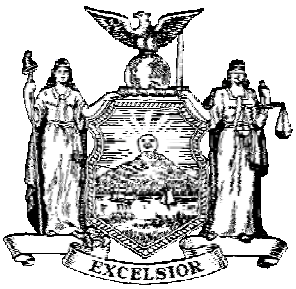
New York State
Division of Housing and Community Renewal

New York State
Housing Trust Fund Corporation



Capital Programs Manual

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November 2007

Please note: All new changes are highlighted in blue. Deletions are not indicated.

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GLOSSARY

Section One

Issued: **11/02**	Revised:
Section: **1.00**	Title: **INTRODUCTION**
Sub-Section: **1.01**	Topic: **About This Manual**

This manual is designed to provide program participants and Office of Community Development (OCD) staff with a comprehensive handbook which explains the processes, procedures and requirements of OCD's capital programs. It supersedes the Low-Income Housing Trust Fund and Low-Income Turnkey/Enhanced Housing Trust Fund Program manuals issued previously by the Office of Community Development and the Capital Programs Manual issued November 2006. The provisions of this document take effect for all OCD capital programs as of November 1, 2007.

The manual is organized under the following headings:

Section 1.00:	Introduction
Section 2.00:	Program Descriptions
Section 3.00:	Unified Funding Process
Section 4.00:	General Program Requirements and Policies
Section 5.00:	Development Requirements
Section 6.00:	Construction Processing Requirements
Section 7.00:	Project Operating and Management Requirements

A Glossary is included for the reader's convenience. Also, please note that OCD's Design Handbook is published separately. Design requirements must be addressed in the design of projects by most program participants. Copies of the OCD Design Handbook may be obtained by contacting the relevant regional office (see Sub-section 1.03 for a listing of the regional offices). Applicants who are new to development projects or who have never received OCD funds are strongly urged to consult the Design Handbook before completing an application.

Issued: **11/02**	Revised:
Section: **1.00**	Title: **INTRODUCTION**
Sub-Section: **1.01**	Topic: **About This Manual**

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

Division of Housing and Community Renewal-Administered Programs

- Housing Development Fund (HDF)
- Rural Rental Assistance Program (RRAP)
- Low Income Housing Credit (LIHC)
- New York State Low Income Housing Tax Credit Program (SLIHC)

Housing Trust Fund Corporation-Administered Programs

- Low Income Housing Trust Fund (HTF)
- New York State HOME Program (HOME)
- Homes for Working Families (HWF)
- Residential Emergency Services to Offer (Home) Repairs to the Elderly (RESTORE)
- Urban Initiatives (UI)
- Rural Area Revitalization Projects Program (RARP)

Information on these programs is also available on the DHCR website:

www.dhcr.state.ny.us

Issued: **11/02**	Revised: **11/04**
Section: **1.00**	Title: **INTRODUCTION**
Sub-Section: **1.02**	Topic: **The Office of Community Development**

The Office of Community Development (OCD) is an administrative office located within the Division of Housing and Community Renewal (DHCR) and serves as staff for the Housing Trust Fund Corporation (HTFC), a public benefit corporation. OCD is responsible for both DHCR and HTFC administered programs.

References to OCD administrative policy shall refer to all programs covered in this manual while references to HTFC administrative policy pertains exclusively to programs funded through HTFC (see Sub-Section 1.01 for a list of all capital programs)

1.02.A. Division of Housing and Community Renewal (DHCR)

DHCR provides staff and administrative support for all of the capital programs described in this manual. Within the OCD, the following units are involved in the processes described herein:

Executive Staff is responsible for the formulation of administrative policies and procedures, working with DHCR executive staff and the Legislature to frame and modify program initiatives, and all other executive responsibilities for the programs included in this manual.

The Regional Offices (Capital District, Buffalo, New York City, Syracuse) are responsible for implementing the policies and programs of OCD. This includes application review, project planning, project monitoring (from concept to completion of the construction/rehabilitation phase), working with community groups, outreach to needy communities, and all other aspects of the State's housing delivery system.

Issued: **11/02**	Revised: **11/04**
Section: **1.00**	Title: **INTRODUCTION**
Sub-Section: **1.02**	Topic: **The Office of Community Development**

The Program Management staff is responsible for oversight of the individual OCD programs. This includes ensuring that rules, regulations and program guidelines are consistent with the statutory intent of the Legislature as well as monitoring to ensure that all applicants and program participants are treated consistently according to standardized, clearly communicated program policies. This Manual is one example of Program Management's mandate to provide consistent, easy-to-understand program information to all interested parties. In addition, program management staff also organizes application workshops for potential program participants, in-house staff training and informational public seminars on new programs and policy using agency staff and consultants retained based on competitive requests for proposals. Individual managers are assigned to all OCD programs.

The Technical Services Unit includes the following three components:

- The Design Services Unit (DSU) reviews and approves all plans and specifications plus provides on-site construction monitoring during the building phase of projects. Since Design reviews are a critical component of the application review process, DSU staff participates in Project Development Meetings with the applicant's development team and provide technical assistance on design issues to both DHCR staff and program participants.

- The Underwriting Unit assesses the financial feasibility of projects, reviews market studies and needs analyses, and provides written analyses for program and project staff of the fiscal dynamics of projects. Additionally, the unit provides policy input into budget submission requirements and the parts of the application review that assess project readiness from a fiscal perspective.

- The Environmental Analysis Unit (EAU) conducts environmental review for housing construction and rehabilitation projects funded by the Housing Trust Fund Corporation (HTFC). Environmental review is conducted according to regulations under the State Environmental Quality Review Act (SEQR) at 6 NYCRR Part 617. Additionally, for HOME projects, environmental review must be conducted according to the National Environmental Policy Act (NEPA), as interpreted by HUD regulations at 24 CFR Part 58.

The Management Systems and Research Unit provides research and analytical support to OCD's staff. The unit has responsibility for maintaining the OCD component of the Statewide Housing Activity Reporting System (SHARS) and other databases, preparing and updating all Legislative reports, and compiling program data into reports, manuals and other information pieces.

In addition to this support from the Office of Community Development, other units in the Division of Housing and Community Renewal are involved in the processes described in this Manual.

These include:

The Office of Fair Housing and Equal Opportunity (FHEO) oversees compliance with all affirmative action, equal employment opportunity and fair housing guidelines. FHEO works hand-in-hand with OCD to ensure that the issues spelled out in Section 4 ("General Program Requirements and Policies") of this Manual are addressed by every participant in the capital programs.

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

The Asset Management Unit (AMU) reviews and supervises projects when the project is complete and the property is occupied. AMU also reviews and approves the Project Management Plans and management agent contracts prior to the closing on DHCR/HTFC financing. In addition, compliance with the requirements described in Section 7 ("Project Operating and Management Requirements") is overseen by the AMU.

1.02.B. Housing Trust Fund Corporation

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

All programs administered by HTFC are implemented by OCD staff in accordance with the directives of the HTFC Board. This includes project selection (subject to Board approval), construction/rehabilitation monitoring, technical assistance and daily administration. The fiscal aspects of the HTFC programs are managed by DHCR's Office of Administration in accordance with the directives of the HTFC Board. This includes disbursement of funds and tracking statutory provisions on allocation of funds by region and type of applicant. The legal aspects of the programs are addressed by DHCR's Office of Legal Affairs including a document review and project closings. DHCR's Housing Management Bureau oversees post-construction project management.

Issued: **11/02**	Revised: **11/04**
Section: **1.00**	Title: **INTRODUCTION**
Sub-Section: **1.02**	Topic: **The Office of Community Development**

1.02.C Administration of Federal Programs by OCD

OCD administers several housing programs funded by the federal government. Currently, the Low-Income Housing Credit (LIHC) is part of OCD's Unified Funding Process (described in Section 3 of this Manual), although a separate Notice of Credit Availability and application review are conducted for this program.
The precise nature of OCD's involvement with these programs is defined by federal regulations but to the extent there is discretion, these programs are administered in a manner similar to DHCR processes described above (Sub-Section 1.02.A.).

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

- application packages; (including OCD Design Handbook)
- submission deadlines;
- program eligibility; or
- availability of funds.

Issued: **11/02**	Revised: **11/04**
Section: **1.00**	Title: **INTRODUCTION**
Sub-Section: **1.03**	Topic: **Regional Offices**

Following are the Regional Offices and the counties they serve:

Capital District

Regional Office - Hampton Plaza, 38-40 State Street, Albany, New York 12207 (518) 486-5012

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

Buffalo

Regional Office - 535 Washington St, Suite 105, Buffalo, New York 14203, (716) 847-7955

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

New York City

Regional Office - 25 Beaver St., 7th Flr, New York, NY 10004, (212) 480-7644

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

Syracuse

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

Issued: **11/02**	Revised: **11/04**
Section: **1.00**	Title: **INTRODUCTION**
Sub-Section: **1.03**	Topic: **Regional Offices**

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

Issued: **11/02**	Revised:
Section: **1.00**	Title: **INTRODUCTION**
Sub-Section: **1.04**	Topic: **Waivers**

In certain circumstances, applicants may wish to request a waiver of one or more of the requirements described in Section 3 ("Unified Funding Process"), Section 5 ("Development Requirements") or Section 6 ("Construction Processing Requirements") of this Manual. This can be done by placing a request in writing to the Deputy Commissioner for Community Development prior to submitting an application. Waiver requests will be considered on an individual basis, based on the rationale provided in the request. Applicants must receive written approval of a requested waiver prior to incorporating the terms of the waiver into an application. Documentation of any approved waiver(s) must be included in the application to which the waiver applies

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

Section Two

Issued: **11/02**	Revised: **10/1/04**
Section: **2.00**	Title: **PROGRAM DESCRIPTIONS**
Sub-Section: **2.01**	Topic: **Low-Income Housing Trust Fund Program**

2.01.01 Summary

The Low-Income Housing Trust Fund Program ("HTF Program") provides payments, grants and loans to eligible applicants to develop and complete housing projects for occupancy by persons of low income in eligible areas. Eligible applicants may receive up to $75,000 per unit to pay for eligible costs that include: site acquisition; constructing, rehabilitating or converting an eligible project; and soft costs. At its discretion, the Housing Trust Fund Corporation ("HTFC" or "Corporation") may determine that up to an additional $25,000 per unit may be provided for projects meeting certain criteria. Among the criteria HTFC may consider in determining whether to provide additional funds are: average cost of construction in the area; location of the project; and the impact of the additional funding on the project's affordability to low-income occupants. HTF Program funds may be used as bridge or permanent financing for predevelopment costs, construction costs, working capital, and replacement reserves. Not-for-profit HTF applicants may also apply to receive Seed Money Awards which are described in Section 3.08.

An eligible applicant may participate in the HTF Program as a direct project recipient, in which capacity it develops projects on its own, and/or as a local program administrator (LPA), whereby it assumes the role of HTFC and administers a program where projects are undertaken by other eligible applicants called subrecipients.

Applicants who participate in the HTF Program as private developers are required to make an equity contribution equal to two and one-half percent of the total project cost or 5 percent of the total project cost less all grants, whichever is greater. A portion of the equity contribution, equal to the lesser of 1 percent (1%) of the total development cost or 50% of project gross rent, must be made as a cash deposit to the project's Operating Reserve Account.

No more than half of the annual HTF Program appropriation may be spent in a single municipality, and no more than one-third of the annual appropriation may be used by private developers.

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

Applicants who plan to use HTF Program funds in conjunction with the Low Income Housing Credit (LIHC) Program (Section 2.04), should be familiar with the eligibility requirements of both programs.

Applicants and owners of projects involving the construction or rehabilitation of four or more DHCR/HTFC assisted housing units including Low Income Housing Credit Program Projects are required to submit affirmative marketing plans before rent-up, detailing specific actions to be taken to provide information and outreach to eligible persons of all racial, ethnic, gender and disabled groups from the housing market area.

HTFC has decided that all local program applications should be submitted under the HOME program since more funding is available for HOME local programs and the HOME program permits more varied activities to be undertaken with fewer restrictions. See section 2.05 for information on the HOME program

2.01.02 Statutory Provisions

2.01.02.A Purpose

The HTF Program was created by Article 18 of the Private Housing Finance Law (PHFL) for the purpose of making payments, grants or loans available to subsidize the cost of rehabilitating and constructing housing for persons of low income. The Legislature's intent in creating the HTF Program was to increase the housing opportunities of persons of low income by expanding the

supply of affordable housing. The HTF Program is administered by the Housing Trust Fund Corporation (HTFC), a public benefit corporation established under Section 45-a of the PHFL.

The following are the specific legislative findings on which the HTF Program is based:

(i) there is a serious shortage of decent affordable housing in the State for persons of low income;

(ii) the cost of providing such housing without public participation and assistance is prohibitively high;

(iii) there exists throughout the State a significant number of dwellings which are deteriorating and are vacant or underutilized;

(iv) the existence of such properties creates a serious threat to the health and safety of persons who live in or near them, limits the availability of decent affordable housing to others, contributes to the blight and deterioration of neighborhoods, and drains municipal resources and expenditures;

(v) the rehabilitation of these properties would stem the deterioration of neighborhoods and promote the preservation and creation of safe and sanitary low-income housing;

(vi) the potential exists to make such housing available to persons of low income through projects carried out by eligible applicants to rehabilitate these dwelling accommodations, bring them into compliance with all applicable laws and regulations, and remove all hazardous code conditions;

(vii) the new construction of housing for persons of low income in areas in which rehabilitation opportunities are limited or where new construction would prove to be more effective would also help serve the purposes of Article 18;

(viii) the implementation of such projects serves a significant public purpose and may appropriately be performed by eligible applicants;

(ix) payment for such services, tax exemptions and other public participation in such projects would bring down the cost of such housing and make it affordable to persons of low income; and

(x) it is the policy of the State to preserve and create such housing and to provide for the aid, care and support of the needy.

Issued: **11/02**	Revised: **10/1/04**
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2.01.02.B Definitions

The following program-specific terms are defined by Article 18 of the PHFL and the HTF Program's Rules and Regulations:

1. Conversion: All work necessary to convert nonresidential property into residential property.

2. Cooperative Project or Condominium Project: An eligible property, which subsequent to construction, conversion or rehabilitation under Article 18 of the PHFL will be owned as an approved residential cooperative or condominium. All cooperative or condominium units assisted through the (HTFor HOME) Program must be occupied by eligible owners as their primary residence; Units may not be sold or sub-leased to staff or board members of the applicant, developer or sponsor organization.

3. Eligible Applicant:
   (a) a person of low income, provided, however, such people cannot be a direct recipient of any payment, grant or loan from the Corporation, but may receive such funds from another eligible applicant;
   (b) a Housing Development Fund Company (HDFC) incorporated pursuant to Article 11 of the PHFL;
   (c) a not-for-profit corporation which has the improvement of housing for persons of low income as a primary purpose, and which has been in existence for at least one year prior to application;
   (d) a charitable organization which has the improvement of housing for low-income persons as a primary purpose;
   (e) a wholly-owned subsidiary of a not-for-profit corporation or a charitable organization which has the improvement of housing for low-income persons as a primary purpose;

(f) a partnership of which at least 50 percent of the controlling interest is held by an eligible not-for-profit corporation or charitable organization or wholly-owned subsidiary thereof, and which has agreed to limit its profits or rate of return of investors in accordance with a formula approved or established by the Corporation;

(g) a private developer which has agreed to limit its profits or rate of return of investors in accordance with a formula approved or established by the Corporation;

(h) a municipality or county;

(i) a municipal housing authority, provided that: the purchase of the eligible property shall not have been financed pursuant to provisions of the Public Housing Law; and the eligible property was not owned by such authority prior to July 1, 1986.

4. Eligible Property: Any vacant residential or non-residential property or any underoccupied residential property, or any portion of any of the above, or any site suitable for construction, which is located in an eligible area.

5. Homesteading Project: An eligible property which, subsequent to construction, conversion or rehabilitation under Article 18, will contain no more than four residential units, have at least one owner occupant and will not be owned as a cooperative or condominium.

6. Nonresidential Property: Any property which is not residential property and is vacant.

7. Persons of Low Income:

(a) in cities with a population of 1,000,000 or more persons, those persons or families whose incomes do not exceed 80 percent of the median income for the Metropolitan Statistical Area (MSA) in which a project is located; provided however, that in the case of an owner/occupant of a homesteading project, "persons of low income" shall also mean those persons or families whose household incomes do not exceed 80

percent of the median income for New York State if this measurement is greater than the measurement previously stated; or,

(b) in the portion of the State outside cities with a population of 1,000,000 or more:

(i) and within a MSA, those persons and families whose household incomes do not exceed 90 percent of the median income for the MSA in which a project is located or 90 percent of the median income for the State, whichever is greater; or,

(ii) and located outside a MSA, those persons and families whose household incomes do not exceed 90 percent of the median income for the county in which a project is located, or 90 percent of the median income for the State, whichever is greater.

8. Private Developer: A person, firm, partnership (of which less than 50 percent of the controlling interest is held by a not-for-profit corporation or charitable organization or wholly-owned subsidiary thereof) or corporation which is not otherwise included in the definition of "an eligible applicant."

9. Project: The construction, rehabilitation or conversion of an eligible property or properties by an eligible applicant hereunder into a cooperative, condominium, homesteading or rental project. In cases where the project consists of less than the entire property, the term project shall mean that portion which is assisted under Article 18 of the PHFL.

10. Rehabilitation: All work necessary to bring a residential property into compliance with all applicable laws and regulations including, but not limited to, the installation, replacement or repair of heating, plumbing, electrical and related systems and the elimination of all hazardous violations in the structure. Rehabilitation may also include reconstruction or work to improve the habitability or prolong the useful life of a residential property.

11. Rental Project: An eligible property, which subsequent to construction, conversion or rehabilitation under Article 18 of the PHFL, will be owned and operated as rental residential property.

12. Residential Property: Any real property in which all or part of the space is used for residential purposes prior and subsequent to construction, rehabilitation or conversion. Residential purposes shall be dwelling accommodations and such facilities as may be deemed by the Corporation to be incidental and appurtenant thereto.

13. Underoccupied Residential Property:

    (a) a residential property, which at the time of application, has an occupancy rate by lawful occupants of less than 60 percent;

    (b) a portion of a residential property as described in the paragraph (a) above, provided that such portion also has an occupancy rate by lawful occupants of less than 60 percent; or

    (c) a residential property which consists of one or two residential units prior to rehabilitation under Article 18 of the PHFL and which, subsequent to rehabilitation, will contain at least one additional residential unit.

2.01.03 Eligibility Requirements

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

2.01.03.A Eligible Applicants

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

Persons of low income may not be direct recipients of payments, grants or loans from the Corporation, but may receive such funds from another eligible applicant.

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

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

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

An applicant may apply directly to the HTF Program as a project recipient, in which case

HTFC administers funding, and/or as a local program administrator (LPA). However, HTFC prefers that applicants consider other funding sources to carry out a local program. Funding alternatives are discussed in sub-section 2.01.03C

2.01.03.B Eligible Projects

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

Underoccupied residential property must be more than 40 percent vacant at the time of application. In addition, occupied one- and two-unit properties are eligible only if they result in the creation of at least one additional unit;

Conversion projects, in which nonresidential property is converted into residential property, are eligible, provided that the nonresidential property is entirely vacant at the time of application;

A property is classified as residential property if 50 percent or more of its gross floor space is residential prior to rehabilitation. The pre-rehabilitation residential space must be at least 40 percent vacant at the time of application;

A property is classified as nonresidential property if less than 51 percent of the gross floor space is residential prior to conversion; the non-residential property must be completely vacant at the time of application.

NOTE: A structure will be considered vacant if the applicant can demonstrate that a (the occupancy is temporary in nature and b) that the occupant does not have a statutory or contractual right to occupy the property at the anticipated time for commencement of activities. A property will not be considered vacant if the occupant's obligation to vacate is conditioned upon the applicant securing funding from New York State.

While there are no project size restrictions, factors such as site characteristics, community need, and project feasibility should be considered when determining project scope. Projects should be primarily for residential use, but other space may be included if it is determined by the

Corporation to be appurtenant or incidental to the residential dwelling accommodations, and is intended for the exclusive use of project occupants. Depending on the nature of the project, such other space may include: community space, on-site management offices, common laundry rooms, social service space, dining and cooking areas, and recreational areas.

The use of HTF Program funds with tax exempt bonds and 4% low income housing tax credit is not permitted. Applicants interested in using tax exempt bonds and 4 % tax credit for a project should consider requesting funding from the Homes for Working Families Program which is discussed in 2.06 of this manual.

2.01.03.C Eligibility Requirements for Homesteading Projects

It is HTFC's policy that applicants requesting funds for 1-4 family owner-occupied properties seek funds from a source other than HTF. Not-For-Profit applicants are encouraged to submit a HOME Local Program Application. For profit applicants are encouraged to consider the NYS Affordable Housing Corporation programs.

2.01.03 D Requirements For Cooperative and Condominium Projects

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

Issued: **11/02**	Revised: **10/1/04**
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2.01.03.E Eligible Areas

Article 18 of the PHFL requires projects to be located in an area which is: blighted, deteriorated, or deteriorating, or has a blighting influence on the surrounding area, or is in danger of becoming a slum or a blighted area because of the existence of substandard, unsanitary, deteriorating or deteriorated conditions, an aged housing stock, or vacant non-residential property, or other factors indicating an inability or unwillingness of the private sector unaided to cause the rehabilitation, construction or conversion which is contracted for under this Article.

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

(i) Federal Designation

a. Areas which are designated by the Secretary of the Department of Housing and Urban Development (HUD) of the United States as areas in which concentrated housing, physical development and public service activities are being or will be carried out in a coordinated manner, pursuant to a locally developed strategy for neighborhood improvement, conservation and preservation;

b. Areas which have been proposed by the locality and approved by HUD as Community Development Block Grant (CDBG) target areas;

c. Areas which have been proposed by the locality and approved by HUD as Rental Rehabilitation target areas; and

d. Neighborhoods in which Community Housing Development Organizations are carrying out activities pursuant to Title II of the National Affordable Housing Act.

(ii) State Designation

a. Areas which are designated under Articles 15 and 16 of the General Municipal Law (The Urban Renewal Law and the Urban Development Action Area Act);

b. Census tracts in which at least 70 percent of the families have incomes which are 80 percent or less than the Statewide median income;

c. Areas of chronic economic distress as designated by the State and as approved by the Secretary of the Treasury and the Secretary of HUD;

d. Neighborhoods in which neighborhood preservation activities are being carried out pursuant to Article 16 of the PHFL;

e. Rural preservation and revitalization regions in which preservation activities are being carried out pursuant to the provisions of Article 17 of the PHFL;

f. Neighborhoods where median income does not exceed 80 percent of the median income of the MSA in which the neighborhood is located, or that does not exceed 80 percent of the median income of the county, if the county is not part of a MSA (for purposes of this section, "Neighborhood" means an area that surrounds a project and tends to determine, along with the condition and quality of the project, selling prices and/or rent levels of housing units);

and

g. State designated Economic Development Zones.

(iii) Local Designation

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

2.01.03.F <u>Eligible Occupants</u>

To be eligible for funding, housing projects must serve persons of low income, defined as:

(i) in cities with populations of 1,000,000 or more, those whose incomes do not exceed 80 percent of the median income for the MSA in which the project is located; provided however that in the case of owner/occupants of homesteading projects, persons of low income shall also mean those whose incomes do not exceed 80 percent of the median income for the State; or

(ii) in the portion of the State located outside cities with a population of 1,000,000 or more persons, and,

a. located within a MSA, those persons and families whose incomes do not exceed 90 percent of the median income for the MSA in which the project is located, or 90 percent of the median income for the State, whichever is greater; or,

b. located outside a MSA, those whose incomes do not exceed 90 percent of the median income for the county in which a project is located, or 90 percent of the median income for the State, whichever is greater.

For rehabilitation or conversion projects, Article 18 of the PHFL provides that legal occupants who remain in possession of their unit, or who are temporarily relocated during rehabilitation or conversion, are entitled to continue occupancy after project completion. All additional occupants who move into the project subsequent to rehabilitation or conversion must be persons of low income, as defined above.

Those who are persons of low income at initial occupancy, but whose incomes later exceed eligibility requirements may remain in the HTF Program unit, but must pay 30 percent of their income as rent - not to exceed the established market rent. (See Sub-Section 7.06.02 for a discussion of rents). Units vacated by over-income tenants must be subsequently rented to eligible occupants.

Pursuant to the HTF Program Rules and Regulations, preference in tenant selection shall be given to persons or families with the lowest possible incomes required to meet the operating, maintenance, debt service and reserve contribution costs (the income requirements) of the project. Preference for occupancy shall also be given to those whose current housing fails to meet basic standards of health and safety and who have little prospect of improving the condition of their housing except by residing in a project assisted pursuant to Article 18 of the PHFL.

By statute, preference in the awarding of funds shall be given to economically feasible projects which contain a substantial number of persons whose income does not exceed 50 percent of the area median.

While projects may contain units intended for occupancy by tenants who are not persons of low income, Article 18 of the PHFL prohibits HTFC funds from being used to rehabilitate, convert or construct these units.

2.01.03.G Eligible Project Costs

Pursuant to Article 18 of the PHFL, the HTF Program cost may not exceed $75,000 per unit, unless the Corporation finds it necessary to increase funding up to an additional $25,000 per unit. Among the criteria the Corporation shall consider in determining whether to provide additional funds are: average cost of construction in the area, location of the project, and the impact of the additional funding on the project's affordability to its low-income occupants.

Eligible project costs shall consist of the actual and necessary cost of rehabilitation, construction, or conversion, including, but not limited to, the following, as set forth by the HTF Program Rules and Regulations:

(i) construction or rehabilitation costs;

(ii) architectural, engineering or professional services fees;

(iii) financing costs;

(iv) fees charged for disbursement of funds by lenders;

(v) temporary relocation costs;

(vi) property acquisition costs (not to exceed 25 percent of the HTF Program award);

(vii) carrying costs during construction;

(viii) a Working Capital Fund;

(ix) a Replacement Reserve;

(x) LPA fees for technical services rendered on behalf of the subrecipient;

(xi) fees for construction audit; and

(xii) Non-Profit Developer's Allowance (NPDA), if applicable.

HTF Program funds may not be used for the administration costs of the applicant, or to capitalize an operating reserve, or for the construction, conversion or rehabilitation of units, which, upon project completion, are to be occupied by other than persons of low income.

By statute, no more than 25 percent of any HTFC payments, grants or loans provided for the project may be used for acquisition costs (including closing costs).

2.01.03.H Eligible Predevelopment Costs

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

(i) site option costs and site carrying charges;

(ii) architectural and engineering fees;

(iii) appraisal fees;

(iv) fees for title search and survey;

(v) planning and consultant fees;

(vi) demolition and clean out expenses necessary to complete the design of the project;

(vii) legal and organizational expenses;

(viii) accounting and application fees; and

(ix) market and environmental studies.

2.01.04 Program Requirements

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

2.01.04.A Private Developer Minimum Equity Requirements

Article 18 requires that HTF applicants which are acting as private developers must make a minimum equity contribution to the project equal to either: (a) two and one-half percent of the total project cost; or (b) five percent of the total project cost minus all grants, whichever is greater. For

the purposes of the HTF Program, a grant is defined as financing which does not require payment of principal or interest during the project's regulatory period. Balloon mortgages which do not require amortization of principal or payment of interest during the loan period are considered grants.

Program policy requires that a portion of the equity contribution be in the form of cash, with a minimum of the lesser of one percent of the total development cost or 50% of project gross rents made as a cash deposit to the project's Operating Reserve Account. To the extent that the cash contribution to the Operating Reserve Account exceeds the Operating Reserve Account cap set by OCD's Underwriting Unit, any amount above that cap shall be placed into the project's Replacement Reserve Account.

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

2.01.04.B <u>Real Estate Contributions</u>

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

The value of property acquired two years or less before submission of a Unified Funding Application that may be counted as equity shall be calculated as the lesser of either the pre-construction appraised value or the purchase price.

The value of property acquired more than two years prior to submission of a Unified Funding Application that may be counted as equity shall be the property's pre-construction

appraised value.

HTF Program funds used to acquire the property on which the project is located shall be deducted from its value when calculating the equity investment.

2.01.04.C Payment of Equity

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

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

2.01.04.D Return on Equity

If, after providing for all expenses, taxes and deposits to the reserve funds, there are funds available, an annual portion of the project earnings will be paid to the private developer as a return on equity.

In order to receive a return on equity, there must be a cash surplus in the project's General Operating Account after payment of all expenses for the applicable fiscal year.

The annual return on equity is limited to six percent of the total qualified equity

contributions.

If unpaid, payment will accrue for return on equity and shall be made at such time as a cash surplus is available in the General Operating Account or in the Operating Reserve Account (subject to the conditions previously described). The maximum payment of return on equity in any one fiscal year is limited to the current year's return on equity and one prior year's accrued amount.

Return on equity payments will be made following the end of each fiscal year. Payments from the General Operating Account for return on equity do not require prior approval of OCD, but payments from the Operating Reserve Account do. OCD staff review the annual audit report to ensure that return on equity is paid properly.

Payments will not be approved if it is determined that the project is not in compliance with HTFC regulations and applicable housing occupancy and maintenance laws, codes, and regulations.

2.01.04.E Regulatory Period

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

(i) for homesteading projects, the regulatory period is the greater of:

a. the 15-year period following the date of final disbursement for the project during which the resale, rental and occupancy restrictions specified in the Regulatory Agreement are applicable; or,

b. the period, not to exceed 30 years, during which any loan or indebtedness incurred pursuant to Article 18 of the PHFL is outstanding.

(ii) for rental, condominium or cooperative projects, the regulatory period is the greater

of:

a. the 20-year period following the date of final disbursement for the project in which the resale, rental and occupancy restrictions specified in the Regulatory Agreement are applicable; or,

b. the period, not to exceed 30 years, during which any loan or indebtedness incurred pursuant to Article 18 of the PHFL is outstanding.

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

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

2.01.04F <u>Accessibility and Adaptation of Units</u>

HTF program policy requires that new construction multi-family projects containing 5 or more units be designed and constructed to be readily accessible to and useable by individuals with disabilities. (Townhouse configuration projects are excluded from this requirement). Accordingly, a minimum of five percent (5%) of the total dwelling units or at least one unit in a project,

whichever is greater, shall be made accessible for and marketed to persons with mobility impairments. An additional two percent (2%), or at least one unit in such a project, shall be accessible for and marketed to persons with hearing or vision impairments. The project owner will be responsible for the reasonable costs of any alterations necessary to accommodate an eligible tenant.

Issued: **11/02**	Revised: **10/1/04**
Section: **2.00**	Title: **PROGRAM DESCRIPTIONS**
Sub-Section: **2.02**	Topic: **Housing Development Fund Program**

2.02.01 Summary

The Housing Development Fund (HDF) is a revolving loan fund which provides loans to eligible applicants who will construct or rehabilitate housing projects for low-income occupants. HDF loans provide temporary, interim financing and are generally repaid from permanent financing provided by another public or private funding source.

Temporary, interest-free HDF interim loans are divided into three categories - predevelopment, acquisition and construction - which may be made alone or in conjunction with one another. These loans generally have terms of up to three years.

HDF predevelopment loans may be utilized for project soft costs including: legal expenses, feasibility and planning studies, site suitability analysis, environmental reviews, market studies, engineering and architectural services. Generally, HDF pre-development loans are repaid from the first receipts of the construction financing.

HDF acquisition loans may be used for the purchase of the project site, including financing fees and closing costs. Generally, HDF acquisition loans are repaid from the first receipts of the construction financing.

HDF construction loans may be used for the costs of rehabilitation or construction of an eligible project including: site improvement, demolition and/or site preparation, infrastructure, professional and legal fees during construction, labor, materials, equipment, approved developer fees and builders' overhead, project carrying costs and working capital, and the development of non-residential facilities, provided such space is incidental or appurtenant to the residential property, and allowed and reimbursable under the project's permanent financing. HDF loan funds may also be used to provide construction financing for NYS HOME Program-assisted projects. Generally, HDF

construction loans are repaid from the first receipts of the permanent financing.

HDF loan funds may also be used to provide interim financing for longer periods for projects funded through the Low-Income Housing Credit program (LIHC). These HDF loans are called equity or bridge loans, because they bridge the time during the project's development and/or initial operating years until sufficient equity proceeds become available to repay the HDF loan. HDF equity loans are generally made at a simple one percent interest rate, and usually have terms of up to seven years. HDF equity loans may be used to pay for any mortgageable project costs.

Restrictions on project size and scope and the exact income levels of the project's low-income occupants are generally determined by the permanent funding source. In addition, all project costs financed with HDF loans must be mortgageable (i.e., reimbursable under the permanent project financing).

2.02.02 Statutory Provisions

2.02.02.A Purpose

The HDF program was created under Article 11 of the Private Housing Finance Law (PHFL) for the purpose of establishing a revolving loan fund to provide temporary loans to eligible applicants to facilitate the development of housing for low-income households. It is the further purpose of HDF to coordinate activities aided under existing municipal, State and federal programs with other public and private actions in order to provide the most effective and economical concentration of federal, State, local and private efforts to increase the supply of low-income housing accommodations, and thereby improve the quality of life for all people of the State. HDF is administered by the Division of Housing and Community Renewal (DHCR).

Issued: **11/02**	Revised: **10/1/04**
Section: **2.00**	Title: **PROGRAM DESCRIPTIONS**
Sub-Section: **2.02**	Topic: **Housing Development Fund Program**

2.02.02.B Definitions

The following pertinent program-specific terms are defined by Article 11 of the PHFL.

1. Development Cost: The costs approved by the Commissioner of DHCR as appropriate expenditures which may be incurred prior to commitment and initial advance of the proceeds of a mortgage. These include, but are not limited to:

(a) payments for options to purchase properties on the proposed housing project site, deposits on contracts of purchase, or, with prior approval of the Commissioner of DHCR, payments for the purchase of such properties;

(b) legal and organizational expenses, including payment of attorneys' fees;

(c) payment of fees for preliminary feasibility studies, advances for planning, engineering and architectural work;

(d) expenses for community needs and market studies;

(e) necessary application and other project-related fees;

(f) bridge loans which provide temporary financing for the development of residential properties and will be repaid out of equity including proceeds from the syndication of a LIHC allocation; and

(g) such other expenses incurred by the project owner as the Commissioner of DHCR or the supervising agency, as the case may be, deems appropriate to effectuate the purposes of Article 11 of the PHFL.

2. Federally-Aided Mortgage: A mortgage made or insured by the federal government or instrumentality thereof, or a mortgage loan entered into in conjunction with a housing assistance payments contract in connection with new construction or substantial rehabilitation pursuant to Section 8 of the United States Housing Act of 1937, as amended.

3. Fund: The Housing Development Fund created by Section 574 of the PHFL.

4. Housing Corporation: A not-for-profit or charitable corporation which has as one of its primary purposes the improvement of housing for persons of low income, or a wholly-owned subsidiary of such corporation or organization.

5. Housing Development Fund Company or HDFC: A company incorporated and organized pursuant to Section 573 of the PHFL.

6. Housing Project: A specific work or improvement undertaken to provide dwelling accommodations, including the acquisition, construction and/or rehabilitation of lands, buildings and improvements, and such commercial, social, recreational, communal or other non-housing facilities as may be incidental or appurtenant to the project.

7. State-Aided Mortgage: A loan made by the State of New York or any agency or instrumentality of the State.

2.02.03 Eligibility Requirements

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

Issued: **11/02**	Revised: **10/1/04**
Section: **2.00**	Title: **PROGRAM DESCRIPTIONS**
Sub-Section: **2.02**	Topic: **Housing Development Fund Program**

2.02.03.A Eligible Applicants

Eligible HDF applicants include HDFCs incorporated pursuant to Article 11 of the PHFL, not-for-profit and charitable corporations, and their wholly-owned subsidiaries, which have the improvement of housing for persons of low income as a primary purpose. Applicants do not have to be HDFCs to be eligible for HDF funding; however, DHCR recommends that applicants incorporate as HDFCs as a vehicle to develop and/or own low-income housing projects.

Applicants must have the experience and capacity to develop, rehabilitate and/or construct a project of the size and type proposed in a timely and cost-effective manner. Additionally, applicants must be able to secure the appropriate permanent financing needed to complete the project and repay the HDF loan.

2.02.03.B Eligible Projects

Eligible projects for HDF loan financing are those that involve the construction or rehabilitation of cooperative, condominium, owner-occupied or rental housing for occupancy by low-income persons or households. Restrictions on project type and size are generally determined by the project's permanent funding provider.

2.02.03.C Eligible Areas

All areas of the State are eligible for HDF financing. However, priority for funding is given to projects which are located in an area which is or may become blighted or deteriorated, as designated by a federal, State or local agency.

2.02.03.D Eligible Occupants

To be eligible for HDF funding, a project must be occupied by low-income individuals or households. Generally, the permanent funding provider regulates tenant eligibility, project rents, sale prices and/or disposition of property. If permanent financing is not provided by a governmental source, DHCR may regulate the project subsequent to repayment of the HDF loan. In such instances, Article 11 of the PHFL restricts project occupancy to households with incomes not exceeding six times the total housing cost (rent plus utilities), except that for households with three or more dependents, the income must not exceed seven times the total housing cost.

2.02.03.E Eligible Loan Costs

Eligible loan costs are described in the Summary (2.02.01).

2.02.04 Program Requirements

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

Issued: **11/02**	Revised: **10/1/04**
Section: **2.00**	Title: **PROGRAM DESCRIPTIONS**
Sub-Section: **2.02**	Topic: **Housing Development Fund Program**

2.02.04.A HDF Loan Requirements

All HDF loans are evidenced by a promissory note or mortgage note which, among other things, requires that the temporary loan will be due and payable on demand if DHCR determines that permanent financing may not be obtained for the project, or if the HDF loan is in jeopardy of not being repaid.

In general, no HDF loan repayment terms can be extended beyond the last receipts of the permanent financing, or in the case of HDF equity loans for LIHC projects, the last installment of syndication proceeds paid to the project owner pursuant to a syndication or partnership agreement. A closing is usually required prior to, or concurrent with, the disbursement of loan proceeds for acquisition and construction. HDF loans are generally interest-free although HDF equity loans may have a one percent interest rate. A six percent interest rate may be charged in the event of default on repayment.

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

Prior to authorizing an HDF loan contract, DHCR must make the following findings:

(i) the HDF applicant proposes to finance the housing in whole or in part with a federal, State or municipal mortgage loan, or, if otherwise financed, will provide housing for low-income persons or families;

(ii) the project site is suitable;

(iii) there is a need for the type of housing proposed in the service area;

(iv) the project is feasible;

(v) there is a reasonable expectation that financing will be obtained; and

(vi) the character and competence of the applicant is sound.

All HDF loan funding commitments are subject to the availability of funds in the HDF revolving loan fund, as well as to an annual authorization by the Legislature to use such funds.

All applicants must enter into an HDF Regulatory Agreement and Loan Contract. HDF contracts must be executed by the applicant and DHCR, and approved by the State Attorney General's Office and the Office of the State Comptroller prior to disbursement of the HDF loan proceeds.

2.02.04.B HDFC Incorporation

A Housing Development Fund Corporation (HDFC) must be incorporated pursuant to the provisions of Article 11 of the PHFL and the provisions of either Section 402 of the Not-For-Profit Corporation Law, or, in the case of low-income cooperatives, Section 402 of the Business Corporation Law. An HDFC Incorporation package may be obtained by contacting the HDF Program Manager at DHCR, 38-40 State Street, 6th Floor, Albany, New York 12207.

HDFCs are either State- or municipally-supervised. State supervised HDFCs are organized with the consent of DHCR. DHCR will consent to the incorporation of an HDFC either for a term of three years or in perpetuity. DHCR will consent to the perpetual incorporation only if the HDFC has secured initial funding commitments for a low-income housing project. If the HDFC has not

secured such funding commitments, the HDFC term is limited to three years; however, the Certificate of Incorporation may be amended at a later date to revise the term to perpetual should the project receive the necessary funding commitments. DHCR must give its consent to all proposed amendments to the Certificate of Incorporation.

DHCR will consent to the incorporation of an HDFC only after review and approval of the HDFC Incorporation package submission which includes the following items:

(i) an executed original of the proposed HDFC Certificate of Incorporation, which shows that the HDFC is organized in accordance with the not-for-profit law and Section 573 of the Private Housing Finance Law.

(ii) a copy of the sponsor's Certificate of Incorporation, or, if unincorporated, a copy of the sponsor's by-laws;

(iii) proof of the sponsor corporation's good standing in the form of a Certificate of Good Standing from the Secretary of New York State, or an attorney's opinion letter;

(iv) a board resolution authorizing the sponsor to organize the proposed HDFC;

(v) an executed original previous participation certificate;

(vi) the sponsor's current financial statement;

(vii) an Organization's Relevant Experience exhibit which is completed for the sponsor corporation. If the sponsor corporation does not have prior housing experience, the form must be submitted for other pertinent members of the project development team. Corporate resumes which outline specific housing development experience will be

accepted in lieu of this form.

(viii) a brief narrative which describes and details the proposed housing project and the sponsor; and

(ix) evidence of permanent funding commitment(s) if the HDFC term is proposed as perpetual.

The process for DHCR consent to incorporate as an HDFC is as follows:

(i) the documents listed above are reviewed for compliance with Article 11 of the PHFL and DHCR's policies;

(ii) Prior to consenting to the incorporation, DHCR must find that:

(a) the HDFC is duly organized pursuant to Article 11 of the PHFL;

(b) a plan has been submitted for the development of a low-income housing project;

(c) the character and competence of the sponsor has been demonstrated to the satisfaction of DHCR; and

(iii) the consent to incorporate and the findings must be signed by the Deputy or Assistant Commissioner of DHCR's Office of Community Development.

Once DHCR has consented to incorporation, the Certificate of Incorporation is returned to

the sponsor or its legal representative for the sponsor to continue its processing. The following steps must be taken to complete the filing of the Certificate of Incorporation:

(i) the certificate of incorporation must be filed with the Secretary of State; and

(ii) a certified copy of the Certificate of Incorporation must be submitted to the HDF Program Manager, together with a copy of the filing receipt from the Secretary of State.

2.02.05 Farmworker Housing Program

The Farmworker Housing Program was authorized in 1995 through an amendment to Article 11 of PHFL which made HDF program funds available for this new purpose.

The Farmworker Housing Program is a low-cost revolving loan program to assist agricultural producers including dairy farmers in improving existing housing or constructing replacement housing for seasonal migrant farmworkers or year-round dairy farmworkers so that the housing will comply with applicable code (that is, the New York State Sanitary Code and/or the Building Codes of New York State). The loans are also used for the new construction of seasonal farmworker housing or year-round dairy farmworker housing and the expansion of existing facilities.

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

Under the program, an agricultural producer can apply to borrow up to $100,000 per year for a project. If more than $100,000 in loan funds are needed to satisfactorily complete the construction, repair or improvement of one farmworker housing project, the agricultural producer can seek funds

from other sources, including a blended loan (i.e., a combination of a program loan and a conventional loan).

LLAs may require a one-time servicing fee from the borrower at the time of loan closing of no more than five percent (5%) of the loan amount. There are no interest or inspection fees. All loans to borrowers must be repaid in equal annual payments of principal; the term of the loan may not exceed ten (10) years. All loans, however, must be fully repaid by January 1, 2020, when the Farmworker Housing Program is currently scheduled to expire.

2.02.06 HouseNY Program

The HouseNY Program was introduced in 2002 with the goal of assisting municipalities and their local housing organizations develop an inventory of sites around the state that are suitable and ready for residential development. Housing Development Fund no-interest predevelopment loans are available to assist communities in identifying sites and procuring State and local approvals.

Working with local communities, eligible applicants, labor unions and community interests, DHCR will make predevelopment loans available to assist communities in identifying sites and bring them through the approval stages (zoning, environmental, etc.) prior to making application to a housing program. Since housing development with a mix of incomes can be desirable for a community, upon request DHCR will provide technical assistance to localities to help them explore project financing options. Housing programs are now available to develop rental properties, homeownership properties, single and multifamily properties for all income groups, and family and senior housing projects. Also, communities may use HouseNY to help address housing needs for local municipal workers, such as fire fighters, police officers, teachers, health care workers, and others who provide vital community services.

HouseNY projects having a high degree of readiness will be viewed favorably when applying for State housing subsidies from DHCR or HTFC.

Issued: **11/02**	Revised:
Section: **2.00**	Title: **PROGRAM DESCRIPTIONS**
Sub-Section: **2.03**	Topic: **Rural Rental Assistance Program**

2.03.01 Summary

The Rural Rental Assistance Program (RRAP) provides rent subsidies on behalf of eligible occupants who are residing in projects constructed or rehabilitated with mortgage financing under the Section 515 Rural Rental Housing (RRH) Program. RRAP operates in conjunction with the Section 515 RRH Program, which is administered by Rural Housing Services (RHS) (formerly the Farmers Home Administration) of the United States Department of Agriculture. RRAP- assisted projects may also receive capital funds from the New York State HOME Program or the Housing Trust Fund Program through the Unified Funding process described in Section 3.

The Section 515 RRH Program provides direct loans to sponsors of multifamily rental housing projects for rural low- and moderate-income families or elderly and handicapped persons. The Section 515 RRH Program and other rural housing credit and assistance programs were authorized by Title V of the Housing Act of 1949, a federal law.

Under RRAP, the Division of Housing and Community Renewal (DHCR) enters into 15 year contracts, which may be extended once, up to a maximum of 25 years, to provide monthly rent subsidy payments to the project sponsor (applicant) equal to the difference between the monthly rent plus utilities and 30 percent of the tenant's adjusted monthly income. RRAP contracts go into effect upon completion of construction or rehabilitation of the project. Up to 100 percent of the project units may receive rental subsidies.

2.03.02 Statutory Provisions

2.03.02.A Purpose

RRAP was created by Article 17-A (Sections 1020-1025) of the Private Housing Finance Law (PHFL) for the purpose of supplementing federal programs with State rental assistance payments to providers of low-income housing in rural areas. RRAP is administered in New York

State by DHCR.

The following are the specific legislative findings on which RRAP is based:

(i) in certain rural areas of the State, significant numbers of low-income residents are unable to obtain decent housing, and the normal operation of the private market has not addressed their needs;

(ii) the elderly and families are especially affected by the lack of housing in rural areas; elderly persons are frequently forced to choose between continuing to live in homes which have become too large to care for and use well, or leaving their communities to live elsewhere; families, particularly those just beginning, are often faced with either substandard, unsafe housing, living with relatives in overcrowded conditions, or leaving their communities; the ensuing social and economic disruption has profoundly adverse effects on the rural communities as well as the residents;

(iii) numerous housing programs have been initiated by the federal government to provide housing for those of low income, which have, for the most part, worked best in areas of high population density, thus effectively, although unintentionally, failing to fulfill their intent in rural areas;

(iv) locally based housing providers can effectively serve the needs of low and moderate income persons in rural areas, yet their efforts have been severely limited by the contemporary high cost of financing, inflation and massive retrenchment in federal housing assistance programs; and

(v) it is in the best interests of the people of New York State to assist local housing providers in meeting the needs of low income occupants in rural areas by supplementing federal construction assistance programs with a program of State

rental assistance payments similar to the federal FmHA (521) rental assistance program.

2.03.02.B Definitions

The following program-specific terms are defined by Article 17-A of the PHFL and by the Program's Rules and Regulations promulgated thereto:

1. Applicant or Eligible Applicant: A sponsor seeking assistance pursuant to Article 17-A.

2. Federal Assistance: Assistance from the FmHA pursuant to Title V of the United States Housing Act of 1949.

3. Eligible Project: A housing project located in a rural area which is to be owned or operated by an eligible sponsor and which has received (or which the sponsor has demonstrated to the satisfaction of the Commissioner will receive) federal assistance through the Rural Housing Services Section 515 Rural Rental Housing Program.

4. Eligible Sponsor: Either a corporation organized pursuant to the not-for-profit corporation law, a public housing authority as defined pursuant to subdivision two of section three of the public housing law, or an eligible borrower as defined in Title V of the United States Housing Act of 1949 (individuals; private, non-profit corporations legally precluded from the distribution of any gain to its members; for-profit corporations with unlimited return on initial investment; limited-profit sponsors who, in order to receive interest credit assistance, agree to limit the amount of profit obtained to eight percent of the initial investment annually; consumer cooperatives organized to operate the housing on a non-profit basis solely for the benefit of the occupants; limited partnerships; and, owner-builder entities).

