



**Homes and  
Community Renewal**

# Capital Programs Manual

September 2024

**Office of Finance and Development**

<https://hcr.ny.gov/>

38-40 State Street/Hampton Plaza  
Albany, NY 12207

Kathy Hochul, Governor  
RuthAnne Visnauskas, Commissioner/CEO

**Office of Finance and Development\***

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Blue text is used to indicate substantive revisions incorporated since the October 2023 edition of the Capital Programs Manual. Purple text is used to indicate substantive revisions incorporated since the July 2024 edition of the Capital Programs Manual. Prospective applicants are encouraged to review the entire document to note all changes.

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8.00 GLOSSARY

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Section: 1.00 INTRODUCTION

Sub Section: 1.01 About This Manual

This manual is designed to provide program participants with a comprehensive handbook which explains the processes, procedures, and requirements of the Office of Finance & Development's Capital Programs (OF&D). It supersedes Capital Programs Manual (CPM) issued September 2022. Please note that the CPM does not apply to bond financed transactions. The provisions of this document take effect for all OF&D immediately.

The manual is organized under the following headings:

Section 1.00: Introduction

Section 2.00: Program Descriptions

Section 3.00: Multifamily Finance 9% RFP Process

Section 4.00: Fair Housing and Equal Opportunity Requirements

Section 5.00: Development Requirements

Section 6.00: Administrative Processing Requirements

Section 7.00: Project Operating and Management Requirements

Section 8.00: Glossary

Please also note that the HCR Design Guidelines and HCR Sustainability Guidelines are published separately. These requirements must be addressed in the design of projects by all program participants. Applicants should consult the Design Guidelines and Sustainability Guidelines before completing an application.

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

Division of Housing and Community Renewal-Administered Programs

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

Housing Trust Fund Corporation-Administered Programs

- Low Income Housing Trust Fund (HTF)
- New York State HOME Program (HOME)
- Urban Initiatives (UI)

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- Rural Area Revitalization Projects Program (RARP)
- Community Investment Fund (CIF)

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Section: 1.00 INTRODUCTION

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

The OF&D an administrative office located within New York State Homes and Community Renewal (HCR) and also serves as staff for the Housing Trust Fund Corporation (HTFC), a public benefit corporation. OF&D is responsible for both DHCR and HTFC administered programs. References to OF&D administrative policy shall refer to all programs covered in this manual while references to HTFC administrative policy pertains exclusively to programs funded through HTFC (see Sub-Section 1.01 for a list of all capital programs).

1.02.01 HCR Units Administering Capital Programs

Within OF&D, the following units are involved in the processes described herein:

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

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

The Underwriting Unit is responsible for assessing the financial plans of projects requesting funding from HCR. This includes analyzing project applications to ensure sufficient and appropriate financing to complete a project, evaluating market demand, and considering rent structures and long-term operating costs of projects. In addition, underwriting staff work with regional office staff on funded projects from the time of award until project completion, providing any required underwriting analysis of the project.

The Management Systems and Research Unit (MSR) provides research and analytical support to OF&D's staff. The unit has responsibility for maintaining the Statewide Housing Activity Reporting System

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(SHARS) and other databases, preparing and updating all Legislative reports, and compiling program data into reports, manuals and other information pieces.

The Design, Construction and Environmental Unit (DC&E) conducts both design and environmental reviews on projects. The Design Unit reviews and approves all plans and specifications plus provides on-site construction monitoring during the building phase of projects. Since design reviews are a critical component of the application review process, DC&E staff participates in Project Development Meetings with the applicant's development team and provides technical assistance on design issues to both HCR staff and program participants. The Environmental Unit (EU) conducts environmental reviews for housing construction and rehabilitation projects funded by the Housing Trust Fund Corporation (HTFC). The environmental review is conducted according to regulations under the State Environmental Quality Review Act (SEQR) at 6 NYCRR Part 617. Additionally, for HOME and Section 8 Project-Based Vouchers (PBV) projects, environmental reviews must be conducted according to the National Environmental Policy Act (NEPA), as interpreted by HUD regulations at 24 CFR Part 58.

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

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

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

The Asset Management Unit (AMU) reviews and supervises projects when the project is complete and the property is occupied. AMU also reviews and approves the Project Management Plans and management agent contracts prior to the closing on DHCR/HTFC financing. In addition, compliance with the requirements described in Section 7.0 ("Project Operating and Management Requirements") is overseen by the AMU.

The Sustainability Team reviews and sets performance-based energy standards and other sustainability and resiliency standards for the agency by way of the Sustainability Guidelines. The unit reviews applications, specifications, and Integrated Physical Needs Assessments (IPNA's) to ensure

compliance with the Sustainability Guidelines. The unit provides technical assistance for decarbonization and reviews and manages the Clean Energy Initiative (CEI) Program and Weatherization Assistance Program.

1.02.02      Housing Trust Fund Corporation

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

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

1.02.03      Administration of Federal Programs by OF&D

OF&D administers several housing programs funded by the federal government. Currently, the Low-Income Housing Credit (LIHTC) is part of OF&D 's Multifamily Finance 9% RFP Process (described in Section 3.0 of this Manual), although a separate Notice of Credit Availability and application review are conducted for this program. The precise nature of OF&D's involvement with these programs is defined by federal regulations but to the extent there is discretion, these programs are administered in a manner similar to HCR processes described above (Sub-Section 1.02.01).



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Section: 1.00 INTRODUCTION

Sub Section: 1.03 Regional Offices

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

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

Following are the Regional Offices and the counties they serve:

Capital District Regional Office

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

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

Buffalo Regional Office

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

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

New York City Regional Office

641 Lexington Avenue New York, NY 10022 (212) 480-7165

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

Syracuse Regional Office

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

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

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Section: 1.00 INTRODUCTION

Sub Section: 1.04 Waivers

In certain circumstances, applicants may wish to request a waiver of one or more of the requirements described in Section 3.0 ("Multifamily Finance 9% RFP Process"), Section 5.0 ("Development Requirements") or Section 6.0 ("Administrative Processing Requirements") of this Manual. This can be done by placing a request in writing to the Vice President of OF&D and/or his or her designee at least 60 days prior to submitting an application. Waiver requests will be considered on an individual basis, based on the rationale provided in the request. Applicants must receive written approval of a requested waiver prior to incorporating the terms of the waiver into an application. Documentation of any approved waiver(s) must be included in the application to which the waiver applies.

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

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Section: 2.00 PROGRAM DESCRIPTIONS

Sub Section: 2.01 Low-Income Housing Trust Fund Program

#### 2.01.01 Summary

The Low-Income Housing Trust Fund Program ("HTF Program") provides payments, grants, and loans to eligible applicants to develop and complete housing projects for occupancy by persons of low income in eligible areas. The HTF Program was established under Article 18 of the Private Housing Financing Law (PHFL) and is administered by HCR on behalf of the NYS HTFC. A copy of the PHFL can be found at

<https://www.nysenate.gov/legislation/laws/PVH/A18>.

Eligible applicants may receive up to \$125,000 per unit per project to pay for eligible costs that include: site acquisition; constructing, rehabilitating, or converting an eligible project; and soft costs. HTF Program funds may be used as bridge or permanent financing for predevelopment costs, construction costs, working capital, and replacement reserves.

Through the Multifamily Finance 9% RFP (9% RFP) process, an eligible applicant may participate in the HTF Program as a direct project recipient, in which the applicant develops projects on its own. Applicants who participate in the HTF Program as private developers, as defined in the PHFL Article 18, Section 1102.1, are required to make an equity contribution equal to two and one-half percent of the total project cost (total development cost in current HCR budget forms) or five percent of the total project cost less all grants, whichever is greater. A portion of the equity contribution, equal to three months of operating expenses and debt service for projects of 60 units or more, and 6 months of operating expenses and debt service for projects of less than 60 units, must be made as a cash deposit to the project's Operating Reserve Account.

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

- 50 percent allocated to projects located within any single municipality.

In addition, Section 1102.8 of the PHFL requires preference in the awarding of funds to be given to economically feasible projects which contain a substantial number of persons whose income does not exceed 50 percent of Area Median Income (AMI).

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Applicants, who plan to use HTF Program funds in conjunction with the Low Income Housing Tax Credit (LIHTC) Program (Section 2.03), should be familiar with the eligibility requirements of both programs. Applicants and owners of projects involving the construction or rehabilitation of four or more HCR assisted housing units including LIHTC Program projects are required to submit affirmative marketing plans before rent-up, detailing specific actions to be taken to provide information and outreach to eligible persons of all racial, ethnic, gender and disabled groups from the housing market area.

#### 2.01.02 Statutory Provisions

##### 2.01.02.A Purpose

The HTF Program was created by Article 18 of the PHFL for the purpose of making payments, grants, or loans available to subsidize the cost of rehabilitating and constructing housing for persons of low income. The Legislature's intent in creating the HTF Program was to increase the housing opportunities of persons of low income by expanding the supply of affordable housing. The HTF Program is administered by the HTFC, a public benefit corporation established under Section 45-a, of the PHFL. The specific legislative findings on which the HTF Program is based are found in Article 18, Section 1100 of the PHFL.

##### 2.01.02.B Definitions

Definitions and program specific terms can be found in Article 18 of the PHFL, Section 1101.

#### 2.01.03 Eligibility Requirements

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

##### 2.01.03.A Eligible Applicants

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

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

Except in cases of not-for-profit organizations, which are at the time of application engaged in multiple activities, and HTFC has given its consent to those activities continuing, the project must be and remain the sole asset and business purpose of the project recipient. Persons of low income may not be direct recipients of payments, grants or loans from the Corporation, but may receive such funds from another eligible applicant.

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

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

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

2.01.03.B Eligible Projects

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

- An occupied residential property is eligible for HTF if the property is distressed. HCR will consider an occupied residential property distressed if:
  - a. The occupancy rate by lawful occupants is less than 60% (otherwise known as under-occupied);
  - b. The residential portion of a mixed use property has an occupancy rate by lawful occupants of less than 60% (under-occupied);
  - c. A property consisting of one or two residential units prior to rehabilitation will subsequent to rehabilitation contain at least one additional residential unit; or,
  - d. The rehabilitation of the property would preserve affordable housing currently serving a population whose housing need would justify its replacement if it ceased to be available.
- An occupied non-residential property is eligible for conversion with HTF if the property is underutilized. HCR will consider the following factors in determining whether a non-residential property is underutilized:
  - a. Revenue from the leased space compared to the cost to operate the property;
  - b. Whether the owner provided the occupant with a plan acceptable to HCR for the occupant's relocation;
  - c. The percentage of leased space compared to the total amount of space available for lease;
  - d. Whether the current occupant of the non-residential space provides a critical service to the community which would be left unmet if the current occupant was displaced by the proposed project; and,
  - e. Whether the land, building(s), and/or structure(s) are currently not used or used at a lower density than the local land use plan permits and may potentially be developed, recycled, or converted into a higher density residential, commercial, or mixed-use development as defined in a local land use plan.

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Per HCR policy, a property is classified as residential property if 50 percent or more of its gross floor space is residential prior to rehabilitation. A property is classified as non-residential property if less than 50 percent of the gross floor space is residential prior to construction.

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

Applicants interested in using tax exempt bonds and 4% LIHTC for a project should consider requesting funding from the Homes for Working Families Program.

#### 2.01.03.C Eligibility Requirements for Homesteading Projects

It is HTFC's policy that applicants requesting funds for 1-4 family owner-occupied properties seek funds from a source other than HTF.

#### 2.01.03.D Requirements For Cooperative and Condominium Projects

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

2.01.03.E Eligible Areas

Article 18, Section 1102.3(h) of the PHFL provides the criteria of areas eligible for HTF funding. In addition, areas which have been designated by any Federal, State, or local law, rule, or regulation as blighted, deteriorated or deteriorating or as having a blighting influence on the surrounding area or as being in danger of becoming a slum or blighted area are eligible for HTF Program funds. Designations that meet these criteria include, but are not limited, to the following:

- (i) Federal Designation
  - a. Areas which are designated by the Secretary of the Department of Housing and Urban Development (HUD) of the United States as areas in which concentrated housing, physical development, and public service activities are being or will be carried out in a coordinated manner, pursuant to a locally developed strategy for neighborhood improvement, conservation and preservation;
  - b. Areas which have been proposed by the locality and approved by HUD as Community Development Block Grant (CDBG) target areas;
  - c. Areas which have been proposed by the locality and approved by HUD as Rental Rehabilitation target areas; and,
  - d. Neighborhoods in which Community Housing Development Organizations are carrying out activities pursuant to Title II of the National Affordable Housing Act.
- (ii) State Designation
  - a. Areas which are designated under Articles 15 and 16 of the General Municipal Law (The Urban Renewal Law and the Urban Development Action Area Act);
  - b. Census tracts in which at least 70 percent of the families have incomes which are 80 percent or less than the Statewide median income;
  - c. Areas of chronic economic distress as designated by the State and as approved by the Secretary of the Treasury and the Secretary of HUD;



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

#### (iii) Local Designation

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

#### 2.01.03.F Eligible Occupants

To be eligible for funding, HTF housing projects must serve persons of low income, defined in PHFL Article 18, Section 1101.10. For rehabilitation or conversion projects, Article 18 of the PHFL provides that legal occupants who remain in possession of their unit, or who are temporarily relocated during rehabilitation or conversion, are entitled to continue occupancy

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after project completion. All additional occupants who move into the project subsequent to rehabilitation or conversion must be persons of low income, as defined above. Only temporary relocation expenses are eligible costs under the HTF Program.

#### 2.01.03.G Eligible Project Costs

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

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

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

For HTF projects with non-residential/commercial space which qualifies as a HTF-funded non-residential Community Service Facility (HTF CSF), these costs may be eligible for HTF funding (see glossary for definition). A HTF CSF is a non-residential facility within a HTF-eligible project which provides services to the low-income residents of the neighborhood/area in which the project is located. Up to 10 percent of the HTF award amount may be used to finance costs associated with the development of the HTF CSF. Please see Section 5.10 for further guidance on using HTF for a HTF CSF.

2.01.03.H Eligible Predevelopment Costs

**NOTE:** Predevelopment awards will only be made if the RFP for a particular 9% RFP states that such an award will be available for that funding round.

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

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

2.01.04 Program Requirements

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

2.01.04.A Private Developer Minimum Equity Requirements

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

Program policy requires that a portion of the equity contribution be in the form of cash, with a minimum of three months of operating expenses and debt service for projects of 60 units or more, and six months of operating costs and debt service for projects of less than 60 units be made as a cash deposit to the project's Operating Reserve Account.

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

2.01.04.B Real Estate Contributions

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

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acquired two years or less before submission of a 9% RFP application that is counted as equity shall be calculated as the lesser of either the preconstruction appraised value or the purchase price. The value of property acquired more than two years prior to submission of a 9% RFP application that may be counted as equity shall be the property's pre-construction appraised value. HTF Program funds used to acquire the property on which the project is located shall be deducted from its value when calculating the equity investment.

#### 2.01.04.C Payment of Equity

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

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

#### 2.01.04.D Return on Equity

If, after providing for all expenses, taxes and deposits to the reserve funds, there are funds available, an annual portion of the project earnings will be paid to the private developer as a return on equity. In order to receive a return on equity, there must be a cash surplus in the project's General Operating Account after payment of all expenses for the applicable fiscal year. The annual return on equity is limited to six percent of the total qualified equity contributions.

If unpaid, payment will accrue for return on equity and shall be made at such time as a cash surplus is available in the General Operating Account or in the Operating Reserve Account

(subject to the conditions previously described). The maximum payment of return on equity in any one fiscal year is limited to the current year's return on equity and one prior year's accrued amount. Return on equity payments will be made following the end of each fiscal year.

Payments from the General Operating Account for return on equity require prior approval of the Asset Management Unit (AMU). Payments from the Operating Reserve Account also require prior approval of AMU. AMU and HTFC Finance staffs review the annual audit report to ensure that return on equity is paid properly. Payments will not be approved if it is determined that the project is not in compliance with HTFC regulations and applicable housing occupancy and maintenance laws, codes, and regulations.

2.01.04.E Regulatory Period

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

- (i) for homesteading projects, the regulatory period is the greater of:
  - a. the 15-year period following the date of final disbursement for the project during which the resale, rental, and occupancy restrictions specified in the Regulatory Agreement are applicable; or,
  - b. the period, not to exceed 30 years, during which any loan or indebtedness incurred pursuant to Article 18 of the PHFL is outstanding.
- (ii) for rental, condominium or cooperative projects, the regulatory period is the greater of:
  - a. the 20-year period following the date of final disbursement for the project in which the resale, rental and occupancy restrictions specified in the Regulatory Agreement are applicable; or,
  - b. the period, not to exceed 30 years, during which any loan or indebtedness incurred pursuant to Article 18 of the PHFL is outstanding.

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

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

#### 2.01.04.F Accessibility and Adaptation of Units

HTF projects must meet all applicable code, Fair Housing Act, and any other applicable requirements for accessibility and adaptability. All reasonable accommodations and reasonable modifications, including modifying adaptable dwelling units to the accessibility needs of the tenant, must be at the owner's expense.

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Sub Section: 2.02 Housing Development Fund Program

#### 2.02.01 Summary

The Housing Development Fund (HDF) is a revolving loan fund program established in 1966 under Article XI of the PHFL and administered by HCR. A copy of the Article XI of PHFL can be found at <https://www.nysenate.gov/legislation/laws/PVH/A11>. The primary purpose of the HDF program as currently administered by HCR is to review requests to provide the Commissioner's Consent to the incorporation of Housing Development Fund Corporations, as set forth in Section 2.02.04B below. While there are significant constraints associated with the use of HDF as a source of project financing, the program may also be utilized to provide temporary, interim, or bridge loan financing and are generally repaid from permanent financing provided by another public or private funding source or the equity proceeds contributed by the investor in low-income housing credit projects. A project sponsor considering the use of HDF loan financing are required to consult with HCR prior to application submission.

HDF construction loans may be used for the costs of rehabilitation or construction of an eligible project including: site improvement; demolition and/or site preparation; infrastructure; professional and legal fees during construction; labor; materials; equipment; approved developer fees and builders' overhead; project carrying costs and working capital; and the development of non-residential facilities, provided such space is incidental or appurtenant to the residential property, and allowed and reimbursable under the project's permanent financing. HDF construction loans may be paid at zero percent interest rate and are repaid from the first receipts of the project's permanent financing. These loans are usually of three years duration, but may be longer based on the financing necessities and construction timetables of specific projects. HDF loan funds have previously been used to provide construction financing for projects receiving permanent financing through the NYS HOME program.

HDF construction loans have previously been utilized to provide interim financing for longer periods for projects funded through the LIHTC program. These HDF loans are called equity or bridge loans, because they bridge the period during the project's development and/or initial operating years until sufficient equity proceeds become available to repay the HDF loan.



HDF equity loans are generally made at a zero or one percent interest rate based upon the project's financing needs, and may have terms longer than HDF construction loans since they may be repaid subsequent to the receipt of permanent financing. HDF equity loans may be used to pay for any mortgageable project costs (i.e., costs reimbursable from the source of permanent financing).

In addition to construction loans, HDF financing has been previously utilized to establish sub-recipient, revolving loan programs. Under this financing structure, HCR may enter into a HDF loan contract with an eligible non-profit corporation as borrower. Using loan origination and servicing parameters approved by HCR, the borrower provides HDF loans to sub-recipients to cover mortgageable costs associated with property acquisition and/or construction of HDF-eligible projects. Upon completion, the sub-recipient repays the full loan amount to the borrower, generally from permanent financing proceeds. The repaid loan funds then revolve and are utilized to finance another sub-recipient loan.

2.02.02 Statutory Provisions

2.02.02.A Purpose

The HDF program was created under Article 11 (Sections 570 through 582) of the PHFL for the purpose of establishing a revolving loan fund to provide temporary loans to eligible applicants to facilitate the development of housing for low-income households. The statutory purpose of the HDF Program is further elaborated upon in Section 571 of PHFL.

2.02.02.B Definitions

Pertinent program-specific terms are defined in Section 572 of the PHFL.

2.02.03 Eligibility Requirements

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

2.02.03.A Eligible Applicants

Eligible HDF applicants include HDFC's incorporated pursuant to Section 573 of the PHFL and other not-for-profit and charitable corporations, and their wholly-owned subsidiaries,

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as set forth in Section 571 of the PHFL, which have the improvement of housing for persons of low income as a primary corporate purpose. Prospective project sponsors do not have to be HDFC's to be eligible for HDF funding. However, applicants may sponsor the incorporation of an HDFC as a single-asset vehicle to develop and/or own a low-income housing development, reduce corporate liability and potentially qualify for a state real property tax-exemption.

Applicants must have the experience and capacity to develop, rehabilitate and/or construct a project of the size and type proposed in a timely and cost-effective manner and demonstrate that the permanent financing needed to complete the project and repay the HDF loan has been firmly committed. Generally, a completed project must be and remain the sole asset and business purpose of the HDFC.

#### 2.02.03.B Eligible Projects

Eligible HDF projects are defined in Section 572 of the PHFL. Restrictions on project size, scope, and the income levels of the project's low-income occupants are generally determined by the permanent funding source.

#### 2.02.03.C Eligible Areas

All areas of the State are eligible for HDF financing.

#### 2.02.03.D Eligible Occupants

HDF projects must be occupied by low-income individuals or households. Generally, the permanent funding provider regulates tenant eligibility, project rents, sale prices and/or disposition of property. If permanent financing is not provided by a governmental source, HCR may regulate the project subsequent to repayment of the HDF loan. Further, Section 576 of the PHFL restricts project occupancy to households with incomes not exceeding six times the total housing cost (rent plus utilities), except that for households with three or more dependents, the income must not exceed seven times the total housing cost.

#### 2.02.03.E Eligible Loan Costs

Eligible loan costs are defined in Section 572 of the PHFL.

