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Section: 2.0 PROGRAM DESCRIPTIONS

Sub Section 2.01 Low-Income Housing Trust Fund Program

2.01.01 Summary

The Low-Income Housing Trust Fund Program ("HTF Program") provides payments, grants and loans to eligible applicants to develop and complete housing projects for occupancy by persons of low income in eligible areas. Eligible applicants may receive up to \$125,000 per unit to pay for eligible costs that include: site acquisition; constructing, rehabilitating or converting an eligible project; and soft costs. HTF Program funds may be used as bridge or permanent financing for predevelopment costs, construction costs, working capital, and replacement reserves. Not-for-profit HTF applicants may also apply to receive Seed Money Awards which are described in Section 3.10. [HTF construction loans to not-for-profit owners are not subject to an interest charge.](#)

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.

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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 equal to at least 50% of the controlling interest in the project and have a defined role in project management, evidenced by an equal say in the selection, hiring and firing of the management agent for the project, and in other decisions regarding the management of the project. The non-profit must also have an equal say in the management of the partnership as demonstrated by the partnership agreement.

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.

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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.

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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 (HTF or 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. Distressed Residential Property: (a) a residential property, the rehabilitation of which would preserve affordable housing currently serving a population whose housing need would justify its replacement if it ceased to be available, (b) a residential property which has an occupancy rate by lawful occupants of less than 60%, (c) a portion of a residential property described in paragraph (b) of this definition provided that such portion also has an occupancy rate by lawful occupants of less than 60%, (d) a residential property which consists of one or two residential units prior to rehabilitation and which, subsequent to rehabilitation, will contain at least one additional residential unit.

4. Eligible Applicant:
 - (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;

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- (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.
5. Eligible Property: Any vacant residential or vacant or underutilized non-residential property or any distressed residential property, or any portion of any of the above, or any site suitable for construction, which is located in an eligible area.
6. 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.

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7. Nonresidential Property: Any property which is not residential property and is vacant or underutilized.

8. 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.

9. 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."

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10. 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.

11. 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.

12. 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.

13. 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.

2.01.03 Eligibility Requirements

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

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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 Section 2.01.03.C.

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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. [Distressed residential properties are also eligible projects, see Section 2.01.02.B, #3;](#)

Conversion projects, in which nonresidential property is converted into residential property, are eligible, provided that the nonresidential property is entirely vacant or underutilized 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 to be considered underoccupied;

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.

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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.

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:

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- (i) Federal Designation
 - a. Areas which are designated by the Secretary of the Department of Housing and Urban Development (HUD) of the United States as areas in which concentrated housing, physical development and public service activities are being or will be carried out in a coordinated manner, pursuant to a locally developed strategy for neighborhood improvement, conservation and preservation;
 - b. Areas which have been proposed by the locality and approved by HUD as Community Development Block Grant (CDBG) target areas;
 - c. Areas which have been proposed by the locality and approved by HUD as Rental Rehabilitation target areas; and
 - d. Neighborhoods in which Community Housing Development Organizations are carrying out activities pursuant to Title II of the National Affordable Housing Act.

- (ii) State Designation
 - a. Areas which are designated under Articles 15 and 16 of the General Municipal Law (The Urban Renewal Law and the Urban Development Action Area Act);
 - b. Census tracts in which at least 70 percent of the families have incomes which are 80 percent or less than the Statewide median income;
 - c. Areas of chronic economic distress as designated by the State and as approved by the Secretary of the Treasury and the Secretary of HUD;

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

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

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- (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 Section 7.06.02 for a discussion of rents). Units vacated by over-income tenants must be subsequently rented to eligible occupants.

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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 income. [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 \$125,000 per unit. 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 50 percent of the HTF Program award);
- (vii) carrying costs during construction;
- (viii) Working Capital Fund;
- (ix) a Replacement Reserve;
- (x) LPA fees for technical services rendered on behalf of the subrecipient;
- (xi) fees for construction audit;
- (xii) Non-Profit Developer's Allowance (NPDA), if applicable; and

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- (xiii) Community Service Facility costs (not to exceed 10% of the HTF residential funding request, with the total HTF request not exceeding the per unit funding cap).

HTF Program funds may not be used for the administration costs of the applicant, 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 50 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;
- (ix) market and environmental studies;
- (x) feasibility studies; and,
- (xi) site option expenses.