Issued: **11/02**	Revised:
Section: **2.00**	Title: **PROGRAM DESCRIPTIONS**
Sub-Section: **2.03**	Topic: **Rural Rental Assistance Program**

2.03.03 Eligibility Requirements

This Section sets forth the eligibility requirements which are specific to RRAP.

2.03.03.A Eligible Applicants

As set forth in Article 17-A, eligible applicants (sometimes called "eligible sponsors") for RRAP include not-for-profit corporations, public housing authorities, individuals, for-profit corporations, limited-profit sponsors, consumer cooperatives, housing development fund companies, limited partnerships, and owner-builder entities.

Applicants must have proven ability and intention to maintain and operate the project as low-income rental housing.

2.03.03.B Eligible Projects

To be eligible to receive RRAP rent subsidies, projects must contain two or more rental housing units which will be owned or operated by an eligible sponsor, and which are constructed or rehabilitated with mortgage financing under the Section 515 Rural Rental Housing Program.

A Rural Rental Assistance Program applicant must receive an award of Section 515 funds from RHS before it is eligible to receive a RRAP funding commitment. Applicants which request 515 funds typically also seek funding from HTFC or DHCR through the Unified Funding process described in Section 3.00 of this Manual. Upon approval by RHS, DHCR makes a determination of the actual amount of subsidy required for the project. RRAP contracts are executed upon verification that construction has been completed in accordance with the plans and specifications approved by RHS.

Issued: **11/02**	Revised:
Section: **2.00**	Title: **PROGRAM DESCRIPTIONS**
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2.03.03.C Eligible Areas

To receive RRAP rental payments, a project must be located in a rural area, as defined by RHS. Such an area includes any open country, place, town, village or city not part of or associated with any urban area, and which meets the following population criteria:

(i) a rural community with a population under 10,000; or

(ii) a town or city with a population of between 10,000 and 25,000 that is located outside an MSA if the United States Secretaries of Agriculture and Housing and Urban Development certify that a serious lack of mortgage credit exists in that town or city.

2.03.03.D Eligible Project Recipients

Eligible recipients of RRAP rent subsidies include low-income households, handicapped persons, or senior citizens who are unable to pay the cost of the project rent plus utilities, with 30 percent of their adjusted monthly income, and whose incomes do not exceed the current RHS income limitations.

Under RRAP, DHCR enters into 15 year contracts, which may be extended once up to a maximum of 25 years, to provide rental subsidy payments on behalf of eligible occupants equal to the difference between 30 percent of the tenant's adjusted monthly income and the tenant's monthly housing expense (rent plus utilities).

Issued: **11/02**	Revised: **11/04**
Section: **2.00**	Title: **PROGRAM DESCRIPTIONS**
Sub-Section: **2.04**	Topic: **Low-Income Housing Credit Program**

2.04.01 Summary

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

LIHC is available to project owners who acquire, construct, and/or rehabilitate rental housing that is reserved for low-income households. The amount of Credit allocated to a project is directly related to the costs associated with the acquisition, construction, and/or rehabilitation of rental housing that is reserved for low-income households; those earning 60% or less of area median income. The amount of Credit allocated to an owner represents the Credit amount the owner may receive for each of the next ten years subsequent to the Credit allocation. In addition, the amount of Credit a project may receive is determined by applying the applicable federal credit percentage to the project; in general, approximately 9% is applied to the cost of new construction or rehabilitation and approximately 4% is applied to the cost of building acquisition or development costs for projects which receive federal financing.

New York State is provided with an annual allocation of LIHC, which is called the State Housing Credit Ceiling. As the State's lead Housing Credit Agency (HCA), DHCR is responsible for the allocation of a portion of the Credit Ceiling to other State and local housing agencies serving as HCAs. These HCAs, in turn, sub-allocate their portion of the Credit Ceiling to eligible applicants/owners of qualified housing projects. DHCR also retains a significant portion of the Credit Ceiling, which it directly allocates for qualified housing projects.

There are two programmatic components of the LIHC program administered by DHCR. Much of the information below refers to the competitive LIHC program in which Credit is allocated from the State's Housing Credit Ceiling (also referred to as 9% Credit projects). DHCR also

currently allocates Credit on a non-competitive basis to projects (also referred to as 4% Credit projects) which are financed by tax-exempt bonds issued from the State's Private Activity Bond Volume Cap pursuant to Sections 42 of the Code. This Credit is available "as-of-right" and is not apportioned from the State's Credit Ceiling (see Section 2.04.05 below for additional information and the current time frame for DHCR's continued acceptance of new 4% Credit project applications).

2.04.02 Statutory Provisions

2.04.02.A Purpose

The Federal Tax Reform Act of 1986, as amended (the Act), established the LIHC Program to be administered by state housing agencies for the purpose of promoting investment in the production and retention of rental housing units which are reserved for low-income households. The LIHC Program replaced other tax incentives that existed prior to the passage of the Act in 1986.

The Act authorized the governor of each state to allocate the low-income housing tax credit ceiling among governmental units and other issuing authorities in the state with a single HCA coordinating the allocation of Credit to owners of low income housing. In New York, the Governor's Executive Order #135 designated DHCR as the State's lead HCA. The Executive Order authorized DHCR to allocate Credit in a manner which maximizes the public benefit by addressing the State's need for low-income housing and community revitalization incentives and to sub-allocate the Credit Ceiling among State and local entities involved with housing.

The Act further required each agency allocating Credit to adopt a Qualified Allocation Plan (the QAP) to provide for the effective coordination of the State's LIHC Program with Section 42 of the Code. The QAP sets forth the eligibility and scoring criteria and preferences by which LIHC will

be awarded and allocated to projects by DHCR.

Note for Prospective UF 2008 LIHC Applicants: As of November 2007, DHCR will be accepting comments regarding proposed amendments to the QAP (the 2008 Proposed QAP), which will include current, revised and/or updated program definitions, threshold eligibility review criteria and project scoring and ranking criteria. The 2008 Proposed QAP, which is subject to further change, will be utilized for the review and processing of all LIHC applications received after completion of the amendment process.

Additional information about the 2008 Proposed QAP and the amendment process will be available on DHCR's website. The process for amending the QAP will be completed prior to the deadline for the submission of applications under the Unified Funding 2008 application review process. In the event the 2008 Proposed QAP is not adopted prior to the application deadline, the current QAP will remain in effect.

2.04.02.B Definitions

The following program-specific terms are defined by Executive Order 135, which designates DHCR as the State's lead HCA pursuant to the Federal Tax Reform Act of 1986. Additional program definitions are contained in the Section 2040.2 of the QAP:

- Code: The United States Internal Revenue Code of 1986, as amended.

- Director of Housing or Director: Any Director of Housing so designated by the Governor. If the position of Director of Housing is vacant, during the period of such vacancy, the Commissioner of Housing and Community Renewal of the State of New York shall exercise the powers,

functions and duties of the Director for the purposes of Executive Order 135.

- Housing Credit Agency or HCA: Any State Housing Credit Agency or Local Housing Credit Agency.

- Low-Income Housing Tax Credit Ceiling or Ceiling: The dollar amount of allocation authority apportioned to the State by the Federal Tax Reform Act of 1986 for a calendar year under Section 42(h)(3)(c) of the Code.

- State Housing Credit Agency: The New York State Division of Housing and Community Renewal (DHCR) or any other State agency, governmental unit or public benefit corporation concerned with housing and designated by the Director as an HCA, within the meaning of Section 42(h)(7)(A) of the Code. DHCR is the lead HCA in the State.

- Tax Credit or Credit: The Low-Income Housing Tax Credit allocated to specific projects pursuant to Section 42 of the Code.

2.04.03 Eligibility Requirements

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

2.04.03.A Eligible Applicants

Eligible applicants/owners for the LIHC Program include for-profit developers, not-for profit developers, individuals, corporations, limited partnerships and limited liability corporations which will own rent-restricted rental housing after the project is acquired and improved, rehabilitated or constructed.

Issued: **11/02**	Revised: **11/04**
Section: **2.00**	Title: **PROGRAM DESCRIPTIONS**
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2.04.03.B Eligible Projects

Credit allocations may only be made to rental housing projects which meet the minimum set-aside requirements for rent-restricted low-income units. Generally, eligible (or qualified) projects must contain a minimum number of low-income units (the minimum set-aside) in accordance with one of the following formulas:

- at least 20 percent of the units in a project must be occupied by households with incomes at or below 50 percent of the area median income; or
- at least 40 percent of the units must be occupied by households with incomes at or below 60 percent of the area median income; or
- in New York City, at least 25 percent of the units must be occupied by households with incomes below 60 percent of the area median income.

To be eligible, the project's low-income units must be rent-restricted, so that low-income households occupying the unit do not pay rent (including tenant-paid utilities) which is greater than 30 percent of the area median income imputed for the unit based on the number of bedrooms the unit contains.

Eligible project activities under the LIHC Program include new construction, building acquisition with rehabilitation and rehabilitation.

The QAP sets forth additional eligibility requirements which must be met by Credit projects. Pursuant to Section 2040.3(E) of the QAP, at each stage of processing (i.e., application, reservation, binding agreement or allocation) Credit applications will be subject to a threshold eligibility review, which will include, but not necessarily be limited to, whether the project meets certain minimum requirements set forth in this section. The threshold eligibility requirements contained in the 2008

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Proposed QAP follow:

(1) The project meets the occupancy, rent restrictions and any other requirements of the code.

(2) The project applicant has site control consistent with the code, for the project real estate through a lease, option, purchase contract or deed.

(3) The project applicant has taken all steps necessary at each stage of processing to secure the required governmental approvals to construct and operate the project and the applicant demonstrates that the project is eligible for all necessary governmental approvals.

(4) Evidence is provided that the project is consistent with the applicable HUD approved consolidated plan for the locality in which the project will be located.

(5) The project applicant has taken reasonable steps to address the objections to the proposed project, if any, raised by the chief executive officer of the locality where the project is proposed.

(6) The project developer, owner and/or manager have successfully developed and operated projects comparable to the proposed project and have the capacity and experience to undertake, complete and operate the proposed project.

(7) The project developer, owner and/or manager and their principals do not include anyone who owns or manages an existing project for which an IRS Form 8823 has been issued and has not been corrected or otherwise resolved as determined by the supervising agency.

(8) The project developer, owner and/or manager and their principals do not include anyone who has participated in a publicly assisted capital project that has been determined to be out of compliance with statutes, rules, regulations, policies or agreements and has not been corrected or otherwise resolved as determined by the public agency responsible for supervising the project.

(9) The amount of requested annual credit allocation does not exceed either the maximum per project or per unit amounts specified in the notice of credit availability issued by the division. Such amounts will be established based upon the expected availability of credit allocation authority. The applicants may request and the commissioner may grant a waiver of this requirement if the commissioner determines that there is sufficient credit available, the project is in furtherance of the State's housing goals and in the best interests of the citizens of the State of New York (this paragraph is not applicable to applications reviewed under section 2040.4 of this Part).

(10) A comprehensive market study, conducted by a market study analyst who has been pre approved by the division, which demonstrates at a minimum 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.

(11) There will be no adverse impact on the occupancy rates of other publicly-assisted housing in the local area.

(12) The project does not involve the permanent involuntary displacement of existing tenants in order to qualify for credits.

(13) The number of bedrooms in the units in the proposed project are appropriate for the type of occupancy proposed.

(14) All LIHC-assisted first floor units in new construction projects without an elevator, all LIHC-assisted units in new construction projects with an elevator, and as many LIHC-assisted units as feasible in adaptive reuse or rehabilitation projects shall meet visitability standards.

(15) The acquisition costs may not exceed 25 percent of the total development costs of the project~~;~~ unless:

(i) it is preservation project (as defined at section 2040.2(q) of this Part); or

(ii) the Commissioner has determined that the preservation of the building(s) is in the best interest of the State (not applicable to applications reviewed under section 2040.4 of this Part).

(16) Project construction has not started without prior authorization by the division.

(17) The project will:

(i) be a qualified low-income housing project for no less than 30 years; or

(ii) be conveyed pursuant to an effective plan for existing tenants to purchase the project at the end of the compliance period.

(18) The project must meet the following green building measures:

(i) utilize Energy Star appliances, light fixtures and heating systems or the equivalent which will produce the same or comparable energy efficiency or savings;

(ii) where appropriate, select and place native trees and plants to minimize water usage and maximize energy efficiency;

(iii) use water-conserving fixtures;

(iv) maximize energy efficiency by use of daylight sensors and timers on outdoor lighting;

(v) where indicated by local conditions for new construction, install a passive radon-reduction system to be activated should tests confirm the presence of radon gas in the building or, for rehabilitation projects, install an active radon-reduction system and measures should tests confirm the presence of radon gas in the building; and

(vi) for properties built before 1978, use lead-safe work practices during renovation, remodeling, painting and demolition.

Prospective UF 2008 Credit applicants seeking additional clarification as to which threshold eligibility criteria have changed from the criteria set forth in the current QAP are advised to contact the appropriate DHCR regional office or review the 2008 Proposed QAP and other explanatory documents on DHCR's website.

In addition, while Credit projects may contain commercial space and market-rate units, Credit can only be taken against and utilized for the financing of the project's low-income residential space.

One important exception to the above is in the case of a residential project containing a Community Service Facility (CSF). A CSF is defined as any facility designed to serve primarily individuals who reside in the Credit project or in the immediate community whose income is 60% or less of area median income. The CSF may include space for such activities as Head Start, child care, job training, primary health care, youth recreation and support services for seniors. The CSF portion of the project is eligible for Credit up to an amount which is not in excess of 10 percent of the total eligible basis in the project. In addition, to be eligible, the subject project must be located

in a qualified census tract. Credit applicants must describe and clearly document the programmatic relationship between the occupant(s) of the CSF and the project tenants and community residents served by the CSF, carefully apportioning all project development costs, hard and soft, and real estate expenses between the CSF and the residential units of the project.

Credit allocations may not be used for projects which will be used for transient housing, defined as units with an initial lease of less than six months. However, an exception is permitted for single room occupancy (SRO) projects, which are eligible for Credit. Further, transitional housing projects for homeless persons and/or families are eligible for Credit.

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

In addition to eligibility standards, the QAP sets forth project scoring and ranking criteria (Section 2040.3(F) of the QAP), which incorporate both Code-mandated project selection criteria and preferences and DHCR project preferences.The preferences, which are outlined below and are described in detail in the 2008 Proposed QAP, include those Credit projects which:

- provide affordable housing in areas with a strong housing market, unmet demand and limited or no subsidized affordable housing production in the project's primary market area;
- are part of a comprehensive community revitalization plan which includes the use and reuse of existing buildings and addresses employment, educational, cultural and recreational opportunities within the community;
- leverage other funding sources (non-HTFC/DHCR) to finance a portion of the project's total development costs and have firm commitments from these sources, the net syndication proceeds as a proportion of the total credit allocation requested, and/or the amount of Credit requested per

unit, adjusted for unit size (i.e., number of bedrooms);

- provide Green Building and sustainable development measures (see DHCR's Green Building Criteria Reference Manual for more information as well as the 2008 Proposed QAP for specific Green Building features in the LIHC scoring criteria);
- propose an extended use agreement (i.e., LIHC regulatory agreement), which may include a commitment to convey ownership to a local non-profit organization, to operate the project as a qualified low-income housing project for a period longer than 30 years;
- include project units which are marketed to and are in fully accessible and fully adapted, move-in ready condition for persons who have a mobility impairment and persons who have a hearing or vision impairment (see DHCR's Design Handbook for information on design standards and the 2008 Proposed QAP for the specific scoring criteria);
- provide the largest percentage of units which are affordable to persons with the lowest incomes;
- offer units with more bedrooms to accommodate households with children;
- participate in the New York State Energy Research and Development Authority (NYSERDA) Multifamily Building Performance Program or the New York Energy Star Program. Projects not eligible to participate in these programs may demonstrate that the project will meet comparable energy efficiency standards. Project applicants may obtain additional information, request technical assistance or apply for available NYSERDA funding by contacting NYSERDA in the following manners: call NYSERDA at 1(877) NY-SMART, email NYSERDA at NewConstruction@prcsolutions.com or visit NYSERDA's website at http://www.getenergysmart.org/buildingowners/newconstruction/overview.as;
- give preference in tenant selection to persons from public housing waiting lists or other existing waiting lists for subsidized housing; the preference must be evidenced by an enforceable agreement with the source of referral;
- give preference in tenant selection to persons with special needs and provide supportive services as evidenced by a comprehensive service plan and an agreement in writing with an experienced

service provider;

- provide for the participation of a local non-profit 501(c)(3)) or 501 (c)(4) organization in the project, subject to the level of the organization's participation, ownership interest and tax-exempt corporate purposes (see the 2008 Proposed QAP for the specific scoring criteria);
- reserve at least 15% of the total projects units for households earning above 60% of area median income (i.e., units not eligible to receive LIHC financing);
- provide amenities for tenants, such as access to discounted internet services, a computer lab, Energy Star central air-conditioning, dishwashers and/or laundry facilities, and/or outdoor patio or garden space.

Prospective UF 2008 Credit applicants seeking additional clarification as to which scoring criteria have changed from the criteria set forth in the current QAP are advised to contact the appropriate DHCR regional office or review the 2008 Proposed QAP and other explanatory documents on DHCR's website.

Subject to the annual availability of Credit and the issuance of a Notice of Credit Availability, DHCR may provide a set-aside of Credit on an annual basis for additional types of projects, including but not limited to:

a. Preservation Projects

A Preservation Project is a project in which residential property is rehabilitated to extend its useful life to serve as affordable housing and averts the loss of affordable housing currently serving the housing needs of a population whose housing need would justify the replacement of the housing if it ceased to be available to that

population. The project must meet the definition in Section 2040.2 (q) of the 2008 Proposed QAP.

The scope of the rehabilitation must be sufficient for the project to function in good repair as affordable housing for a period equal to at least thirty years from the date of issuance of the final credit allocation. [Note: applicants proposing a Preservation Project must demonstrate how the project averts the loss of affordable housing and must: a) describe any regulatory and economic circumstances which could precipitate the loss of or risk the availability of the project to low income households, and; b) provide a compelling rationale for preserving the existing project based upon economic conditions including the availability of alternative affordable housing, street rents, vacancy rates and current and future demand].

Preservation Projects which involve the redevelopment of state-assisted public housing must meet the criteria and conditions for approvals under the New York State Public Housing Law. Such projects may include the economic restructuring and rehabilitation of an existing public housing project. Applicants are encouraged to consult with DHCR regarding the review and approval of the redevelopment plan prior to submitting an application to DHCR

b. High Acquisition Cost Projects

As defined in Section 2040.2 (j) of the 2008 Proposed QAP, a High Acquisition Cost Project is a Preservation Project in which the acquisition costs of the building(s) is twenty five percent or more of the project's total development cost. Such projects

must meet the Preservation Project definition referenced above to be eligible for funding.

In a High Acquisition Cost Project, the amount of the developer's fee shall be based upon an assessment of risk assumed by the project owner, considering factors including, but not limited to, rent subsidies or other project operating support, location, financing sources, occupancy level, project type and identities of interest.

c. Supportive Housing Projects

A Supportive Housing Project, as defined in Section 2040.2 (u) of the 2008 Proposed QAP, is a project which gives preference in tenant selection to persons with special needs (defined in Section 2040.2(p) of the proposed QAP), for at least twenty five percent of the total units in the project.

For a proposed LIHC-financed project to be considered Supportive Housing:

i. The need for housing for the targeted population within the primary market area must be documented;

ii. 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 an agreement in writing with an experienced service provider;

iii. The project must be located in close proximity to public transit service or the applicant must include a transportation plan as a component of the comprehensive service plan to ensure access to necessary services;

iv. The applicant must demonstrate that funding is in place or identify a viable plan for the funding of appropriate services;

v. The applicant must provide for an ongoing rental subsidy or other form of subsidy to ensure that rents paid by the targeted population remain affordable; and,

vi. 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.

In addition, Section 42(h)(5) of the Code requires that the States set-aside 10% of the Ceiling (see 2.04.04A below**)** for qualified non-profit organizations which own an interest in the project and materially participate in the development and operation of the project throughout the compliance period.

In regard to multiple-building developments, DHCR will treat these as one project provided it is consistent with the Code, the QAP and meet the following requirements:

- Buildings on Adjacent Sites:
  - on same or adjacent tracts of land

- have the same ownership entity and common construction/permanent financing sources

- Buildings on Scattered Sites:
  - in non-metropolitan counties, such projects must be located in the same municipality (i.e., town, city or village)
  - in metropolitan counties, such projects must be located in the same neighborhood, or if recognized neighborhood boundaries do not exist, in no more than two adjacent census tracts
  - have the same ownership entity and common construction/permanent financing sources

2.04.03.C Eligible Areas

All areas of New York State are eligible.

2.04.03.D Eligible Occupants

Eligible occupants are low-income households earning up to 60% of area median income.

LIHC may only be utilized on units that are occupied at the time of initial occupancy by eligible occupants. To be eligible for LIHC, project occupancy must meet the minimum set-aside requirement discussed in 2.04.03B above.

Units must be available for use by the general public and cannot be restricted to members of a particular organization or to employees of a specific employer. Project owners may, however,

give preference in renting units, or limit occupancy to, categories of persons with special needs (e.g., persons who are elderly, persons or families who are homeless persons with HIV/AIDS) provided such preferences are in accordance the U.S. Department of Housing and Urban Development's (HUD) policy on non-discrimination in housing and Federal and State fair housing laws and regulations.

2.04.03.E Eligible Project Costs

Eligible project costs include the actual and necessary costs of residential construction, building acquisition and/or rehabilitation, customary hard costs and related soft costs, excluding the expense associated with the syndication of the Credit.

Additional DHCR standards for calculating the maximum amount of Credit necessary for a project are detailed in Section 2040.3(G) of the QAP. These standards include but are not limited to the following maximum allowable construction-related costs in relation to the contractor's contract:

- Builder's profit of 10 percent;
- Builder's overhead of 4 percent; and,
- General requirements of 6 percent.

Section 2040.3 of the QAP also sets forth the amount of developer's fee compensation for services, overhead and profit recognized by DHCR. The developer's fee is limited to 10 percent of the acquisition and improvement costs associated with the low-income portion of the Credit project. This can be increased up to a maximum of 15 percent of improvement cost for the low-income portion when either the developer or affiliate provides both a satisfactory cost completion guarantee and an operating deficit guarantee as those guarantees are set forth in the project owner's

organizational documents. Notwithstanding any other provision in the QAP, the amount of the developer's fee for a high acquisition cost project shall be based upon DHCR's assessment of the risk assumed by the project owner, considering factors including, but not limited to, rent subsidies or other project operating support, location, financing sources, occupancy level, project type, and identity of interest.

DHCR may also reduce allowable costs**,** including but not limited to the developer's fee, where an identity of interest exists among the parties to the Credit transactions involving the syndication, development and/or operation of the project.

DHCR charges processing fees for 9% Credit projects which include application and Credit allocation fees, as specified in Section 2040.3(C) of the QAP. The application and allocation fees for 4% Credit projects are noted in Section 2040.4(C) of the QAP.

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2.04.04 Program Requirements

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

2.04.04.A LIHC Ceiling Allocation

New York State receives an annual allocation of Credit called the Low-Income Housing Tax Credit Ceiling. The Ceiling for any calendar year is defined as the sum of:

- a per capita amount based on the State's population (this figure can be changed by Congress and has trended upwards in recent years);
- the National Pool, which represents the unused portion of the Credit of other States which did not fully allocate their Ceiling in the previous calendar year (the National Pool funds are distributed to States which fully allocated their Ceiling based on a formula derived by State population size); and,
- the amount of the Ceiling returned in the calendar year from projects which did not require all or a portion of their Credit allocation.

Ceiling Allocation to HCAs

DHCR is authorized to apportion the Ceiling to other State and Local HCAs, which in turn make allocations to eligible projects. The Ceiling is apportioned in a manner to insure that each HCA has sufficient Credit allocation authority to undertake a program of Credit activity and to assist, through the appropriate HCA, any project which represents an important initiative or unique opportunity to meet State and local housing needs.

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As noted above, each agency allocating Credit is required to adopt a Qualified Allocation Plan to provide for the effective coordination of the State's LIHC Program with Section 42 of the Code. The DHCR QAP sets forth the eligibility and scoring criteria and preferences by which LIHC will be awarded and allocated to projects by DHCR as well as certain underwriting standards and compliance monitoring requirements. In order to receive an apportionment of the Ceiling from DHCR, each HCA must adopt and submit a QAP which is consistent with the Code.

In addition to adopting a QAP which sets forth its guidelines and requirements in allocating Credit, HCAs are responsible for:

- underwriting each project to limit the amount of the credit allocation to the amount needed to make the project feasible;
- executing and recording as a restrictive covenant, a Low-Income Housing Extended Use Agreement (also known as a Regulatory Agreement) with the project owner for the **minimum** term of **at least** a 30-year extended use period to maintain the project in good repair for low-income households; and,
- making a good faith effort to find a qualified buyer as a successor to the original owner, if the owner requests a Qualified Contract for the purchase of the project at the end of the 15-year compliance period.

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DHCR's Credit Allocation Authority

The portion of the Ceiling which is not allocated to other State and local HCAs represents DHCR Allocation Authority. DHCR allocates Credit on a competitive basis as defined in DHCR's QAP to projects which:

- utilize Credit in conjunction with its other capital financing programs (e.g., Low-Income Housing Trust Fund, NYS Low-Income Housing Tax Credit Program, NYS HOME Program, Homes for Working Families Program, Rural Rental Assistance Program, Urban Initiatives Program, Rural Area Revitalization Projects Program);
- receive other federal, state and local government financing (e.g., Community Development Block Grant, local government HOME Program, NYS Homeless Housing Assistance Program, tax-exempt bond financing allocated from the State's Private Activity Bond Volume Cap); and,
- which do not receive any other governmental funding assistance.

The projects in the second and third categories are also termed LIHC standalones, since they do not have other DHCR/HTFC financing.

2.04.04.B DHCR Credit Allocation Process

DHCR's process for the allocation of Credit to projects is set forth in detail in Section 2040.3 of the QAP and includes descriptions of the DHCR:

- funding cycle;
- LIHC application and allocation fees;

- requirements for issuance of Credit reservations, binding agreement, carryover allocations and the Internal Revenue Form 8609;
- threshold eligibility review criteria;
- project scoring and ranking criteria; and,
- process for determination of the Credit allocation amount for a project.

The DHCR Notice of Credit Availability and Unified Funding Request for Proposals which are issued on an annual basis also provide the detailed parameters and criteria of Credit application review, DHCR's stated expectations and project preferences and the format for applicant notification of the outcome of DHCR's review.

2.04.04.C Extended Use Period

As noted above, pursuant to the Code, the owner must execute an Extended Use Agreement (also referred to as a Regulatory Agreement) with the HCA that issued the Credit allocation which requires that a building's Credit-assisted units be available for low-income households for an Extended Use Period of 30 years. The Regulatory Agreement (described in Section 2040.5 of the QAP), which is binding on all successors, provides an enforcement mechanism for both the HCA, which performs a compliance monitoring function, and residents to assure that the Credit-assisted units will be maintained for this purpose through the Extended Use Period. The Extended Use Period may terminate early if the building is acquired by foreclosure, or if the HCA cannot find a qualified buyer for the building within one year of the owner's written request to do so. The owner cannot make such a request until the end of the fourteenth year of the 15-year Compliance Period.

DHCR's responsibilities and requirements for Credit project monitoring, the tenant income certification process and compliance inspections are set forth in Sections 2040.7 - 2040.10 of the

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QAP.

2.04.04.D Consolidating Multiple LIHC Reservations

DHCR will consider an applicant's request for approval to combine two or more reservations provided:

- the applicant's request to combine project reservations does not occur prior to issuance of the reservation for the individual projects nor subsequent to issuance of the binding agreement/carryover allocation;
- each project is independently viable from both design and underwriting perspectives through construction and the regulatory period;
- each project possesses the same ownership entity and the same construction/permanent financing sources;
- the sites are adjacent (that is, abutting on at least one side); and,
- the combination of project reservations results in a reduction of project-related costs which provides a benefit to the tenants in terms of lower rents, increased amenities, security or other features and/or to DHCR through a reduction in necessary funding levels.

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2.04.04.E Low Income Housing Credit Program - Commissioner's Findings and Determination

DHCR will consider an applicant's request for approval to extend a Credit reservation deadline subject to the following policy:

It is the policy of New York State and the purpose of federal housing programs to provide housing opportunities to all persons and areas of the State. Although the conditions and needs may vary in different areas of the State, these housing programs are intended to be flexible and to address a variety of needs and the unique circumstances of the various communities across the State.

DHCR, in its role as Housing Credit Agency, has administered the Low-Income Housing Credit (LIHC) program in a manner which strives for an equitable distribution of credits across the State based upon need and population. The LIHC has experienced success in assisting projects in urban areas and also has been successful in facilitating the development of projects in non-urban areas.

The LIHC program is designed to facilitate the timely completion of affordable housing projects and credits that are not used by the State in a timely fashion are forfeited. To avoid the threat of forfeiture, the State has administered the program in a manner which requires applicants to strictly comply with all development time frames and projects which do not meet these time frames have had their allocation revoked with no provision for extensions or exceptions.

However, there are substantial differences in the local review and approval processes implemented and carried out by the non-urban communities in which projects have been proposed. It is a main objective of the State to assist and allow these non-urban communities to properly and

adequately review these project proposals for appropriateness for the areas in which the property is located.

In particular communities have taken additional time to carefully review proposed family projects and their impact on their communities. It has been DHCR's experience that these reviews may take more time to complete than was initially anticipated.

In light of the importance of the development of projects for families in non-urban areas, DHCR has determined that it is necessary to establish a policy whereby projects which are designed to serve families in non-urban areas which are involved in the local review and approval process may be granted additional time necessary to complete the process for obtaining local approvals.

A request may be made and granted by the Deputy Commissioner under the following circumstances:

1. Project is designed to serve families and is located in a non-urban area;
2. Local Approval Process has been timely commenced and is still ongoing; (including any judicial review proceedings); and,
3. All other conditions for the LIHC have been met, including but not limited to site control and financing commitments.

2.04.05 Projects Financed by Private Activity Bonds

As noted in 2.04.01, DHCR allocates Credit at the 4% rate which is derived “as-of-right” for projects which are financed by tax-exempt bonds issued from the State’s Private Activity Bond

Volume Cap. This Credit, issued to pursuant to Section 42 and Section 142 of the Code, is not apportioned from the State's Credit Ceiling and, therefore, is allocated to projects on a non-competitive basis. DHCR administers the allocation of these Credits (referred to herein as 4% Credit) to eligible projects pursuant to Section 2040.4 of the QAP.

While the LIHC eligibility and extended use/compliance requirements referenced above apply to the projects financed by tax-exempt bonds, there are significant differences in the application review and Credit allocation processes.

Prospective applicants for a DHCR allocation of 4% Credit should note that the 2008 Proposed QAP (Section 2040.4(f)) states that this section of the QAP shall apply to 4% Credit applications filed with DHCR prior to March 1, 2008. Subsequent to that date, it is anticipated that the New York State Housing Finance Agency (HFA) will be designated the State Housing Credit Agency with the responsibility for the review of all 4% Credit applications and the issuance of allocations for such projects. Such allocations will be made by HFA pursuant to HFA's QAP and its 4% Credit requirements and standards. Therefore, the following sections related to DHCR's review of 4% Credit applications refer only to such applications submitted to DHCR prior to March 1, 2008.

2.04.05.A <u>Application Review Process for 4% Credit Projects</u>

Applications for 4% Credit are accepted and processed by DHCR at its Hampton Plaza Office throughout the calendar year and are not subject to a funding cycle. However, a complete application for 4% credit must be submitted at least 60 days prior to the proposed construction start date. Applications are initially reviewed for completeness and then for applicable LIHC threshold eligibility requirements cited in Section 2040.3(E) of the QAP and a review of public purpose as

noted in Section 2040.3(F). (although the latter section references LIHC scoring criteria, applications for 4% Credit are reviewed to determine which criteria are addressed by a project and are not scored).

Applications for 4% Credit which are incomplete or fail to meet all applicable eligibility criteria are not reviewed further. DHCR notifies the applicant why the application is incomplete and/or ineligible.

Subsequent to the reviews for completeness and eligibility, DHCR conducts an initial consideration of the Project pursuant to the QAP Section 2040.3 (G) (except for Section 2040.3(G)(1)(b)), which includes a review of the proposed developer and builder fees and the Project's proposed sources and uses of financing (i.e., the gap analysis). This provides the basis for the initial anticipated LIHC allocation amount. For projects proposed to renovate existing buildings, see Section 5.04.01.

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2.04.05.B Credit Allocation Process for 4% Credit Projects

Based on outcome of the reviews noted in 2.04.05 above, DHCR issues a letter indicating that the owner and proposed project satisfy the requirements of the QAP and that an allocation of Credit to the project in a stated amount will satisfy the financial feasibility and project viability requirements of the Code, although a final determination to that effect cannot be made until the project is completed and placed in service. The letter also contains detailed instructions for the documentation which the applicant/owner must submit in order to obtain an IRS Form 8609 Credit allocation. (Unlike 9% Credit projects, there is no need for DHCR to issue **a** LIHC reservation binding agreement and/or carryover allocation**[s]** described in Section 2040.3 of the QAP).

If requested, DHCR will review updated exhibits at project completion and consider cost overruns during construction which increase the project's eligible basis. This may be done after all project costs have been certified and prior to the issuance of IRS Form 8609 Credit allocation.

2.04.06 Instructions for Issuance of Final Credit Allocation (IRS Form 8609 or NYS DTF-625)

In order for a Credit project to obtain the final credit allocation (i.e.**,** IRS Form 8609 Credit allocation for a LIHC project), the applicant must comply with following requirements and submit application exhibits and documentation as noted. (These submission requirements are applicable for both 9% and 4% Credit projects, as well as for SLIHC project applicants obtaining a final credit allocation through receipt of the NYS DTF-625 allocation document):

I. Compliance Monitoring Requirements

Section 42(m) of the Code requires DHCR, as a Housing Credit Agency, to implement a

monitoring procedure to ensure an owner's compliance with Credit requirements.

Any project receiving at least one IRS Form 8609 Credit Allocation Certification Document for an improvement to a building will be subject to DHCR's monitoring plan certification and annual monitoring fee charged by DHCR which shall not exceed 0.5 percent of the maximum restricted rents for the low-income units.

Further information on DHCR's Credit project compliance monitoring and operating and management requirements is included in Section 7.00 of this Manual and DHCR's LIHC Compliance Monitoring Guide.

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II. IRS 8609: Credit Allocation Certification Document Requirements

If a project has entered service, to obtain the Low-Income Housing Credit Allocation Certification Document ("IRS 8609"), the project owner must submit the following documents, attachments and exhibits from DHCR's Unified Funding Application to their DHCR Project Manager. Any document, attachment or exhibit that has already been submitted in its final form does not have to be resubmitted. However, the owner must ensure that any changes in financing or project configuration are fully updated on all documents, attachments or exhibits that reference that change.

A. For the Project as whole:

1. Copy of the Limited Partnership Agreement or Limited Liability Corporation Operating Agreement (which includes the "pay-in" schedule if the project is subject to one);

2. An updated "Proposal Summary" **(Unified Funding Project Application (Attachment F9)**;

3. An updated "Development Budgets/Funding Sources" – **separate Project Summary and building specific exhibits (Exhibit 3)**;

4. An updated "Unit Rent/Maintenance Fees & Affordability" **(Exhibit 4)**;

5. An updated "Project Income & Operating Budget"; **(Exhibit 5)**;

6. An updated "LIHC/SLIHC Qualified Building Information" (Exhibit 9), Sections B,C and D - Project Summary and building specific - see item B.3. below);

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7. An updated "LIH/SLIHC Project Summary" (Exhibit 10) including an updated Section C. "Use of Credit Proceeds";

8. Evidence of Compliance with special instructions (if applicable) as specified in a reservation, carryover allocation and/or regulatory agreement including, but not limited to;

   - Agreement(s) giving preference in tenant selection for the LIHC regulated units to persons from public housing waiting lists or other existing waiting lists for subsidized housing, and/or to persons and families whose current housing fails to meet basic standards of health and safety and who have little prospect of improving the conditions of their housing except in a project receiving LIHC.

   - An agreement with a not-for-profit 501(C)(3) or its wholly owned subsidiary to acquire the low-income portion of the project at a cost equal to or below the minimum permitted pursuant to the Internal Revenue Code for the purposes of a Qualified Contract.

   - An effective plan for existing tenants to purchase the project as part of a buy-out plan at the end of the compliance period.

   - An agreement or commitment in writing with an experienced service provider to provide supportive services to project tenants with special needs, as set forth in the original application.

9. For projects which have received funding under one of New York City's Department of Housing Preservation and Development multi-family rehabilitation finance programs, please submit proof that the fee requirement of such program has been

paid;

10. A Copy of an executed LIHC Regulatory Agreement. The LIHC Regulatory Agreement (Extended Use Agreement) will be prepared by DHCR after the documents, attachments and exhibits in this section have been found to be satisfactory and after completion of the third underwriting. Documentation of the authority of the person who will sign a LIHC Regulatory Agreement with DHCR on behalf of the project owner, must be submitted in order to prepare the regulatory agreement. (Secretary's certificate of resolution for corporations, partnership agreements for partnerships. All levels of authorization must be documented.) Proof of recording of the Regulatory Agreement in the county clerk's office will be required. The Executed Regulatory Agreement and proof of recording must be forwarded to the LIHC Program Manager prior to release of the IRS 8609;

11. A Cost Certification, as described in item B.2. below, which includes an overall summary of project costs; and,

12. Evidence that the project owner has closed on all sources of permanent financing.

B. For each Building in the project:

1. Evidence that each building in the project has entered service;

a. For new construction or rehabilitation of a vacant building a Certificate of Occupancy is acceptable;

b. For a building that is undergoing rehabilitation and was occupied at the time of acquisition there are two different "placed in service"

dates and each requires separate evidence.

i. For an occupied rehabilitated building claiming Credit for the acquisition portion of the building, the "placed in service" date for the acquisition is the date the building was acquired and the applicant must submit evidence that the acquisition has occurred. Acceptable evidence would be a deed.

ii. For an occupied rehabilitated building, the "placed in service" date for the rehabilitation portion of the building can be any point in a period of up to 24 months during which eligible rehabilitation expenditures are aggregated. Acceptable evidence for the rehabilitation portion of an occupied building is a statement by the owner indicating the date the owner has selected for "placed in service".

2. Evidence of Costs:

a. Certifications of Costs by an independent accountant indicating costs by the same line items as shown in the "Development Budget" for the project as a whole and each building in the project. Costs associated with the non-residential portion of a building should be specifically identified as non-residential. Certification by an accountant must include all costs that the owner expects DHCR to include in a

determination of eligible basis (including soft costs and developer's fee). Any costs not included or referenced in the accountant's certification or the owner's statement or under "build out cost" (see paragraph c below) will not be included in the final calculation of eligible costs for the IRS 8609.

b. If the project has included acquisition costs as part of the eligible basis, an accountant should include a statement indicating the value assigned to the land and the value assigned to the building.

c. If "build out costs" are included in eligible basis, the owner should submit a statement listing such items and the amounts. The items should be the same line item categories as shown on the "Development Budget". "Build out costs" are development or construction costs incurred after a building is placed in service but which will be made through the end of the first year of the Credit period. "Build out costs" plus the Certification of the Costs should total the costs shown in the "Development Budget".

d. If a building has multiple sources of financing and one or more of the financing agreements restrict the use of the funds to certain costs (e.g., commercial, non-rent restricted units, acquisition, etc.) such costs shall be separately identified and allocated to the appropriate source of financing.

3. As noted above, an updated "LIHC/**SLIHC** Qualified Building

Information" (Exhibit 9); including Section B "Determination of Qualified Basis";

- an updated Section C "Declaration of Public Subsidies"; and,
- an updated Section D "Unit Information".

4. An updated "Site & Building Information" (Exhibit 8); and,
5. As-built drawings for the entire project;

The following item applies only to LIHC standalone projects proposing the renovation of existing housing which received a reservation or consistency/determination letter dated July 1, 2004 or later:

6. For projects financed by LIHC only (i.e., no other Housing Trust Fund Corporation or DHCR funding) which include the renovation of an existing structure(s), the Physical Needs Assessment Form, Part A and B, must be completed and submitted.

The following item applies only to LIHC standalone projects proposing the renovation of existing housing for tenants other than solely senior citizens:

7. For projects financed by LIHC only which include the renovation of an existing structure(s), an updated certification that all work was completed in compliance with all applicable federal, state and municipal laws, regulations or ordinances, as amended, pertaining to lead-based paint abatement must be completed and submitted.

Issued: **11/02**	Revised:
Section: **2.00**	Title: **PROGRAM DESCRIPTIONS**
Sub-Section: **2.05**	Topic: **The New York State HOME Program**

2.05.01 Summary

The New York State HOME Program (HOME) provides loans and grants to eligible applicants to undertake activities eligible under one or more of the three basic project types: Rental projects, Homeownership Assistance projects and Tenant-Based Rental Assistance (TBRA) projects. Rental projects may involve the acquisition, new construction, substantial rehabilitation and/or moderate rehabilitation of units for low-income tenants. There are two types of Homeownership Assistance projects: Home Repair projects, under which owner-occupied housing is rehabilitated, and Home Purchase Assistance projects which involve either direct assistance to low-income homebuyers, or the new construction or rehabilitation of housing for sale to low-income homebuyers. TBRA projects involve the payment of rental subsidies on behalf of eligible low-income tenants.

All HOME projects must benefit low-income households, defined as those with incomes at or below 80 percent of the area median. Rental projects which are assisted by the HOME Program are required to remain affordable to low-income households for the applicable regulatory period, the term of which is based on several factors, including the amount of the HOME subsidy and the type of activity funded.

The New York State HOME Program is administered by the New York State Housing Trust Fund Corporation (HTFC). However, HTFC's degree of involvement varies depending on the type of activity proposed. Site-specific (or single-site) projects, which may involve acquisition, new construction or substantial rehabilitation of low-income housing on a site or sites under common ownership may be undertaken by all eligible applicants, and are administered directly by the Housing Trust Fund Corporation. Local HOME Programs (formerly termed multi-site projects) may be undertaken only by non-profit organizations or municipalities who assume certain administrative duties on behalf of the State, and involve TBRA, Home Purchase Assistance, and Moderate Rehabilitation projects.

New York State is required to reserve a minimum of 15 percent of HOME funds for locally-based non-profit entities that qualify as Community Housing Development Organizations (CHDOs). All areas

of the State are eligible for HOME projects; however, in addition to the 15 percent CHDO set-aside, at least 80 percent of the State's HOME allocation must be spent on projects that are not in localities designated by HUD as participating jurisdictions.

2.05.02 Statutory Provisions

2.05.02.A Purpose

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

2.05.02.B Definitions

The following definitions apply to the New York State HOME Program:

1. Awardee: An applicant which has been informed by HTFC of the decision to fund the proposed project and which has executed, or will execute, a written agreement with HTFC.

2. Community Housing Development Organization (CHDO): A private, non-profit organization which:

   (a) has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons;
   (b) has demonstrated its capacity for carrying out activities assisted with HOME funds;

(c) has a history of serving the community within which the housing to be assisted with HOME funds is located;

(d) is organized under State law;

(e) has standards of financial accountability;

(f) has a tax exemption under Section 501(c) of the Internal Revenue Code;

(g) is not controlled by a private, for-profit entity whose primary purpose is the development or management of housing;

(h) is not controlled by a private, for-profit entity that has the right to appoint one-third or more of the non-profit organization's governing board, or has control over appointment of the remaining two-thirds;

(i) is not controlled by a public body that has the right to appoint one-third or more of the non-profit organization's governing board; and

(j) maintains accountability to low-income community residents by:

(i) providing a formal process for low-income program beneficiaries to advise the organization in its decisions regarding the design, siting, development, and management of affordable housing;

(ii) maintaining at least one-third of its governing board's membership for residents

of low-income neighborhoods, other low-income community residents, or elected representatives of low-income neighborhood organizations; and

(iii) for organizations with a multi-county services area, has low-income residents from each county on the governing board.

3. Developer: Any entity which organizes and supervises all phases of a project, including acquisition, construction, and final sale or rental. In the case of a CHDO, to be considered a developer, the CHDO must, regardless of ownership, have the contractual authority to acquire, finance, rehabilitate or maintain/manage a project for the term of affordability.

4. Federal Home Regulations: 24 CFR part 92 of the Federal Register.

5. Local Home Program (multi-site project): A HOME Program undertaken by a subrecipient or State recipient involving the moderate rehabilitation of rental properties or owner-occupied housing, rental assistance or home purchase assistance.

6. New Construction: Newly-built projects, rehabilitation projects that include new construction of one or more units outside the existing walls of the structure, or any project which will receive its first certificate of occupancy within one year of receiving HOME assistance.

7. Owner: An entity which owns, or which will own, a project at completion.

8. Participating Jurisdiction: A unit of general local government designated by HUD to receive HOME funds through a formula allocation.

9. Site-Specific Project (single-site project): A site or an entire building (including a manufactured housing unit), or two or more buildings, together with the site or (when permissible) sites on which the building or buildings are located, that are under common ownership, management and financing and are to be assisted with HOME funds for new construction or substantial rehabilitation of housing, under a commitment by the owner, as a single undertaking. A site-specific project includes all of the activities associated with the site and building.

10. Sponsor: An entity which assists another entity to own, by acquisition or otherwise, develop and manage a project. The sponsor may initially apply for and receive a loan commitment with the requirement that a designated entity will assume the grant/loan obligation and other responsibilities of the project at a specified time.

11. State Recipient: A county, city, town or village which has signed an agreement with HTFC to carry out a Local Home Program.

12. State HOME Program: The New York State HOME Program.

13. Subrecipient: A not-for-profit corporation or housing authority that administers a coordinated set of eligible activities, pursuant to an agreement with HTFC to carry out a local HOME Program.

2.05.03 Eligibility Requirements

This Section describes the eligibility requirements that are specific to the HOME Program. Sub-Sections 2.05.04 through 2.05.06 set forth in detail the specific requirements of the various types of HOME projects that may be undertaken.

2.05.03.A Eligible Applicants

Eligible applicants for the New York State HOME Program include individuals and private for-profit and non-profit organizations with a demonstrated capacity to develop feasible projects. Additionally, units of local government which are not participating jurisdictions, either directly or as part of a HOME consortium, are also eligible applicants, as are agencies under their control.

While any eligible applicant may undertake a site-specific project, Local HOME Programs may be undertaken only by not-for-profit corporations and housing authorities (termed subrecipients) and units of general local government, including counties, cities, towns and villages, (termed state recipients). Subrecipients and state recipients generally serve an administrative function and do not typically act as the project developer or hold any ownership interest in an assisted property. They are required to conduct environmental reviews and periodically report on site activities. Section 2.05.03.C discusses site-specific projects and Local HOME Programs.

Please refer to Sub-Section 2.05.03.B for a discussion of CHDOs and their special eligibility requirements. A minimum of 15 percent of New York State's HOME funds must be set aside for CHDOs.

2.05.03.B Eligibility Requirements for Community Housing Development Organizations (CHDOs)

New York State is required to reserve at least 15 percent of its HOME funds for housing that will be developed, sponsored or owned by CHDOs which are community based, non-profit organizations with experience in providing low-income housing assistance, and which are fully defined in Sub-Section 2.05.02.B. The HOME Program provides for some exceptions to its requirements and eligibility

standards when an entity is a CHDO. These special circumstances are discussed below.

While CHDOs may undertake any of the activities eligible under the HOME Program, only those projects developed, owned, or sponsored by qualified CHDOs count towards the 15 percent CHDO set-aside requirement. The activities which do not count toward the set-aside are: TBRA, rehabilitation of owner-occupied property, direct home purchase assistance to low-income homebuyers not involving rehabilitation, moderate rehabilitation programs that benefit existing private owners, and CHDO operating costs.

