

Office of Finance and Development

Capital Programs Manual

Section: 5.00 DEVELOPMENT REQUIREMENTS

Sub Section: 5.01 Introduction

This Section describes the general development requirements of HCR for projects funded under the UF Process. Unless otherwise noted at the top of each heading, the development requirements apply to these programs:

- (i) the Low-Income Housing Trust Fund (HTF) Program;
- (ii) the Rural Area Revitalization Program (RARP) and Urban Initiatives Program (UI);
- (iii) the New York State HOME Program (HOME) and projects allocated Project Based Vouchers (PBV);
- (iv) Federal Low-Income Tax Credit (LIHC) Program; and,
- (v) New York State Low-Income Housing Tax Credit (SLIHC) Program.

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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 LIHC/SLIHC Program; or such other exceptions as described in the annual RFP.

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 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 determination 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 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 SEQRA review may be expedited.

For federally funded projects, HCR classifies each project according to categories established by SEQRA regulations at 6 NYCRR 617, and NEPA regulations at 24 CFR Part 58. Regarding SEQRA, if the municipality or another agency has or will conduct a coordinated SEQRA review, or in the case of a New York City Agency, a New York City Environmental

Quality Review (CEQR) process review, HCR may be able to concur with that determination. If the municipality or another agency has not or will not conduct a coordinated review, a determination by the HTFC will be required for all Unlisted and Type I Actions, which adds time to the review process.

Regarding NEPA, HCR is not able to rely upon another entity's NEPA review, unless HCR was included in that entity's publication. HCR can incorporate another entity's review into HCR's determination, which may significantly shorten the amount of time required to conduct the review; however, HCR would still be required to publish a notice and receive authority from HUD prior to providing environmental clearance. *Note that no choice limiting actions shall take place based upon another entity's NEPA clearance. HCR must conduct its own NEPA review for federal funding that it allocates to a project.* Failure to wait for HCR's NEPA sign-off 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 federally funded projects, NEPA;
- assessment, where required, of potential impacts of the proposed action on public health or the natural environment;
- review by the State Historic Preservation Office (SHPO) to determine the potential impact of proposed activities on archaeological, cultural or historic resources;
- compliance with specific environmental regulations (i.e., flood plain management, HUD noise regulations); and,
- investigation of liability associated with prior use of the site 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 at <https://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.*

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

5.02.04 Compliance With Other Specific Environmental Regulations

In addition to obligations under SEQRA, 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

A recent Phase I Environmental Site Assessment (ESA), prepared within twelve months of application submission, must be submitted for all project applications to determine the likely presence on the project site of hazardous materials, soil, water or vapor contamination, underground storage tanks, PCBs, asbestos, mold, lead-based paint and radon. If a project is approved for funding, suspected hazards must be characterized by follow-up testing and analysis. HCR will require remediation and final clearance documentation of identified hazards in accordance with regulations or guidance of agencies with jurisdiction over the hazard(s) present on the site.

All relevant regulations must be adhered to concerning site contaminant assessment, remediation and clearance. In addition, all HCR projects must address the following:

- 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, regardless of site location, HCR requires compliance with New York State Department of Labor Mold Rules; and,
- for moderate to high radon areas, radon mitigation systems must be designed in accordance with relevant EPA or ASTM Standards.

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:

- The SEQRA Short EAF, Part 1, completed, dated and signed by the project sponsor, including identification of the relevant tax lots (if a coordinated review has already commenced, the SEAF should be the same as the SEAF (or EAS, in the case of a project in New York City) submitted to the municipality);
- A copy of the SHPO CRIS submittal form;
- Phase One Environmental Site Assessment;
- Evidence of compatibility with existing zoning, or request for variance;

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- Any prior SEQRA or NEPA environmental findings issued by a local or other State Agency; and,
- Any other existing environmental documentation or permits, i.e., environmental site assessments, wetland investigations, State Pollution Discharge Elimination System (SPDES) permits, etc.

If the project is funded, the Environmental Analysis Unit (EAU) 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 EAU if they were not included in the project application and are applicable to the project:

- (a) Zoning change or variance;
- (b) Subdivision and/or Site Plan Approval;
- (c) Archaeological survey;
- (d) Village/Town/City Council Review/Approval;
- (e) Flood Plain/ 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 Storm Water 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) An up-to-date Phase I Environmental Site Assessment (ESA) 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 DHCR/HTFC. The Clearance Letter will usually be accompanied by a Site Alteration Letter (SAL), which identifies close-out items that must be submitted to EAU as construction progresses.