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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 Section 2.01.04.D.

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2.01.04.B Real Estate Contributions

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

The value of property 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 preconstruction 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.

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2.01.04.D Return on Equity

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

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

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

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

Return on equity payments will be made following the end of each fiscal year. Payments from the General Operating Account for return on equity require prior approval of [the Asset Management Unit \(AMU\)](#). Payments from the Operating Reserve Account [also require prior approval of AMU](#). [AMU and HTFC finance](#) 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,

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- 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

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2.01.04.F Accessibility and Adaptation of Units

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.

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Sub Section 2.02 Housing Development Fund Program

2.02.01 Summary

The Housing Development Fund (HDF) is a revolving loan fund 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.

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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).

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:

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- (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.

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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.

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.

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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.

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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;

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- (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:

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- (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:

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- (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.

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The Farmworker Housing Program is a low-cost revolving loan program to assist agricultural producers in improving existing housing or constructing replacement housing for 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 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 ([a producer or entity which owns or operates land eligible for an agricultural assessment under Sections 305 and 306 of the Agriculture and Markets Law and which produces food by the tillage of the soil, or raises, shears, feeds or manages animals or other dairying processes](#)) can apply to borrow up to \$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.

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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.

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Section: 2.00 PROGRAM DESCRIPTIONS
Sub Section: 2.03 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 5 year contracts, which may be extended, up to a maximum of 26 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

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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

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- (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).

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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.

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

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- (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 5 year contracts, which may be extended once up to a maximum of 26 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).

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Section: 2.0 PROGRAM DESCRIPTIONS

Sub Section: 2.04 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.

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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 [Internal Revenue Code \(the Code\)](#). The QAP sets forth the [threshold](#) eligibility, scoring criteria and preferences by which LIHC will be awarded and allocated to projects by DHCR.

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.

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- 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.

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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 QAP follow:

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

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(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).

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(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, [except when such standards are demonstrated to be irreconcilable with federal, state or local statutes, regulations, ordinances or codes.](#)

(15). [If the project includes the rehabilitation of any building\(s\)](#) the acquisition costs of [the building\(s\)](#) 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 appliances [which are labeled Energy Star including, but not limited to, refrigerators,](#)

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- (ii) utilize Energy Star light fixtures, with the exception of light fixtures located in basements or storage areas;
- (iii) utilize Energy Star heating systems or the equivalent which will produce the same or comparable energy efficiency or savings;
- (iv) where appropriate, select and place native trees and plants to minimize water usage and maximize energy efficiency;
- (v) use water-conserving fixtures;
- (vi) maximize energy efficiency by use of daylight sensors and timers on outdoor lighting;
- (vii) 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
- (viii) for properties built before 1978, use lead-safe work practices during renovation, remodeling, painting and demolition.

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. Pursuant to the federal Housing and Economic Recovery Act of 2008 (HERA) which amended certain provisions of the Code in regard to Credit, the allowable percentage of development costs of the CSF portion of the qualified low-income project which can be included in basis is 25 percent. 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

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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 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 **or** reuse of existing buildings, **which may include the historic rehabilitation 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 QAP for specific Green Building features in the LIHC scoring criteria);

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- 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 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@trcsolutions.com or visit NYSERDA's website at <http://www.getenergysmart.org/MultiFamilyHomes/NewConstruction/BuildingOwner.aspx>;

- 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 QAP for the specific scoring criteria);

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- 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 [broadband](#) internet services, a computer lab, Energy Star central air-conditioning [or the equivalent](#), [Energy Star or equivalent](#) dishwashers and/or laundry facilities, and/or outdoor patio or garden space.

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 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

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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 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 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 **thirty** 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;

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- 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 2.04.04.A below) for qualified non-profit organizations which own an interest in the project and materially participate in the development and operation of the project throughout the 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

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- 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. [A complete listing of the populations which DHCR and HTFC recognize as persons with special needs is provided in Section 5.14 of this manual. Also, pursuant to a provision in HERA, a project which otherwise meets this general public use](#)

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requirement may have occupancy preferences that favor tenants who are members of a specified group under a federal program or state program or policy that supports housing for such a specified group or tenants who are involved in artistic and literary activities.

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.

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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.

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.

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);

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- 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, [the Credit financing available including per unit and per project maximum annual allocation amounts](#), DHCR's stated expectations and project preferences and the format for applicant notification of the outcome of DHCR's review.

