a minimum annual contribution of $250 per unit for new construction projects and $300 per unit for rehab projects. HCR requires a 3% annual increase in replacement reserve contributions for all projects. All required replacement reserve contributions will continue throughout the term of the project's regulatory period with no ceiling. HTFC stand-alone projects, (i.e., projects that do not involve LIHTC or SLIHC), may be permitted to capitalize a replacement reserve if a project's operating

economics cannot support the required annual contribution. Projects permitted to capitalize the replacement reserve must demonstrate that the initial capitalization will provide sufficient funds to cover expenses throughout the regulatory period. All assumptions (i.e., initial cost, annual inflation rate, life expectancy of major building systems, etc.) should be included on a spreadsheet which shows that such capitalization will be adequate.

Operating Reserve Contributions -

All projects financed with LIHTC and/or SLIHC: no annual contribution required.

Projects financed without LIHTC or SLIHC: Annual operating reserve contribution equal to 3% of the project's gross rents is required. Annual contributions to the Operating Reserve are required in any year that the balance in the reserve is less than 50% of the gross rents.

Financing Plan - the financing plan for the project must meet the following requirements:

(a) the total project cost must be financed by grants, loans, or equity, or a combination of the three;

(b) all project financing must be contractually obligated at or before the project's Construction Loan Closing, or at or before the issuance of a LIHTC/SLIHC Binding Agreement/Carryover Allocation;

(c) grants and/or equity financing cannot encumber the project in a manner which is inconsistent with the requirements of the applicable HCR program;

(d) debt service for loans must be supportable by the project's annual operating budget;

(e) loan terms must be provided at a fixed rate of interest for a minimum of a 30-year term;

(f) the terms and conditions of construction and/or permanent financing must be economical and reasonable. The interest rates must be no more than the rates/level offered in the marketplace and the conditions (i.e., requirements on security, credit enhancement, and debt service coverage factors) must be typical and advantageous; and,

(g) debt service coverage factors required by lenders should be documented by the applicant at the time of application submission and again prior to Construction Loan Closing.

Section: 5.00 DEVELOPMENT REQUIREMENTS

Sub Section: 5.08 Subsidy Layering Review Process

The Federal Housing and Economic Recovery Act of 2008 (the Act) authorized changes to the Federal Low Income Housing Credit Program to simplify its use and enhance its value in creating and preserving affordable housing. Among these changes, the Act stated that when PBV assistance is proposed for newly constructed and rehabilitated structures the subsidy layering review (SLR) required in accordance with Section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 shall be satisfied if a Housing Credit Agency (HCA) conducts an SLR. This section outlines the purpose of performing SLRs, as well as the procedures that HCR will utilize, consistent with the Department of Housing and Urban Development (HUD) administrative guidelines issued March 13, 2023 (88 FR 15443), for conducting these reviews. Please note that HUD must perform the SLRs required for Mixed-finance projects involving the development or modernization of public housing pursuant to 24 CFR 905 subpart F, where public housing units are owned by an entity other than a PHA.

5.08.01 Purpose of Subsidy Layering Reviews

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

5.08.02 Timing of Reviews

An initial subsidy layering review will be performed by HCR Underwriting staff at the time of application review to determine the appropriate number of PBVs, tax credits, and/or HCR capital funding to recommend for award. Please note that HCR will apply the SLR development standard and limits described below to **all** projects proposing the use of PBV assistance, even if the vouchers are not being requested from HCR. A second, and in most cases final, SLR will be conducted prior to construction start. The second SLR will be based upon updated development and operating budgets submitted by the project sponsor. The Division's Section 8 Office will not execute an Agreement to Enter into Housing Assistance Payments (AHAP) contract until an SLR has been completed, as evidenced by a certification from OF&D that the project complies with HUD

requirements. When HCR performs the SLR for projects awarded vouchers by another PHA, a copy of the signed certification will be provided to the project sponsor to proceed to AHAP execution with the PHA.

5.08.03 Guidelines for Conducting Subsidy Layering Reviews

In conducting SLRs, HCR Underwriting staff will utilize the administrative guidelines issued by HUD in its notice of March 13, 2023 (88 FR 6359-N-01). The guidelines state that the required SLR may be fulfilled by the IRC Section 42(m)(2) gap analysis review, if the review substantially complies with the SLR requirements detailed in the HUD notice. In addition, the HUD guidelines require the HCA to evaluate the effect of the PBV income on project operating economics to assure that the amount of voucher assistance is no more than necessary. Specifically, the HUD notice requires that certain development and operations standards be applied by the HCA in conducting the SLR. These standards are summarized below.

1) **Development Standards**: Net syndication proceeds to the project must be at or above the amount generally contributed by investors based upon current equity market conditions. Development costs must be evaluated for reasonableness based upon HUD safe harbor standards and maximum allowable amounts.
   (a) Safe harbor: These are generally applicable development cost standards. If project costs and fees are within the safe harbor standards, the project can move forward without the need for additional justification. If project costs exceed the safe harbor limits, the owner must provide additional documentation and justification that demonstrate the need for costs that exceed the safe harbor standards.
   (b) Maximum allowable amounts: These are firm limits which cannot be exceeded under any circumstances. Where HUD and HCR maximum allowable costs or cash flow differ, the more stringent limit is applicable.
   (c) Safe Harbor Percentage Allowances and Maximum Allowable Amounts
      (i) **Builder's Fees** (as a percentage of the construction contract)
         1. Safe Harbor:
            a. General Conditions: 6%

b. Overhead: 2%

c. Profit: 6%

2. Maximum:

The maximum combined costs for general conditions, overhead, and profit cannot be more than fourteen percent of the construction contract.

(ii) **Developer's Fee**: HCR will allow no more than the HUD safe harbor cost limit as modified below. No exceptions or waivers will be allowed.

Maximum: twelve percent of soft and hard costs plus ten percent of acquisition.

(iii) Net Syndication Proceeds: The LIHTC equity raised by the project's syndication must be at or above the current market price average as determined for that funding round. The safe harbor minimum for the LIHTC equity pricing will be established by HCR based upon its assessment of the market price for similar projects reviewed under the same application funding round. If the amount of equity raised is below the current market price, HCR will reduce the LIHTC allocation to bring the value of the tax credits to a level at or above the minimum LIHTC equity price.

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

(a) **Debt Coverage Ratio (DCR):** In any year, the DCR cannot be more than 1.45 or less than 1.10. If the project has no hard debt, it must demonstrate an Expense Coverage Ratio (Gross Income divided by Total Operating Expenses) of no less than 1.10 and no higher than 1.45.

(b) **Cash Flow:** In any year, the cash flow cannot exceed 10% of the total project operating expenses.

(c) **Trending Parameters:** The HCA may use the trending assumptions that it deems appropriate and reasonable to the project market area. HCR requires a 5% vacancy factor with operating expenses trended at 3% per year, and annual rent increases at 2%.

To the extent that the project exceeds the DCR and/or cash flow limits, HCR will conduct further trending analysis of the 20-year pro forma to determine whether the project is receiving more governmental assistance than is necessary to meet the needs of the project. If the HCR analysis indicates this to be the case, the project owner will be asked to re-visit the operating pro forma to bring cash flow and/or DCR down to allowable levels. If the owner declines, the number of vouchers proposed will be reduced or the proposed rents will be lowered as required by the HUD guidelines.

5.08.04 Basis of Review

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

(1) HCR Underwriting Forms:

(a) Development Budget/Sources and Uses;

(b) Project Rents/Income;

(c) 20-year Operating Pro-forma;

(d) Tax Credit Worksheet; and

(e) Updated Project Summary.

(2) Other Documents:

(a) Commitment letters from all financing sources disclosing significant terms;

(b) Tax credit equity investment commitment letter, or if available, limited liability corporation operating agreement/limited partnership agreement;

(c) Letter from entity allocating PBVs authorizing/approving the PBV assistance; and

(d) HUD-2880 Standard Disclosure and Perjury Statement Form signed by the sponsor (https://www.hud.gov/sites/dfiles/OCHCO/documents/2880.pdf).

HCR reserves the right to request other documents as needed in performing the SLR. All documents required for the SLR must be submitted to the Regional Office project manager. The project manager will forward the material to the underwriter for evaluation.