For HOME and PBV funded projects, HTFC must also publish an appropriate public notice in a newspaper of general circulation in the project area. Once environmental review for HOME and PBV projects is complete, EAU 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.

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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.

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

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

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- 3) The site must be accessible from a public road. For phased projects which include common infrastructure and access, please see Section 5.05 Project Costs (iii) Construction Costs and Soft Costs.
- 4) Elderly projects located within a rural community must have local public transportation or be within walking distance, (i.e., one-half mile) of essential services including a grocery store.

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

5.03.01 Site Control

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

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

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

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

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- 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. 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 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.

5.03.02 Site Acquisition

If the project includes the acquisition of property, the applicant must document the absence of encumbrances which would impair the applicant's ability to complete the project. The applicant is required to disclose any liens on the property and/or if the seller is subject to a bankruptcy proceeding or if the property is subject to a foreclosure proceeding. The site purchase price must be documented in a fixed price purchase contract or a fixed price option to purchase the property. Such contracts or options must allow for the site acquisition to occur in a timely manner.

Only that portion of the site's value which is necessary for the project may be recognized as a project cost. [If a parcel larger than is necessary for the proposed project is to be purchased in anticipation of future development, the acquisition cost must be apportioned between all potential phases. The applicant must provide a clear rationale for the basis of the apportionment.](#)

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

the surveyed premises; j) observable evidence of cemeteries; and k) significant observations not otherwise disclosed.

5.03.03 Appraisals

Acquisition costs for any individual site which exceed \$100,000 must be supported by an acceptable appraisal(s). If site acquisition costs exceed \$250,000, HCR may require two appraisals. 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.

In addition, HCR may also engage a review appraiser 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 date of the application.
Appraisals prepared more than six months, but less than one year, prior to the date of the application will be accepted, if the appraiser provides a letter confirming that the appraisal remains valid given current market conditions. In no instance will HCR accept an appraisal prepared one year or more prior to the date of application.
- 3) Appraiser must have the appropriate certification/license to undertake the scope of the project:

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- a. NYS Licensed Real Estate Appraiser: non-complex, residential properties with a transaction value of less than \$1 million and non-complex, nonresidential properties with a transaction value of less than \$250,000.
 - b. NYS Certified Real Estate Residential Appraiser: all residential, noncomplex properties and non-residential, non-complex properties with a transaction value of less than \$250,000.
 - c. NYS Certified Real Estate General Appraiser: appraisals on all types of real property regardless of transaction value or complexity.
- 4) Must comply with the Uniform Standards of Professional Appraisal Practice.
 - 5) Must use the income, market, and replacement cost approaches (see Glossary under "Appraisal") in estimating the fair market value of the site. For vacant land, or where both the prior and proposed use of the property is a one to four unit dwelling, only the market approach is required.
 - 6) For vacant land the "as is" value should be documented on a per acre basis (in NYC on a per buildable square foot basis) AND on a per unit basis.
 - 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 Physical Needs Assessment

The goal of the design requirements is to encourage the development of housing units that have a long life expectancy and that are durable, accessible, adaptable, relatively

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maintenance free, and provide quality living facilities. All applicants who are requesting funding for the renovation of an existing structure(s) must complete and submit the Physical Needs Assessment Form (PNAF), which is an attachment in the UF Project 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.

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Sub Section: 5.04 Design Requirements

The design requirements contained in the HTFC Design Handbook apply to all projects, funded with HOME or HTF or as otherwise specified in the annual RFP. The goal of the design requirements is to encourage the development of housing units that have a long life expectancy and that are durable, accessible, adaptable, relatively maintenance free, and provide quality living facilities. Housing planned for historic neighborhoods should reflect the historic and cultural environment in size, scale and material, while housing planned for rural areas should be developed to reflect the character of the environment. For detailed information refer to the current HTFC Design Handbook: <http://www.nyshcr.org/Publications/DesignHandbook/>.