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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 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;

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- 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.

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.

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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.

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2.04.05 Projects Financed by Private Activity Bonds

Pursuant to Section 2040.4(f) of the QAP, as of March 1, 2008, DHCR no longer accepts applications for 4% Credit applications for projects financed by private activity bonds. The New York State Housing Finance Agency (HFA) has been 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 on a statewide basis. Such allocations will be made by HFA pursuant to HFA's QAP and its 4% Credit requirements and standards.

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 “LIHC/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;

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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.

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- (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.

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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.

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Section: 2.0 PROGRAM DESCRIPTIONS

Sub Section: 2.05 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.

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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;

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- (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.

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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.

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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 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

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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 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 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 setaside 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 preconstruction 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, preconstruction 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

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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

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- (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;

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- (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 owneroccupied 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.

Section 2.05.04 sets 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.

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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:

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- 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

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- 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;

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- (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 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

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- (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);

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- (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.

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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 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.

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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. [Notices to tenants in occupied buildings to be assisted with HOME funds \(required by 49 CFR 24.101\) and to owners of such buildings \(required by 49 CFR 24.101\) must be submitted prior to the issuance of the HTFC funding commitment letter described in Section 3.02.07.](#)

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).

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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.

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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.

2.05.04.E 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.

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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 CHDO Multi-Family Rental Projects

In order for a HOME multi-family rental project to be considered a CHDO project, the project ownership structure must comply with the terms of 24 CFR 92.300 (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 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;

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- (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);

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- (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 Section 6.02.09.A.

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Section: 2.00 PROGRAM DESCRIPTIONS

Sub Section: 2.06 Homes for Working Families

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 senior or non-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 maintains a strong preference to provide permanent financing only for HWF projects.

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

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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 [4% Low-Income Housing Credit](#), HWF-assisted units are subject to the pertinent provisions of Section 42 of the Internal Revenue Code and the Qualified Allocation Plan [of the housing credit agency issuing the Credit allocation](#).

2.06.03 Eligibility Requirements

HWF-assisted units in projects must meet all the eligibility requirements of the HTF Program (see Section 2.01.03 of this Manual), [as well as the requirements of all other agencies providing tax-exempt bonds, 4% Low-Income Housing Credit and any other public financing](#).

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, [\(except where otherwise indicated\)](#), 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 [design and](#) underwriting requirements and post-construction compliance monitoring during the project's regulatory period [\(see Section 2.06.04.C for additional information about the coordination of roles between HTFC and the agencies issuing the tax-exempt bonds and/or 4% Credit\)](#).

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.

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For construction financing, borrowers will execute a 6% interest note and mortgage, in accordance with Section 5.13.02 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 HWF Program Coordination of Roles and Responsibilities

The following is a summary of the coordination of roles and responsibilities, where applicable, between HTFC and the agencies providing tax-exempt bond financing and/or 4% Credit:

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(i) New York State Housing Finance Agency (HFA)

Applicants seeking to apply for HWF financing from HTFC and HFA's tax-exempt bonds, second mortgage financing and 4% Credit must submit a joint application to both agencies, which is available on the DHCR website at <http://nysdhcr.gov/Apps/HomesForWorkingFamilies>.

Since HFA provides a substantial portion of the HWF project's financing, HFA assumes lead agency status in most facets of application review, as well as monitoring during construction and the HWF regulatory term. However, in assessing the construction feasibility and the post-completion operating viability of jointly financed HWF projects during the regulatory period, HFA and HTFC coordinate many aspects of their review. If clarification or revised documentation is deemed necessary during feasibility review, applicants are required to submit the requested documentation to both agencies for review.

In general, HTFC accepts HFA's project underwriting and design review provided that there is general adherence to HWF statutory, financing and regulatory requirements. HTFC accepts HFA's SEQRA determinations when there is a coordinated review, and utilizes HFA's Minority and Women Owned Business participation goals and standards. HFA issues the "as-of-right" LIHC allocation for jointly-financed HWF projects and is responsible for compliance monitoring during the LIHC regulatory period. HWF programmatic requirements are incorporated into the HFA's regulatory agreement which is executed with the project owner.