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#### 2.02.04 Program Requirements

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

##### 2.02.04.A HDF Loan Requirements

When utilized, HDF construction loans are evidenced by a promissory note and/or mortgage note which, among other things, requires that the temporary loan will be due and payable on demand if HCR determines that permanent financing may not be obtained for the project, or if the HDF loan is in jeopardy of not being repaid. In general, no HDF loan repayment term can be extended beyond the last receipts of the permanent financing, or in the case of HDF equity loans for LIHTC projects, the last installment of syndication proceeds paid to the project owner pursuant to a syndication or partnership agreement. A closing is usually required prior to, or concurrent with, the disbursement of loan proceeds for construction. HDF loans are generally interest-free although HDF equity loans may have a one percent interest rate. An interest rate of up to six percent may be charged in the event of default on repayment.

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

Prior to authorizing a contract and disbursing HDF loan funds, HCR must make findings pursuant to Section 573 of the PHFL. All HDF loan funding commitments are subject to the availability of funds in the HDF revolving loan fund, as well as to an annual authorization by the Legislature to use such funds and external State agency approval. All applicants must enter into an HDF Regulatory Agreement and Loan Contract. HDF contracts must be executed by the applicant and HCR, and approved by the State Attorney General's Office and the Office of the State Comptroller prior to disbursement of the HDF loan proceeds.

##### 2.02.04.B HDFC Incorporation

A Housing Development Fund Corporation (HDFC) must be incorporated pursuant to the provisions of Section 573 of the PHFL and the provisions of either Section 402 of Not-For-Profit

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Corporation Law, or, in the case of low-income cooperatives, Section 402 of the Business Corporation Law. An HDFC Incorporation package may be obtained by contacting the HDF Program Manager at HCR, 38-40 State Street, 6th Floor, Albany, New York 12207. Section 573 of the PHFL provides that a sponsor seeking to establish a HDFC must obtain the approval or consent of the Commissioner of HCR or certain officials within a locality, prior to filing a certificate of incorporation to incorporate an HDFC with the New York State Department of State. The agency which provides this consent or approval serves as the supervising agency of the HDFC which is incorporated.

The statute requires that the provision of the consent to the filing of the certificate of incorporation of the HDFC shall be based upon findings by the Commissioner or supervising agency as to the character and competence of the sponsor.

An applicant seeking capital financing from HCR must obtain the consent of the Commissioner prior to the incorporation of an HDFC to be used in that project. An applicant must obtain the consent of the NYC Department of Housing Preservation and Development (HPD) if financing is not being sought from HCR and the project is located in New York City. An applicant may seek consent of either the Commissioner or the supervising agency if the project is not in New York City and is not seeking financing from HCR.

In order to obtain the Commissioner's consent for the formation of a HDFC, the documentation cited in HCR's PROCESS FOR OBTAINING DHCR CONSENT TO INCORPORATE AN HDFC (see <https://hcr.ny.gov/housing-development-fund-corporation-hdfc>) must be submitted by the sponsor or its legal representative to HCR at the above-cited address (or by electronic submission as specified in the guidance). This documentation will be reviewed by HCR's legal and program staff to determine consistency with both statute and the referenced guidance at the sole discretion of the Commissioner. A sponsor that has previously incorporated an HDFC with the consent of the Commissioner or a supervising agency must still submit a complete package of the documentation for a new HDFC or for any proposed amendment to the HDFC Certificate of Incorporation, regardless of the timeframe of the last approved submission.

Once HCR has consented to incorporation, the signed consent form is returned to the sponsor or its legal representative to continue processing. The following steps must be taken by the Sponsor to complete the filing of the Certificate of Incorporation:

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

#### 2.02.05 Farmworker Housing Program

The Farmworker Housing Program was authorized in 1995 through amendment to Article 11 of the PHFL, which made HDF program funds available for this new statutory purpose (see Sections 572 and 576-D of PHFL, at <https://www.nysenate.gov/legislation/laws/PVH/A11>). The Farmworker Housing Program is a low-cost revolving loan program which provides financing to assist agricultural producers in improving existing housing or constructing replacement housing for seasonal and year-round farmworkers so that the housing will comply with applicable code (such as the New York State Sanitary Code and/or the Building Codes of New York State). The loans are also used for the new construction of farmworker housing and the expansion of existing facilities.

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

Under the program, an agricultural producer (a producer or entity which owns or operates land eligible for an agricultural assessment under Sections 305 and 306 of the Agriculture and Markets Law and which produces food by the tillage of the soil, or raises, shears, feeds or manages animals or other dairying processes) can apply to borrow up to \$200,000 per year. If

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more than \$200,000 in loan funds is needed to satisfactorily complete the construction, repair or improvement of one farmworker housing project, the agricultural producer can seek funds from other sources, including a blended loan (i.e., a combination of a program loan and a conventional loan).

LLAs may require a one-time origination and servicing fee from the borrower at the time of loan closing of no more than five percent (5%) of the loan amount. There are no interest or inspection fees. All loans to borrowers must be repaid in equal annual payments of principal; the term of the loan may not exceed ten (10) years.

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Section: 2.00 PROGRAM DESCRIPTIONS

Sub Section: 2.03 Low-Income Housing Credit (LIHTC) Program

#### 2.03.01 Summary

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

LIHTC is available to project owners who acquire, construct, and/or rehabilitate rental housing reserved for low-income households. The amount of Credit allocated to a project is directly related to the costs associated with the acquisition, construction, and/or rehabilitation of rental housing that is reserved for low-income households (i.e., those earning 60% or less of AMI) and the allocation amount necessary to ensure the project's completion and continued operation through the project's regulatory term. The amount of Credit allocated to an owner represents the annual Credit amount the owner may claim and receive for each of the next ten years subsequent to the Credit allocation.

In addition, the amount of Credit a project may receive is determined by applying the applicable federal credit percentage to the project; 9% (designed to yield 70% present value) is applied to the cost of new construction or rehabilitation for non-federally financed projects and 4% (designed to yield 30% present value) is applied to the cost of building acquisition or for all development costs associated with projects which receive federal financing through the provision of tax-exempt bond financing attributable to the State's private activity bond volume cap. It should be noted that the New York State Housing Finance Agency (HFA) administers the State's credit allocations for tax-exempt bond financed projects (also termed "4% LIHTC projects") and the information contained herein does not address these projects.

#### 2.03.02 Statutory Provisions

##### 2.03.02.A Purpose

The Federal Tax Reform Act of 1986, as amended (the Act), established the LIHTC Program to be administered by state housing agencies for the purpose of promoting investment in

the production and retention of rental housing units which are reserved for low-income households. The LIHTC Program replaced other tax incentives that existed prior to the passage of the Act in 1986.

The Act authorized the governor of each state to allocate the low-income housing tax credit ceiling among governmental units and other issuing authorities in the state with a single Housing Credit Agency (HCA) coordinating the allocation of Credit to owners of low income housing. In New York, the Governor's Executive Order #11 of 2011 designated DHCR as the State's lead HCA. The Executive Order authorized DHCR to allocate Credit in a manner which maximizes the public benefit by addressing the State's need for low-income housing and community revitalization incentives and to sub-allocate the Credit Ceiling among State and local entities involved with financing affordable housing subject to an application requesting Credit authority. The information provided below is specific to the Credit allocated by DHCR (as a component of HCR) directly to projects it selects for funding.

The Act further required each agency allocating Credit to adopt a Qualified Allocation Plan (QAP) to provide for the effective coordination of the State's LIHTC Program with Section 42 of the Internal Revenue Code (the Code). The DHCR QAP sets forth the threshold eligibility, scoring and other selection criteria by which LIHTC will be awarded, and allocated to projects by DHCR, as well as other important program provisions establishing the parameters by which DHCR administers the program.

2.03.02.B Definitions

LIHTC Program definitions are set forth in the Code and Section 2040.2 of the QAP.

2.03.03 Eligibility Requirements

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

2.03.03.A Eligible Applicants

Eligible applicants under LIHTC include for-profit developers, not-for-profit developers, individuals, corporations, limited partnerships, and limited liability corporations which will own



rent-restricted rental housing after the project is acquired and improved, rehabilitated or constructed.

2.03.03.B Eligible Projects

Credit allocations may only be made to qualified low-income housing projects which meet the minimum set-aside requirements set forth in Section 42(g)(1) of the Code. To be eligible, the project's low-income units must be rent-restricted, so that the low-income households occupying the LIHTC-regulated units do not pay rent (including tenant-paid utilities) greater than 30 percent of the AMI imputed for the unit based on the number of bedrooms the unit contains. Eligible project activities under the LIHTC Program include new construction, building acquisition with rehabilitation, and rehabilitation. The QAP sets forth additional eligibility requirements which must be met by Credit projects. These eligibility requirements are set forth in Section 2040.3(e) of the QAP.

In addition, while Credit projects may contain commercial space and market-rate or otherwise un-regulated residential units, Credit can only be claimed and utilized for the financing of the project's low-income residential units. [One important exception to the above is in the case of a residential project containing a Section 42 9% LIHTC eligible Community Service Facility \(Section 42 9% LIHTC eligible CSF\) \(see glossary for definition\). A Section 42 9% LIHTC eligible CSF is a non-residential facility within a residential project located in a HUD-designated Qualified Census Tract \(QCT\) designed to offer and provide services to individuals who reside in the Credit project and to persons in the immediate community/neighborhood.](#)

Although not specifically defined in the Code, a Section 42 9% LIHTC eligible CSF may include space for such activities as Head Start, childcare, job training, primary health care, youth recreation, and support services for seniors. Pursuant to the Code, the allowable percentage of development costs of the Section 42 9% LIHTC eligible CSF portion of the qualified low-income project which can be included in qualified basis is 25 percent. Credit applicants must describe and clearly document the programmatic relationship between the owner of the residential projects, the occupant(s) of the Section 42 9% LIHTC eligible CSF and the project tenants and community residents served by the Section 42 9% LIHTC eligible CSF, carefully

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apportioning all project development costs, hard and soft, and real estate expenses between the Section 42 9% LIHTC eligible CSF and the residential units of the project.

Credit allocations may not be used for projects which will be used for transient housing, defined as units with an initial lease of less than six months. However, an exception is permitted pursuant to the Code for transitional housing projects for homeless persons and/or families.

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

In addition to eligibility standards, the QAP sets forth project scoring and ranking criteria (Section 2040.3(f) of the QAP), which incorporate both Code-mandated project selection criteria and HCR project preferences. LIHTC scoring provisions are described in detail in the QAP and the HCR Multifamily Finance 9% LIHTC Request For Proposals (RFP) issued under HCR's 9% RFP application process. Subject to the availability of Credit, and the issuance of a Notice of Credit Availability and RFP, DHCR may choose to provide one or more set-asides of Credit for additional types of projects, which are specified in the 9% RFP.

In addition, Section 42(h)(5) of the Code requires that state housing credit agencies set-aside 10% of its annual Credit Ceiling (see 2.03.04.A below) for qualified non-profit organizations which own an interest in the project and materially participate in the development and operation of the project throughout the project's regulatory term.

In regard to multiple-building developments, DHCR will treat these as one project provided it is consistent with Section 42(g)(7) of the Code, the QAP, and meets the following parameters:

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

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

#### 2.03.03.C Eligible Areas

All areas of New York State are eligible.

#### 2.03.03.D Eligible Occupants

Eligible occupants are low-income households earning up to 60% of area median income, as adjusted for household size (or up to 80% of area median income if the Average Income set-aside is utilized). LIHTC may only be utilized on units that are occupied at the time of initial occupancy by eligible occupants. To be eligible for LIHTC, project occupancy must meet Code minimum set-aside requirements. Units must be available for use by the general public pursuant to Section 42(g)(9) of the Code. Project owners may, however, give preference in renting units, or limit occupancy to, certain categories of persons with special needs as defined in Section 2040.2(q) of the QAP or to persons as otherwise determined by HCR's Office of Fair and Equitable Housing. Further, according to federal statute, projects which would otherwise meet the general public use requirement may have occupancy preferences that favor tenants who are involved in artistic and literary activities. Projects must also comply with all Federal and State fair housing laws, regulations and applicable policies.

#### 2.03.03.E Eligible Project Costs

See Section 5.05 of the CPM.

#### 2.03.04 Program Requirements

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

2.03.04.A LIHTC Ceiling Allocation

New York State receives an annual allocation of Credit called the Low-Income Housing Tax Credit Ceiling based on a formula set forth in Section 42(h)(3) of the Code (the Ceiling). This Credit is also referred to as “9% LIHTC” and is awarded to projects on a competitive basis pursuant to HCR’s 9% RFP and the QAP.

Ceiling Allocation to HCAs

DHCR may sub-allocate a portion of the Ceiling, and/or the authority to allocate 4% LIHTC (per Section 42(h)(4) of the Code), to other State and Local HCA’s, which in turn makes allocations to eligible projects.

DHCR’s Credit Allocation Authority

The portion of the Ceiling which is not allocated to other State and local HCA’s represents DHCR’s annual Allocation Authority. DHCR awards and allocates Credit (i.e., 9% LIHTC) on a competitive basis as defined in DHCR’s QAP to projects which utilize Credit on a standalone basis (i.e., projects not receiving HCR capital financing assistance) or in conjunction with HCR’s other capital financing programs as specified in the 9% RFP.

2.03.04.B DHCR Credit Allocation Process

The process for the allocation of Credit to projects conforms to Section 42(h) of the Code, as further detailed in Section 2040.3 of the QAP. This section of the QAP references the following:

- LIHTC application and funding cycle;
- LIHTC application, binding agreement allocation and/or other processing fees;
- Requirements for issuance of Credit reservations, binding agreement, carryover allocations and the Internal Revenue Service Form 8609 (explained in more detail below);
- threshold eligibility review criteria;
- project scoring and rating criteria;

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- other important project review factors such as site suitability and location, architectural design, consistency with underwriting standards, and whether a project advances the State's housing goals and objectives, including any goals set forth by a Regional Economic Development Council strategic plan applicable to the area in which a project is located; and,
- other factors involved in the determination of the Credit allocation amount for a project.

The LIHTC Notice of Credit Availability and the RFP provide additional detailed parameters and criteria of Credit application review, the maximum per unit and per project annual Credit allocation amounts which may be requested, HCR's specific housing goals, objectives, and project preferences, as well as notification of the outcome of HCR's review.

#### 2.03.05 LIHTC Processing Documents

##### 2.03.05.A Reservation Letter

The Reservation letter (the Reservation) serves as HCR's initial commitment of Credit to a project approved for a Credit award. The Credit Reservation includes the following significant sections:

1) The first section, the Reservation letter itself, contains the terms, conditions, and specific documentation submission timeframes and requirements which the project sponsor must provide and meet in order for DHCR to approve the issuance of a binding agreement and/or carryover allocation to the project. This section further sets forth the maximum dollar amount of Credit to be provided pursuant to the Reservation, the Reservation expiration date (i.e., the date by which the project must meet the terms and conditions of the Reservation and close on construction financing) and the dates by which the project must start construction and submit carryover eligibility documentation. This section also provides programmatic advisories in regard to notification requirements pertaining to changes in project scope, design or budget, and the prohibition against the use of contractors and sub-contractors listed on federal or state debarment lists. Requests to extend the Reservation expiration date or otherwise amend the terms of the Reservation are subject to HCR review and may be approved by HCR, in its sole

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discretion. Failure to meet the deadlines or any other terms and conditions of the Reservation, or changes to project scope may adversely impact the scoring and competitiveness of application submitted by the project sponsor in future application rounds and/or may result in termination of the Reservation, at HCR's sole discretion.

2) The second section of the Reservation, the Reservation Addendum, contains additional project specific issues and submission requirements which the project sponsor must address prior to the Reservation expiration date and date of construction financing closing, unless otherwise specified. Generally, the conditions noted include open items that were not sufficiently explained or resolved in the initial 9% RFP application which was submitted to HCR. The section reflects the documentation submissions required by the HCR technical units involved in project review, such as Underwriting, Design, Program Management, FEHO, Special Needs, EAU, and AMU. The Reservation Addendum, in the Underwriting Issues section, sets forth the project's anticipated credit equity conversion factor (i.e., the credit equity pay-in per dollar which the Credit investor will provide to purchase the ownership interest in the project). Should a project sponsor obtain a higher credit equity pay-in at any time prior to project completion and issuance of the IRS Form 8609 Credit allocation, such an increase is subject to the provisions of DHCR's LIHTC Equity Increase Policy. The specific guidelines are set forth at the following website address:

[hcr.ny.gov/system/files/documents/2019/03/lihcequityincreasepolicy.pdf](http://hcr.ny.gov/system/files/documents/2019/03/lihcequityincreasepolicy.pdf)

However, note that the Reservation Addendum does not provide a comprehensive list of all requirements a project sponsor must meet to proceed to construction financing closing, which may be transmitted under separate correspondence or documentation.

3) The third section of the Reservation, Attachment A, cites the specific provisions which will be incorporated in the project's LIHTC Regulatory Agreement (see Section 2.03.05.E). The provisions incorporated into the Regulatory Agreement are based on those project amenities, population targets, and other features proposed in the initial funding application, and for which the project may have been mandated to provide under threshold eligibility (Section 2040.3(e) of the QAP) and/or received scoring points (Section 2040.3(f)). This includes but is not limited to requirements for operating the

completed project based on standards for green/sustainable buildings; energy efficiency; special needs and supportive housing; income and affordability targets; not-for-profit participation in the project's ownership and/or right of first refusal; tenant buy-out; prohibitions against using debarred contractors on an ongoing basis; project unit visitability, accessibility and adaptability for persons with physical disabilities; and treatment of additional rental income received by the project through collection of rent subsidized by Section 8 Tenant Based Vouchers (or similar tenant based subsidy). Attachment A further provides that the project awardee (and ultimately, the project owner), by executing the Reservation, agree to waive any right to request a Qualified Contract to purchase the project at the end of the credit compliance period as defined in Section 42(h)(6)(F) of the Code (see Section 2.03.05.E).

**2.03.05.B Binding Agreement**

Projects which meet the terms and conditions of their Reservation may request a Binding Agreement letter. Issuance of a Binding Agreement is not required by HCR; rather it is often requested by the project sponsor or their tax credit investor/syndicator as confirmation that the project has met the terms and conditions of the LIHTC/SLIHC reservation letter and to facilitate the closing on construction financing. In order to secure a Binding Agreement, the project sponsor must submit evidence that all local approvals necessary to proceed to construction, and commitments from all sources of construction and permanent financing cited in the project's approved development budget to complete the project have been obtained. The Binding Agreement may only be issued and released upon completion of the project's second HCR underwrite, as mandated by the Code, and review and approval of the above-referenced documentation by HCR's OLA. A summary of HCR's second underwrite of the project's development and operating budgets is incorporated in the Binding Agreement.

The Binding Agreement also provides instructions for submission of carryover certification documentation, and an invoice for payment of pertinent Credit application (if not previously paid) and allocation fees.

2.03.05.C Carryover Allocation

Projects which meet the terms and conditions of their Reservation and/or Binding Agreement may request a Carryover Allocation, which DHCR will issue pursuant to Section 42(h)(1)(E)/(F) of the Code. The Carryover Allocation represents an actual allocation of Credit from that specific year's Credit Ceiling to the project though it is not binding upon the IRS until HCR issues the IRS Form 8609 Certification (i.e., the final credit allocation) subsequent to the project's placement in service and a final underwrite of project costs. Pursuant to the Code, receipt of a Carryover Allocation provides the project owner with up to two years from the last day of the calendar year in which the allocation was issued to place the project in service (pursuant to IRS Notice 88-116), unless otherwise amended by any subsequent IRS guidance.

In order to qualify for a Carryover Allocation, the project's second underwrite must be completed. DHCR also may require that the project's Carryover Allocation issuance be sponsor must obtain approved by HCR's OLA based on a review of all construction closing documentation, commitments of permanent financing, and evidence of construction start, remit all application and allocation fees owed and submit a completed "Attachment B – Carryover Allocation Information Form" and "Attachment C – LIHTC Basis and Site Control Opinion and Certification." These forms, which are provided to the project sponsor in the Reservation Letter and Binding Agreement, contain the specific-project related information to be completed by the project owner, their attorney and/or accountant, as required by the IRS rules for the LIHTC Program (CFR 1.42.1 to 1.42.14), for Carryover Allocation.

These completed forms include, but are not limited to, the project owner's identification of the project address, anticipated placed in service date and provision of a legal opinion certifying that site control has been obtained and that more than 10% of reasonably expected basis in the project has been incurred (pursuant to 26 CFR 1.42-6(c) of the IRS Credit Regulation). HCR will generally not issue a Carryover Allocation until this 10% test has been met and certified, but may do so on an exception basis to ensure HCR fully allocated its annual Credit Ceiling.



**2.03.05.D Notice of Satisfaction of Conditions and Binding Commitment**

Projects which meet the terms and conditions of their Reservation and/or Binding Agreement and have submitted documentation for a Carryover Allocation (see 2.03.05.C above) may receive a Notice of Satisfaction of Conditions and Binding Commitment letter pursuant to Section 42(h)(1)(C) of the Code. Issued by HCR with the consent of the project owner, the Binding Commitment provides the project owner with confirmation that the project has qualified for a Carryover Allocation, but that issuance of that allocation will be provided from the next calendar year's Credit Ceiling. This provides HCR with the administrative flexibility to better manage its portfolio of open Credit projects and provide Credit to projects from the Credit allocation year best suited to that project's investor needs and construction completion timeframe, at the sole discretion of HCR. Provision of the Binding Commitment no later than in the year a project is placed in service holds the project owner harmless should they receive a Carryover Allocation in the next year (which would otherwise be prohibited by the Code).

**2.03.05.E Extended Use Period/Final Credit Allocation**

Pursuant to the Code and Section 2040.5 of the QAP, the owner of a Credit project must execute an Extended Use Agreement (also referred to as a LIHTC Regulatory Agreement) which requires that a building's Credit-assisted units be available for low-income households for an Extended Use Period, as specified in the project's Reservation Letter. Section 2040.3(e)(17) of the QAP indicates that the regulatory term will be minimum term of 30 years, and provides that the minimum term may be increased as set forth in the RFP. (Note: The most recent 9% RFP's issued by HCR have required a 50-year minimum project regulatory term, unless otherwise indicated).