CHDOs are eligible to apply for HOME Program loans of up to $5,000 a unit to establish site control and initial feasibility and to cover eligible pre-construction costs. Site control and pre-construction loans may only be used for non-construction activities, and are limited to $45,000 per project. While site control loans may be requested via the Unified Funding Application Process, pre-construction loans may only be requested by an applicant who has been selected for funding, pursuant to an Application Review Letter (ARL). Site control loans may be forgiven if the project is later determined to be infeasible, otherwise they must be repaid from the proceeds of the construction financing. Only CHDOs are eligible to receive these loans.

The expenses which are eligible for site control and pre-construction loans are those customary costs that the CHDO has incurred, or will incur, prior to construction, including:

(i) expenses necessary to determine project feasibility, including an initial feasibility study;

(ii) consulting fees;

(iii) costs of preliminary financial applications;

(iv) legal fees;

(v) preliminary architectural or engineering fees;

(vi) costs to engage a development team; and

(vii) costs to obtain site control or title clearance.

In addition to the above, the following are eligible pre-construction loan expenses only. (These are not eligible expenses for a HOME site control loan):

(i) costs to obtain construction loan commitments;

(ii) costs for architectural plans and specifications;

(iii) costs to obtain zoning approvals;

(iv) costs for engineering studies; and

(v) legal fees.

Administrative costs are not an eligible pre-construction expense.

HOME Program regulations provide that up to five percent of the annual federal HOME allocation may be used for CHDO operating expenses; however, these funds may not be used to pay the operating expenses incurred by a CHDO while acting as a subrecipient. CHDO's that do receive operating funds must enter into a written agreement with DHCR stating that the CHDO is expected to be

funded as a subrecipient within 24 months of receiving the operating expense funds. In any given fiscal year, a CHDO may not receive HOME funds which exceed the greater of $50,000 or 50 percent of the CHDO's total operating expenses for that fiscal year. This includes HOME operating expense funds as described above, as well as any other HOME funds for operating expenses, including organization support, housing education and administrative funds.

CHDOs are required to develop and follow a plan for tenant participation in management decisions and must adhere to a fair lease and grievance procedure for any housing developed with HOME Program funds.

CHDOs must meet the following re-certification requirements to remain an eligible DHCR CHDO:

(i) After a CHDOs initial certification, re-certification to maintain CHDO status must be conducted every 3 years. The re-certification information submitted by the entity should include similar documents, materials and requirements as the original certification, and should be submitted to the appropriate regional office for a full review;

(ii) If a CHDO applies to DHCR/HTFC for funding in the years between re-certifications, it must include a letter from the CHDO president or chairperson stating that no organizational changes have been made since the date of the original certification or most recent re-certification. If organizational changes occur in a certified CHDO, the CHDO must submit an explanation of those changes to their Regional Office and a determination will be made regarding the CHDO's continued eligibility as a CHDO.

(iii) CHDO certifications, re-certifications and "no change" letters must include the name of each NYS county in which the applicant has or will have eligible CHDO status."

2.05.03.C Eligible Projects

Certain activities undertaken with HOME Program funds are termed site-specific projects, which may be undertaken by any eligible applicant. While site-specific projects may involve more than one site, all sites comprising a site-specific project must be under common ownership, management and financing, and are to be assisted with HOME funds as a single undertaking. Site-specific projects may involve new construction, substantial rehabilitation or acquisition of low-income housing only.

Local HOME Programs may be undertaken by non-profit organizations (subrecipients) or municipalities (state recipients) only, and involve the moderate rehabilitation of rental- or owner-occupied properties, as well as TBRA and direct home purchase assistance to low-income homebuyers. For projects undertaken under Local HOME Programs, the per unit development cost minus the cost of acquisition must be less than $30,000.

Eligible applicants may apply for HOME Program funds to engage in more than one type of activity provided that all eligibility requirements for each activity are met.

Sub-Sections 2.05.04 through 2.05.06 set forth the specific general and eligibility requirements of the various project types which may be undertaken with HOME funds, including Rental projects, Homeownership Assistance projects and TBRA projects.

2.05.03.D Eligible Areas

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

2.05.03.E Eligible Occupants

HOME Program funds may only be used to assist low-income households, defined as those with incomes at or below 80 percent of the area median. In addition, the federal HOME regulations require that HOME rental projects must primarily serve households with incomes at or below 60 percent of area median. All cooperative or condominium units assisted through the HOME program must be occupied

as the owner's primary residence and units may not be sold or sub-leased to investors, or to staff or board members of the applicant, developer or sponsor organization.

2.05.03.F Eligible Project Costs

HOME Program funds may be used to pay for the eligible project costs set forth below, subject to the per unit cost limitations published for the HOME Program which are available from HTFC upon request. Federal HOME regulations also require a minimum per-unit investment of $1,000, excluding any matching funds.

HOME Program funds will be made available as grants, no-interest loans, or interest-bearing loans, depending upon the economics of the project and the type of assistance requested.

Local HOME Program applications may not request HOME funds of more than $30,000 per unit, unless a waiver with supporting justification is included.

Eligible costs include:

A. Development Hard Costs: The actual cost of constructing or rehabilitating housing, including:

(i) for new construction projects, costs to meet the applicable new construction standards of the various codes referenced in the HOME Program Request for Proposals (RFP);

(ii) for rehabilitation projects, costs to meet applicable rehabilitation standards,

correct substandard conditions, and make essential improvements, including energy related repairs or improvements, improvements necessary to permit use by handicapped persons, the abatement of lead-based paint hazards, and to repair or replace major housing systems in danger of failure;

(iii) where HOME funds are loaned to rehabilitate a single-family, owner-occupied unit, costs to refinance the owner's existing debt on the unit, in order to increase affordability;

(iv) demolition costs;

(v) costs to make utility connections; and

(vi) costs for site improvements that are in keeping with improvements of surrounding, standard projects, including on-site roads and sewer and water lines necessary to the project's development.

(vii) Federal Labor Standards (Davis-Bacon Related Acts) which become applicable for projects with 12 or more units of HOME funding

B. Acquisition Costs: the costs of acquiring improved or unimproved real property, which will provide rental units or will be transferred to an eligible low-income homebuyer.

C. Related Soft Costs: other reasonable and necessary costs incurred by the owner related to the financing and/or development of new construction, rehabilitation or acquisition of HOME housing projects, including:

(i) architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups;

(ii) settlement and financing costs, such as private lender origination fees, credit reports, fees for title evidence, recording and filing fees, building permits, attorney fees, private appraisal fees, independent cost estimate fees, and builder/developer fees;

(iii) the cost of a project audit when required by HTFC;

(iv) costs for providing information services, such as affirmative marketing and fair housing information to prospective homeowners/tenants, as required by the Federal HOME Regulations;

(v) costs to establish an Operating Deficit Reserve for new construction or substantial rehabilitation projects; this reserve differs from a typical Operating Reserve, in that it may only be used to pay the project's operating expenses in the event of a shortfall in project income during the project's rent-up period, which may not exceed 18 months; any unspent HOME funds remaining in the Operating Deficit Reserve at the end of the 18 months must be returned to HTFC;

(vi) staff and overhead costs which are directly related to implementing the project, such as preparing work specifications and loan processing inspections, or which are provided to assist potential tenants and homebuyers, such as housing

counseling, only if the project is funded and the individual assisted becomes the owner or tenant; applicants must document that such costs were reasonably allocated among all HOME-assisted units in a multi-unit project; and

(vii) for new construction and substantial rehabilitation projects, costs for the payment of impact fees that are charged for all projects within a jurisdiction.

(viii) costs for testing and risk assessment for lead hazard control and other health and safety testing and assessment costs, and costs for conducting an energy audit.

D. Project-Specific Assistance to CHDOs: Within the restrictions more fully set forth in the federal HOME regulations, HOME funds may be used to provide technical assistance, site control loans and pre-construction loans to CHDOs, provided that the costs are related to a specific eligible project. These costs are more fully discussed in Sub-Section 2.05.03.B.

E. Relocation Costs: Costs resulting from the displacement of persons by a HOME project, including:

(i) relocation housing payments, payments for moving expenses, and payments for reasonable out-of-pocket costs incurred in temporarily relocating people; and

(ii) staff and overhead costs directly related to the provision of advisory and other relocation services to persons displaced by the project, including timely written notices to occupants, referrals to comparable and suitable replacement property, property inspections, counseling and other assistance necessary to minimize

hardship.

F. Tenant-Based Rental Assistance (TBRA) Costs: Eligible costs related to TBRA, including rental assistance and security deposit payments.

G. Local HOME Program Administrative Costs: Such costs may not exceed eight percent (8%) the HOME award amount (applies to LPAs only).

HOME Program funds may not be used to provide a replacement reserve account or an operating reserve account; nor may HOME Program funds be used to provide project-based rental assistance.

2.05.03.G Eligible Activities

There are a number of activities which are eligible for funding under the HOME Program. These include: new construction and substantial rehabilitation of rental housing and/or housing for purchase by low-income homebuyers, acquisition of rental projects which does not involve rehabilitation, rehabilitation of owner-occupied housing, moderate rehabilitation, rehabilitation of rental properties, home purchase assistance to low-income homebuyers, and TBRA.

HOME Program funds may not be used for the following activities:

(i) to provide a project reserve account for replacements, a project reserve account for unanticipated increases in operating costs, or operating subsidies;

(ii) to provide TBRA for the special purposes of the existing Section 8 Program, or to prevent displacement from projects assisted with Rental Rehabilitation funds (Part 511);

(iii) to provide non-federal matching contributions required under any other federal program;

(iv) to provide assistance authorized under federal regulations - Part 965, Public Housing Authority-Owned or Leased Projects - Maintenance and Operation;

(v) to provide assistance for activities authorized under the Public Housing Modernization and the Comprehensive Improvement Assistance Programs, Part 968 of the Federal Regulations;

(vi) to provide assistance to housing which is eligible for prepayment of mortgages by owners of low-income housing under the Low Income Housing Preservation and Resident Homeownership Act of 1990;

(vii) to provide assistance to a project previously assisted with HOME funds during the period of affordability established by the PJ (except that housing previously assisted with HOME funds may receive further HOME assistance in the form of TBRA or Purchase Assistance to low-income homebuyers; additionally, a project may receive additional HOME funds up to one year after completion so long as the per-unit HOME subsidy for the project has not been exceeded); and

(viii) to pay for the acquisition of property owned by the PJ, except for property acquired with HOME funds or acquired with the intention of carrying out a HOME project.

Although a HOME Program application may request funding to engage in a variety of eligible activities, there are requirements which are specific to each of three basic project types: Rental projects, Homeownership Assistance projects and TBRA projects, each of which is discussed below.

Combination projects, such as those with both rental and owner-occupied units, must comply with the requirements for all project types as set forth below.

2.05.04 Rental Project Requirements

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

2.05.04.A General Requirements for Rental Projects

Applicants may use HOME Program funds to assist rental housing in site-specific projects and in local programs. Site-specific rental projects may involve acquisition, new construction, or rehabilitation. Local programs that assist rental projects may provide up to $30,000 in HOME funds per unit to rehabilitate rental units. Both rental and home ownership units may be assisted in the same project or program, provided that requirements for each activity are met.

Applicants for HOME funds involving rental projects may assume a number of different roles: they may retain ownership of completed projects, transfer ownership to another entity which agrees to meet the HOME Program's long-term affordability and monitoring requirements, or may simply provide rehabilitation assistance to private owners of rental housing who agree to meet with the HOME Program affordability requirements. In all cases, the applicant is responsible for ensuring compliance with all rental project requirements set forth herein for the duration of the period of affordability, as detailed below in Sub-Section 2.05.04.D.

All housing assisted with HOME funds must, at a minimum, meet Federal Housing Quality Standards (HQS), which are discussed in detail in the OCD Design Handbook. Newly constructed or

substantially rehabilitated HOME projects must meet all applicable local codes, rehabilitation standards, and zoning ordinances. Local programs providing rehabilitation assistance for rental housing must adopt rehabilitation standards substantially equivalent to the National Center for Lead Safe Housing standards, which are available from HTFC.

2.05.04.B Eligible Rental Properties

Eligible HOME Program rental properties include the following:

(i) residential buildings that are in need of rehabilitation in order to meet the rehabilitation standards set forth in the OCD Design Handbook;

(ii) residential properties acquired to provide rental housing for eligible occupants;

(iii) commercial properties that can be converted into residential rental housing for eligible occupants; and

(iv) mixed-income and mixed-use properties are eligible, provided that all units receiving HOME Program funds meet all rental project requirements set forth herein.

When proposing to assist an occupied building with HOME Program funds, applicants must comply with all HOME Program requirements regarding relocation, displacement and acquisition, which are set forth in HUD Handbook 1378.

2.05.04.C Eligible Tenants/Rents

HOME-assisted rental units must be primarily occupied by low-income households (those with incomes at or below 60 percent of area median income, or AMI). Multi-family projects (projects with five or more units) must reserve 20 percent of the units in the project for occupancy by very low-income families (those with incomes at or below 50 percent of AMI).

HTFC may grant waivers to permit owners to assist units occupied by households with incomes between 60 and 80 percent of AMI. Such waivers may not be granted for more than 10 percent of the total number of rental units assisted with funds made available.

No tenant may be excluded from leasing a HOME rental project because they hold a certificate, voucher or comparable document from any rental assistance program.

Rents for HOME-assisted units may not exceed the rent published by HUD for the applicable unit size, adjusted for any applicable utility allowance (known as the "High HOME Rent"). Additionally, for projects with five or more units, at least 20 percent of the project's units must either be occupied by very low-income households paying 30 percent or less of their monthly adjusted gross income for rent, or must bear rents which are not greater than 30 percent of the gross income of households with incomes equal to 50 percent of AMI (known as the "Low HOME Rent").

If a unit receives federal or state project-based rental subsidy and the very low-income family pays no more than 30% of the family's adjusted income as a contribution toward rent, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the federal or state project-based rental subsidy program. Low HOME Rents for units receiving project-based rental subsidies may be set at the maximum allowable under the Federal or State project-based

rental subsidy program. HTFC will make copies of High and Low HOME Program rents available to applicants and owners.

Tenants whose incomes increase to more than 80 percent of AMI may continue to occupy their HOME-assisted unit provided they pay 30 percent of their adjusted monthly income for rent.

2.05.04.D Regulatory Periods for Rental Projects

HOME-assisted Rental projects must remain affordable for the applicable minimum term listed below, based on the project's average per-unit subsidy from the HOME Program.

Rehabilitation/acquisition less than $15,000:	5 years
Rehabilitation/acquisition between $15,000-$40,000:	10 years
Rehabilitation/acquisition over $40,000:	15 years
New Construction of any amount:	20 years

For HOME-assisted projects with multiple funding sources, the regulatory period will be the longest required by any of the sources.

2.05.04E Regulatory Restrictions of HOME LPA Rental Rehabilitation Projects

Rental projects assisted with HOME funds, including assisted rental units in two-four unit owner-occupied buildings where the owner is provided with HOME funds for purchase assistance, must remain affordable for a period of between five and 20 years, and must meet all applicable requirements of 24 CFR 92.252 and 253. These sections require recipients to secure assistance provided to rental

housing by means of a deed restriction or other similar mechanism that runs with the land.

While the affordability restrictions terminate in the event of foreclosure or transfer of deed in lieu of foreclosure, the State - and by contractual agreement, any recipient that receives funds for this purpose - is responsible for recovering all HOME funds invested into the project. For projects containing four or fewer units, where the owner receives assistance to purchase the building, the resale/recapture requirements of 24 CFR 92.254 apply. For all other rental projects receiving HOME funds, deed restrictions or covenants running with the land must be used to preserve affordability.

To ensure that recipients have an opportunity to preserve affordability in the event of foreclosure or transfer in lieu of foreclosure, HTFC will provide recipients with sample first mortgagee waiver agreements that they can use to negotiate with the owners' primary lenders to secure their approval of these agreements. Recipients are also encouraged to negotiate purchase options, rights of first refusal, or other preemptive rights to purchase the housing before foreclosure or deed in lieu of foreclosure.

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

2.05.04 F <u>CHDO Multi-Family Rental Projects</u>

In order for a HOME multi-family rental project to be considered a CHDO project, the project

ownership structure must comply with the terms of 24 CFR 92.300 (a) (1). This section states that funds may be provided to a CHDO, its subsidiary or a partnership of which the CHDO or its subsidiary is the managing general partner. If a CHDO owns the project in partnership, it or its wholly owned for-profit or non-profit subsidiary must be the managing general partner. In acting in any of the capacities specified, the community housing development organization must have effective project control. A CHDO applicant must state in its application and document in the project owner's organizational documents that the CHDO has effective project control.

2.05.05 Homeownership Assistance Projects

There are two general categories of Homeownership Assistance projects which may be funded by the HOME Program. They are: Home Repair projects, which involve the rehabilitation of owner-occupied housing; and Home Purchase Assistance projects, which may involve either the provision of subsidies to low-income homebuyers so that they may purchase moderately-priced housing, or the construction or rehabilitation of housing for sale to low-income homebuyers. The specific requirements for Home Repair and Home Purchase Assistance projects are detailed in Sub-Sections 2.05.05.A and 2.05.05.B, respectively.

As with all housing assisted with HOME funds, Homeownership Assistance projects must, at a minimum, meet Federal HQS, as discussed in the OCD Design Handbook. Additionally , newly constructed or substantially rehabilitated projects must meet all applicable local codes, rehabilitation standards, and ordinances. Local programs providing rehabilitation assistance for homeownership housing must adopt rehabilitation standards substantially equivalent to the National Center for Lead Safe Housing standards, which are available from HTFC.

If a homeownership project also contains rental units, applicants must comply with all Rental project requirements set forth in Sub-Section 2.05.04.

Issued: **11/02**	Revised:
Section: **2.00**	Title: **PROGRAM DESCRIPTIONS**
Sub-Section: **2.05**	Topic: **The New York State HOME Program**

2.05.05.A General Requirements for Home Repair Projects

Home Repair projects funded by the HOME Program involve the rehabilitation of substandard housing that is currently owned and occupied by low-income families, as defined in Sub-Section 2.05.05.A2. Eligible costs and minimum and maximum per-unit cost limitations are identical to those outlined in Sub-Section 2.05.03.F. Local programs providing rehabilitation assistance for owner-occupied housing must adopt rehabilitation standards substantially equivalent to the National Center for Lead Safe Housing standards, which are available from HTFC. There are no regulatory term restrictions for properties assisted by a Home Repair Program.

2.05.05.A1 Eligible Properties for Home Repair

Any single-family residence which is the principal residence of any eligible owner, including a cooperative, condominium, combination manufactured home and lot, and manufactured home lot, is eligible, provided that it is within the subrecipient's or state recipient's jurisdiction. Manufactured housing may only be assisted if the owner of the manufactured unit also holds title to the land on which the unit is located. Owner-occupied properties containing two-to-four rental units are also eligible provided that the property's rental units are subject to the HOME Program restrictions on rental housing. The income targeting requirements set forth in Sub-Section 2.05.04.C also apply to the rental units of owner-occupied properties. The state recipient or subrecipient must perform income certifications and HQS inspections in accordance with Federal HOME Regulations. If such certifications and inspections are not performed, the recipient may be required to repay HOME funds provided for the project.

The after-rehabilitation value of housing assisted with HOME funds must not exceed 95 percent of the median purchase price for single family housing in the area. HOME purchase price limits for New York State counties are available from HTFC.

Issued: **11/02**	Revised:
Section: **2.00**	Title: **PROGRAM DESCRIPTIONS**
Sub-Section: **2.05**	Topic: **The New York State HOME Program**

2.05.05.A2 Eligible Owners of Home Repair Projects

Owners of properties to be assisted under a Home Repair Program must have incomes which are at or below 80 percent of area median income. Awardees must make income determinations and obtain documentation that any owners benefitted by a Home Repair Program do not exceed the income threshold. Awardees must also obtain acceptable evidence of ownership (forms of which include: fee simple title, 99-year leasehold, and ownership or membership in a cooperative), and must ensure that no restrictions or encumbrances exist which would unduly restrict the marketability of the property to be assisted.

The property to be assisted must be the owner's principal place of residence.

2.05.05.A3 Rehabilitation of Owner-occupied Property

HUD does not require an affordability period for rehabilitation of owner-occupied housing. However, HTFC encourages recipients to adopt procedures that provide for a return of all or a part of the investment of HOME funds in the event that the property is sold or transferred to a household that is not low-income, to ensure that low-income clients benefit from these investments for a specified period (generally five to ten years). In programs that do not involve purchase assistance (whether or not provided by HOME funds), recipients may adopt policies that terminate the recapture provisions in the event of foreclosure, death of the householder, or other prescribed events. Such provisions must be approved by HTFC prior to approval of the recipient's contract with HTFC.

Recipients that adopt resale or recapture provisions must have procedures for handling recapture or repayment under the note/mortgage or other instrument; requests for prepayment or re-subordination to refinancing (with safeguards to prevent predatory lending); and workouts when assisted households encounter financial difficulties.

Issued: **11/02**	Revised:
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2.05.05.B Home Purchase Assistance Projects

There are two types of Home Purchase Assistance projects which applicants may undertake with HOME Program funds. The first type involves the provision of funds, through an LPA, to low-income homebuyers to purchase moderately-priced housing which doesn't need rehabilitation, and the second involves the construction or rehabilitation of housing for sale to eligible low-income homebuyers.

The general and eligibility requirements for Home Purchase Assistance projects are detailed in the following sub-sections, as are the requirements with regard to resale and deed restrictions.

2.05.05.B1 General Requirements for Home Purchase Assistance Projects

HOME Program funds for Home Purchase Assistance are generally limited to $30,000 a unit. DHCR may, at its discretion, provide additional funds given such considerations as area construction costs, project location and the impact of additional funds on the project's affordability.

The initial purchase price (and after-rehabilitation value, if the unit is being rehabilitated with HOME funds) must not exceed 95 percent of the median purchase price for single family housing in the area. HOME purchase price limits for New York State counties are available from HTFC.

All HOME-assisted projects must meet Federal HQS and must be the low-income homebuyer's principal place of residence. Local programs providing rehabilitation assistance for homeownership housing must adopt rehabilitation standards substantially equivalent to the National Center for Lead Safe Housing standards, which are available from HTFC.

2.05.05.B2 Eligible Occupants

All HOME funds used for a HOME Purchase Assistance project must benefit households with incomes at or below 80 percent of the area median income. The requirement that those assisted under a Home Purchase Assistance project must be first-time homebuyers was eliminated by an Interim Rule published by HUD in August, 1994.

2.05.05.B3 Regulatory Period for Home Purchase Assistance Projects

Properties assisted with HOME Program funds under a Home Purchase Assistance project are subject to a regulatory period which begins at the time that the homebuyer takes title to the property. During this period, the property may be resold to a low-income household (with an income at or below 75 percent of the area median) at a price which yields a fair return to the seller, only if it is affordable to that household, meaning that it can afford to pay 30 percent of its income for housing costs, including principal, interest, taxes and insurance. To assure compliance with the regulatory period's affordability requirements, a lien or deed restriction will be placed on each HOME-assisted property. The regulatory periods are:

HOME Program assistance of less than $15,000:	5 years
HOME Program assistance of between $15,000-$40,000:	10 years
HOME Program assistance of more than $40,000:	15 years

2.05.05.B4 Home Purchase Assistance Resale, Recapture and Resubordination

The amount of HOME subject to recapture or repayment depends on the activity the funds were used for, and the type of assistance provided. Under certain circumstances HTFC can permit recipients to invest recaptured funds in other eligible projects, but it cannot waive HUD's recapture requirements.

The following summarizes these requirements. Recipients should also refer to the HOME Program recapture, resale, and repayment policies HOME Program Final Rule (24 CFR Part 92) and other HUD guidance.

Purchase assistance programs (home buyer assistance) - When HOME funds are provided to a recipient to administer a purchase assistance program, the recipient must follow the rules on qualification as affordable housing (92.254). Those rules specify that recipients use either resale or recapture mechanisms to ensure affordability for a period of five to fifteen years following project completion. During that period, the home buyer must occupy the property as its principal residence, and must not sell or transfer ownership of the property without first providing written notice to the recipient.

HTFC requires that recipients execute a mortgage and note with the assisted buyer that will be recorded with the appropriate local jurisdiction to run with the land for the required period of affordability, except for certain properties as described below in the Resale section. The recipient's procedures for complying with the recapture or resale requirements will be specified in the administrative plan that becomes an exhibit to the contract between the recipient and HTFC. The method that is used must apply to all units funded pursuant to the recipient's contract, so that each recipient has one approved method that applies to all the participants in its program; the choice may not be left to individual buyers.

Recapture restrictions are required when the recipient is providing down payment or closing cost assistance, interest rate subsidies, mortgage buy downs, or other assistance to enable low-income households to purchase existing housing. Recapture will be enforced by a mortgage that the recipient places on the property, which stipulates that the HOME funds provided to the buyer must be repaid to the recipient if, during the affordability period, the property is sold, no longer occupied by the household as their principal residence, or lost through foreclosure or other action. In such cases, all or a potion of the HOME funds initially provided to enable the household to purchase the unit must be returned to

HTFC or invested as additional purchase assistance subsidies, at HTFC's discretion.

Recipients entering into agreements to provide purchase assistance to assisted household must use the following method to secure the investment of HOME funds in the project, and minimize the amount of HOME funds subject to recapture in the event of foreclosure:

- HOME funds will be provided as a deferred payment loan, with the amount subject to recapture reduced proportionally for each year of the affordability period that the home owner owns and occupies the unit as its primary residence;
- the amount subject to recapture is a share of the net available proceeds, as determined according to the formula set forth in the Final Rule at 24 CFR 92.254(a)(5)(ii)(A)(3).
- upon sale or transfer of the property, the mortgage may be assumed by another eligible low-income buyer, to avoid the need to recapture funds when the unit will continue to qualify as affordable housing. However, if additional HOME subsidy is provided to the subsequent buyer, a new affordability period is trigger and another mortgage must be placed on the property.

HTFC is currently developing standard loan documents that will be provided to recipients that use this model. Until those documents are available recipients must use their own.

When purchase assistance is provided as a deferred payment loan the recipient must report the assistance as a loan on the project completion report that is submitted to HTFC. Recipients are also required to notify their DHCR regional office in writing prior to sale of an assisted property, and as soon as possible upon learning of a default or potential foreclosure involving an assisted property. While regional office staff will attempt to provide assistance to the recipient whenever possible, it is the recipient's responsibility to ensure that assistance provided is secured in a manner that minimizes the

risk that funds are not repaid in the event of default or foreclosure.

Resale restrictions are used when HOME funds are provided as a development subsidy, where construction or rehabilitation of one or more units of affordable home ownership housing is made possible by the investment of HOME funds. Resale restrictions require that housing assisted with HOME funds may only be sold or transferred to another eligible family during the regulatory period so that the housing remains affordable to low-income households for the entire affordability period.

When HOME funds are used for purchase assistance development subsidies, the recipient must secure the investment of HOME funds in the project by a placing a deed restriction that runs with the land on the property and enables the recipient to assume ownership or assign its right to ownership to another eligible household in the event of resale, foreclosure, or execution of a due-on-sale clause. The recipient must report the assistance as a grant on the project completion report.

The Final Rule permits the presumption of affordability if market conditions in the recipient's service area indicate that housing in the area is likely to remain affordable during the regulatory period. Recipients in such areas can presume affordability if they have selected resale as the method they will use in their program, and provide a market analysis to HTFC prior contract execution that meets the conditions listed in 24 CFR 92.254(a)(5)(i)(B)). HTFC must review and approve the market analysis before the recipient can provide assistance under this provision. If the recipient has been authorized by HTFC to use this method, a deed restriction is not required. However, in such cases, HTFC may permit the recipient to execute a grants enforcement mortgage with the buyer to provide for a transfer of the property to another eligible household, should the initial buyer no longer occupy the property as their principle residence.

Community housing development organizations (CHDOs) developing housing through the

HTFC CHDO Home Ownership Initiative typically provide a portion of the assistance as a development subsidy and the remainder as a subsidy to enable low-income households to purchase the unit. In these projects, only the purchase assistance subsidy will be subject to the repayment requirements. The development subsidy will be subject to the resale requirements. CHDOs in areas where continued affordability can be presumed (see above) should submit required market data to avoid unnecessary use of deed restrictions on assisted properties.

Subordination to permit refinancing in home ownership projects - Recipients that propose to permit re-subordination of the HOME loan so that owners can refinance the primary mortgage on an assisted property must adopt procedures that permit subordination only when the following conditions apply:

- the recipient must notify their DHCR regional office before a loan is subordinated to permit refinancing of the primary mortgage;
- the new loan amount will not exceed the current balance of the existing first mortgage (no cash out);
- the new loan can be used to repay all or a portion of the outstanding balance of the HOME loan, in addition to the primary loan, but can not be used to pay consumer or other non-housing debts;
- the refinancing must result in a more affordable housing situation for the client;
- all of the recipient's initial requirements must be met (for example, if the recipient requires that clients be current on their property taxes at the time of initial assistance, they should ensure clients are still current on property taxes.)

Issued: **11/02**	Revised:
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2.05.05.B5 Project Resale Restrictions

Projects directly sponsored by HTFC will be structured in such a manner as to ensure that the housing will remain affordable, subject to the terms of the mortgage, to a reasonable range of low-income home buyers. Mortgages held by HTFC will provide the owner with a fair return on investment, including any improvements (the actual rate of return will depend upon actual market conditions). The mortgage will also permit assumption by qualified low-income purchasers in accordance with the regulations and with prior approval of HTFC. Any transfer of title to an owner that does not qualify as a low-income household will trigger the recapture provisions of the mortgage. The affordability provisions will terminate upon occurrence of any of the following events: Foreclosure, transfer in lieu of foreclosure, or assignment of an FHA insured mortgage to HUD. The State (or the State Recipient or subrecipient) will have the right of first refusal to purchase the housing before foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property.

2.05.05.B6 LPA Affordability Restrictions

When HTFC provides funds to a Local Program Administrator to operate a home purchase assistance program, and funds are provided to eligible home buyers in the form of loans for down-payment assistance or closing costs, the funds must be secured by a mortgage and note that provides for one of the acceptable recapture methods described in 24 CFR 92.254 (a) (4) (ii) (A). The home mortgage will generally be a second lien behind private, market-rate financing, with no interest or principal payments due unless the property is sold or otherwise transferred.

Issued: **11/02**	Revised:
Section: **2.00**	Title: **PROGRAM DESCRIPTIONS**
Sub-Section: **2.05**	Topic: **The New York State HOME Program**

2.05.06 Tenant Based Rental Assistance (TBRA) Projects

This section describes the requirements and eligibility standards that are specific to HOME Program projects involving TBRA projects.

2.05.06.A General Requirements for TBRA Projects

HOME Program funds may be used to provide TBRA to low-income families selected in accordance with written tenant selection policies and criteria that are consistent with the purpose of providing housing to low- and very low-income families, including those that occupy substandard housing, those that are homeless or living in a homeless shelter, those that are paying more than 50 percent of their gross income for rent, and involuntarily displaced families. Additionally, low-income families who are living in units designated for rehabilitation or acquisition under the HOME Program may also qualify for TBRA for the assisted unit, or in other qualified housing. TBRA payments are made to the landlord on behalf of the tenant.

To be eligible to administer HOME TBRA funds, applicants must have experience and a demonstrated capacity for administering a rental assistance program of the size and type proposed, as well as the ability to comply with all applicable regulations and financial requirements of the federal HOME regulations. Applicants must demonstrate to HTFC that the need for rental assistance is consistent with one of the needs identified in the State's Consolidated Plan, and must specify the local market conditions that led to this determination. Applicants under contract with a Public Housing Authority may administer TBRA on behalf of a locality.

Rental assistance contracts may not have terms of more than 24 months, although they may be renewed if HOME Program funds are available when the contract expires.

Any unit which a household receiving HOME TBRA funds proposes to lease must be inspected by the subrecipient or state recipient prior to occupancy to ensure that the unit meets Federal HQS. Deficiencies must be corrected before the state recipient or subrecipient can make TBRA payments on behalf of the unit. Units occupied by families receiving rental assistance must be inspected annually thereafter to ensure continued compliance with Federal HQS.

2.05.06.B Eligible Occupants - TBRA

Eligible recipients of TBRA must have incomes at or below 60 percent of the area median. Applicants must certify the income eligibility of each tenant at initial inception of the lease and annually thereafter.

2.05.06.C Maximum Rental Subsidy

The monthly rental subsidy provided to, or on behalf of, a family may not exceed the difference between a rental amount established by the awardee as locally standard for the applicable unit size and 30 percent of the family's monthly adjusted income. The awardee must either base such local rent standards on local market conditions which are approved by HTFC, or they may establish rent standards which are not less than 80 percent of the HUD Fair Market Rents for the jurisdiction, but not more than the Fair Market Rent in effect when the rent standards are set. The awardee must also establish a minimum tenant contribution toward rent. If the rent established is not reasonable based on rental charges for other local comparable unassisted units, the awardee may not approve a lease for the unit. In addition to establishing rental standards, the awardee must establish a minimum contribution that the tenant must make toward rent.

Issued: **11/02**	Revised:
Section: **2.00**	Title: **PROGRAM DESCRIPTIONS**
Sub-Section: **2.05**	Topic: **The New York State HOME Program**

2.05.06.D TBRA Lease Requirements

Awardees must review and approve all leases for units to be occupied by tenants receiving TBRA. Leases may not have terms of less than one year. Owners of units occupied by TBRA recipients may not terminate or refuse to renew the lease of such unit without good cause, and must give the tenant 30 days written notice specifying the grounds for termination or refusal to renew.

2.05.07 HOME LPA Roles/Responsibilities

(i) providing adequate staff to carry out the program;

(ii) program marketing, including compliance with all State and Federal equal opportunity, fair housing, and affirmative marketing requirements;

(iii) conducting eligibility determinations and ensuring that all income targeting requirements are met;

(iv) ensuring that HOME funds are only expended for eligible activities consistent with State and Federal requirements, with respect to property requirements, rehabilitation standards, appraised value, subsidy limits, and qualification as affordable housing;

(v) for home buyer assistance, loan underwriting, loan processing, home ownership counseling, and other activities necessary to reduce the risk of default, consistent with the LPA's Administrative Plan, and enforcing HOME resale requirements for assisted properties (see 24 CFR 92.254 (a) (4));

(vi) for tenant-based rental assistance, determining the amount of subsidy provided on behalf

of each assisted household, determining tenant contributions, conducting Housing Quality Standards inspections and rent reasonableness determinations, and taking actions to minimize adverse impacts on tenants as a result of the expiration of the rental assistance subsidy;

(vii) conducting, or assisting HTFC in conducting, environmental reviews, determinations, and action for each activity that it carries out with HOME funds, in accordance with 24 CFR part 58, and submission of Requests for Release of Funds or other documentation, as required, to HTFC for approval. Environmental Review Procedures for Local Program Administrator (LPA) Programs is available on the DHCR website.

(viii) following an anti-displacement plan to minimize displacement, and compliance with Federal displacement, relocation, and acquisition, requirements concerning temporary relocation, relocation assistance, identification of displace persons, real property notification of non-displacement for existing tenants, and proper notification to sellers when acquiring properties with HOME funds (see 24 CFR 92.353 and 49 CFR part 24);

(ix) financial management of all HOME funds, establishing a local HOME Investment Trust Fund account, if applicable, disbursing funds to owners or contractors, coordinating payment of HOME Program funds with funds from other sources, tracking and reporting on repayments and other program income, and data entry and maintenance of the recipient's account in HUD's Integrated Disbursement Information System;

(x) compliance with requirements for encouraging minority/women-owned business (M/WBE) utilization, and submission of reports on M/WBE outreach and utilization, and

equal opportunity, fair housing, and M/WBE participation in the local community;

(xi) post-occupancy monitoring to ensure regulatory compliance for assisted units, including annual HQS and income verifications, if applicable;

(xii) compliance with all uniform administrative requirements, as described in 24 CFR 92.505;

(xiii) adherence to the conflict of interest requirements of 92.356, 24 CFR 85.36, and 24 CFR 85.42, as applicable;

(xiv) record-keeping and reporting, including submission of an Annual Performance Report.

For more information on the role of HOME LPAs, see Sub-Section 6.02.09.A.

Issued: **11/02**	Revised:
Section: **2.00**	Title: **PROGRAM DESCRIPTIONS**
Sub-Section: **2.06**	Topic: **Home for Working Families (HWF)**

2.06 Program Description: Homes for Working Families Program

2.06.01 Summary

Homes for Working Families (HWF) is a housing development program which provides Housing Trust Fund Corporation (HTFC) financing assistance of up to $35,000 per unit ($45,000 in New York City) for the new construction/rehabilitation of family or senior rental projects. Under this program, more than 50% of the project cost must be financed with tax-exempt bonds which are issued by a public authority and allocated from the State's Private Activity Bond Volume Cap. This bond financing enables the project to receive an allocation of 4% "as-of-right" Low-Income Housing Credit (LIHC); 100% of HWF-assisted units must meet LIHC rent restriction requirements (i.e., affordable to households with incomes at 60% or less of area median income).

In addition, up to 20% of the overall project units may serve households above 60% of area median income. Although HWF cannot provide financing for these units, New York State Low-Income Housing Tax Credit may be utilized to provide financing for units affordable to households with incomes greater than 60% and less than or equal to 90% of area median income band (see Section 2.08).

Under HWF, the HTFC permanent loan is provided in the form of a 30-year, 1% interest loan payable from available cash flow. Construction loans are generally provided with a 6% interest note and mortgage. HTFC's preference is to provide permanent financing only.

Under HWF, the Housing Trust Fund Corporation has no preference between financing family or senior rental projects.

Issued: **11/02**	Revised:
Section: **2.00**	Title: **PROGRAM DESCRIPTIONS**
Sub-Section: **2.06**	Topic: **Home for Working Families (HWF)**

2.06.02 HWF Statutory Provisions

HWF is subject to the provisions of Article 18 of the Private Housing Finance Law, which created the HTF Program (see Section 2.01.02 for a detailed summary).

Further, since HWF projects also receive "as-of-right" LIHC, HWF-assisted units are subject to the pertinent provisions of Section 42 of the Internal Revenue Code and the State of New York Low-Income Housing Credit Qualified Allocation Plan.

Issued: **11/02**	Revised:
Section: **2.00**	Title: **PROGRAM DESCRIPTIONS**
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2.06.03 Eligibility Requirements

HWF-assisted units in projects must meet all the eligibility requirements of both the HTF Program (see section 2.01.03 of this Manual) and the LIHC Program (see the Qualified Allocation Plan).

2.06.04 Program Requirements

Generally, the non-statutory programmatic, underwriting and design requirements and standards for HTF, LIHC and other capital financing programs set forth in this manual apply to HWF-financed units, unless a waiver is approved by HTFC. However, HWF projects financed with HFA tax-exempt bonds are subject to the provisions of HFA's Qualified Allocation Plan (since HFA issues the 4% Credit for these jointly financed projects) and the parameters of HFA's pertinent bond financing programs, including HFA's underwriting requirements and post-construction compliance monitoring during the project's regulatory period.

HTFC provides some flexibility in HWF program requirements, as enumerated in the pertinent parts of Section 5 and the current edition of the HWF Frequently Asked Questions (FAQ's). These requirements have been formulated based on the premise that tax-exempt bond financed projects are more market-oriented than standard HTFC-financed capital projects, operate under different risk management assumptions and that it is necessary for HWF to be more adaptable to housing industry standards to accommodate the requirements of the bond issuer, source of credit enhancement and/or other parties involved in the bond issuance.

Issued: **11/02**	Revised:
Section: **2.00**	Title: **PROGRAM DESCRIPTIONS**
Sub-Section: **2.06**	Topic: **HOMES FOR Working Families (HWF)**

2.06.04.A HTFC Loan Terms/Conditions

For permanent financing, borrowers will execute a 1% interest cash flow note and mortgage with a minimum of a 30 year term.

For construction financing, borrowers will execute a 6% interest note and mortgage, in accordance with Section 5.12.02 of the Manual. In some cases, HTFC will allow interest on the HWF loan to accrue during construction and be added to the principal of the HWF permanent loan to be repaid from cash flow as described below.

2.06.04.B Private Activity Bonds and Permanent Financing

In order to qualify for an "as-of-right" LIHC allocation for the entire project, HWF projects must meet the requirement under Section 42(h)(4)(B) of the Internal Revenue Code (IRC) that more than 50% of the project cost be financed by tax-exempt bonds issued from the State's Private Activity Bond Volume Cap.

Generally, this requirement, know as the "50% rule," is met during the construction period with tax-exempt bonds financing more than 50% of the project cost. Since HWF projects, however, do not generate a sufficient level of project revenue to support the debt from the long term bond financing of 50% or more of project cost, other funds including equity and/or HWF financing are used as permanent financing to pay off a portion of the bonds issued during construction. Prospective applicants and project sponsors considering this financing scenario are urged to consult with tax counsel on the timing of such a payment to assure compliance with the requirements of the "50% rule" under Section 42 of the IRC.

2.06.04.C Design Review

HTFC requires compliance with the DHCR Design Handbook, latest edition. Any deviations from these standards must be requested in writing prior to application submission. Waiver requests will be reviewed, and determinations made, based upon the project sponsor's ability to demonstrate cost-effectiveness, functional appropriateness, and durability and operating appropriateness of the alternate solution.

2.06.04.D Construction Monitoring

HTFC may consider having a joint construction monitor with other project lenders and/or the source of the credit enhancement or may assign this role to the bond issuer.

Issued: **11/06**	Revised:
Section: **2.00**	Title: **PROGRAM DESCRIPTIONS**
Sub-Section: **2.07**	Topic: **RESTORE (Residential Emergency Services To Offer (Home) Repairs to the Elderly)**

2.07 RESTORE Program (Residential Emergency Services to Offer (Home) Repairs to the Elderly

2.07.01 Summary

The Residential Emergency Services to Offer (Home) Repairs to the Elderly (RESTORE) Program provides emergency home repairs for elderly homeowners.

The RESTORE Program provides grants to Local Program Administrators who administer home repair programs in the target area(s) which they designate. Applicants are selected through an annual competitive funding round which is described in section 3.

2.07.02 Statutory Authority

RESTORE was initiated in fiscal year 1987-1988 within New York State Division of Housing and Community Renewal's Aid to Localities budget. The program is now administered by the Housing Trust Fund Corporation.

2.07.03 Eligibility Requirements

The following program specific terms are defined by the enacting legislation and the HTFC's program Rules and Regulations.

2.07.03A. Eligible Applicant:

The following may apply for designation as a Local Program Administrator: municipalities (City, Village, Town, County) and not-for-profit corporations.

Issued: **11/06**	Revised:
Section: **2.00**	Title: **PROGRAM DESCRIPTIONS**
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2.07.03B. Eligible Project Recipients

- New York State homeowners;
- At least one of the homeowners must be age 60 or over;
- The home must be the primary residence of the older (60+) homeowner;
- The household income must fall within 80 percent of the area's median family income; and,
- Existing situation must be deemed an emergency, that is, it must pose a threat to the life, health, or safety of the older residents.

2.07.03C Eligible Areas

All areas of state are eligible.

2.07.03D Eligible Project

Any repair to a building containing 1-4 dwelling units that poses a threat to the life, health or safety of low-income elderly homeowners. Typical repairs include: furnace, roof, electrical, and water problems. Maximum lifetime assistance is limited to $5,000 per building.

2.07.03E Performance Requirements

Local Program Administrators should comply, to the extent feasible, with the following time constraints:

- within 72 hours of application intake, make an assessment of the emergency home repair

needs,

- within seven days of application intake, begin the repair work, and

- within 30 days of application intake, complete the required repairs.

Issued: **11/06**	Revised:
Section: **2.00**	Title: **PROGRAM DESCRIPTIONS**
Sub-Section: **2.08**	Topic: **New York State Low-Income Housing Credit Program**

2.08 New York State Low-Income Housing Credit Program

2.08.01.A Summary

The New York State Low-Income Housing Credit (SLIHC or State Tax Credit) Program was created in 2000 by Article 2-A of the Public Housing Law (The Law). The Law authorizes the Commissioner of NYS DHCR to administer the SLIHC Program according to procedures established in 9 NYCRR Part 2040.14 (the SLIHC regulation) and in the same manner as the federal Low-Income Housing Credit (LIHC) Program authorized by Section 42 of the U. S. Internal Revenue Code (the Code). Owners/investors can receive a dollar-for-dollar reduction in certain New York State income taxes to be taken over a 10-year period in return for building and maintaining affordable housing for income eligible tenants for at least 30 years.

The SLIHC Program differs from the federal LIHC Program by serving tenants having an income level of up to 90% of area median income, as opposed to the federal limit of 60% of area median income. This assists low-income elderly and working households where the rents of conventionally financed dwellings are not affordable. Scoring preference will be given to those projects that propose serving households in multiple income bands (see Unified Funding Application for delineation of household income bands).

All processes, policies and procedures applicable to the LIHC Program shall apply to the SLIHC Program except as modified below:

2.08.01.B 2008 Proposed SLIHC Regulations

Prospective SLIHC applicants are advised that as of November 2007, DHCR will be accepting comments regarding proposed amendments to the SLIHC regulation (the 2008 Proposed SLIHC regulation), in conjunction with proposed amendments to the LIHC QAP, as noted in Section 2.04 above. The specific amendments set forth in the 2008 Proposed SLIHC regulation will impact SLIHC scoring criteria. In addition, the changes reflected in the 2008 Proposed QAP for program definitions and threshold eligibility will correspondingly impact the review of SLIHC applications, which are subject to all QAP parameters (except where modified by the Law and SLIHC regulation).

The 2008 Proposed QAP and Proposed SLIHC regulation, which may be subject to further change, will be utilized for the review and processing of all SLIHC applications received after the completion of the amendment process.

Additional information about the 2008 Proposed QAP and Proposed SLIHC regulation, and the amendment process, is available on DHCR's website. The process for amending the QAP and the SLIHC regulation will be completed prior to the deadline for the submission of applications under the Unified Funding 2008 application review process. In the event these revised rules are not adopted prior to the application deadline, the current QAP and SLIHC regulation will remain in effect.

Issued: **11/06**	Revised:
Section: **2.00**	Title: **PROGRAM DESCRIPTIONS**
Sub-Section: **2.08**	Topic: **New York State Low-Income Housing Credit Program**

2.08.02. Additional Definitions:

(1) Eligibility Statement shall mean a statement issued by the Commissioner certifying that a building that has been placed in service as an eligible low-income building with a certain amount of SLIHC allowable. For purposes of SLIHC, all references to the IRS Form 8609 shall be deemed to be references to NYS Department of Taxation and Finance Form DTF-625 which is an eligibility statement for the SLIHC and is the document which is used to make the final allocation of state tax credit to the project.

(2) Eligible Low-Income Building shall mean any building located in New York State which either is a qualified low-income building as defined in Sections 42(c) of the Code, or would be a qualified low-income building under such section if the 20-50 test specified in subsection (g)(1) of Section 42 of the Internal Revenue Code (the Code) were disregarded and the 40-60 test specified in such subsection (requiring that at least 40% of the residential units be both rent-restricted and occupied by individuals whose income is 60% or less of area median gross income) were a 40-90 test.

(3) Qualified Basis of an eligible low-income building shall mean the qualified basis of such building as determined under Section 42(c) of the Code or which would be determined under such section if the 40-90 test specified above applied under Section 42 to determine if such building were part of a qualified low-income housing project (see Section 2.08.04.B – Eligible Projects below).

(4) De Minimus Determination - The Commissioner of New York State Taxation and Finance in consultation with the Commissioner of DHCR may exempt from recapture any SLIHC which is allocated to a project or unit which is otherwise eligible but is not an eligible low-income building due to an error by the owner in calculating the low-income eligibility test.

(5) Notice of Non-Compliance shall mean a statement issued by the Commissioner and sent to the project owner notifying the project owner that the project is not in compliance with the provisions of this Section 2040.14. For the purposes of SLIHC, all references to IRS Form 8823 shall be deemed references to the Notice of Non-Compliance.