However, HFA-financed HWF projects receiving a SLIHC allocation from DHCR will still be subject to the SLIHC regulations, the pertinent sections of the LIHC QAP and other standard programmatic requirements, in addition to the requirements of other programs and agencies providing financing for such HWF projects.

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(ii) **Other Tax-Exempt Bond Issuers**

For HWF projects in which other tax-exempt bond issuers are proposed (e.g., local industrial development agencies, public housing authorities, New York City Housing Development Corporation), HTFC assumes the lead role in all facets of project feasibility and design review, including construction and post-construction monitoring.

Pursuant to the LIHC QAP, DHCR no longer accepts applications for 4% Credit. For HWF projects financed by tax-exempt bond issuers other than HFA, HFA accepts applications requesting 4% Credit on a statewide basis. Applicants may use the HWF HTFC/HFA joint application referenced in (i) above to request 4% LIHC only. For projects in which NYC Housing Development Corporation is the proposed bond issuer, applicants may use the New York City Department of Housing Preservation and Development as the tax credit issuing agency.

2.06.04.D 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.E 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.

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Section: 2.00 PROGRAM DESCRIPTIONS

Sub Section: 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.

2.07.03.A. Eligible Applicant

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

2.07.03.B. 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;

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- 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.

2.07.03.C Eligible Areas

All areas of state are eligible.

2.07.03.D 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 **\$7,500** per building.

2.07.03.E 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.

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Section: 2.00 PROGRAM DESCRIPTIONS

Sub Section: 2.08 New York State Low-Income Housing Credit Program

2.08.01 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 senior and non-senior 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:

2.08.02 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

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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.

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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.

2.08.04 Eligibility Requirements

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

2.08.04.A Eligible Applicants/Owners

Eligible applicants/owners for the SLIHC Program include individuals, partnerships, limited partnerships, **limited liability** 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 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)).

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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.

2.08.04.B 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 QAP and referenced in Section 2.04.03 B above.

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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.

2.08.04.C 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;

2.08.04.D Eligible Areas

All areas of New York State are eligible.

2.08.04.E 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

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with federal and state laws and regulations barring discrimination in housing. Also, the pertinent provisions of the federal Housing and Economic Recovery Act of 2008, described in Section 2.04.03.D above, apply to SLIHC.

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 SLIHC regulation. The SLIHC scoring criteria are 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)

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Section: 2.00 PROGRAM DESCRIPTIONS

Sub Section: 2.09 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 80% 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.

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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 **53,000** 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.

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.

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(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.

2.09.07 Regulatory Term

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

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Section: 2.00 PROGRAM DESCRIPTIONS

Sub Section: 2.10 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

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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 **25,000**. 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.

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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.

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Section: 2.00 PROGRAM DESCRIPTIONS

Sub Section: 2.11 Small Projects Program

2.11.01 Summary

The purpose of the program is to provide financial assistance to not-for-profit applicants only who will also act as the owner of the completed affordable rental housing project. SPP projects can be located anywhere in New York State. SPP awards are anticipated to be zero percent interest (0%) balloon loans and funding can come from either the HTF or HOME capital programs. Applications may be submitted at any time of the year through the DHCR/HTFC Open Window application process. In addition to the requirements outlined in Section 2.11.03 below, SPP projects will be subject to the general statutory and regulatory provisions of the HTF and HOME capital programs.

2.11.02 Eligible Applicants

Eligible applicants include not-for-profit organizations, including not-for-profit subsidiaries of housing authorities that will act as the applicant, developer and owner of affordable housing.

2.11.03 Eligible Projects

An SPP project must be limited to no more than fifteen (15) total residential rental units and may not include Federal or New York State Low-Income Housing Tax Credit as a project funding source. Projects may be the new construction of residential rental units or the rehabilitation of vacant, under-utilized, or distressed residential properties. Distressed residential properties are residential properties, the rehabilitation of which would preserve affordable housing currently serving a population whose housing need would justify its replacement if it ceased to be available. Conversion of vacant or underutilized non-residential properties to residential use is also allowed.

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2.11.04 Eligible Areas

Applications may propose a project location anywhere in New York State according to the provisions of Article 18 of the PHFL.

2.11.05 Eligible Occupants

- (A) For HTF SPP requests 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; or,

- (B) In the portion of the State outside cities with a population of 1,000,000 or more, and, (i) within a MSA, those persons and families whose household 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 of the State, whichever is greater; or, (ii) 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.