The Regulatory Agreement (as described in QAP Section 2040.5), is binding on all successors, provides an enforcement mechanism for HCR (which performs a compliance monitoring function), and residents to assure that the Credit-assisted units will be maintained as a qualified low-income housing project (per Section 42(g) of the Code) through the Extended Use Period.

In general, HCR requires that the Regulatory Agreement be executed by the project owner at or prior to the construction financing closing date set forth in the Reservation.

However, HCR may consider requests to defer this requirement based on submission of an explanation for the delay. In such instances, HCR reserves the right to condition Carryover Allocation and issuance, or subsequent administrative action, upon receipt of an executed and filed Regulatory Agreement, with evidence of recording by the locality in which the Regulatory Agreement was filed.

To initiate the process of requesting, preparing and executing the LIHTC Regulatory Agreement, HCR encourages project sponsors to review the LIHTC/SLIHC Regulatory Agreement Document Submission List, which is available at HCR's website at: [hcr.ny.gov/low-income-housing-credit-program-lihc](http://hcr.ny.gov/low-income-housing-credit-program-lihc).

In addition, boilerplate copies of the LIHTC and LIHTC/SLIHC Regulatory Agreement(s) are available on HCR's website at the following address: [hcr.ny.gov/low-income-housing-credit-program-lihc](http://hcr.ny.gov/low-income-housing-credit-program-lihc)

Some of DHCR's overall responsibilities and requirements for Credit project compliance with the LIHTC Regulatory Agreement; monitoring; the tenant income certification process and compliance inspections are set forth in Sections 2040.7 - 2040.10 of the QAP.

2.03.05.F 8609 Issuance

The IRS Form 8609 Low-Income Housing Credit Allocation and Certification (the 8609) serves as the final allocation of Credit to the project, subsequent to the project's building(s) being placed in service and completion of the third statutorily required underwrite of the project. Specific review parameters and guidelines and requirements for the third underwriting are set forth in Section 5.00. To initiate HCR's issuance of the 8609, HCR encourages project owners to review Section 5.00 of the CPM and the 8609 submission document checklist, which are available, at the following two HCR web address: [hcr.ny.gov/low-income-housing-credit-program-lihc](http://hcr.ny.gov/low-income-housing-credit-program-lihc)

2.03.06 Projects Financed by Private Activity Bonds

Pursuant to Section 2040.4(f) of the QAP, as of March 1, 2008, HCR accepts applications for 4% Credit for projects financed by private activity tax-exempt bonds through HFA. HFA serves as the State HCA with the responsibility for the review of all such 4% Credit applications

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and the issuance of allocations for such projects on a statewide basis. Such allocations are made by HFA pursuant to its QAP and its 4% Credit requirements and standards. DHCR does not accept applications for 4% Credit for projects financed by private activity bonds.

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Section: 2.00 PROGRAM DESCRIPTIONS

Sub Section: 2.04 The New York State HOME Program

#### 2.04.01 Summary

The New York State HOME Program (HOME) provides loans and grants to eligible applicants to undertake eligible rental activities. See 24 CFR Part 92.205 for eligible activities. Please also refer to the New York State Action Plan for further information on the HOME Program.

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

All of the units in site-specific projects seeking HOME under the 9% RFP process must serve households at or below 60 percent of AMI. Rental projects which are assisted by the HOME Program are required to remain affordable to low-income households for the applicable regulatory period, the term of which is based on several factors, including the amount of the HOME subsidy and the type of activity funded.

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

New York State is required to reserve a minimum of 15 percent of HOME funds for locally-based non-profit entities that qualify as Community Housing Development Organizations (CHDO's) (See 24 CFR 92.300-303). All areas of the State are eligible for HOME projects; however, in addition to the 15 percent CHDO set-aside, at least 80 percent of the State's HOME allocation must be spent on projects that are not in localities designated by HUD as participating jurisdictions.

2.04.02 Statutory Provisions

2.04.02.A Purpose

The HOME Program was authorized by Title II of the National Affordable Housing Act (NAHA) of 1990, for the purposes of increasing the number of families served with affordable housing and to expand the supply of such housing. The Final Rule for the program was originally published by HUD on September 16, 1996, at 24 CFR Part 92. The Final Rule has been amended and was published on July 24, 2013.

2.04.02.B Definitions

Definitions for the HOME Program can be found at 24 CFR Part 92.2 Definitions.

2.04.03 Eligibility Requirements

This Section describes the eligibility requirements that are specific to the HOME Program. Sub-section 2.04.03.C sets forth in detail the specific requirements of the various types of HOME projects that may be undertaken.

2.04.03.A Eligible Applicants

Eligible applicants for the New York State HOME Program include individuals and private for profit and non-profit organizations with a demonstrated capacity to develop feasible projects. Additionally, units of local government which are not participating jurisdictions, either directly or as part of a HOME consortium, are also eligible applicants, as are agencies under their control. Except in cases of not-for-profit organizations, which are at the time of application engaged in multiple activities, and HTFC has given its consent to those activities continuing, the project must be and remain the sole asset and business purpose of the project recipient.

2.04.03.B Eligibility Requirements for Community Housing Development Organizations (CHDO's)

New York State is required to reserve at least 15 percent of its HOME funds for housing that will be developed, sponsored, or owned by CHDO's which are community based, non-profit organizations with experience in providing low-income housing assistance. The HOME Program

provides for some exceptions to its requirements and eligibility standards when an entity is a CHDO. These special circumstances are discussed below.

While CHDO's may undertake any of the activities eligible under the HOME Program, only those projects developed, owned, or sponsored by qualified CHDO's count towards the 15 percent CHDO set-aside requirement. CHDO operating costs do not count toward the 15 percent set aside. CHDO's are required to develop and follow a plan for tenant participation in management decisions and must adhere to a fair lease and grievance procedure for any housing developed with HOME Program funds.

CHDO's must meet the following certification requirements to be considered and/or remain an eligible HCR CHDO:

- (i) CHDO's must demonstrate their ability to meet the HUD HOME criteria to be certified as a CHDO and successfully administer a HOME funded project. CHDO's applying to receive HOME capital funds will be certified by HCR on a per project basis. CHDO applicants may provide documentation to their HCR regional representative at any time. HCR will review submittal information, as prescribed by the HOME regulations, including organizational and financial documents, verification of staff capacity and experience, project underwriting, and market need. HCR will notify the CHDO of its approval specific to the development of a particular project. HCR does not accept certifications of other participating jurisdictions.
- (ii) CHDO certification material must include the name of each NYS county in which the applicant has or will have eligible CHDO status.

See Section 6.05 for the CHDO Determination Process.

#### 2.04.03.C Eligible Projects

Certain activities undertaken with HOME Program funds are termed site-specific projects, which may be undertaken by any eligible applicant. While site-specific projects may involve more than one site, all sites comprising a site-specific project must be under common ownership, management and financing, and are to be assisted with HOME funds as a single

undertaking. Site-specific projects may involve new construction, substantial rehabilitation, or acquisition of low-income housing only.

2.04.03.D Eligible Areas

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

2.04.03.E Eligible Occupants

HOME Program funds may only be used to assist low-income households, defined as those with incomes at or below 80 percent of AMI. In addition, the federal HOME regulations require that HOME rental projects must primarily serve households with incomes at or below 60 percent of AMI. All of the units in site-specific projects seeking HOME under the 9% RFP process must serve households at or below 60 percent of AMI.

2.04.03.F Eligible Project Costs

HOME Program funds may be used to pay for the eligible project costs set forth below, subject to the per-unit cost limitations published for the HOME Program which is available from HTFC upon request or from HCR's website: <https://hcr.ny.gov/>. Federal HOME regulations also require a minimum per-unit investment of \$1,000, excluding any matching funds.

HOME Program funds may be made available as grants, no-interest loans, or interest-bearing loans, depending upon the economics of the project and the type of assistance requested. HOME Program funds may not be used to capitalize a replacement reserve account or an operating reserve account; nor may HOME Program funds be used to provide project-based rental assistance. HOME funds may not be used for the new construction or rehabilitation of a free-standing community building in a multi-building project. HCR will not allow HOME funds to be used for the purchase of furniture and equipment. See 24 Part 92.206 for eligible project costs. The NYS Consolidated Plan and Action Plan should also be reviewed for additional

information on the HOME Program in New York State. Also see Section 5.06 Underwriting Criteria.

2.04.03.G Eligible Activities

Under HCR's HOME capital project financing available through the 9% RFP process, there are a number of eligible uses for HOME funds. Generally these include: acquisition of land or buildings, demolition, new construction and substantial rehabilitation of rental housing, and conversion of a commercial or retail space to a low-income residential housing use (see 24 CFR 92.205). HOME funds are also prohibited from being used in certain activities (see Section 24 CFR 92.214) and Section 5.06 Underwriting Standards.

2.04.04 Rental Project Requirements

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

2.04.04.A General Requirements for Rental Projects

Applicants may use HOME Program funds to assist rental housing in site-specific projects. Site-specific rental projects may involve acquisition, new construction, or rehabilitation. Applicants for HOME funds involving rental projects may assume a number of different roles. They may retain ownership of completed projects, or transfer ownership to another entity which agrees to meet the HOME Program's long-term affordability and monitoring requirements. The applicant is responsible for ensuring compliance with all rental project requirements set forth herein for the duration of the period of affordability.

All housing assisted with HOME funds must, at a minimum, meet Federal Housing Quality Standards (HQS). Newly constructed or substantially rehabilitated HOME projects must meet all applicable local codes, rehabilitation standards, and zoning ordinances. Local programs providing rehabilitation assistance for rental housing must comply with HUD Regulations at 24 CFR Part 35 for Lead Based Paint Hazard Reduction. In addition, projects funded with HOME funds must comply with HCR's Design Guidelines.



2.04.04.B Eligible Rental Properties

Eligible HOME project rental properties include the following:

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

2.04.04.C Eligible Tenants/Rents

HOME assisted rental units in site-specific projects must be occupied by low-income households with incomes at or below 60 percent of AMI. Multi-family projects (projects with five or more units) must reserve 20 percent of the units in the project for occupancy by very low-income families (those with incomes at or below 50 percent of AMI). No tenant may be excluded from leasing a HOME rental project because they hold a certificate, voucher, or comparable document from any rental assistance program.

Rents for HOME assisted units may not exceed the rent published by HUD for the applicable unit size, adjusted for any applicable utility allowance (known as the "High HOME Rent"). See 24 CFR 92.252(a)(1)(2). Please see Section 5.07 of the CPM for utility allowance requirements in HOME-funded units. Additionally, for projects with five or more units, at least 20 percent of the project's units must either be occupied by very low-income households paying 30 percent or less of their monthly adjusted gross income for rent, or must bear rents which are not greater than 30 percent of the annual income of a family whose income equals 50 percent of the AMI (known as the "Low HOME Rent"). See 24 CFR 92.252(b)(1)(2).

If a unit receives federal or state project-based rental subsidy and the very low-income family pays no more than 30% of the family's adjusted income as a contribution toward rent, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the federal or state project-based rental subsidy program. Tenants whose

incomes increase to more than 80 percent of AMI may continue to occupy their HOME-assisted unit provided they meet the requirements of 24 CFR 92.252(h)(i)(2).

2.04.04.D Regulatory Periods for Rental Projects

See 24 CFR 92.252(e) for information on the regulatory periods for rental projects.

2.04.04.E Regulatory Restrictions of HOME Rental Projects

Rental projects assisted with HOME funds must remain affordable for a period of between five and twenty years, and must meet all applicable requirements of 24 CFR 92.252 and 253. These sections require recipients to secure assistance provided to rental housing by means of a deed restriction or other similar mechanism that runs with the land.

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

2.04.04.F CHDO Multi-Family Rental Projects

In order for a HOME multi-family rental project to be considered a CHDO project, the project ownership structure must comply with the terms of 24 CFR 92.300. This section states that funds may be provided to a CHDO, its subsidiary or a partnership or a limited liability company of which the CHDO or its subsidiary is the sole general partner or sole managing member. If a CHDO owns the project in partnership, it or its wholly owned for-profit or non-profit subsidiary must be the sole general partner. In acting in any of the capacities specified, the community housing development organization must have effective project control. A CHDO

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applicant must state in its application and document in the project owner's organizational documents that the CHDO has effective project control.

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Section: 2.00 PROGRAM DESCRIPTIONS

Sub Section: 2.05 New York State Low-Income Housing Tax Credit (SLIHC) Program

#### 2.05.01 Summary

The New York State Low-Income Housing Tax Credit (SLIHC or State Tax Credit) was created in 2000 by Article 2-A of the Public Housing Law (The Law). The Law authorizes the Commissioner of DHCR to administer the SLIHC Program according to procedures established in 9 NYCRR Part 2040.14 (the SLIHC regulation) and in the same manner as the federal LIHTC Program, as authorized by Section 42 of the U. S. Internal Revenue Code (the Code).

Owners/investors may receive a dollar-for-dollar reduction on certain New York State tax liability to be taken over a 10-year period in return for building and maintaining affordable housing for income eligible tenants for the term project is subject to an HCR Regulatory Agreement (generally, 50 years).

The SLIHC Program differs from the federal 9% LIHTC Program by serving tenants with an income of up to 90% of AMI, as opposed to the federal LIHTC limit of 60% of AMI (80% AMI for LIHTC Average Income set-aside projects). SLIHC may therefore assist low-income households in those housing markets where the rents of conventionally financed rental housing are not affordable. SLIHC Program scoring, which includes many of the scoring criteria associated with 9% LIHTC, also allots scoring points for those projects that propose serving households in multiple income bands.

All processes, policies, and procedures applicable to the 9% LIHTC Program pursuant to the Code and the QAP, apply to the SLIHC Program except for specific programmatic requirements modified by the Law and the SLIHC Regulations. Therefore, the guidance provided in Section 2.03 pertaining to LIHTC applies to SLIHC except as otherwise noted below.

#### 2.05.02 Additional Definitions

LIHTC Program definitions, which are applicable to SLIHC, are set forth in the Code and Section 2040.2 of the QAP. Additional definitions pertaining to SLIHC alone are set forth in the Law and Section 2040.14(b) of the Regulation. SLIHC is also subject to federal LIHTC Regulations and other IRS and HUD guidance pertaining to the LIHTC Program.

2.05.03 Eligibility Requirements

This Section describes only specific SLIHC eligibility requirements that differ from the LIHTC Program. Unless otherwise specified below, LIHTC program eligibility requirements (see Section 2.03.03 of the CPM and the QAP) are fully applicable to SLIHC.

2.05.03.A Eligible Applicants/Owners

The same requirements under the LIHTC Program apply to SLIHC (see Section 2.03.03.A), except that the owner must also have New York State tax liability in order to utilize the State Tax Credit, unless the SLIHC allocation is bifurcated and transferred to a third party investor pursuant to the Law.

2.05.03.B Eligible Projects

The same requirements under the LIHTC Program apply to SLIHC (see Section 2.03.03.B of the CPM), except in the following manners:

- (i) Qualified low-income housing projects under SLIHC must meet one of the minimum set-aside of low-income units as set forth in Section 2014.14(b)(2) of the Regulation and the Code. However, any 9% LIHTC funding set-asides specified in the 9% RFP which may be made available under 9% LIHTC do not apply to SLIHC unless otherwise specified in the 9% RFP.
- (ii) State Tax Credit allocations are not subject to the Code requirement that 10% of the annual SLIHC allocations made be set-aside for qualified non-profit organizations.

2.05.04 Project Scoring and Ranking Criteria

SLIHC project applications are scored subject to criteria set forth in Section 2040.14(d) of the regulation.

2.05.05 Additional State Tax Credit Exceptions to 9% LIHTC

- The 9% LIHTC Program Requirements set forth in Section 2.03.04.A of the CPM pertaining to the Ceiling Allocation do not pertain to SLIHC.

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- Section 2.03.06 of the CPM, in regard to 4% LIHTC projects financed by Private Activity Bonds does not pertain to SLIHC.
- All references to the IRS Form 8609 Final Credit allocation, including those in Section 2.03.05.F, should be replaced with references to the NYS DTF-625 allocation form, which is used for the final allocation of State Tax Credit to a project.

#### 2.05.06 SLIHC Transfer

In 2018, the Law was amended to allow for the bifurcation and transfer of the SLIHC allocation from the recipient of the federal LIHTC allocation to a third-party investor. Prospective applicants which may propose utilizing SLIHC Transfer are advised to review additional HCR guidance (see <https://hcr.ny.gov/slihc-bifurcation-and-transferability-information>) and identify such a proposal in their initial funding application.

Project sponsors utilizing SLIHC transfer which obtain an HCR funding award are required to submit the documentation listed below, in a form acceptable to HCR, prior to construction financing closing and/or DTF-625 final allocation issuance. Such documents must be submitted in accordance with the above cited SLIHC Transfer website guidance. Templates of some of these forms may be obtained from your HCR Project Manager.

- (i) SLIHC Transfer Statement;
- (ii) SLIHC Transfer Contract (i.e., SLIHC Purchase and Sale Agreement);
- (iii) SLIHC Guaranty Agreement;
- (iv) SLIHC Guarantor's most recent audited financial statements (including a signed certification indicating the audited financial statement's representations of the Guarantor's assets and liquidity are accurate and provide for sufficient assets to cover any liabilities on the part of the Taxpayer, as determined by HCR should those Obligations not be met.);
- (v) SLIHC Transfer loan documents; and,
- (vi) SLIHC Bifurcation organizational chart (indicating transferor and transferee entities) and related organizational documents.

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HCR retains the discretionary authority to approve the use of SLIHC transfer on a project-specific basis, subject to a consideration of a number of factors, including project economics and financial benefit.

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Section: 2.00 PROGRAM DESCRIPTIONS

Sub Section: 2.06 Urban Initiatives (UI) Program

#### 2.06.01 Summary

**PLEASE NOTE:** The Urban Initiatives Program (UI) is currently administered in two parts by HCR. This manual should only be used for UI when incorporated with other funds as part of a larger 9% RFP project proposal administered by HCR's OF&D. All other UI funding is administered by HCR's OCR.

The purpose of the UI Program is to provide financial/technical grants to New York communities for the restoration and improvement of housing, commercial areas, and public/community facilities in urban neighborhoods.

#### 2.06.02 Eligible Applicants

Eligible applicants include not-for-profit corporations or charitable organizations, organized for a period of one or more years, which is either incorporated under the not-for-profit corporation law together with any other applicable law or, if unincorporated, is not organized for the private profit or benefit of its members.

#### 2.06.03 Eligible Projects

- 1) New construction, preservation, or improvement of residential housing units in a neighborhood.
- 2) New construction, preservation, or improvement of local commercial facilities and public facilities or other aspects of the area environment when carried out in connection with or incidental to a program of housing activities.

Applicants must have an ownership interest in a project during the contract period.

#### 2.06.04 Eligible Areas

Eligible areas are neighborhoods within a municipality, having a population of 25,000 or more with established boundaries consistent with a determination of neighborhood eligibility under Article 16 of the PHFL. A substantial proportion of the residential population must be



persons of low income, and may include populations with persons of special needs with unmet housing needs.

2.06.05 Eligible Occupants/Beneficiaries

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

2.06.06 Eligible Project Costs

UI funds may be used for material expenses related to the proposed project incurred subsequent to contract document execution including: the costs of acquisition; construction; repair; renovation; rehabilitation; demolition; and clearance and sealing of any building or other structure. Eligible project costs also include fees to consultants retained by the qualified applicant to provide the eligible activities listed in Section 2.06.03.

2.06.07 Ineligible Project Costs

In no event shall program funds be used for:

- 1) acquisition of property unless such acquisition is in conjunction with the construction, repair, renovation, demolition, clearance, or sealing of any building or of the structure;
- 2) payment of salaries and wages to employees of the qualified applicant, unless specifically authorized and set forth in the UI Program and Regulatory Agreement, and Grant Conditions Compliance Enforcement Mortgage; or,
- 3) other costs or expenses directly related to the applicant's employees or consultants, including office rentals, office equipment, fringe benefits, office expenses, or other administrative expenses.

2.06.08 Regulatory Term

The regulatory term for a project with UI funds is seven years. Projects that are awarded UI grant monies will be required to sign and record a UI Program and Regulatory

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Agreement and a Grants Conditions Compliance Enforcement Mortgage. The contract documents must be recorded in the municipality in which the project is located.

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Section: 2.00 PROGRAM DESCRIPTIONS

Sub Section: 2.07 Rural Area Revitalization Program (RARP)

#### 2.07.01 Summary

**PLEASE NOTE:** The Rural Area Revitalization Program (RARP) is currently administered in two parts by HCR. This manual should only be used for RARP when incorporated with other funds as part of a larger 9% RFP project proposal administered by HCR's OF&D. All other RARP funding is administered by HCR's OCR.

The purpose of the RARP program is to provide financial/technical grants to New York communities for the restoration and improvement of housing, commercial areas and public/community facilities in rural communities.

#### 2.07.02 Eligible Applicants

Eligible applicants include not-for-profit corporations or charitable organizations, organized for a period of one or more years, which is either incorporated under the not-for-profit corporation law together with any other applicable law or, if unincorporated, is not organized for the private profit or benefit of its members.

#### 2.07.03 Eligible Projects

- 1) New construction, preservation or improvement of residential housing units in a neighborhood.
- 2) New construction, preservation or improvement of local commercial facilities and public facilities.
- 3) Other aspects of the area environment when carried out in connection with or incidental to a program of housing activities.

Applicants must have an ownership interest in a project during the contract period.

2.07.04      Eligible Areas

Towns and villages with populations of less than 25,000 are eligible areas. A substantial proportion of the residential population of the region must be persons of low income and may include population for persons with special needs with unmet housing needs requirements.