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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 project cost (as defined in the Glossary) to ensure that acquisition and development costs fall within established guidelines. Applicants should note the following standards for the various costs included in the total project cost. These standards should be used as a guide only, over or under budgeting of costs will impact 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) 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 LIHC/SLIHC, acquisition costs of the building(s) may not exceed twenty-five percent of the total development costs of the project unless it meets the definition of a High Acquisition Cost project as set forth in Section 2040.2(i) of the QAP and QAP eligibility criteria at Section 2040.3(e)(15). See Section 5.03.02 above for cost expectations for projects purchasing land to be used for the development of multiple phases of housing.
- (ii) Total Development Cost (TDC) - should reflect the reasonable and necessary cost of producing low-income housing; cost effectiveness will be an integral part of the technical reviews.
- (iii) 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

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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.

- (iv) Builder's Fees - up to two percent of construction costs may be used for builder's overhead; up to six percent of construction costs may be used for general requirements; and up to six percent of construction costs may be used for builder's profit.
- (v) 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.
- (vi) Developer's Fee – a developer's fee will range 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. Developer fee **may not** be earned on project contingency. In preservation projects where the acquisition of a building includes the assumption of existing debt, no developer fee may be earned on those loans. The HCR approved developer fee is set at the time of the initial underwriting assessment, and subsequent increases in fee due to higher project costs will not be allowed. Projects that include project based Section 8 vouchers will be limited to a maximum fee of twelve percent (see Section 5.07 Subsidy Layering Review Process for detailed information).

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

- (vii) Project Contingency - up to ten percent of the sum of total soft costs and contractor's cost (excluding builder's fees) for projects involving the rehabilitation of a vacant building and small non-tax credit projects, and up to five percent for new construction projects and tenant occupied- rehabilitation/preservation projects.
- (viii) Professional Fees - these include all professional services which are necessary to project completion, e.g., fees for project architect, legal counsel, engineer, surveyor, accountant, environmental monitoring, energy efficiency modeling & testing etc. as required. The following specific limits apply to architect's and legal counsel fees:
 - a. Architect's Fees - should generally be approximately seven percent of construction costs with higher fees allowed for smaller projects, historic preservation projects or projects with other unique/difficult issues. Lower fees are expected for projects that are large scale, new construction, multiple buildings of the same design, and/or subsequent phases of a similar project.
 - b. Legal Fees – project sponsor attorney's fees are limited to one percent of the total development cost.
- (ix) Housing Consultant Fees – This refers to fees charged by housing consultants to perform development activities on behalf of the developer, e.g. packaging of

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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 LIHC/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.

- (x) Developer's Allowance – projects that do not involve financing with SLIHC or LIHC 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. 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 no more than 25% of the allowance may be paid during the project's development as a project cost for the performance of development duties. The remaining 75% must be held back as an incentive payment for successfully completing the project.

- (xi) 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 project 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.
- (xii) 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

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project has been in operation for one year should be transferred to the operating reserve.

- (xiii) 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. For HTF and HOME-funded projects which include LIHC and/or SLIHC as a financing source, an initial capitalization of the replacement reserve equal to \$1,000 per unit is required. HOME projects must utilize a non-HOME source, such as LIHC equity, to cover the replacement reserve capitalization. No initial capitalization is required for HTF or HOME projects which do not include LIHC or SLIHC as sources.

b. Operating Reserve (see Glossary for definition) - The operating reserve may be funded with annual contributions or with an initial capitalization (as reflected in the development budget). The applicant should review specific program requirements for each program under which the application is submitted to determine if the initial capitalization of operating reserves is allowed and under what circumstances. Applicants participating as private developers in the HTF and HOME Programs, and all applicants proposing projects funded with LIHC/SLIHC, are required to make a cash equity contribution to the Operating Reserve equal to the lesser of one percent of the total development cost or 50% of project gross rent. Those projects which capitalize the reserve in an amount equal to one percent of total development cost will be required to make annual contributions until the Operating Reserve reaches the cap of 50 percent of project gross rent.

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Sub Section: 5.06 Underwriting Standards

All funded projects are subject to the underwriting criteria set forth below. Where federal programs are involved (e.g. HOME, LIHC), 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 LIHC, 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 5.07 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 UF 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"> • LIHC/SLIHC projects outside of the New York City 	<ul style="list-style-type: none"> • Projects located in NYC regardless of size or type
<ul style="list-style-type: none"> • Non-tax credit projects of more than 15 units outside of the New York City 	<ul style="list-style-type: none"> • Non- tax credit projects of 15 units or less
<ul style="list-style-type: none"> • Non-tax credit preservation projects of more than 15 units with average occupancy below 90% for the 12 months prior to application submission 	<ul style="list-style-type: none"> • Non-tax credit preservation projects of more than 15 units with average occupancy of 90% or higher for the 12 months prior to application submission