5.08.05 Completion of Review

If upon completion of the SLR, the HCR underwriter finds that the project is in compliance with HUD requirements, OF&D will issue an HCA certification that the PBV assistance awarded to the project is not more than the amount necessary to provide affordable housing. The certification will be sent to the HCR's Section 8 Office and to HUD. If the underwriter finds the project to not be in compliance with HUD Subsidy Layering guidelines, the project owner will be contacted to discuss any necessary changes needed for the certification to be issued.

Section: 5.00 DEVELOPMENT REQUIREMENTS

Sub Section: 5.09 Construction Monitoring Requirements

All projects funded under the 9% Multifamily RFP are subject to construction monitoring by the HCR Design Unit to track construction progress and to identify and resolve any potential problems or delays a project may experience. The following procedures apply:

1) HCR Construction Monitors shall have access to the project on a bi-monthly basis for monitoring and reporting on the progress and quality of the project construction to the HCR Design Unit architect and OF&D project manager.
2) Project architects shall provide the following information to the HCR Design Unit architect on a bi-monthly basis, as applicable:
    a. Minutes of construction progress meetings and monthly contractor payment requisitions (AIA Forms G702 and 703) certified by the project architect. These reports must indicate the overall percentage of project completion achieved to date.
    b. A site visit report provided and signed by the project architect describing the general progress and status of construction, photos of the construction progress, anticipated completion date, changes in the work and any significant issues that have arisen, which may impact project construction and/or the timeframe for completion.
3) Change Order procedures outlined in Section 6.09.
4) 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.
5) At construction completion for each building in the project, a copy of the Permanent Certificate of Occupancy, or Temporary Certificate of Occupancy (if applicable), shall be provided to the HCR Design Unit architect and OF&D project manager.
6) 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 20 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). 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.

All closeout submissions required for prior to project occupancy shall be provided per the Project Development Timetable Letter. Under no circumstance, shall dwelling units be occupied prior to the Design Unit sign-off for project occupancy.

Section: 5.00 DEVELOPMENT REQUIREMENTS

Sub Section: 5.10 Financing Requirements

These financing requirements apply to all HTF and HOME funded projects.

The applicant must provide firm commitments from all sources of loan and equity financing necessary for the project as part of the Construction and Permanent Loan Closing. Documentation of firm financing commitments must include at least the following:

(i) identification of the applicant and other parties to the proposed financial transaction;

(ii) evidence that the commitment is legally in effect until a date which is on or after the anticipated date of Construction or Permanent Loan Closing;

(iii) evidence that the commitment is not subject to any conditions other than the availability of other proposed project financing and/or the implementation of the project as described in the application submitted to HCR;

(iv) interest rate and principal repayment terms; and,

(v) identification of debt service coverage and/or income to expense ratio requirements.

HCR may request copies of superior and subordinate notes and mortgages for review and their use must be approved before execution of the documents or such lien occurs. HCR funds will generally be provided as permanent financing only. Applicants must consult the Request for Proposals under which they are applying to see if construction financing is available.

HCR is permitted by statute to subordinate HTFC debt to other loans made for eligible uses, i.e., affordable residential development and, to a limited extent, a HTF CSF development as described in Section 2.01.03.G. With the exception of a HTF CSF as noted above, HTFC and HOME loans may not be used to finance non-residential/commercial projects. Recipients of HTF and HOME funds who plan to develop mixed-use projects are advised to secure separate financing for development of the non-residential/commercial portion of the project, which is not secured by the HTFC or HOME financed residential portion of the project.

HCR will, however, permit an HTFC or HOME financed residential project to be encumbered by a mortgage which also encumbers the non-residential/commercial portion of the project if a creditworthy individual or entity, with adequate financial assets (as determined by HCR),

provides a payment guarantee of debt service and operating expenses of the non-residential/commercial portion of the project in the event of vacancy or default.

In some instances, a condominium will suffice to legally separate the HTFC or HOME financed residential portion of a project from the commercial/non-residential portion of a project. If the condominium adequately isolates the residential project, then a payment guaranty may not be required.

Section: 5.00 DEVELOPMENT REQUIREMENTS

Sub Section: 5.11 Insurance Requirements

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

(i) with regard to HDF's Program projects, the insurance requirements set forth here apply only to HDF interim acquisition and construction loans; and,

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

Applicants (and their contractors and architects) are required to maintain appropriate insurance coverage during the development of the project as specified below. For projects using HCR funds for construction financing, or where HCR has an existing regulatory interest in the project, evidence of the required insurance during construction must be submitted prior to the construction closing as part of the Construction Loan Closing submission. Please see HCR's Legal Documents Manual, Index XVI, Construction Loan Closing Checklist III, Insurance for further information on the required insurance.

Owners/awardees must submit the necessary borrower insurance binders or certificates as part of the Permanent Loan Closing submission. Please see HCR's Legal Documents Manual, Index XVI, Permanent Loan Closing Checklist II for further information on the required insurance.

5.11.01 Insurance Requirements for Applicants

Title Insurance

- insuring DHCR/HTFC's interest as mortgagee in the maximum amount of the DHCR/HTFC financing to be provided;
- required for all projects in which a mortgage securing the DHCR/HTFC financing is required;
- property description must match a survey certified to DHCR/HTFC, the applicant and the title insurance company (survey must plot the proposed project and all existing easements); and,

- insurance policy must be delivered at or before closing insuring DHCR/HTFC's interest in the property, free and clear of all liens, encumbrances and restrictions except as may have been previously approved and including all required endorsement which include:
  - Environmental Protection Lien (for State Agencies) (8.1);
  - ALTA 9 (if affirmative coverage is not available);
  - Tax Parcel (for NYC projects or where more than one tax parcel is involved);
  - Land Same As Survey;
  - Condominium/Cooperative (if applicable);
  - Leasehold (if applicable); and,
  - Additional endorsement(s) deemed necessary by HTFC Office of Legal Affairs.

All Insurance, as required below, must include:

- evidence that the insurer will not modify the policy adversely to the interests of any mortgage on the premises or cancel any policy without the minimum notice requirements set forth in Section 3426 of the NYS Insurance law; and,
- DHCR/HTFC and the State of New York to be named as additional insured and certificate holder.

Liability Insurance

Comprehensive General Liability:

- monetary limits of not less than $1,000,000 for each occurrence with Hazards including contractual liability and completed operations, and,
- contractual coverage.

Property Insurance

- monetary limits commensurate with the project's 100% insurable replacement value; and,
- Builder's Risk Form - All Risk Coverage.

Automobile Liability Insurance

Liability:

- "Any Auto" automobile coverage in a minimum amount of 1 million;
- to cover vehicles owned and/or operated by the applicant; or,
- coverage for owned (if applicable), hired and non-owned vehicles, accompanied by a letter on letterhead stating that if autos are purchase that insurance coverage will be immediately changed to "any auto".

Blanket Position Fidelity Dishonesty Bond

- amount of coverage equal to the amount of the largest anticipated disbursement; and,
- DHCR/HTFC and State of New York as sole/joint payee/obligee.

Workers' Compensation and Disability Benefits Insurance

- Must be provided by the employer for all employees performing work related to the project; and,
- If no employees, a certification that this coverage is not presently required (form CE-200 which can be obtained on the Workers' Compensation Board website).

Flood Insurance

If, according to the best available data, the improvements, or any portion thereof, at the project site are located within a Special Flood Hazard Area, flood insurance is required in an amount equal to the replacement cost of the structure or the maximum limit of coverage made available under the National Flood Insurance Program, whichever is less.

5.11.02 Insurance Requirements for Builders Under Direct Contract with Applicants

Liability Insurance

Comprehensive General Liability:

- monetary limits of not less than $1,000,000 for each occurrence;
- contractual coverage; and,
- applicant to be named as additional insured.

Builder's Risk Insurance

- monetary limit to cover cash value of completed work on the project; and,
- DHCR/HTFC and State of New York as mortgagee/loss payee (as applicable).

Automobile Liability Insurance

Liability:

- "Any Auto" automobile coverage in a minimum amount of 1 million;
- to cover vehicles owned and/or operated by the applicant; or,
- coverage for owned (if applicable), hired and non-owned vehicles.

Workers' Compensation and Disability Benefits Insurance

- Must be provided by the employer for all employees performing work related to the project; and,
- If no employees, a certification that this coverage is not presently required (form CE-200 which can be obtained on the Workers' Compensation Board website).