2.07.05      Eligible Occupants/Beneficiaries

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

2.07.06      Eligible Project Costs

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

- 1) the costs of acquisition, construction, repair, renovation, rehabilitation, demolition, clearance and sealing of any building or other structure; and,
- 2) fees to consultants retained by the qualified applicant to provide the eligible services listed in subdivision 1) of this section.

2.07.07      Ineligible Project Costs

In no event shall program funds be used for:

- 1) acquisition of property unless such acquisition is in conjunction with the construction, repair, renovation, rehabilitation, demolition, clearance, or sealing of any building or of the structure;
- 2) payment of salaries and wages to employees of the qualified applicant, unless specifically authorized and set forth in the RARP Program and Regulatory Agreement, and Grant Conditions Compliance Enforcement Mortgage; or,
- 3) other costs or expenses directly related to the applicant's employees or consultants, including office rentals, office equipment, fringe benefits, office expenses or other administrative expenses.

2.07.08      Regulatory Term

The regulatory term for a project with RARP funds is seven years. Projects that are awarded RARP grant monies will be required to sign and record a RARP Program and Regulatory Agreement and a Grants Conditions Enforcement Mortgage. The contract documents must be recorded in the municipality in which the project is located.

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Section: 2.00 PROGRAM DESCRIPTIONS

Sub Section: 2.08 Rural and Urban Community Investment Fund (CIF) Program

#### 2.08.01 Summary

The Rural and Urban Community Investment Fund Program (CIF) will provide loans to eligible applicants to develop and complete a retail, commercial, or community facility that is or will be part of, or which is in close proximity to and clearly serves the needs of, tenants residing in an Affordable Residential Development financed by an HCR agency. CIF funds may also be used for the preservation of multifamily affordable housing in rural areas of the State (Rural Preservation Projects) that may or may not have a retail, commercial, or community facility space. Please review the latest 9% RFP or Open Window CIF RFP as applicable, for more specific program details.

#### 2.08.02 Statutory Provisions

The CIF Program was created by Article 27 of the PHFL. HTFC has been designated to administer the CIF program, and within the limit of the funds available for the program, HTFC is authorized to make payments, grants or loans available to eligible applicants to develop eligible projects. The following are the specific legislative findings on which the CIF program is based:

- 1) There exists a serious need to assist communities with the creation and improvement of affordable housing; and,
- 2) There exists a serious need to assist communities with the creation and improvement of the retail, commercial, and community facilities related to mixed use affordable residential developments.

#### 2.08.03 Eligible Applicants

Eligible applicants shall include a not-for-profit corporation or charitable organization, or the wholly-owned subsidiary of such a corporation or organization, or a private for-profit developer such as a person, corporation, partnership, or limited liability company.

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#### 2.08.04 Eligible Areas

Rural areas of the state shall mean cities, towns, and villages having a population of less than 25,000 as determined by the last federal decennial census. Urban areas of the state shall mean any unit of local government within the state with a population of more than or equal to 25,000 persons as determined by the last decennial census.

#### 2.08.05 Fund Allocation

Sixty percent of the total funds shall be awarded pursuant to this article in any fiscal year shall be allocated to projects located in urban areas of the state. Forty percent of the total funds awarded pursuant to this article in any fiscal year shall be allocated to projects located within rural areas of the state.

#### 2.08.06 Eligible Occupants/Beneficiaries

Affordable Residential Development shall include residential units that are rent restricted and occupied by persons and families whose income does not exceed ninety percent of AMI for the county in which the project is located as calculated by the United States Department of Housing and Urban Development. Please review the latest CIF RFP for more specific program details.

#### 2.08.07 Match Requirements

A one-third match of requested CIF amount shall be required of any eligible applicant. The match may include but is not limited to cash, developer equity, deferred developer fee, donated property, materials, or labor, and other non-HCR/HFA resources as qualified in the applicants development budget and supported by funding commitment documentation. The match requirement may be reduced or eliminated for projects located within a declared disaster area and if the proposed project clearly addresses an impact resulting from the disaster. Applicants seeking a reduction or elimination of the CIF matching requirement must request a waiver detailing the basis for the reduction or elimination at least 10 business days prior to the application submission.

2.08.08      Allowable Developer Fee

CIF funds may not be used for payment of a developer fee on the non-residential portion of the project with the exception of non-residential space in a 9% LIHTC project which qualifies as a Section 42 9% LIHTC eligible CSF. If the applicant is requesting a developer fee on the Section 42 9% LIHTC eligible CSF space, HCR will not allow for the maximum amount of CIF to be awarded to the project. The CIF award will be reduced by the amount of the fee budgeted.



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Section: 3.00 MULTIFAMILY FINANCE 9% RFP PROCESS

Sub Section: 3.01 Introduction

The Multifamily Finance 9% RFP (9% RFP) Process has been adopted by HCR, acting through HTFC and DHCR, to efficiently administer capital programs supporting affordable housing. The 9% RFP process is the method by which applicants may request full or partial funding from HCR to undertake housing projects, and by which applications for funding are evaluated. Through the 9% RFP process applicants may apply for funding from a number of HCR administered programs. However, application content, submission timeframes, and specific review steps will vary, depending upon the program(s) from which funds are being requested.

Subject to availability, applications for funds from the following programs will be accepted until the deadline date specified in the most recent HCR-issued Notice of Funding Availability (NOFA) or Notice of Credit Availability (NOCA for LIHTC/SLIHC) and Request for Proposals (RFP), at which point they will be competitively reviewed pursuant to the criteria outlined in the most recent RFP:

- (i) Low Income Housing Trust Fund Program (HTF);
- (ii) New York State HOME Program (HOME);
- (iii) Low Income Housing Credit Program (LIHTC);
- (iv) State Low Income Housing Credit Program (SLIHC), and,
- (v) other programs identified in the NOFA and/or RFP.

Subject to the availability of funds, additional programs may be made available through the 9% RFP process.

Technical assistance may be requested at any time by applicants who wish to discuss a project or program that may result in a 9% RFP application. Section 3.03 provides specific details on the various types of technical assistance which may be provided by HCR and the process for technical assistance.

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Section: 3.00 MULTIFAMILY FINANCE 9% RFP PROCESS

Sub Section: 3.02 Application Review and Funding Process

The application review and funding process consists of the following steps, depending on the outcome of the various reviews conducted by HCR staff:

- (i) eligibility review;
- (ii) rating and ranking;
- (iii) project review;
- (iv) project recommendations based on criteria outlined in the 9% RFP;
- (v) HTFC Board Approval (for HTFC resources only); and,
- (vi) Outcome Letters.

HCR may complete additional application reviews as necessary. All Review steps are subject to quality control and supervisory reviews which occur on an ongoing basis.

#### 3.02.01 Eligibility Review

Applications are reviewed for eligibility to ensure that the proposed project meets all statutory requirements of the program(s) from which funds are being requested. HCR staff must ensure, at a minimum, that the application has demonstrated the eligibility of the:

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

#### 3.02.02 Rating and Ranking

All applications are rated according to the statutory, regulatory, and policy considerations of the applicable program(s). For the purpose of rating and ranking applications, when an applicant requests funds from two or more programs, HCR will utilize the scoring criteria for the program which would provide the greatest amount of financial assistance to the proposed project.

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While rating and ranking of an application is a critical factor in award decisions, it is only one of the considerations described in the 9% RFP.

#### 3.02.03 Project Review

Applications which are in the competitive scoring range will undergo a project review. Staff members from the Design Unit, EU, and UW Unit will conduct technical assessments of the project as proposed. Staff from Program Management and the OLA may also participate, as well as other HCR staff as deemed necessary, to conduct a thorough review of each application.

#### 3.02.04 Project Recommendations

After all reviews have been completed, the HCR Commissioner and/or HTFC Board of Directors will make final awards based upon the following considerations:

- i) the rating/ranking of all applications;
- ii) statutory and regulatory requirements, as discussed below;
- iii) the state's housing goals including but not limited to the preservation of affordable housing, community renewal, and collaboration with other government agencies;
- iv) the availability of program funds;
- v) geographic distribution of funds; and,
- vi) other criteria published in the 9% RFP.

If an applicant/developer/owner/manager and their principles are not in compliance with existing state contracts, or have participated in a publicly assisted program or project that has been determined to be out of compliance with statutes, rules, regulations, policies or agreements and has not taken satisfactory steps to remedy such non-compliance, HCR reserves the right to not award funding to such applicants.

HCR also reserves the right to award all, a portion of, or none of the program funds based upon funding availability, feasibility of applications received, the competitiveness of the applications, the applicant's ability to meet HCR criteria for funding, the applicant's ability to advance the State's housing goals, and HCR's assessment of cost reasonableness. HCR further reserves the right to review an application requesting project funds as an application for funding under other programs, for which the project is eligible, and to change or disallow aspects of the

applications received. HCR may make such changes an express condition of its commitment to fund the project.

The HTF Program has statutory requirements governing the distribution of program funds. Per statute, allocations of HTF cannot exceed the following limits based on the total program appropriation in any fiscal year:

- (i) 50 percent allocated to projects located within any single municipality.

### 3.02.05 Outcome Letters

Once the application review process has been completed and funding decisions have been made, Outcome Letters will be prepared and sent to all applicants informing them of one of the three possible review statuses their application has achieved:

- 1) Award Letters are sent to all successful Applicants;
- 2) Application Review Letters are sent to unsuccessful Applicants; or,
- 3) Application Disqualification Letters are sent to unsuccessful Applicants whose submissions did not pass Completeness, Threshold or Eligibility reviews.

Applications which are incomplete, ineligible, non-competitive, cannot satisfactorily address HCR's underwriting standards, and/or do not advance State housing goals will not be selected for funding. Applicants whose applications are not selected for funding will be invited to meet with the appropriate Regional Office to review their application through an exit conference.

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

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Applicants, whose applications are selected for funding, will receive an Award Letter congratulating them on their successful proposals, and notifying them that they will be contacted by an HCR project manager to arrange the Project Development Meeting as described in Section 6.02.01.

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Section: 3.00 MULTIFAMILY FINANCE 9% RFP PROCESS

Sub Section: 3.03 Technical Assistance for Capital Projects

General technical assistance may be requested at any time from the HCR regional office serving the area in which the applicant is considering a project. General technical assistance may include, but is not limited to, the following:

- 1) guidance on HCR program requirements and policies, as they pertain to a specific project;
- 2) assistance in determining the most appropriate HCR funding sources for the proposed project;
- 3) guidance in establishing a HDFC for a specific project;
- 4) review of development and/or operating budgets for a specific project;
- 5) assistance with reviewing and selecting a site or sites for a specific project; and,
- 6) referrals to other governmental agencies for funding and/or support services for a specific project.

Representatives of agency technical units may attend the meeting, depending on the nature of the request. In some instances, HCR's ability to provide technical assistance may be limited by the timeliness of the request for assistance or other factors. Priority will be given to not-for-profit applicants. Applications for general technical assistance will not be accepted during the application review period immediately following the 9% RFP application deadline. Requests for general technical assistance occurring immediately prior to the 9% RFP deadline may not be accommodated.

For site-specific technical assistance, please see the current 9% RFP at:

<https://hcr.ny.gov/multifamily> for technical assistance procedures.

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Section: 4.00 M/WBE AND FAIR HOUSING AND EQUAL OPPORTUNITY  
REQUIREMENTS

Sub Section: 4.01 Introduction

This Section describes the general program requirements and policies concerning  
Minority/Women-Owned Business Enterprises (M/WBE), Equal Opportunity, and Fair Housing.

It is organized under the following headings:

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

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Section: 4.00 M/WBE AND FAIR HOUSING AND EQUAL OPPORTUNITY  
REQUIREMENTS

Sub Section: 4.02 M/WBE Requirements

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

Goals for M/WBE participation are assessed and imposed on each State-assisted contract. Participation levels are based upon the availability of certified M/WBE to perform the work in the region in which the contract is to be performed and the total dollar value of the work to be performed in relation to the dollar value of the components of the contract scope. Contractors on HCR projects are required to submit quarterly reports detailing the utilization of M/WBE in performing the contract.

Article 15-A of the Executive Law and the M/WBE Regulations requires contractors to take affirmative steps to encourage the utilization of M/WBEs. Contractors are notified by HCR of such requirements. A Directory of Certified Minority and Women Owned Businesses can be downloaded from the NYS Empire State Development web site at: <https://ny.newnycontracts.com/?TN=ny>. Technical assistance is offered by HCR's Department of Empowerment, Compliance and Opportunity (DECO). DECO can be reached at [econ.opportunity@hcr.ny.gov](mailto:econ.opportunity@hcr.ny.gov).

#### 4.02.01 Utilization Plan

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



4.02.02 Methods for the Participation of M/WBEs

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

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

In compliance with the requirements of Article 15-A, applicants must provide HCR with assurances that they will require contractors to take specific affirmative steps, including, but not limited to, the above-mentioned items, in the form of the Agency's M/WBE Utilization Plan and Utilization Agreement which may be found at [hcr.ny.gov/mwbe-sdvob-forms](http://hcr.ny.gov/mwbe-sdvob-forms) under the "M/WBE & EEO" and "M/WBE Contract Documents" sections.

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Section: 4.00 M/WBE AND FAIR HOUSING AND EQUAL OPPORTUNITY  
REQUIREMENTS

Sub Section: 4.03 Equal Employment Opportunity

Equal employment opportunity (EEO) is guaranteed by Title VII of the Federal Civil Rights Act of 1964, as amended, and the New York State Human Rights Law which prohibits discrimination in employment on the basis of race, creed, color, disability, national origin, age, sex, marital status, or arrest record. Affirmative action is generally defined as any positive action that is intended to:

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

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

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

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

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must include in every subcontract the provisions of Article 15-A § 312.1 except as relates to employment outside of New York State.

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Section: 4.00 M/WBE AND FAIR HOUSING AND EQUAL OPPORTUNITY  
REQUIREMENTS

Sub Section: 4.04 Fair Housing Requirements

#### 4.04.01 Fair Housing Laws

Funded applicants are required to comply with all applicable federal, state and local fair housing and non-discrimination laws, including but not limited to the following:

- The federal Fair Housing Act;
- New York State Human Rights Law;
- Section 602 of the New York State Private Housing Finance Law;
- Section 504 of the Federal Rehabilitation Act of 1973;
- The Americans with Disabilities Act; and,
- The Violence Against Women Act and implementing federal and state policies and regulations.

In accordance with these laws, discrimination based on any of the following factors is prohibited in the conditions or privileges accorded with the sale, rental, or lease of any housing accommodation or in the furnishing of facilities or services in connection therewith.

- Race, Color or Ethnicity
- Religion or Creed
- Sex
- Gender
- Gender Identity or Expression
- Sexual Orientation
- Any prior arrests or criminal accusations that have been resolved in the applicant's favor, youthful offender adjudications, pending arrests with adjournments in contemplation of dismissal or a variety of sealed convictions listed in section 296(16) of the New York State Human Rights Law
- Disability
- National Origin, [Citizenship](#), [Immigration Status](#)
- Military Status
- Lawful Source of Income
- Age
- Marital Status
- Familial Status (e.g. whether they have children in the household)
- Adverse factors resulting from being a victim of domestic violence, dating violence, sexual assault, or stalking
- [Pregnancy-related condition](#)
- [Predisposing genetic characteristics](#)

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This list is not exhaustive of all factors and categories that are protected under law for a particular project.

In addition, to the extent that any approved tenant selection policies are based on an applicant or tenant being a veteran or having served in the armed forces, the tenant selection policy shall include those who served in the armed forces of the United States for a period of at least six months (or any shorter period due to injury incurred in such service) and (i) have been thereafter discharged or released from service, or (ii) are the spouse or surviving spouse of someone in (i).

Applicants and owners must incorporate the provisions of these laws into the development of marketing plans, tenant selection plans, admission standards and policies, and waiting lists for housing units to be constructed or rehabilitated with State funds.

#### 4.04.02 Affirmative Fair Housing Marketing Plans

Applicants and owners of projects must comply with HCR fair housing policies and procedures, including, but not limited to those set forth in the Affirmative Fair Housing Marketing Plan Guide for Managing Agents, Owners and Developers, as may be updated from time to time. The Guide can be found at the following link: <https://hcr.ny.gov/marketing-plans-policies>.

All HCR-financed projects must submit and obtain approval from HCR's Fair and Equitable Housing Office (FEHO) of (1) a Project Summary and Certification form (the "Short Form") which must be approved by HCR prior to construction finance closing, and (2) an Affirmative Fair Housing Marketing Plan (the "Long Form"), which must be approved before any marketing and leasing activities can begin. Limited waivers for these requirements may be granted by FEHO but only in limited circumstances and on a case-by-case basis (e.g. 4 units or less). As part of this approval process, FEHO reviews, among other things, any preferences in tenant selection, marketing plans to reach those least likely to apply, tenant selection policies and lotteries, and reasonable accommodation procedures.

### Forms and Timelines for New Construction

Affirmative Marketing Plan Guidelines and forms may be found at: <https://hcr.ny.gov/marketing-plans-policies>. Projects are under a continuing duty to check this site and use the most updated forms and guidance available on the site.

#### Project Summary and Certification Form (the “Short Form”)

A Short Form must be approved by FEHO prior to closing of construction financing. The completed form must be submitted at least 60 days prior to closing. All preferences must be listed in this Short Form for approval by FEHO. Also see Section 7.05.01 General Tenant Selection Process for requirements regarding screening and suitability for tenancy.

#### Affirmative Fair Housing Marketing Plan (AFHMP) (“the Long Form”)

The Affirmative Fair Housing Marketing Plan form must be submitted to HCR no later than 240 days (8 months) prior to anticipated date of occupancy. FEHO attorneys and staff will review the submission and all required attachments and provide comments. Once all comments have been addressed, FEHO will issue a conditional approval of the Long Form. Within 30 days of the conditional approval of the Long Form, the Project Rent-Up conference must be scheduled which will include a review of the lottery requirements. Also at this time, the final advertisement must be submitted with the final application and lottery dates for HCR approval. FEHO will issue the final approval of the Long Form once the Project Rent-Up Conference has occurred and the final advertisement is approved. Once FEHO has issued the final approval of the Long Form, the marketing and application period can commence. The marketing and application period can run concurrently and must be at least 60 days prior to application deadline. Marketing and outreach efforts must include those that are approved in the AFHMP. The final HCR-approved advertisement announcing the lottery must be posted on HCR’s website ([hcr.ny.gov/lotteries](https://hcr.ny.gov/lotteries)) at least 60 days prior to the tenant application due date. The project must also be posted on NYHousingSearch.gov, a FREE service provided by New York State to advertise and search for affordable and accessible housing. The service is also available through a toll-free, bilingual call center at **1-877-428-8844**. Representatives are available to assist with listings and searches.

In addition, projects must allow 10 business days after the application deadline before running the lottery.

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Please note that the "Fair/Equal Housing Opportunity" and the "Accessibility" logos must be displayed on all affordable housing advertisements. These logos can be found at:

<https://www.hud.gov/library/bookshelf/1/hudgraphics> and <https://accessibleicon.org/#use>.

#### **AFHMP Requirements for Existing Projects**

Once the projects are developed, Owners and their agents must submit for FEHO approval an updated Affirmative Fair Housing Marketing Plan if they are remarketing or repopulating a waitlist and a prior-approved plan is more than 5 years old, or when they are securing new HCR financing. If projects are remarketing or securing new HCR financing and their AFHMP was approved less than 5 years ago, they can complete a Fair Housing Recertification Form that can be provided by the HCR representative. Other instances where a Fair Housing Recertification must be completed and approved by FEHO are: Change in ownership/management, change in community or occupancy preferences, change in age restrictions, change in special needs units, change in number of affordable units and change in special needs units. Consult your HCR representative for a Fair Housing Recertification for each of these instances.

#### **Preferences in Tenant Selection**

All preferences in tenant selection must be approved by FEHO. Any proposed preferences, including those for which projects received points under HCR's Qualified Allocation Plan for Low-Income Housing Tax Credits, or preferences for those involved in artistic or literacy activities, must be included in Affirmative Fair Housing Marketing Plan submissions, the Short Form and the Long Form for approval. Projects will be required to provide demographic information for the preference category to ensure that the preference does not disparately impact groups protected by fair housing laws. Projects proposing an established relationship with a public housing authority must execute a PHA Linkage Agreement (<https://hcr.ny.gov/marketing-plans-policies>).

Tenant selection and occupancy preferences, even when not intentionally discriminatory, may in practice deny equal housing opportunity or perpetuate segregation without justification and thus be prohibited by the Fair Housing Act and the New York State Human Rights Law. HCR's approval of any AFHMP containing any tenant selection or occupancy preferences does not constitute legal advice or its imprimatur of legality of the preference.

### Accessible Units

For projects that received points at application for proposing fully accessible and adapted move in ready units, Owners must provide a written agreement with one or more organizations experienced in serving the needs of persons with mobility, hearing and visual impairments. In this written agreement the service organization should confirm that there is a need for fully adapted units in their service area and must agree to notify potential tenants with mobility, hearing and/or visual impairments of the project and direct them on how to access the application to apply for a unit, lottery waiting list, as the case may be. Owners may not exclusively reserve fully adapted units for any one organization.

For all adapted accessible units, the following apply:

- The Owner/Managing Agent (“Housing Provider”) must continue to accept applications and keep the waitlist open for Accessible Units, even if the general waitlist is closed;
- All public listings, both in NYHousingSearch.gov and elsewhere, must show that the waitlist is open for those Accessible Units;
- For occupied buildings, a preference for Accessible Units must be given first to current tenants who are in need of the special design features of the unit, and second for those that are on the waiting list and/or apply to the project;
- For Accessible Units occupied by households that do not require the accessible features, the Housing Provider must facilitate a relocation to a comparable unit so that a household that requires the accessibility features can move into the Accessible Unit;
- In extremely limited instances, a Housing Provider may apply for a waiver to fill a vacant unit with a household that does not require the accessibility features. The Housing Provider must follow the requirements outlined in NYS HCR policy which includes robust outreach and a vacancy period, and the applicant must sign a lease rider that they will move to a comparable unit if the Accessible Unit is required by a household that needs the features of that unit.
- The Housing Provider must conduct continuing outreach to organizations that serve people with disabilities.