- (a) A **comprehensive market study** must be performed by a disinterested, professional market analyst who has been pre-qualified by HCR. The study must comply with the HCR Market Study Content Guidelines detailed below in this section. A listing of the currently approved analysts is maintained on the agency website. Market studies performed by an analyst not on the pre-approved list will not be accepted. The market study must demonstrate that the proposed number and type of units meet an existing and identified need of low-income individuals and can be readily absorbed by existing need in the local area. Applicants proposing projects located within the City of New York may prepare a market analysis utilizing data and housing trends from the most current report issued by the New York City Rent Guidelines Board.
- (b) A **market analysis** is prepared by the project applicant. The market analysis should include:
- i. surveys identifying potential tenants and/or housing studies recently conducted by public agencies documenting need for the proposed units;
 - ii. information on waiting lists from other projects in the market area providing housing of the same general type and with comparable rents; and,
 - iii. commitments on leases and/or referral of households financially assisted by social services or public health programs.

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

HCR Market Study Content Guidelines

- A. Executive Summary. Each market study must include a concise summary of the data, analysis and conclusions, including the following:
- A concise description of the site, adjacent parcels and the immediately surrounding area;
 - A brief summary of the project including the type of construction, number of buildings, number and type of units, proposed rents and the proposed population to be served;
 - Precise statement of key conclusions reached by the analyst;
 - Precise statement of analyst's opinion of market feasibility including the prospect for long term performance of the property given housing and demographic trends and economic factors;
 - Provide recommendations and/or suggest modifications to the proposed project; and,
 - Provide a summary of market related strengths and/or weaknesses which may influence the subject development's marketability, including compatibility with surrounding uses, the appropriateness of the subject property's location, unit sizes and configuration, and number of units.
- B. Project Description. The market study must include a project description to show the analyst's understanding of the project at the point in time the market study is undertaken. The project description should include:
- Proposed number of units specifying the number of bedrooms and baths, income limit as a percent of Area Median Income (AMI), unit size in square feet and utility allowances for

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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

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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.
- A comparable property is one that is representative of the rental housing choices of the PMA and that is similar in construction, size, amenities, location, and/or age. A competitive property is comparable to the proposed project and competes at nearly the same rent levels and tenant profile, such as age, family, or income.
- Describe the size of the overall rental market in the PMA, including the proportion of market rate and affordable housing properties.
- Provide a narrative evaluation of the subject property in relation to the comparable properties, and identify the competitive properties, which are most similar to the proposed development. The analyst should state why the comparables referenced have been selected, which are the most directly comparable, and explain why certain projects have not been referenced.
- For each comparable property, provide comparisons to the subject rents based on the comparable property amenities, tenant paid utilities, location, parking, concessions, and rent increase or decrease trends.
- Only directly comparable projects should be used to derive the market rents in the PMA for use in evaluating the competitive advantage of the project rents. Market rents should be

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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 LIHC/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, LIHC, 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.
- 100% of the income eligible renter households should be included in the project demand pool; homeowners may not be included as prospective tenants in non-senior projects.
- In senior projects, no more than 10% of income eligible senior homeowners may be included in the demand pool.
- Calculate a total project capture rate based upon all units.
- Calculate separate capture rates for each targeted income limit by unit type in the subject property, incorporating HCR restrictions such as age, income, renters versus home owners, household sizes, etc. (For example, if a project has 30 one bedroom units targeted at 50% of AMI, 10 one bedroom units targeted at 60% of AMI, and 20 two bedroom units targeted at 60% of AMI, three separate capture rates must be calculated.)
- Capture rates are to be calculated as "net" capture rates which account for the existing supply of affordable housing in the PMA in arriving at unmet demand.
- The unmet demand for additional housing units must be more than 5 times the number of units proposed. Capture rates must be twenty percent or less for each targeted income limit by unit type as well as for the total project.
- Define and justify the absorption period and absorption rate for the subject property.
- Project and explain any future changes in the housing stock within the market area.
- Identify risks (i.e., competitive properties which may come on line at the same time as the subject property, declining population in the PMA, etc.) unusual conditions, and mitigating circumstances. Evaluate the need for voucher support or HUD contracts.
- Provide documentation and descriptions that show the methodology for calculations in the analysis section and relate the conclusions to the data.