2.08.03 Funding Rounds

A Notice of Credit Availability (NOCA) will be issued by the DHCR within six months of enactment of the statute providing credit allocation authority. Such notice shall remain in effect until such time as the SLIHC credit allocation authority is expended or expired. Therefore, SLIHC applications which do not include a request for financing under other HTFC/DHCR programs may be submitted at any time during the calendar year subject to the availability of SLIHC allocation authority. State tax credit authority is not year-specific. Therefore, any unused credit authority from one year may be carried forward by DHCR for use in the next calendar year.

Issued: **11/06**	Revised:
Section: **2.00**	Title: **PROGRAM DESCRIPTIONS**
Sub-Section: **2.08**	Topic: **New York State Low-Income Housing Credit Program**

2.08.04 Eligibility Requirements

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

2.08.04A Eligible Applicants/Owners

Eligible applicants/owners for the SLIHC Program include individuals, partnerships, limited partnerships, corporations and Chapter S corporations which will own rent-restricted rental housing after the project is acquired and improved, developed or rehabilitated. DHCR provides a scoring preference for projects which include the participation of a local tax-exempt organization (501(c)(3) or (c)(4)) as set forth in the SLIHC scoring criteria (see Section 2040.14 (d)(13) of the 2008 Proposed SLIHC regulation).

Priority for funding is given to those applicants who have experience in the development and/or operation of low-income housing. Additionally, priority may be given to projects which are designated by the Commissioner as important initiatives or unique opportunities to meet State or local housing needs, including mixed income projects, which are provided with a scoring preference to the extent the project serves a mixture of income levels (see Section 2040.14(d)(5).

Applicants are charged an allocation fee, equal to six percent of the State Tax Credit allocation amount (first year's State Tax Credit amount). The fee must be paid prior to State Tax Credit allocation and is recognized as a project cost, but is not eligible

for inclusion in the project's qualified basis.

2.08.04B Eligible Projects

State Tax Credit allocations may only be made to rental housing projects which meet the minimum set-aside requirements for rent-restricted units. Generally, eligible (or qualified) projects must contain a minimum number of low-income units (the minimum set-aside) in accordance with the following formulas:

(i) At least 40 percent of the units must be occupied by households with incomes at or below 90 percent of the area median income, or

(ii) In New York City, at least 25 percent of the units must be occupied by households with incomes below 90 percent of the area median income.

In addition, to be eligible, the project's low-income units must be rent-restricted, so that the low-income households occupying the unit do not pay rent (including tenant-paid utilities) which is greater than 30 percent of the area median income imputed for the unit based on the number of bedrooms the unit contains.

The QAP sets forth additional eligibility requirements which must be met by SLIHC projects. Pursuant to Section 2040.3(E) of the QAP, at each stage of processing (i.e., application, reservation, binding agreement or allocation), applications will be subject to a threshold eligibility review, which will include, but not necessarily be limited to, whether the project meets certain minimum requirements set forth in this section. The

LIHC threshold eligibility requirements, which apply to SLIHC projects, are contained in the 2008 Proposed QAP and referenced in Section 2.04.03 B above.

Further, in SLIHC projects which are not jointly financed with LIHC, no more than 40% of the units assisted by SLIHC can serve households with incomes at or below 60% of area median income.

2.08.04C Eligible Activities

New construction, substantial and moderate rehabilitation, and acquisition are all eligible activities under the SLIHC Program. Project applications which address the type of housing activity (new construction, substantial or moderate rehabilitation, or acquisition in conjunction with rehabilitation) appropriate to the location, will be given preference for funding.

While projects may contain commercial space and market-rate residential units, the amount of State Tax Credit can only be based on the project's low-income residential space. State Tax Credit allocations may not be used for projects proposing:

- transient housing, defined as units with an initial lease of less than six months. However, an exception is made for transitional housing and single room occupancy (SRO) projects, which are eligible for Credits.

- rental dwelling units that are or will be part of a health facility, trailer park or dormitory;

2.08.04D Eligible Areas

All areas of New York State are eligible.

2.08.04E Eligible Occupants

SLIHC can only be taken on units that are occupied at the time of initial occupancy by households with incomes at or below 90 percent of the area median income. Units must be available for use by the general public and cannot be restricted to members of a particular organization, ethnic group, or religion. Project owners may, however, give preference in renting units or limit occupancy to, persons with special needs such as persons who are frail elderly, disabled and persons or families who are homeless, provided such preferences are in accordance with federal and state laws and regulations barring discrimination in housing.

2.08.05 **Project** Scoring **and Ranking Criteria**

Project applications which pass completeness and threshold eligibility review are scored based upon the following criteria, which are set forth in Section 2040.14 (d) of the 2008 Proposed SLIHC regulation. The SLIHC scoring criteria have been synchronized with the LIHC scoring parameters to the extent possible; the only variation in the two scoring criteria is for Mixed Income (LIHC) and Income Mixture (SLIHC). The SLIHC criteria for Income Mixture is referenced below while the other pertinent LIHC/SLIHC

scoring preferences are described in Section 2.04.03 B above:

- Community impact/revitalization (15 points)
- Financial leveraging (13 points)
- Sponsor characteristics (10 points)
- Green Building (10 points)
- Income mixture (8 points) –
  This is scored on the extent affordable housing opportunities are provided to different income levels (i.e., units affordable to households with incomes below 30 percent of area median, 30 percent to 50 percent, 50 percent to 60 percent and/or units affordable to households above 90 percent).
- Long term affordability (7 points)
- Fully accessible and adapted, move-in ready units (6 points)
- Project readiness (5 points)
- Energy efficiency (5 points)
- Persons with special needs (5 points)
- Marketing plan/public assistance (5 points)
- Individuals with children (5 points)
- Participation of local non-profit organizations (4 points)
- Project amenities (2 points)

Issued: **11/06**	Revised:
Section: **2.00**	Title: **PROGRAM DESCRIPTIONS**
Sub-Section: **2.09**	Topic: **Urban Initiatives (UI) Program**

2.09.01 Summary

The purpose of the Urban Initiatives program is to provide financial/technical resources to New York communities for the restoration and improvement of housing, commercial areas and public/community facilities in urban neighborhoods. This program will provide grants to not-for-profit community based organizations and charitable organizations that have a direct interest in improving the health, safety and economic viability of a distressed urban neighborhood or other aspects of the area environment that is related to community preservation or renewal activities.

2.09.02. Eligible Applicants

Eligible applicants include not-for-profit corporations or charitable organizations, organized for a period of one or more years, which is either incorporated under the not-for-profit corporation law together with any other applicable law) or, if unincorporated, is not organized for the private profit or benefit of its members and has been engaged primarily in community preservation activities and will serve a population with incomes at 90% or below of median annual income. The applicant's officers, directors and members must be representative of the residents and other legitimate interests of the neighborhood.

2.09.03 Eligible Projects

1. Creation, preservation or improvement of residential housing units in a neighborhood.

2. Preservation or improvement of local commercial facilities and public facilities or other aspects of the area environment which include as part of its project the creation, preservation or improvement of residential housing units in a neighborhood, when carried out in connection with or incidental to a program of housing activities.
3. Applicants must have an ownership interest in a project during the contract period.

2.09.04 Eligible Areas

Neighborhood - An area within a municipality having a population of 20,000 or more identified by recognized or established boundaries consistent with a determination of neighborhood eligibility under article 16 of the Private Housing Finance Law. A substantial proportion of the residential population of the neighborhood must be persons of low income, and may include populations with persons of special needs with unmet housing needs. The neighborhood must contain a substantial number of deteriorating or substandard buildings.

2.09.05 Eligible Occupants/Beneficiaries

Eligible occupants of UI Program projects are persons and families whose income does not exceed 80% of the area median income for the MSA or county or municipality in which the project is located based on family size.

Non-residential projects must benefit municipalities in which at least 50% of the population has incomes of 80% or less of the median income of the municipality.

Issued: **11/06**	Revised:
Section: **2.00**	Title: **PROGRAM DESCRIPTIONS**
Sub-Section: **2.09**	Topic: **Urban Initiatives (UI) Program**

2.09.06 Eligible Project Costs

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

(i) the costs of acquisition, construction, repair, renovation, rehabilitation, demolition, clearance and sealing of any building or other structure, provided that such funds may not be used for planning of any such activity or for operating an office to be used by the qualified applicant and, provided further that no funds shall be used for acquisition unless such acquisition is in conjunction with the construction, repair, renovation, rehabilitation, demolition, clearance, or sealing of any building or of the structure.

(ii) fees to consultants retained by the qualified applicant to provide the eligible services listed in subdivision (a) of this section.

In no event shall program funds be used for:

(i) payment of salaries and wages to employees of the qualified applicant, unless specifically authorized and set forth in the UI Program contract; or

(ii) Other costs or expenses directly related to the applicant's employees or consultants, including office rentals, office equipment, fringe benefits, office expenses or other administrative expenses.

Issued: **11/06**	Revised:
Section: **2.00**	Title: **PROGRAM DESCRIPTIONS**
Sub-Section: **2.09**	Topic: **Urban Initiatives (UI) Program**

2.09.07 Regulatory Term

The regulatory term for a project with urban initiatives funds is a minimum period of seven years.

Issued: **11/06**	Revised:
Section: **2.00**	Title: **PROGRAM DESCRIPTIONS**
Sub-Section: **2.10**	Topic: **Rural Area Revitalization (RARP) Program**

2.10.01 Summary

The purpose of the program is to provide financial/technical resources to New York communities for the restoration and improvement of housing, commercial areas and public/community facilities in rural communities. This program will provide grants to not-for-profit community based organizations and charitable organizations that have a direct interest in improving the health, safety and economic viability of a rural area or other aspects of the area environment that are related to community preservation or renewal activities.

2.10.02 Eligible Applicants

Eligible applicants include not-for-profit corporations or charitable organizations, organized for a period of one or more years, which is either incorporated under the not-for-profit corporation law together with any other applicable law) or, if unincorporated, is not organized for the private profit or benefit of its members and has been engaged primarily in community preservation activities and will serve a population with incomes at 90% or below of median annual income. The applicant's officers, directors and members must be representative of the residents and other legitimate interests of the rural region.

2.10.03 Eligible Projects

Projects that are designed to construct, maintain, preserve, repair, renovate, upgrade, improve, modernize, rehabilitate or otherwise prolong the useful life of housing accommodations; to restore abandoned and vacant as well as occupied housing accommodations to habitable and viable condition; to demolish structurally unsound or unsafe or otherwise unsightly or unhealthy residential structures which no longer serve or can economically be made to serve a useful purpose consistent with stabilizing or improving a region; to acquire and renovate buildings which contain housing accommodations; and to conduct similar activities with respect to retail, commercial,

cultural, civic and community establishments within a region when carried out in connection with or incidental to program of housing activities. Applicants must have an ownership interest in a project during the contract period.

2.10.04. Eligible Areas

Rural Area of the State shall mean cities, towns and villages having a population of less than 20,000. A substantial proportion of the residential population of the region must be persons of low income and may include population groups for persons with special needs with unmet housing requirements.

2.10.05 Eligible Occupants/Beneficiaries

Eligible occupants of RARP Program projects are persons and families whose income does not exceed 90% of the area median income for the MSA or county in which the project is located based on family size.

Non-residential projects must benefit municipalities or rural area in which at least 50% of the population has incomes of 90% or less of the MSA or county median income.

2.10.06 Eligible Project Costs

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

(i) the costs of acquisition, construction, repair, renovation, rehabilitation, demolition, clearance and sealing of any building or other structure, provided that such funds may not be used for planning of any such activity or for operating an office to be used by the qualified applicant and, provided further that no funds shall be used for acquisition

unless such acquisition is in conjunction with the construction, repair, renovation, rehabilitation, demolition, clearance, or sealing of any building or of the structure.

(ii) fees to consultants retained by the qualified applicant to provide the eligible services listed in subdivision (a) of this section.

In no event shall program funds be used for:

(i) payment of salaries and wages to employees of the qualified applicant, unless specifically authorized and set forth in the RARP Program contract; or

(ii) Other costs or expenses directly related to the applicant's employees or consultants, including office rentals, office equipment, fringe benefits, office expenses or other administrative expenses.

2.10.07 Regulatory Term

The regulatory term for a project with RARP funds is a minimum period of seven years.

Section Three

Issued: **11/02**	Revised:
Section: **3.00**	Title: **UNIFIED FUNDING PROCESS**
Sub-Section: **3.01**	Topic: **Introduction**

The Unified Funding (UF) Process has been adopted by the HTFC and DHCR to efficiently administer capital programs supporting affordable housing. The UF process is the method by which applicants may request full or partial funding and/or seed money from the HTFC and/or DHCR to undertake housing projects, and by which staff evaluates, recommends and processes projects for funding.

Through the UF process applicants may apply for funding from a number of DHCR/HTFC-administered programs. However, application content, submission timeframes, and specific review steps will vary, depending upon the program(s) from which funds are being requested.

Applications for funds from the following programs will be held until the deadline date specified in the most recent DHCR/HTFC-issued Notice of Funding Availability (NOFA) (or NOCA for LIHC) and Request for Proposals (RFP), at which point they will be competitively reviewed with awards made according to specific timeframes as discussed later in this section:

(i) Low Income Housing Trust Fund Program (HTF);

(ii) New York State HOME Program (HOME);

(iii) Low Income Housing Credit Program (LIHC);

(iv) Rural Rental Assistance Program (RRAP) (application submitted in conjunction with an application for HOME or HTF and LIHC); and,

(v) Residential Emergency Services to Offer (Home) Repairs to the Elderly (RESTORE)

As described in Section 3.07 below, applications may be submitted for the following DHCR programs at any time of the year, with awards being made on an ongoing basis, subject to funding

availability:

(i) Housing Development Fund Program (HDF**);**

(ii) Homes for Working Families Program (HWF);

(iii) New York State Low Income Housing Tax Credit (SLIHC);

(iv) Urban Initiatives Program (UI); and,

(v) Rural Area Revitalization Projects Program (RARP).

However, applications under these programs which propose joint financing with HOME, HTF, RRAP and/or LIHC are subject to DHCR/HTFC's Unified Funding application submission deadline.

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

In addition to project funding from the above programs, subject to the availability of funds, DHCR/HTFC will accept applications at any time of the year for seed money. Seed money is available to not-for-profit applicants to assess the feasibility of a potential project, and/or retain professional services to assist in applying for capital project funding. Seed money is available only from the HTF and HOME Programs, and the specific programmatic requirements pertaining to seed money awards is discussed in the Program Descriptions contained in Section 2.00. The application review and funding process for seed money is described in Section 3.09.

Technical assistance may be requested at any time by not-for-profit applicants who wish to discuss a project or program that may result in a UF application or a UF project/program that may require additional assistance. Sub-Section 3.08 provides specific details on the various types of technical assistance which may be provided by DHCR and the process for technical assistance.

Applications submitted to undertake projects under the HTF and HOME Programs require a

more detailed series of reviews than do other applications. Additionally, the volume of requests for funds from these programs requires DHCR/HTFC to use a competitive ranking system for these applications so that feasible and cost effective projects meeting State priorities are chosen. The application review and funding process for HTF and HOME projects is described in Sub-Section 3.02 below.

The application review and funding processes for the HDF, LIHC and RRAP Programs are described in Sub-Sections 3.04, 3.05, and 3.06, respectively.

The application review and funding processes for HWF, UI and RARP are set forth in the latest addition of HTFC/DHCR's Unified Funding Programs Request for Proposals, which is issued annually. The application review process for these programs, as well as SLIHC, is also briefly described in Sub-Section 3.07.

In some instances (i.e., demonstration projects, response to disaster) some projects may be funded outside of the UF process if sufficient funds are available from program income or reappropriated recaptured funds. This is discussed in Sub-Section 3.10.

Issued: **11/02**	Revised:
Section: **3.00**	Title: **UNIFIED FUNDING PROCESS**
Sub-Section: **3.02**	Topic: **Application Review and Funding Process for HTF and HOME Projects**

The application review and funding process described below in Sub-Sections 3.02 and 3.03 is that which is followed for applications requesting project funding from the HTF, HOME and RESTORE Programs only. It consists of the following steps, depending on the outcome of the various reviews conducted by DHCR/HTFC staff:

(i) completeness review;

(ii) eligibility review;

(iii) rating and ranking;

(iv) feasibility review;

(v) project recommendations;

(vi) HTFC Board Approval

(vii) Application Review (AR) Letters;

(viii) funding commitment;

(ix) project development meeting; and

(x) development track process.

Issued: **11/02**	Revised:
Section: **3.00**	Title: **UNIFIED FUNDING PROCESS**
Sub-Section: **3.02**	Topic: **Application Review and Funding Process for HTF and HOME Projects**

All Review steps are subject to quality control and supervisory reviews which occur on an on going basis to arrive at a list of award recommendations.

3.02.01 Completeness Review

Each application undergoes a completeness review by DHCR/HTFC staff to ensure that all required documents have been completed and submitted. Complete applications will go on to an Eligibility Review.

Incomplete applications are those which are missing required exhibits and/or attachments, contain incomplete or illegible documents, and/or contain unsigned certifications. DHCR/HTFC will refrain from requesting any missing item which would affect the rating of the application, e.g., funding commitment documentation. Applicants will be notified that their application is incomplete within ten business days of the application submission deadline. The Notice of Incomplete Application will itemize all missing, incomplete and illegible documents.

The applicant has ten business days from the date the incomplete notification is received to provide all of the itemized documents to DHCR/HTFC. Only those documents requested in the Notice will be accepted for review. Any material submitted by the applicant which was not requested in the Notice will not be reviewed. Submissions of missing documents which reflect a change in the scope, location, funding request, funding sources, or other aspect of the original application will not be accepted. If the applicant fails to supply DHCR/HTFC with any of the itemized documents within the ten-day period, DHCR/HTFC will not review the application any further. The applicant will receive an Application Review Letter from DHCR/HTFC as discussed in Sub-Section 3.02.06 below, stating that the application was incomplete, and not selected for funding.

Issued: **11/02**	Revised:
Section: **3.00**	Title: **UNIFIED FUNDING PROCESS**
Sub-Section: **3.02**	Topic: **Application Review and Funding Process for HTF and HOME Projects**

3.02.02 Eligibility Review

Applications which pass the completeness review are then reviewed for eligibility to ensure that the proposed project meets all statutory requirements of the program(s) from which funds are being requested. DHCR/HTFC staff must ensure that the application has demonstrated the eligibility of the:

(i) applicant/owner;

(ii) area in which the proposed project is to be located;

(iii) proposed use;

(iv) property; and

(v) proposed occupants.

Applications which fail to meet all programmatic eligibility requirements will not be reviewed further. The applicant will receive an Application Review Letter from DHCR/HTFC, as discussed in Sub-Section 3.02.06, stating that the application was not selected for funding and citing the specific eligibility criterion/criteria which was/were not met.

Applications which are determined to be eligible will go on to the next review stage - rating and ranking.

Issued: **11/02**	Revised:
Section: **3.00**	Title: **UNIFIED FUNDING PROCESS**
Sub-Section: **3.02**	Topic: **Application Review and Funding Process for HTF and HOME Projects**

3.02.03 Rating and Ranking

All applications which pass the eligibility review are rated according to the statutory, regulatory, and policy considerations of the applicable program(s).

HTF and HOME projects are rated according to the general criteria listed in (i) through (v) below:

(i) income served;

(ii) subsidy cost;

(iii) community impact/revitalization

(iv) leveraging;

(v) greenbuilding initiative;

(vi) energy efficiency initiative;

(vii) persons with special needs;

(viii) fully accessible and adaptable move-in-ready units;

(ix) project readiness; and

(x) successful development performance

After all the applications for each Program are rated, they will be ranked in order of score; those which rate competitively will go on to a feasibility review. Applications that do not rate competitively will not be reviewed further. The applicant will receive an application review letter from DHCR/HTFC, as discussed in Sub-section 3.02.06 stating that the application did not have sufficient scoring priority to be selected for funding.

3.02.04 Feasibility Review

Applications which are in the competitive scoring range will undergo a feasibility review, in which staff members from the Technical Services Unit (includes Design Services, Environmental Analysis and Underwriting) conduct technical assessments on the feasibility of the project as proposed. Staff from Program Management and the Office of Legal Affairs may also participate as necessary.

Applications must also demonstrate the suitability of the proposed project site. Project sites must meet the minimum site requirements outlined in Sub-Section 5.03 of this Manual.

The Project Manager will assess whether or not the housing that is being developed is based upon a demonstrated need consistent with the State's or locality's Consolidated Plan. Additionally, the Project Manager and Design Services Unit Architect may conduct a site visit, if one was not conducted previously, to assess:

(i) the condition of the neighborhood, project site, and existing structures (if applicable);

(ii) the accuracy of the design documents in reflecting existing site conditions;

(iii) the suitability of the site with regard to the proposed occupants, accessibility to shopping, community facilities, transportation, etc.; and

(iv) site eligibility.

In general, applicants are encouraged to contact a Project Manager or Design Services Architect prior to starting the application process to schedule a site visit so that each potential site can be assessed for eligibility and suitability.

In addition to assisting with the site assessment, a Design Services Unit Architect will conduct a review of project drawings; outline specifications; owner/architect agreement; zoning compliance and environmental compliance. The total development cost and construction cost estimates will also be reviewed. (Please refer to the Design Handbook for further discussion on site requirements).

Environmental Analysis Unit staff members will assist the Design Services staff with the review of projects with potential environmental impacts.

An Underwriting staff member will review the application for feasibility, with a primary focus on: the Market Study; Project Income and Operating Budget; Unit Rents, Maintenance Fees and Affordability; Development Budget/ Funding Sources; and, any exhibits specific to the use of LIHC.

In some cases, involving complex projects, such as those involving historical rehabilitation, independent cost estimates will be required.

The feasibility review is the final review conducted prior to making funding recommendations to HTFC's Board, or the DHCR Commissioner, as applicable.

Issued: **11/02**	Revised:
Section: **3.00**	Title: **UNIFIED FUNDING PROCESS**
Sub-Section: **3.02**	Topic: **Application Review and Funding Process for HTF and HOME Projects**

3.02.05 Project Recommendations

After all reviews have been completed by DHCR/HTFC staff, the DHCR Commissioner/HTFC Board will make a final selection of applications which will be funded for each program, based upon the following considerations:

(i) the scoring/ranking of all competitive and feasible applications to each program;
(ii) the program's statutory requirements, as discussed below;
(iii) the state's housing goals including but not limited to the preservation of affordable housing; community renewal; green buildings and collaboration with other government agencies and the development community;
(iv) the availability of program funds.

The HOME and HTF Programs both have statutory requirements governing the distribution of program funds. These are outlined below.

HOME Program applications must be selected according to the following statutory criteria:

(i) first, all applications involving CHDOs will be selected based upon their score, until the 15 percent CHDO set-aside requirement discussed in Sub-Section 2.05.03.B is met;

(ii) next all applications involving non-participating jurisdictions (PJs) will be placed in rank order (including the CHDO projects not previously chosen) and selected based

on their score, until the minimum 80 percent non-PJ requirement is met (see Sub-Section 2.05.03.D for a discussion of this requirement); and

(iii) finally, all remaining projects will be placed in rank order and selected based upon their scores until program funds have been exhausted.

HTF Program applications must be selected according to the following statutory criteria:

(i) no more than 50 percent of the total original appropriation may be awarded to projects located within any single municipality;

(ii) no more than 33 1/3 percent of the funds awarded to projects within a city with a population of one million or more shall be allocated to private developers; and

(iii) no more than 33 1/3 percent of the funds awarded to projects outside of cities with a population of one million or more shall be allocated to private developers. Preference in making awards to eligible applicants is given to projects which involve not-for-profit corporations or their wholly-owned subsidiaries. For limited partnership or limited liability company applicants, the ownership interest of the not-for-profit or its wholly-owned subsidiaries must be "at least 50% of the controlling interest" of the partnership as directed by Article XVIII of the Private Housing Finance Law.

The development and property management experience of the applicant or their proposed property manager will be a threshold issue for DHCR/HTFC in making project funding

recommendations and awards. If an applicant is not in compliance with existing state contracts and has not taken satisfactory steps to remedy such non-compliance, DHCR/HTFC reserve the right to not award funding to such applicants.

3.02.06 Application Review Letters

Once the application review process has been completed, and funding decisions have been made, Application Review Letters will be prepared and sent to all applicants within 150 calendar days of the application submission deadline informing them of one of the three possible review statuses their application has achieved: 1) selected for funding; 2) not selected for funding; or 3) placed on a waiting list (see note below).

Applications which are incomplete, ineligible, infeasible or non-competitive will not be selected for funding. The Application Review Letter will cite the specific reason(s) that the application was not funded, and invite the applicant to meet with the appropriate Regional Office to review their application.

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

Applicants whose applications are selected for funding, will receive an Application Review Letter congratulating them on their successful proposals, and notifying them that they will receive a

Funding Commitment within approximately 45-60 business days, as discussed in Sub-Section 3.02.07.

3.02.07 Funding Commitment

Within approximately 45-60 business days of the Application Review Letter date, a Funding Commitment will be issued to successful applicants. The Funding Commitment describes the project, as well as defines the relationship between the State and the applicant. It will set forth the following specifics on project scope:

(i) the number and configuration of units in the project and information about the project owner;

(ii) project rents, housing expenses and household income ranges;

(iii) populations to be served;

(iv) operating cost and project financing assumptions;

(v) critical timeframes for project development, including deadline for construction start and marketing, management, fair housing and environmental submissions.

(vi) cost overrun guarantee from applicants expecting to receive LIHC;

(vii) marketing and management plan requirements;

(viii) documentation required to complete the environmental review;

(ix) Office of Fair Housing and Equal Opportunity and Women-Owned Business Participation goals for the project;

(x) populations with persons of special needs requirements, if applicable;

(xi) closing requirements;

(xii) HOME project Federal requirements; and

(xiii) Community Housing Development Organization (CHDO) Requirement, if applicable.

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

Applicants will be given 30 days from receipt of letter to review the Funding Commitment, and return it signed by one of the applicant's principals. The signature and return of the Funding Commitment by the applicant will indicate the acceptance of all terms and conditions set forth therein. Upon DHCR/HTFC's receipt of the executed Funding Commitment, a project development meeting may be scheduled for members of the applicant's project development team and

DHCR/HTFC staff to discuss the project.

Applicants are expected to comply with the terms of the executed Funding Commitment; failure to comply with such terms is likely to result in its termination. In general, DHCR/HTFC is reluctant to consider changes to the terms of the Funding Commitment once it has been issued. Requests for nominal or de minimis changes in rents, or operating and development costs specified in the Funding Commitment can be considered. Any change in tenancy, ownership, use, amount of DHCR/HTFC financing or changes in project timetables are considered significant revisions. Any significant revisions to conditions set forth in the Funding Commitment must be evaluated by staff, who will make recommendations for either project termination or approval of project revisions with supporting rationale. This reevaluation will ensure that no other alternatives to the requested changes(s) exist, and that the project would have scored highly enough to merit funding given the change in project scope. DHCR/HTFC will not approve changes in a Funding Commitment which affect the project's competitiveness or in other ways would affect the outcome of the funding competition. HTFC Board approval will be required for any significant change in project scope, or a ten percent or more change in HOME/HTFC funding.

3.02.08 Project Development Meeting

The Project Development Meeting is held to review the terms of the Funding Commitment agreed to by the applicant. All issues, requirements and submissions related to the project's economics, design, and ownership will be discussed, as will the roles and responsibilities of the various project participants.

The Project Development Meeting will also include a review with the applicant's team of the various technical reviews, processes and timetables for the particular Development Track that the project will follow. There are three Development Tracks, each of which involves different levels of review and DHCR/HTFC involvement, based upon the project's characteristics. The processes for

Development Tracks One, Two and Three are discussed below in Sub-Sections 3.02.9 through 3.02.11. Applicants must designate one person to be the primary contact and coordinator for the project.

If the Project Development Meeting turns up issues that cannot be resolved, or if the applicant can no longer adhere to the terms agreed to in the Funding Commitment, the State expects to terminate its commitment to the project. Applicants whose projects are terminated would be able to apply in future funding rounds without prejudice.

Issued: **11/02**	Revised:
Section: **3.00**	Title: **UNIFIED FUNDING PROCESS**
Sub-Section: **3.02**	Topic: **Application Review and Funding Process for HTF and HOME Projects**

3.02.09 Development Track One Process (HTF/HOME Permanent Loan Takeout)

Development Track One is for projects involving HTF or HOME which require permanent take-out financing only. This track is generally followed by applicants who have their own development team in place, and have pre-selected a general contractor. Projects will require regular contact with the Design Services Unit and occasional oversight by OCD project staff.

For projects following this Development Track, a complete and through review of construction drawings and final cost estimates and environmental review will be conducted prior to the loan closing with the construction lender, to ensure that they meet the design requirements of DHCR and the HTFC. Applicant will be required to submit changes to approved documents for review and approval prior to implementation. In addition the HTFC SEQRA review as described in Section 5.02 must be completed prior to the closing on the HTF or HOME financing.

At the time of construction loan closing the project manager will be responsible for collecting any documentation required for the second LIHC underwriting, or if necessary, documentation for the project to secure a binding agreement of LIHC if required for the closing. The OCD Technical Services Unit is responsible for reviewing this material and providing information to Program Management for the preparation of the binding agreement.

The next contact with DHCR/HTFC will be approximately 90 days prior to project rent-up, when the applicant and/or owner meet with staff from the Asset Management Unit of the office of Housing Management at a Rent-Up Conference. The purpose of this meeting is to review any statutory and/or regulatory requirements regarding rent-up, tenant selection, and occupancy requirements of the project.

The permanent loan closing will occur upon satisfactory completion of the project in accordance with the terms and conditions set forth in the Funding Commitment. It is the

responsibility of the owner to satisfy DHCR/HTFC's determination of satisfactory completion of the project. Cost certification requirements, as well as other close-out requirements are discussed in Section 6.00 of this Manual. If construction or permanent lenders are providing project financing, the submission of an intercreditor agreement will be incorporated as a requirement in the DHCR/HTFC Funding Commitment.

3.02.10 Development Track Two Process (HTF/HOME Construction Loan)

This process is followed by projects involving LIHC, which require HOME/HTF construction financing. Sponsors of these projects will be required to cover any increases in total project costs above the amount recognized in the funding commitment letter. The contractor will have to guarantee a fixed price for construction. In addition to the requirements identified in the Funding Commitment, Development Track Two project sponsors must submit final plans and specifications, as well as all contract documents listed in Section 3.03 of the Design Handbook prior to a construction loan closing. The project manager is responsible for receiving the construction documents and forwarding to the following units for their review and approval:

- Design Services
- Underwriting
- Environmental Analysis
- OLA
- Office of Fair Housing
- Persons with special needs

Upon receiving approval of the documents from all units the project manager and the OLA attorney assigned to the project can schedule the construction loan closing.

As discussed in Sub-Section 3.02.09 above, the applicant/owner will be required to attend a Rent-Up Conference. Upon completion of construction, a cost certification will be required.

HTFC does not provide construction financing through the HOME Program. HOME funds are utilized for permanent financing only. Applicants requiring HOME funds for construction should simultaneously submit a request for a Housing Development Fund loan in amount equal to the HOME construction financing need, as part of their application for HOME permanent financing.

3.02.11 Development Track Three Process (HTF Predevelopment Loan)

Not-for-profit applicants which state in their application that they are seeking predevelopment funds for their project, and which do not involve a LIHC-funded developer's fee, may follow this process.

Predevelopment funds may be requested by the applicant after they have received a Funding Commitment, provided that all programmatic eligibility requirements are met and only those expenses required to ready a project for a construction closing are requested (See Section 2.00 Program Descriptions for information on predevelopment requirements for the applicable program). DHCR/HTFC may conduct elective reviews on projects seeking predevelopment funds.

A bid document submission is required for Development Track Three projects, unless they have received DHCR/HTFC approval of the project builder, and do not intend to bid the project. The bid document review consists of an examination of all construction-related materials included in the list of submission requirements outlined in the Design Handbook, as well as any bid documents listed in the Funding Commitment.

Upon its approval of final plans and specifications and cost estimates, and completion of environmental review, DHCR/HTFC will execute a construction loan agreement and other closing

documents with the applicant. The Rent-Up Conference described in Sub-Section 3.02.09 above is required no later than 90 days prior to project rent-up. A cost certification and other close-out documentation as outlined in Section 6.00 are also required for Development Track Three projects.

Issued: **11/02**	Revised:
Section: **3.00**	Title: **UNIFIED FUNDING PROCESS**
Sub-Section: **3.03**	Topic: **Application Review and Funding Process for HOME and RESTORE Programs**

HOME and RESTORE Local Program applications undergo the following reviews as discussed in Sub-Section 3.02:

(i) completeness review (Sub-Section 3.02.01);

(ii) eligibility review (Sub-Section 3.02.02); and

(iii) rating and ranking (Sub-Section 3.02.03).

Feasibility reviews are not conducted on Local Program applications.

Local Program applications are selected in the manner described in Sub-Section 3.02.06, and receive Application Review Letters as described in Sub-Section 3.02.07. The Application Review Letter issued to successful program applicants may request revisions to the applicant's submission as a precondition to the issuance of a Program Agreement.

Project Implementation Meetings may be held with funded Local Program applicants to discuss contract requirements and other matters.

DHCR/HTFC will execute LPA Contracts upon satisfaction of all requirements set forth in the Application Review Letter.

Issued: **11/02**	Revised:
Section: **3.00**	Title: **UNIFIED FUNDING PROCESS**
Sub-Section: **3.04**	Topic: **Application Review and Funding Process for the HDF Program**

The HDF Program utilizes the Unified Funding capital project application to accept and evaluate requests for program assistance. Applications are reviewed for completeness, and any missing or incomplete documents must be submitted prior to undergoing an eligibility review. HDF applications are subject to the same eligibility review as is set forth in Sub-Section 3.02.02, except that they have the additional criterion that commitments from other funding sources must exist that will enable the project to be completed as proposed, and will assure repayment of the HDF loan.

Eligible HDF applications are rated based upon the following criteria:

(i) project readiness;

(ii) development team capacity;

(iii) cost effectiveness; and

(iv) need and affordability.

HDF applications are reviewed for feasibility, with more detailed reviews occurring if DHCR is acting as the project's lead agency.

A contract will be issued to funded HDF applicants. Upon satisfaction of all requirements set forth in the contract transmittal letter, DHCR will execute a HDF Regulatory and Loan Agreement and any necessary security instruments with the applicant.

Issued: **11/02**	Revised:
Section: **3.00**	Title: **UNIFIED FUNDING PROCESS**
Sub-Section: **3.05**	Topic: **Application Review and Funding Process for the LIHC and SLIHC Programs**

Applications for the federal Low-Income Housing Credit Program (LIHC) and the New York State Low Income Housing Credit Program (SLIHC) will be evaluated for completeness, program eligibility, feasibility and the extent to which the applicant meets the threshold and selection criteria contained in DHCR's Low-Income Qualified Allocation Plan (QAP) and, for SLIHC projects, the scoring criteria set forth in the SLIHC regulations.

In addition, applicants should refer to Sec. 42 of the Internal Revenue Code and Section 2.04 for LIHC and Article 2-A of the New York State Public Housing Law and Section 2.08 for SLIHC. (Additionally, the application review process for SLIHC is further elaborated upon in Sub-Section 3.07.)

These documents are available on DHCR's website: www.dhcr.state.ny.us

Issued: **11/02**	Revised:
Section: **3.00**	Title: **UNIFIED FUNDING PROCESS**
Sub-Section: **3.06**	Topic: **Application Review and Funding Process for the Rural Rental Assistance Program (RRAP)**

Generally, projects which have received Rural Rental Assistance Program (RRAP) awards in recent years have been funded under a Leveraged Loan Rural Housing Initiative through which an applicant receives an award of HOME or HTF funds from HTFC and LIHC from DHCR through the UF Process, and a loan from the USDA Rural Development Office. USDA also provides rental assistance for some units. Therefore, applications seeking RRAP are currently reviewed pursuant to the parameters for HOME or HTF and LIHC.

When the project has begun construction, the applicant submits the following documents to DHCR, together with a request for a RRAP contract package:

(i) the project's first year operating budget;

(ii) the name and address of the project's managing agent, as well as the name and address of the entity to whom the subsidy checks should be mailed;

(iii) for elderly projects, evidence of municipal real estate tax abatement;

(iv) a Partnership Agreement or a Board resolution authorizing the corporation to enter into a rental assistance contract with the State, whichever is applicable; and

(v) the New York State Department of State charitable organization registration number, if the applicant is a non-profit organization.

DHCR will forward the contract package to the owner when all of the applicable items

listed above have been received and approved. The contract will be executed upon verification that construction has been completed in accordance with the plans and specifications approved by the USDA Rural Development Office, and when all other requirements established by the RRAP contract transmittal letter are met.

Issued: **11/02**	Revised:
Section: **3.00**	Title: **UNIFIED FUNDING PROCESS**
Sub-Section: **3.07**	Topic: **Application Review and Funding Process for Applications Accepted Under Open Window**

As noted in Sub-Section 3.01, DHCR/HTFC provides an open window for the receipt of applications under UI, RARP, SLIHC and HWF. Applications requesting financing under these programs are accepted continuously throughout the calendar year, subject to funding availability.

In addition, DHCR provides an open window for receipt of applications for projects financed by tax-exempt bonds subject to the State's Private Activity Bond Volume Cap which are seeking 4% LIHC pursuant to Section 2040.4 of the QAP. Since the LIHC allocated for these projects is not subject to the State's Credit Allocation Ceiling, there is no issue regarding the availability of tax credits. Prospective 4% Credit applicants are advised to review Section 2.04.05 above for additional information and the current timeframe for DHCR's continued acceptance of new 4% Credit project applications pursuant to the 2008 Proposed QAP.

The application review process for applications submitted for these programs generally follows the guidelines for Unified Funding Applications. That is, DHCR/HTFC's review consists of the following:

(i) completeness review;
(ii) eligibility review;
(iii) competitive scoring*; and,
(iv) design and underwriting feasibility reviews.

*Note: HWF applications are subject to a Technical Assessment rather than a competitive scoring review; 4% LIHC applications are not competitive and, therefore, not subject to scoring.

Issued: **11/02**	Revised:
Section: **3.00**	Title: **UNIFIED FUNDING PROCESS**
Sub-Section: **3.07**	Topic: **Application Review and Funding Process for Applications Accepted Under Open Window**

DHCR/HTFC will notify applicants under these programs of the outcome of these reviews and a determination of whether the project will receive a funding award/reservation no later than 60 days after receipt of a complete application.

If an application is initially deemed incomplete, DHCR/HTFC will suspend processing of the application and the applicant will have initially 10 days from receipt of a Notice of Incomplete Application and no more than 60 days from DHCR/HTFC's receipt of the initial application to satisfactorily respond to the notice and submit the incomplete application items. DHCR/HTFC will not conduct further reviews of any application which remains incomplete after this time period; the applicant will be required to submit a new application. (It should be noted, however, that applicants under SLIHC, 4% LIHC and/or HWF with incomplete applications will not be required to submit a new tax credit application fee with the new application submission).

Issued: **11/02**	Revised:
Section: **3.00**	Title: **UNIFIED FUNDING PROCESS**
Sub-Section: **3.08**	Topic: **Application Review and Funding Process for Technical Assistance**

Technical Assistance may be requested at any time from the DHCR regional office serving the area in which the applicant is considering a project, or a UF application may be used by applicants who have a project or site in mind that they wish to develop with funding assistance from DHCR/HTFC but who require assistance to pull the project together. Requests for technical assistance may be submitted at any time of the year.

Technical Assistance may include, but is not limited to, the following:

(i) guidance on DHCR/HTFC program requirements and policies, as they pertain to a specific project;

(ii) assistance in determining the most appropriate funding sources for the proposed project;

(iii) assistance in establishing a Housing Development Fund Company for a specific project;

(iv) assistance in formulating development and/or operating budgets for a specific project;

(v) assistance with reviewing and selecting a site or sites for a specific project;

(vi) assistance in assessing the cost effectiveness of a specific site or building;

(vii) referrals to other governmental agencies for funding and/or support services for a specific project; and

(viii) referrals to other applicants who have successfully undertaken projects similar to the one proposed.

(ix) assistance through DHCR/HTFC Development Technical Assistance contracts.

DHCR/HTFC will schedule a project assessment meeting with the applicant after review of the technical assistance application. Representatives of agency technical units may attend the meeting, depending on the nature of the request.

In some instances, DHCR's/HTFC's ability to provide technical assistance may be limited by lack of staff and/or resources. Priority will be given to not-for-profit applicants.

Issued: **11/02**	Revised:
Section: **3.00**	Title: **UNIFIED FUNDING PROCESS**
Sub-Section: **3.09**	Topic: **Application Review and Funding Process for Seed Money Projects**

Seed Money is available from the HTF and HOME Programs to not-for-profit applicants with a full-time staff which have been operating for at least one year prior to application. Applicants for HOME seed money must be an established New York State certified Community Housing Development Organization (CHDO). Eligibility requirements for CHDO's are outlined in sub-section 2.05.03B. HTF and HOME eligibility requirements are discussed in detail under the Program Descriptions contained in Sub-Section 2.01 and 2.05, respectively. Seed Money applications may be submitted at any time of the year, and will be funded on an ongoing basis, subject to funding availability. HOME seed money awards are made as loans and repayment may be waived if it is determined that the project is infeasible or if there are impediments to project development which are determined to be beyond the CHDO's control. Seed money awards from HTF are made as grants and therefore no repayment is required.

Seed Money applications must undergo an eligibility review to demonstrate that:

(i) the applicant meets all eligibility requirements of the applicable program;

(ii) a site has been identified for which site control has been, or may be obtained;

(iii) the population to be served by the proposed project has been identified;

(iv) the approximate number of units to be assisted has been determined;

(v) the project is eligible for permanent funds from an identified funding source, and the funds are likely to be available from such source; and

(vi) the proposed project demonstrates a likelihood to meet rating criteria.

Issued: **11/02**	Revised:
Section: **3.00**	Title: **UNIFIED FUNDING PROCESS**
Sub-Section: **3.09**	Topic: **Application Review and Funding Process for Seed Money Projects**

Seed Money applications are reviewed in a manner which is similar to the process outlined in Sub-Section 3.02. An abbreviated project rating system is employed to assist in the selection of seed money projects meeting HTFC's priorities. Regional offices may recommend an award of seed money for complete, eligible and competitive applications which appear to be feasible. The HTFC Board makes the final determination on seed money awards.

If the application is selected for funding, HTFC will send the applicant an Application Review Letter specifying any required documents which must be submitted in order to complete execution of a Seed Money Agreement. Within 45 business days of HTFC's receipt and approval of all such required documents HTFC will notify the applicant of approval along with any conditions. The Seed Money Agreement will establish the amount and uses of the Seed Money Award, as well as the timeframes for the applicant to perform specific functions and/or deliver specific products.

Should the applicant later submit a successful application for full project funding from the HOME program, or receive funding from another government agency, the Seed HOME Money Award will be incorporated into the project's permanent financing (e.g., HOME Award Amount: $1,045,000 includes a previously provided $45,000 seed money award and a full project funding award of $1,000,000). Since HTF seed awards are made as grants, the HTF seed money will not be incorporated into the permanent financing. Receipt of a seed money award should not be construed as a commitment from HTFC to provide further funding for the project. In addition, no priority for full project funding is given to projects that have received seed money awards.

In some instances, seed money may be awarded in lieu of full project funding if a determination is made that the seed money would assist the applicant in developing a more feasible project. HTFC will determine which program will provide the seed money based on eligibility requirements and funding availability.

Issued: **11/02**	Revised:
Section: **3.00**	Title: **UNIFIED FUNDING PROCESS**
Sub-Section: **3.10**	Topic: **Reallocated Funds Process**

DHCR/HTFC may provide funds to projects in a manner which differs from the UF Application Process described above. There are two instances when this may occur, including:

(i) money may be recovered from the Program's current fiscal year appropriation, and reallocated to project(s) on the Program's waiting list (as described in Section 3.02.06 above); and

(ii) funds other than those described in (i) above may become available to fund projects, chosen at the discretion of the DHCR Commissioner, or the HTFC Board.

In general, these funds will only be made available to:

(i) projects which provide disaster relief; or

(ii) demonstration projects which address publicly announced priorities.

Projects which are funded through the reallocated funds process will receive a Funding Commitment as described in Sub-Section 3.02.07, and will follow the review and funding process described in Sub-Section 3.02 above.

Issued: **11/02**	Revised:
Section: **3.00**	Title: **UNIFIED FUNDING PROCESS**
Sub-Section: **3.11**	Topic: **Funding Increases Under DHCR/HTFC Programs**

I. Introduction

DHCR/HTFC will, in general, not approve any requests for increases in the Low-Income Housing Credit ("LIHC"), Housing Trust Fund ("HTF"), or HOME programs in an amount above the reservation or award amount due to costs that were not in the original development budget. DHCR expects that such cost increases will be funded through completion guarantees, contingency funds, developers fees and/or builder's profit. To the greatest extent possible, project architects and/or engineers should review proposed changes to ensure maximum cost efficiency have been obtained with all design changes. Additionally, improved terms by banks, syndicators and builders should also be considered.

DHCR/HTFC may consider requests for additional funding above the amount awarded due to unusual circumstances such as acts of God; changes in the laws applicable to low-income housing programs, changes in building codes, changes in local ordinances or regulations or other circumstances that could not have been foreseen by the Owner/Sponsor.

In the event there are circumstances that would justify additional funding, DHCR/HTFC will only increase its funding when the economic viability of the project is in jeopardy and when all the budgeted resources identified above have been exhausted.

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

to the terms of the DHCR Qualified Allocation Plan ("QAP") and the Capital Programs Manual.

II. Evaluation Milestones

Applicable laws require that DHCR underwrite each LIHC project three times: prior to issuing a credit reservation, at carryover/binding agreement and at the time of submission for IRS Form 8609. In order to enhance Agency efficiency and to eliminate redundant procedures, all requests for additional funding should, within the limitations provided below, be coordinated with one of the three milestone underwrites. DHCR/HTFC will not entertain more than one request for additional funding for any one project unless there is a demonstrate able error by the Agency.

Requests for additional funding can be made in coordination with each of the aforementioned three milestones pursuant to the following guidelines:

1. Prior to accepting a LIHC reservation – all Owner/Sponsors that are offered a reservation by the Agency have a minimum of 45 days within which to accept the offer. Within 10 days of receipt of the reservation letter, if the Owner/Sponsor should have any issues with the DHCR recommended funding level, a revised underwriting will be considered by the Agency upon written request. The Owner/Sponsor must demonstrate to DHCR, in writing, that the Agency misinterpreted information in the application.

2. Prior to requesting a carryover/binding agreement – request for additional funding should be made no more than 45 days and no less than 30 days prior to carryover/binding agreement.

3. At the time of submission for IRS Form 8609 – DHCR will not accept requests for additional funding during the time period between carryover allocation and submission for IRS Form 8609 unless DHCR determines that emergency remedial action is required. At the time of the IRS 8609 submission, DHCR will only consider for additional funding those additional costs that resulted from events that were completely beyond the control of the Owner/Sponsor.

III. Underwriting Parameters

DHCR underwriters will employ a highly disciplined review of all requests for additional funding. The following methodology will be followed:

1. The underwriter, in conjunction with the DHCR architect, if applicable, will make recommendations to the Assistant Commissioner for Technical Services as to whether the additional expenses that were incurred were deemed necessary to the project and whether total project costs and the additional project costs are reasonable based on Agency experience with similar projects. Costs not deemed essential to the project will be required to be paid for by the Owner/Sponsor and will not be considered eligible for additional funding.

2. DHCR staff, including the underwriter, architect, if applicable, and project manager will make recommendations to the Assistant Commissioner for Technical Serves as to whether cost increases for items deemed necessary for the project resulted from events that were within or beyond the control

of the Owner/Sponsor using the categories below as a guide.

Category A – Increases in costs originating with DHCR/HTFC such as:

(a) issues which my arise from staff interpretation of applications;
(b) changes in plans and specifications that were requested by DHCR, and/or;
(c) changes in prevailing wage rates arising from a decision by DHCR/HTFC to award funding under a program not applied for by the Owner/Sponsor;
(d) changes mandated by revisions in the applicable building codes, regulations, and laws governing the construction of housing.