Performance and Payment Bond(s)

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

5.11.03 Project Architect's Insurance

Project architects are required to meet the applicable insurance coverage parameters specified below. The project architect must furnish HCR with Certificates of Insurance for projects receiving construction financing from HCR. If a project architect does not carry professional liability insurance, project professional liability insurance coverage may be carried in lieu of blanket coverage. Coverage should extend from the date of the Owner/Architect Agreement to one year after the substantial completion of the project. All certificates of insurance must contain evidence that the insurer will not modify the policy adversely to the interests of any mortgagee of the premises or cancel any policy without the minimum notice requirements set forth in Section 3426 of the NYS

Insurance law. DHCR/HTFC and State of New York would need to be named as additional insured for any projects with an HCR construction loan.

Comprehensive General Liability Insurance

- with limits of $1,000,000 per occurrence/$2,000,000 aggregate; and,
- the project architect agrees to defend, indemnify, and hold harmless the additional insureds as stated above from damages, causes of action and legal proceedings arising out of the operations and completed operations of the project architect to the services provided under this contract.

Professional Liability Insurance

- in the amount of $1,000,000 per claim and $1,000,000 aggregate;
- the policy must include Contractual Liability coverage;
- the coverage shall remain in force without diminution for three years after completion of the project architect contract; and,
- The permanent lender on HDF Program projects must certify that architect's liability insurance is an eligible expense.

Workers Compensation and Disability Benefits

- Must be provided by the employer for all employees performing work related to the project; and,
- If no employees, a certification that this coverage is not presently required (form CE-200 which can be obtained on the Workers' Compensation Board website).

Section: 5.00 DEVELOPMENT REQUIREMENTS

Sub Section: 5.12 Real Property Tax Exemption

Applicants are expected to obtain tax exemptions or abatements with local municipalities for all or a portion of the project. Applicants are encouraged to explore the benefits available under Section 581-A of the NYS Real Property Tax Law. This tax provision provides that affordable housing be assessed on the basis of the income approach for determining value. Applicants who pursue tax exemptions or abatement may receive additional points in the rating and ranking of their application(s) if tax exemptions or abatements have been obtained and documented. Any anticipated tax exemptions or abatements should be documented as outlined in Section 5.06(iii). The operating budget projections should also identify the cost of any special county or district taxes applicable to the project. As an advisory, negotiating Voluntary Payment Agreements, host community agreements or other similar agreements, at levels that exceed what is available through tax exemption programs, abatement programs, available PILOT programs and/or 581-A is not allowable. Further HCR will not permit projects to use such an instrument to pay fees at an amount beyond standard property taxes, including special county or district taxes. At the time of the submission of the Permanent Loan Closing Documents, a signed payment-in-lieu of tax agreement must be submitted in support of this operating budget expense.

Section: 5.00 DEVELOPMENT REQUIREMENTS

Sub Section: 5.13 Professional Service Contract Requirements

All projects funded through the 9% Multifamily RFP must comply with the provisions of this Section when selecting project architects, builders, engineers, attorneys, housing consultants, managing agents, or other professionals who provide all or a portion of the professional services required to develop a project. Professionals should be selected based on their professional and technical competence, relevant experience and past experience, knowledge of local laws, regulations and codes, proposed cost for services, and capacity to provide services in a timely manner consistent with the development timeframe.

HCR requires all contracts over $25,000 to include goals for the participation of Minority and Women-Owned Business Enterprises (M/WBE), with the exception of projects which are financed solely under LIHTC/SLIHC. Please see Section 4 for a discussion of M/WBE requirements. In the event of inconsistencies between this Section and the federal HOME regulations, the HOME regulations shall apply.

5.13.01 Selection of an Architect/Engineer

All agreements between applicants and project architects or engineers must reflect a fixed fee compensation for all services required by HCR. The fixed fee should be structured so that payment is tied to successful completion of the various phases of work proposed (i.e., preliminary design, bid design, construction documents, etc.). All Owner/Architect agreements must be submitted to HCR for review and may require revisions if not acceptable to HCR. See Appendix D the HCR Design Guidelines for additional information and requirements.

5.13.02 Selection of a Housing Consultant

This section is not applicable to projects financed solely under LIHTC/SLIHC.

The applicant's agreement with a housing consultant to provide services related to the project's planning, marketing, housing management, and/or development must reflect a fixed fee arrangement based upon defined services to be provided by the consultant. Payment should be structured into phased progress payments associated with the percentage of work completed for each

phase (i.e., planning phase, marketing phase, construction phase, occupancy phase, etc.). The OF&D project manager will review all consultant agreements for reasonableness of costs and clarity of the scope of work to be performed. HCR reserves the right to require an amendment to the agreement before funding is provided.

Housing consultant fees will not be recognized in the development budget for projects funded with LIHTC and/or SLIHC equity. For those non-LIHTC/SLIHC funded projects receiving a Developer's Allowance, any housing consultant fees budgeted apart from the Developer's Allowance will be subtracted from the Developer's Allowance cap to arrive at the maximum amount that the applicant is entitled to receive.

5.13.03 Selection of Attorneys

The applicant should identify the scope of legal services to be provided throughout the development of the project, and request that the attorney prepare and submit an agreement specifying the legal services to be performed at a fixed fee compensation. The following legal services may be included in the applicant/attorney agreement:

(i) preparation and review of all applicant agreements excluding services related to the preparation and submission of applications for funding which must be treated as housing consultant fees (except for projects financed solely under LIHTC/SLIHC – See Section 5.13.02);
(ii) representation of the applicant at all closings;
(iii) title examination and curing of title defects;
(iv) preparation of legal descriptions of property; and,
(v) recording of title papers.

5.13.04 Selection of a Builder

HCR has two tracks for the contracting of construction work for its low-income housing projects. At the time of application submission, a project sponsor must identify which method of securing a construction contractor will be utilized. The first track is for a project sponsor seeking construction bids through a publicized, competitive process. The second track is for a project sponsor to identify and select a builder at the time of application submission.

Applicants/owners which propose to act as their own Builder (see Glossary for definition) must document the following:

(i) a minimum of five years of successful experience administering construction and completing projects of comparable size and scope;

(ii) the in-house staff capacity and experience to negotiate and direct the functions of both the project architect and construction activities; **and**,

(iii) the financial capacity to provide a 100% performance and payment bond for the entire construction cost.

Under either track, should a project sponsor elect to produce housing through the use of a manufactured housing company, the purchase contract and supervision of such housing must be done as a sub-contract to the builder's contract. The requirements for both tracks are enumerated in the sections below.

Publicized, Competitive Bidding (Track One)

Project sponsors electing to publicly and competitively bid the construction portion of their low-income housing projects must indicate this intent at the time of application submission. This type of contractor selection will require the project sponsor to openly advertise in a well-known local newspaper for a period of four days and have a minimum bidding period of four weeks before bids are closed. M/WBE outreach requirements will be part of the bidding process. On projects subject to Federal Labor Standards (Davis-Bacon Related Acts) regulatory requirements (see Section 5.15 for more information) the labor standard procedures for competitive bidding must also be followed.

Upon receipt of bids, the project sponsor and architect must notify HCR of the bidding results and the name of the selected lowest qualified bidder. The contractor's schedule of values must also be submitted to HCR at that time. HCR reserves the right to require that the project be rebid or negotiated or to modify the scope of work, if all bids received are higher than the project's estimated total construction cost. The project sponsor must include the services for a detailed construction cost estimate prepared by a cost estimator.

Pre-Selected Builder Requirements (Track Two)

Project sponsors who elect to include a builder with their application for funding will be required to indicate the selection criteria that was used to hire the builder, the builder's previous professional experience in producing low-income housing units, the role the builder will play during the development and construction phases of the project and that the builder or owner/applicant is capable of obtaining a 100% Payment and Performance Bond for the entire construction project.

In addition, a pre-selected builder will be responsible for providing a detailed cost estimate of the total construction work with the project sponsor's application submission. For projects that will be subject to Davis-Bacon wage requirements (see Section 5.15 for more information), all construction cost estimates should be based on the most current Davis-Bacon wage rates appropriate for the project location and type of construction. Please be advised that HCR imposes limits on builder's fees depending on the type of funding requested. See Section 5.05 and 5.07.

At the time of application submission, the owner/applicant must provide a **guaranteed price for the total development costs of the project.** Any construction cost overruns incurred during the development and construction phases of the project shall be borne by the owner/applicant and shall be paid for from the developer's fee amount, unless a request is made pursuant to Section 6.03. All MBE/WBE requirements applicable to the pre-selected contractor must be documented through the contractor's selection process for sub-contractors and suppliers.