I. Other Requirements

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

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

- (a) Rent Plan/Exhibit 4 - the applicant must submit with the UF application, a rent plan for the project estimating rental income, adjusted by a five percent vacancy and arrears loss. The rents approved by HCR for the purposes of the HTF, HOME or other HTFC funding commitment letter or LIHC/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 operating budget for the non-residential space must be self-sustaining and accounted for separately. 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 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 vacancy loss and arrears, operating and maintenance expense, and debt service. The estimate for vacancy loss and arrears should be in the range of five percent for pre-leased space, to ten percent for space which has not been leased.

- (iii) Operating Budget - the applicant must submit an estimated project operating budget which reflects as accurately as possible the expected rental income and operating costs of the project. The accuracy of the projections will be an important factor in underwriting assessment of the project and its successful operation through the funding program's regulatory period. [The operating budget should trend at a 2% increase in annual income and a 3% increase in annual variable expenses.](#) 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 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.
- The applicant may use information from comparable projects as the basis for estimating expenses, such as maintenance, management, and various services (i.e., trash or snow removal, pest control, etc.) provided they are similar to the proposed project in type and located in the same market area. The applicant must identify the comparable projects used as a basis for their projections. [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 estimate must clearly show](#)

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owner paid utilities and tenant paid utilities. In mixed-use projects, the estimate must breakout the non-residential utility 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. The applicant's estimate of property tax expenses must be documented by a counsel's letter confirming the legal basis for any exemption or abatement to be received by the project. If a Payment in Lieu of Taxes (PILOT) is to be provided by the municipality, a letter from the municipality outlining the proposed PILOT terms must be provided. If the project is to be fully taxed, the estimate must be documented by a letter from the assessor having jurisdiction in the projects location, stating the basis for estimation, and estimated amount of the post-construction value. The cost of any special county or district taxes should also be included in the project operating budget.

In projects with a conventional permanent loan, HCR will allow initial cash flow at the greater of up to \$35 per unit per month (pu/pm) OR the amount necessary to meet the lender's and/or mortgage insurer's debt service coverage requirements.

In projects without a conventional bank loan, in order to maintain positive cash flow through the first fifteen years of operations, HCR will allow initial per unit cash flow to exceed \$35 pu/pm. Dependent upon the specific needs of the project, some or all of the cash flow over \$35 pu/pm will be required to be deposited into the project's replacement reserve account. 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.

- (a) Replacement Reserve Contributions - The following replacement reserve contributions are required for all HTF and/or HOME projects that **do not** include LIHC and/or SLIHC as a financing source:

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

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

All required annual 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 LIHC or SLIHC), may be permitted to capitalize a replacement reserve if the project's operating economics cannot support the annual contributions required for these projects. Projects permitted to capitalize the replacement 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.

- (b) Operating Reserve Contributions – annual operating reserve contributions are required for all HTF/HOME financed projects. Unless otherwise approved by HCR, the operating budget should provide for a minimum of three percent of the project's gross rents to be contributed annually to the Operating Reserve account. Annual contributions to the Operating Reserve are required in any year that the balance in the reserve is less than 50% of the gross rents. For projects with HCR capital financing that is not HTF or HOME, an annual operating reserve contribution of 3% of gross rents will be allowed if project operating economics can support it, but it is not required. In HTF/HOME or other HTFC financed projects without LIHC or SLIHC as a financing source,

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all excess cash flow from the project should be deposited in the Operating Reserve account.

- (iv) Financing Plan - the financing plan for the project must meet the following requirements:
- (a) the total project cost must be financed by grants, loans, or equity, or a combination of the three;
 - (b) all project financing must be contractually obligated at or before the project's Construction Loan Closing, or at or before the issuance of a LIHC/SLIHC Binding Agreement/Carryover Allocation;
 - (c) grants and/or equity financing cannot encumber the project in a manner which is inconsistent with the requirements of the applicable HCR program;
 - (d) debt service for loans must be supportable by the project's annual operating budget;
 - (e) loan terms must be provided at a fixed rate of interest for a minimum of a 30 year term;
 - (f) the terms and conditions of construction and/or permanent financing must be economical and reasonable. The interest rates must be no more than the rates/level offered in the marketplace and the conditions (i.e., requirements on security, credit enhancement, and debt service coverage factors) must be typical and advantageous; and,
 - (g) debt service coverage factors required by lenders should be documented by the applicant at the time of application submission and again prior to Construction Loan Closing.