For HOME SPP requests, eligible occupants are generally those persons and families whose incomes do not exceed 80 percent of the metropolitan area (MSA) in which the project is located. However, additional HOME program requirements for rental housing are outlined in Section 2.05.03.E.

For HTF 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. Those eligible occupants whose incomes later exceed the eligibility requirements may remain in the SPP unit, but the percentage of tenant income which must be paid toward rent may be adjusted whether the SPP project was funded under the HTF or the HOME capital program.

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2.11.06 Eligible Project Costs

SPP financing is available only for the construction or rehabilitation of rental housing units and may be used for construction or permanent financing through HTF and permanent financing only under the HOME capital program. Preference will be given to applications that propose a construction lender other than the SPP source. SPP funds may be used for customary HTF and HOME capital development costs including acquisition, soft costs, construction/rehabilitation expenses and a working capital fund. SPP funds may also be used to create community space for the exclusive use by the project tenants. SPP funding is limited to \$125,000 per HTF covered unit and is limited to the HOME subsidy cost per unit for the project location. Up to 50 percent of an HTF SPP award may be used towards the acquisition costs of a property and up to 10 percent of an HTF SPP award may be used to develop a Community Service Facility (CSF). (A CSF is defined as any facility designed to primarily serve individuals whose incomes would make them eligible to occupy an SPP-assisted project, including persons who reside in the SPP project or in the immediate community.)

Ineligible SPP project costs include administrative costs and the capitalization of an operating reserve. SPP funds cannot be used to create civic or commercial space, but these uses are permissible for the project if funded by a non-SPP source.

2.11.07 Regulatory Term

The regulatory term for an SPP project is proposed to be 30 years.

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Section: 2.00 PROGRAM DESCRIPTIONS

Subsection 2.12 Access to Home Program

2.12.01 Summary

The New York State Access to Home program provides funds to make the homes and apartments of low and moderate income New Yorkers who have disabilities and/or are frail elderly, more accessible. Home adaptations and alterations are made to enable persons with disabilities to remain in or return to their own homes, rather than enter or stay in more costly and restrictive institutional settings.

The Access to Home program is authorized by Article 25 of the Private Housing Finance law, for the purpose of providing financial and technical resources that assist renters and property owners in making dwelling units accessible for low and moderate income persons with disabilities.

2.12.02 Eligible Applicants

An eligible applicant is a city, town, or village, or a not-for-profit corporation which has been in existence for a period of one or more years prior to application, and which is, or will be at the time of award, incorporated under the not-for-profit corporation law and has substantial experience in adapting or retrofitting homes for persons with disabilities.

Administration of each Access to Home Program will be governed by the Administrative Plan that is agreed to by the local program administrator, or “LPA” (an eligible applicant that administers funds to provide either loans or grants to homeowners and renters, and who oversees the adaptation or retrofitting of eligible properties) and the HTFC. The Administrative Plan will be incorporated as an exhibit in the grant agreement between the applicant and the HTFC. Prior to issuance of an agreement, successful applicants may be asked to revise the plan to address issues

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not discussed in the application or to modify sections that are inconsistent with Federal or State regulations.

2.12.02A Access to Home LPA Roles and Responsibilities

- i. Provision of adequate staff to carry out the program;
- ii. Implementation of all required policies and procedures;
- iii. Maintaining a documented record of training that staff working on the program has received. Documentation must include the title of the training, the date and time the training occurred, a description of topics covered in the training, and the names and signatures of all attendees;
- iv. Program marketing, including compliance with all State and Federal equal opportunity, fair-housing and affirmative marketing requirements;
- v. Conducting eligibility determinations and ensuring that all income targeting requirements are met;
- vi. Ensuring that Access to Home funds are only expended for eligible activities consistent with State and Federal requirements with respect to property requirements, rehabilitation standards and qualification as affordable housing;
- vii. Following an anti-displacement plan;
- viii. Financial management of all program funds, disbursing funds to contractors, coordinating payment of program funds with funds from other sources, and tracking and reporting on repayments and program income;
- ix. 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;
- x. Post-occupancy monitoring to ensure regulatory compliance for assisted units;
- xi. Conducting, or assisting HTFC in conducting, environmental reviews for each activity that it carries out with Access to Home funds and submission of requests for payment or other documentation, as required, to HTFC for approval.