5.13.05 Construction Contracting Requirements

The standard AIA Owner/Contractor Agreement or AIA Owner/Construction Manager as Constructor Agreement (current editions) should be used to execute construction contracts. For multisite projects, the builder is to provide the construction costs on an individual site basis. Any applicant who proposes to act as the builder or general contractor on their own projects must show successful prior experience, bear the responsibilities, and meet the requirements of builders or contractors. The selected builder must submit a detailed cost estimate/trade payment breakdown prior to the start of construction, which may be reviewed for cost reasonableness. This estimate/trade payment breakdown shall also indicate whether the trade item will be performed by the builder or a subcontract. Subcontractors shall be identified if known at the time of this submission. Please see Section 4.0 for M/WBE requirements.

On projects subject to Davis-Bacon requirements (see Section 5.15 for more information), construction contracts and all construction sub-contracts must include the appropriate Federal Labor Standards documents and Davis-Bacon Wage Decision(s). As stated in Section 5.15, prior to signing any construction contract, project owners must consult with OF&D for guidance and instruction regarding the correct documents that must be included.

Builders will not be allowed to obtain a profit and overhead unless they are performing actual construction and performing construction supervision over all Work. "Actual construction" means "work" as defined in American Institute of Architects (AIA) documents: "....labor, materials, equipment, and services provided by the contractor to fulfill the contractor's obligations." Under this definition contractors who choose to subcontract out construction of the project to another contractor will not obtain a builder's fee (general overhead and profit) when:

(i) More than 50 percent of the contract sum in the construction contract is subcontracted to one subcontractor, material supplier, or equipment lessor; and/or,

(ii) Seventy-five percent or more of the contract sum in the construction contract is subcontracted with three or fewer subcontractors, material suppliers, and/or equipment lessors.

Note: If two or more subcontractors have common ownership, they are considered one subcontractor. When a construction manager as builder contract arrangement is utilized, construction manager fees shall not exceed the total of builder's overhead and profit limits indicated in this chapter.

"Construction supervision" means continuous oversight, inspection, and coordination of the Work in a timely, professional, competent manner to ensure compliance with the approved construction documents, contract documents, applicable regulations, project schedule, and all other applicable requirements. "The Work" refers to all such construction and services, whether performed by the Builder's or Subcontractor's forces necessary to complete the project. Supervision may be performed by an individual, or individuals. If performed by more than one individual, there shall be one individual responsible for all supervisory tasks. Supervisory tasks shall be performed by Site Superintendent personnel employed by the recognized Builder on a full-time basis.

5.13.06 Selection of a Managing Agent

Owners which propose to utilize a managing agent must document that the agent holds a New York State real estate broker's license. Both owners which propose to utilize a managing agent and those which are planning to manage the project with their own staff must:

(i) document that any person authorized to receive, handle, or disburse any monies of the project, is covered by a blanket position fidelity bond which is issued by the Superintendent of Insurance of the State of New York, which names the owner as obligee, and an amount of coverage equal to three months' rent role and all project reserve funds;

(ii) document their experience in managing similar low-income housing projects of the same size and complexity;

(iii) maintain an office or place of business within the State of New York at no cost to the project owner;

(iv) establish a monthly fee if a managing agent is to be used for services set forth in the Management Plan;

(v) provide an organization plan setting forth lines of responsibilities and authority among those persons assigned to the housing project, including the owner's staff;

(vi) provide an operational plan that details the staff member(s) or agent's functions with regards to marketing, physical maintenance, financial administration, resident relations, and general administration; and,

(vii) provide an affirmative action plan to ensure that the staff member(s) or agent recruits, selects, and retains employees in such a manner as to ensure equal employment opportunities and that the agent solicits bids from minority and women-owned business enterprises.

Section: 5.00 DEVELOPMENT REQUIREMENTS

Sub Section: 5.14 Private Developer Requirements

The following requirements apply only to private developers of projects funded under:

(i) HTF; and,

(ii) LIHTC

Please see Section 2.01 for a discussion of the private developer minimum equity contribution requirement specific to the HTF Program.

5.14.01 Guarantee of Construction Contract Costs

Private developers will be required to adhere to the award amount in their Funding Commitment (see Sub-Section 6.02.02). Any additional costs or cost increases must be paid for by the developer.

5.14.02 Construction Financing using HCR Funds

Construction loans will be provided at 0% interest. Legal closing and construction monitoring fees will be charged when HCR construction loans are used in projects financed with LIHTC or SLIHC. A construction loan closing fee of $2,500 will be charged to reimburse HCR legal expenses. A construction monitoring fee of $15,000 will be charged to cover HCR's inspection costs. These fees must be paid at the time of construction loan closing and must be paid from credit equity or non-HCR financing sources. HCR may reduce or waive some or all of these fees if it decides that imposition of such charges would adversely impact the project's financing.

Section: 5.00 DEVELOPMENT REQUIREMENTS

Sub Section: 5.15 Special Needs and Supportive Housing

Supportive project units which are regulated by other NYS agencies directly or through the supervision or licensing of the service provider introduces multiple layers of statutory and regulatory requirements from several NYS agencies. Projects proposing DHCR and/or HTFC-assisted units regulated by other NYS agencies will be rigorously required to demonstrate the units meet all statutory and regulatory requirements of the pertinent HCR funding program requested prior to application submission. As such, documents pertaining to the requirements of the units, including any residential residency or program admissions agreements governing participation in the service program(s) and service fee requirements charged to the tenants MUST be submitted as part of the application. HCR reserves the right to request any additional documentation necessary to determine project consistency with pertinent program statute and regulations at any time during the project's development. As such, there are instances in which HCR will not finance supportive project units which are regulated by other NYS agencies. Any project proposing a project with supportive project units which are regulated by other NYS agencies MUST participate in a mandatory pre-application conference with HCR staff.

5.15.01 Projects Serving Persons with Special Needs

A project is considered to serve persons with special needs if it includes a 9% RFP application containing a proposal summary and narrative as described below and a Housing/Services Agreement with an experienced service provider(s) which agrees to refer at least 15% of the total units in the project to one, or more, of the following populations, as identified in the application:

- Families who are Homeless;
- Persons and Families with a Substance Use Disorder;
- Persons who are Frail Elderly;
- Persons who are Homeless;
- Persons with Intellectual/Developmental Disabilities;
- Persons who are Survivors of Domestic Violence;
- Persons living with AIDS/HIV;

- Persons with Physical Disability/Traumatic Brain Injury;
- Persons with Serious Mental Illness;
- Veterans who are Homeless;
- Veterans with a Substance Use Disorder;
- Veterans with Intellectual/Developmental Disabilities;
- Veterans who are Survivors of Domestic Violence;
- Veterans living with AIDS/HIV;
- Veterans with Physical Disabilities/Traumatic Brain Injury;
- Veterans with Serious Mental Illness;
- Veterans who are Frail Elderly; and,
- Any other Special Needs population defined in a Request for Proposal for capital projects, as determined by New York State.

Plan for Serving Tenants who are Persons with Special Needs

If the project proposes to serve tenants with special needs, the application submitted must include a narrative which must provide the following:

- A description of how the need and market for housing for persons with special needs was established, including references to, and data from, any studies or analyses of the need for the proposed housing;
- Information about the proposed Support Agency, including but not limited to: an overview and history of the agency, experience serving the proposed population, services offered, how services will be funded, and service area;
- An explanation of how the Support Agency will provide services to the project, including, who will provide services, where they will be provided, and when/how often they will be provided;
- A description of how the eligible population will be identified and how individuals will be referred to the project, including any specific referral process that is coordinated with a City, County, or State Agency or local planning group; and,
- Submit any materials tenants with special needs must sign in order to receive services.

In addition, a Housing/Services Agreement, executed between the Project Owner and the Support Agency (and approved by HCR), with an Attachment A, completed by the Support Agency, consisting of a full description of the services to be provided to the project is required.