Category B – Increases in costs that were beyond the exclusive control of the Owner/Sponsor such as:

(a) changes in plans and specifications required in connection with local approval;
(b) municipal impact fees;
(c) change in prevailing wage rates;
(d) compliance with SHPO that could not have been foreseen by the Owner/Sponsor;
(e) acts of God (flood, earthquake) and/or;
(f) change in financing caused by changes or other factors beyond the Owner/Sponsor's control (i.e. change in prime rate or bank failure); and/or,

Category C – Cost increase issues that were within the control of the Owner/Sponsor such as:

(a) refinement or amendment of plans and specifications;

(b) updated development cost line items;

(c) addressing environmental issues that were known or should have been known by the developer;

(d) addressing site conditions that were known or should have been known by the developer;

(e) increases in costs due to work stoppage resulting from actions or inaction by the Owner/Sponsor;

(f) replacement of financing previously committed;

(g) required increases in operating reserves to compensate for loss of operating subsidies (could be Category B depending on circumstances) and/or,

(h) required increases in replacement reserves to cover inadequate warranties.

IV. Methodologies for Determining Cost Sharing

1. Funding increases will be treated based on the appropriate categories as described in Section III in the following manner:

Category A – DHCR/HTFC will generally allow for additional funding, if appropriate, without requiring the Owner/Sponsor to increase deferred developer fees.

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

(a) any developer fees in excess of 10% of total development cost, as defined in the commitment letter, will first be contributed back to the project by the Owner/Sponsor to pay for cost increases.

(b) any additional cost increases will be paid for by equal cost sharing (50/50) between DHCR/HTFC through additional funding by DHCR/HTFC and by the Owner/Sponsor through deferred developer fees or other contributions. However, DHCR/HTFC may elect to require the Owner/Sponsor to pay a larger share of any cost increase that the Agency determined could have been mitigated by the Owner/Sponsor.

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

(a) any developer fees in excess of 10% of total development costs, as defined in the original award, will first be contributed back to the project by the Owner/Sponsor to pay for cost increases.

(b) any additional cost increases will be paid for by cost sharing between DHCR/HTFC and the Owner/Sponsor. DHCR/HTFC may contribute up to 20% of such costs as determined by the Agency through additional allocations and the balance of all cost increases shall be paid for by the Owner/Sponsor.

2. For purposes of additional allocations, DHCR/HTFC may, in its discretion, make such allocations through LIHC, HOME, and/or HTF

awards, or by permitting rent increases as it deems appropriate.

3. DHCR/HTFC may, in its discretion, consider additional underwriting solutions in order to efficiently facilitate project completion.

V. Process for Requesting Additional Allocations

1. The Owner/Sponsor will make a formal written request to the project manager. The request shall include:

- Original Exhibits (Development Budget, Rent Plan, Affordability Plan, Operating Budget, proposed amended Exhibits.
- Chart indicating items that changed, original cost, actual cost, change in cost and a concise narrative explaining the reason for each change.
- For any cost increases resulting from events driven by forces outside the Owner/Sponsor's control, clear documentation demonstrating the need for the change (i.e. letter from local zoning official, request from financing entity).
- For standalone tax credit projects that have not undergone design review by DHCR/HTFC, additional documents may be required.

2. Based on the Owner/Sponsor's request for additional funding, the project

manager will determine the impact that such additional funding would have had on project scoring. In the event that the project would not have been funded as a result of modified scoring, no further action will be required by DHCR/HTFC and the Owner/Sponsor will be notified accordingly. However, if the project remains eligible for funding, scoring will be reviewed a second time based on the outcome of the modified underwriting.

3. The project manager shall forward the request and supporting documents to the Assistant Director of Community Development, Underwriter and Architect, if applicable, for review. The underwriter and architect, if applicable, will review and each make recommendations to the Assistant Commissioner for the Technical Services Unit. DHCR will only make additional allocations after a determination has been made by the project architect and/or engineer that the increase in project costs reflect actual value added to the project.

4. The Assistant Commissioner for Technical Services shall advise the Deputy Commissioner for Community Development, Assistant Commissioner for Program Management, project manager and relevant program directors and managers of any determinations.

5. If the request for an increase is denied, the Regional Office will notify the Owner/Sponsor and all other involved parties of the action. If the request is approved, Program Management will prepare the revised exhibits with input, as necessary, from Design and Underwriting.

Issued: **11/02**	Revised:
Section: **3.00**	Title: **UNIFIED FUNDING PROCESS**
Sub-Section: **3.12**	Topic: **Assignment and Transfer of Awards and Commitments**

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

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

All transfers or assignments must be pre-approved by HTFC. No transfer or assignment can occur unless it is demonstrated that the new applicant has sufficient development and management experience. If a project is transferred to homesteaders or a self-managed cooperative or condominium association, HTFC will require that regulatory monitoring responsibilities remain with the original applicant.

Section Four

Issued: **11/02**	Revised:
Section: **4.00**	Title: **GENERAL PROGRAM REQUIREMENTS AND POLICIES**
Sub-Section: **4.01**	Topic: **Introduction**

This Section describes the general program requirements and policies concerning Minority/Women-Owned Business Enterprises (M/WBE), equal opportunity, and fair housing. It is organized under the following headings:

4.01 Introduction
4.02 M/WBE Requirements
4.03 Equal Opportunity Requirements
4.04 Fair Housing Requirements

Issued: **11/02**	Revised:
Section: **4.00**	Title: **GENERAL PROGRAM REQUIREMENTS AND POLICIES**
Sub-Section: **4.02**	Topic: **M/WBE Requirements**

The Division of Minority and Women's Business Development(M/WBD), NYS Empire State Development, has promulgated Rules and Regulations (the M/WBE Regulations - Title 9, New York Code of Rules and Regulations, Subtitle N, Parts 540-544) pursuant to Article 15-A of the State Executive Law, to ensure that certified M/WBE shall be given the opportunity for meaningful participation in the performance of State-assisted contracts, and to facilitate the award of a fair share of State-assisted contracts and subcontracts to such enterprises. In accordance with Article 15-A of the Executive Law, DHCR and HTFC encourage contractors to make affirmative efforts to ensure that M/WBE have opportunities for meaningful participation on projects to be undertaken and financed with funds provided by DHCR/HTFC.

Recommended levels for M/WBE participation on State-assisted contracts have been established for contractors to use as a reference. Participation levels are based upon such considerations as, among others, the availability of certified M/WBE to perform the work in the region in which the contract is to be performed and the total dollar value of the work to be performed in relation to the dollar value of the components of the contract scope. Contractors on DHCR/HTFC projects are required to submit reports detailing the utilization of M/WBE in performing the contract.

Article 15-A of the Executive Law and the M/WBE Regulations requires contractors to take affirmative steps to encourage the utilization of M/WBE. Contractors will be notified by DHCR/HTFC of such requirements.

A break-out of M/WBE by trade services or suppliers, as well as technical assistance, may be obtained by contacting DHCR's Office of M/WBE Contract Compliance at:

New York State Division of Housing and
Community Renewal
Office of Fair Housing and Equal Opportunity
38-40 State Street
Albany, New York 12207
(518) 474-6157
Fax (518) 486-3365

Issued: **11/02**	Revised:
Section: **4.00**	Title: **GENERAL PROGRAM REQUIREMENTS AND POLICIES**
Sub-Section: **4.02**	Topic: **M/WBE Requirements**

A copy of the Directory of Certified Minority and Women Owned Businesses can be downloaded from the NYS Empire State Development web site at:

www.empire.state.ny.us

Albany Office New York State Empire State Development
Division of Minority and Women's Business Development
30 South Pearl Street
Albany, New York 12245
(518) 292-5250
Fax: (518) 292-5803

New York City OfficeNew York State Empire State Development
Division of Minority and Women's Business Development
633 3rd Avenue, Suite 32
New York, New York 10017
(212) 803-2414
Fax: (212) 803-3223

Issued: **11/02**	Revised:
Section: **4.00**	Title: **GENERAL PROGRAM REQUIREMENTS AND POLICIES**
Sub-Section: **4.02**	Topic: **M/WBE Requirements**

4.02.01 Utilization Plan

Applicants are required to submit a Utilization Plan for the participation of State-certified M/WBE in connection with their project. The Utilization Plan must include a list of the names and federal identification numbers or social security numbers (if known) of M/WBE which the applicant intends to use in connection with the project, the dollar amount and the scope of work to be performed, the date when such work will commence and the estimated completion date for each contract, including such categories as the purchase of supplies, the use of temporary office services, and any other builder or vendor the applicant intends to use in connection with the project.

4.02.02 Methods for the Participation of M/WBE

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

(i) actively and affirmatively solicit bids for contracts and subcontracts from certified M/WBE, including the circulation of solicitations to minority and women contractor associations;

(ii) request a list of M/WBE from DHCR/HTFC and solicit bids from M/WBE on such list;

(iii) attempt to ensure that plans, specifications, requests for proposals and other documents used to secure proposals for the performance of work or supply of

materials will be made available in sufficient time for review by prospective M/WBE;

(iv) divide, where economically and technically feasible, the work into smaller portions to enhance participation by M/WBE;

(v) encourage, where economically and technically feasible, the formation of joint ventures, partnerships or other similar arrangements among contractors to enhance participation by M/WBE;

(vi) consult with and use the services of governmental agencies, their consultants and contractor associations to further the participation of M/WBE;

(vii) make efforts to ensure that progress payments to M/WBE are made on a timely basis and with such frequency that undue financial hardship is avoided and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation;

(viii) place timely advertisements in appropriate minority and women-oriented trade and general circulation publications;

(ix) make written solicitations in a timely fashion of M/WBE listed in the Minority and Women-Owned Business Directory; and

(x) make timely responses to any advertisements and solicitations provided by M/WBE.

In compliance with the requirements of Article 15-A, applicants must provide DHCR/HTFC with assurances that they will require contractors to take specific affirmative action steps, including,

but not limited to, the above-mentioned items, in a form to be prescribed by DHCR/HTFC.

All contractors must submit contract reports on M/WBE Utilization Plan forms. These contract reports shall include, but are not limited to, the following:

(i) the name, address and telephone number of each M/WBE the contractor is using or intends to use;

(ii) a brief description of the contract scope of work to be performed for the contractor by each M/WBE and the scheduled dates for performance;

(iii) a statement of whether the contractor has a written agreement with each M/WBE and, if requested, copies of the agreements the contractor is using or intends to use;

(iv) the actual total cost of the contract, the work performed and the materials provided, scope of work to be performed by each M/WBE for each contract;

(v) the actual amounts of any payments made by the contractor to each M/WBE as of the date the compliance report was submitted; and

(vi) the percentage of total contractors, subcontractors, vendors and suppliers utilized for the project and the total contract prices for each.

Equal employment opportunity (EEO) is guaranteed by Title VII of the Federal Civil Rights Act of 1964, as amended, and the New York State Human Rights Law which prohibits discrimination in employment on the basis of race, creed, color, disability, national origin, age, sex, marital status, or arrest record. In addition, Executive Order #28 prohibits discrimination on the basis of sexual orientation in the provision of any service or benefits by State agencies or departments.

Issued: **11/02**	Revised:
Section: **4.00**	Title: **GENERAL PROGRAM REQUIREMENTS AND POLICIES**
Sub-Section: **4.03**	Topic: **Equal Opportunity Requirements**

Affirmative action is generally defined as any positive action that is intended to:

(i) correct the effects of past discrimination (whether such actions were intentional or unintentional);

(ii) identify and seek to eliminate current discriminatory practices; and

(iii) seek to prevent discrimination by actively initiating and implementing policies and procedures designed to promote greater employment opportunities for protected class individuals in the work force.

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

(i) a policy statement signed by the organization's president, chair or CEO stating that:

(a) the organization is an equal opportunity employer and does not discriminate on the basis of race, creed, color, national origin, age, sex, disability, marital status or arrest record.

(b) the organization will comply with all relevant Federal and State EEO and non-discrimination laws, regulations and executive orders with respect to employment opportunities; and

(c) the organization will adopt and implement affirmative action policies

designed to promote employment opportunities for women, minority groups, Vietnam-era veterans, and disabled persons in the work force, at all levels of employment, and that a policy-level executive of the organization will be designated to ensure that such policies are properly implemented;

(ii) a description of the organization's personnel policies and practices for recruitment, hiring, promotion, separations, training and grievance procedures with assurances that such are consistent with applicable laws and affirmative action policies; and

(iii) a description of how the organization will communicate its affirmative action and non-discriminatory policy to contractors, subcontractors, vendors and suppliers.

While applicants are encouraged to give priority in hiring to residents of the project area, precautions must be taken to ensure that such priorities do not result in qualified persons being denied employment opportunities because of sexual orientation, race, creed, color, national origin, age, sex, disability, marital status or arrest record.

In addition, under Section 312 of Article 15.A of the New York State Executive Law, the Division of Minority and Women's Business Development, NYS Empire State Development has drafted regulations for the employment of minority group members and women in State and State-assisted contracts. When promulgated, these regulations will apply to all State construction contracts exceeding $100,000 and all subcontracts exceeding $25,000.

In brief, Part 542 of the regulations may require contracting agencies to include specific non-discrimination and equal employment opportunity language relating to minority group members and women in all covered contracts, subcontracts, and all documents soliciting bids. In addition, equal employment opportunity policy statements and periodic compliance reports may also be required.

It should be noted, however, that there are separate equal employment opportunity requirements for the construction or rehabilitation of federally-assisted projects where contracts and

subcontracts exceed $10,000. Please refer to Section 2.00 of the Capital Programs Manual for more information.

Issued: **11/02**	Revised:
Section: **4.00**	Title: **GENERAL PROGRAM REQUIREMENTS AND POLICIES**
Sub-Section: **4.04**	Topic: **Fair Housing Requirements**

Applicants are required to comply with Title VIII of the Federal Civil Rights Act of 1968, also referred to as the "Fair Housing Act," which prohibits discrimination against occupants on the basis of race, color, religion, sex or national origin. It covers the activities of all segments of the real estate industry including real estate brokers, builders, apartment owners, sellers and mortgage lenders with regard to policies and procedures for advertising, loan organization and tenant selection.

In addition, the Federal Fair Housing Amendments Act of 1988 prohibits discrimination in housing on the basis of disability/handicap or "familial status". "Familial Status" refers to one or more individuals who have not attained the age of 18 years and are domiciled with (a) a parent or another person having legal custody of such individual(s); or (b) the designee of such parent or other person having such custody with the written permission of such parent or other person. The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

Moreover, discrimination on the basis of disability or handicap is also prohibited under the provisions of Section 504 of the federal Rehabilitation Act of 1973 which provides that no individual with a disability shall be excluded from participation in, or the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance.

The New York State Human Rights Law makes it an unlawful practice to discriminate against any person because of his/her race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status or familial status in the terms, conditions or privileges of sale, rental or lease of any housing accommodation or in the furnishing of facilities or services in connection therewith.

It is also an unlawful discriminatory practice for

the owners, lessees, assignees, or managing agents of publicly-assisted housing accommodations, or other persons having the right, ownership or possession of, or the right to rent or lease such accommodations, to cause to be made any written or oral inquiry, or record concerning

the race, creed, color, disability, national origin or marital status of a person seeking to rent or lease any publicly-assisted housing accommodation.

Discrimination in housing is also prohibited under Section 602 of the New York State Private Housing Finance Law. Applicants and owners must incorporate the provisions of these laws into the development of marketing plans, tenant selection plans, admission standards and policies, and waiting lists for housing units to be constructed or rehabilitated with State funds.
Applicants and owners of projects involving the construction or rehabilitation of four or more DHCR/HTFC assisted housing units including Low Income Housing Credit Program Projects are required to submit affirmative marketing plans before rent-up, detailing specific actions to be taken to provide information and outreach to eligible persons of all racial, ethnic, gender and disabled groups from the housing market area.

NOTE: No later than 90 days prior to engaging in marketing activities, you must register your project on the NYS Accessible Housing website. To register,

- logon to www.nysaccessiblehousing.org , (http://www.nysaccessiblehousing.org/)and from the site's homepage,
- click on "Managers and Landlords." Then follow the steps under "Register Your Property."

For help in registering and for information on posting vacancies once your project is rented up, contact the Center for Independence of the Disabled, New York (CIDNY), the operator of this website at access@cidny or(212)674-2300 x145.

Marketing plans should include:

(i) how information on DHCR/HTFC affirmative marketing requirements and applicable Federal and State Fair Housing and Non-Discrimination Laws will be made available to potential owners, tenants and the general public;

(ii) a description of steps to be taken to reach those eligible persons who would not likely apply for available housing without special outreach, including advertising in publications which are distributed in minority and isolated communities, and outreach through local community-based organizations; and

(iii) how project applicants, sponsors and owners will maintain records documenting the outreach efforts under their affirmative marketing plans and the results of such efforts, as required.

(iv) (for elderly projects only) a description of how elderly projects will be structured, either as a 55 or over project, where at least 80% of occupied units are occupied by at least one person who is 55 years of age or older; OR as a 62 or older project, where all occupants are persons 62 years of age or older. (See Section 5.13 for further details). In HTFC projects which are jointly financed with the US Department of Agriculture Rural Housing Services, an elderly project may be occupied by persons 62 years of age or older, or by handicapped persons of any age.

Applicants and owners must receive from DHCR/HTFC an approved affirmative marketing plan prior to rental of any units. At the rent-up conference the applicant and/or owner should ensure that their DHCR project manager registers the project on DHCR's Affordable Housing Directory (AHD) New Affordable Housing Projects Now Accepting Rental Applications internet website.

After the rent-up period has ended and the buildings have been issued certificates of occupancy the project will be listed on the Affordable Housing Directory (AHD). The AHD is part of the DHCR Internet website that allows the general public to search for affordable housing subsidized by the DHCR/HTFC. Information on your project that will be displayed on the site includes; number of units, number of bedrooms per unit, number of handicapped accessible units, availability of an elevator, general vacancy status and property management contact information. It

Issued: **11/02**	Revised:
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is expected that owners will receive inquiries from the general public, generated by the AHD, about the availability of housing at your project. DHCR requires that you anticipate these calls and ensure that they are handled courteously, accurately and promptly.

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

http://www.hud.gov/library/bookshelf15/hudgraphics/fheologo.cfm
http://www.ahfc.state.ak.us/Graphics/Communications_Images/wheelchair-symbol.jpg

Affirmative marketing requirements do not apply to certain types of activities administered under the federal HOME Program. Please refer to Section 2.00 of the Capital Programs Manual for more information.

Section Five

Issued: **11/02**	Revised:
Section: **5.00**	Title: **DEVELOPMENT REQUIREMENTS**
Sub-Section: **5.01**	Topic: **Introduction**

This Section describes the general development requirements of the DHCR/HTFC for projects/programs funded under the Unified Funding Process. Unless otherwise noted at the top of each heading, the development requirements apply to all programs:

(i) the Low-Income Housing Trust Fund (HTF) Program;

(ii) the New York State HOME Program (HOME).

(iii) the Housing Development Fund (HDF) Program;

(iv) the Rural Rental Assistance Program (RRAP); and

(v) For LIHC, SLIHC and LIHB only, i.e. standalones, Please refer to Sub-section: 5.07

Issued: **11/02**	Revised:
Section: **5.00**	Title: **DEVELOPMENT REQUIREMENTS**
Sub-Section: **5.02**	Topic: **Environmental Requirements**

All funded projects must undergo an environmental review, with the exception of:

(i) projects funded solely under the LIHC/SLIHC Program;

(ii) projects funded under RRAP;

(iii) projects receiving HDF loans for predevelopment;

(iv) projects receiving only HTF or HOME Program awards for predevelopment or seed money; and

(v) tenant based rental assistance.

An environmental review may include any or all of the following independent reviews, depending upon the specific project proposed:

(i) State Environmental Quality Review Act (SEQRA) - for all projects;

(ii) City Environmental Quality Review (CEQR) - for all projects located in New York City where the City of New York Department of Housing Preservation Development (HPD) is a funding source or has site control;

(iii) State Historic Preservation Office (SHPO) review - for all projects;

(iv) Flood Plain Management Criteria - for all State projects; and

(v) Waterfront Revitalization and Coastal Resources Review - for all projects located in, or adjacent to, any Waterfront Revitalization Area.

(vi) Agricultural District Determination: Section 305 (4) of the Agriculture and Markets Law.

In addition, any expenditure of HOME funds is subject to the provisions of the National Environmental Policy Act (NEPA) of 1969. Implementing regulations are found at 24 CFR Parts 50 and 58.

5.02.01 DHCR/HTFC Environmental Review Procedures

DHCR/HTFC conducts an environmental review according to 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 DHCR/HTFC to complete an environmental review and issue an environmental determination before an action commences involving physical alteration of a project site, such as construction, rehabilitation, site clearance or grading, excavation, or any change in use.

DHCR/HTFC is responsible to certify environmental determinations made for HOME projects directly funded by the agency. Local Program Administrators which are units of general local government assume environmental review responsibilities for HOME local programs. DHCR/HTFC cannot delegate the responsibility to certify HOME environmental review to non-profit organizations, CHDOs, private developers or lending institutions. These entities may assist in information collection necessary for the review but only DHCR/HTFC can certify that environmental review requirements have been properly completed.

The DHCR/HTFC 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. If coordinated SEQRA review is conducted, DHCR/HTFC will not assume lead agency status unless requested by the local municipality. Any situations where DHCR/HTFC might be requested to be lead agency should be identified by the project sponsor. If another agency is conducting coordinated SEQRA review, DHCR/HTFC must be identified as an involved agency, and a Full EAF submitted to DHCR/HTFC. DHCR/HTF encourages developers to have their project's local municipality conduct a coordinated SEQR review in the earliest stage possible of a project's development. As an involved agency of a coordinated SEQR review, the DHCR/HTF SEQR review may be expedited.

Significant issues identified by environmental review may be subject to verification or require further investigation. DHCR/HTFC will require any significant environmental impacts identified by this assessment to be mitigated as a condition for proceeding with project construction.

5.02.02 City Environmental Quality Review (CEQR)

New York City has established an environmental review process for all projects located in the five boroughs of the City, which is to be utilized in addition to the SEQRA and NEPA process. The City Environmental Quality Review (CEQR) provides for the selection of a single lead review agency, and enhances the public's opportunity to comment on a project in the early stages of the environmental review process. HPD will assume lead agency status for all NYS projects which involve HPD approval or disposition of city-owned property.

For more information regarding CEQR, contact: Director of Environmental Review, 100 Gold Street, Room 9H-4, New York, New York 10038.

Issued: **11/02**	Revised:
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Sub-Section: **5.02**	Topic: **Environmental Requirements**

5.02.03 General Scope of Review

In general, DHCR/HTFC environmental review addresses the following issues:

- classification of the project according to SEQRA and, for federally funded projects, NEPA categories;
- 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 which may have involved storage, treatment or disposal of hazardous materials.

5.02.04 Project Classification and Environmental Assessment

DHCR/HTFC classifies each project according to categories established by SEQRA regulations at 6 NYCRR 617, and NEPA regulations at 24 CFR Part 58.

Under SEQRA, a project can be classified as Type II, Unlisted or Type I. A Type II action requires no Determination of Significance to be made. For Unlisted actions, an environmental assessment must be prepared, referencing the criteria for determining significance found at 6 NYCRR 617.7(c). A Determination of Significance is then made, either a Negative Declaration or a

Positive Declaration. A Negative Declaration ends the SEQRA process. A Positive Declaration requires that an Environmental Impact Statement (EIS) be prepared. Agency review for Unlisted actions may be uncoordinated, where each agency conducts its own SEQRA review, or coordinated, where one agency becomes the Lead Agency, and makes a Determination of Significance binding upon all involved agencies. Type I actions require coordinated review as described above, leading to either a Negative Declaration or a Positive Declaration. Whenever a project is anticipated to undergo coordinated SEQRA review, and is seeking DHCR/HTFC funding (except LIHC alone), DHCR/HTFC should be identified as an involved agency and a Full EAF submitted. No matter how a project is classified under SEQRA, it must still comply with related regulations or review processes (e.g., floodplain management, SHPO review).

Under NEPA, projects are classified as Exempt, Categorically Excluded, or Requires Environmental Assessment. Except for Exempt actions, all projects and LPA programs funded under the HOME Program require publication of a public notice and HUD clearance prior to project construction start.

5.02.05 Historic Properties

The State Historic Preservation Office (SHPO) is required to review all state or federally funded new construction or rehabilitation projects to determine whether the proposed project is of historic, architectural or archaeological value or would adversely affect any district, site, building or other structure which is listed, or eligible to be listed, in the National Register of Historic Places, SHPO is also required to make recommendations on issues of design or construction that best protect the historic quality of a building, site or district. Once a site has been listed or is eligible for listing in the Register, or is within an existing or eligible historic district, no site action affecting historic resources can proceed once application is made, or is anticipated to be made by the project sponsor, for state or federal funding, without consultation of the SHPO.

Project sponsors must initiate the SHPO review process prior to applying for funds by

submitting a Historic Resources Inventory Form (for rehabilitation) or Project Review Cover Form (for new construction) directly to SHPO together with SHPO Transmittal Letter provided in the project application. SHPO may ask the applicant for further information regarding the existing site or proposed project design in order to make its determination.

Projects with SHPO conditions related to the design and specifications of the project must take into consideration the cost impacts upon 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.

OCD may act as mediator between the project sponsor and SHPO to resolve project conditions. OCD's mediation role is greatly diminished if federal funds are involved.

5.02.06 Compliance With Specific Environmental Regulations

Proposed construction activities must be in compliance with applicable environmental regulations and receive all necessary approvals and permits prior to construction start (6NYCRR Part 617 State Environmental Quality Review, Section 617.3(a)). In addition to obligations under SEQRA, DHCR/HTFC is also required to review projects according to the following specific environmental review regulations:

- The New York State Historic Preservation Act of 1980 (Chapter 354 of Parks, Recreation and Historic Preservation Law)
- 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

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For HOME projects and LPA programs, activities must also be reviewed according to related environmental regulations listed at 24 CFR 58.5 and 58.6.

5.02.07 Site Contamination

A Phase I Environmental Site Assessment (ESA) will be required for all single-site projects when the project receives a funding award, to determine the likely presence on the site of hazardous materials, soil or water contamination, underground storage tanks, PCBs, asbestos, mold and lead-based paint. Suspected hazards must be characterized by follow-up testing and analysis. DHCR/HTFC will require remediation of identified hazards in accordance with regulations or guidance of agencies with jurisdiction over the hazard(s) present on the site. Prospective applicants are encouraged to explore funding for hazardous materials remediation from state and federal funding sources.

5.02.08 Schedule of Submissions

Project Application

a. The SEQRA Short EAF, Part 1, completed, dated and signed by the project sponsor;

b. A copy of the SHPO Historic Resources Inventory Form or Project Review Cover Form and the SHPO Transmittal Letter submitted to SHPO;

c. A letter from the Code Enforcement Office, other municipal agency or insurance company indicating the flood zone of the project site, and the location of the project site relative to the designated coastal zone (for projects near a designated coastal zone);

d. Evidence of compatibility with existing zoning, or request for variance; and

e. Any prior SEQRA or NEPA environmental findings issued by a local or other State

Agency.

(iv) Any other existing environmental documentation or permits, i.e., environmental site assessments, wetland investigations, State Pollution Discharge Elimination System (SPDES) permits, etc.

Post Application Submissions

The Funding Commitment Letter sent to successful applicants will outline additional submission requirements to complete the environmental review. A Phase I Environmental Site Assessment (ESA) will be required for all awarded projects. The Environmental Analysis Unit (EAU) will provide a detailed letter to awardees discussing other necessary requirements and their scope.

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

5.02.09 Completion of Environmental Review

Environmental review for HTFC projects is complete when a SEQRA determination is made by the SEQRA Officer and approved by the HTFC Board of Directors.

For HOME construction projects, HTFC must publish an appropriate public notice in a newspaper of general circulation in the project area. Environmental review for HOME projects is complete when comment periods following public notices have expired and HUD issues an Authority to Use Grant Funds form for the project.

Issued: **11/02**	Revised:
Section: **5.00**	Title: **DEVELOPMENT REQUIREMENTS**
Sub-Section: **5.03**	Topic: **Site Requirements**

5.03.01 Site Requirements

The site requirements set forth below apply to new construction and substantial rehabilitation on all sites for all funded projects with the exception of those funded under:

(i) LIHC/SLIHC/LIHB; and

(ii) RRAP.

Applicants should select sites which are suitable for residential use; the suitability of the site selected will be an important factor in determining project eligibility and feasibility. The HOME Program also has a requirement for site and neighborhood standards that is published in the HOME regulations at 24 CFR 92.202. Applicants must select project sites in accordance with fair housing requirements and to promote a greater choice of housing opportunities. Newly constructed projects must not be located in areas of minority concentration, except as permitted by 24 CFR 882.705.

Low-income housing projects located within an urban neighborhood must meet the following minimum requirements:

1. The site must be free from hazardous materials and incompatible adjacent uses. There must be no environmental conditions that significantly impair the intended residential purposes.

2. The site must have power, telephone, water and sewer connections adjacent to the site.

3. The site must have local/public transportation or be within walking distance to

community services and retail establishments including a grocery store.

4. The site must have adequate space to accommodate local off-street parking requirements.

5. The site must be relatively level and of no greater size than that which is necessary to accommodate the proposed project.

Low-income housing projects located in non-urban areas must meet the following minimum requirements:

Items 1, 4 and 5 as numerated above.

1. Where public utilities are not included, the site must have the capacity to provide a cost effective on-site water and/or septic system.

2. For family projects, the site must be within a five mile distance of a municipality that provides community services and retail establishments including a grocery store.

3. Family projects must have adequate space to accommodate an on-site play area for children.

4. The site must be directly accessible from a public road.

5. Elderly projects must be located within a rural community and have local public transportation or be within walking distance, (i.e., one-half mile) of essential services including a grocery store.

Issued: **11/02**	Revised:
Section: **5.00**	Title: **DEVELOPMENT REQUIREMENTS**
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5.03.01 Site Control

> DHCR/HTFC requires that applicants have some form of site control for all buildings and/or sites included when applying for projects. Single-family homes in a specific subdivision are not excluded from DHCR/HTFC's site control requirements. Applicants that propose to use HOME funds for HOME programs are not required to identify sites at the time of application.

Any site control documentation which includes an offer and acceptance, such as a contract of sale, option or lease must include signatures of all required parties in order to be considered acceptable documentation of site control.

Acceptable forms of site control, in order of DHCR/HTFC preference, include:

- Executed Deed evidencing ownership by applicant or owner;
- A title report not more than 90 days old at the time of submission showing that the applicant holds title;
- A contract of sale between applicant and the property owner which describes the terms and conditions for the conveyance of title of the site at a designated price during a specific period;
- An Option to Purchase which is renewable or with a term of no less than six months

from the date of application For HOME projects, purchase options must be conditioned on completion of HUD environmental review prior to closing.;

- A local Land Disposition Agreement;
- A letter from a public agency providing a site to the applicant under specified conditions within a time frame consistent with the proposed Development Timetable;
- A 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 with a term that equals the applicable program's regulatory period.

DHCR/HTFC reserves the right to accept other evidence of site control for State- or federally-owned sites, 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. All site acquisitions at a market price must be arms-length transactions between the seller and the applicant. 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. The specific amount of the site purchase price that will be recognized as a project cost is limited to the lesser of: the purchase price, or the value established by an appraisal acceptable to DHCR/HTFC (see Sub-Section 5.03.03). 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. Valuation must be documented via an acceptable appraisal. In lieu of an appraisal the price of the subject property from the last sale by an unrelated seller, if within 24 months from the date of application, plus associated carrying costs, will be used to determine the approved sales price.

Applicants must submit evidence prior to the Contract 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 redated 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

> The site appraisal requirement set forth below may be waived for sites funded under the HDF Program if the permanent/construction financing source agrees to the site purchase price.
>
> For LIHC/SLIHC/LIHB funded projects only, i.e. standalones, see Section 5.07.

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, DHCR/HTFC may require two appraisals. If there is an identity of interest between the seller and any project participant, an appraisal must be provided even if the acquisition cost is below $100,000.

In addition, DHCR/HTFC may also engage a review appraiser for further documentation of site value. If HOME funds are used to assist with the purchase of a unit by a first-time home buyer, an appraisal must be conducted by a state-certified appraiser. 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.

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. Appraiser must have the appropriate certification/license to undertake the scope of the project:

   - NYS Licensed Real Estate Appraiser: non-complex, residential properties with a transaction value of less than $1 million and non-complex, non-residential properties with a transaction value of less than $250,000.

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

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

3. Must comply with the Uniform Standards of Professional Appraisal Practice.

4. 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.

5. 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.

Other comments such as extraordinary assumptions, sales history, and type of transaction

(i.e., arms-length) together with a table of contents and pagination will assist in the determination of site value.

Issued: **11/02**	Revised:
Section: **5.00**	Title: **DEVELOPMENT REQUIREMENTS**
Sub-Section: **5.04**	Topic: **Design Requirements**

The design requirements contained in the OCD Design Handbook apply to all projects, with the exception of those funded under:

(i) LIHC

(ii) SLIHC;

(iii) RRAP

(iv) HOME LPAs;

(vi) HOME substantial rehabilitation projects where the total development cost is less than $25,000 per unit.

(vi) LIHB

In addition, the design requirements apply to projects developed under the following programs only if DHCR/HTFC is the lead review agency:

(i) HDF;

(ii) HOME; and

(iii) HTF.

(iv) HWF

Issued: **11/02**	Revised:
Section: **5.00**	Title: **DEVELOPMENT REQUIREMENTS**
Sub-Section: **5.05**	Topic: **Projects Costs**

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 project awards in which DHCR/HTFC is not the lead review agency, Applicants are encouraged to incorporate the design requirements into local procedures. For LPA's all units assisted with HOME funds must, at a minimum, meet federal Housing Quality Standards (HQS) and HUD Cost-Effective Energy Conservation and Effectiveness Standards found in 24 CFR Part 39.

For detailed information refer to the Design Handbook, current edition.

In an effort to promote the continued marketability of the housing units we finance, the DHCR/HTFC would like to encourage applicants/developers to include in their designs the provision of high speed internet access in all residential units.

Issued: **11/02**	Revised:
Section: **5.00**	Title: **DEVELOPMENT REQUIREMENTS**
Sub-Section: **5.05**	Topic: **Projects Costs**

All funded projects are subject to the project cost standards set forth below, with the following exceptions:

(i) projects financed under the HDF Program must meet DHCR/HTFC underwriting criteria only if DHCR/HTFC has been designated as the lead review agency;

(ii) projects receiving an allocation under the LIHC/SLIHC/LIHB Program should refer to section 5.07 and

(iii) HOME tenant based rent subsidies.

A project must provide housing which represents good value for the State's investment. In making this determination, DHCR/HTFC 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 on both feasibility and/or scoring. The applicant should also refer to Section 2.00 of this Manual to determine eligible costs for the appropriation program(s).

(i) Acquisition Costs - The HOME and the HDF Programs are the only DHCR/HTFC programs for which the total program award may be used for acquisition costs. The HTF statute prohibits using more than 25% of the HTF award for site acquisition;

(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; HOME new construction and rehabilitation projects which contain 12 or more HOME-assisted units are subject to the provisions of the Davis-Bacon Related Act and must pay prevailing wages;

(iii) Construction Costs and Soft Costs - generally, the ratio of construction costs to soft costs should be 80% (construction costs) to 20% (soft costs); PLEASE NOTE: Only off site costs directly associated with the project will be considered eligible for funding through the DHCR/HTFC programs.

(iv) Builder's Fees - up to four 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 ten percent of construction costs may be used for builder's profit.

(v) Payment and Performance Bond Premium - in addition to a ten percent retainage held throughout construction, generally one to two percent of construction costs is allowed for a Payment and Performance Bond Premium (see Section 5.09, Insurance Requirements); where applicable, the bonding requirement must be satisfied at the Contract Closing;

(vi) Project Contingency - up to ten percent of the sum of total soft costs and contractor's cost for rehab projects and small project initiative projects, and up to five percent for typical new construction projects.

(vii) Professional Fees - these include project architect and legal counsel fees, as well as development consultant, engineer, surveyor, and accountant fees as required:

(a) Architect's Fees - up to five percent of construction costs for project design,

and two percent of construction costs for construction supervision, depending on the project size. The fees for design should be lower if the project has multiple buildings of the same design.

(b) Legal Fees - are generally limited to one percent of the total development cost, depending on the attorney's specific responsibilities.

(c) Housing Consultant Fees - up to one percent of TDC, not to exceed $20,000. Note: For projects receiving LIHC/SLIHC, the maximum allowable developer's fee is reduced by the amount of payments to a consultant, unless their services are not normally provided by the developer (ie, packaging related to historic preservation, brownfields, real property tax abatement).

(d) Nonprofit Developer's Allowance (NPDA) - a not-for-profit organization which acts as the developer on a project which will be owned and operated on a not-for-profit basis may be paid a NPDA as compensation for functions not otherwise funded. An NPDA is not available to a not-for-profit which is in partnership with a for-profit developer on a project. The NPDA is not available to applicants which receive only seed money awards. It is only available to applicants which receive development funding awards.

Not-for-profit applicants seeking a developer's allowance or fee must ensure that such fee or allowance is an eligible expense under the permanent financing source. An HDF applicant cannot receive a developer's allowance from both HDF and the permanent financing source. The NPDA is not compensation for an organization's administrative overhead, which is frequently funded from another source, or for out-of-pocket project costs, which may be invoiced as an eligible development expense. DHCR/HTFC

has established standards for NPDA compensation based upon the complexities of the project's development and the costs associated with a project's geographical location. DHCR/HTFC standards also provide for an adjustment when a consultant's services are used to undertake functions which would otherwise be undertaken by the nonprofit developer. The amount of the NPDA is limited to the greater of:

1. ten percent of total development cost less the amount of acquisition; or

2. $2,400 per low-income unit. Single Room Occupancy (SRO) units are counted as 75% of a low-income unit for the purpose of calculating the NPDA. For projects located in the high cost New York Metropolitan Area and Nassau, Westchester and Suffolk Counties, the NPDA is increased to $3,000 per low-income unit.

3. For projects financed with 501(c)3 tax exempt bonds, the greater of ten percent of TDC or $5,000 per unit.

When a housing consultant's services are used in connection with the project, the housing consultant's fee will be subtracted from the NPDA cap to arrive at the NPDA that the applicant is entitled to receive.
Under an executed contract with DHCR/HTFC, the nonprofit developer must meet specific milestones tied to the completion of the project in order to earn the NPDA. No more than 80% of the NPDA may be paid during the project's development as a project cost for the performance of development duties. The remaining 20% must be held back as an incentive payment for successfully completing the project. Specifically, percentages of the approved NPDA are

earned in accordance with the following schedule:

Scope	Deliverables/Milestones	Fee
1. Preliminary Approvals	Site Control & DHCR/HTFC Notice of Review Action - Competitive	10%
2. Preconstruction	Local Approvals & All Funding Commitments	20%
3. Bid Process	Selection of Contractor	5%
4. Contract Finalization	Initial Endorsement of DHCR/HTFC Contract and Regulatory Agreement	20%
5. Construction	Certificate of Occupancy Issuance	25%
6. Cost Certification	DHCR/HTFC Approval of Project Cost Certification	10%
7. Start Up	Rent Up Completed	10%

(e) Local HOME Program Administrative Costs - such costs should not exceed 8% of the HOME award, and are available when program funding levels permit.

(f) Construction Manager's Fees - (this fee is only available to projects without a general contractor) limited to five percent of project construction cost, and builder's overhead and profit may not be claimed.

(g) HTFC Debt Service - In the case of HWF or 501(c)(3) bond

financed projects, debt service to HTFC will be applied first against accrued interest, then current interest and then against principal until the principal on the loan is reduced to $1 for the remainder of the 30 year loan term.

(viii) 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; any working capital remaining after the project has been in operation for one year should be transferred to the operating reserve;

(ix) Reserve Funds - an initial deposit to project reserve funds may be required in certain programs. The applicant should review the Underwriting Criteria (Sub-Section 5.06(iii) and Project Operating and Management Requirements (Sub-Sections 7.03.03 and 7.03.04) of this Manual. HOME funds may not be used to provide capitalization of either an operating or replacement reserve account.

(a) Replacement Reserve (see Glossary for definition) - The replacement reserves are generally funded from an annual contribution included in the operating budget. For those projects in which annual contributions from project income are not economically feasible given the rents, an initial capitalization may be allowed. The applicant should demonstrate the necessity for an initial capitalization.

The applicant should review the specific program requirements for each program under which the application is submitted to determine if the initial capitalization of replacement reserves is allowed and under what circumstances.

Additionally, the DHCR/HTFC will recognize the capitalization of up to $4000 per unit to be set aside to cover the post-construction cost to fully adapt an accessible residential unit to meet the specific needs of a prospective handicapped household.

(b) Operating Reserve (see Glossary for definition) - The operating reserve may be funded with annual contributions or an initial capitalization. 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 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.

(c) Debt Service Reserve - In the case of HWF or 501(c)(3) bond financed projects, a debt service reserve may be funded based on the requirements of the bond issuer or the source of credit enhancement.

Issued: **11/02**	Revised:
Section: **5.00**	Title: **DEVELOPMENT REQUIREMENTS**
Sub-Section: **5.06**	Topic: **Underwriting Criteria**

All funded projects are subject to the underwriting criteria set forth below, with the following exceptions:

(i) projects financed under the HDF Program must meet only the underwriting criteria specified for determining market support for the project, and the appraisal criteria for acquisition and construction loans, where DHCR has been designated as the lead review agency for the project; and

(ii) projects funded through local HOME programs described in Section 2.05.

(iii) LIHC/SLIHC/LIHB funding only, i.e. standalone (see Section 5.07)

Where federal programs are involved (e.g. HOME, LIHC), DHCR/HTFC may be required to certify to the federal agency that these projects receive only the level of funding that is necessary to provide affordable housing. To comply with these requirements, applicants that propose projects involving other federal subsidies (i.e., CDBG or Section 8) may be requested to provide additional information.

Applicants must establish that a project is financially feasible by demonstrating 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:

(i) Market Support of Project - Applicants must firmly establish that a sufficient number of income-eligible households exist in the proposed market area which can afford the project rents and which can be expected to live in the project. To do this, applicants shall submit a market analysis or a comprehensive market study.

A market analysis must consider the geographic area from which households are expected to be drawn (See HTFC/DHCR Market Study Content Guidelines below for definition of Primary/Secondary (PMA/SMA)), 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. In areas having comparable housing under development, DHCR/HTFC 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 housing/community development strategy or serving a special needs population.

(a) Evidence of Market Support - which must be submitted at the time of Small Project Initiative, Urban Initiative (UI), and Rural Area Revitalization Program (RARP) applications, 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;
iii. commitments on leases and/or referral of households financially assisted by social services or public health programs; and

(b) Comprehensive Market Studies - applicants utilizing LIHC and/or SLIHC must submit a professional market study which:

i. is conducted by a disinterested pre-qualified market analyst approved by the Division and demonstrates 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.

Alternatively, applicants proposing projects located within the City of New York may prepare an analysis utilizing data from the most current "Housing NYC: Rents, Markets and Trends" report issued by the New York City Rent Guidelines Board for inclusion in their application.

(Note: In all cases market demand must be documented from within New York State.)

ii. The comprehensive market study should include the Scope of Work contained in the following guidelines:

HTFC/DHCR 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.

- 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 should 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 by: number of bedrooms and baths, income limit as a percent of Area Median Income (AMI), unit size in square feet and utility allowances for tenant paid utilities, proposed rents, and target population, including income restrictions and any special needs set-asides.

- The utilities expected to be paid by tenants and energy sources for tenant paid hot water, heat, cooking.

- For existing occupied properties, identification of any existing assisted housing program at the property 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. The Secondary Market Area (SMA) is the portion of a market area that supplies additional support to a property beyond that provided by the Primary Market Area.

- Define the Primary and Secondary Market Areas, including a map that clearly delineates the areas, and provide a clear explanation of the basis for the boundaries of the PMA and SMA. Identify PMA and SMA boundaries by municipality(ies), census tracts/block groups, street/highway names, or other appropriate geographic features (a river for example) 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/SMA.

- 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. Address any local perceptions of crime or problems in the PMA.

D. Population and Households

- Provide total population, age and income target data for the Primary Market Area using the 1990 Census, 2000 Census, current year estimates, and a five year projection. Data from other legitimate studies, such as Claritas, CACI and similar demographic information companies, with detail on household size, tenure, age and other relevant categories may be provided. Provide the same information for the SMA, if one has been defined. Indicate the source for all data and provide a methodology for estimates.

- Provide a breakdown of households by tenure for 1990 Census, 2000 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 1990 and 2000 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, SMA, 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, SMA, 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 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), 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 property contact. Attach photos of each comparable property. Include a map showing the location of each comparable property in relation to the subject.

- Describe the size of the overall rental market in the PMA, including the percentage 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.

- Discuss the availability of affordable housing options, including purchase or sale of homes.

- When relevant, include a list of LIHC/SLIHC projects with allocations 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, special populations) and unit size.

- Identify the number of people on waiting lists for each project.

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 consider:

- 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.

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

H. Analysis.

- Derive a market rent and an achievable rent and then compare them to the developer's proposed rent. Quantify and discuss 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 the DHCR Capital Programs Manual, Section 7.06.04, for additional information at www.dhcr.state.ny.us).

- Calculate the capture rate for each income limit in the subject property incorporating DHCR/HTFC restrictions such as age, income, renters versus home owners, household sizes, etc. In calculating the capture rate the analyst should subtract all existing affordable housing in the PMA (supply) from the number of income eligible, age appropriate households (demand).

  Note: For senior projects, only 10% of the eligible homeowners may be included in the demand calculation. The unmet demand for additional housing units must be more than 5 times the number of units proposed. (Capture rate must be 20% or less.)

- 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 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.

Issued: **11/02**	Revised:
Section: **5.00**	Title: **DEVELOPMENT REQUIREMENTS**
Sub-Section: **5.06**	Topic: **Underwriting Criteria**

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.

[Note: This section does not have to be addressed on projects entailing preservation of existing housing which is occupied (i.e., occupancy of 90% or more).]

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

(a) Rent Plan - the applicant must submit with the UF application, a rent plan for the project estimating rental income, adjusted by the appropriate vacancy and arrears loss (ranging from three percent for elderly or rent-subsidized projects, to five percent for family projects). The rents approved by DHCR/HTFC for the purposes of the HTF or HOME commitment letter or LIHC reservation may be increased by the annual percentage increase in the area median income prior to initial rent up with DHCR/HTFC 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 budget for the non-residential space must be self-sustaining and accounted for separately. DHCR/HTFC funds may not be used to subsidize the non-residential portions of the project unless deemed appurtenant to the residential portion of the project. The feasibility of the project should not be predicated upon income from non-residential rents. Any non-residential income to be used to support the 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 15% 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 feasibility.

Issued: **11/02**	Revised:
Section: **5.00**	Title: **DEVELOPMENT REQUIREMENTS**
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The operating budget should 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 the time of Contract Document Submission. 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, extermination, etc.) provided they are similar to the proposed project in type and located in the same market area. The applicant should identify the comparable projects used as a basis for their projections. Utility allowances, common utilities and heating expense (i.e., electric, gas, or fuel oil) should be estimated on the basis of consumption and rate schedules or vendor price. A utility estimate prepared by the project architect is also acceptable. Utility costs must be supported by a written estimate from the architect or vendor and should cover utilities paid directly by the tenant. The estimated insurance expenses should be documented by a written quote from an insurance broker including both the coverage and price. The applicant's estimate of property tax expenses should be documented by a counsel's letter confirming the legal basis for any exemption or abatement to be received by the project. If the project is to be fully taxed, the estimate should be documented by a letter from the assessor having jurisdiction, stating the basis for estimation and estimated amount of the post-construction value.

DHCR/HTFC will not recognize more than a nominal initial cash flow (e. g., $30 per unit per month) unless a debt service coverage is imposed for purposes of a conventional loan or bond financing.