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Section: 5.00 DEVELOPMENT REQUIREMENTS

Sub Section: 5.07 Subsidy Layering Review Process

The Federal Housing and Economic Recovery Act of 2008 (the Act) authorizes changes to the Federal Low Income Housing Credit Program in order to simplify its use and enhance its value in creating and preserving affordable housing. Among these changes, the Act states that when Project-Based Voucher (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 [September 26, 2014 \(79 FR 57955\)](#), for conducting these reviews.

5.07.01 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.

5.07.02 Timing of Reviews

An initial subsidy layering review will be performed by HCR Underwriting staff at the time of application review in order 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 requirements 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 is in compliance 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 in order to proceed to AHAP execution with the PHA.

5.07.03 Guidelines for Conducting Subsidy Layering Reviews

In conducting SLRs, HCR Underwriting staff will utilize the administrative guidelines issued by HUD in its notice of September 26, 2014 (79 FR 57955). 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 in order 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 Requirements: 6%
 - b. Overhead: 2%

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- c. Profit: 6%

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

2. Maximum:

The maximum combined costs for general requirements, 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 LIHC 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 LIHC 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 LIHC allocation to bring the value of the tax credits to a level at or above the minimum LIHC equity price.

- (2) **Operations Standards:** The impact of PBV assistance on the project's fifteen 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.
- (b) **Cash Flow:** In any year, the cash flow cannot exceed 10% of the total project operating expenses.
- (c) **Trending Parameters:** The HCA may use the trending assumptions that it deems appropriate and reasonable to the project market area. Generally, operating

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expenses should be trended between 3% - 7% per year, and annual rent increases between 2% - 5%.

To the extent that the project exceeds the DCR and cash flow limits, HCR will conduct further trending analysis of the 15 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.

5.07.04 Basis of Review

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

- (1) HCR Forms:
 - (a) Residential Development Budget with all proposed sources and uses of funds;
 - (b) Rent and Affordability Plan;
 - (c) Income and Operating Budget; and,
 - (d) Tax credit exhibits - Qualified Building Information and LIHC/SLIHC Project Summary.
- (2) Other Documents:
 - (a) Commitment letters from all financing sources disclosing significant terms;
 - (b) Tax credit equity investment commitment letter, or if available, limited liability corporation operating agreement/limited partnership agreement;
 - (c) Appraisal supporting budgeted acquisition cost; and,
 - (d) Letter from entity allocating PBVs authorizing/approving the PBV assistance.

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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5.07.05 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: 5.08 Construction Monitoring Requirements

These construction monitoring requirements apply to projects funded with LIHC/SLIHC and/or non-residential CIF financing only (i.e., no HTF or NYS HOME program financing).

LIHC/SLIHC and non-residential portions of CIF projects are not subject to the requirements of the HTFC Design Handbook since these projects were not funded with HTF or NYS HOME program financing. However, these projects are subject to construction monitoring by HCR to track construction progress and to identify and resolve any potential problems or delays a project may experience. Therefore, on a monthly basis, the owners of all LIHC/SLIHC and non-residential CIF funds projects under construction must provide HCR with copies of the following documentation:

- (i) Minutes of monthly 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.
- (ii) A narrative provided and signed by the project architect describing the general progress and status of construction, 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. The project architect's narrative should accompany the minutes of the monthly progress meetings.
- (iii) At construction completion, a copy of the Permanent Certificate of Occupancy, or Temporary Certificate of Occupancy (if applicable), as soon as it has been issued, for each building in the project. For projects comprised of multiple buildings, which will enter service as each building is completed, the project owner must submit each Certificate of Occupancy, as part of the monthly report. Once all such Permanent Certificates of Occupancy have been issued without conditions, for the building(s) in the project, this reporting requirement will be satisfied.

In addition, within 30 days of the commencement of construction, the project owner shall submit to HCR a schedule of specific dates and times on which monthly construction inspections

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and/or progress meetings with the project owner, the general contractor and project architect will take place. HCR staff shall attend such inspections and/or meetings at its discretion and shall also conduct construction monitoring visits as deemed necessary.

The project owner shall submit copies of all change orders within five (5) business days of execution by the project owner. Change orders will be reviewed for compliance with programmatic standards and consistency with the approved project scope of work. 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.