5.15.02 Supportive Housing Projects

Supportive Housing shall mean projects which give preference in tenant selection to persons with special needs as defined in a RFP. To be considered a Supportive Housing Project, a project application must satisfactorily address the following:

1) The applicant must document the need for housing for the targeted population within the primary market area;
2) The applicant must ensure the delivery of appropriate services, for which a documented need exists, to the targeted population as evidenced in a comprehensive service plan and a Housing Services Agreement in writing with an experienced service provider;
3) The applicant must include a transportation plan to ensure access to necessary services, and access to job training and employment opportunities as appropriate for the target population;
4) The applicant must have funding in place or identify a viable plan for the funding of appropriate services. If funding, and/or subsidies, are supplied by a contracting state agency, then any award letters or contracts for said funds must be submitted. Project rental income **may not** be used to pay for supportive services;
5) The applicant must include provision for an ongoing rental subsidy or other form of subsidy which will be available to ensure that rents paid by the targeted population remain affordable (NOTE: HTF and HOME funded projects may NOT use master leases on tenant units);
6) The applicant must identify, and have a written agreement with, a public agency or experienced service provider that will include a description of the referral procedure they will use to refer eligible persons and families for the targeted units;
7) The applicant must demonstrate a firm commitment for capital financing from a governmental agency serving the proposed target population; and,

8) The project must provide an integrated setting that enables individuals with disabilities to live independently and without restrictive rules that limit their activities or impede their ability to interact with individuals without disabilities.

If the project identified as a Supportive Housing project, submit a comprehensive service plan which provides the following:

- A description of how the need and market for housing for persons with Special Needs was established, including references to and data from any studies or analyses of the need for the proposed housing;
- The source of capital financing from a governmental agency serving the proposed target population and/or service and operating funding from a governmental agency serving the proposed target population;
- The applicant must include a provision for an ongoing rental subsidy, or other form of subsidy which will be available to ensure that rents paid by the targeted population remain affordable;
- Information about the proposed Support Agency, including but not limited to: an overview and history of the agency, experience serving the Special Needs population, experience serving individuals living in Permanent Supportive Housing, services offered, a description of the staffing of the project as it relates to the Special Needs population, how services will be funded, and service area;
- A description of the program and how the Support Agency will provide services to the project, including, who will provide services, where they will be provided, and when/how often they will be provided;
- Transportation arrangements available to ensure access to necessary services;
- Description of the access to job training and employment opportunities exist for the proposed target population;
- Include any materials that a special needs tenant must sign in order to receive services; and,
- A description of how persons with disabilities will receive services in the most integrated setting appropriate to their needs.

In addition, a Housing/Services Agreement, executed between the Project Owner and the Support Agency (and approved by HCR), with an Attachment A, completed by the Support Agency,

consisting of a full description of the services to be provided to the project is required along with the Special Needs Proposal.

5.15.03 Housing Services Agreement

In both Special Needs and Supportive Housing Projects, HCR requires that the Project Owner and Support Agency enter into a Housing/Services Agreement to serve the special needs population assisted by the project. Upon HCR approval of the agreement, it will be appended to the final marketing plan and become part of the project Regulatory Agreement.

The Housing/Services Agreement requires that priority for referrals be given to persons with special needs, as defined in Section 5.15.01, who have served in the armed services of the United States for a period of at least six months (or any shorter period due to injury incurred in such service). The HCR model Housing/Services Agreement which can be found on the HCR website at: https://hcr.ny.gov/forms-applications.

5.15.04 Identification of a Senior Housing Project

Applications proposing projects serving the elderly must identify whether their project will be structured as a 55 year or older or as a 62 years or older project:

- A 55 or older project is a project in which at least 80% of the occupied units are occupied by at least one person who is 55 years of age or older.
- A 62 or older project is a project in which ALL occupants are persons 62 years of age or older.

Under both structures, the projects must be operated, advertised, and intended to serve a primarily elderly population. In HCR projects which are jointly financed by the US Department of Agriculture and Rural Housing Services, elderly projects must be occupied by persons 62 years or older, or by persons with disabilities of any age. Please note that projects which intend to restrict tenancy for any portion of the units in the project based on age shall provide proof of receipt of an exemption from the New York State Division of Human Rights (DHR) in accordance with N.Y. Exec. Law § 296-2a(e) and the federal Fair Housing Act, 42 U.S.C. 3601 et seq., as a condition of HCR funding. Verification of this exemption must be provided directly to DHCR's Fair and Equitable Housing Office (FEHO) subsequent to award.

5.15.05 Most Integrated Setting

In its 1999 Olmstead v. L.C. decision, the US Supreme Court ruled, in accordance with the American with Disabilities Act (ADA), that states have an obligation to provide services to individuals with disabilities in the most integrated setting appropriate to their needs. Working in collaboration with State, Federal, and/or local partners, HCR will review all proposals to assess whether persons with disabilities will be served in the most integrated setting appropriate to their needs.

Section: 5.00 DEVELOPMENT REQUIREMENTS

Sub Section: 5.16 Federal Labor Standards Regulatory Requirements

5.16.01 Davis-Bacon Related Acts

Federal Labor Standards may be required for the construction of projects funded by HCR. Information regarding the Labor Standards is available in the US Department of Labor (US DOL) Prevailing Wage Resource Book on Tab 3; "Introduction to the Labor Standards Statutes Coverage": https://www.dol.gov/agencies/whd/government-contracts/prevailing-wage-resource-book.

As explained in the US DOL document referenced above, under the Davis-Bacon Related Acts, the requirements of the Davis-Bacon Act can be triggered by funding under certain Federal programs to projects which meet specific threshold requirements. In nearly all instances where these requirements are triggered on HCR funded projects, they are tied to assistance provided to the project from HUD programs. This includes assistance directly administered by HUD, by HCR, or any other State, County, or local entity. For detailed information regarding when Davis-Bacon requirements apply due to assistance by HUD programs, please review the "Factors of Labor Standards Applicability" on HUD's website: https://www.hud.gov/program_offices/davis_bacon_and_labor_standards/olr_foa.

HCR monitors and enforces compliance with Federal Labor Standards on funded projects as required by federal regulations and guidance issued by US DOL Wage and Hour Division and HUD Office of Labor Relations. Contractors and project owners are directly and ultimately responsible for knowledge of, and full compliance with all related laws and regulations. Failure to comply or falsification of records may result in withholding of funds, investigation by US DOL, debarment, fines, and/or criminal charges.

5.16.02 Requirements Prior to Submitting an Application

- Determine if Davis-Bacon Requirements will apply ***(If No, all following requirements in 5.16.03 and 5.16.04 are not applicable)***; and,
- Use wage rates from the most recent applicable (based on location and construction type) Davis-Bacon Wage Decision in estimation of construction costs.

5.16.03 Requirements Prior to Executing Any Construction Contract or Starting Any Work

- Confirm that no contractors or sub-contractors being considered for the project are on any Federal or New York State debarment list or otherwise prohibited from bidding on or receiving government contracts; and,
- Contact HCR OF&D for guidance and instruction regarding the correct Davis-Bacon Wage Decision and all other requirements.

5.16.04 Awarded Projects Subject to Davis-Bacon Requirements

If an awarded project is subject to Davis-Bacon requirements and HCR has responsibility for compliance monitoring and enforcement, the project owner and general contractor will be provided with detailed information and requirements by OF&D Davis-Bacon staff in writing (via e-mail) after awards are made and prior to construction start. This will include information on:

- The applicable Wage Decision(s) and Wage Decision lock-in process;
- Requirements for Construction Contracts;
- Project site signage requirements;
- Construction start; and,
- HCR requirement for General Contractors and all Subcontractors to submit Certified Payroll Reports and other Davis-Bacon information electronically via an online system.

5.16.05 Additional Resources

- HUD Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects: https://www.hud.gov/sites/documents/23612_4812-LR.PDF;
- US DOL: Prevailing Wage Resource Book: https://www.dol.gov/agencies/whd/government-contracts/prevailing-wage-resource-book; and,
- HUD: Handbook: Federal Labor Standards Compliance in Housing and Community Development Programs (sect. 1344.1): https://www.hud.gov/program_offices/administration/hudclips/handbooks/sech/13441

Section: 5.00 DEVELOPMENT REQUIREMENTS

Sub Section: 5.17 Uniform Relocation Assistance and Real Property Acquisition Policy Requirements

5.17.01 Relocation

A displaced person is an individual, family, partnership, association, corporation, or organization which moves from their home, business or farm, or moves their personal property as a direct result of acquisition, demolition, or rehab for a federally funded project. All displaced persons, regardless of income, are entitled to relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the URA).