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More information about policies regarding accessible units is available here:

<https://hcr.ny.gov/marketing-plans-policies>.

#### **Senior Waivers**

Any restrictions based on age must be in accordance with the N.Y. Exec. Law § 296-2a(e) and the federal Fair Housing Act, 42 U.S.C. 3601 et seq. Marketing plans for projects serving older persons should also indicate how the project will be structured, either as a “55 or over” project, where at least 80% of occupied units are occupied by at least one person who is 55 years of age or older; OR as a “62 or older” project, where all occupants of the project are persons 62 years of age or older. (See Section 5.15 for further details). In HTFC projects which are jointly financed with the US Department of Agriculture Rural Housing Services, an elderly project is required to be occupied by persons 62 years of age or older, or by persons with disabilities of any age. In either case, applicants must obtain an exemption for the New York Division of Human Rights in order to develop housing that has age restrictions as part of its tenant selection policy.

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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.

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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.

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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](http://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):

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- 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;

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- (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](#)



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[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.

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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:

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- 1) Where public utilities are not included, the site must have the capacity to provide a cost effective on-site water and/or septic system.
- 2) For family projects, the site must be within a five-mile distance of a municipality that provides community services and retail establishments including a grocery store.
- 3) 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;

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- 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

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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

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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.

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- 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



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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.

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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.

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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

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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.

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- (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

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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

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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

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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.



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- (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

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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.

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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.

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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

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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.

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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.

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Comprehensive Market Study Required	Market Analysis Required
<ul style="list-style-type: none"><li>• LIHTC/SLIHC projects <b>outside</b> of the New York City</li></ul>	<ul style="list-style-type: none"><li>• Projects located in NYC regardless of size or type</li></ul>
<ul style="list-style-type: none"><li>• Non-tax credit projects of more than 15 units <b>outside</b> of the New York City</li></ul>	<ul style="list-style-type: none"><li>• Non- tax credit projects of 15 units or less</li></ul>
<ul style="list-style-type: none"><li>• Non-tax credit preservation projects of more than 15 units with average occupancy <b>below</b> 90% for the 12 months prior to application submission</li></ul>	<ul style="list-style-type: none"><li>• 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</li></ul>

- (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



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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.

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- 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 than the proposed rent affordability level. For example, a MIHP unit affordable to a household at 90% AMI may be rented to a household up to 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.

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- 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.

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**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.



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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,

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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.

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#### 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

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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,

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- (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.

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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%

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- 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.

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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.

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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

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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.

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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),

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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.

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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,

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- 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



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#### 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

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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).

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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.

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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.



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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.

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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.

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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;

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- 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.

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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,

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- 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.

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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](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](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](https://www.hud.gov/program_offices/administration/hudclips/handbooks/sech/13441)

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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

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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 be 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, if 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:



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(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

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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.

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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

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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:

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- 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,

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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 properly 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.

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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](http://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>.

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Section: 6.00 ADMINISTRATIVE PROCESSING REQUIREMENTS

Sub Section: 6.01 Introduction

#### 6.01.01 Summary

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

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Section: 6.00 ADMINISTRATIVE PROCESSING REQUIREMENTS

Sub Section: 6.02 Administrative Procedures and Requirements

#### 6.02.01 Project Development Meeting

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

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

#### 6.02.02 Funding Commitment Letter (FCL)

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

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

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

The terms of the FCL will provide for the delivery of the proposed housing product. Where an applicant is unwilling or unable to comply with terms of the FCL, funds for the project will be terminated, unless it is in the State's best interest to continue.

Applicants will be given 30 days from receipt of letter to review the FCL, and to return an original signed copy of the FCL to Hampton Plaza. The signature and return of the FCL by the applicant will indicate the acceptance of all terms and conditions set forth therein. If the applicant is unable to sign and return the FCL within the 30-day timeframe, HCR will consider this a failure to accept all terms and conditions contained in the FCL. This will have the effect of terminating the FCL and all terms and conditions will have to be reconsidered.

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

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ensure that no other alternatives to the requested changes(s) exist, and that the project would have scored highly enough to merit funding given the change in project scope. HCR will not approve changes in a FCL which affect the project's competitiveness or in other ways that would affect the outcome of the funding competition. HTFC Board approval will be required for any significant change(s), including any requests to increase HOME/HTF funding by more than ten percent or more above the award amount already approved by HTFC Board.

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Section: 6.00 ADMINISTRATIVE PROCESSING REQUIREMENTS

Sub Section: 6.03 Funding Increase Under HCR Programs

#### 6.03 Funding Increase Under HCR Programs

HCR will, in general, not approve any requests for funding increases in an amount above the project reservation or award amount due to costs that were not in the original development budget or because of loss of other funding sources identified in the application development budget. HCR expects that such cost increases or funding losses will be funded through completion guarantees, contingency funds, developer's fees and/or builder's profit. In projects where there is an identity of interest between the general contractor and the project sponsor, no increases in builder's fees will be recognized in HCR's evaluation of the increase request. To the greatest extent possible, project architects and/or engineers should review proposed changes to ensure maximum cost efficiency have been obtained with all design changes, consistent with HCR design requirements. Additionally, improved terms by banks, syndicators and builders should also be considered. The owner/sponsor must demonstrate to HCR's satisfaction that they have explored alternatives to reduce, offset and/or fund increases in costs.

HCR may consider requests for additional funding above the amount awarded due to unusual circumstances such as acts of God; changes in the laws applicable to low-income housing programs; changes in building codes; changes in Davis-Bacon wage rates; changes in local ordinances or regulations; or other circumstances that could not have been foreseen by the Owner/Sponsor. In the event there are circumstances that would justify additional funding, HCR will only increase its funding when the economic viability of the project is in jeopardy and when all the budgeted resources identified above have been exhausted.

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



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#### 6.03.01 Evaluation Milestones

Section 42 of the Internal Revenue Code (the Code) require that HCR underwrite each LIHTC project three times: at initial application submission, at Binding Agreement/Carryover and at the time of the project Owner/Sponsor's submission of documents for IRS Form 8609. To enhance HCR efficiency and to eliminate redundant procedures, all requests for additional funding should be submitted within the timeframe limitations described below. HCR will not entertain more than one request for additional funding for any one project unless there is a demonstrable error by HCR, or on an exception basis, as determined by HCR in its sole discretion. Any such funding increase will be provided in the form of increased LIHTC or capital subsidy financing, at the sole determination of HCR, subject to the availability of such funding and subject to HTFC Board approval, where applicable.

A request for additional funding can be made at any one of the following milestones:

- 1) Within 30 days of receipt of the initial HCR funding award letter, if the Owner/Sponsor should have any issues with the HCR recommended funding level, a revised underwriting will be considered by HCR upon written request. The Owner/Sponsor must demonstrate to HCR, in writing, that HCR misinterpreted information in the application.
- 2) Prior to construction closing a request for additional funding should be made no less than 60 days prior to LIHTC Reservation letter expiration date, or construction closing date, if earlier.
- 3) During the project construction period, such requests for increased funding will not be accepted during the construction period unless HCR determines, in its sole discretion, that emergency remedial action is required for the project to be completed. Should HCR determine that a funding increase has been satisfactorily documented and is necessary, the funding increase may be provided in the form of a supplemental LIHTC Carryover Allocation, consistent with the Code, or an amended HTFC Funding Commitment Letter providing increased capital subsidy financing, subject to availability.
- 4) At Substantial Completion, HCR will only consider for increased funding those additional documented project costs that resulted from events that were completely beyond the control of the Owner/Sponsor. Pursuant to 3) and 4) of Section 6.03.01, Owner/Sponsors requesting a funding increase are advised that any such requests for

additional LIHTC in the form of a supplemental Carryover Allocation must be consistent with the pertinent provisions of the Code. That is, the Code prohibits the allocation of credit in a year subsequent to the calendar year in which the project was placed in service. For multiple building projects, this limitation would apply to the date the first building is placed in service.

6.03.02      Underwriting Parameters

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

- 1) The HCR project underwriter, in conjunction with the HCR supervising underwriter and HCR architect, if applicable, will make recommendations to the OF&D Executive Staff as to whether the additional expenses or loss of funding are necessary to the project and whether the additional project costs are reasonable based on HCR experience with similar projects. Costs not deemed essential to the project will be required to be paid for by the Owner/Developer and will not be considered eligible for additional funding.
- 2) HCR staff, including the underwriter, architect, if applicable, and project manager will make recommendations to the OF&D Executive Staff as to whether cost increases for items deemed necessary for the project or the loss of funding resulted from events that were within or beyond the control of the Owner/Developer using the categories below as a guide.

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

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

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

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

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

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

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

6.03.03 Methodologies for Determining Cost Sharing

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

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

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

- a) any developer fees in excess of a 10% fee, based upon developer fee eligible costs (as described in the Qualified Allocation Plan Section 2040.3(g)(2)(ii) and CPM Section 5.05(vi)) and as recognized in the original award, will first be contributed back to the project by the Owner/Developer to pay for cost increases. In addition, if there is an identity of interest between the project owner/developer and the builder, at least 50% of builder's profit, as recognized in the original award, will first be contributed back to the project. Any remaining financing gap after accounting for these actions and any other actions taken will be paid for by equal cost sharing (50/50) between HCR through additional funding by HCR and by the Owner/Developer through deferred developer fees or other contributions. However, HCR may elect to require the Owner/Developer to pay a larger share of any cost increase that HCR determined could have been mitigated by the Owner/Developer.

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

- a) any developer fees in excess of a 10% fee, based upon developer fee eligible costs (as defined in the Qualified Allocation Plan Section 2040.3(g)(2)(ii) and CPM Section 5.05(vi)) and as recognized in the original award, will first be

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contributed back to the project by the Owner/Developer to pay for cost increases. In addition, if there is an identity of interest between the project owner/developer and builder, at least 50% of builder's profit, as recognized in the original award, will first be contributed back to the project; and,

- b) any remaining financing gap after accounting for these actions and any other actions will be paid for by cost sharing between HCR and the Owner/Developer. HCR may contribute up to 20% of such costs as determined by HCR through additional allocations, and the balance of any remaining financing gap for all cost increases shall be paid for by the Owner/Developer or through non-HCR funds.

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

- a) the financing gap attributable to significant, unexpected increases in mandated Davis-Bacon wage rates will be paid for by cost sharing between HCR and the Owner/Developer. HCR may contribute up to 80% of such costs as determined by HCR through additional allocations, and the balance of any remaining financing gap for all cost increases shall be paid for by the Owner/Developer or through non-HCR funds.

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

#### 6.03.04 Process for Requesting Additional Allocations

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

The request shall include:

- Original Forms (Underwriting Application Worksheet) and the proposed amended Forms.
- Chart indicating items that changed, original cost, actual cost, change in cost, and a concise narrative explaining the reason for each change.

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

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

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Section: 6.00 ADMINISTRATIVE PROCESSING REQUIREMENTS

Sub Section: 6.04 Assignment and Transfer of Awards and Commitments

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

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

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

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

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

No transfer or assignment can occur unless it is demonstrated that the new applicant has sufficient development and management experience. If a project is transferred to homesteaders or a self-managed cooperative or condominium association, HTFC will require that regulatory monitoring responsibilities remain with the original applicant. If an HTF or HOME award granted to a not-for-profit or Community Housing Development Organization (CHDO) is requested to be assigned to a private developer, the approval of the assignment is conditioned upon HCR's annual HTF awards being below the private developer limit per the HTF statute, and HCR's annual HOME awards meeting the HOME Final Rule requirement that at least 15% of NYS HOME allocation is made to CHDO's.



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Section: 6.00 ADMINISTRATIVE PROCESSING REQUIREMENTS

Sub Section: 6.05 CHDO Determination Process

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

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

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

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Section: 6.00 ADMINISTRATIVE PROCESSING REQUIREMENTS

Sub Section: 6.06 Development Team Member Change

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

- 1) Cover Letter, providing an explanation for the proposed change in the development team member, identifying any impact on the project's current approved budgets, and how the new development team member was selected;
- 2) Exhibit A-3, Development Team Summary
- 3) Exhibit 3, Development Budget <https://hcr.ny.gov/capital-project-forms>;
- 4) Exhibit 5, Operating Budget <https://hcr.ny.gov/capital-project-forms>;
- 5) Updated Organization Chart, if any change in the general partner or project ownership is proposed;
- 6) Development Team Summary, and any other pertinent Application Items that have been impacted by the change, i.e., Attachment B-2 Project Narrative;
- 7) Development Team Omnibus Certification <https://hcr.ny.gov/capital-project-forms>;
- 8) For any proposed change to the project's developer, owner, GC/Builder and Management Agent, a current (i.e., no more than six months old) Accurint/LexisNexis Comprehensive Business Report, or the equivalent report generated by another law service, for the new proposed corporate entity, including an explanation of any open liens, judgement, tax warrants or other items which might pose a financial/legal risk to their participation the financed project (unless the new entity has been vetted by HCR in the last 12 months);
- 9) For any proposed change to the project's developer, owner, GC/Builder and Management Agent, a current (i.e., no more than six months old) Accurint/LexisNexis Comprehensive Person Report, or the equivalent report generated by another law service, for the principals of the new proposed corporate entity, including an explanation of any open liens, judgement, tax warrants or other items which might pose a financial/legal risk to their participation the financed project (unless the principals of the new entity has been vetted by HCR in the last 12 months);

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- 10) Proposed GC/Builder's contract for a change in the GC/Builder, if applicable; and,
- 11) Any proposed agreement with the new entity participating in the project, such as a new co-general partner for changes in the ownership structure, new development consultant, new architect, or new management agent as applicable.

Contact your assigned project manager for the forms listed above.

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Section: 6.00 ADMINISTRATIVE PROCESSING REQUIREMENTS

Sub Section: 6.07 Project Development Tracks

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

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

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

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

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

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

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manager with staff from the Asset Management Unit of the Office of Housing Preservation. The purpose of this meeting is to review any statutory and/or regulatory requirements regarding rent-up, tenant selection, and occupancy requirements of the project. Please see Section 7 for all Project Operating and Management Requirements.

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

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

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

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

During construction, the majority of the construction related correspondence will be through the HCR Design Unit architect. At approximately 75% construction completion, the applicant/owner must request a Rent-Up Conference through the project manager with staff from the Asset Management Unit of the Office of Housing Preservation. The purpose of this meeting is to review any statutory and/or regulatory requirements regarding rent-up, tenant selection, and occupancy requirements of the project. Please see Section 7 for all Project Operating and Management Requirements.

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

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

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

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

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

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

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

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

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

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

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

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



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Section: 6.00 ADMINISTRATIVE REQUIREMENTS

Sub Section: 6.08 Construction Processing Requirements

#### 6.08.01 Pre-Construction Meeting Requirements

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

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

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

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

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

The awardee or their representative must prepare minutes of the meeting immediately thereafter, summarizing items discussed and specifying agreements made. Copies of the minutes must be distributed to each project participant, within 5 business days whether or not they attended the meeting.

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

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

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

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- (ii) completing, within the time frame specified in the contract, a project which meets all program requirements;
- (iii) assuring compliance with all Minority and Woman Owned Business Enterprise (M/WBE) and Equal Opportunity requirements;
- (iv) if applicable, assure compliance with all Federal Labor Standards (Davis-Bacon Related Acts) regulatory requirements;
- (v) processing and delivering all required paperwork regarding disbursement requests to the OF&D Project Manager;
- (vi) notifying the builder, private lender and any other funding source(s) (if applicable) and the Design Unit construction monitor of all construction work which is incomplete or incorrect;
- (vii) providing change orders for all changes in the work prior to enacting any changes;
- (viii) immediately notifying HCR if the contractor or subcontractor places a mechanic's lien upon the project;
- (ix) immediately notifying HCR if a stop work order is issued;
- (x) providing HCR as-built/record drawings and project warranties at the time of project close-out;
- (xi) ensuring that all required bonding, letters of credit, and/or retainages as required by the construction lender;
- (xii) ensuring that all environmental concerns are properly addressed;
- (xiii) participating in the project's final inspection; and,
- (xiv) ensuring compliance with all programmatic requirements triggered by public sources of funding.

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

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

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

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- (i) ensuring that the project is built in accordance with HCR approved construction documents and all applicable Federal, State, and local codes, rules and regulations;
- (ii) making periodic site visits, but no less often than once every two weeks, to determine the quality and progress of the work, and its compliance with HCR approved construction documents;
- (iii) issuing construction site visit reports to HCR and other interested parties;
- (iv) notifying the owner and Design Unit construction monitor of any deficiencies, and giving written notification to the contractor to correct deficiencies;
- (v) preparing and submitting any necessary reports advising the owner of problems, delays, changes, and disputes;
- (vi) preparing change orders;
- (vii) reviewing and approving shop drawings;
- (viii) participating in requisition meetings, punchlist, and final inspections;
- (ix) identifying punchlist items and amounts to be withheld pending their correction;
- (x) meet all requirements applicable to project architects under Section 5.10;
- (xi) certifying that the project has been completed in accordance with the HCR approved construction documents, including any change orders; and,
- (xii) preparing as-built/record drawings, if applicable.

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

#### 6.08.04 Roles/Responsibilities of the Builder

Builder's responsibilities include but are not limited to:

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

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

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

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

The OF&D project manager has the following responsibilities during the project construction period:

- (i) coordinating all project correspondence with the owner and with the HCR technical units;
- (ii) explaining to the owner all general disbursement and close-out procedures at the preconstruction meeting;
- (iii) reviewing and processing all payments, budget modifications, and award increase requests;
- (iv) notifying the owner and construction lender in writing of any construction problems that may prevent the HCR from executing its permanent take-out; and

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

6.08.06 Roles/Responsibilities of the Design Unit Construction Monitor

The Design Unit construction monitor is responsible for:

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

6.08.07 Roles/Responsibilities of the Design Unit Architect

The Design Unit architect is responsible for:

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

6.08.08 Roles/Responsibilities of the CEI Technical Assistance Provider:

The CEI Technical Assistance Provider is responsible for:

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

6.08.09 Responsibilities for Construction Documents

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

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

- (i) ensuring that the project architect maintains up-to-date plans, specifications, addenda, modifications and change orders, and that the OF&D Project Manager, Design Unit architect, and construction monitor receive such documents;
- (ii) ensuring that the builder or any other designated representative of the project owner obtains all necessary building permits, local approvals, licenses, etc., prior to starting project construction, and that the OF&D Project Manager and Design Unit architect receive such documents;

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

#### 6.08.10 Schedule of Values

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

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

#### 6.08.11 Payment for Stored Materials

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

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



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

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

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

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

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

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

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Section: 6.00 ADMINISTRATIVE PROCESSING REQUIREMENTS

Sub Section: 6.09 Change Orders/Escrow Accounts

#### 6.09.01 Change Orders

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

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

Change orders are subject to the maximum builder fees allowed by the program funding. For work scope performed by subcontractors, builders may only charge up to 10% to cover all builder's fees including but not limited to general requirements, general conditions (as defined in the Capital Programs Manual), builder's overhead, builder's profit, insurance and bonds.

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

All change order submissions must include the following:

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

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

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

#### 6.09.02 Emergency Change Order Requests

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

#### 6.09.03 Change Orders – Credit Standalones

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

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

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

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

#### 6.09.04 Escrow Accounts

On a case-by-case basis, OF&D may permit the establishment of escrow accounts for HCR projects which are financed in conjunction with other Federal, State, private, or municipal agencies. For HCR projects, funds may be deposited into the project's escrow account for disbursement during construction, in accordance with the owner's Construction Loan Agreement and the Escrow Agreement. The Escrow Agreement is a contract between the owner, HCR, and an escrow agent, which establishes the terms and conditions under which the escrow agent may disburse funds, how the funds will be held on deposit, and in some cases, the terms of the construction loan management. Escrow account management fees are negotiated on a case-by-case basis. All unexpended funds and interest earned on HTF/HOME or HDF project escrow accounts must be returned to HCR within 90 days of the Escrow Agreement's termination.

All escrow accounts holding HCR funds must be insured by the FDIC, with any funds in excess of the insured amount properly and adequately collateralized. Escrow accounts must be interest-bearing, with the interest accruing to HCR. Escrowed HCR funds must be invested in, or collateralized by HCR approved instruments, in accordance with HCR's investment policies.

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Section: 6.00 ADMINISTRATIVE PROCESSING REQUIREMENTS

Sub Section: 6.10 HCR Disbursement Procedures

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

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

#### 6.10.01 Construction Loan Progress Payment Requests

After executing the FCL and construction commencement, owners may request construction loan progress payments from HTFC for the disbursement of funds to pay for completed construction work, professional services rendered, fees paid or charges incurred with regard to the project's soft costs, or working capital expenses as delineated in the HCR approved Development Budget. If HTFC will be a co-construction financier with CPC or a bank lender, the budgets for all construction lenders should be consistent. Should changes in the budget be required, a Budget Modification Form (CD-139) must be submitted within 30 days to the OF&D project manager. A revised Development Budget showing the new proposed use of HTFC funds during construction must be submitted with the form. The Budget Modification Form can be found at:

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

HCR will only entertain payment requests for predevelopment or seed money funds from those awardees which have received a Funding Commitment, and which can document that costs have been incurred for eligible predevelopment expenses.

At the preconstruction meeting, the owner should establish a specific date and time that the monthly construction inspection and review of each disbursement request will take place by the owner, contractor, project architect, and Design Unit construction monitor. The owner should submit monthly progress payment requests to the OF&D project manager after each construction inspection meeting unless otherwise agreed to by HCR. If the monthly construction inspection meeting must be rescheduled, the owner must notify the project manager of the new date.

Rescheduling or postponing the monthly construction inspection meeting may result in delayed processing of the disbursement request.