For LIHC/SLIHC projects that propose to defer a portion of their developer fee

please see Section 5.05 vii(f)

In the case of HWF or 501(c)(3) bond financed projects cash flow is defined and calculated as project revenues less operating expenses, scheduled reserve payments and first mortgage debt service. Debt service on loans to the owner of the project or property from any principal of the project, general or limited partner, member, developer or other parties related to the project is payable only from the 50% of cash flow available for distribution to the owner. Any expense payment involving a party related to the owner, partner or shareholder must be approved in advance by HTFC. Distribution of cash flow will be split with 50% payable to HTFC as debt service and 50% to the project owner.

Certain programs may establish Replacement Reserve and/or Operating Reserve Accounts with an initial DHCR/HTFC capitalization. In this event, the project owner must provide for monthly contributions to the Reserve Account(s) in the operating budget as detailed below.

(a) Replacement Reserve Contributions - where applicable, the operating budget should provide for an annual contribution to be made to the Replacement Reserve Account equal to .50 percent of the total development cost, less cost of land acquisition, or $400 per unit annually on elderly projects unless otherwise approved by DHCR/HTFC. The annual contribution will continue throughout the life of the project with no ceiling. Projects may be permitted to capitalize a replacement reserve if the project's operating economics cannot support annual contributions. 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 expectancies, etc.) should be included on a spreadsheet which shows that such capitalization will be adequate.

In the case of HWF or 501(c)(3) bond financed projects, HTFC will permit use of the industry standard $250 per dwelling unit per year. However, HTFC may permit adjustments to the replacement reserve requirement for rehabilitation projects based on the project's scope of work, or may adopt the standards required by the bond issuer. HTFC may consider increasing replacement reserves based on a review of the project's plans and specifications and an analysis of the major building systems which have been proposed.

(b) Operating Reserve Contributions - where applicable, and unless otherwise approved by DHCR/HTFC, 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 when the balance in the reserve is less than 50% of the gross rents. 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 Contract Closing;

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

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

(e) balloon payments of loan principal prior to the end of the regulatory period are permissible only if it can be demonstrated that refinancing is possible without affecting project rents; and

(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 average rate 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.

(g) debt service coverage factors required by lenders should be provided by the applicant at the time of the Contract Document Submission; and

In the case of tax exempt bond and 501(c)(3) bond financed projects, HTFC may waive or alter these requirements based upon the applicant's satisfactory demonstration of its necessity or may adopt the standards required by the bond issuer.

Issued: **11/06**	Revised:
Section: **5.00**	Title: **DEVELOPMENT REQUIREMENTS**
Sub-Section: **5.07**	Topic: **LIHC Program Development Requirements**

This sub-section describes the general development requirements of the DHCR for projects funded by LIHC/SLIHC and LIHB (4% LIHC allocated per Section 2040.4 of the QAP) ONLY, i.e., standalone credit projects. (No other capital financing required from DHCR/HTFC.)

5.07.01 Site Control

DHCR requires that applicants have some form of site control for all buildings and/or sites included when applying for projects.

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

- Executed Deed evidencing ownership by applicant or owner;
- A title report not more than 90 days old at the time of submission showing that the applicant holds title;
- A contract of sale between applicant and the property owner which describes the terms and conditions for the conveyance of title of the site at a designated price during a specific period.
- An Option to Purchase which is renewable or with a term of no less than six months from the date of application.
- A local Land Disposition Agreement;
- A letter from a public agency providing a site to the applicant under specified conditions within a time frame consistent with the proposed Development Timetable;
- A 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 with a term that equals the applicable program's regulatory period.

DHCR reserves the right to accept other evidence of site control for State-or-federally-owned sites, or those owned by entities affiliated with the State or federal government. If a site is owned by any government entity, the applicant should describe the current status of the project site in the land disposition process.

5.07.02 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. All site acquisitions at a market price must be arms-length transactions between the seller and the applicant.

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. The specific amount of the site purchase price that will be recognized as a project cost is limited to the lesser of: the purchase price, or the value established by an appraisal acceptable to DHCR (see Sub-Section 5.07.03). 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. Valuation must be documented via an acceptable appraisal. In lieu of an appraisal the price of the subject property from the last sale by an unrelated seller, if within 24 months from the date of application, plus associated carrying costs, will be used to determine the approved sale price.

Issued: **11/06**	Revised:
Section: **5.00**	Title: **DEVELOPMENT REQUIREMENTS**
Sub-Section: **5.07**	Topic: **LIHC Program Development Requirements**

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, DHCR may require two appraisals. If there is an identity of interest between the seller and any project participant, an appraisal must be provided even if the acquisition cost is below $100,000.

In addition, DHCR may also engage a review appraiser for further documentation of site value. 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.

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.
2. Appraiser must have the appropriate certification/license to undertake the scope of the project.

- NYS Licensed Real Estate Appraiser: non-complex, residential properties with a transaction value of less than $1 million and non-complex, non-residential properties with a transaction value of less than $250,000.
- NYS Certified Real Estate Residential Appraiser: all residential, non-complex properties and non-residential, non-complex properties with a transaction value of less than $250,000.

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

3. Must comply with the Uniform Standards of Professional Appraisal Practice.
4. 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.
5. 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.

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

5.07.04 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 maintenance free, and provide quality living facilities.

All applicants who are requesting funding from LIHC/SLIHC/LIHB only and are renovating an existing structure(s) must complete and submit the Physical Needs Assessment Form which is an attachment in the Unified Funding Project Application. The applicant must request a site visit from the Division to enable staff to observe the building's existing condition and discuss proposed renovations PRIOR to the application submission.

5.07.05 Project Costs

A project must provide housing which represents good value for the State's investment. In making this determination, DHCR reviews total project cost (as defined in the Glossary) to ensure

that acquisition and development costs fall within established guidelines.

(i) Acquisition Costs – Projects with the acquisition costs of the building(s) may not exceed twenty five percent (25%) of the total development costs of the project unless it meets the parameters set forth in the QAP at Section 2040.2(N).

(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) Builder's Fees – up to four 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 ten percent of construction costs may be used for builder's profit.

(iv) Developer's Fee – a developer's fee will range from 10% to 15% of the development cost; the applicant should refer to the QAP (Section 2040.3 (G)(2)(b)) for specific information.

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 feasible.

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 development's placed in service date. This repayment must be made from funds available after the payment of project expenses, including all debt service, according to the annual budget and payments to required reserves.

(v) Construction Manager's Fees – (this fee is only available to projects without a general contractor) limited to five percent of project construction cost, and builder's

overhead and profit may not be claimed.

(vi) Reserve Funds – an initial deposit to project reserve funds may be required.

(a) Replacement Reserve (see Glossary for definition) – The replacement reserves are generally funded from an annual contribution included in the operating budget. For those projects in which annual contributions from project income are not economically feasible given the rents, an initial capitalization may be allowed. The applicant should demonstrate the necessity for an initial capitalization.

Additionally, the DHCR will recognize the capitalization of up to $4,000 per unit to be set aside to cover the post-construction cost to fully adapt an accessible residential unit to meet the specific needs of a prospective handicapped household.

(b) Operating Reserve – (see Glossary for definition) – The operating reserve are generally funded from an annual contribution included in the operating budget.

(c) Debt Service Reserve – In the case of tax exempt bond financed projects, a debt service reserve may be funded based on the requirements of the bond issuer or the source of credit enhancement.

5.07.06 Underwriting Criteria

Applicants must establish that a project is financially feasible by demonstrating the following: that there is market support for the project; in general, that 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:

i. Comprehensive Market Studies - an applicant utilizing LIHC, SLIHC or LIHB must submit a professional market study which:

(a) is conducted by a disinterested party approved by the Division and demonstrates that the proposed number and types of units meet an existing and identified need of low-income individuals and can be readily absorbed by existing need in the local area. Alternatively, applicants proposing projects located in the City of New York may prepare an analysis utilizing data from the latest version of the "Housing NYC: Rents, Markets and Trends" report issued by The Rent Guidelines Board for inclusion in their application.

(b) defines the market area boundaries, giving any physical, social, governmental and/or economic reasons for their selection and explains why the boundaries were established in such a manner; (Note: Market demand must be documented from within New York State.)

(c) estimates the number of income-eligible households in the market area (and any specific subset which the project is intended to serve) which are prospective tenants, describing their characteristics (e.g., age, income, household size, special requirements, etc.) and analyzing any relevant socio-economic, demographic and housing information in the context of current economic conditions. [Note: This section does not have to be addressed on projects entailing preservation of existing housing which is occupied (i.e., occupancy of 90% or more)];

(d) estimates the available housing supply in the market area through analysis of the current housing inventory and anticipated additions, giving the number, vacancy levels, type, condition, age, rent levels, and other relevant information;

(e) concludes the net demand from income-eligible households on a specific subset), which can be expected to support the project as proposed, given the number and type of units, the proposed rents and utility allowances and the existing housing supply;

(f) identifies the sources of statistics used in the analyses and, when statistics are not from public sources, includes means for verification (e.g., list of contacts with telephone numbers or attachment of source documents); and

(g) fully explains the reasoning behind any assumptions used in the analyses.

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

(a) Rent Plan – the applicant must submit with the UF application, a rent plan for the project estimating rental income, adjusted by the appropriate vacancy and arrears loss (ranging from three percent for elderly or rent-subsidized projects, to five percent for family projects). The rents approved by DHCR for the purposes of the LIHC reservation may be increased by the annual percentage increase in the area median income prior to initial rent up with DHCR 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 budget for the non-residential space must be self-sustaining and accounted for separately. DHCR funds may not be used to subsidize the non-residential portions of the project unless deemed appurtenant to the residential portion of the project. The feasibility of the project should not be predicated upon income from non-residential rents. Any non-residential income to be used to support the 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 15% 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 feasibility.

The operating budget should 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 the time of binding agreement/carryover allocation. 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, extermination, etc.) provided they are similar to the proposed project in type and

located in the same market area. The applicant should identify the comparable projects used as a basis for their projections. Utility allowances, common utilities and heating expense (i.e., electric, gas, or fuel oil) should be estimated on the basis of consumption and rate schedules or vendor price. A utility estimate prepared by the project architect is also acceptable. Utility costs must be supported by a written estimate from the architect or vendor and should cover utilities paid directly by the tenant. The estimated insurance expenses should be documented by a written quote from an insurance broker including both the coverage and price. The applicant's estimate of property tax expenses should be documented by a counsel's letter confirming the legal basis for any exemption or abatement to be received by the project. If the project is to be fully taxed, the estimate should be documented by a letter from the assessor having jurisdiction, stating the basis for estimation and estimated amount of the post-construction value.

DHCR will not recognize more than a normal initial cash flow (e.g., $30 per unit per month) unless a debt service coverage is imposed for purposes of a conventional loan or bond financing. For LIHB projects, DHCR will not allow cash flow in excess of that generated when the debt service coverage is assumed to be 1.30.

For LIHC/SLIHC/LIHB projects that propose to defer a portion of their developer fee, see Section 5.07.05 (iv).

(a) Replacement Reserve Contributions – the operating budget should provide for an annual contribution to be made to the Replacement Reserve Account equal to $250 per dwelling unit per year for new construction developments for seniors and $300 per dwelling unit per year for new construction of

family developments, and all rehabilitation projects. The annual contribution will continue throughout the life of the project with no ceiling. Projects may be permitted to capitalize a replacement reserve if the project's operating economics cannot support annual contributions. Projects permitted to capitalize the replacement reserve must first 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 expectancies, etc.) should be included on a spreadsheet which shows that such capitalization will be adequate.

(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 in place at or before the issuance of a 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 DHCR program;

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

(e) The terms and conditions of construction and/or permanent financing must be economical and reasonable. The interest rates must be no more than the average rate 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.

In the case of LIHB projects, DHCR may waive or alter these requirements based upon the

applicant's satisfactory demonstration of its necessity or may adopt the standards required by the bond issuer.

Issued: **11/02**	Revised:
Section: **5.00**	Title: **DEVELOPMENT REQUIREMENTS**
Sub-Section: **5.08**	Topic: **Financing Requirements**

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

(i) LIHC/SLIHC/LIHB; and

(ii) RRAP.

The applicant must provide firm commitments from all sources of loan and equity financing necessary for the project as part of the Contract Document Submission. 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 Contract 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 DHCR/HTFC; and

(iv) interest rate and principal repayment terms.

All financing for the project, including that necessary for capitalization of reserve funds, must be made available on or before the Contract Closing. DHCR/HTFC 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 for private developers will be structured as recourse financing.

Issued: **11/02**	Revised:
Section: **5.00**	Title: **DEVELOPMENT REQUIREMENTS**
Sub-Section: **5.08**	Topic: **Financing Requirements**

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

DHCR is precluded by statute from providing financing for commercial space development under both the HTF and HOME programs. Recipients of HTF and HOME funds who plan to develop mixed use properties are advised to secure separate financing for the development of commercial space which will not encumber the residential space. Under certain limited circumstances, DHCR will permit a residential project to be encumbered by a mortgage which also finances commercial development, provided that the commercial space is master leased for the length of the HTFC/HOME regulatory term to an entity controlled by or under common control of the applicant and a payment guarantee acceptable to DHCR to secure the payment of all rent obligations and expenses of the master lessee under the master lease is supplied to DHCR at or prior to the funding of its loan.

Issued: **11/02**	Revised:
Section: **5.00**	Title: **DEVELOPMENT REQUIREMENTS**
Sub-Section: **5.09**	Topic: **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 the fidelity bond requirement listed below also applies to HDF predevelopment loans; and

(ii) projects financed under the following programs are not required to comply with any of the insurance requirements set forth herein:

(a) HOME Programs;
(b) LIHC; and
(c) RRAP.

Applicants (and their contractors and architects) are required to maintain appropriate insurance coverage during the development of the project as specified below. Binders or certificates for the following insurance policies must be submitted for review no later than three weeks prior to the scheduled date of the Contract Closing.

5.09.01 Insurance Requirements for Applicants

Liability Insurance

Comprehensive General Liability:

- monetary limits of not less than $1,000,000 for each occurrence (homesteading projects should obtain a $1,000,000 "umbrella" liability policy);
- contractual coverage;
- DHCR/HTFC to be named as additional insured;
- 30 days prior written notice to DHCR/HTFC of cancellation, non-renewal, or change in coverage;
- single family HTF homesteading projects are required to obtain not less then $300,000 in liability insurance

Property Insurance

- monetary limits commensurate with the project's replacement value;
- DHCR/HTFC as mortgagee/loss payee (as applicable);
- 30 days prior written notice to DHCR/HTFC of cancellation, non-renewal, or change in coverage
- 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;
- 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;
- 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.

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.

Issued: **11/02**	Revised:
Section: **5.00**	Title: **DEVELOPMENT REQUIREMENTS**
Sub-Section: **5.09**	Topic: **Insurance Requirements**

5.09.02 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;
- 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);
- 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;
- 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;
- applicant and DHCR/HTFC as obligees/loss payees.

5.09.03 Project Architect's Insurance

DHCR/HTFC recommends that applicants require their project architects to meet the applicable insurance coverage parameters specified below, depending upon the dollar amount of the project construction costs:

(i) for projects with construction costs of less than $750,000, no professional liability insurance is required;

(ii) for projects with construction costs of at least $750,000, but less than $2,500,000, a minimum of $1,000,000 professional liability insurance should be required; and

(iii) for projects with construction costs of $2,500,000 or more, a minimum professional liability insurance coverage of one-half the construction costs should be required.

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.

Issued: **11/02**	Revised:
Section: **5.00**	Title: **DEVELOPMENT REQUIREMENTS**
Sub-Section: **5.09**	Topic: **Insurance Requirements**

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

Applicants are encouraged to pursue tax exemptions or abatements with local municipalities for all or a portion of the project. Any anticipated tax exemptions or abatements should be documented as outlined in Sub-Section 5.06(iii). At the time of Contract Document Submission a signed payment-in-lieu of tax agreement must be submitted in support of this operating budget expense.

Issued: **11/02**	Revised:
Section: **5.00**	Title: **DEVELOPMENT REQUIREMENTS**
Sub-Section: **5.10**	Topic: **Real Property Tax Exemption**

Applicants are encouraged to pursue tax exemptions or abatements with local municipalities for all or a portion of the project, and may receive additional points in the rating and ranking of their application(s) if tax exemptions or abatements have been obtained and documented.

Issued: **11/02**	Revised:
Section: **5.00**	Title: **DEVELOPMENT REQUIREMENTS**
Sub-Section: **5.11**	Topic: **Professional Service Contract Requirements**

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

(i) LIHC;

(ii) RRAP; and

(iii) projects funded from the HDF Program for which DHCR is not the lead review agency.

Applicants must comply with the provisions of this Section when selecting project architects, engineers, attorneys, construction managers, housing consultants, managing agents, or other professionals to 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. Formal bids are not required when selecting contractors for professional services; however, informal bids are required from at least three-to-four firms or individuals. The lowest, qualified bidder should be selected, or a detailed explanation of the reasons for not selecting the lowest qualified bidder must be provided.

DHCR/HTFC encourages applicants to utilize the services of M/WBEs in the performance of contracts. Please see Section 4.00 for a discussion of M/WBE requirements, and for details on how to obtain a M/WBE Directory.

In the event of inconsistencies between this Section and the federal HOME regulations, the HOME regulations shall apply.

Issued: **11/02**	Revised:
Section: **5.00**	Title: **DEVELOPMENT REQUIREMENTS**
Sub-Section: **5.11**	Topic: **Professional Service Contract Requirements**

5.11.01 Selection of an Architect/Engineer/Construction Manager

All agreements between applicants and project architects or engineers must reflect a fixed fee compensation for all services required by DHCR/HTFC. 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.). Applicants should make OCD's Design Handbook available to the project architect as early as possible to ensure that the cost of services reflect the documentation required by DHCR/HTFC. All Owner/Architect agreements must be signed by the architect and submitted to DHCR/HTFC for review. Agreements that are already signed by both the architect and owner may require amendments if not acceptable to DHCR/HTFC. The following basic services and terms should be included in the Owner/Architect Agreement:

(i) for rehabilitation projects, measured drawings showing all pertinent existing conditions of the building;

(ii) for projects with construction costs greater than $250,000, full-size as-built drawings and CD Roms(3) indicating the actual construction work performed on the project, including all change orders, addenda and modifications to the bid documents;

(iii) detailed cost estimates for the UF application and bid documents; and

(iv) no interest payable for unpaid balances.

The cost for any additional services required from the project architect must also be included in the fixed fee. Additional services may include the following:

(i) providing structural, mechanical, electrical and/or landscaping services beyond basic services;

(ii) providing site surveys, soil tests, and asbestos reports and tests;

(iii) preparing asbestos removal plans and specification documents; and

(iv) providing services for the project owner's construction manager.

All reimbursable costs, including printing, travel, meetings, and fees for securing governmental approvals should be separately itemized and included in the fixed-fee price. Fees may be charged on an hourly basis, provided that a maximum upset price is given.

If the project architect has an identity of interest with the applicant/owner, or builder, the architect cannot perform construction monitoring services.

The percentage of fee by phase will be reviewed for compliance with the following schedule:

- Preliminary Phase < 15% Fee
- Design Development Phase < 20% Fee
- Construction Documents < 40% Fee
- Bidding/Negotiating < 5% Fee
- Construction Monitoring > 20% Fee
- Total Fee - 100% Fee (Including submission of As Built drawings)

It is the project sponsor's and architect's responsibility to ensure that the Agreement has the proper dates, names, project address(es), project description and authorized signatures.

The use of AIA Document B141 (current edition) is required by DHCR/HTFC for all Owner/Architect agreements. If an architect's or engineer's contract fee is over $25,000, the applicant must submit a M/WBE Utilization Plan prior to the contract execution.

Issued: **11/02**	Revised:
Section: **5.00**	Title: **DEVELOPMENT REQUIREMENTS**
Sub-Section: **5.11**	Topic: **Professional Service Contract Requirements**

The project sponsor and architect will be required to certify to DHCR/HTFC that care was taken to ensure compliance with all of the Design Handbook's requirements.

Please Note: Construction cost overruns will not be the responsibility of DHCR or HTFC.

Issued: **11/02**	Revised:
Section: **5.00**	Title: **DEVELOPMENT REQUIREMENTS**
Sub-Section: **5.11**	Topic: **Professional Service Contract Requirements**

5.11.02 Selection of a Construction Manager

Applicants which propose to act as their own General Contractor or plan to utilize a construction manager in lieu of bidding for a general contractor must document that they have:

(i) a minimum of five years of successful experience administering construction;

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

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

The applicant must document a proposed construction manager's ability and experience in managing the type and size of project proposed by demonstrating the following:

(i) a minimum of five years experience as a construction management firm;

(ii) three years of management experience in the field of residential construction; and,

(iii) two years of experience with not-for-profit organizations and/or governmental agencies.

The construction management firm must also document and certify that there is no identity of interest between the firm and the applicant/owner and/or the project architect.

The owner/construction manager contract must detail the responsibilities to be performed and the fee charged for each major activity, as well as due dates for all deliverables. Projects using a construction manager may not include builders overhead or profit in the development budget nor

have a general contractor. The functions detailed in the owner/construction manager contract must not duplicate any of the functions of the project architect.

A fixed price, limited to five percent of the estimated construction costs, is the generally accepted construction manager's fee. Applicants which plan to use a construction manager must ensure that the project architect prepares bid documents which allow for trade work to be bid separately. The construction manager may not act as a subcontractor on the project. The applicant must bid all work prior to the Contract Closing and must guarantee the total construction cost of the project. If the project employs a construction manager, DHCR/HTFC will not recognize the cost of a general contractor and no builder's profit or overhead may be requested.

AIA Document B801 (current edition) for owner/construction manager agreement is required unless justification is submitted for not doing so, and is approved in advance by DHCR/HTFC. Applicants must provide the owner/construction manager agreement with detailed cost estimates with the UF Application and Bid Document Submissions. If the contract amount for the construction manager fee is over $25,000, the applicant must submit a M/WBE Utilization Plan prior to execution of the contract.

5.11.03 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 phase (i.e., planning phase, marketing phase, construction phase, occupancy phase, etc.). OCD's project manager will review all consultant agreements for reasonableness of costs and clarity of the scope of work to be performed. DHCR/HTFC reserves the right to require an amendment to the agreement before funding is provided.

For those projects receiving a developer's fee, the housing consultant fee will be deemed to be a part of the developer's fee unless the applicant can demonstrate that the duties of the housing

consultant are above and beyond those normally performed by the developer.

5.11.04 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;

(ii) representation of the applicant at all closings;

(iii) title examination and curing of title defects; and

(iv) preparation of legal descriptions of property, and recording of title papers.

If the contract amount for the Attorney's fee exceeds $100,000, the applicant must submit an M/WBE Utilization Plan prior to execution of the contract.

Issued: **11/02**	Revised:
Section: **5.00**	Title: **DEVELOPMENT REQUIREMENTS**
Sub-Section: **5.11**	Topic: **Professional Service Contract Requirements**

5.11.05 Selection of a Builder

5.11.05.a Construction Contracting Requirements

DHCR/HTFC has two tracks for the contracting of construction work for its low-income housing projects. At the time of application funding, 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. 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 general contractor's/construction managers contract. The requirements for both tracks are enumerated in the sections below.

1. Publicized, Competitive Bidding

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. MBE/WBE outreach requirements will be part of the bidding process. HOME funded projects with 12 or more units or projects with 9 or more units of project based assistance are subject to Federal Labor Standards (Davis-Bacon Related Acts) regulatory requirements. The labor standards procedures for competitive bidding must be followed for these projects. Upon receipt of bids, the project sponsor and architect must notify DHCR/HTFC of the bidding results and the name of the selected lowest qualified bidder. The contractor's schedule of values must also be submitted to DHCR/HTFC at that time. DHCR/HTFC reserves the right to rebid a project or to negotiate a reduction in the scope of work, if all bids received are higher than the project's estimated total construction cost.

Since no contractor is available at the time of application submission, the project sponsor must ensure that the terms of the Owner/Architect Agreement include services for a detailed construction cost estimate prepared by a cost estimator based upon the preliminary drawings and specifications.

2. Pre-Selected Contractor/Construction Manager Requirements

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

In addition, a pre-selected contractor will be responsible for providing a detailed cost estimate of the construction work based upon the preliminary drawings and specifications with the project sponsor's application submission. If the Davis-Bacon Related Acts apply to a project the Federal Labor Standards clauses for the relevant federal program and the most current wage rate for the location and type of construction must be incorporated into the contractor/construction manager agreement. The construction cost estimate must include general requirements (3% to 6% of the labor and material costs); builder's overhead (up to 4% of construction amount allowed); and builder's profit (up to 10% of the construction amount allowed). General requirements that are special conditions such as security, impact fees, etc. to a project should be detailed on a separate itemized listing.

At the time of application submission, the project sponsor 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 project sponsor and shall be paid for from the developer's fee amount. Using a pre-selected contractor permits the project sponsor to "by-pass" the Bid Document Submission stage; thus creating only one set of submission

requirements, the Contract Documents.

All MBE/WBE requirements applicable to the pre-selected contractor must be documented through the contractor's selection process for sub-contractors and suppliers.

Applicants must maintain documentation of bid procedures, including invitations to bid, bid tabulations, M/WBE solicitation procedures, and written justification should a low bidder not be selected.

References should be carefully checked to ensure that the bidders and the selected builder have prior experience with comparable size projects, the financial capacity to complete the work, including sufficient working capital to cover carrying charges, and have satisfied any letter of credit/bond premium/retainage requirements.

The standard AIA A101 Owner/Contractor Agreement Form (current edition) should be used to execute construction contracts.

It is advised that per-unit costs be included in the bid documents in the event that unforeseen problems occur. For multi-site construction projects, the bid documents should also provide clear instructions for the builder to provide bids on an individual site basis.

All projects must provide a summary bid tabulation prior to the execution of Contract Documents to be reviewed for cost reasonableness. The selected builder must submit a detailed cost estimate/trade payment breakdown at the time of Contract Document Submission.

Any applicant which proposes to act as the builder or general contractor on its own projects must show successful prior experience, bear the responsibilities, and meet the requirements of builders or contractors.

Municipal applicants may be required to abide by the Wicks Law, which requires separate bidding and contracts for a minimum of four major construction trades. Non-municipal applicants may bid project work using a single builder. If the contract between the builder and the applicant is for an amount greater than $100,000, the applicant must submit an M/WBE Utilization Plan prior to execution of the contract, or within 90 days of the date assigned for the return of the HTFC commitment letter, whichever is sooner.

Contractors 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 contractors 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 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.

5.11.06 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 fidelity bond which is issued by the Superintendent of Insurance of the State of New York, which names the owner as obligee, and which is equal to at least 25% of the annual rent roll;

(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.

Issued: **11/02**	Revised:
Section: **5.00**	Title: **DEVELOPMENT REQUIREMENTS**
Sub-Section: **5.12**	Topic: **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.

5.12.01 Guarantee of Construction Contract Costs

Private developers will be required to adhere to the award amount in their Funding Commitment (see Sub-Section 3.02.08). Any additional costs or cost increases must be paid for by the developer.

5.12.02 Construction Loans Made to Private Developers

For projects administered by HTFC, interest, legal closing, and construction monitoring fees will be charged when construction loans are provided to private developers. Construction loan interest will generally be six percent simple interest on the outstanding loan principal. It is calculated as follows:

(i) the principal amount of the loan is multiplied by 0.5 to arrive at the average outstanding balance;

(ii) three months is added to the number of months in the construction period (for cost certification and HTFC approval of conversion of construction loan to permanent loan) and the total then is divided by 12;

(iii) the product of step 2, is multiplied by 0.06 (six percent); and

(iv) the product of step 1 is multiplied by the product of step 3 to produce total construction period interest.

A construction loan closing fee, generally $2,500, will be charged to reimburse DHCR/HTFC legal expenses. A construction inspection fee, generally $15,000, (* Exceptions will be made for small projects whose development costs are less that $1 million and whose developers are not for profit organizations. Fees may be increased for complicated projects, such as those with environmental or historic preservation issues. Such fees will be specified in the HTFC commitment letter) will be charged to reimburse a portion of such cost to HTFC. Construction interest, closing cost and inspection fees will be paid at the time of construction loan closing.

HTFC may reduce or waive some or all of the above charges if it decides that imposition of such charges would significantly impact either project feasibility or the affordability of project rents.

Issued: **11/02**	Revised:
Section: **5.00**	Title: **DEVELOPMENT REQUIREMENTS**
Sub-Section: **5.13**	Topic: **Persons with Special Needs Requirements**

5.13 Persons with Special Needs Requirements

A project is considered a project for persons with special needs if it targets 15% to 24% of its total units to one, or more, of the following populations and includes a supportive service plan where off-site services are to be delivered by either an independent service provider or by the housing sponsor:

Persons with AIDS/HIV Related Illness;
Persons and Familes who are in long term recovery from Alcohol/Substance abuse;
Persons with Psychiatric Disabilities;
Persons and Families who are Homeless Persons and Families including Youth aging out of foster care and Veterans who are Homeless;
Persons with Physical Disabilities;
Persons who are Victims of Domestic Violence;
Persons with Mental Retardation/Developmentally Disabled, and
Persons who are Frail Elderly
If the project is also an elderly project, an aging-in-place plan is required.

Supportive housing shall mean projects which give preference in tenant selection to persons with special needs for at least 25 percent of the LIHC-assisted units. To be considered supportive housing a project must meet all of the aforementioned persons with special needs criteria and comply with 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 as evidenced by a commitment of funding for services or a viable plan for funding services and an agreement in writing with an experienced service provider;

(3) The applicant must include a transportation plan to ensure access to necessary services;

(4) The applicant must have funding in place or identify a viable plan for the funding of appropriate 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; and

(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.

The comprehensive service plan requirement for a written agreement with an experienced service provider may be satisfied by utilizing the DHCR/HTFC model Housing/Service Agreement which can be found on the DHCR website at

http://www.dhcr.state.ny.us/ocd/forms/pdf/HsgSvcsAgreement.pdf .

The written agreement requirement may also be satisfied by using a document which incorporates all of the terms of the model Housing /Service Agreement.

5.13.01 Aging in Place Plan

This plan must identify the following:

project staff functions related to tenant requests for information/assistance;
what services are anticipated to be requested/required by elderly tenants;
means for helping tenants access services which they may request/require;
any community organizations that will address tenants' service needs; and
the design features which will be included to accommodate tenants' aging.

Issued: **11/02**	Revised:
Section: **5.00**	Title: **DEVELOPMENT REQUIREMENTS**
Sub-Section: **5.13**	Topic: **Persons with Special Needs Requirements**

5.13.02 Identification of Elderly Project Structure

Applicants proposing projects serving the elderly must identify whether their project will be structured as a 55 or older project or as 62 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 intended and operated as an elderly housing project. For further details, reference the Fair Housing Law exemption found at 24CFR 100.

In HTFC projects which are jointly financed by the US Department of Agriculture Rural Housing Services, an elderly project can only be occupied by persons 62 or older, or by handicapped persons of any age.

Issued: **11/02**	Revised:
Section: **5.00**	Title: **DEVELOPMENT REQUIREMENTS**
Sub-Section: **5.14**	Topic: **Federal Labor Standards Requirements**

5.14 Federal Labor Standards Regulatory Requirements (Davis-Bacon Related Acts)

Federal Labor Standards regulatory requirements (Davis-Bacon Related Acts) are enforced for certain Federal programs when projects meet specific threshold requirements such as HOME funded projects with 12 or more units or projects with 9 or more units of project based assistance.

The Federal Labor Standards regulatory requirements (described in Title 29 CFR Parts 1,3,5, 6,7) are comprised of the Davis-Bacon Related Acts, (DBRA); Contract Work Hours and Safety Standards Act (CHHSSA); the Copeland Act (Anti-Kickback Act); and the Fair Labor Standards Act (FLSA).

The DHCR Contracting Officer enforces the Federal Labor Standards requirements and rules promulgated by the HUD Office of Labor Relations. These requirements include providing initial information on wage rates, making determinations of appropriate rate schedules, locking in wage rates, and serving as a the depository for required federal payroll filings throughout the project.

A. Project Owner requirements prior to executing an owner-general contractor agreement:

1. Contact the DHCR Contracting Officer for a determination regarding application of appropriate wage rate schedule (residential or building) to the structures on the project.

2. Review contractor eligibility (debarment status) for federal contracting prior to entering into a federally assisted construction contact subject to these requirements. Federal funds will not be paid for work performed by debarred contractors and sub-contractors.

Issued: **11/02**	Revised:
Section: **5.00**	Title: **DEVELOPMENT REQUIREMENTS**
Sub-Section: **5.14**	Topic: **Federal Labor Standards Requirements**

B. General Contractors/Construction Managers are required to:

1. Lock in wage rates and file with the DHCR Contracting Officer copies of either: Documentation identifying: 'start of construction' date; copy of an owner –general contractor agreement containing both the federal program's labor standards clause, and the most current wage rate for the schedule and location of construction; or variances or other similar communications from the U.S. Department of Labor

2. Ensure that all bid documents, contracts and subcontracts contain applicable Federal labor standards clauses and Davis-Bacon wage decision. No contract is awarded to an ineligible subcontractor, (e.g., debarred) for federally assisted work.

3. Post the applicable wage decision (or alternative Project Wage Sheet, HUD form 4720) and Department of Labor 'Notice to Employees' (WH-1321) at the job site at a location accessible to all employees. (Pre-printed copies of the WH-1321 with DHCR Contracting Officer contact information will be provided to each project.)

4. Provide appropriate staffing, capable of: reviewing weekly certified payroll reports and related documentation from employees and sub-contractors; identifying discrepancies and/or violations; ensuring that any needed corrections are made promptly; making discrepancies known to the DHCR Contracting Officer along with payroll submissions; and cooperating with on-site inspections.

5. Submit original payroll reports to the DHCR Contracting Officer promptly after each construction draw. This must be accompanied by a summary sheet listing all active subcontractors on site, the name of the project and the project SHARS number.

If any skilled trades or laborer rates are not listed on the published wage determination, but required for the project, file a HUD 4230a form with the DHCR Contracting Officer requesting Department of Labor approval of a wage rate for the missing wage classifications.

Issued: **11/02**	Revised:
Section: **5.00**	Title: **DEVELOPMENT REQUIREMENTS**
Sub-Section: **5.14**	Topic: **Federal Labor Standards Requirements**

Any outstanding federal labor standards issues which remain unresolved at the end of the construction period may result in Federal funds not being released at finance closing. Contractors with U.S. Department of Labor penalties from previous Federal projects may have funds withheld from the current project's funding.

Section Six

Issued: **11/02**	Revised:
Section: **6.00**	Title: **CONSTRUCTION PROCESSING REQUIREMENTS**
Sub-Section: **6.01**	Topic: **Introduction**

6.01.01 Summary

Unless otherwise noted at the top of a specific heading, these requirements apply to the programs listed below. Some programs have additional requirements which are noted in the text; therefore, project participants should read this Section carefully.

(i) the Low-Income Housing Trust Fund (HTF) Program;

(ii) the Housing Development Fund (HDF) Program; and

(iii) the New York State HOME Program (HOME).

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

Issued: **11/02**	Revised:
Section: **6.00**	Title: **CONSTRUCTION PROCESSING REQUIREMENTS**
Sub-Section: **6.02**	Topic: **Construction Procedures and Requirements**

6.02.01 Pre-Construction Meeting Requirements

A project's construction phase begins with a pre-construction meeting, which should be held within ten days of the Contract Closing. In requiring the pre-construction meeting, DHCR/HTFC's goal is to expedite the project's construction by setting forth all program regulations, procedures and contract requirements, as well as clearly delineating the roles and responsibilities of each of the project participants. Attendance at the pre-construction meeting is required of the project participants listed below:

(i) the awardee, or its representative;

(ii) the owner or its representative;

(iii) the project contractor, or its representative;

(iv) the project architect;

(v) the OCD construction monitor;

(vi) the OCD project manager;

(vii) the OCD staff architect;

(viii) The Davis-Bacon contracting officer, if applicable;

(ix) the construction lender's representative, if applicable;

(x) the representative of any other funding source, if applicable; and

(xi) the construction manager, or clerk of the works, if applicable.

It is the owner's responsibility to conduct the pre-construction meeting. The following agenda sets forth the topics that should be discussed during the meeting:

(i) Introduction of project participants/signing of attendance sheet;

(ii) Roles and Responsibilities of Project Participants:

(a) roles/responsibilities of owner;

(b) roles/responsibilities of contractor and construction manager/clerk of the works, if applicable;

(c) roles/responsibilities of project architect;

(d) roles/responsibilities of OCD project participants (OCD project manager, construction monitor and staff architect);

(e) roles/responsibilities of municipality's representative, if applicable; and

(f) roles/responsibilities of private lender and/or other funding source(s), if applicable;

(iii) Review of General Conditions:

(a) permits;

(b) progress schedule;

(c) list of subcontractors and suppliers;

(d) Schedule of Values;

(e) construction supervision;

(f) coordination between subcontractors;

(g) shop drawings and material submissions;

(h) payments;

(i) change orders;

(j) responsibility for damage;

(k) disputes;

(l) delays;

(m) as-built drawings;

(n) insurance;

(o) construction start and completion dates; and

(p) temporary facilities;

(iv) Scheduling of construction meetings;

(v) Scheduling of OCD site inspections; and

(vi) Other issues

The owner must prepare minutes of the meeting immediately thereafter, summarizing items discussed and specifying agreements made. Copies of the minutes must be distributed to each project participant, within 5 business days whether or not they attended the meeting. The project manager will review the minutes and respond to any discrepancies or errors, if necessary. Installation of DHCR project sign is a requisite for approval of first disbursement and photographic evidence of the sign shall be required. (See Design Handbook for sign specifications)

6.02.02 Roles/Responsibilities of the Project Owner

The project owner has the following responsibilities with regard to construction of the project:

(i) selection and general supervision and coordination of the project contractor(s) during construction (the actions of the contractor(s) are the responsibility of the project owner);

(ii) completing, within the time frame specified in the contract, a project which meets all program requirements;

(iii) assuring compliance with all Minority and Woman Owned Business Enterprise (M/WBE) and Equal Opportunity requirements;

(iv) if applicable, assure compliance with all Federal Labor Standards (Davis-Bacon Related Acts) regulatory requirements. In the selection of the general contractor/construction manager, assuring eligibility status of contractors on federally assisted contracts (not debarred).

(v) processing and delivering all required paperwork regarding disbursement requests to the OCD project manager;

(vi) notifying the project contractor, project owner, private lender and any other funding

source(s) (if applicable) and OCD construction monitor of all construction work which is incomplete or incorrect and providing change orders for all changes in the construction documents prior to enacting any changes;

(vii) immediately notifying DHCR/HTFC if the contractor or subcontractor places a mechanic's lien upon the project; and

(viii) for projects with total development costs greater than $250,000, (or when required by DHCR/HTFC) providing DHCR/HTFC and the project owner with one set of as-built drawings at the time of project close-out, which include any significant deviations from the approved construction documents; and

(ix) providing all required bonding, letters of credit, and/or retainages as required by the construction lender.

(x) participating in the project's final inspection;

(xi) operating and managing the project in accordance with all program requirements upon completion; and

(xii) complying with all program rules and regulations, and the provisions of DHCR's Audit and Accounting Manual. (With the exception of low-income homestead project owners, all project owners will be required to submit an annual CPA audit for the project within 120 days of the close of their fiscal year).

Project owners should also review Sub-Section 6.02.10 for a list of responsibilities with regard to construction documents.

HTF and HOME owners must meet cost certification requirements as described in Sub-Section 6.05 (Cost Certification). Applicants who will act as the project contractor are also responsible for performing the activities listed under Sub-Section 6.02.04 (Roles/Responsibilities of the Project Contractor). Applicants should also familiarize themselves with the project development responsibilities and requirements outlined in Section 5.00 (Development Requirements).

6.02.03 Roles/Responsibilities of the Project Architect

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

(i) ensuring that the project is built in accordance with DHCR/HTFC approved construction documents and all applicable State and local codes, rules and regulations including the provision of adaptable and accessible requirements;

(ii) making periodic site visits, but no less often then once every two weeks, to determine the quality and progress of the work, and its compliance with DHCR/HTFC approved construction documents;

(iii) notifying the owner and OCD construction inspector of any deficiencies, and giving written notification to the contractor to correct deficiencies;

(iv) preparing and submitting any necessary reports advising the owner of problems,

delays, changes and disputes;

(v) preparing change orders;

(vi) reviewing and approving shop drawings;

(vii) participating in requisition meetings and punchlist and final inspections;

(viii) identifying punchlist items and amounts to be withheld pending their correction;

(ix) certifying that the project has been completed in accordance with the DHCR/HTFC approved construction documents, including any change orders; and

(x) preparing as-built drawings, if applicable.

The project architect also has responsibilities with regard to construction documents, which are discussed in SubSection 6.02.10.

6.02.04 Roles/Responsibilities of the Project Contractor

The project contractor is responsible to the owner for performing the activities listed below. Project owners who also act as the project contractor must meet the contractor's responsibilities listed below, in addition to those of the owner listed in Section 6.02.02.

(i) performing as specified in the Owner/Contractor Agreement (AIA A101 Form) including Davis-Bacon Related Acts requirements, if applicable;

(ii) working with the owner and the project architect to resolve construction changes, delays and disputes;

(iii) providing the Project architect and owner with written detailed cost estimates for all changes in the scope of work;

(iv) participating in the requisition meetings, construction meetings, and punchlist and final inspections;

(v) providing and updating the Schedule of Values;

(vi) coordinating all on-site construction activities;

(vii) providing on-site security (if applicable);

(viii) completing construction on schedule and within the DHCR/HTFC approved construction budget;

(ix) meeting the bonding requirements outlined in Section 5.00 (Development Requirements);

(x) meeting all contractor insurance requirements specified in Section 5.00 (Development Requirements);

(xi) immediately notifying the owner if a mechanic's lien is placed upon the project;

(xii) providing interim construction financing to meet all subcontractor payment requests; and

(xiii) supervising all subcontractors and suppliers.

Contractors should review Sub-Sections 6.02.10, 6.02.11 and 6.02.12 for a discussion of responsibilities with regard to construction documents and stored materials.

6.02.05 Roles/Responsibilities of the Construction Lender

For some programs, DHCR/HTFC may, upon submission and approval of an escrow agreement, allow the construction lender to hold DHCR/HTFC funds in escrow for disbursement during the project's construction. This transfer of responsibility will take place only if there is no identity of interest between the construction lender and the owner or contractor, and provided the construction lender has the ability to perform bi-weekly project inspections. Other escrow account requirements are more fully discussed in Sub-Section 6.03.04.

In the event DHCR/HTFC agrees to the aforementioned arrangement, the construction lender will be responsible for performing one or more of the following activities (failure to perform designated activities will result in DHCR/HTFC freezing the escrow account or, in the case of permanent take-out, may result in the delay of settlement closing and/or a reduction in the permanent take-out amount):

(i) administering the Construction Loan Agreement;

(ii) making site inspections;

(iii) approving construction work and change orders;

(iv) disbursing progress payments and final payment;

(v) providing written monthly reports to the awardee, owner and DHCR/HTFC, detailing all deficiencies in construction work and/or delays and changes to construction documents;

(vi) providing, at the time of project closeout, a final reconciliation of all transactions, fees, charges, and interest earned and paid out during construction;

(vii) certifying to DHCR/HTFC that the required DHCR/HTFC closeout documents have been received and approved. DHCR/HTFC will not sign-off on the project's closeout or release the retainage until it receives such certification from the construction lender;

(viii) returning all interest earned and/or unexpended funds to DHCR/HTFC within 90 days of project completion;

(ix) releasing retainage only after DHCR/HTFC reviews and gives final approval of cost certification, if applicable; and

(x) depositing any escrowed DHCR/HTFC funds in an interest-bearing account(s), the balance of each which does not exceed $100,000, and agreeing to follow specific DHCR/HTFC policies for collateral and investment.

If the construction lender does not hold DHCR/HTFC funds in escrow, construction inspections will be done by DHCR/HTFC in conjunction with the construction lender's inspectors, and the monthly written reports on the construction work will be provided by DHCR/HTFC to the lender and owner.

6.02.06 Roles/Responsibilities of the OCD Project Manager

The OCD project manager has the following responsibilities during the project construction period:

(i) coordinating all project correspondence with the owner, and with the OCD technical units;

(ii) explaining to the owner all general disbursement and close-out procedures at the pre-construction meeting;

(iii) reviewing and processing all payments, budget modifications, and award increase requests (all payments and budget modifications must be approved by the Regional Director);

(iv) notifying the owner and construction lender in writing of any construction problems that may prevent the DHCR/HTFC from executing its permanent take-out

agreement, or approving any change order requests, which may result in the reduction of DHCR/HTFC funds available for permanent take-out; and

(v) attending the project's final inspection.

6.02.07 Roles/Responsibilities of the OCD Construction Monitor

The OCD construction monitor is responsible for:

(i) monitoring DHCR/HTFC Program's project construction on a pre-determined schedule based upon the size of the project, as discussed at the pre-construction meeting by the construction monitor, owner and contractor; (HDF projects will be inspected as set forth above only if DHCR/HTFC is the lead review agency, or if HDF will fund 50% or more of the construction loan amount);

(ii) monitoring and reporting to the OCD staff architect and project manager the progress and quality of the project construction;

(iii) making recommendations to the OCD staff architect for approvals of the contractor's payment requests based on the percentage and quality of work done;

(iv) reviewing and assisting the OCD staff architect in approving change orders and resolving construction problems; and

(v) performing punchlist and final inspections to ensure that the project construction is acceptable and in compliance with all construction documents (final project closeout cannot occur without the construction monitor's final inspection and report stating

that the project is 100% complete).

(vi) reviewing as built drawing submissions as requested by the OCD Staff Architect.

In case of tax exempt bond or 501(c)(3) Bond Financing, HTFC may consider having a joint construction monitor with other project lenders and/or the source of the credit enhancement or may assign this role to the bond issuer, if it is serving as lead agency for reviews and project monitoring

6.02.08 Roles/Responsibilities of the OCD Staff Architect

The OCD staff architect is responsible for:

(i) supervising the OCD construction monitor;

(ii) assisting the construction monitor in performing the punchlist inspection;

(iii) aiding in the resolution of any construction issues or problems; and

(iv) reviewing change orders and giving their approval or disapproval to the project manager.

6.02.08A. Roles/Responsibilities of the DHCR Federal Labor Standards (Davis-Bacon Related Acts) Contracting Officer

The DHCR Contracting Officer will:

(i) Provide technical assistance and training;

(ii) Make updated determinations on appropriate wage rate schedules, (residential or building);

(iii) Review certified payroll reports and related documentation, identifying discrepancies and/or violations, and ensure that any needed corrections are made promptly;

(iv) As required, conduct on-site inspections, performing interviews with laborers and mechanics employed on work sites;

(v) Ensure that the applicable Davis-Bacon wage decision and Department of Labor Notice to Employees notice is posted at the job site;

(vi) Refer potential criminal or complex investigations, Contract Work Hours and Safety Standards Act assessments for overtime violations and debarment recommendations to HUD;

(vii) Maintain full documentation for Federal Labor Standards administration and enforcement activities;

(viii) Comply with all HUD requirements concerning special statutory, program, and/or other requirements.

6.02.09 Roles/Responsibilities of the Local Program Administrator

For HTF program see Section 2.01.01

6.02.09.A Roles/Responsibilities of the HOME Local Program Administrator (LPA) State Recipients and Subrecipients

HOME LPAs are responsible for the following areas:

(i) ensuring that the minimum amount of HOME funds needed to maintain affordability is invested in each assisted unit, by conducting initial and subsequent inspections, independent work write ups and cost estimates, reviews of plans and specifications, determinations of financial feasibility, following acceptable contractor selection procedures, soliciting and reviewing bids, and adequately insuring assisted properties, consistent with the LPA's Administrative Plan;

(ii) on-site monitoring of construction activities and disbursement of construction funds, reviewing change orders, placing liens, and ensuring full completion prior to release of retainage and liens, consistent with the LPA's Administrative Plan;

(iii) financial management of all HOME funds, establishing a local HOME Investment Trust Fund account, if applicable, disbursing funds to owners or contractors, coordinating payment of HOME Program funds with funds from other sources, tracking and reporting on repayments and other program income, and data entry and maintenance of the recipient's account in HUD's Integrated Disbursement Information System;

(iv) compliance with all uniform administrative requirements, as described in 24 CFR 92.505;

(v) compliance with 24 CFR 92.354, where applicable, requiring wages prevailing in the locality, as required by the Davis-Bacon Act, and the provisions of the Contract Work Hours and Safety Standards Act (42 CFR 327-333), and performing all activities related to compliance with applicable labor standards for any Program subject to this requirement.