The required documentation cited above in (i) and (ii), which evidences the project's previous month's construction progress, must be submitted to HCR no later than the 15th day of each month, with the first report provided in the month following construction financing closing and construction start. Please submit copies of the all of the above required documentation directly to your assigned project manager via email.

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Section: 5.00 DEVELOPMENT REQUIREMENTS

Sub Section: 5.09 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 notes and mortgages for review and their use must be approved before execution of the documents or such lien occurs. Applicants may decide if they wish to apply for both construction and permanent financing, or permanent financing only. Construction financing will be structured as recourse financing.

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

HCR is precluded by statute from providing financing for non-residential/commercial space development under both the HTF and HOME programs. There is an exception however, for HTF projects with non-residential/commercial space which qualifies as a community service facility (CSF). The CSF may be funded with HTF funds provided the CSF space is used to provide services to the low-income residents of the neighborhood/area in which the project is located. Up to 10% of the HTF award amount may be used to finance costs associated with development of the CSF.

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

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Section: 5.00 DEVELOPMENT REQUIREMENTS

Sub Section: 5.10 Insurance Requirements

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

- (i) with regard to HDF's Program projects, the insurance requirements set forth here apply only to HDF interim acquisition and construction loans; and,
- (ii) projects financed solely under the LIHC/SLIHC programs are not required to comply with any of the insurance requirements set forth herein.

Applicants (and their contractors and architects) are required to maintain appropriate insurance coverage during the development of the project as specified below. 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.(6) for further information on the required insurance.

5.10.01 Insurance Requirements for Applicants

Liability Insurance

Comprehensive General Liability:

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

Property Insurance

- monetary limits commensurate with the project's replacement value;

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- DHCR/HTFC as mortgagee/loss payee (as applicable);
- 30 days prior written notice to DHCR/HTFC of cancellation, non-renewal, or change in coverage; and,
- Builder's Risk Form - All Risk Coverage.

Automobile Liability Insurance

Liability:

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

Blanket Position Fidelity Dishonesty Bond

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

Workers' Compensation and Disability Benefits Insurance

- Must be provided by the employer for all employees performing work related to the project; and,
- If no employees, a certification that this coverage is not presently required (form CO-200).

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.

Title Insurance

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

5.10.02 Insurance Requirements for Builders Under Direct Contract with Applicants

Liability Insurance

Comprehensive General Liability:

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

Builder's Risk Insurance

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

Automobile Liability Insurance

Liability:

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

Workers' Compensation and Disability Benefits Insurance

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

Performance and Payment Bond(s)

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

5.10.03 Project Architect's Insurance

Project architects are required to meet the applicable insurance coverage parameters specified below:

Comprehensive General Liability Insurance

- with limits of \$1,000,000 per occurrence/\$2,000,000 aggregate;
- the Certificate of Insurance must name DHCR and HTFC as additional insured; 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,

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- the project architect agrees to indemnify and hold harmless DHCR and HTFC from damages, causes of action, and legal proceedings arising out of the negligent acts, errors, or omissions of the project architect with respect to the services provided under this contract.

Workers Compensation and Disability Benefits

- for all employees engaged under this Agreement;
- the project architect shall furnish HCR with Certificates of Insurance for projects receiving construction financing from HCR;
- must contain a 30-day prior written notice of cancellation or material change clause, naming DHCR/HTFC as Certificate Holders; and,
- coverage should extend from the date of the Owner/Architect Agreement to one year after the substantial completion of the project. If a project architect does not carry professional liability insurance, project professional liability insurance coverage may be carried in lieu of blanket coverage.

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

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Section: 5.00 DEVELOPMENT REQUIREMENTS

Sub Section: 5.11 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 include the cost of any 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: 5.12 Professional Service Contract Requirements

These requirements apply to all funded projects with the exception of:

- (i) projects funded solely under LIHC/SLIHC; and,
- (ii) projects funded from the HDF Program for which HCR is not the lead review agency.

Applicants must comply with the provisions of this Section when selecting project architects, 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, knowledge of local laws, regulations and codes, price, and capacity to provide services in a timely manner.

HCR requires all contracts over \$25,000 to include goals for the participation of Minority and Women-Owned Business Enterprises (M/WBE). 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.

5.12.01 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 the HTFC Design Handbook for additional information and requirements:

<http://www.nyshcr.org/Publications/DesignHandbook/>.

5.12.02 Selection of a Housing Consultant

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

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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 LIHC and/or SLIHC equity. *For those non-LIHC/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.*

5.12.03 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;
- (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.