Each progress payment request for completed construction work must have the required minimum retainage of ten percent of the construction cost withheld. Depending upon the conditions of the 100% performance bond or letter of credit, the retainage percentage may be higher than ten percent. Installation of the HCR project sign is a requisite for approval of first disbursement and photographic evidence of the sign must be provided.

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

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

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

- one original Request for Disbursement Form, reflecting updated disbursement amounts from all funding sources ([hcr.ny.gov/disbursement-forms-hcr-capital-projects](http://hcr.ny.gov/disbursement-forms-hcr-capital-projects)).
- Disbursement requests must be for whole dollar amounts only;
- one original AIA G702 Form (Application and Certificate for Payment);
- one original AIA G703 Form (Continuation Sheet);
- for HDF projects only, one Standard State Voucher;
- copies of HCR approved change orders for which work has been completed;
- invoices for professional service fees, subcontractors, suppliers, vendors and utility companies, acquisition expenses (when the full acquisition amount is requested), relocation assistance expenses, and, if applicable, statements of finance charges for lines of credit and/or interim loans which were approved in advance by HCR; and,
- receipts for eligible working capital expenses.

In addition to the above, owners of projects receiving HTF and HOME Program funds must obtain a notice of title continuation each time a disbursement is requested (except for predevelopment award disbursements). This assures HTFC that no liens have been placed upon

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the property since the last disbursement. Upon completion of the title update, the title company must directly notify the HTFC Finance Officer. The notification may initially occur via telephone, but must be confirmed in writing. The disbursement will only be released when the HTFC Finance Officer receives verbal notification of clear title from the title company. If, by the time the next disbursement request is submitted, the required written confirmation of clear title has not been received for the previous disbursement, the next disbursement will be held until written confirmation of clear title, current with the most recent disbursement request, is received (facsimiled confirmations are acceptable). The OF&D Project Manager will notify the owner immediately should a problem arise with the title.

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

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

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

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

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

When all items from the punch list inspection have been completed and/or corrected, and the local jurisdiction has issued a certificate of occupancy (C of O) or temporary C of O, a final inspection is to be scheduled by the owner/awardee. **Owners must provide the OF&D project manager and the Design Unit architect with notification 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). Final payment will not be processed by HCR until all punchlist items have been completed or corrected, construction is 100% complete, and all other closeout procedures have been satisfied. Depending on the condition of the completed work, status of closeout submissions, including third party certifications, the Design Unit may agree to allow the dwelling units to be occupied. All closeout submissions required 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.

6.10.06 Final Inspection Conference (All Development Tracks)

An inspection conference must be attended by the inspection participants immediately following the project's final inspection. The inspection participants must reach agreement on:

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

A mutually agreed upon final inspection report will be prepared by the owner, project architect, and Design Unit construction monitor based upon the results of the Inspection Conference. The project architect will also prepare a Certificate of Substantial Completion showing the amount of money to be withheld if any for incomplete/unsatisfactory work and/or outstanding change order work. A Permanent Loan Closing will not be scheduled if outstanding or unsubmitted change orders have not been received by the HCR.

The Design Unit will be able to provide their approval for permanent closing if all parties present at the final inspection conference agree to the incomplete/unsatisfactory work items. The

disbursement at the permanent loan closing will be reduced by a sum of two and one half times the value of incomplete/unsatisfactory work, or 5% retainage, whichever is greater.

6.10.07 Permanent Loan Closing Payment Requests

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

6.10.08 Required Forms and Documentation for Permanent Closing Payment Requests

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

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

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- (vi) final AIA G703 Form/AIA G703 (Continuation Sheet) Form showing holdback for construction related items, if applicable.

If the HTF/HOME award is being used to pay for budget line items other than construction costs, evidence of those costs needs to be provided (e.g., acquisition costs will require a closing statement to be submitted showing the purchase price, etc.). In addition, applicants must either provide wire instructions (wires can be paid the day of the closing), including the name and address of the bank receiving the HTFC wire, the electronic wire instructions, and the ABA number; or applicants can complete the ACH/Direct Deposit Authorization Form (paid within 2 days of the closing) at:

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

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

#### 6.10.09 Permanent Loan Final Payment Requests with a Holdback

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

#### 6.10.10 Permanent Loan Final Payment Requests with No Holdback

For projects moving to a permanent loan closing with no holdback, the owner must check the final payment box in Request for Disbursement Form Section F, Awardee/Owner Certifications. The Final Payment Form with all required documents must be submitted to the

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OF&D Project Manager. Original signatures are required on both forms in order for HTFC to provide the funds at the permanent loan closing.

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Section: 6.00 ADMINISTRATIVE PROCESSING REQUIREMENTS

Sub Section: 6.11 Permanent Loan Closing Procedures

#### 6.11.01 Permanent Loan Closing

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

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Section: 6.00 ADMINISTRATIVE PROCESSING REQUIREMENTS

Sub Section: 6.12 Cost Certifications

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

- LIHTC/SLIHC stand-alone projects: with the IRS 8609/DTF 625 request package.
- LIHTC/SLIHC with HCR subsidy funds: with the IRS 8609/DTF 625 request package.
- Any HTF/HOME/CIF or other HCR subsidy project: with the permanent loan closing package. This applies only to stand-alone HCR subsidy projects without LIHTC/SLIHC.

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

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Cost certifications for projects not funded with LIHTC/SLIHC must utilize the following format:

- (i) an opinion letter prepared by the CPA, certifying that the project audit was performed in accordance with generally accepted auditing standards and practices, and that there is no identity or conflict of interest between the CPA, and the owner, contractor, project architect, or any subcontractor; and,
- (ii) a schedule of costs in the same line item format as HCR's Development Budget.

HCR will review all cost certifications for compliance with the following requirements:

- (i) the final AIA G702 Form (Application and Certificate for Payment) for the project's construction, or the total payment requests if more than one prime contractor was employed to construct the project, must equal the amount expended by the owner and/or contractor from all funding sources;
- (ii) any line item costs budgeted in the Development Budget which were not actually expended must be deducted from the actual total project cost; and, all non-HCR funds which were to be used in developing the project, must have been received from the non-HCR funding source(s), and expended by the owner.

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Section: 7.00 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS

Sub Section: 7.01 Introduction

This section describes the general procedures for operating and managing any property funded by HTFC (including but not limited to) HOME, Housing Trust Fund, and Turnkey Programs. Owners should refer to the Regulatory Agreement for project specific obligations. Projects with LIHTC are also subject to certain post-construction operating requirements as set forth in the LIHTC statute and Regulatory Agreement. If requirements of different programs overlap, **the most restrictive provisions shall apply**. Where the requirements for the LIHTC and HTFC Programs differ, it is noted in the text. [HCR reserves the right to update these provisions to comply with any additional Office of Housing Management \(OMH\)/Statewide Asset Management Unit \(SAMU\) policies and procedures, as necessary.](#)

Current HCR SAMU forms and documents can be found at: <https://hcr.ny.gov/asset-management-forms-documents>.

Local Program Administrators (LPAs) acting under the HTF Program are responsible for enforcing all requirements in this section and for monitoring sub recipient projects in the same manner that Office of Housing Management (OHM)/Statewide Asset Management Unit (SAMU) monitors direct project recipients.

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

NYS Division of Housing and Community Renewal

Statewide Asset Management Unit 5th Floor

38-40 State Street

Albany, NY 12207



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Section: 7.00 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS

Sub Section: 7.02 Required Operating Accounts

#### 7.02.01 Establishing Bank Accounts

Project owners must adhere to the following general requirements for establishing bank accounts for the project:

- (i) all project funds must be held in accounts with banking institutions which are authorized to do business in New York State, which are insured by an agency of the federal government, and which have a proven record of investment in the community in which the project is located; project owners are responsible for ensuring that project funds maintained in such account(s) are within the insured amount limitations as established by the federal government;
- (ii) any account offset provisions are prohibited (the bank must waive any right to seize the account and cannot be used as collateral for other obligations);
- (iii) project funds may only be used for authorized purposes as described in this section, the Regulatory Agreement, and all attachments thereto;
- (iv) project funds must be maintained separately and distinctly from any other accounts maintained by the owner and/or managing agent for other projects or enterprises;
- (v) on demand deposit checking account must be maintained for each project; and,
- (vi) the interest earned on any interest-bearing accounts must remain in such account and may only be used for the specific purposes to which the account is dedicated.

Project owners must establish the following accounts for the operation of the project:

- (i) General Operating Account;
- (ii) Working Capital Fund Account;
- (iii) Operating Reserve Account;
- (iv) Replacement Reserve Account;
- (v) Real Estate Tax and Insurance Escrow Account; and,
- (vi) Tenant Security Deposit Account.

Each of the required operating accounts is described in the following sub-sections.

7.02.02 General Operating Account

The General Operating Account is used for the deposit of all project income (including rent receipts, housing subsidy payments, and non-residential rental income) and for the disbursement of all necessary project expenses (including deposits to the Real Estate Tax and Insurance Escrow Account and the Reserve Accounts). Any cash in excess of three month's rent roll which remains on deposit in the account at the end of the project's fiscal year must be transferred to the Operating Reserve Account. See Section 7.02.05.

7.02.03 Working Capital Fund Account

At the time of closing, funds will be deposited into the Working Capital Fund Account in an amount deemed adequate by HTFC to cover operating expenses during the project's initial rent-up period. Funds in this account may be used for expenses incurred in the project's first year of occupancy, such as fidelity bond and insurance premiums, real estate taxes, debt service, management fees, movable furnishings, and equipment which is essential for project operation and management, utility charges, and/or other initial project-related expenses approved by HTFC. Should any funds remain in the Working Capital Fund Account after the project has been in operation for one year, those funds must be transferred to the Operating Reserve Account, and the Working Capital Fund Account must be closed.

7.02.04 Reserve Fund Accounts

At the time of the permanent closing, the owner must establish an Operating Reserve Account and a Replacement Reserve Account with an initial deposit and distribution in amounts to be determined by HTFC on a project-by-project basis. Any withdrawals from these accounts will require the advance approval of SAMU. The owner will be required to make fixed monthly deposits to the Reserve Fund Accounts by transferring funds into them from the project's General Operating Account. The amount of such monthly deposits will be determined by HTFC on a project-by-project basis.

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

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

All Reserve Funds not currently required must be invested in insured certificates of deposit or United States securities, or invested in a manner which is wholly secured or collateralized by such securities. Any interest earned shall accrue to the Reserve Funds. Any HTFC-approved transfer or sale of the project during the Regulatory Period must include the transfer of all Reserve Funds to the new owner. (For more information on the sale or transfer of HTF or Turnkey Program projects see Section 2.01).

The owner may be required to deposit project reserves pursuant to a Custodial Agreement Account if the owner or managing agent has one or more prior instances of fiscal irregularities including but not limited to:

1. withdrawals without required approvals from DHCR or from any other financing source;
2. failure to pay taxes or other obligations when due; or,
3. any element of default.

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

#### 7.02.05 Operating Reserve Account

The Operating Reserve Fund Account is established to provide the project with a source of funds in the event that the project cannot meet its monthly operating expenses. Withdrawals will not be approved until the terms of the Operating Deficit Guarantee have been satisfied (if applicable).

An Operating Deficit Guarantee is required for LIHTC and/or SLIHC projects with a developer fee over ten percent of the acquisition and improvement cost associated with the LIHTC/SLIHC portion of the project. This guarantee must be set forth in the project owner's organizational documents.

These documents must provide a commitment to pay any operating deficits incurred during the first 36 months after the project is placed in service, including but not limited to debt service, accounts payable, and the funding of reserve accounts, up to a total of the applicable Operating Deficit Guarantee required by DHCR. The amount of such guarantee shall not be less than one-fifth of the developer's fee approved by HCR. For multiple building projects, the operating deficit guarantee

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period shall begin on the date the first building is placed in service and shall end thirty-six (36) months from the date the last building is placed in service.

All expenditures from the Operating Reserve Account will require the prior approval of SAMU. All requests for withdrawals from the Operating Reserve Account must be submitted in writing to SAMU. The following documents are needed to review a request for an operating reserve withdrawal submission. Additional back-up documentation may be requested on a case-by-case basis:

- a. Cover letter explaining the request.
- b. Related operating expense documentation.
- c. Current copy of the Operating Reserve Account bank statement.

For projects that do not include LIHTC or SLIHC as a financing source, owners are required to make monthly deposits to the Operating Reserve Account in an amount to be determined by HTFC on a project-by-project basis. The monthly Operating Reserve deposit will be made with monies withdrawn from the General Operating Account. If necessary, the monthly deposits may be adjusted by SAMU after initial project occupancy.

If, after paying the project's annual operating and maintenance expenses, there is annual rental income over and above an amount equal to three month's rent roll; such amount must be deposited into the Operating Reserve Account. If there are Operating Reserve Funds in excess of the maximum reserve amount which is prescribed by the Regulatory Agreement, such excess funds may be used subject to the approval of SAMU to either:

- (i) lower the current tenant rental charge(s) (provide a rent subsidy);
- (ii) increase the number of Persons of Very Low Income residing in the project;
- (iii) repay the HTFC loan or grant;
- (iv) for HTF Program projects, pay the Return on Equity as described in Section 2.01.04.D as applicable; or,
- (v) fund the purchase of furnishings or equipment essential for project operation and management; or to improve the enjoyment of the building.

**7.02.06**      Replacement Reserve Account

The Replacement Reserve Account is established to provide the project with a source of funds to replace such items as flooring; plumbing; heating; electrical; roof and security systems;

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appliances; window and door units; cabinetry; site apparatus; or other items approved, in advance, by SAMU. Replacements must be in accordance with requirements found in the Project's Regulatory Agreement and/or HCR Sustainability Preservation guidebook (found at <https://hcr.ny.gov/sustainability-guidelines>). A more complete listing of eligible/ineligible items can be found at <https://hcr.ny.gov/asset-management>.

No release from the project's Replacement Reserve Account will be permitted within the first five years following the permanent closing of the HTFC loan. Owners must make monthly deposits to the Replacement Reserve Account in an amount which HTFC determines is necessary to maintain an adequate Replacement Reserve for the project. The monthly Replacement Reserve Account deposit will be made with monies withdrawn from the General Operating Account. If necessary, the monthly deposit established by HTFC may be adjusted by SAMU after initial project occupancy.

All expenditures from the Replacement Reserve Account will require the prior approval of SAMU. All requests for withdrawals from the Replacement Reserve Account must be submitted in writing to SAMU. The following documents are needed to review a request for reserve withdrawal submission. Additional back-up documentation may be requested on a case-by-case basis:

- a. cover letter explaining the request, including a description/scope of work or replacement.
- b. three (3) bids for any expenditure exceeding \$5000 (or) a HCR waiver (if applicable).
- c. the proposed bidder's Liability Insurance Certificate.
- d. copy of existing warrantee.
- e. current copy of the Replacement Reserve Account bank statement.

#### 7.02.07 Real Estate Tax and Insurance Escrow Account

The Real Estate Tax and Insurance Escrow Account is established for the annual payment of real estate taxes and insurance. Each month, the owner must withdraw one-twelfth of the annual anticipated total of these obligations from the General Operating Account and deposit these funds into the Real Estate Tax and Insurance Escrow Account. Any interest earned becomes part of the Account. Withdrawals from the Account may only be made for the purpose of meeting real estate tax and insurance obligations.

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7.02.08      Tenant Security Deposit Account

Where tenant security deposits are required by a project's lease or are otherwise collected by the project owner, and the project contains six or more dwelling units, the project owner must place the tenant security deposits into an interest-bearing account in a banking organization with a place of business within New York State. The Account must earn interest at the prevailing rate earned by other such deposits made with banks in the area (see General Obligations Law 7-108).

For projects with less than six units, the tenant security deposits do not have to be placed in an interest bearing account, but must be held in a banking institution, until such time as they are repaid to the tenant, or applied toward damages. The project owner must provide each tenant with written notification of the name and address of the bank where the money is deposited, as well as the amount of the tenant's deposit. If the account is interest-bearing, the project owner is entitled to an administration expense fee equal to one percent per annum on the security money deposited. This shall be in lieu of all other administrative and custodial expenses. The balance of the interest earned is the property of the tenant and it must be paid annually to the tenant. If a tenant's lease terminates at a time when the banking organization at which the security money is deposited does not regularly pay interest, the project owner must pay the tenant any interest that it is able to collect at the time that the lease terminates. All tenant security deposits must be considered the property of the tenant, and may not be commingled with the personal monies, or become an asset, of the project owner.

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

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Section: 7.00 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS

Sub Section: 7.03 Insurance Requirements for Owners

The project owner is required to maintain the following insurances throughout the project's regulatory period. The ACORD Certificate of Liability Insurance Form should always be used. **The project's SHARS ID MUST be on each ACORD form.** On the ACORD, list additional as indicated for each type of insurance and use the agency address found in the project's Regulatory Agreement(s).

#### Liability Insurance

Comprehensive General Liability

- monetary limits of not less than \$1,000,000;
- contractual coverage;
- DHCR/HTFC and the State of New York to be named as additional insured and certificate holder; and,
- 15-day prior written notice to HTFC of cancellation, non-renewal or change in coverage.

#### Fire and Casualty Insurance

Fire and Casualty Insurance with Extended Coverage

- monetary limits commensurate with replacement value of the project;
- HTFC as mortgagee/loss payee; and,
- 15-day prior written notice to HTFC of cancellation, non-renewal or change in coverage.

#### Flood Insurance

- Flood insurance is required when a project is located in a 100-year flood plain established by FEMA.

#### Automobile Liability Insurance

Liability

- monetary limit of not less than \$1,000,000;
- coverage of owned (if applicable), hired and non-owned vehicles; and,

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

Worker's Compensation and Disability Benefits

Insurance Blanket Position Fidelity Bond

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

7.03.01 For Homesteading Owners

A homesteader is required to maintain the following insurances throughout the project's regulatory period.

Liability Insurance

Comprehensive General Liability

- monetary limits of not less than:
  - \$300,000 for one or two units
  - \$500,000 for three or four units
- contractual coverage;
- DHCR, HTFC and the LPA to be named as additionally insured; and,
- 15-day prior written notice to HTFC and the LPA of cancellation, non-renewal or change in coverage.

Fire and Casualty Insurance

Fire and Casualty Insurance with Extended Coverage

- monetary limits commensurate with replacement value of the project;
- HTFC as mortgagee/loss payee;
- 15-day prior written notice to HTFC and the LPA of cancellation, non-renewal or change in coverage; and,
- DHCR or HTFC (as applicable), and the LPA to be named as additional certificate holders.

7.03.02 Notification Required for Insurance Claims



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Owners are required to notify their assigned DHCR asset management representative regarding any claim on a project's insurance policy. Notification to the SAMU must be made within 24 hours of the event. Owner must provide a description of loss, copy of insurance claim and scope of work, if applicable, and any additional information, that may be required by the Agency in accordance with the terms and conditions of the project's Regulatory and/or Mortgage and Security Agreement.

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Section: 7.00 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS  
Sub Section: 7.04 Annual Reporting Requirements

Projects funded by the HTFC are required to provide an annual audit report to SAMU. The audit report must be prepared by a Certified Public Accountant (CPA) in accordance with accepted audit and accounting practices, and is due no later than 120 days after the end of the project's fiscal year. Electronic submission via email to the project's assigned HCR Asset Management Representative is encouraged. HTF sub recipients must submit their financial statements to LPAs within 120 days of the end of the sub recipient's fiscal year; the LPAs, in turn, must submit those statements received to SAMU within 30 days.

Audit reports must include the status of the project's operations, income received, and deposits and withdrawals made to all required operating accounts and comply with agency requirements. The CPA must certify that the owner has complied with all Program Rules and Regulations, the Regulatory Agreement, and any attachments thereto, including the maintenance of information and documentation regarding procedures for tenant selection and income verification and that all project reserves are properly funded. Mortgagors have been sent correspondence which describes the HTFC required additional disclosures and information to be included in the Annual Audit, as well as a notification that indicates that failure to include this information and schedule will result in the audit report being considered incomplete upon its receipt by the HTFC. The amount of excess income identified by your accountant is due within 30 days of the completion of the audited financial statement – no more than 5 months from the end of the projects fiscal year. The cost of the annual audit should be an itemized expense in the project's annual operating budget.

Owners who do not receive HCR Neighborhood or Rural Preservation Program funds, and who own and operate HTF or Turnkey-funded projects comprised of 20 or fewer units in total, may submit a compilation in lieu of the certified annual audit report. The compilation must be as prescribed by the American Institute of CPAs. A certification by the owner of compliance with the Program Rules and Regulations must be submitted with the compilation. If additional audits on the property are prepared, copies of each report must be provided to SAMU.

7.04.01 Performance Report

HTF project recipients **not receiving LIHTC** are required to provide an annual performance report. The performance report is due within 120 days of the close of the project's fiscal year. Performance reports must include a certification, signed by the owner, of the habitability of each unit. Also included in the report will be a description of the operation of the project including, but not limited to: marketing activities, status of waiting list, rents, vacancies, tenant or occupant selection activities, deposits to and withdrawals from reserve accounts, extraordinary repairs, replacements, or improvements.

An HTF sub recipient must submit its performance report to the LPA within 120 days of the end of the sub recipient's fiscal year; the LPA, in turn, must submit that report to SAMU within 30 days. The LPA must also submit its Performance Report, which includes a certification of the projects financial stability, income eligibility of occupants, status of sales or transfers of properties, and an inspection report of the project.

7.04.02 Operating Budget

An annual operating budget, submitted on HCR forms is due no later than three months before the start of the project's fiscal year. Submission is required regardless of increases in project rents. Forms can be found online at <https://hcr.ny.gov/asset-management>. Extensions may be granted, for good cause, upon written request.