For more information on the role of HOME LPAs, see Section 2.05.07.

6.02.10 Responsibilities for Construction Documents

> This Section does not apply to HDF Program projects unless DHCR/HTFC is the lead review agency.

The project owner has the following responsibilities with regard to construction documents:

(i) ensuring that the project architect maintains up-to-date plans, specifications, addenda, modifications and change orders, and that the OCD project manager and staff architect receive such documents;

(ii) ensuring that the contractor or any other designated representative of the project owner obtains all necessary building permits, local approvals, licenses, etc., prior to starting project construction, and that the OCD project manager and staff architect receive such documents;

(iii) ensuring that the contractor's Schedule of Values is delivered to the OCD staff architect at, or prior to, the pre-construction meeting, and that it has been reviewed and approved by the owner's project architect;

(iv) ensuring that the contractor's Schedule of Values is updated to reflect all change orders, and is then forwarded to the OCD staff architect;

(v) providing the DHCR/HTFC with all change order requests for DHCR/HTFC approval prior to authorizing any changes to the contractor; and

(vi) submitting to the OCD project manager along with the final close-out payment request, mylar or 1 paper copy and 3 CDROMS of the as-built drawings, which reflect all significant deviations from the DHCR/HTFC approved documents, change order work, field conditions, and field directives performed on the project, including all shop drawings.

Issued: **11/02**	Revised:
Section: **6.00**	Title: **CONSTRUCTION PROCESSING REQUIREMENTS**
Sub-Section: **6.02**	Topic: **Construction Procedures and Requirements**

6.02.11 Schedule of Values

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

Contractors must prepare and maintain a Schedule of Values for the project. This is a progress and payment schedule for each major trade item (as detailed in the contractor's trade item cost breakdown), listing the item's dollar value, and its percentage of completion for each payment request. Schedules of Value may also, on a month-by-month basis, project the estimated amount of work to be completed for each trade item. All change order work that has been performed must be reflected in the next monthly Schedule of Values submitted for a progress payment. The Schedule of Values is usually developed on the AIA G703 Form (Continuation Sheet), and must be reviewed and approved by the owner and project architect.

The Schedule of Values must be submitted to the OCD staff architect at or prior to the pre-construction meeting. Progress payment requests will not be processed by the OCD project manager until the OCD construction monitor compares the progress of construction to the estimates in the Schedule of Values, and recommends approval of the percentages of completion reflected in the schedule.

Issued: **11/02**	Revised:
Section: **6.00**	Title: **CONSTRUCTION PROCESSING REQUIREMENTS**
Sub-Section: **6.02**	Topic: **Construction Procedures and Requirements**

6.02.12 Stored Materials on Site

> This Section does not apply to HDF Program projects unless DHCR/HTFC is the lead review agency.

Project contractors must provide DHCR/HTFC with the following items in order for stored on- or off-site materials to be recognized by DHCR/HTFC:

(i) a letter to the OCD project manager and construction monitor, requesting a waiver of the DHCR/HTFC policy that disbursement requests may not include the cost of stored materials;

(ii) a letter certifying that the contractor will take responsibility for the loss of materials, and will not seek compensation from DHCR/HTFC for stolen materials;

(iii) a letter certifying that the contractor has on/off-site security and insurance to protect the materials at the location where they are stored;

(iv) invoices and pictures of the stored materials which are submitted with the disbursement request; and

(v) stored materials have been visually inspected and photographed by the OCD construction monitor.

Contractors who do not provide the documentation set forth above may not count stored materials in the Schedule of Values percentage of completion, and may not claim payment for stored materials in their disbursement request.

6.02.13 Disputes, Claims, Delays and Time Extensions

It is the owner's responsibility to resolve any disputes and claims that arise between the project architect, contractor and subcontractors.

The owner must notify the OCD project manager and construction monitor within ten days of the occurrence of a dispute or claim. Any resolution of a claim which proposes either a change order or an increase in the contract must be reviewed and approved in writing by the OCD project manager. DHCR/HTFC may require that a "finding of fact" be prepared and submitted by the awardee/owner and its attorney so that DHCR/HTFC can review the circumstances surrounding the claim, and make an appropriate determination.

Owners must report delays in project construction within ten days to the OCD project manager and to the construction monitor. A written explanation for the delay, together with a request for a specific time extension must also be submitted within ten days. DHCR/HTFC will review all delays and additional costs incurred on a project-by-project basis.

The circumstances under which change orders, budget modifications and award increases will be considered by DHCR/HTFC are described below. Also discussed are the procedures and documentation which the owner must comply with in order to make changes to construction documents, budgets or awards.

Issued: **11/02**	Revised:
Section: **6.00**	Title: **CONSTRUCTION PROCESSING REQUIREMENTS**
Sub-Section: **6.03**	Topic: **Change Orders/Budget Modifications/Escrow Accounts**

6.03.01 Change Orders

A change order is a written agreement which describes any changes in the construction work to be performed. Change orders are prepared by the project architect, who submits them to the owner for approval. DHCR/HTFC will not recognize any change orders for consideration of project scope changes or requests for additional funding, if they are received for review after the issuance of the temporary certificate of occupancy. The owner should not sign a change order until it has been accepted by by DHCR/HTFC. Change orders reflecting the following conditions must be submitted to the OCD construction monitor and staff architect for review and acceptance prior to the contractor enacting any changes to the scope of the work:

(i) changes to the project scope, or adding work which was not in the approved construction documents;

(ii) deleting work which was provided for in the construction documents;

(iii) changes to material, placement or number of work items which were provided for in the construction documents;

(iv) unforeseen field conditions, such as deteriorated material, not visible upon normal inspection of the building;

(v) errors or omissions in the construction documents which must be corrected in order to complete the construction and obtain a Certificate of Occupancy;

(vi) time extensions beyond the date specified in the Owner/Contractor Agreement for

completion of construction; and

(vii) no-cost change orders, which substitute items or have no impact on the project cost or the completion date of the construction work.

Change orders are prepared by the project architect, using Form AIA G701 (Change Order). All alterations to the project resulting from change orders must be reflected on Form AIA G703 (Continuation Sheet). All change orders, including those which are to be financed by non-DHCR/HTFC funding sources or by owner equity, must be reflected on the Disbursement Request Form and/or Form AIA G702 (Application and Certificate of Payment).

All change order submissions must include the following:

(i) a completed Form AIA G701 (Change Order), containing the number of the change order, the date initiated, a detailed description of the work to be performed, and/or the referenced change order drawing(s) to be added to the construction documents; all change order drawing(s) must be stamped and signed by the project architect;

(ii) the cost of the work (credit, debit or no charge);

(iii) the contractor's written proposal for the cost of the work, attached to the change order;

(iv) the signatures of the project architect and contractor;

(v) an estimate of additional time required to complete the work; and

(vi) architectural drawing(s) showing the proposed change.

Issued: **11/02**	Revised:
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The change order review process begins when the owner, contractor and project architect discuss the proposed change or work with the OCD construction monitor at the construction meeting. The OCD construction monitor will review the change order paperwork to ensure it contains all necessary documents and that it is indeed a change from the contract documents accepted by the OCD Statff Architect. The staff architect will confer with the construction monitor and the OCD project manager prior to accepting the change order. Upon the staff architect's approval, the original order will be returned to the owner , signed by the OCD staff architect. This authorizes the project architect to include the change order on Form AIA G702 (Application and Certificate for Payment) when it is submitted with the next progress payment request. No change in work should be performed by the contractor prior to DHCR/HTFC acceptance of the change order in which the change in work scope is detailed.

For projects where the DHCR/HTFC is a permanent take-out lender, the owner should get change order approval prior to commencement of such work to ensure the DHCR/HTFC commitment for permanent financing is not jeopardized. Failure to provide change orders to the DHCR/HTFC during construction will, at a minimum, result in a time delay at the closing, as DHCR/HTFC will not execute permanent loan closing documents until all change orders are correctly submitted and reviewed by the OCD staff architect. The amount of the DHCR/HTFC loan will be reduced by the amount of change orders not approved by DHCR/HTFC.

All change order requests which exceed the contingency funds allocated in the project's development budget must be approved by the HTFC President. The owner must submit a letter and support documentation, explaining in detail the reason for the cost overrun, and demonstrating that no other funding sources are available to pay for the cost overrun.

DHCR/HTFC does not guarantee payment for any cost overruns or change orders which have been ordered by the owner and have not been submitted to and approved by DHCR/HTFC.

For HTF and HOME Program projects, any change order requests which would result in a

greater than ten percent increase in the approved award amount must be submitted to the HTFC Board for approval prior to performing the change of work.

6.03.02 Emergency Change Order Requests

Emergency change orders are those that, if not approved, would force a complete shutdown of the job site for a period of more than one week. When making an emergency change order request, the owner must obtain the contractor's upset (or maximum) price for the work, which must be agreed upon by the owner and project architect. The owner must notify the OCD construction monitor immediately of the need to process an emergency change order, and provide the agreed-upon upset price. The construction monitor will verify the emergency within 48 hours of notification by conducting a site visit or conferring with the OCD staff architect, if necessary. If the emergency is verified, the construction monitor and staff architect will review the upset price to ensure its appropriateness. The staff architect will confer with the project manager before approving any change order.

Upon the staff architect's approval, the construction monitor will give verbal notification (followed in writing) to the owner to proceed with processing the change order. The owner will then give written notification to the project architect and contractor to proceed with the emergency change order work, stipulating that within seven days, the contractor must furnish a detailed written cost breakdown of the work to be performed, the total of which cannot exceed the agreed-upon upset price. If the contractor fails to submit the required written cost breakdown, the owner's future payment requests will not be processed. Upon receipt of the cost breakdown, the owner should submit the emergency change order request according to the standard change order procedures outlined herein.

Emergency change order requests with upset prices greater than the amount remaining in the contingency fund must be reviewed and approved before being processed. Emergency change order

requests for projects funded under HTFC-administered programs must also receive the approval of the HTFC Board if greater then ten percent of the award amount.

6.03.03 Budget Modifications

Applicants seeking to modify their project's budget by redirecting funds between major budget line items, (e.g. between construction and soft costs) must submit written documentation substantiating the need to make the change. The justification will be reviewed by the OCD project manager, who will recommend that the Program Manager either approve or deny the budget modification. No DHCR/HTFC approved project budget may be modified without authorization from the Program Manager. For HTFC-administered programs, the Program Manager will transmit the budget modification request to the HTFC Finance Officer for final approval. The HTFC Finance Officer will transmit the approved budget modification request to the owner.

Contingency funds should be requested only for approved construction change orders or construction-related cost overruns or other soft cost and item changes which have been approved by the Program Manager. Any funds remaining in the contingency fund will result in a reduction in the final disbursement.

6.03.04 Escrow Accounts

On a case-by-case basis, OCD may permit the establishment of escrow accounts for DHCR/HTFC program projects which are financed in conjunction with other federal, State, private or municipal agencies. (See Sub-Section 6.02.05 for a detailed discussion of the construction lender's responsibilities with regard to escrow accounts).

Issued: **11/02**	Revised:
Section: **6.00**	Title: **CONSTRUCTION PROCESSING REQUIREMENTS**
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For DHCR/HTFC program projects, funds may be deposited into the project's escrow account for disbursement during construction, in accordance with the owner's Construction Loan Agreement and the Escrow Agreement. The Escrow Agreement is a contract between the owner, DHCR/HTFC and an escrow agent, which establishes the terms and conditions under which the escrow agent may disburse funds, how the funds will be held on deposit, and in some cases, the terms of the construction loan management. Escrow account management fees are negotiated on a case-by-case basis. All unexpended funds and interest earned on HTF/HOME or HDF project escrow accounts must be returned to HTFC or DHCR, respectively, within 90 days of the Escrow Agreement's termination.

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

Issued: **11/02**	Revised:
Section: **6.00**	Title: **CONSTRUCTION PROCESSING REQUIREMENTS**
Sub-Section: **6.04**	Topic: **DHCR/HTFC Disbursement Procedures**

The disbursement procedures set forth below do not apply to HDF projects for which DHCR/HTFC is not the lead review agency.

Since owners with projects having permanent DHCR/HTFC financing are required to submit a final Disbursement Request Form only, the progress payment disbursement procedures set forth herein do not apply. See Sub-Section 6.06 for discussion of permanent DHCR/HTFC financing close-out procedures.

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

6.04.01 Progress Payment Requests

After contract execution, owners may make progress payment requests for the disbursement of funds to pay for completed construction work, professional services rendered, fees paid or charges incurred with regard to the project's soft costs, or working capital expenses as delineated in the owner's DHCR/HTFC approved Development Budget.

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

notification may occur via telephone, but must be confirmed in writing. Rescheduling or postponing the monthly construction inspection meeting may result in delayed processing of the disbursement request.

Each progress payment request for completed construction work must have the required minimum retainage of ten percent of the construction cost withheld. Depending upon the conditions of the 100% performance bond or letter of credit, the retainage percentage may be higher than ten percent.

Requests for progress payments that include change order work will only be processed if the change order request has been approved by DHCR/HTFC and the work has been performed. DHCR/HTFC reserves the right to stop processing progress payment requests if change order work is performed without the express written approval of DHCR/HTFC.

6.04.02 Required Forms and Documentation for Progress Payment Requests

The owner must submit certain documents, which are detailed below, to the OCD project manager when making a progress payment request. Required documents may include, but are not limited to:

(i) one original Request for Disbursement Form, reflecting updated disbursement amounts from all funding sources;

(ii) one original Disbursement Request Support Documentation Form;

(iii) one original AIA G702 Form (Application and Certificate for Payment);

(iv) one original AIA G703 Form (Continuation Sheet);

(v) for HDF and RRAP projects only, one Standard State Voucher;

(vi) copies of DHCR/HTFC approved change orders for which work has been completed, together with appropriate support documentation;

(vii) invoices for professional service fees, subcontractors, suppliers, vendors and utility companies, acquisition expenses (when the full acquisition amount is requested), relocation assistance expenses, and, if applicable, statements of finance charges for lines of credit and/or interim loans which were approved in advance by DHCR/HTFC;

(viii) receipts for eligible working capital expenses; and

(ix) the most recent bank statement for the checking account containing DHCR/HTFC funds.

In addition to the above, owners of projects receiving HTF and HOME Program funds must obtain a notice of title continuation each time a disbursement is requested (except for predevelopment award disbursements). This assures HTFC that no liens have been placed upon the property since the last disbursement. Upon completion of the title update, the title company must directly notify the HTFC Finance Officer. The notification may initially occur via telephone, but must be confirmed in writing. The disbursement will only be released when the HTFC Finance Officer receives verbal notification of clear title from the title company. If, by the time the next disbursement request is submitted, the required written confirmation of clear title has not been received for the previous disbursement, the next disbursement will be held until written confirmation of clear title, current with the most recent disbursement request, is received (facsimilied confirmations are acceptable). The OCD project manager will notify the owner immediately should a problem arise with the title.

Issued: **11/02**	Revised:
Section: **6.00**	Title: **CONSTRUCTION PROCESSING REQUIREMENTS**
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6.04.03 Progress Payment Requests for Multi-Site Projects

For projects with more than one site, owners must submit a separate Disbursement Request Form for each of the project sites, as well as a Disbursement Request Form summarizing all site costs for the project as a whole.

For multi-site projects with more than one contractor, disbursements will be processed, and close-outs will occur, on a site-by-site basis, rather than when all project sites are completed. This means that Final Payment Requests (Sub-Section 6.04.07) will be processed for each site in a multi-site project as they are completed.

No project (as opposed to Program) will be closed out until all closing documents and cost certifications for all sites have been submitted and approved by DHCR/HTFC.

6.04.04 Progress Payment Processing Procedures

Upon receipt, the project manager will review all required documents as listed in Section 6.04.02 to ensure completeness, accuracy, and conformance with the latest approved budget. If the Disbursement Support Documentation Form is not completed, the Request for Disbursement will not be processed.

If the Request for Disbursement Form is approved by the project manager, he or she will sign and forward it to the Regional Director for approval. Request for Disbursement Forms for projects funded under HTFC-administered Programs will then be forwarded to the HTFC Finance Officer for final approval and processing. If the Request for Disbursement is complete and accurate, a check will be released to the owner within 10-14 calendar days of its receipt. However, for projects receiving HTF and HOME Program funds, this timetable is subject to the receipt of a timely verbal or written, if necessary, title continuation. For projects funded under programs administered by DHCR, the Request for Disbursement Form will, following approval by the project

manager and the Regional Director, be forwarded to the Office of Financial Administration for processing through the Office of the State Comptroller. A check will be released to the owner within 30 calendar days of the Request for Disbursement's receipt. Any inquiries regarding disbursements should be directed to the OCD project manager no earlier than one week after the above timeframes.

6.04.05 Final Payment Requests

Final payment requests are made only after the project's final inspection has occurred and the project architect has signed the AIA G704 Form (Certificate of Substantial Completion). Additionally, the OCD project manager cannot begin to process a final disbursement request until the OCD staff architect determines that all punchlist items have been satisfactorily completed, and signs the final Request for Disbursement Form.

Final payment requests usually include disbursements for construction retainage, balances remaining in the working capital fund, and reserve funds. Contingency funds which are not needed will not be disbursed. Any interest earned will also be recaptured by DHCR/HTFC at this time. All change orders must be submitted and approved by DHCR/HTFC prior to processing a final payment request. DHCR/HTFC reserves the right to reduce the final award amount via the contingency fund if disputes arise from the result of unapproved but completed change order work. DHCR/HTFC also reserves the right to delay final payment to the awardee if all change orders have not been submitted for DHCR/HTFC approval.

HTFC may require the holdback of up to $25,000 in addition to construction retainage. These additional funds will be disbursed upon submission of all project close-out documents including permanent Certificates of Occupancy, As-built Drawings and other items cited in Section 6.04.07 of the manual.

For projects involving tax exempt bonds or 501(c)(3) bonding, HTFC will require an escrow equal to 3% of total development cost (less the developer's fee) as a five-year guarantee on

workmanship. Disbursement of the escrow is subject to verification of satisfactory workmanship through inspections by an HTFC-approved architect. However, there are exceptions to this program requirement and HTFC may reduce or eliminate the escrow requirement at its discretion for projects in which the bond issuer is serving as lead agency and for certain new construction projects. In addition, HTFC may waive the escrow requirement in consideration of the awardee having a construction contract with the general contractor which includes a guarantee of workmanship for five years beyond the construction completion date, and the awardee or its general contractor agrees to provide a payment and performance bond equal to 3% of TDC (less the developer's fee) for a term equivalent to the guarantee of workmanship.

6.04.06 Punchlist and Final Inspections

When the project's construction is 95% complete, the owner will schedule a punchlist inspection with the OCD construction monitor, project contractor, and project architect. The contractor, project architect, and OCD construction monitor, should agree upon which incomplete or incorrect construction items should be included on the punchlist, which will be formally prepared by the project architect, with copies given to all parties listed above.

If the project architect wishes to minimize the number of items included on the punchlist, he or she should draft a punchlist prior to the inspection so that the owner and contractor can begin correction or completion. The OCD punchlist work items should not take more than five-to-seven work days to be completed or corrected. When all punchlist items have been corrected or completed, construction is 100% complete, and the owner has received a certificate of occupancy (C of O) or temporary C of O from the municipality having jurisdiction over the project, a final inspection will be scheduled by the owner. Those who must attend the final inspection include the owner, contractor, project architect, OCD project manager, OCD construction monitor and OCD staff architect.

If the project architect is satisfied with the quality of the construction work, and degree of

completion, he or she will sign the AIA G704 Form (Certificate of Substantial Completion). The OCD staff architect will sign the final Request for Disbursement Form when all punchlist items have been completed or corrected, and the construction is 100% complete. The OCD project managers cannot begin to process the final Request for Disbursement Form until it has been signed by the OCD staff architect.

6.04.07 Required Forms and Documentation for Final Payment Requests

For each site for which the owner is submitting a final payment request, one signed original of each of the following documents must be submitted to the OCD project manager (LPA required documents are listed further below):

(i) Request for Disbursement Form;

(ii) Disbursement Request Support Documentation Form;

(iii) final AIA G702 Form (Application and Certificate for Payment);

(iv) final AIA G703 Form (Continuation Sheet);

(v) AIA G704 Form (Certificate of Substantial Completion);

(vi) AIA G706 Form (Contractor's Affidavit of Payment of Debts and Claims);

(vii) AIA G706A Form (Contractor's Affidavit of Release of Liens) certified by the contractor, with general releases of liens from all major subcontractors and suppliers;

(viii) construction monitor's Final Inspection Report;

(ix) copies of all DHCR/HTFC approved change orders;

(x) C of O issued by the local building authority; (a temporary C of O may be submitted for final payment with the stipulation that a permanent C of O must be issued prior to the release of the contractor's retainage, unless waived in writing by DHCR/HTFC);

(xi) required licenses from governmental regulatory agencies, if applicable;

(xii) a lien bond or indemnity bond for all outstanding claims in connection with the construction contract as identified in the Waiver of Mechanic's Liens, if applicable;

(xiii) a fire insurance policy and blanket position fidelity bond naming DHCR/HTFC and the State of New York as loss payees, and comprehensive general liability insurance and worker's compensation and disability insurance policies naming DHCR/HTFC and the State of New York as additionally insured parties;

(xiv) for projects with construction costs in excess of $250,000, or when required by DHCR/HTFC, as-built drawings indicating all changes and revisions to the bid documents;

(xv) standard lease to be used for project rent-up, incorporating all Program requirements, if applicable;

(xvi) four color 5" x 7" prints of the completed project;

(xvii) for all projects governed by Rent Stabilization or the Emergency Tenant Protection

Act (ETPA), evidence of registration with DHCR Rent Administration;

(xviii) a copy of the Two-Tier Rent Form, if applicable;

(xix) a copy of the Rent Registration Form, if applicable;

(xx) verification that all material warranties have been delivered to the project owner;

(xxi) verification that all permanent financing as indicated in the contract is in place;

(xxii) Occupancy Status Report Form;

(xxiii) for HTF and HOME Program projects only, a Project Cost Certification Audit on project expenditures, prepared by an independent Certified Public Accountant (see Sub-Section 6.05);

(xxiv) if the Development Budget approved by DHCR/HTFC at the time of contract execution has changed, an updated Development Budget reflecting the final DHCR/HTFC approved amounts;

(xxv) if the Rent Plan and/or Affordability Plan approved by DHCR/HTFC at the time of contract execution has changed, an updated Rent Plan and/or Affordability Plan reflecting DHCR/HTFC approved adjustments; and

(xxvi) documentation that all required project operating and Reserve accounts have been established, as well as copies of dual signature cards for Reserve accounts.

(xxvii) J-51 Certification

(xxviii) For HOME projects, a Rental Housing Completion Report Form (HUD-40097) which includes the requested information for all project units.

(xxix) approved Minority/Women - Owned Business Enterprise Utilization Plan, if not submitted.

(xxx) for HOME projects, Section 3 Summary Report

(xxxi) approved Marketing plan if not submitted.

(xxxii) if the ownership of the project will be transferred to another entity for the regulatory period, an explanation of the need for the transfer, documentation showing that the new owner is an eligible applicant under the program providing funding for the project and information on the staff who will be involved in administering the project following the transfer.

6.04.08 Final Payment Processing Procedures

The OCD project manager will review all required documents described in Section 6.04.07 upon receipt for completeness, accuracy, required signatures, and conformance with the latest DHCR/HTFC approved budget. For projects which require it, the Cost Certification Audit will be sent to the OCD project manager as part of the close-out submission.(See Section 6.05)

For the HTFC administered Programs, the OCD project manager and Regional Director will, upon review and approval of all required documents, sign the final Request for Disbursement Form, and forward the entire final disbursement package to the HTFC Finance Officer for final approval and processing.

Issued: **11/02**	Revised:
Section: **6.00**	Title: **CONSTRUCTION PROCESSING REQUIREMENTS**
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For the HDF Program, the final Request for Disbursement Form and Support Documentation Form will be forwarded, following Regional Office approval, to CAU for processing through the State Comptroller's Office.

This Section applies to projects funded under all DHCR/HTFC administered Programs, with the following exceptions:

(i) projects for which DHCR/HTFC program funds will be used only for a distinct purpose, such as acquisition, are exempt from DHCR/HTFC cost certification requirements;

(ii) projects for which another funding source is requiring a cost certification of all project funds, including DHCR/HTFC funds, are exempt from DHCR/HTFC cost certification requirements, provided that DHCR/HTFC is supplied with a copy of such certification; and

(iii) projects which have only one funding source, and which have a total project cost less than or equal to $100,000, are exempt from DHCR/HTFC cost certification requirements, but are subject to an independent closeout review.

The purpose of cost certification is to establish the project's actual total cost, including the construction cost, in order to determine the maximum DHCR/HTFC award amount for the project's final closeout. DHCR/HTFC requires that cost certifications be submitted as part of the project close-out package so that the final retainage may be released upon project completion.

Issued: **11/02**	Revised:
Section: **6.00**	Title: **CONSTRUCTION PROCESSING REQUIREMENTS**
Sub-Section: **6.05**	Topic: **Cost Certifications**

Cost certification will be required of the following owner types:

(i) for-profit owners;

(ii) not-for-profit owners which have an identity of interest with the project architect, project contractor/developer, and/or project consultant;

(iii) not-for-profit owners which have acted as the project contractor; and

(iv) subrecipients which receive HTF awards from LPAs (except in cases where there is only one project funding source, and the total project cost is less than or equal to $100,000).

DHCR/HTFC reserves the right to request a cost certification in situations other than those described above based on the size and complexity of the project financing or other substantive factors.

All cost certifications must be performed by an independent New York State Certified Public Accountant (CPA). DHCR/HTFC may require that the cost certification be performed by an independent CPA under contract with DHCR/HTFC if there is an identity of interest between a for-profit owner and the project architect, contractor and/or consultant. If the owner is told that the cost certification must be done by a DHCR/HTFC contracted CPA, it must notify the project manager when the project is 75% complete so that the cost certification can be scheduled. Failure to do so may result in an inability to schedule the cost certification with the DHCR/HTFC contracted CPA in a timely manner, and thus, a delay in the project's closeout.

To meet cost certification requirements, for-profit owners must submit the following:

(i) a certification by the owner that the cost certification was completed by an independent CPA who is acceptable to DHCR/HTFC, or by the DHCR/HTFC contracted CPA, and that the certification is for the total project cost, including all funding sources;

(ii) an accounting of all the major line items as detailed in the project's final approved Development Budget, and a listing of the actual dollar amount expended from every funding source (less any retainage) for each line item, compared against the approved total cost budgeted for each line item;

(iii) copies of the final AIA G702 Form (Application and Certificate for Payment) for each prime contractor, indicating the final dollar amount of all construction work for that contractor, signed by the contractor, project architect and owner;

(iv) a copy of the owner's final Request for Disbursement Form; and

(v) a CPA's certification that the soft costs, acquisition costs and working capital expenses of the project are accurate, and adequately documented by actual invoices and payments by the owner to all vendors listed.

Owners who have an identity of interest with the project contractor/developer, architect and/or consultant must submit the following documents to meet the cost certification requirements:

(i) all documents listed in (i) through (v) above;

(ii) a detailed trade item breakdown of all the contractor's actual project costs, including overhead and profit, as listed on the AIA G703 Form (Continuation Sheet);

(iii) unless performed by a CPA contracted by DHCR/HTFC, a CPA's certification that the project's actual construction costs have been adequately documented by invoices and payments by the owner to the contractor and all vendors; and

(iv) verification by the contractor that there is no identity of interest between any project subcontractors and/or suppliers.

All cost certifications must utilize the following format:

(i) an opinion letter prepared by the CPA, certifying that the project audit was performed in accordance with generally accepted auditing standards and practices, and that there is no identity or conflict of interest between the CPA, and the owner, contractor, project architect or any subcontractor;

(ii) a copy of the final Request for Disbursement Form prepared by the owner;

(iii) a copy of the final AIA G702 Form (Application and Certificate of Payment) for the contractor, or for each prime contractor, prepared by the project architect;

(iv) a copy of the AIA G703 Form (Continuation Sheet), prepared by the project architect, and listing all construction work, including all approved change orders;

(v) a copy of the DHCR/HTFC approved Development Budget which was attached as an exhibit to the owner's Predevelopment Costs Agreement;

(vi) a form similar to the Development Budget, which lists all line items in the

Development Budget with columns showing the total cost budgeted for each item, the actual total cost for each item, and the actual corresponding amounts paid out from each funding source;

(vii) a listing of all consultant and contractor payments for services rendered to the project; and

(viii) a detailed breakdown of all construction work by subcontractors, vendors and suppliers, the total amount of each contract or invoice billed, and a summation of the total construction cost.

DHCR/HTFC will review all cost certifications for compliance with the following requirements:

(i) the final AIA G702 Form (Application and Certificate for Payment) for the project's construction, or the total payment requests if more than one prime contractor was employed to construct the project, must equal the amount expended by the owner and/or contractor from all funding sources;

(ii) any line item costs budgeted in the Development Budget which were not actually expended must be deducted from the actual total project cost;

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

(iv) the contractor/developer fee cannot exceed ten - fifteen percent of the total project

cost, or the contractor's profit cannot exceed ten percent of the total construction costs, depending on the relationship between the owner and contractor and what was approved at Contract Closing. (See Sub-Section 5.05 and the LIHC Allocation Plan for more information on this).

Issued: **11/02**	Revised:
Section: **6.00**	Title: **CONSTRUCTION PROCESSING REQUIREMENTS**
Sub-Section: **6.06**	Topic: **Permanent HTFC Financing Only Close-Out Procedures**

6.06.01 Final Inspection

Owners receiving permanent financing only from HTFC must provide the project manager with written notification 45 days in advance of the anticipated substantial completion date by which project will be ready for final inspection.

Prior to the project's final inspection, the owner must schedule a punchlist inspection of the project with the project architect and OCD construction monitor. A representative of the owner or contractor must be present at the punchlist inspection. The punchlist which results from such inspection will be prepared by the project architect and owner, and must contain the following information:

(i) the inspection date;

(ii) the name and title of the contractor's or owner's representative present;

(iii) any incomplete or unsatisfactory work items; and

(iv) the specific location of each incomplete or unsatisfactory work item.

The owner must provide copies of the punchlist to the OCD construction monitor. The final inspection will occur upon completion and/or correction of all punchlist items. Those whose attendance is required at the project's final inspection (collectively referred to as the "inspection participants") are: the owner, construction lender's inspector, project architect, and OCD construction monitor, OCD staff architect, and OCD project manager.

Issued: **11/02**	Revised:
Section: **6.00**	Title: **CONSTRUCTION PROCESSING REQUIREMENTS**
Sub-Section: **6.06**	Topic: **Permanent HTFC Financing Only Close-Out Procedures**

6.06.02 Permanent Financing Inspection Conference

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

(i) whether or not work has been completed in accordance with the final documents; and

(ii) any incomplete or unsatisfactory work items, and when they will be completed or corrected.

(iii) any outstanding or unsubmitted change order work and a date when the permanent Certificate of Occupancy will be submitted for DHCR/HTFC review and approval (if not already submitted).

A mutually agreed upon final inspection report will be prepared by the owner, project architect and OCD construction monitor based upon the results of the Inspection Conference. The OCD construction monitor will also prepare an inspection report and a certificate of completion showing the amount of money to be withheld by DHCR/HTFC for incomplete/unsatisfactory work and/or outstanding change order work. Upon receipt of the report and certificate, the project manager will immediately notify the owner and construction lender and schedule a date for the Settlement Closing. A Settlement Closing will not be scheduled if outstanding or unsubmitted change orders have not been received by the DHCR/HTFC. This may result in a time delay of the DHCR/HTFC settlement closing and/or a reduction in the final award amount or a holdback equal to the sum of two and one half times the value of unapproved work, any retainage, plus if there is an identity of interest between the owner and contractor, the project contractor's builders profit.

Issued: **11/02**	Revised:
Section: **6.00**	Title: **CONSTRUCTION PROCESSING REQUIREMENTS**
Sub-Section: **6.06**	Topic: **Permanent HTFC Financing Only Close-Out Procedures**

6.06.03 Settlement Closing

The owner must submit the following documents to DHCR/HTFC for prior review and approval before a Settlement Closing can occur:

(i) a Certificate of Occupancy for each building, issued by the responsible local agency;

(ii) submission of all change orders;

(iii) a verified release and certification by the owner, stating that all contractors, subcontractors, vendors, suppliers, laborers and mechanics have been paid, or that the owner will satisfy all outstanding balances and obtain conditional waivers of mechanics liens from all parties with open accounts;

(iv) Disbursement Request Form showing the total amount due the owner from DHCR/HTFC minus any unsettled claims;

(v) assignments of all project guarantees and warranties to the owner and to DHCR/HTFC;

(vi) as-built drawings for the project;

(vii) copies of receipts for real property taxes and utility bills paid by the owner during construction;

(viii) an updated title report from a title company which is satisfactory to DHCR/HTFC, and which:

(a) states that the title is good and marketable;

(b) states that title is free of any mortgage, lease, lien or other encumbrance(s) which has not been approved by DHCR/HTFC; and,

(c) commits to the issuance of a title insurance policy at Settlement Closing, insuring DHCR/HTFC and the owner;

(ix) project architect's certification letter;

(x) evidence that bank accounts have been established for:

(a) working capital funds;

(b) replacement reserve funds;

(c) operating reserve funds;

(d) real estate tax and escrow account funds; and

(e) tenant security deposits;

(xi) evidence that the following types of insurance are in place:

(a) comprehensive general liability;

(b) fire casualty insurance;

(c) worker's compensation & disability insurance; and

(d) blanket position fidelity bond;

(xii) a copy of the proposed deed;

(xiii) a copy of the proposed lease;

(xiv) certified survey;

(xv) rent registration forms, if applicable;

(xvi) note and mortgage;

(xvii) construction lender's pay out letter;

(xviii) assignment/satisfaction of mortgage;

(xix) four 5" x 7" color prints of the project;

(xx) Occupancy Status Report Form;

(xxi) OCD construction monitor's final report;

(xxii) required licenses from all involved governmental regulatory agencies, if applicable; and

(xxiii) all other requirements, as specified in the Purchase Contract, which must be satisfied prior to DHCR/HTFC's purchase of the project.

(xxiv) approved Minority/Women Owned Business Enterprise Utilization Plan, if not submitted.

(xxv) for HOME projects Section 3 Summary Report, if not submitted.

(xxvi) approved Marketing Plan, if not submitted.

(xxvii) if the ownership of the project will be transferred to another entity for the regulatory period, an explanation of the need for the transfer, documentation showing that the new owner is an eligible applicant under the program providing funding for the project and information on the staff who will be involved in administering the project following the transfer.

Upon receipt of the documents listed above, DHCR/HTFC will schedule the Settlement Closing which must be attended by representatives of the owner, the construction lender and OCD. At the Settlement Closing, DHCR/HTFC will pay the owner the DHCR/HTFC Contract Price, less the required two and one-half percent holdback amount and any amounts required to be withheld to complete the project's construction.

Any monies withheld to complete outstanding construction work, such as landscaping, will be released to the owner upon a satisfactory inspection of the unfinished work by the OCD

construction monitor and approvals by the OCD staff architect and project manager.

The two and one-half percent holdback amount, which is required for all DHCR/HTFC-administered projects pursuant to the DHCR/HTFC Purchase Contract or Commitment, will be released to the owner after the required holdback period (one year and 15 days or, if a letter of credit was provided, one year and 30 days) and a satisfactory inspection of the project by the OCD construction monitor and staff architect for compliance with the DHCR/HTFC approved construction documents (and to ensure that there are no material or construction defects which may have occurred during the holdback period). It is the owner's responsibility to schedule the inspection with the project manager 30 days prior to the holdback release date. The owner's failure to do so may delay the release of the holdback amount. If the inspection reveals any items which need correction, the cost of repairing such items may be paid out of the holdback amount; any money remaining after such repair(s) will be released to the owner after satisfactory reinspection by DHCR/HTFC.

Section Seven

Issued: **10/02**	Revised:
Section: **7.00**	Title: **PROJECT OPERATING AND MANAGEMENT REQUIREMENTS**
Sub-Section: **7.01**	Topic: **Introduction**

This section describes the general procedures for operating and managing **any property funded by the Housing Trust Fund Corporation, (HOME, Housing Trust Fund and Turnkey Programs). Owners should refer to the Regulatory Agreement for project- specific obligations**. Projects with Low Income Housing Credit (LIHC) are also subject to certain post-construction operating requirements as set forth in the LIHC statute and Regulatory Agreement. Further guidance is contained in the LIHC Compliance Monitoring Guide. If requirements of different Programs overlap, **the most restrictive provisions shall apply**. Where the requirements for the LIHC, HTF, **HOME** and Turnkey Programs differ, it is noted in the text.

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

If you have any questions regarding compliance issues, please contact your Asset Management Representative or call the **Asset Management Unit** (518) **474-5776** or write:

NYS Division of Housing and Community Renewal
Asset Management Unit 5th Floor
38-40 State Street
Albany, NY 12207

Issued: **11/99**	Revised:
Section: **7.00**	Title: **PROJECT OPERATING AND MANAGEMENT REQUIREMENTS**
Sub-Section: **7.03**	Topic: **Required Operating Accounts**

7.02.01 Audit Requirements

Projects must be operated in compliance **with DHCR's Audit and Accounting Manual**. To ensure **that all projects funded by the Housing Trust Fund Corporation (HTFC)** are being operated and managed in compliance with all program requirements, AMU will conduct periodic site visits and will review audit reports which must be submitted to DHCR within 120 days of the close of the project's fiscal year. DHCR reserves the right to perform on-site audits, if deemed necessary.

7.02.02 Bank Accounts

In addition to the requirements **established in DHCR's Audit and Accounting Manual,** project owners must adhere to the following general requirements for establishing bank accounts for the project

(i) all project funds must be held in accounts with banking institutions which are authorized to do business in New York State, which are insured by an agency of the federal government, and which have a proven record of investment in the community in which the project is located; project owners are responsible for ensuring that project funds maintained in such account(s) are within the insured amount limitations as established by the federal government;

(ii) any account offset provisions are prohibited; (the bank must waive any right to seize the account and cannot be used as collateral for other obligations)

(iii) project funds may only be used for authorized purposes as described in this section, the Regulatory Agreement, and all attachments thereto;

(iv) project funds must be maintained separately and distinctly from any other accounts

maintained by the owner and/or managing agent for other projects or enterprises; however, with the approval of **AMU,** owners of multiple projects funded by the **Housing Trust Fund Corporation** may establish and maintain combined accounts for all HTFC-funded projects;

(v) on demand deposit checking account must be maintained for each project;

(vi) the interest earned on any interest-bearing accounts must remain in such account an may only be used for the specific purposes to which the account is dedicated; and

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

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

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

7.03.01 <u>General Operating Account</u>

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

on deposit in the account at the end of the project's fiscal year must be transferred to the Operating Reserve Account. See Section 7.03.04

7.03.02 Working Capital Fund Account

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

7.03.03 Reserve Fund Accounts

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

Issued: **11/99**	Revised:
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Sub-Section: **7.03**	Topic: **Required Operating Accounts**

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

Projects funded with HTF or NYS HOME must utilize a Custodial Agreement Account if the combined amount of operating and replacement reserves will total $100,000 or more adding together capitalized amounts and annual contributions to reserves over the first five years of operations. The owner may be required to deposit project reserves below $100,000 pursuant to a Custodial Agreement Account **if** the owner or managing agent has one or more prior instances of fiscal irregularities including but not limited to:

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

The project owner must set up the Custodial Agreement Account(s) according to DHCR requirements listed below:

- All withdrawals require two party signature [one being DHCR staff];
- The bank must waive any right to seize the account and cannot be used as collateral for other obligations (no offset provisions);
- All deposited funds are collateralized, if not in US Government Treasury Securities or Certificates of Deposit, by DHCR approved investments.

- The owner/management agent shall make the required contributions as stated in the Regulatory Agreement into a Custodial Agreement Account.

- The reserve account(s) shall be established at a federally insured depositing institution in New York State.

Withdrawals from Custodial Agreement Accounts will require the signatures of AMU and the owner for release of funds. The OCD Project Manager will approve withdrawals until the project is transferred to AMU. Specific requirements for each type of reserve account are given in Sub Section 7.03.04 and 7.03.05. DHCR reserves the right to require Custodial Agreement Account(s) for problem projects at any time.

7.03.04 Operating Reserve Account

The Operating Reserve Fund Account is established to provide the project with a source of funds in the event that the project cannot meet its monthly operating expenses. Owners are required to make monthly deposits to the Operating Reserve Account in an amount to be determined by HTFC on a project-by-project basis. The monthly Operating Reserve deposit will be made with monies withdrawn from the General Operating Account. If necessary, the monthly deposits may be adjusted by AMU after initial project occupancy.

If, after paying the project's annual operating and maintenance expenses, there is annual rental income over and above an amount equal to three month's rent roll, such amount must be deposited into the Operating Reserve Account.

If there are Operating Reserve Funds in excess of the **maximum** reserve amount which is prescribed by the Regulatory Agreement, such excess funds may be used subject to the approval of

AMU to either:

(i) lower the current tenant rental charge(s) (provide a rent subsidy);

(ii) increase the number of Persons of Very Low Income residing in the project;

(iii) repay the HTFC loan or grant;

(iv) for HTF Program projects, pay the Return on Equity as described in Section 2.01, i applicable; or

(v) fund the purchase of furnishings or equipment essential for project operation and management; or to improve the enjoyment of the building.

7.03.05 <u>Replacement Reserve Account</u>

The Replacement Reserve Account is established to provide the project with a source of funds to replace such items as flooring, plumbing, heating, electrical, roof and security systems, appliances, window and door units, cabinetry, site apparatus, or other items approved, **in advance**, by **AMU.**

Owners must make monthly deposits to the Replacement Reserve Account in an amount which HTFC determines is necessary to maintain an adequate Replacement Reserve for the project. The monthly Replacement Reserve Account deposit will be made with monies withdrawn from the General Operating Account. If necessary, the monthly deposit established by HTFC may be adjusted by **AMU** after initial project occupancy.

Issued: **11/99**	Revised:
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Sub-Section: **7.03**	Topic: **Required Operating Accounts**

All expenditures from the Replacement Reserve Account will require the prior approval of **AMU**. The signatures of **AMU** and the owner **are** required for the release of funds from any project account.

All requests for withdrawals from the Replacement Reserve Account must be submitted in writing to **AMU**. The request must include, but is not limited to, a description/scope of work or replacement, three bids (if possible), the proposed bidder's Liability Insurance Certificate, copy of existing warrantee and a current copy of the Replacement Reserve Account bank statement.

7.03.06 Real Estate Tax and Insurance Escrow Account

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

7.03.07 Tenant Security Deposit Account

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

Issued: **11/99**	Revised:
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For projects with less than six units, the tenant security deposits do not have to be placed in an interest bearing account, but must be held in a banking institution, until such time as they are repaid to the tenant, or applied toward damages.

The project owner must provide each tenant with written notification of the name and address of the bank where the money is deposited, as well as the amount of the tenant's deposit. If the account is interest-bearing, the project owner is entitled to an administration expense fee equal to one percent per annum on the security money deposited. This shall be in lieu of all other administrative and custodial expenses. The balance of the interest earned is the property of the tenant and it must be paid annually to the tenant. If a tenant's lease terminates at a time when the banking organization at which the security money is deposited does not regularly pay interest, the project owner must pay the tenant any interest that it is able to collect at the time that the lease terminates.

All tenant security deposits must be considered the property of the tenant, and may not be commingled with the personal monies, or become an asset, of the project owner.

7.03.08 <u>Operating Budget</u>

An annual operating budget must be submitted for each project no later than three months before the start of the project's fiscal year. **Extensions may be granted, for good cause, upon written request.**

Issued: **11/99**	Revised:
Section: **7.00**	Title: **PROJECT OPERATING AND MANAGEMENT REQUIREMENTS**
Sub-Section: **7.04**	Topic: **Insurance Requirements for Owners**

The project owner is required to maintain the following insurances throughout the project's regulatory period. The DHCR Standard Insurance Certificate Form should always be used and may be obtained from the **AMU.**

Liability Insurance

Comprehensive General Liability

- monetary limits of not less than $1,000,000
- contractual coverage
- DHCR and HTFC to be named as additionally insured
- 30-day prior written notice to HTFC of cancellation, non-renewal or change in coverage

Fire and Casualty Insurance

Fire and Casualty Insurance with Extended Coverage

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

Flood Insurance

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

Automobile Liability Insurance

Liability

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

- 30-day prior written notice to HTFC of cancellation, non-renewal or change in coverag

Worker's Compensation and Disability Benefits Insurance

Blanket Position Fidelity Bond

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

7.04.01 For Homesteading Owners

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

Liability Insurance

Comprehensive General Liability

- monetary limits of not less than:

  $300,000 for one or two units
  $500,000 for three or four units

- contractual coverage

- DHCR, HTFC and the LPA to be named as additionally insured

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

Fire and Casualty Insurance

Fire and Casualty Insurance with Extended Coverage

- monetary limits commensurate with replacement value of the project

- HTFC as mortgagee/loss payee

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

- DHCR or HTFC, and the LPA to be named as additional certificate holders

Issued: **11/99**	Revised:
Section: **7.00**	Title: **PROJECT OPERATING AND MANAGEMENT REQUIREMENTS**
Sub-Section: **7.05**	Topic: **Annual Audit Report**

Projects funded by the HTFC are required to provide an annual audit report to AMU. The audit report must be prepared by a Certified Public Accountant (CPA) in accordance with DHCR's Audit and Accounting Manual and accepted audit and accounting practices, and is due 120 days after the end of the project's fiscal year. The audits should be sent to the AMU, Attention to the Director of Asset Management, 38-40 State Street, Albany, NY 12207. HTF subrecipients must submit their financial statements to LPAs within 120 days of the end of the subrecipient's fiscal year; the LPAs, in turn, must submit those statements received to AMU within 30 days.

Audit reports must include the status of the project's operations, income received, and deposits and withdrawals made to all required operating accounts. The CPA must certify that the owner has complied with all Program Rules and Regulations, the Regulatory Agreement, and any attachments thereto, including the maintenance of information and documentation regarding procedures for tenant selection and income verification. The cost of the annual audit should be an itemized expense in the project's annual operating budget.

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

7.05.01 Performance Report

HTF project recipients not receiving LIHC are required to provide an annual performance report. The performance report is due within 120 days of the project's fiscal year. Performance reports must include a certification, signed by the owner, of the habitability of each unit. Also

included in the report will be a description of the operation of the project including, but not limited to: marketing activities, status of waiting list, rents, vacancies, tenant or occupant selection activities, deposits to and withdrawals from reserve accounts, extraordinary repairs, replacements, or improvements.

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

Issued: **11/99**	Revised:
Section: **7.00**	Title: **PROJECT OPERATING AND MANAGEMENT REQUIREMENTS**
Sub-Section: **7.06**	Topic: **Tenant Management Requirements**

This Section establishes tenant management requirements which are designed to:

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

7.06.01 General Tenant Selection Process

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

HOME:
Refer to Section 2.05.04C

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

The selection of tenants for all projects must comply with all federal and State fair housing laws, Title VIII of the Federal Civil Rights Act of 1968, and the New York State Human Rights Law. (See Section 4.00, General Requirements, for further discussion of fair housing requirements).

Application fees:
Application fees for prospective tenants may not be charged for any HTF and HOME funded projects.