For projects utilizing federal funds triggering URA and involving demolition of units or the conversion of low income units to a use other than low income housing, Section 104(d) of the Housing and Community Development Act is also required. Low income units are those with a rent and average monthly utility cost equal to or less than the HUD Fair Market Rate (FMR) for the locality. When low income tenants are displaced in a federal project triggering URA as a result of the demolition of any unit or the conversion of a low income unit to another use, they may be entitled to additional protections pursuant to Section 104(d). Benefit calculations for such tenants would be done for both URA and Section 104(d), and the tenant would be allowed to choose which benefit is more beneficial to them. As with URA, tenants displaced by 104(d) are entitled to receive notice that federal funds have been applied for and awarded (if applicable); notice of displacement or non-displacement; and financial assistance in the event of temporary or permanent physical relocation, or economic displacement (in accordance with URA as applicable). NOTE: the State may be required to replace low income units lost as a result of demolition or conversion within 3 years of demolition. Please see the Section 2.04.04E “One-to-One Replacement of Units” for guidance on how the State will make this determination.

Permanent relocation and associated benefits are not considered likely under owner-occupied rehabilitation, although temporary relocation may be needed in some circumstances. In such programs, tenants must be provided temporary relocation benefits but homeowner occupants are not eligible for such unless there is a State approved Optional Relocation Plan created (NYS does not currently have an Optional Relocation Plan). Federal funds may be used to pay all required costs of

relocation under the Uniform Relocation Act and Section 104(d), and any additional benefits that a jurisdiction or recipient determines reasonable to pay. Federal funds may also be used to pay interim relocation costs.

5.17.01.A Notice

An application considering acquiring, rehabilitating, or demolishing an occupied (residential and/or non-residential) property with federal funds triggering URA must provide a General Information Notice to all occupants at the time the application for funding is made, which must be prior to the date of the Initiation of Negotiations (ION) (defined as the date of the execution of the agreement covering the acquisition, rehabilitation, or demolition). Examples of the required General Information Notices can be found in HUD Handbook 1378, Tenant Assistance, Relocation, and Real Property Acquisition (Appendix 2 – 3B as applicable). Multiple General Information Notices may be required once it is determined which tenants will be displaced and those who will not be displaced. Multi-phased projects must carefully consider the requirements of the URA, in particular the definition of the ION.

If a proposed project involving acquisition, rehabilitation, or demolition is awarded federal funding triggering URA, all occupants of the affected properties must receive a notice of eligibility or notice of non-displacement at or shortly after the ION date. Examples of the required notices can be found in HUD Handbook 1378 (Appendix 4-7 for URA and appendices 25-26 for 104(d) as applicable).

Tenants of properties receiving federal funds triggering URA and involving acquisition, rehabilitation, or demolition must also receive a 90-day notice to vacate for those persons who will be displaced. Tenants cannot be required to move unless they have received at least 90 days written notice of the earliest move out date, and such notices cannot be given until the tenant has been provided with at least one comparable replacement unit. The notice must state either the exact move out date or the earliest possible date followed by a 30-day notice with the exact move out date. Tenants can only be required to move in less than 90 days for extreme health and safety reasons. Under such circumstances, they would have to be temporarily relocated while the required relocation processing is completed.

It is the sub recipient's responsibility to determine which notices are applicable and to notify the correct occupants. (NOTE: if 104(d) is triggered so is URA and both Notices must be given or the notices must be adjusted to cover both situations.) All notices must be hand delivered or sent certified mail, return receipt requested; written in plain, easy to read format; understandable by the tenant (this may require translation into another language, Braille or sign language; notices must be read to illiterate tenants); and notices must include a phone number for tenants to call for assistance.

5.17.01.B Voluntary Acquisition

The following requirements must be documented for a purchase to qualify as voluntary in accordance with the URA requirements (See HUD Handbook Appendix 23). For entities with Eminent Domain Authority that wish to document that an acquisition is voluntary, all of the following conditions noted in the URA regulations at 24.10(b)(1)(i) through (iv) must be met:

(i) No specific site or property needs to acquired;

(ii) The property to be acquired is not part of an intended, planned or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits;

(iii) The project developer will not acquire the property if negotiations fail to result in an amicable agreement, and the owner is so informed in writing prior to the project developer making an offer; and,

(iv) Inform the owner in writing of what the project developer believes the market value of the property to be (See sample letter to owner in HUD Handbook 1378, Appendix 32);

For acquisitions for programs or projects undertaken by an Agency or person that received Federal financial assistance but does not have authority to acquire property by eminent domain, the following requirements as noted in URA regulations 24.102(b)(2)(i) and (ii) must be documented:

(i) Prior to making an offer for the property, clearly advise the owner that it is unable to acquire the property if negotiations fail to result in an agreement; and,

(ii) Inform the owner in writing of what it believes to be the market value of the property (See Appendix A, Section 24.101(b)(1)(iv) and (2)(ii)). (See sample letter to owner in HUD Handbook 1378, Appendix 31).

Other acquisition which may be deemed voluntary include:

- the acquisition of real property from a Federal Agency, State, or State Agency, it the project developer desiring to make the purchase does not have authority to acquire the property through condemnation; and
- the acquisition of real property by a cooperative from a person who, as a condition of membership in the cooperative, has agreed to provide without charge any real property that is needed by the cooperative.

A third-party appraisal is required to support the finding that the purchase price is a fair price prior to sale. Examples of the acquisition checklist can be found in HUD Handbook 1378 (Appendix 24). If you are operating a home buyer program, bear in mind that even the owner occupant or tenant of the house being purchased with federal funds triggering URA is entitled to a notice that Federal funds are being used in the purchase transaction. The required notice must note the buyer's estimate of Fair Market Value, the voluntary nature of the acquisition and that owner occupants, if any, are ineligible for relocation benefits. NOTE: tenants in such houses must be provided relocation benefits if they are displaced. Examples of the required notice can be found in HUD Handbook 1378 (Appendix 31).

5.17.01.C Displaced vs. Non-Displaced Tenant

If a new tenant is interested in occupying a unit after the date of ION and the General Information Notices have been issued, a Move in Notice must be signed by the new tenants prior to the new tenants signing a lease for the unit which will potentially receive federal funds triggering URA. The Move in Notice provides notice to the new tenant they are not eligible for relocation assistance should the project be awarded federal funds triggering URA. If the notice is not provided and the new tenants are displaced due to federal funding triggering URA, they are eligible for relocation assistance. Examples of this notice can be found in HUD Handbook (Appendix 29).

A permanently displaced tenant must be offered at least one (1) comparable unit prior to the 90 day notice to vacate. If Section 8 vouchers are available, the permanently displaced tenant may be offered Section 8 assistance in lieu of a 104(d) cash payment if Section 104(d) is triggered and if the tenant is income qualified. Examples of the notices can be found in HUD Handbook 1378 (Appendix 25 – 26 as applicable). If only URA is triggered and/or tenants are not currently subsidized, they can

refuse the offer of a Section 8 voucher and receive a cash payment in accordance with URA calculations instead.

At no point can a sub recipient compel any of the displaced tenants to sign releases constituting a waiver of rights and benefits. This is prohibited by statute.

5.17.01.D Comparable Decent, Safe, and Sanitary Replacement Housing

A displaced person has the right to a comparable decent, safe, and sanitary (DSS) replacement dwelling. According to the URA regulations at 24.2(a)(6), comparable means a dwelling which is:

(i) Decent, safe and sanitary as described in paragraph 24.2(a)(8) of this section;

(ii) Functionally equivalent to the displacement dwelling. The term functionally equivalent means that it performs the same function, and provides the same utility. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Agency may consider reasonable trade-offs for specific features when the replacement unit is equal to or better than the displacement dwelling (See appendix A, Sec. 24.2(a)(6));

(iii) Adequate in size to accommodate the occupants;

(iv) In an area not subject to unreasonable adverse environmental conditions;

(v) In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;

(vi) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (See also Sec. 24.403(a)(2));

(vii) Currently available to the displaced person on the private market except as provided in paragraph (a)(6)(ix) of this section (See appendix A, Sec. 24.2(a)(6)(vii)); and,

(viii) Within the financial means of the displaced person:

(A) A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential as described in Sec. 24.401(c), all increased mortgage interest costs as described at Sec. 24.401(d) and all incidental expenses as described at Sec. 24.401(e), plus any additional amount required to be paid under Sec. 24.404, Replacement housing of last resort.

(B) A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance under this part, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling as described at Sec. 24.402(b)(2).

(C) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if an Agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds the person's base monthly rent for the displacement dwelling as described in Sec. 24.402(b)(2). Such rental assistance must be paid under Sec. 24.404, Replacement housing of last resort.