Project operating expenses are the regular on-going costs incurred in the ordinary course of the project's business associated with the operation, management, and repair and maintenance of real estate property. These costs include property management fees, administrative expenses, monitoring fees, payroll, maintenance contracts, utilities, taxes, insurance, and required deposits to reserve accounts. Debt service payments, distributions, or fees (including for example, "management incentive" fees) paid to an affiliated entity (exclusive of property management fee paid to an affiliate of the ownership entity) are not considered operating expenses by HCR for purposes of its determination of net operating income.

7.04.03 Limitation of Profits and Return on Equity

Debt service on loans to the owner of the project or property from any principal of the project, general or limited partner, developer or other parties related to the project shall be payable only from project revenues after payment of all operating expenses, scheduled reserve payments and other approved mortgage debt service, unless otherwise provided for in the HTFC contract documents. Any expense payment to the owner of the project or property, principal of the project, a party related to the owner, partner or shareholder must be approved in advance by HTFC.

At the end of each fiscal year, following payment of any interest owed to HTFC, projects may, upon the prior approval of HTFC, distribute from any remaining Excess Income for such fiscal year. HTFC approval should be submitted in the form of a Return-on-Equity submission. Any part of the Return on Equity for any fiscal year which is not paid because of insufficient Excess Income for such fiscal year may be paid from Excess Income in the subsequent fiscal year. Any Return on Equity which is not paid in the subsequent fiscal year shall not be recoverable.

The following documents are needed to review a Return on Equity submission. Additional back-up documentation may be requested on a case-by-case basis:

- a. cover letter explaining the request,
- b. current operating budget (on HCR's form),
- c. evidence all required HTFC debt service has been paid and,
- d. current audit.

Project owners are responsible for ensuring requested amounts do not exceed the terms of the project's HTFC Regulatory Agreement.

7.04.04 Annual HOME Monitoring Requirements

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

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

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

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Section: 7.00 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS  
Sub Section: 7.05 Benchmarking

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

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

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

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Section: 7.00 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS  
Sub Section: 7.06 Tenant Management Requirements

This Section establishes tenant management requirements which are designed to:

- (i) meet the statutory provisions of the Programs;
- (ii) protect the State's investment in the units;
- (iii) establish a level of owner accountability which can be verified by DHCR; and,
- (iv) provide a basis for ensuring the future viability of projects.

7.06.01 General Tenant Selection Process

Units shall only be made available to eligible occupants as set forth in the project regulatory agreement.

HOME: Refer to Section 2.04.05.E

LIHTC blended project: Income limits for qualifying tenants depend on the project set-aside election and the requirements set forth in the project regulatory agreement.

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

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

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

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#### Fees

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

#### Occupancy Standards

Owners of HTFC funded projects are required to conform to the following occupancy chart:

#### OCCUPANT DENSITY RANGE\*

NUMBER OF BEDROOMS	MINIMUM	MAXIMUM	OPTIONAL MAXIMUM
0	1	2	2
1	1	2	3
2	2	4	5
3	3	6	7
4	5	8	9
5	7	10	11

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



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The “Optional Maximum” column outlines a 2023-implemented increase that new construction or existing projects may go up to as long as the increased occupancy standard does not conflict with:

- Certain housing programs and government policies that may have legally required occupancy policies (such as federal Section 8 programs and foster care placement, 18 NYCRR 442.6); or
- Local fire, housing maintenance and/or other governmental occupancy laws or codes.

An Owner/Managing Agent should seek a waiver from their relevant NYS HCR representative if a request is made for a unit to deviate from previously approved NYS HCR occupancy standards. They must also seek a waiver if they want to increase occupancy standards beyond the ones set forth in the chart above. A project may go above the maximum limit for the household size for a specific unit if it is reasonable to do so. The United States Department of Housing and Urban Development has issued guidance on what this standard of “reasonable” constitutes. Several factors have to be taken into consideration such as: the size of the bedrooms and the unit, configuration and physical limitations of the unit, age of the children, state and local laws on occupancy limits and fire codes, and other relevant factors (e.g., if the house provider has made discriminatory comments, or only enforced their occupancy policy on families with children).

Owners must establish a Transfer Policy to outline procedures for required transfers to comply with occupancy standards above, as well as to address internal transfers. Should the owner at any time be unable to lease the project's units in accordance with the occupancy standard requirements set forth above, the owner may submit a written request to SAMU for a waiver of these requirements.

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

**Applicant Assessment Policies for Credit and Criminal Legal System Involvement**

Unless specifically required by other funding (such as federal Section 8 requirements), Owners are not required to conduct credit and criminal legal system background checks. To the extent they do, Owners must implement HCR’s policies for assessing applicants based on credit or their history of criminal legal system involvement found at: <https://hcr.ny.gov/marketing-plans-policies>. This means that Owners must conduct an individualized assessment based on various limited factors laid out in

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the two policies. Worksheets are available to guide the tenant selection process based on credit and justice involvement. Use of these worksheets will be monitored on all site visits.

Blanket rejections based on credit or criminal legal involvement are prohibited except in extremely limited circumstances. Applicants must be provided 14 business days before being rejected on either of these factors to provide additional explanatory or mitigating information.

Examples of factors cannot be the basis of rejections include, but are not limited to:

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

#### **Project Specific Requirements**

Project owners should refer to the project regulatory agreement for project-specific requirements. Records must be available on site to document compliance with special needs programs and/or special population set-asides.

#### **HTF Projects undergoing Rehabilitation or Conversion**

The following apply to HTF Program projects only:

- (i) legal occupants of a property rehabilitated under the HTF Program who continue to occupy the property during the rehabilitation are entitled to continue such occupancy once the project is completed;

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- (ii) legal occupants of a property rehabilitated under the HTF Program who are temporarily relocated during such rehabilitation may not be permanently displaced; and,
- (iii) subsequent to rehabilitation or conversion, an eligible occupant must be a person of low-income at the time of application for occupancy of the unit.

**HOME Projects undergoing Rehabilitation or Conversion**

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

**HTF Program Tenant Selection**

The owner must give preference to eligible persons or families with the lowest possible incomes, taking into consideration the income requirements of the project. Preferences must also be given to persons or families whose current housing fails to meet basic standards of health and safety, and who have little prospect of improving the condition of their housing except by living in a project assisted by the HTF Program.

**Lottery Requirement**

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

**Turnkey Program Tenant Selection**

With regard to tenant selection for the Turnkey Program project units, the owner must ensure that, unless waived, in writing, by HTFC, at least 30 percent, but not more than 70 percent of the tenants are persons with incomes at public assistance level or persons or families receiving benefits pursuant to Section 131A of the Social Service Law. Furthermore, preference among the public assistance level tenants must be given to those who are referred by hotels, motels, or shelters operated by, or receiving direct or indirect payment from, a social services district or any other

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philanthropic or charitable facility providing such accommodations. To the extent economically feasible, the remaining tenants must be persons of low-income.

**For LIHTC blended projects, the previous sentence does not apply.**

**See Sub-Section 7.10.01.**

Owners of Turnkey Program projects must establish the following three waiting lists:

- (i) a waiting list for tenants with incomes at the public assistance level;
- (ii) a waiting list for tenants who are persons of low-income; and,
- (iii) a waiting list for tenants who are individuals with disabilities.

**General Tenant Selection from Waiting List**

HTFC Projects: Applicants will be selected via a lottery at initial rent up. After initial rent up, applicants will be selected from the waiting list(s) which match the lowest income eligible applicant with the correct basic rent level(s). If the income amount is the same, then the earliest dated application is selected.

HOME Projects: Applicants will be selected via a lottery at initial rent up. After initial rent up, applicants will be selected in chronological order as they are placed on the waitlist.

7.06.02      Tenant Affordability Requirements

Please note: The following requirements apply to all projects receiving subsidy financing from the Housing Trust Fund Corporation. These requirements are not applicable to units financed with only LIHTC or SLIHC.

At initial project rent-up, no unit may be leased to a household which would be paying housing costs (basic rent plus the allowance for tenant-paid utilities) which are less than 25 percent, or more than 48 percent of that household's income. However, if the household is a participant in a housing subsidy program (e.g., HOPWA, Section 8, City FHEPS) which has its own programmatic rent to income ratio or affordability requirements, the rent to income ratio described in this paragraph shall be waived as necessary to admit the applicant with the subsidy. For projects funded under the Middle Income Housing Program (MIHP), units above 60% AMI may be rented to households paying less than 30% of their income to rent **if** the project is located in a HUD-

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

After initial occupancy, vacated units may be leased in accordance with the requirements set forth above, except that the units may not be leased to a household which, after occupancy, would be paying housing costs which are less than 30 percent, or more than 48 percent of that household's income (subject to the same exceptions as above).

Should the owner at any time be unable to lease the project's units in accordance with the affordability requirements set forth above, the owner may submit a written request to SAMU for a waiver of these requirements. This requirement applies at household's annual recertification as well.

**7.06.03      Establishing Project Rents**

Project applicants/owners submit a rent plan with their application for funding which sets the rental charge for each unit based upon tenant income levels, number of bedrooms per unit, and the project's operating budget. The HCR/HTFC approved rent plan establishes the initial basic rent for each of the units in the project. The basic rent must be set so that project income is sufficient to support the project's expenses.

The project owner is to use the following procedures for establishing the basic rent and the annual changes thereto:

- (i) the basic rent for tenants with incomes at the public assistance level must be set at the Shelter Allowance level, and is not subject to an annual increase unless the Shelter Allowance is also raised by the State of New York;
- (ii) the basic rent for tenants with income above the public assistance level, but below 90 percent of the Area Median Income (AMI), will initially be set so that the project's rental income is sufficient to cover all projected operating and maintenance expenses, including Reserve Fund deposits; these basic rents may be skewed so that various

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

- (iii) for projects in jurisdictions which are subject to the Rent Stabilization Law (RSL) or the Emergency Tenant Protection Act (ETPA), the applicable Rent Guidelines Board increase (see Section 7.05.04 for a discussion of initial rents for projects located in areas subject to RSL or ETPA); and,
- (iv) for tenants whose incomes rise above the persons of low-income level as determined by the owner's annual income verification procedure, the rent will be adjusted to the lesser of the market rent or 30 percent of the tenant's annual income less the allowance for tenant paid utilities, but will not be lower than the approved basic rent except in HOME funded projects. In these properties tenants whose income exceeds 80% of AMI must comply with Section 92.252 (i)(2) of the final HOME rule. Persons of low income shall mean: for those cities with a population of one million or more persons, those persons or families whose household incomes do not exceed 80% of the median income for the metropolitan statistical area in which that project is located. For other portions of the State: a) and within a metropolitan statistical area, those persons and families whose household income do not exceed 90 percent of the median income for the metropolitan statistical area in which that project is located or 90% of the median income for the State, whichever is greater; or b) and without a metropolitan statistical area, those persons and families whose household income do not exceed 90 % of the median income for the county in which a project is located or 90% of the median income for the State, whichever is greater. Tenants who do not submit, or falsify their income verification documents, will pay the market rent (described below).

#### 7.06.04 Initial Project Rents in Areas Subject to the Rent Stabilization Law (RSL) or Emergency Tenant Protection Act (ETPA)

Owners of projects located in areas which are subject to the RSL or ETPA are required to register all units in the project with HCR's Office of Rent Administration. Owners are required to comply with the terms and conditions of a Rent Order which will be entered into between HCR's

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Office of Rent Administration and HTFC at the time of Final Closing. The Rent Order establishes the market rent and registers the basic rent as the lawful registered rent. For projects located in areas subject to the RSL or ETPA, owners will also be required to include in all leases a Rent Rider, specifying the terms and conditions under which the owner is permitted to make adjustments to the basic rent in excess of the increases permitted under RSL or ETPA.

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

**7.06.05**      Adjusting Project Rents

Once in operation for at least 12 months, project owners may increase basic rents. Beginning in the Fall of 2024, agency policy allows owners to implement rent increases (including first year rent increases) up to 8.4% without HCR approval. This allowable increase is based on the OCAF (HUD's Operating Cost Adjustment Factor) for New York State plus 3%. Each year after the annual determination of OCAF by HUD, the agency will release a memo advising owners of the allowable increase amount that will be effective for the following fiscal year's budget.

Regardless of the amount of the rent increase, it is the owner's responsibility to ensure that gross rent does not exceed applicable limits. The adjustment of project rents permitted under this section of the CPM does not unilaterally override the requirements of or enable increases to any more restrictive standard applicable to a unit, including but not limited to the following:

- Rent subsidy programs, including but not limited to the Empire State Supportive Housing Initiative (ESSHI);
- Federal housing programs, such as LIHTC, HOME, FHTF, etc.;
- Section 8 payment standards;
- Legal regulated rents established under the Rent Stabilization Law; and,
- Rents established pursuant to Article 2 of the Private Housing Finance Law (PHFL) in lieu of the procedures required in the administration of that program.

Furthermore, owners must adjust rents as necessary to remain in compliance when limits and/or utility allowances change.

Proper notification to tenants of rent increases is also the owner's responsibility. For increases of 5% or more, the owner must follow RPL §226-c which was changed by the enactment

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of the Housing Stability and Tenant Protection Act of 2019. The Appendix A of the required leases include language supporting the notification timeframe.

- (i) Rent increases at or below the allowable percentage require:
  - a. The submission of the Project's Operating Budget on HCR forms (9% HTFC Proposed Budget at <https://hcr.ny.gov/asset-management-forms-documents>).
  - b. The submission of a Rent Schedule (in format similar to the project's HTF Affordability Plan) noting current and new rent amounts per unit type at applicable income targeting OR the submission of Current and Proposed Rent Plans on HCR forms at <https://hcr.ny.gov/asset-management-forms-documents>.
- (ii) Rent increases above the allowable percentage require agency review and approval. The following documents are needed to review a rent increase submission. Additional back-up documentation may be requested on a case-by-case basis:
  - a. Cover letter addressed to the project's assigned Asset Management Representative that includes justification, effective date of proposed increase and a schedule of unit type (BR/AMI), current rents (\$), proposed dollar amount of increase (\$), proposed rents (\$), utility allowance per bedroom size (\$) and total housing costs (\$).
  - b. Current Rent Roll that includes: Apt. #, Tenant name, # of BRs, HH size, Date of move-in, HH income at MI, Targeted AMI levels, last income cert., HH income at last cert., tenant payment, utility allowance and rental assistance. Provide copy in EXCEL format, if software permits.
  - c. Current Utility Allowance (circle all tenant-paid utilities & note totals, for each BR size).
  - d. 9% - HTFC – Current Rent Plan (<https://hcr.ny.gov/asset-management-forms-documents>).
  - e. 9% - HTFC – Proposed Rent Plan (<https://hcr.ny.gov/asset-management-forms-documents>).



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- f. 9% - HTFC – Proposed Budget supporting the proposed rent increase with explanation of line-item budget increases (<https://hcr.ny.gov/asset-management-forms-documents>).
  - g. Last audit report, if not previously submitted (see Sub-Section 7.04).
  - h. If Managing Agent is submitting request, letter from Owner indicating their approval of the proposed rent increase.
- (iii) Rent increases at Unit Turnover can be made up to the most restrictive rent limit under the unit’s funding programs, for example, LIHTC maximum, Low HOME, Rent Stabilization, etc. It is the owner’s responsibility to determine limits applicable to the units in the project based on their funding sources, subject to the limitations outlined previously in this section.
- a. Notification to the Agency of the current rents in effect at unit turnover is required. Submit to the assigned Asset Manager the Rent Schedule that lists the rent amount for each type of unit (that includes BR size and income targeting) that will be charged to a newly occupying tenant with the effective date.
    - i. Changes to the rent amounts charged at turnover due to new income limits being released or new applicable utility allowance amounts will require a new Rent Schedule to be submitted with the effective date.

Budget and Rent Plan forms have been developed by SAMU’s Accounting Staff to streamline the review process. These forms are found at: <https://hcr.ny.gov/asset-management-forms-documents>. These forms must be used for items d – f above.

At the time of contract closing, OF&D will establish the market rent for each unit. This is the maximum amount of rent that can be charged for the unit if a tenant’s income increases to a point where they are no longer low-income, or if the tenant fails to submit or falsifies their income. No tenant may be charged more than the market rent to occupy a unit. The market rent is established as a function of the basic rent for the unit, plus an additional amount which would be payable if all HTFC payments, grants and/or loans made to the project were treated as a 30-year amortizing interest-bearing loan at the 30-year U.S. Treasury bond yield rate in effect at the time of the project’s contract closing. The market rent will be adjusted annually by an amount equal to the basic rent

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increase; however, in jurisdictions which are subject to the RSL or ETPA, the increase may not exceed the lawful annual increase authorized under such laws. If the project's operating budget does not warrant it, the owner need not increase basic rents.

Owners that wish to increase rents for projects not yet transferred to SAMU must reach out to the assigned OF&D Project Manager.

7.06.06      Private Housing Finance Law Section 610

Private Housing Finance Law ("PHFL") Section 610 program allows project owners of certain types of affordable housing to collect increased tenant- or project-based subsidies that are above the legal rent. HCR has released the application for owners/managing agents of NYS Homes and Community Renewal regulated properties to apply for approval to collect the higher rents under PHFL 610. (Please note, HPD has a different application process for eligible affordable housing developments taking advantage of PHFL 610.) HCR is currently only accepting applications for projects that meet all criteria listed below:

1. regulatory agreements with DHCR and/or HTFC;
2. subject to the Rent Stabilization Law (RSL)/Emergency Tenant Protection Act (ETPA); and
3. are in receipt of certain project- or tenant-based subsidies.

Projects that satisfy the above criteria and can demonstrate ongoing financial constraints may be able to obtain agency approval to participate in this program. Project owners/managing agents may not participate until they have received a written approval from the agency and a recorded amendment to their regulatory agreement(s) with DHCR and/or HTFC. Projects will be evaluated on a case-by-case basis and issues of non-compliance with all applicable HCR funding sources and rent registration status with the Office of Rent Administration will be considered in review. The rent registration portal opens on April 1st each year and registrations are due July 31st. More information can be found at <https://hcr.ny.gov/private-finance-housing-law-phfl-610>.

7.06.07      Tenant Income Verification

The owner is responsible for determining the income of tenants and verifying and certifying to HCR that such tenants are eligible for project occupancy. On move-in (prior to occupancy), the

tenant must submit to the owner a signed Tenant Income Certification. Third party source documentation/verification must be obtained for all income sources. The date of third-party source documentation/verification of income and assets must be within one hundred and twenty days prior to the effective date of the tenant certification. Guidance on the types of acceptable forms of verification and definition of assets and income to be included/excluded may be found in HUD Handbook 4350.3 rev-1, chg-4 (or its successor). A copy of the entire handbook and other HUD regulations can be obtained at <https://www.hud.gov/> or at <https://www.huduser.gov/portal/home.html>.

Tenant recertification to determine continued eligibility, to verify income, and to establish rental amounts, will be on a yearly basis. For 100% LIHTC buildings (not blended with HTF or HOME), see Sub-Section 7.10.04 regarding tenant income certification, and Sub-Section 7.10.05 regarding student eligibility. For 100% HTFC regulated projects, see Sub-Section 7.06.06 regarding tenant income recertification waiver. For HOME or HOME blended with 100% LIHC, owners should follow § 92.203(a)(1)(i) as referenced in 24 CFR 92.252 (h), which requires a full recertification of income every sixth year of a tenant's occupancy.

#### 7.06.08 HTF Tenant Income Recertification Waiver

For projects with 100% HTF regulated units, the HTFC is relieving the obligation to perform annual income recertifications with 3<sup>rd</sup> party income verifications. Projects may use a one-page resident self-attestation income verification form to ensure the project is complying with its area median income set-asides in accordance with its regulatory agreement. This form is available on our website. It is the identical form used for HOME funded projects. Still required are initial move-in certification, recertification due to changes in household composition, and submission by owners of annual reports as required in Chapter 7.00 of the CPM. As always, your cooperation during administrative and physical inspections performed by HCR staff is appreciated. Still required are HCR's signed lease (or a signed lease extension/renewal) and HCR's VAWA Lease Addendum.

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Sub Section: 7.07 Tenant Lease Agreements

All tenants must sign written lease agreements with the owner or the owner's managing agent. A lease agreement is a contract which assures the tenant exclusive possession of a specific dwelling unit and reasonable use and protection of the property in exchange for payment of rent. Lease agreements should be written for a minimum term of two years, although one year leases are permitted at the request of the tenant. Except where other more restrictive provisions are required by the RSL, ETPA or other applicable law, owners will use the HTFC Lease. This includes a HCR's Violence Against Women Act lease addendum available here: <https://hcr.ny.gov/marketing-plans-policies>. All HCR multifamily awardees ("Covered HCR Awardees") must use HCR's state issued VAWA Lease Addendum.

All HTFC leases, and subsequent Appendixes, must include the HCR approved market rent for the applicable unit. This is the maximum amount of rent that can be charged for the unit if a tenant's income increases to a point where they are no longer low-income, if the tenant fails to submit or falsifies their income or if the tenant is no longer eligible for rental assistance. No tenant may be charged more than the market rent to occupy a unit.

In the very limited instance, and pursuant to an approved waiver given by HTFC, where a unit that is designed with accessibility features for those with mobility or hearing/vision impairments is leased to a household who does not need the accessibility features, the lease must include a written rider that contains language that the applicant agrees to move, at Housing Provider's expense, within 30 days to an available, appropriately sized, non-accessible unit if the accessible unit is needed by an applicant or resident family with a mobility and/or hearing/vision Impairment. Specific required language is available in the link above.

Should the Owner wish to add language to the HTFC lease said language must be submitted for review and approval in the form of a Lease Addendum not later than 90 days following the date assigned for return of the executed HTFC commitment letter. During project operation, proposed revisions to the HTFC Lease and/or lease addenda must be submitted in the form of a Lease Addendum for review and approval to the assigned asset management representative prior to its use.

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In order to reduce processing time, review of proposed addendum/changes for compliance with applicable laws, by owner's counsel, is highly recommended.