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The Owner should begin the tenant selection process no later than the point at which the project's construction is 75% completed. This will ensure that there is adequate time to market, advertise and select the project's initial occupants. The Owner is required to describe the procedures which will be used to market the units in a marketing plan. The Owner must then follow this marketing plan. All owners of **HTFC funded projects are required to conform to the following occupancy chart:**

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

Owners must comply with all local, State, and federal codes pertaining to handicapped accessibility, including the Americans with Disabilities Act (ADA).

Owners of **HTFC** projects with handicapped-accessible units should include affirmative measures to identify sources of referrals for these units in their management plans. The owner should also establish linkages with local agencies or groups prior to the initial project rent-up for the ongoing referral of occupants to these units. Handicapped-accessible units should be reserved for persons with disabilities. Project owners with agencies and groups agreements with persons with special needs must adhere to their persons with special needs marketing plan.

Project owners should refer to the project regulatory agreement for project specific

requirements. Records must be available on site to document compliance with any required persons with special needs program.

General Tenant Selection From Waiting List

HTF/Turnkey Projects: During initial project rent-up, and thereafter, owners must select applicants from the waiting list which match the lowest income eligible applicant with the correct basic rent level(s). If the income amount is the same, then the earliest dated application is selected.

HOME Projects: Applicants must be selected in chronological order.

Affordable Housing Directory Requirements

Once a date to begin marketing project units has been **determined,** the owner must notify the **DHCR** project manager of the date and provide information regarding how to obtain and submit an application and a contact person and phone number or address. The project will then be added to the " New Affordable Housing Projects Now Accepting Applications" link on the DHCR Affordable Housing Directory Website (AHD).

After the rent-up period has ended, the project will be listed on the AHD. The AHD is part of the DHCR Internet website that allows the general public to search for affordable housing funded by the DHCR/ HTFC. Project information on the site includes; number of units, number of bedrooms per unit, availability of an elevator, general vacancy status and property management contact information. Inquiries will be received from the general public, as a result of the AHD, regarding the availability of units at the project. These calls must be handled courteously,

accurately and promptly. Compliance will be monitored through a random quality control survey conducted by DHCR.

HTF Program Tenant Selection

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

Owners must establish a waiting list for persons of low-income, which may be developed by advertising through the municipality's office newspaper or a newspaper of general circulation in the neighborhood or municipality in which the project is located, or from existing waiting lists for social service, charitable or philanthropic facilities. Owners must follow their approved Marketing Plan for project specific requirements..

Turnkey Program Tenant Selection

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

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For LIHC blended projects, the previous sentence does not apply. See Sub-Section 7.10.01.

HOME Program Tenant Selection:

Refer to Section 2.05.03.E

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

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

`Such waiting lists should be developed in the same manner as outlined previously under General Tenant Selection From Waiting List criteria.

7.06.02 <u>Establishing and Adjusting Project Rents</u>

Project applicants/owners submit a rent plan with their application which sets the rental charge for each unit based upon tenant income levels, number of bedrooms per unit, and the project's operating budget. The DHCR/HTFC approved rent plan establishes the initial basic rent for each of the units in the project. For units which are to be occupied by persons with incomes above the public assistance level, the basic rent should be set so that project income is sufficient to support the project's expenses.

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

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(i) the basic rent for tenants with incomes at the public assistance level must be set at the Shelter Allowance level, and is not subject to an annual increase unless the Shelter Allowance is also raised by the State of New York;

(ii) The basic rent for tenants with income above the public assistance level, but below 90 percent of the Area Median Income (AMI), will initially be set so that the project's rental income is sufficient to cover all projected operating and maintenance expenses, including Reserve Fund deposits; these basic rents may be skewed so that various segments of the target population may be reached, based upon 30 percent of tenants' income being devoted to housing costs.

(iii) for projects in jurisdictions which are subject to the Rent Stabilization Law (RSL) or the Emergency Tenant Protection Act (ETPA), the applicable Rent Guidelines Board increase (see Section 7.06.03 for a discussion of initial rents for projects located in areas subject to RSL or ETPA); and,

(iv) for tenants whose incomes rise above the persons of low-income level, as determined by the owner's annual income verification procedure, the basic rent will be adjusted to the lesser of the market rent or 30 percent of the tenant's annual income less the allowance for tenant paid utilities **except in HOME funded projects. In these properties tenants whose income exceeds 80% of AMI must comply with Section 92.252 (i) (2) of the final HOME rule**. Tenants who do not submit, or falsify their income verification documents, will pay the market rent (described below).

(v) The following documents are needed to review a rent increase submission. Back-up documentation may be requested on a case by case basis.

a. Budget supporting the proposed rent increase with explanation of line item budget increases.

b. The schedule of current rents, proposed dollar amount of increase, proposed rents, and utility allowance per bedroom size (if applicable).

c. A current rent roll.

d. Last audit report if not previously submitted (see subsection 7.05).

e. If Managing Agent is submitting request, letter from Owner indicating their approval of the proposed rent increase.

For LIHC Standalone or LIHC blended projects see Sub-Section 7.10.02 regarding paragraph (ii) and Sub- Section 7.10.03 regarding paragraph (iv).

At the time of contract closing, OCD will establish the market rent for each unit. This is the maximum amount of rent that can be charged for the unit if a tenant's income increases to a point where they are no longer low-income, or if the tenant fails to submit or falsifies their income. No tenant may be charged more than the market rent to occupy a unit. The market rent is established as a function of the basic rent for the unit, plus an additional amount which would be payable if all

HTFC payments, grants and/or loans made to the project were treated as a 30-year amortizing interest-bearing loan at the 30-year U.S. Treasury bond yield rate in effect at the time of the project's contract closing. The market rent will be adjusted annually by an amount equal to the basic rent increase; however, in jurisdictions which are subject to the RSL or ETPA, the increase may not exceed the lawful annual increase authorized under such laws.

If the project's operating budget does not warrant it, the owner need not increase basic rents. If, after paying all ofthe project's annual operating and maintenance expenses, there is excess annual income over and above an amount equal to three month's rent roll, such amount must be deposited into the project's Operating Reserve Account. See Operating Reserve Account Sub-Section 7.03.04 for details.

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

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

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

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7.06.04 Tenant Occupancy Requirements

At initial project rent-up, no unit may be leased to a household which would be paying housing costs (basic rent plus the allowance for tenant-paid utilities) which are less than 25 percent, or more than 48 percent of that household's income.

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

Should the owner at any time be unable to lease the project's units in accordance with the occupancy requirements set forth above, the owner may submit a written request to AMU for a waiver of these requirements.

For **HTFC** projects, the maximum number of persons per bedroom is two. In addition, each HTF or Turnkey-assisted unit must be the principal residence of its occupant(s).

The following apply to HTF Program projects only:

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

(ii) legal occupants of a property rehabilitated under the HTF Program who are temporarily relocated during such rehabilitation may not be permanently displaced; and

(iii) subsequent to rehabilitation or conversion, an eligible occupant must be a person of low-income at the time of application for occupancy of the unit.

7.06.05 Tenant Income Verification

The owner is responsible for determining the income of tenants and verifying and certifying to DHCR/HTFC that such tenants are eligible for project occupancy. Tenant income verification may include but is not limited to certification by the Department of Social Services, the Veteran's Administration, a public assistance agency, or a written statement from the tenant's employer (third party verification). **Refer to HUD Handbook 4350.3** Rev-1 dated 5/03.

For LIHC blended projects, see Sub-Section 7.10.04 regarding tenant income certification and Sub-Section 7.10.05 regarding student eligibility.

Tenant recertification to determine continued eligibility, to verify income, and to establish rental amounts, will be on a yearly basis. In performing the project's annual audit, the CPA will be required to certify that the owner has sufficient documentation and procedures in place to accurately verify the income of tenants.

7.06.06 Recertification Waiver for 100% LIHC Buildings

DHCR has adopted a recertfication waiver procedure for 100% low income tax credit buildings. Specifically, Internal Revenue Service Procedure 94-64 provides that an owner of a 100% low-income building may obtain an IRS waiver of the annual tenant income recertification requirement where the monitoring procedures of the housing credit agency

contain waiver provisions and the conditions set by the IRS are satisfied. The waiver would exempt an owner of a 100% tax credit building from the requirements to:

- **keep records that show that an annual income recertfication was obtained from all low-income tenants in the building who have previously had their annual income verified, documented, and certified;**
- **Maintain documentation to support the recertification and;**
- **Certify to DHCR that it has received this information.**

The waiver does not, however, exempt owners from income certification requirements upon a tenant's initial occupancy of a residential rental unit in a 100% low-income building.

DHCR procedure allows for a recertification waiver provided:

The building is 100% low income;

- **There is no previous or current non compliance which would affect the buildings status as a 100% low-income building; and**
- **The initial move-in certification(s) has been submitted to DHCR**.

The waiver will not exempt the owner from tenant income recertification requirements imposed by any other federal, state or local housing program. For example, a building with Turnkey, Rural Development 515, HOME or project based Section 8 would be eligible for the waiver under Internal Revenue Code Section 42. However, the owner is still required to conduct annual income recertifications since the waiver does not apply to these other funding sources. Obtaining the waiver from the IRS for projects with these funding types means a failure to recertify tenants' income would not be reported to the IRS under the Low-Income Housing Credit Program. However, a failure to recertify tenants' income would be a violation of these other program funding requirements and regulatory agreements.

Owners must still determine tenant full-time student status on an ongoing basis, and buildings with credit allocated prior to 1990 must annually verify tenant household size if restricted rent is determined by number of persons in the household.

A project owner must obtain a DHCR statement prior to sending the written statement requesting a waiver to the IRS. The IRS will then send a letter to the owner either approving or denying the waiver. The owner must send a copy of the IRS approval or denial letter to DHCR.

7.06.07 HTF Tenant Income Recertification Waiver

The HTF has adopted a recertification waiver policy. HTF funded properties that (a) are not participating in other programs requiring annual verifications of income (i.e., HOME, Turnkey, Rural Housing, Section 8), (b) have been placed in service, (c) have completed one year of satisfactory annual compliance with the requirements set forth in Chapter 7 of the CPM, and are in good standing with DHCR, are eligible to apply for this waiver. Properties that are 100% LIHC and have received a recertification waiver from the IRS must include a copy of the IRS' waiver in their request to the HTF.

The HTF waiver relieves the property only from the obligation to perform annual income recertifications. Still required are: initial move-in certification, recertification due to changes in household composition, and submission by owners of annual reports as required in Chapter 7 of the CPM and cooperation during record inspections as required by monitoring regulations.

The waiver will take effect beginning with the compliance monitoring cycle following the date of the letter of approval. The waiver covers all subsequent compliance monitoring cycles during the buildings compliance period. If DHCR determines at any time following the grant of the waiver

that substantial noncompliance has occurred, the waiver may be revoked and the owner must complete full annual income recerifications with third party verifications.

Waiver requests must be sent to the Director of Asset Management, 38-40 State Street, Albany, New York 12207.

Issued: **11/99**	Revised:
Section: **7.00**	Title: **PROJECT OPERATING AND MANAGEMENT REQUIREMENTS**
Sub-Section: **7.07**	Topic: **Tenant Lease Agreements**

7.07 Tenant Lease Agreements

All tenants must sign written lease agreements with the owner or the owner's managing agent. A lease agreement is a contract which assures the tenant exclusive possession of a specific dwelling unit and reasonable use and protection of the property in exchange for payment of rent. Lease agreements should be written for a **minimum term of two-years,** although one-year leases are permitted at the request of the tenant.

Except where other more restrictive provisions are required by the RSL, ETPA or other applicable law, owners will use **the HTFC Lease.**

Should the Owner wish to add language to the HTF lease said language must be submitted for review and approval in the form of a Lease Addendum not later than 90 days following the date assigned for return of the executed HTFC commitment letter.

Issued: **11/99**	Revised:
Section: **7.00**	Title: **PROJECT OPERATING AND MANAGEMENT REQUIREMENTS**
Sub-Section: **7.08**	Topic: **Managing Agent/Tenant Management Services**

Owners may manage their own project if they demonstrate management capacity. If, however, the services of a management agent are required, AMU should approve managing agent compensation and the type and frequency of the residential services to be provided by the managing agent; the owner must determine the following:

(i) the staffing necessary to provide such services;

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

The managing agent must be licensed as a Real Estate Broker by NYS; and, any employee of the agent who will show apartments, sign leases, or collects rents must be licensed as a Salesman or Associate Broker of the licensee.

Selection of a qualified managing agent shall be subject to the approval of DHCR. The owner shall solicit bids, review bids, select a prospective agent and submit its selection to DHCR together with all bids. DHCR shall review the bids, considering primarily the qualifications and quality ofthe bidders, and either approve the owner's proposed agent or disapprove the agent and direct the owner to select another agent from among those acceptable to DHCR. If there are no other bidders, or no bidder acceptable to DHCR, the owner will be directed to re-bid. Continued eligibility to self manage the project will be conditioned upon the satisfactory operation of the project as determined by AMU. HTFC/AMU reserves the right to remove/replace an owner as managing agent. HTFC/AMU also reserves the right to approve, reject, or remove/replace an existing or proposed managing agent.

Issued: **11/99**	Revised:
Section: **7.00**	Title: **PROJECT OPERATING AND MANAGEMENT REQUIREMENTS**
Sub-Section: **7.09**	Topic: **Asset Management Performance Reviews**

7.09 Asset Management Performance Reviews

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

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

- Annual Audit Reports
- General Operating Accounts (checking and savings)
- Reserve Accounts
- Operating Budget
- Insurance Certificates
- Performance Report
- Waiting List(s)
- Rent Roll/Rent Plan/Schedule
- Lease Agreement/Addenda
- Tenant Files
- Management Agreement
- Agent's Real Estate Broker License
- Licenses of Broker's Staff
- On site physical inspections

and other such information as DHCR may require in order to determine project recipient's compliance with the terms of recipient agreements, loan documents, and the rules and regulations of the HTFC.

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Sub-Section: **7.10**	Topic: **AHTF/Turnkey/LIHC Blended Projects**

The purpose of this Section is to **highlight** specific areas where LIHC requirements differ from HTF/Turnkey requirements.

In order to receive LIHC, the property owner and property manager must follow the Regulatory Agreement and I.R.S. regulations and requirements. Failure to follow these requirements (e.g., renting a unit to an over-income tenant, charging rent in excess of the maximum allowable, renting to ineligible students (See Section 7.10.05) or inadequately documenting a tenant file) may result in the recapture of credit with interest and penalty. For a detailed explanation of the LIHC Program requirements, refer to the **Low-Income Housing Credit Compliance Monitoring Guide** or contact the **AMU.**

7.10.01 Maximum Income Limits- LIHC Projects

Income limits for qualifying tenants depend on the projects set-aside election. On move-in, qualifying tenants in 20-50 set-aside projects may not have income which exceed 50% of the AMI by household size. Qualifying tenants in 40-60 and 25-60 set-aside projects may not have incomes which exceed 60% of the AMI by household size.

7.10.02 Restricted Rent Limit

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

Issued: **11/99**	Revised:
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7.10.03 Increases In Tenant Income - Next Available Unit Rule

Upon initial move-in certification, a household's annual income must not exceed the applicable area median (50% or 60%) income limit by household size.

At recertification, if a tenant's income in a LIHC unit has increased above the maximum allowable income limit, the unit continues to qualify for tax credit purposes as long as the tenant qualified on move-in and the unit remains rent restricted.

A LIHC unit occupied by a tenant whose income rises above 140% of the current maximum allowable income limit continues to qualify for tax credit purposes as long as the unit remains rent restricted and the next vacant unit of comparable or smaller size in the building is rented to a qualified LIHC tenant.

7.10.04 Tenant Income Certification

On move-in (prior to occupancy) and annually thereafter, the tenant must submit to the owner a signed Tenant Income Certification.

Third party source documentation/verification must be obtained for all income sources at initial move-in certification and at each annual recertification. The date of third party source documentation/verification of income and assets must be within ninety days prior to the effective date of the tenant certification. Guidance on the types of acceptable forms of verification and definition of assets and income to be included/excluded may be found in HUD Handbook 4350.3 (or its successor). A copy of HUD Handbook 4350.3 may be obtained by writing to: HUD, Directives Distribution Section, Room B-100, 451 7th Street SW, Washington DC 20410-3700, or by calling 1 (800) 767-7468.

Issued: **11/99**	Revised:
Section: **7.00**	Title: **PROJECT OPERATING AND MANAGEMENT REQUIREMENTS**
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7.10.05 **Students**

Full time students cannot reside in a LIHC unit unless they are in one of the following categories and are income eligible:

Unit occupied by an individual who is:

1) Receiving assistance under title IV of the Social Security Act (Aid to Families with Dependent Children)

2) Enrolled in a job training program under the Job Training Partnership Act, or other similar Federal, State, or local law.

Unit occupied entirely by full time students who are:

1) Single parents with their children, and such parents and children are not dependents of another individual.

2) **Married and file a joint income tax return.**

Glossary

Glossary

Accessible: A term used with respect to the design, construction, or alteration of an individual dwelling unit, indicates that the unit is located on an accessible route and when designed, constructed, altered or adapted can be approached, entered and used by individuals with physical disabilities. A unit that is on an accessible route and is adaptable and otherwise in compliance with the applicable standards set forth in the Building Code of New York State, New York City Building Code, Section 504 of the Rehabilitation Act of 1973, the Federal Fair Housing Act and their respective regulations and guidelines is accessible within the meaning of this paragraph.

Accessible route: A continuous unobstructed path connecting accessible elements and spaces in a building or facility that complies with the space and reach requirements of applicable standards prescribed by the Building Code of New York State, New York City Building Code, Section 504 of the Rehabilitation Act of 1973 and the Federal Fair Housing Act and their respective regulations and guidelines.

Adaptable: The ability of certain elements of a dwelling unit, such as, but not limited to, kitchen counters, sinks, and grab bars, to be added to, raised, lowered, or otherwise altered, to accommodate the needs of persons with or without disabilities, or to accommodate the needs of persons with different types or degrees of disability. The adaptation of an element shall require no special knowledge or tools and shall be accomplished with no structural change. For example, in a unit adaptable for a hearing-impaired person, the wiring for visible emergency alarms may be installed but the alarms need not be installed until such time as the unit is made ready or occupancy by a hearing-impaired person.

Acquisition Cost: The amount of cash or other valuables necessary to obtain title to property, which includes, in addition to the purchase price, such items as closing costs, mortgage origination fees, finance charges, and title insurance.

Amortization: Repayment of a debt by means of systematic payments of principal and/or interest over a set period.

Annual Income or Income: The adjusted gross income of all income-earning household members that was reported (or would have been reported) in the previous year's federal income tax returns, minus such exemptions and deductions for medical expenses as were actually taken by the taxpayer.

Application Review Letter: A letter which is sent after DHCR/HTFC's review of a Unified Funding Application, and which notifies the applicant that the project has achieved one of the following statuses:

a) not selected for funding - the application was incomplete, ineligible or non-competitive or a project application which did not demonstrate project feasibility;

b) waiting list - the project is eligible and competitive, however, there are not currently

adequate Program funds to fund the project or program; applications remain on the waiting list until the next funding round for the Program under which the applicant requested funds is issued, or until the waiting list is discontinued;

c) selected for funding - the application is eligible, competitive, and has been selected to receive a Funding Commitment letter (projects) or a Program Agreement (LPAs).

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

a) The Market Data Approach: The current sales prices of similar properties are compared and analyzed after necessary adjustments are made for any differences in the properties. This approach is used most frequently in evaluating residences, and is also called the "direct sales comparison approach."

b) The Cost Approach: This approach involves an estimation of the value of the land (usually determined by the market data approach), plus the cost of replacement of any improvements to the land, minus depreciation. This approach is used primarily to estimate the value of service-type properties, such as churches and post offices.

c) The Income Approach: This approach, frequently used to determine the value of income-producing properties such as apartment buildings, involves an estimation of value based on the capitalization of income and productivity. Often called the "income approach to value," it appraises the current worth of a property's future benefits.

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

Appreciation: A temporary or permanent increase in the value of property.

Appurtenant: Something, such as a right, privilege or property, considered incidental to the principal property for purposes including passage of title, conveyance or inheritance.

Arm's Length Transaction: A transaction negotiated by unrelated parties, each acting in their own self interest.

Arrears: Money which is overdue and unpaid.

As-Built Drawings or Record drawings: Architectural drawings, usually prepared by the architect in

cooperation with the general contractor, which show significant changes made during the construction process, based on marked up prints and other data furnished by the contractor.

Assignment: The transfer of one person's (the assignor) right, title, and interest in a property to another person (the assignee).

Balloon Payment: The payment of the remaining balance which is due upon the maturity of a note or obligation, and which repays the debt in full.

Basic Rent: The actual rent necessary to cover operating and maintenance costs, including debt service and reserve fund contributions.

Basis: The financial interest of an asset attributed to the owner by the Internal Revenue Service to determine annual depreciation and gain or loss on the sale of the asset.

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

Blanket Position Fidelity Bond: See the definition for "Fidelity Bond."

Bridge Loans: See the definition for "Interim Financing".

Builder's Overhead: The general administrative costs of the builder, including, but not limited to, office expenses, permits, taxes, performance bonds, field personnel, small tools, etc.

Builder's Risk Insurance: Fire and extended coverage insurance to cover risks during a building's construction. Coverage increases automatically as the construction progresses, and is terminated upon completion. Builder's Risk Insurance should be replaced with permanent insurance once the building is ready for occupancy.

Building Codes: Local or State government codes which are established to provide and regulate minimum building and construction standards to safeguard the health, safety and welfare of the public. Building codes regulate and control the location, design, construction, quality, occupancy, and maintenance of all buildings and structures. Building codes are enforced via inspections, the issuance of building permits and certificates of occupancy, and by fines imposed for violations.

Building Permit: Written permission by a municipal government to construct a new building or other improvement to install prefabricated housing, or demolish, or substantially repair an existing structure. Building permits are obtained prior to the start of construction.

Buy-Sell Agreement: An agreement between an interim and a permanent lender, providing for the sale and assignment of a mortgage to the permanent lender upon a building's completion. Often the

mortgagor is a party to the agreement on the theory that the mortgagor would have a contractual right to insist that the permanent lender buy the mortgage. Also referred to as an intercreditor agreement.

Carrying Charges: Costs which are incurred in connection with owning a property through the completion of its development, such as the developer's costs for property taxes and construction loan interest paid during the development phase.

Cash Flow: The amount of money netted from operating income-producing property over a set time period, after paying operating expenses and debt service, but prior to deducting depreciation and income taxes.

Certificate of Incorporation: A legal document, filed with the State, which describes the legal organizational structure of a corporation, and any amendments and restatements of the certificate of incorporation.

Certificate of Insurance: A document issued by an insurance company which certifies that a particular policy insuring specific parties is in effect for specific coverage amounts and periods of time.

Certificate of Occupancy: A certificate which is issued by the local government building department, as evidence that a building is prepared and fit for occupancy, and that it is free of building code violations.

Certificate of Title: A statement of opinion regarding the status of title to a parcel of real property, prepared by the title company, and based on an examination of certain public records. While it does not guarantee title, it does certify the condition of the title as of the date of issuance.

Change Order: An order which authorizes changes or modifications to the construction work originally shown in the contract drawings, plans, or specifications.

Clear Title: Title to property which is free from any defects, liens, or other encumbrances which the buyer or mortgagee has not agreed to accept (such as a mortgage to be assumed).

Closing: The fulfillment of a real estate transaction, when title is transferred from the seller to the buyer in exchange for the purchase price.

Commissioner: The Commissioner of the New York State Division of Housing and Community Renewal.

Commitment: A pledge to do something, such as a bank's promise to loan to a buyer a certain sum of money at a certain interest rate provided that certain conditions are satisfied by a certain date.

Common Areas: Land, improvements and amenities which are for the benefit and use of all occupants, as well as the property owner, such as corridors, hallways, playgrounds and elevators.

Communal Housing Arrangement (CHA): See Housing Types.

Comparable Rent: The prevailing rent for comparable apartments in the same neighborhood or service area.

Condominium Project: A system of ownership in which there is individual ownership of units in a project, combined with joint ownership of common areas.

Construction Loan Agreement: The contract which documents the terms for development of the project and disbursement of the award proceeds.

Construction Costs or "Hard" Costs: The costs incurred by the contractor in providing all of the labor, materials, equipment, general conditions, overhead and profit for the construction of a project.

Construction Loan: A short-term loan to cover a project's construction costs, with loan proceeds disbursed periodically in installments as the work progresses.

Contiguous: Adjoining or abutting.

Contract Closing: The closing which occurs when all contract documents have been approved, or approved with conditions. The Regulatory Agreement is executed at the Contract Closing and, depending on the funding Program and the structure of the interim financing, a Construction Loan Agreement, or a Mortgage and Promissory Note, may also be executed.

Contract Work Hours and Safety Standards Act (CWHSSA): This act requires time and one half pay for overtime (over 40 hours in any work week) worked on a covered federally assisted project.

Contractor: (Also known as "Builder" or "General Contractor") A person or corporation who contracts with an owner or developer to supply labor and materials for a specific project.

Conversion: The transformation of non-residential property into residential property.

Cooperative Project: A type of project in which each tenant is a shareholder in a corporation which owns the building. As a shareholder, each tenant has the right to occupy a unit in the building.

Copeland Anti-Kickback Act: This act makes it a federal crime for anyone to require any laborer or mechanic employed on a federally assisted project to kickback (give up or pay back) any part of their wages. The Copeland Act requires every employer to submit weekly certified payroll reports and regulates permissible deductions

Cost Certification: The accounting of actual project costs as expended for all project related

expenses from all project funding sources.

Credit Ceiling or Ceiling: The annual allocation of Low Income Housing Credit which New York State receives and allocates in accordance with the Qualified Allocation Plan so as to meet the most pressing State and local housing needs.

Credit Rate: (LIHC Program term). The credit rate (applicable percentage) is calculated monthly by the U.S. Department of the Treasury based on changes in federal borrowing to reflect the present values of 70 percent and 30 percent of qualified basis. The credit rate is multiplied by the qualified basis to calculate a Credit allocation amount.

Davis-Bacon and Related Acts (DBRA): This is the extension of the Davis Bacon Act, which requires payment of U.S. Department of Labor determined wage rates for construction, alteration or repair. This applies to several HUD programs, including on an am HOME (12 or more units), Housing Choice Vouchers (9 or more units) and CDBG.

Debt Service: The amount of cash necessary to meet the periodic payments of principal and interest on an amortizing mortgage or debt.

Deed: A legal document by which a property owner (the grantor) conveys and transfers ownership interest in real property to another (the grantee).

Density: A zoning term for the number of building units per acre, or the number of persons or families per unit of land area.

Depreciation: An asset's loss in value over a period of time.

Detached/Semi-Detached: See Housing Types.

Developer: A person or corporation which organizes and supervises all phases of a project, including acquisition, construction and final sale.

Disbursement: Money which is paid out.

Division or DHCR: The New York State Division of Housing and Community Renewal.

Easement: An interest which one person has in land owned by another, which entitles the holder of the interest to limited use or enjoyment of the other's land.

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

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

Executive Law.

Eleemosynary Corporation: A nonprofit corporation formed for charitable purposes.

Eligible Basis: (LIHC Program term). The proportion of project cost attributable to residential purposes under the LIHC Program, as defined under Section 42 of the IRS Code.

Environmental Impact Statement (EIS): A report which reviews the probable environmental impact of a proposed project during all phases of development. It includes a detailed description of the proposed project and the existing environmental setting, and emphasizes local and regional perspectives on the project and its impact on the environment.

Equity: The remaining interest in, or value of, a property after all liens and/or other charges on the property have been paid. In general, an owner's equity in her/his property is the amount of monetary interest he/she holds over and above the mortgage indebtedness.

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

Escrow: A procedure in which a disinterested third party holds money and/or documents until all terms and conditions of the escrow instructions have been satisfied, and the escrowed funds and documents are delivered and transferred.

Extended Coverage: A term used in fire insurance policies to include damage by such perils as wind, hail, explosion, riots and smoke. A title insurance policy with extended coverage insures against risks not normally covered by standard policies.

Facade: The front (or exposed part) of a building.

Fair Labor Standards Act (ELSA): Federal minimum wage, overtime, and child labor requirements. DHCR will refer to HUD any possible FLSA violations found on federally assisted projects.

Fair Market Value: The highest price a property would bring if offered for sale in a competitive market for a reasonable time period, with both buyer and seller being fully aware of all the property's present and future uses without being compelled to conduct the transaction.

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

Feasibility Study: A study which is used by developers to analyze a proposed project in terms of

probable income and expenses, and beneficial use and design.

Federal Labor Standards: A collection of labor standards, laws, and regulations which Fide apply to federally assisted construction projects commonly known as “Davis-Bacon”.

Fidelity Bond or Surety Bond: A bond which protects against theft of funds by employees.

Fiduciary: A relationship which implies a position of trust or confidence wherein one person (the fiduciary) is entrusted to act on the behalf of a principal.
Firm Commitment: A lender's irrevocable agreement to loan a specific sum of money at a specified interest rate for a definite term, subject to certain conditions.

First Mortgage: A mortgage which is superior in right to any other mortgage on the property.

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

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

Gap Financing: Financing which is: a) used to make up the difference between the underlying loan and the total amount required to undertake the project; or, b) used as a temporary device, until permanent financing is secured; it is sometimes called a "bridge mortgage".

General Contractor: A contractor who does not personally do all construction work on a project, but requires the use of other specialty contractors, such as electrical or plumbing contractors, whose work the general contractor superintends.

General Conditions: that part of the contract documents that describe the rights, responsibilities and relationships of the owner, architect and contractor.

General Requirements: The project specific costs of the builder, including, but not limited to, temporary utilities, temporary construction, scaffolding, on-site security, project signs, field office, on-site storage facilities, etc.

General Partner: A natural person, partnership, corporation or other person or entity in its own or any representative capacity who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement.

Generic Housing: Housing that is available to the general population without restriction or, housing

financed by DHCR/HTFC available to any low/moderate-income household without restriction.

Good Faith: Bona Fide. An action is taken in good faith if it is done honestly.

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

Gross Income: A project's total income before deductions are made for expenses, taxes, etc.

Hard Costs: See the definition of "Construction Costs".

HCA: (LIHC term). Housing Credit Agency. An Agency which is legally authorized to allocate and award tax credits to eligible projects.

Holdback: The portion of a loan or payment which is held by the lender pending the satisfaction of all requirements, such as completion of all construction work.

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

Housing Development Fund Company or HDFC: A company incorporated under Article XI of the PHFL, and the provisions of either: a) the Business Corporation Law (for cooperatives); or, b) the Not-for-Profit Corporation Law (for rental housing).

Housing Types: One of the four types of dwelling units as described below:

a) Detached/Semi-Detached: A structure consisting of either a single living unit surrounded by permanent open spaces, or a structure containing two living units separated by a common vertical wall;
b) Rowhouse: A structure containing three or more living units, each separated by vertical walls and having individual entrances; or, a multi-story low-rise (five or less stories) structure containing two or more living units between vertical walls, provided there is no more than one unit on the majority of the stories;
c) Walk-Up: A multi-story low-rise (five or less stories) structure containing two or more living units on at least half of the stories , each separated horizontally and vertically; and
d) Single Room Occupancy (SRO): A residential structure in which individuals and/or families share only one of the following spaces: cooking, sanitary, or sleeping facilities. (formerly known as “Communal Housing Arrangement”) Cooking facilities must include a full kitchen and sanitary facilities must include a full bath.

HTFC: The Housing Trust Fund Corporation, a public benefit corporation established under Section 45-a of the PHFL.

HTF Program: The Low Income Housing Trust Fund Program.

HUD: The United States Department of Housing and Urban Development - the department of the federal government primarily responsible for housing and community development programs.

Identity of Interest: A condition which exists when:

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

Improved Land: Land which has been increased in value by the addition of on- and off-site improvements such as utilities, roads, buildings and sewers.

Improvements: Additions made to property which amount to more than repairs, and which enhance the property's value.

Income Rent: Rent which is based upon 30 percent of a tenant's annual income.

Income Requirements: The income necessary to pay a project's actual operating and maintenance

costs, including debt service, operating reserves and replacement reserves.

Incorporation: Forming a legal corporation through the preparation and filing of a certificate of incorporation with the appropriate government agency or division.

Insurance Binder: A legal document which gives immediate insurance coverage until the time that a regular insurance policy can be issued. Binders are sometimes issued pending a real estate closing.

Intercreditor Agreement: See: "Buy-Sell Agreement".

Interim Financing or Interim Loans: Financing provided for a limited period, to be "taken out" by permanent financing or equity.

Lease: An agreement which transfers the right to exclusive possession and use of real property for a specific period of time.

Letter of Credit: A bank's agreement or commitment, made at a customer's request, to honor a third party's demands of payment upon compliance with the conditions specified in the letter of credit.

Lien: A claim which one person has upon another person's property as security for a debt or obligation.
LIHC: Low Income Housing Credit program.

Limited Partnership: A partnership formed by two or more persons under Articles 8 or 8A of the Partnership Law, having one or more general partner and one or more limited partners.

Local Program Administrator (LPA): An applicant to whom HTFC makes payments, grants or loans for the purpose of constructing, rehabilitating, or converting its own projects, or making payments, grants or loans to subrecipients (HTF or HOME) or other eligible recipients for the construction, rehabilitation or conversion of projects, or for the purpose of providing tenant-based rental assistance (HOME only). LPAs select projects or recipients to receive financing according to a program design approved by HTFC. They also supervise construction of such projects and monitor compliance with HTF or HOME Program requirements for the duration of the regulatory period.

Loss Payee: The entity which an insurance policy designates as the one to be paid should the insured property be damaged or destroyed.

Maintenance: The general upkeep and repair of a property.

Management Agent: The company or individual who markets, leases, manages, and maintains the project.

Management Agreement: A contract between a project owner and the individual or company who

will manage the property, which establishes the agent's obligations, compensation, scope of authority, methods of paying project expenses, etc.

Market Rent: The unit rent that would be charged if the DHCR/HTFC monies used to fund the unit were treated as a 30-year, amortized, interest-bearing loan, at the 30-year U.S. Treasury bond interest rate in effect 30 days prior to the execution of the Regulatory Agreement.

Metes and Bounds: A method of land description which identifies a parcel by specifying its shape and boundary dimensions, using terminal points and angles.

Moderate Rehabilitation: A project which has a per unit total development cost of $25,000 or less.

Mortgage: A legal document which is used to secure the performance of an obligation. When a mortgagee loans funds to a mortgagor, the mortgagor is required to sign a promissory note for the borrowed amount, and execute a mortgage to secure the debt. A mortgage is typically secured by real property.

Mortgageable: Project costs which are reimbursable under the permanent project financing.

Mortgagee: The lender in a mortgage transaction, who receives and holds a mortgage as security for a debt.

Mortgagor: A borrower who gives a mortgage as security for a debt.

Multiple Dwelling: A structure which houses three or more households in separate living units.

Negative Declaration: A finding by DHCR/HTFC's SEQRA Officer that the proposed project will have no impact, or no significant impact, upon the environment.

Nonprofit or Not-for-Profit Corporation: A corporation incorporated under the State Not-For-Profit Corporation Law or its predecessors.

Note: A document which serves as evidence of a borrower's debt in connection with a loan. The Note sets forth the loan amount, interest rate, time and method of repayment, and the borrower's obligation to repay the loan.

OCD: DHCR's Office of Community Development.

Offsite Costs: Costs which are incurred while developing unimproved land, but which are not connected with the onsite costs of the project's actual construction. Offsite costs include such items as sewers, streets and utilities.

Operating Expenses: Periodic expenses which are essential for a project's continuous operation and

maintenance. Operating expenses may be fixed, such as property taxes and insurance, or they may be variable, such as utilities or payroll. Operating and replacement reserve contributions are operating expenses; mortgage principal and interest, and depreciation are not.

Operating Pro Forma: An operating budget statement which predicts a project's expected income, operating costs and net operating income for a 12-month period.

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

Option: A legal agreement between parties to keep open an offer to sell, buy or lease property over a specific time period. Options allow time for the buyer to settle issues of title, zoning, financing and feasibility before making a commitment to purchase or lease the property.

Owner: A person, corporation or other entity which has legal title to property.

Owner/Occupant: An owner of a piece of real estate who occupies the property.

Partnership Expense: (LIHC Program term). Any partnership expense paid from the proceeds of syndication of Low Income Housing Credits which are not allocated to developer's fee or syndication cost.

Performance Bond: A bond posted by a contractor which guarantees a project's completion according to contract. The bond generally provides for the insurer to either complete the project or pay damages up to the performance bond's limit should the contractor fail to complete the contract.

Permanent Financing: A long-term loan, often used to "take out" the interim lender who loaned money to finance the construction of a major project.

Persons at the Public Assistance Level: Persons receiving benefits pursuant to Section 131-A of the Social Services Law, or who can afford rents no greater than those paid by persons receiving benefits pursuant to such law.

PERSON WITH DISABILITIES means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such impairment.

(a) Physical or mental impairment includes:

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

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual,

speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

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

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

(d) Is regarded as having an impairment means:

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

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

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

PHFL: Private Housing Finance Law.

Plans and Specifications: Plans are the architectural drawings pertaining to a project being considered for development, and include such items as building(s) and mechanical and electrical drawings. Specifications are written instructions to the contractor which contain all pertinent information regarding materials, quality of work, style, fabrication, colors and finishes, and which supplement the details contained in the construction drawings.

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

Predevelopment Costs: Costs which are incurred in conjunction with, but prior to, the actual commencement of the project's construction, such as site option costs, site carrying charges, architectural and engineering fees, and appraisal fees.

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

Present Value: (LIHC Program term). The value today of payments to be made or received in the future.

Principal: Any person or public or private entity that will participate in the proposed project as an applicant, owner, builder, developer, or managing agent. Architects, attorneys or other consultants who have an interest in the project, other than an "arms-length" fee arrangement for professional

services, are also considered principals. All general and limited partners having a 25 percent or more interest in a partnership are considered principals. Principals of public or private corporations include the president, vice president, secretary, treasurer, and all executive officers who are directly responsible to the board of directors or equivalent governing body, as well as each director and stockholder having a ten percent or more interest in the corporation.

Private Developer: A person, firm, corporation or partnership of which less than 50 percent is controlled by a not-for-profit corporation, charitable organization or a wholly-owned subsidiary of such corporation or organization, whose business activities include residential construction or rehabilitation.

Private Financing: Funding which is provided from a private, non-governmental source, such as a banking institution.

Pro Forma: See the definition of "Operating Pro Forma".

Program Agreement: (HTF and HOME Program). The agreement which is entered into between HTFC and its LPAs for the administration of a program.

Program Design: An exhibit to the Program Agreement which sets forth the program of work to be performed by an LPA on behalf of HTFC. The Program Design specifies how the HTF LPA will meet all HTF Program requirements set forth in the LPA Program Agreement, Article 18 of the PHFL, the rules and regulations promulgated pursuant to Article 18 of the PHFL, and any other applicable laws or codes; or how a HOME LPA will administer its program in a manner which meets all applicable HOME Program and other applicable Federal statutes and regulations.

Progress Payments: Scheduled payments of construction funds which are disbursed as phases of the project's construction are completed, rather than in one lump sum at the beginning of construction.
Project Architect: The architect of record for the project.

Project Contingency: A percentage of the project's total soft costs and contractor's cost, usually a minimum of five percent, which is budgeted to pay for any unforeseen project costs which may be incurred after construction begins.

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

Project Participants: Includes the project applicant, owner, contractor, and architect, the OCD project manager, construction monitor, and staff architect, and if applicable, the construction manager, clerk of the works, and representatives of the construction lender and additional funding

source(s).

Project Recipient: An applicant to which HTFC makes a direct payment, grant or loan for the construction, rehabilitation or conversion of a project.

Promissory Note: One person's unconditional written promise to pay a specific sum of money to another (or order, or bearer), at a future specified time.

Public Financing: Funds which are provided from a government source, State, local or federal.

Punch List: A listing of construction defects or omissions which must be corrected or completed in order to bring the building(s) into compliance with its plans and specifications. The punch list is completed by the project architect following the punch list inspection (see below).

Punch List Inspection: An inspection of the project which is made when contractor advises the owner that the project is substantially complete, for the purpose of making a punch list of all incomplete or incorrect work.

Purchase Price: The amount of money and/or other considerations set for the sale of the property which is to be the site(s) of the regulated project.

QAP: (LIHC Program term). A Qualified Allocation Plan, which is prepared and issued by a Housing Credit Agency pursuant to Section 42 of the Internal Revenue Code and which establishes the criteria by which LIHC funds will be allocated on a geographical basis.

Qualified Basis: (LIHC Program term). The proportion of eligible basis which qualifies for Low Income Housing Credit as defined under Section 42 of the IRS Code.

Regulatory Agreement: The contract between DHCR/HTFC and the project owner which prescribes the terms under which the project will be owned and operated.

Regulatory Period: The period of time for which the project's Regulatory Agreement is in effect.

Rehabilitation: See definitions of "Moderate Rehabilitation" and "Substantial Rehabilitation". In general, it is the restoration of a building to its former or improved condition, as when buildings are renovated or modernized. Rehabilitation usually does not alter a structure's basic plan or style, but may include some new construction, buildings, or additions.

Rent: A fixed payment made periodically by a tenant to a property owner in exchange for the possession and use of a dwelling unit.

Rental Project: A project which is owned and operated as a rental residential property, for which occupants pay rent in exchange for the right to occupy a unit in the building.

Rent Control: Regulation by the State or local governments which restricts the amount that landlords can charge their tenants.

Rent-Up: The process by which a project's units are initially leased to tenants.

Replacement Cost: The current cost of replacing a building with one which has the same practical use, but which may differ from the original in size, materials, and design.

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

Reserve Fund: Monies set aside as a cushion for future payment of items such as taxes, insurance, deferred maintenance, and roof replacement. See definitions for Operating Reserve and Replacement Reserve.

RESTORE Program: Residential Emergency Service to Offer Repairs to the Elderly Program.

Restricted Rent: (LIHC Program term). The rent limitation for a dwelling unit for purposes of qualifying for Low Income Housing Credit as defined under Section 42 of the IRS Code.

Retainage: A portion or a percentage of the construction contract which is withheld until the construction contract has been satisfactorily completed and the period for filing mechanics' liens has expired (or when the lien has been released by the contractor and subcontractor).

Return on Equity: An annual amount to be paid to the developer out of the project's earnings after all necessary operating expenses, including contributions to the reserve fund, are paid. The Return on Equity is calculated as a percentage of the developer's original financial contribution to the project.

Rowhouse: See Housing Types.

RRAP: Rural Rental Assistance Program.

Rural: Cities, towns or villages with a population of less than 25,000.

Satisfaction of Mortgage: An instrument which the mortgagee issues when a mortgage has been paid in full, or is otherwise satisfied.

Schematics: Architectural drawings which are not greatly detailed, but which show basic project layouts in broad scheme.

Seed Money: Funds which a developer needs prior to the submission of an application for full

project funding to determine the feasibility of the project.

SEQRA: State Environmental Quality Review Act.

Setback: Zoning restrictions on the amount of space required between a property's lot and building lines.

Shelter Allowance: The Department of Social Service's maximum rental allowance for persons receiving public assistance; the allowance is based on county of residence and family size.

Shelter Rent: The maximum rent which can be charged for units to be occupied by persons receiving public assistance, or who have incomes at the public assistance level.

SHPO: State Historic Preservation Office.

Single-Family Residence: A structure which is used as a single dwelling unit and is designed for single-family occupancy.

Site Improvements: Additions to a site, such as grading, utilities, sewers, streets and sidewalks, made when the site is developed.

Site Inspection: A visit to and review of the premises.

Soft Costs: Costs, other than acquisition and construction/ rehabilitation costs, which are incurred while holding unimproved property or during construction. Soft costs may include, but are not limited to, such items as carrying charges (interest, real estate taxes, and ground rents), professional service and audit fees, offering plan/prospectus costs, surveys, relocation expenses, insurance, assessments, mortgage insurance premiums, inspection, recording and filing fees, Not-for-Profit Developer's Allowance (NPDA), FNMA/GHMA fee, mortgage recording tax, and title examination costs.

Specifications: Written instructions which supplement the project's architectural plans, and which provide the contractor(s) detailed information regarding features of the proposed project's construction, such as materials, colors, etc.

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

Subrecipient: An applicant to whom a Housing Trust Fund Program Local Program Administrator (LPA) makes a payment, grant or loan for a project pursuant to a formally executed Subrecipient Regulatory Agreement.

Subsidy: A grant made by a government or other entity to reduce the cost of housing to the occupant.

Substantial Completion: The stage of construction when building(s) are determined based upon inspections by the DHCR/HTFC construction monitor, to be habitable and in compliance with codes, although minor items, such as landscaping, may remain to be completed.

Substantial Rehabilitation: A project which has a per unit total development cost in excess of $25,000.

Survey: The measurement of boundaries, dimensions and position of buildings on a lot, including the determination of any existing encroachments or easements.

Syndication Cost: (LIHC Program term). The costs of legal, marketing and syndicator fees necessary to sell partnership interest providing federal tax benefits in the form of Low Income Housing Credits.

Takeout Financing: Long-term permanent financing used to pay off a project's short-term construction loan. This term is used when a project's financing involves two lenders: the interim and the permanent lender. Prior to making a construction loan, an interim lender usually requires a commitment from the permanent lender to "take out" the interim lender when construction is completed, by taking over the mortgage as a permanent (long-term) investment.

Tax Credit: A dollar-for-dollar reduction in federal tax liability for investors who invest in qualified low-income housing under the Low-Income Housing Credit Program.

Technical Assistance: Assistance provided by DHCR/HTFC to help applicants in the design, development, ownership or management of affordable housing projects or programs.

Temporary Certificate of Occupancy: A permit issued to a property owner by the local governmental agency having jurisdiction, when all major building systems are in compliance with the applicable State and local building codes, except for minor compliance items which do not impair the health or safety of the occupants.

Tenant: A person who has the temporary use and occupation of real property owned by another person.

Tenant Paid Utilities: Those utilities whose costs are paid directly by the tenant.

Title: Evidence of the ownership of land; or, the right to or ownership of land.

Title Insurance: A contract under which a title insurance company guarantees to indemnify the policy holder against a loss arising through title defects. Unlike most insurance policies which protect against loss from a future event, title insurance protects against loss from something that has already occurred, such as an undisclosed heir turning up to claim title.

Title Report: A preliminary report showing the current state of the property's title, including any unpaid mortgages, easements, or other recorded objections to clear title.

Title Search: An examination of public records to determine if any defects exist in the chain of title.

Total Development Cost (TDC): The sum of all eligible, necessary and reasonable construction/rehabilitation, site acquisition, and soft costs for a project, excluding working capital and replacement and operating reserve costs.

Total Housing Expense or Total Housing Cost: A household's total monthly expenditure for rent plus utilities.

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

Track Record: A developer's or owner's past experience in developing the kind of projects for which funds have been requested.

Turnkey Development Method: A method used to develop low-income housing in which the development of the project is handled by an experienced builder who at the completion of the development phase turns it over to an experienced owner to operate and manage the project (in some cases, the builder and the owner may be the same entity).

USDA Rural Housing Services (Rural Development): an U.S. Department of Agriculture agency, which assists rural residents and communities through a variety of housing credit and development programs.

Unified Funding Process: The process by which applicants may apply for technical assistance, seed money and capital project funding from DHCR/HTFC.

Unit: A discrete portion of a building designed for residential living.

Urban: Cities, towns or villages with a population of 25,000 or more.

Utilities: Basic services required for a project, such as electricity, water, and gas.

Vacancy Rate: The vacancy rate is the percentage of total units that are vacant in a particular project or area.

Variance: Permission from government zoning authorities to construct a building or utilize a property in a way which is prohibited by the locality's zoning laws; an exception from the zoning

laws.

Very Low Income Persons: Persons or households whose incomes are less than or equal to 50 percent of the area median income.

Walk-Up: See Housing Types.

Working Capital Fund: A fund to be used for start-up expenses incurred in the first year after substantial completion including, but not limited to, liability insurance, fidelity bond premiums, utility hook-up deposits, maintenance equipment, movable furnishings and equipment, and other initial project-related expenses, as approved by DHCR/HTFC.

Work-Out: A mortgagee's attempt to help a mortgagor who is in default to arrange a plan to cure the default.