(ix) For a person receiving government housing assistance before displacement, a dwelling that may reflect similar government housing assistance. In such cases any requirements of the government housing assistance program relating to the size of the replacement dwelling shall apply. (See appendix A, Sec. 24.2(a)(6)(ix).)

Decent, safe and sanitary means that the dwelling must meet local housing and occupancy codes and HUD Housing Quality Standards (HQS). HQS requires, at a minimum that the dwelling be structurally sound and in good repair; have safe electrical wiring; have a heating system capable of sustaining a healthful temperature; be of adequate size with respect to the number of rooms and living space required by the displaced person; have a separate, private, lighted and ventilated bathroom; working kitchen area; has an unobstructed egress to open space at level ground; and meet

other Housing Quality Standards (HUD Form 52580 or HQS Inspection Form at: https://www.hud.gov/sites/dfiles/OCHCO/documents/52580.PDF.

In the case of a displaced person with a disability, the dwelling should be free of any barriers which would preclude reasonable ingress, egress, or use (see URA 49 CFR Parts 24.205 and 24.403). The dwelling shall be inspected prior to it being made available for use to ensure that it is decent, safe, and sanitary as described above. A staff member from the Design, Construction and Environmental Unit or a staff member from the Asset Management Unit of HCR may conduct the dwelling inspection.

A potential federal applicant for funds triggering URA must contact their HCR regional representative when a replacement dwelling is considered for a person who may be displaced by a project utilizing federal funds triggering URA. The regional representative will contact the appropriate HCR staff member and the potential applicant to schedule the inspection. Applicants should be familiar with the requirements of URA 49 CFR 24 before contemplating any project utilizing federal funds triggering URA in which displacement may occur.

5.17.01.E One-to-One Replacement of Units

All occupied and vacant inhabitable lower-income dwelling units that are demolished or converted to a use other than a lower-income dwelling units in connection with an assisted activity must be replaced with comparable lower-income dwelling units (see 24 CFR Part 42.375). Lower-income dwelling units may be provided by any governmental agency or private developer and must meet the following requirements:

1) The units must be located within the recipients' jurisdiction. To the extent feasible and consistent with other statutory priorities, the units shall be located within the same neighborhood as the units replaced.

2) The units must be sufficient in number and size to house no fewer than the number of occupants who could have been housed in the units that are demolished or converted. The number of occupants who could have been housed in the units shall be determined in accordance with applicable local housing occupancy codes. The recipients may not replace those units with smaller units (e.g., a two (2) bedroom unit with two one (1) bedroom units), unless the recipient has provided the information required.

3) The units must be provided in standard condition. Replacement lower-income dwelling units may include units that have been raised to standard from substandard condition if:

(i) No person was displaced from the unit, and,

(ii) The unit was vacant for at least three (3) months before execution of the agreement between the recipient and the property owner.

4) The units must initially be made available for occupancy at any time during the period beginning one (1) year before the recipient makes public the information required under paragraph (d) of this section and ending three (3) years after the commencement of the demolition or rehabilitation related to the conversion.

5) The units must be designed to remain lower-income dwelling units for at least 10 years from the date of initial occupancy. Replacement lower-income dwelling units may include, but are not limited to, public housing or existing housing receiving Section 8 project-based assistance.

6) **Before the State enters into a contract in which federal funds triggering URA will directly result in the demolition of lower-income dwelling units or the conversion of lower-income dwelling units to another use, the State will make public and submit in writing to the HUD field office the following information (in the case of a Unit of General Local Government (UGLG) funded by the State and with a State approved RARP of its own, the UGLG will make public and submit in writing to the State, the same information).**

1) A description of the proposed assisted activity;

2) The location on a map and number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than for lower-income dwelling units as a direct result of the assisted activity;

3) A time schedule for the commencement and completion of the demolition or conversion;

4) The location on a map and the number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units. If such data are not available at the time of the general submission, the submission shall identify the

general location on an area map and the approximate number of dwelling units by size, and information identifying the specific location and number of dwelling units by size shall be submitted and disclosed to the public as soon as it is available;

5) The source of funding and a time schedule for the provision of replacement dwelling units;

6) The basis for concluding that each replacement dwelling unit will remain a lower-income dwelling unit for at least 10 years from the date of initial occupancy; and,

7) Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units (e.g., a two (2)-bedroom unit with two one (1)-bedroom units) is consistent with the needs assessment contained in its HUD-approved consolidated plan. A unit of general local government funded by the State that is not required to submit a consolidated plan to HUD must make public information demonstrating that the proposed replacement is consistent with the housing needs of lower-income households in the jurisdiction.

Replacement is not required under the one-for-one replacement requirement to the extent the HUD field office determines, based upon objective data, that there is an adequate supply of vacant lower-income dwelling units in standard condition available on a nondiscriminatory basis within the area. In order to obtain such non replacement approval, the developer will submit a waiver request directly the State, requesting determination that the one-for-one replacement requirement does not apply. The State will then submit the request with supporting documentation to directly to the HUD field office. Simultaneously with the submission of the request, the State will make the submission public and inform interested persons that they have three (3) days from the date of submission to provide to the State any additional information supporting or opposing the request.

If, however, the awardee of the funding is a unit of general local government, then the request for determination should be submitted to the State. Simultaneously with the submission of the request, the unit of general local government must make the submission public and inform interested persons that they have 30 days from the date of submission to provide to the State additional information supporting or opposing the request. If the State, after considering the submission and the additional data, agrees with the request, the State must provide its recommendation with supporting information to the HUD field office**.**

5.17.01.F Certification of Legal Residency

Applicants for federal funding triggering URA should note that each person seeking relocation payments or relocation advisory assistance must, as a condition of eligibility, certify: (i) in the case of an individual, that he or she is either a citizen or national of the United States, or an alien who is lawfully present in the United States; (ii) if a family, each family member is a citizen or national of the U.S., or an alien who is lawfully present in the U.S. – the certification may be made by the head of the household; (iii) if an unincorporated business, farm, or non-profit organization, each owner is a citizen or national of the U.S, or lawfully present alien in the U.S, and (iv) in the case of an incorporated business, farm, or nonprofit organization, that the corporation is authorized to conduct business within the U.S. The certification may be made by the principal owner, manager, or operating officer on behalf of other persons with an ownership interest, and that the entity is authorized to conduct business within the U.S.

No relocation payments or relocation advisory assistance shall be provided to a person who has not provided the certification described above or who has been determined to be not lawfully present in the U.S., unless the person can demonstrate to the recipient of federal funds triggering URA that the denial of relocation assistance will result in an exceptional and extremely unusual hardship to the person's spouse, parent, or child who is a citizen of the U.S or is an alien lawfully admitted for permanent residence in the U.S. Additional certification of residency requirements are listed in the URA 49 CFR 24.208. HUD claim forms found in HUD Handbook 1378 include a certification of legal residency that must be completed by the displacee. See Appendices 11 through 17 for samples of various claim forms which can be used.

5.17.01.G Basic Recordkeeping Requirements

A record of contacts with affected persons must be maintained. All records to demonstrate compliance with applicable laws, regulations, local housing, and occupancy codes must be maintained. The awardees of federal funding triggering URA must maintain all records regarding acquisition and relocation actions and such records must be available for inspection by HCR or a HUD regional representative. All pertinent records shall be retained for the period specified in the applicable program regulations, but no less than three (3) years after the latest of:

1) The date by which all payments have been received by persons displaced for the project and all payments for the acquisition of the real property have been received;

2) The date the project has been completed;

3) The date by which all issues resulting from litigation, negotiation, audit, or other action (e.g., civil rights compliance) have been resolved and final action taken; or,

4) For real property acquired with HUD funds, the date of final disposition (see 24 CFR 84.53 and 85.42).

A list of minimum records to be maintained may be found in HUD Handbook 1378 Chapter 6. All records maintained are confidential and shall not be made available as public information unless required by applicable law. Only authorized staff or HUD shall have access to the records. However, if an appeal is made the person or the persons representative may have access to, all records pertinent to his or her case except materials classified as confidential by Awardees. For more information see subsection IX "Appeals" below.

5.17.01.H Advisory Services

Awardees of federal funds triggering URA must assess their proposed projects in a manner that recognizes the problems associated with the displacement of individuals, families, businesses, farms and non-profit organizations (displaced persons) and develop solutions and provide advisory services to minimize the adverse impacts of displacement.