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Sub Section: 7.08 Managing Agent/Tenant Management Services

Owners may manage their own project if they demonstrate management capacity. If, however, the services of a management agent are required, SAMU must approve managing agent compensation and the type and frequency of the residential services to be provided by the managing agent. Any changes to the Management plan and agreement must be approved in advance by HCR. The owner must determine the following:

- (i) the staffing necessary to provide such services; and,
- (ii) the fee for the performance of such services pursuant to a written agreement (fee may not exceed the reasonable and customary fee for such services in the area in which the project is located).

The managing agent must be licensed as a Real Estate Broker by NYS. Selection of a qualified managing agent shall be subject to the approval of HCR. The owner shall solicit bids, review bids, select a prospective agent, and submit its selection to HCR together with all bids. HCR shall review the bids, considering primarily the qualifications and quality of the bidders, and either approve the owner's proposed agent or disapprove the agent and direct the owner to select another agent from among those acceptable to HCR. If there are no other bidders, or no bidder acceptable to HCR, the owner will be directed to re-bid.

Continued eligibility to self-manage the project will be conditioned upon the satisfactory operation of the project as determined by SAMU. HTFC/SAMU reserves the right to remove/replace an owner as managing agent. HTFC/SAMU also reserves the right to approve, reject, or remove/replace an existing or proposed managing agent.

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Section: 7.00 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS  
Sub Section: 7.09 Asset Management Performance Reviews

Throughout the term of the HTFC funded project's regulatory period SAMU will conduct periodic reviews. These reviews may include reviewing the performance of the project recipient/sub-recipient through site visits, audits, review of specific records and documentation, and compliance with HCR agreements.

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

- Annual Audit Reports;
- General Operating Accounts (checking and savings);
- Reserve Accounts;
- Tax/Insurance Escrow Accounts;
- Operating Budget;
- Insurance Certificates;
- Performance Report;
- HOME Reports;
- Lottery Log;
- Waiting List(s);
- Rent Roll/Rent Plan/Schedule;
- Records of Individualized Assessments for those applicants with Criminal Legal System impact;
- Records of Credit Policy Individualized Assessments (Worksheets);
- Lease Agreement/Addenda;
- Tenant/Applicant and Move-Out Files;
- Management Agreement/Plan;
- Agent's Real Estate Broker License;
- On site physical inspections; and,
- Other such information as HCR may require in order to determine project recipient's compliance with the terms of recipient agreements, loan documents, and the rules and regulations of the HTFC.

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Section: 7.00 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS

Sub Section: 7.10 HTF/Turnkey/LIHTC Blended Projects

The purpose of this Section is to highlight specific areas where LIHTC requirements differ from HTF/Turnkey requirements. In order to receive LIHTC, the property owner and property manager must follow the Regulatory Agreement and IRS regulations and requirements. Failure to follow these requirements (e.g., renting a unit to an over-income tenant, charging rent in excess of the maximum allowable, renting to ineligible students (see Section 7.09.05) or inadequately documenting a tenant file) may result in the recapture of credit with interest and penalty.

#### 7.10.01 Maximum Income Limits - LIHTC Projects

Income limits for qualifying tenants depend on the projects set-aside election. On move-in, qualifying tenants in 20-50 set-aside projects may not have incomes which exceed 50% of the AMI by household size. Qualifying tenants in 40-60 and 25-60 set-aside projects may not have incomes which exceed 60% of the AMI by household size. Projects utilizing the LIHTC Income Averaging set-aside election may include qualifying tenants up to 80% AMI by household size, provided that the average imputed income limit for the entire project is at or below 60% AMI.

#### 7.10.02 Restricted Rent Limit

The maximum rent which a project owner can charge for a low-income unit is called the restricted rent. If this limit is met, the unit is considered rent-restricted. Gross rent (tenant rent payment plus utility allowance) for LIHTC units may not exceed 30% of the maximum area income limit using an assumed 1.5 persons per bedroom (1 person for units without a separate bedroom).

#### 7.10.03 Increases in Tenant Income - Next Available Unit Rule (NAUR)

Upon initial move-in certification, a household's annual income must not exceed the applicable area median income limit by household size. At recertification, if a tenant's income in a LIHTC unit has increased above the maximum allowable income limit, the unit continues to qualify for tax credit purposes as long as the tenant qualified on move-in and the unit remains rent restricted. A LIHTC unit occupied by a tenant whose income rises above 140% of the current maximum



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allowable income limit continues to qualify for tax credit purposes as long as the unit remains rent restricted and the next vacant unit of comparable or smaller size in the building is rented to a qualified LIHTC tenant.

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

#### 7.10.04 Tenant Income Certification

If all the low-income buildings in the project are 100% low income buildings, owners are not required to complete annual tenant income recertifications in projects not blended with HTF or HOME. If all the low-income buildings in the project are 100% HTF or HOME buildings, owners may use a one-page resident self-attestation. See paragraph 7.06.06.

#### 7.10.05 Students

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

## Glossary

Appraisal: The formulation and support of an opinion of value. Appraisals are usually required when real estate is sold, financed, condemned, taxed, insured, or partitioned. An appraisal is an estimate of value, and not a determination. The three major approaches to formulating appraisals are listed below:

- a) The Market Data Approach: The current sales prices of similar properties are compared and analyzed after necessary adjustments are made for any differences in the properties. This approach is used most frequently in evaluating residences, and is also called the "direct sales comparison approach."
- b) The Cost Approach: This approach involves an estimation of the value of the land (usually determined by the market data approach), plus the cost of replacement of any improvements to the land, minus depreciation. This approach is used primarily to estimate the value of service-type properties, such as churches and post offices.
- c) The Income Approach: This approach, frequently used to determine the value of income-producing properties such as apartment buildings, involves an estimation of value based on the capitalization of income and productivity. Often called the "income approach to value," it appraises the current worth of a property's future benefits.

Where applicable, an appraisal reconciles information from all three approaches. The three appraisal methods serve as checks on one another to evaluate a property. In determining the weight to be given to each approach, consideration is given to such factors as the type of property involved, the appraisal's purpose, and the adequacy of the compiled data.

Bid Document Review: A review of the final plans, specifications, and any addenda submitted prior to bidding the project. Bid documents are reviewed to ensure that: the applicant complies with conditions and scope of work included in the Funding Commitment and the documents comply with all relevant HCR design and development requirements.

Builder: A contractor, construction manager as constructor, or other entity recognized by HCR that is responsible to perform the work under the contract for construction and assumes the risk for the construction. Builders are to be responsible to ensure the completion of the project in accordance with all applicable provisions and are subject to the requirements indicated in the Capital Programs Manual.

Construction documents: As defined by the AIA; "drawings and specifications prepared by the architect setting forth the requirements for the construction of the project."<sup>1</sup>

Construction manager as constructor: In accordance with standard AIA contract relationships; an entity that serves as an advisor to the owner during the design phase of a project, including cost estimating and constructability reviews, and as a construction contractor during the construction phase. Construction managers as constructors shall complete the work in accordance with the

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<sup>1</sup> Hayes, R.L. (ed.) *The Architect's Handbook of Professional Practice, Fifteenth Edition*. Hoboken: John Wiley & Sons, 2014. Print.

construction documents and assume the risk for construction. In this capacity, the construction manager as contractor takes on the role of the “Builder” in accordance with the above definition.

Contingency:

**Hard Cost Contingency Budget Line:** The hard cost contingency budget line shall be for funds set aside for unforeseen circumstances occurring after a final development budget is established at the time of the construction loan closing. Hard cost contingency funds may only be expended to complete the project scope represented in the application for funding or agreed to at the time of the construction loan closing. Hard cost contingency funds shall not be used to otherwise expand the project beyond the project scope agreed to by the agency, unless approved in writing by HCR. Use of the hard cost contingency for changes to the construction work must conform to the applicable change order process in the CPM. HCR reserves the right to use hard cost contingency funds remaining at the time of the permanent loan closing to reduce funding to the project from any of the sources administered by HCR by an equivalent amount.

**Soft Cost Contingency Budget Line:** The soft cost contingency budget line shall be for funds set aside for unforeseen increases in project soft costs after the construction loan closing. HCR reserves the right to use soft cost contingency funds remaining at the time of the permanent loan closing to reduce funding to the project from any of the sources administered by HCR by an equivalent amount.

**Contractor:** (Also known as "Builder" or "General Contractor") A person or corporation who contracts with an owner or developer to supply labor and materials for a specific project. As defined by the American Institute of Architects (AIA); “one who enters in to a contract.....responsible for performing the work under the contract for construction.” Contractors shall complete the work in accordance with the construction documents and assume the risk for construction<sup>2</sup>.

**Dwelling Unit:** A private, self-contained group of rooms rented or owned by an individual(s) for independent living. Each dwelling unit shall contain kitchen facilities for food preparation, full bathroom/sanitary facility(ies), living space, dining space, sleeping space(s), and associated closet/storage spaces.

**Elderly:** A person 55 years of age or older as defined by the New York State Human Rights Law, Section 296 of the Executive Law.

**Elderly Project:** A project which excludes non-elderly persons based on age and as prescribed by the federal Fair Housing Act and the New York State Human Rights Law, Section 296 of the Executive Law.

**Equity and Regulatory Agreement:** (HTF Program term) A document which establishes the regulation of the operation of the project, pursuant to Article 18 of the PHFL, the regulations and the policies and procedures of the Corporation. The Agreement also establishes the permissible return on equity, if any.

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<sup>2</sup> Hayes, R.L. (ed.) *The Architect's Handbook of Professional Practice, Fifteenth Edition*. Hoboken: John Wiley & Sons, 2014. Print.

Family Project: A project containing a majority of dwelling accommodations for families of three or more persons.

Firm Commitment: A lender's irrevocable agreement to loan a specific sum of money at a specified interest rate for a definite term, subject to certain conditions.

Frail Elderly: Persons age 55 or older who require assistance with one or more activities of daily living or instrumental activities of daily living. Also persons age 55 or older who have limitations in mental capacity or emotional strength and motivation that affect their capacity to viably live independently; that is without assistance or intervention.

Funding Commitment: A letter sent by HCR that identifies all conditions to be met prior to Contract Closing and sets forth the amount of the payment, grant, or loan which will be provided for the project by HCR. Funding Commitments may be amended to adjust the funding amount based on the HCR approved Development Budget at the time of Contract Closing.

General Conditions: Services and obligations of the builder necessary to administer and facilitate the contract for construction. These services and obligations do not directly contribute to and are not specific to any scope of work required for the actual construction of the project<sup>3</sup>. Where differences in terminology occur, the following examples of General Conditions supersedes that indicated in the Design Handbook. However, this list does not alter the responsibilities and obligations of the Builder, or other project member, from that indicated in the Design Handbook. Examples of services and obligations categorized under General Conditions:

- Site administrative tasks:
  - Oversight of the various building trades, including conducting coordination meetings and inspections necessary to ensure these trades properly and safely perform and complete their particular scopes of work.
  - Establishing safety procedures and protocols and providing equipment necessary to ensure the work complies with governmental regulations for standard construction, including OSHA, NYDOL, other jurisdictional authorities, and industry practices for the protection of workers, other personnel on site and the general public at large.
  - Scheduling, reporting and tracking of the work including the cost of on-site labor and site specific administrative tools, such as computer software used solely for the subject project but not for the builder's business administration tasks.
  - Securing government approvals necessary for the completion or occupancy of the project.
  - Processing and reviewing various product information for compliance with the contract documents and subsequently processing those items requested by the architect, or owner for their approval.
  - Project closeout, including overseeing completion of punch lists, final cleaning, completing record documentation, including as-built drawings, other record documents, warranties, operation manuals, etc.
  
- Permits/Signage:

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<sup>3</sup> Hayes, R.L. (ed.) *The Architect's Handbook of Professional Practice, Fifteenth Edition*. Hoboken: John Wiley & Sons, 2014. Print.

- Building permit and other miscellaneous permits that may be required by the jurisdiction or other governmental authority.
  - Temporary project signage required by funding agencies, or other authorities.
- Site office (usually a job trailer):
  - Includes telephone, internet, electrical utilities.
  - Does not include temporary electricity, etc. required for the project construction.
- Labor, etc.:
  - Site Superintendent to supervise the work.
    - May be more than one person on large projects.
  - Common laborers.
    - To carry out general labor tasks necessary to supply the site with materials, for daily clean-up, and other miscellaneous tasks to support the construction activities.
  - Labor, services and materials to correct non-conforming work.
  - Post completion warranty period obligations.
- Facilities necessary to secure the site during construction:
  - Temporary perimeter fencing and barricades.
  - Basic security measures, such as locked access points and perimeter security cameras.
  - Fire protection.
  - Pest control during construction for common pests and infestations.
- General facilities for the workers:
  - First aid facilities.
  - Sanitary facilities.
- Field measurements:
  - Site layout to locate the building, site improvements and utilities.
- Site clean-up and maintenance:
  - Standard trash disposal fees.
    - Does not include specialized trash and recycling services such as those for green building programs.
  - Dust control.
  - Basic facilities required by governing authorities, such as truck wheel washing stations for standard soils, not for specialized containment of contaminated soils.
  - Rudimentary erosion and sedimentary controls, not heightened measures mandated by a regulatory authority.
- Costs not recognized as General Conditions:
  - Builder's Office Overhead Expenses.
    - Examples:
      - Project managers assigned to multiple projects.
      - Percentages of central office bills, utilities, staff, etc. pro-rated to the subject project.
      - Software used to manage and track multiple projects.

- Tools and equipment necessary to build the project.
- Services and facilities necessary for the work trades to perform their particular scope(s) of work.
- Construction bonds and insurance.
- See corresponding General Requirements list.

General Contractor: A contractor who does not personally do all construction work on a project, but requires the use of other specialty contractors, such as electrical or plumbing contractors, whose work the general contractor superintends. The general contractor takes on the role of the “Builder” in accordance with the above definition.

General Requirements: Costs of tools, services and equipment that directly contribute to a specific scope of work necessary to construction the project that are provided by the Builder and not included in a subcontract<sup>4</sup>. Where differences in terminology occur, the following examples of General Requirements supersedes that indicated in the Design Handbook. However, this list does not alter the responsibilities and obligations of the Builder, or other project member, from that indicated in the Design Handbook. Examples of tools, services and equipment categorized under General Requirements:

- Special services and obligations:
  - Specified inspections and testing performed by the builder.
  - Site safety plans and other enhanced safety measures, training and reporting required by the local jurisdiction when they exceed OSHA and NYDOL requirements for standard construction.
  - Commissioning (testing of mechanical or other systems).
  - Construction waste management associated with specialized trash and recycling programs, such as those for green building programs (not for standard construction trash removal).
  - Field engineering for special situations (e.g. engineering the underpinning of an existing structure).
  - Sustainable (green) building practices, procedures, and certifications.
  - Construction bonds and insurance.
- Temporary utilities, facilities, etc.: (those required for specific scopes of work and not associated with the site office, or basic safety or security obligations)
  - Temporary access roads and parking.
  - Temporary electric.
  - Temporary heating/cooling.
  - Temporary lighting.
  - Temporary protective walkways (e.g. where work blocks or endangers pedestrian sidewalks).
  - Temporary ventilation.

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<sup>4</sup> Hayes, R.L. (ed.) *The Architect's Handbook of Professional Practice, Fifteenth Edition*. Hoboken: John Wiley & Sons, 2014. Print

- Temporary water.
  - Construction platforms.
  - Dewatering for foundation systems.
  - Site shoring and existing building protection.
  - Staging areas (storage areas for materials and equipment).
- Equipment and tools:
    - Cranes.
    - Equipment mobilization (moving large equipment, necessary to construct the project, to the site).
    - Equipment rentals (large and small equipment and tools).
    - Generators.
    - Hazardous materials protection, equipment, containment and safety measures.
    - Personal protective equipment (e.g. hardhats, gloves, eye protection).
    - Safety nets.
    - Scaffolding.
    - Temporary elevators/hoists.
  - Costs not recognized as General Requirements:
    - General Conditions:
      - See corresponding General Conditions list.
    - Builder's Office Overhead Expenses.
      - Examples:
        - Project managers assigned to multiple projects.
        - Percentages of central office bills, utilities, staff, etc. pro-rated to the subject project.
        - Software used to manage and track multiple projects.

Grant Conditions Compliance Enforcement Mortgage: A document which secures the performance of the project recipient under the Construction Loan Agreement and the Equity and Regulatory Agreement by the placement of a mortgage on the project site in the amount of the grant.

Homesteading Project: a) A one-to-four unit dwelling, of which one unit is occupied by the property's owner as a primary residence (HTF Program); or, b) housing that is owned and made available by a public agency at favorable terms to low- or moderate-income homeowners.

Housing Trust Fund-funded non-residential Community Service Facility (HTF CSF): A HTF CSF is a non-residential facility within a HTF-eligible project which provides services to the low-income residents of the neighborhood/area in which the project is located. Up to 10 percent of the HTF award amount may be used to finance costs associated with the development of the HTF CSF.

Identity of Interest: A condition which exists when:

- a) there is any financial interest of the developer or owner in the general contractor, subcontractor, architect, or consultant which receives compensation in regards to the project;
- b) one or more of the officers, directors or stockholders of the developer or owner is also an officer, director, or stockholder of the general contractor, subcontractor, architect or consultant;
- c) any officer, director or stockholder of the developer or owner has any financial interest whatsoever in the general contractor, subcontractor, architect or consultant;
- d) the general contractor, subcontractor, architect or consultant advances any funds to the developer or owner;
- e) the general contractor, subcontractor, architect or consultant provides and pays, on behalf of the developer or owner, the cost of any architectural services or engineering services other than those of a surveyor, general superintendent, or engineer employed by a general contractor in connection with his/her obligations under the construction contract;
- f) the general contractor, subcontractor, architect or consultant takes stock or any interest in the developer or owner corporation, or partnership as part of the consideration to be paid it;
- g) any relationship (e.g., family) exists which would give the developer or owner or general contractor control or influence over the price of the contract or the price paid to the subcontractor, material supplier or lessor of equipment; or
- h) there exist (or come into being) any side deals, agreements, contracts or undertakings entered into or contemplated, thereby altering, amending, or cancelling any of the required closing documents, except as approved by HCR.

Inspection(s): In the context of the term “inspection(s)” referenced in this document for actions by HCR personnel or their agents, personal visits and site observations of the subject matter. “Inspection(s)” when referring to HCR personnel or their agents, shall not be deemed as observations, testing, or other actions normally undertaken by authorities having regulatory jurisdiction.

Outcome Letters: A letter which is sent to applicants after HCR’s review of a 9% RFP application, and which notifies the applicant has achieved one of the following statuses:

- 1) Application Review Letters – sent to unsuccessful applicants regardless of which program(s) funds were requested from.
- 2) Application Disqualification Letters – sent to unsuccessful applicants whose submissions did not pass Threshold or Eligibility reviews.
- 3) Award Letters – sent to all successful 9% RFP applicants. This letter notifies the applicant that the project has been selected for funding, and sets forth the number of units and award amount(s). The Award Letter is a preliminary notification, and is issued prior to the binding 9% LIHTC/SLIHC Reservation and/or Funding Commitment Letters.

Operating Reserve: A fund into which monies are set aside at the time of initial occupancy and each month thereafter for unanticipated operation and maintenance costs.



Person with Special Needs: Means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such impairment.

(a) Physical or mental impairment includes:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(b) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(c) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(d) Is regarded as having an impairment means:

(1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraph (a) of this section but is treated by a recipient as having such an impairment.

In addition, HCR and the Housing Trust Fund may designate specific classifications of persons who have experienced significant impediments to securing safe, decent, appropriate affordable housing as Persons with Special Needs. Such classifications can include, but may not be limited to domestic violence victims, homeless individuals or families, youth aging out of foster care and Veterans with any of the previously listed Special Needs.

PHFL: Private Housing Finance Law.

Pre-Construction Meeting: A meeting held after the Contract Closing, but prior to the start of construction, with all project participants in attendance to discuss the proposed work, set forth all program regulations, procedures and requirements, and delineate the roles and responsibilities of each project participant.

Predevelopment Costs Agreement: (HTF Program term) A document which sets forth the terms for partial disbursement of a Housing Trust Fund award for costs associated with the predevelopment stage of a project. If a project proceeds to construction, this agreement will be superseded by the Construction Loan Agreement.

Project Development Meeting: A meeting held, after a successful project applicant signs and returns its Funding Commitment letter, between the project team and OF&D staff to discuss the following project-related topics: roles of OF&D staff, program and development requirements, required documents, coordination with other agencies, timetables, fee arrangements, and any issues raised by the Funding Commitment letter or as a result of HCR's review of the project.

Replacement Reserve: The amount set aside at the time of initial occupancy, or each month thereafter, for the future replacement of items including, but not limited to, flooring, plumbing systems, heating systems, security systems, electrical systems, roofs, and window and door units, as approved by HCR.

Section 42 9% LIHTC eligible Community Service Facility (Section 42 9% LIHTC eligible CSF): A non-residential facility within a residential project located in a HUD-designated Qualified Census Tract (QCT) designed to offer and provide services to individuals who reside in the Credit project and to persons in the immediate community/neighborhood. The space must meet the statutory provisions pertaining to a Community Service Facility set forth at § 42(d)(4)(C)(iii) of the Internal Revenue Code, be regulated as a Community Service Facility, and use 9% LIHTC equity to pay for the Community Service Facility space.

Subcontractor: A builder/contractor who performs a specific portion of the work on a project, such as the plumbing, pursuant to an agreement with the project's developer or general contractor.

Single Room Occupancy (SRO): A dwelling unit consisting of a single room for residence. Each SRO unit shall contain a private full kitchen for food preparation, or a full bathroom, but not both. The building shall include either common food preparation or sanitary facilities, when not included in each SRO unit. Each SRO may include limited counter space with a small sink and a small under-counter refrigerator when a common food preparation facility is provided.

Total Development Cost (TDC): The sum of all eligible, necessary and reasonable acquisition, construction/rehabilitation, and soft costs for a project, as well as working capital and reserve fund capitalization costs, where applicable.