5.12.04 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.

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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.

(i) 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.

(ii)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 builders 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.

5.12.05 Construction Contracting Requirements

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

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

Builders will not be allowed to obtain a profit and overhead unless they are performing actual construction. "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.

5.12.06 Selection of a Managing Agent

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

- (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;

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- (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: 5.13 Private Developer Requirements

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

- (i) HTF; and,
- (ii) LIHC

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

5.13.01 Guarantee of Construction Contract Costs

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

5.13.02 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 LIHC 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: 5.14 Special Needs and Supportive Housing

5.14.01 Projects Serving Persons with Special Needs

A project is considered to serve persons with special needs if it includes a UF 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 who are in Long Term Recovery from Alcohol Abuse;
- Persons and Families who are in Long Term Recovery from Substance Abuse;
- Persons who are Frail Elderly;
- Persons who are Homeless;
- Persons with Intellectual/Developmental Disabilities;
- Persons who are Victims of Domestic Violence;
- Persons with AIDS/HIV Related Illness;
- Persons with Physical Disability/Traumatic Brain Injury;
- Persons with Psychiatric Disabilities;
- Veterans who are Homeless;
- Veterans in Long Term Recovery from Alcohol Abuse;
- Veterans in Long Term Recovery from Substance Abuse;
- Veterans with Intellectual/Developmental Disabilities;
- Veterans who are Victims of Domestic Violence;
- Veterans with AIDS/HIV Related Illness;
- Veterans with Physical Disabilities/Traumatic Brain Injury;
- Veterans with Psychiatric Disabilities;
- 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.

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Plan for Serving Tenants who are Persons with Special Needs

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

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

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

5.14.02 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;

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- 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. 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;
- 6) The applicant must identify, and have a written agreement with, a public agency or experienced service provider that will refer eligible persons and families for the targeted units;
- 7) The applicant must demonstrate a firm commitment for capital financing from a governmental agency serving the proposed target population; and,
- 8) The project must provide an integrated setting that enables individuals with disabilities to live independently and without restrictive rules that limit their activities or impede their ability to interact with individuals without disabilities.

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

- A description of how the need and market for housing for persons with Special Needs was established, including references to and data from any studies or analyses of the need for the proposed housing;
- The source of capital financing from a governmental agency serving the proposed target population, source of rental subsidy, and funding source of supportive services;
- 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.

5.14.03 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 HCR model Housing/Services Agreement which can be found on the HCR website at <http://www.nyshcr.org/Forms/SpecialNeeds/HsgSvcsAgreement.pdf>.

5.14.04 Identification of a Senior Housing Project

Applications proposing projects serving the elderly must identify whether their project will be structured as a 55 years 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. For further details, reference the Fair Housing Law exemption found at 24 CFR Part 100. 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 handicapped persons of any age.

5.14.05 Aging in Place Plan

Applications proposing a Senior Housing Project defined as one that excludes non-elderly persons based on age, as prescribed by the Federal Fair Housing Act and the New York State Human Rights Law, Section 296 of the Executive Law, must submit a plan to address the aging in place of all tenants. The Aging in Place Plan will be attached to the Proposal Summary and included in the regulatory agreement. To meet Aging in Place requirements, submit a plan that identifies the following:

- project design features that will address and accommodate the tenants' aging-related changes in physical and mental abilities;
- what services are anticipated to be requested/required by elderly tenants;
- the means for helping tenants access services which they may request/require;
- project staff functions related to tenant requests for information/assistance;
- community organizations that will address the service needs of the tenants; and,
- a description of the existing or anticipated working relationships the owner or service provider has with these organizations.

5.14.06 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: 5.15 Federal Labor Standards Regulatory Requirements

5.15.01 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”: www.dol.gov/whd/recovery/pwrp/Tab3.pdf.

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:

<http://portal.hud.gov/hudportal/documents/huddoc?id=13441aII-6SECH.pdf>

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.

5.15.02 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.

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5.15.03 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.

5.15.04 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.

5.15.05 Additional Resources

- HUD Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects: <http://portal.hud.gov/huddoc/4812-LRguide.pdf>;
- US DOL: Prevailing Wage Resource Book: www.dol.gov/whd/recovery/pwrp/toc.htm; and,
- HUD: Handbook: Federal Labor Standards Compliance in Housing and Community Development Programs (sect. 1344.1):
http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/sech/13441