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- xii. Record-keeping and reporting on program activities.

2.12.03 Eligible Projects

An eligible property is a housing unit that is the primary residence of a person with a physical disability and a total household income that does not exceed eighty percent of median income, or a disabled veteran who has a total household income that does not exceed one hundred twenty percent of area median income. A property that is otherwise obligated by federal, state or local law to be provided with accessibility improvements shall not be considered an eligible property. Publicly assisted buildings will only be provided assistance when it can be determined that no other resources are available for this purpose.

Both rental and owner-occupied housing may be improved with program funds. Owner-occupied housing includes single-family housing where the owner holds fee-simple title and occupies the unit as his or her primary residence. Life estates and life tenancies, where the property is occupied by an eligible household pursuant to a lease or other agreement that gives the household the right to occupy the property for a minimum of five years are also acceptable forms of ownership for. Condominiums and cooperatives are also eligible. Cooperatively-owned units are eligible if the occupant is meets income and disability requirements for eligibility, provided that any required approvals are obtained from the governing Coop board. If an LPA applicant has a significant number of cooperatively-owned buildings in its target service area, procedures to provide service to this type of unit should be addressed in the administrative plan.

The LPA must ensure that Access to Home funds is not used where owners have the responsibility to provide such improvements from other sources of funds. The assisted unit must be made available to low income persons and be affirmatively marketed to persons with disabilities for a period of five years.

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Projects cannot use program funds to subsidize services that are available from other programs or service providers. In some situations funds may be used to provide environmental modifications to supportive service units. Technical assistance from a DHCR regional office should be sought before an application that targets such housing is submitted.

An LPA may only allocate funds to improve a property that it owns if:

- i. The work is consistent with the LPA's administrative plan; and
- ii. The work is necessary to meet the goals of the program; and
- iii. There is a public disclosure to the community that the LPA is proposing to assist a property that it owns; and,
- iv. There is prior approval by the DHCR regional office.

2.12.04 Eligible Areas

Projects can be located anywhere in New York State. Each LPA must designate a defined service area in which the projects the sponsor will be located. The service area may consist of a neighborhood, a municipality, an entire county or part or all of two adjacent counties.

2.12.05 Eligible Occupants/Beneficiaries

Homeowners and rental property owners qualify for Access to Home assistance through the LPA under the following criteria:

- i. The household includes an occupant that is physically disabled or has substantial difficulty with an activity of daily living due to aging.
- ii. The dwelling unit is the occupant's primary residence or will be the occupant's primary residence after modifications are completed.
- iii. Total household income does not exceed 80 percent of area median income, adjusted for household size. If the occupied unit includes a disabled veteran the household income cannot exceed 120% of area median income, adjusted for household size.

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“Disabled veteran” means a veteran who is certified by the United States department of veterans affairs or the department of defense as entitled to receive disability payments upon the certification of such department for a disability incurred by him or her in time of war.

2.12.06 Eligible Costs

Eligible Costs include, but are not limited to the following:

- i. Lead testing (from Administrative funds or other sources).
- ii. Health and Safety measures in the immediate work area where modifications are being installed.
- iii. Construction costs directly related to the accessibility modifications.
- iv. Short-term relocation
- v. Staff costs relating to project delivery:
 - a. Staff time directly related to qualifying individuals or households for assistance;
 - b. Site visits to determine the extent and the type of accessibility modifications necessary;
 - c. Writing specifications, obtaining evaluating and awarding contractor bids;
 - d. Interim and final inspections of the work;
 - e. Health and safety tests such as that for lead clearance; and
 - f. Engineering costs directly related the project.
 - g. Necessary and appropriate architectural services.
- vi. Administration (not to exceed 7.5% of total grant amount).

Health and safety measures are an eligible expense only in the immediate work area where the modifications are being installed. The LPA should locate other sources of funds to provide energy conservation and/or to mitigate health and safety hazards unrelated to the accessibility modifications to be made.

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Funds may only be requested for costs that have been incurred and must be accompanied by supporting documentation as described in instructions for requesting payment from HTFC that are provided to each applicant. Only work performed after the date of the execution of the grant agreement will be reimbursed. Advances of funds are not permitted.

Any work performed for a unit that falls out of the program area or does not proceed for some reason is not eligible for reimbursement as a project deliverable, but must be taken from the 7.5% administrative allowance.