Displaced persons will be advised of his or her rights under the Fair Housing Act. If a comparable replacement dwelling to be provided to a minority person is located in an area of minority concentration (as may be identified in the HCR Consolidated Plan) the minority person will also be given, if possible, referrals to comparable and suitable decent, safe and sanitary replacement dwellings not located in such areas. (See 24 CFR 42.350(a)).

Providing the required written notice or series of notices is not sufficient to assure a displaced person affected by the project understands his/her rights and responsibilities. As soon as feasible, awardees must contact each person affected by the project to discuss his/her individual needs, preferences, and concerns. Whenever feasible, this contact should be face-to-face. A list of minimum relocation advisory services expected of all awardees may be found in 49 CFR 24.205(c).

5.17.01.I Calculating Housing Replacement Costs and Moving Expenses

Relocation assistance counts toward the per unit federal subsidy calculation, and is distributed across the assisted units. Relocation assistance can be treated as a project cost that need not be mortgaged to the assisted owner. All displaced persons, regardless of income, are eligible for relocation assistance under the URA, which includes offering the displaced person a decent, safe, and sanitary comparable unit, a 90 day notice to vacate, and assistance with moving expenses. (NOTE: In a voluntary acquisition, only tenants meet the definition of displaced persons; homeowner occupants are only eligible for relocation benefits if the acquisition triggers the Involuntary Acquisitions requirements.) Calculating this assistance requires caution to avoid overpayment or underpayment of benefits. HCR strongly recommends referring to the regulations (CFR 49 CFR 24) and utilizing HUD Handbook 1378 (Chapters 3 and 4) as a reference and making use of the claim forms included therein when calculating benefits.

5.17.01.J Moving Related Expenses

Any qualified displaced owner-occupant or tenant-occupant is entitled to payment of moving related expenses. Generally, the displaced person may select between actual reasonable moving related expenses or a fixed payment for such expenses. Persons displaced from public housing units into comparable public housing units may be moved by the PHA at the option and expense of the PHA, and special rules apply.

Form HUD-40054 "Residential Claim for Moving and Related Expenses" is found in HUD Handbook 1378 Appendix 11. The form is optional, but HCR strongly recommends using it. If the form is not used, documentation must be included in the Awardee's files to support any amounts claimed and paid. See HUD Handbook Chapters 3 and 4 for guidance on moving cost calculations as well as the URA regulations at 49 CFR part 24.301-306 as appropriate.

5.17.01.K Replacement Housing Payments

The URA allows for 42 months of replacement housing payments, to be paid in installments unless used for down payment assistance. If used for down payment assistance, such assistance must be escrowed until the closing on the acquisition. Replacement housing payments are based upon the cost of a comparable dwelling, with at least three dwellings being examined to assure decent, safe,

and sanitary conditions. The upper limit of a replacement housing payment is established on the basis of cost for the comparable dwelling that is decent, safe, and sanitary and most representative of, and equal to, or better than, the displacement dwelling. Additional rules apply to homeowners and persons who have been in occupancy for less than 90 days and special conditions apply to those persons displaced from mobile homes. Consultation with HUD Handbook 1378, Chapter 1 to 3 is advised. If Section 104(d) is triggered, low income tenants must be offered the choice of URA or 104(d) benefit calculations.

Renters – Whether an Acquisition is Voluntary or Involuntary, tenants are always eligible for replacement housing payments. The replacement housing payment for renters is calculated as the difference between the rent at the displacement unit and the rent at either a comparable unit or the actual replacement unit, whichever is lower for forty-two months. For persons who meet the HUD low to moderate income limit, an additional calculation is made based on the difference between thirty percent of the household's gross income and the rent at a comparable unit or the actual replacement unit, whichever is lower, for a forty-two month period. If this latter calculation is greater than the rent to rent calculation, the low-income tenant would receive the larger payment. HUD Handbook 1378, Chapter 3 and Appendix 14 provide detailed information on calculating the URA Replacement Housing Payment. For Low/Moderate Income tenants subject to 104(d), both the URA and 104(d) calculations must be completed and the tenant given the choice of benefits. (See Section of this manual discussing 104(d) and Chapter 7 and appendices 25-27 of HUD Relocation Handbook 1378.1 for more information regarding 104(d) benefits.)

Under Section 104(d), replacement housing payments for displaced persons are paid to low and moderate income families for a 60-month period of time.

For Section 104(d), the replacement housing payment is based on the difference between the Total Tenant Payment, as defined in HUD Section 8 regulations at 24 CFR Part 813, and the rent for a comparable unit or the actual rent at the replacement unit, whichever is less.

Moving and related expenses are paid either at a fixed rate, according to the Dept. of Transportation Fixed Moving Schedule, or displaced persons are reimbursed for reasonable, actual moving costs.

Security deposits and credit checks are also eligible costs for displaced persons under Section 104(d).

Unlike the Uniform Relocation Act which prohibits the payment of Relocation benefits to illegal aliens, eligibility for relocation assistance under Section 104(d) does not require legal residency in the United States. Some projects may trigger compliance with both Section 104(d) and the URA. In the case of relocation payments, the displaced person eligible for 104(d) may choose under which Act they will be compensated.

5.17.01.L Businesses, Farms, and Nonprofit Organizations

Businesses, farms, and nonprofits qualify as "displaced persons" and are entitled to relocation benefits as defined in the URA at 24 CFR 24.2(9). Calculation of relocation benefits for these types of entities are discussed in HUD Handbook 1378, Chapter 4 and the URA regulations at Section 24.205(c) (advisory services) and at Section 24.301 and Section 24.303 (moving expenses). See also Handbook 1378, Appendices 2A, 3A, 7, 8, 16 and 17.

5.17.01.M Lower-Income Persons

If a federally assisted activity triggering URA displaces low income tenants and includes the demolition of any unit or the conversion of a low-income unit to another use, the low-income tenant is also protected under Section 104(d) of the Housing and Community Development Act of 1974. Low income persons have the option of receiving benefits pursuant to 104(d) or URA. The program differences are listed below:

1) 104(d) allows security deposit payments at the new unit. URA does not cover security deposits.
2) 104(d) housing replacement costs must be paid for 60 months. The URA pays for 42 months.
3) 104(d) housing replacement costs are calculated using HUD's Total Tenant Payment.
4) All or a portion of the 104(d) assistance may be offered through a voucher for rental assistance provided under Section 8 if the tenant is eligible. Unsubsidized tenants eligible only for URA benefits may refuse the offer of a voucher and receive a URA replacement housing payment instead.

5.17.01.N Appeals

Any aggrieved person may file a written appeal with the State or UGLG as applicable in any case in which the person believed that the awardee failed to property consider the person's application for eligibility of relocation benefits and moving costs under URA and/or Section 104(d). HCR has set a reasonable time of 60 days to appeal after the persons received written notification of the awardee's determination of the person's eligibility. A person has a right to be resented by legal counsel, or other representative in connection with his or her appeal, but solely as the person's expense. The person may inspect and copy all materials pertinent to his or her appeal except materials which are classified as confidential by the awardee and/or HCR. However, reasonable conditions may be imposed on the person's right to inspect non confidential materials.

All pertinent justification and other materials submitted by the person and all other available information that is needed to ensure a fair and full review of appeal shall be considered. Written determination of the appeal will be promptly provided to the person and the State or UGLG as applicable will include an explanation of the basis on which the decision was made. Such will also advise the person filing the appeal of their right to seek judicial review of the decision. In addition, a low- or moderate-income household that has been displaced from a dwelling in a federal project triggering URA may file a written request for review of the grantee's decision to the HUD Field Office.

Section: 5.00 DEVELOPMENT REQUIREMENTS

Sub Section: 5.18 Other Federal Requirements

A complete description of all other applicable federal regulations can be found within the Electronic Code of Federal regulations at: www.ecfr.gov (Title 24, Part 92, Subpart H).

5.18.01 Section 3

Section 3 is a provision of the Housing and Urban Development Act of 1968 (see 24 CFR Part 75). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain HUD financial assistance, including the HOME Program and Federal Housing Trust Fund, shall to the greatest extent feasible, and consistent with Federal, State and local laws and regulations, be directed to low- and very low income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons. A project utilizing more than $200,000 of housing and community development financial assistance (or $100,000 where the assistance is from the Lead Hazard Control and Healthy Homes programs) must comply with Section 3 hiring, contracting and reporting requirements. More information is available here: https://hcr.ny.gov/section-3-compliance.