2.12.06A Eligible Work Items

It is the responsibility of the LPA to create/adopt a procedure for deciding which modifications are appropriate to enable a person with disabilities to remain at or return to the home, based on commonly accepted practices of the agency or funding program that has primary responsibility for providing services for the type of disability involved.

The LPA is required to create/adopt a procedure to follow for prioritizing modifications within each unit in the application. The LPA must establish priorities that ensure only work needed to meet the accessibility goals is performed and that assistance is provided to as many eligible persons possible.

Eligible home modification measures that allow individuals to stay in or return to their homes include but are not limited to:

- i. Wheelchair ramps, lifts, and stair glides;
- ii. Handrails;
- iii. Expanded doorways, 36” wide doorways with off-set hinges.
- iv. Roll-in showers with grab bars, bathtub grab bars and seats, hand-held shower;
- v. Non-skid flooring;
- vi. Appliances that respond to verbal commands

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- vii. Easy-to-reach work and storage areas and other kitchen modifications
- viii. Outlets at 18” instead of 12”; light switches at 42” instead of 48” from the floor;
- ix. Electrical installation of special thermostatic or environmental controls, luminous light switches;
- x. Strobe light or vibrator-assisted smoke and burglar alarms;
- xi. Re-locating a bathroom or bedroom on a first floor;
- xii. Low-cost measures such as traction tape on stairways, levered door handles or additional outside lighting.

New construction is not permitted with Access to Home funds; however, small additions added to an existing structure that are required to permit the installation of accessibility modifications and to enable the customer to remain in or return to the unit may be allowed in certain situations.

*** All adaptations should meet the individualized needs of the disabled occupant(s) of the unit that requires modifications.**

2.12.06B Relocation

Access to Home funds may be used to reimburse occupants for short-term relocation, to permit work to be completed on the unit without posing a safety risk to occupants or workers.

Relocation must be directly related to the Access to Home work being completed.

2.11.07 Performance Requirements

LPA’s must adhere to the following performance requirements:

- i. The LPA must make a proactive effort to encourage participation by certified women-owned and minority-owned businesses.
- ii. The LPA is required to obtain two bids for each separate project in order to establish the reasonableness of modification costs.

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- iii. All work must meet all applicable codes, regulations and standards.
- iv. Universal Design principles must be followed in the installation of accessibility modifications.
- v. If other work unrelated to the accessibility modifications is needed, other funds must be used to provide the repairs before Access to Home funds are spent on the unit. All requirements associated with the other funding source must be met.
- vi. All contract activities must be completed in accordance with the contract production schedule.

2.12.08 Outreach and Marketing

- i. The LPA is required to develop a procedure for the outreach to and selection of contractors including outreach to M/WBE's.
- ii. The LPA is required to develop a procedure for the outreach and marketing of the Access to Home program to their coverage area, including affirmative marketing strategies. The developed procedures must result in the fair and equitable distribution of assistance.
- iii. The LPA is required to develop a procedure for their customer list prioritization. The developed procedures must result in the fair and equitable distribution of assistance.

2.12.09 Regulatory Period

Any property receiving Access to Home assistance must be reserved for occupancy by households with incomes at or below 80% of the area median income (or 120% of AMI if the household includes a disabled veteran) for a period of five years; rental units that become vacant during that period must be affirmatively marketed to low income persons with disabilities.

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2.12.10 Recordkeeping, Reporting and Monitoring

The LPA is responsible for maintaining complete project files including participant applications, eligibility documentation, work specifications, bid documents, contracts, contractors' invoices, inspection reports and any applicable documentation on historic preservation reviews, lead-based paint, and environmental conditions and clearances. Project files will be examined by DHCR personnel on regularly scheduled site visits. Files are also subject to examination at any time by representatives of HTFC or DHCR.

Each project file must include the following:

- The building address at which the work is done;
- The date(s) when the work was started, a record of the days that work was conducted on the project, and the date completed.;
- Original estimates of the work to be performed;
- Invoices from contractors;
- Date(s) of LPA and/or architect site inspections;
- Signed agreement with property owner (deferred loan terms and conditional repayment agreement);
- Pre- and post-photographs of the modifications;
- Signed agreement to release photographs;
- Copy of customer sign-off of completed work;
- Copy of lead clearance inspections if applicable;
- HTFC Environmental clearance document(s).