Section: 7.0 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS

Sub Section 7.01 Introduction

This section describes the general procedures for operating and managing **any property funded by the Housing Trust Fund Corporation, (HOME, Housing Trust Fund and Turnkey Programs). Owners should refer to the Regulatory Agreement for project-specific obligations**. Projects with Low Income Housing Credit (LIHC) are also subject to certain post-construction operating requirements as set forth in the LIHC statute and Regulatory Agreement. Further guidance is contained in the LIHC Compliance Monitoring Guide. If requirements of different Programs overlap, **the most restrictive provisions shall apply**. Where the requirements for the LIHC, HTF, **HOME** and Turnkey Programs differ, it is noted in the text.

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

If you have any questions regarding compliance issues, please contact your Asset Management Representative or call the **Asset Management Unit** (518) **474-5776** or write:

NYS Division of Housing and Community Renewal

Asset Management Unit 5th Floor

38-40 State Street

Albany, NY 12207

Section: 7.0 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS

Sub Section 7.02 Required Operation Audits

7.02.01 Audit Requirements

Projects must be operated in compliance **with DHCR's Audit and Accounting Manual**. To ensure **that all projects funded by the Housing Trust Fund Corporation (HTFC)** are being operated and managed in compliance with all program requirements, AMU will conduct periodic site visits and will review audit reports which must be submitted to DHCR within 120 days of the close of the project's fiscal year. DHCR reserves the right to perform on-site audits, if deemed necessary.

7.02.02 Bank Accounts

In addition to the requirements **established in DHCR's Audit and Accounting Manual,** project owners must adhere to the following general requirements for establishing bank accounts for the project

(i) all project funds must be held in accounts with banking institutions which are authorized to do business in New York State, which are insured by an agency of the federal government, and which have a proven record of investment in the community in which the project is located; project owners are responsible for ensuring that project funds maintained in such account(s) are within the insured amount limitations as established by the federal government;

(ii) **any account offset provisions are prohibited;** (the bank must waive any right to seize the account and cannot be used as collateral for other obligations)

(iii) project funds may only be used for authorized purposes as described in this section, the Regulatory Agreement, and all attachments thereto;

(iv) project funds must be maintained separately and distinctly from any other accounts maintained by the owner and/or managing agent for other projects or enterprises;

(v) on demand deposit checking account must be maintained for each project;

(vi) the interest earned on any interest-bearing accounts must remain in such account an may only be used for the specific purposes to which the account is dedicated; and

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

(i) General Operating Account;

(ii) Working Capital Fund Account;

(iii) Operating Reserve Account;

(iv) Replacement Reserve Account;

(v) Real Estate Tax and Insurance Escrow Account; and

(vi) Tenant Security Deposit Account. Each of the required operating accounts are described in the following sub-sections.

Section: 7.0 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS

Sub Section 7.03 Required Operating Accounts

7.03.01 General Operating Account

The General Operating Account is used for the deposit of all project income (including rent receipts, housing subsidy payments and non-residential rental income), and for the disbursement of all necessary project expenses (including deposits to the Real Estate Tax and Insurance Escrow Account and the Reserve Accounts). Any cash in excess of three month's rent roll which remains on deposit in the account at the end of the project's fiscal year must be transferred to the Operating Reserve Account. See Section 7.03.04

7.03.02 Working Capital Fund Account

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

7.03.03 Reserve Fund Accounts

At the time of Final Closing the owner must establish an Operating Reserve Account and a Replacement Reserve Account with an initial deposit and distribution in amounts to be determined by HTFC on a project-by-project basis. Any withdrawals from these accounts will require the advance approval of AMU. HTFC funded reserve accounts will be blocked and require a HFTC signature to withdraw funds. The owner will be required to make fixed monthly deposits to the Reserve Fund Accounts by transferring funds into them from the project's General Operating

Account. The amount of such monthly deposits will be determined by HTFC on a project-by project basis.

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

Projects funded with HTF or NYS HOME must utilize a Custodial Agreement Account if the combined amount of operating and replacement reserves will total $100,000 or more adding together capitalized amounts and annual contributions to reserves over the first five years of operations. The owner may be required to deposit project reserves below $100,000 pursuant to a Custodial Agreement Account **if** the owner or managing agent has one or more prior instances of fiscal irregularities including but not limited to:

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

The project owner must set up the Custodial Agreement Account(s) according to DHCR requirements listed below:

- All withdrawals require two party signature [one being DHCR staff];
- The bank must waive any right to seize the account and cannot be used as collateral for other obligations (no offset provisions);
- All deposited funds are collateralized, if not in US Government Treasury Securities or Certificates of Deposit, by DHCR approved investments.
- The owner/management agent shall make the required contributions as stated in the Regulatory Agreement into a Custodial Agreement Account.
- The reserve account(s) shall be established at a federally insured depositing institution in New York State.

Withdrawals from Custodial Agreement Accounts will require the signatures of AMU and the owner for release of funds. The OCD Project Manager will approve withdrawals until the project is transferred to AMU. Specific requirements for each type of reserve account are given in Sub Section 7.03.04 and 7.03.05. DHCR reserves the right to require Custodial Agreement Account(s) for problem projects at any time.

7.03.04 Operating Reserve Account

The Operating Reserve Fund Account is established to provide the project with a source of funds in the event that the project cannot meet its monthly operating expenses. Owners are required to make monthly deposits to the Operating Reserve Account in an amount to be determined by HTFC on a project-by-project basis. The monthly Operating Reserve deposit will be made with monies withdrawn from the General Operating Account. If necessary, the monthly deposits may be adjusted by AMU after initial project occupancy.

If, after paying the project's annual operating and maintenance expenses, there is annual rental income over and above an amount equal to three month's rent roll, such amount must be deposited into the Operating Reserve Account.

If there are Operating Reserve Funds in excess of the **maximum** reserve amount which is prescribed by the Regulatory Agreement, such excess funds may be used subject to the approval of AMU to either

(i) lower the current tenant rental charge(s) (provide a rent subsidy);

(ii) increase the number of Persons of Very Low Income residing in the project;

(iii) repay the HTFC loan or grant;

(iv) for HTF Program projects, pay the Return on Equity as described in Section 2.01, i applicable; or

(v) fund the purchase of furnishings or equipment essential for project operation and management; or to improve the enjoyment of the building.

7.03.05 Replacement Reserve Account

The Replacement Reserve Account is established to provide the project with a source of funds to replace such items as flooring, plumbing, heating, electrical, roof and security systems, appliances, window and door units, cabinetry, site apparatus, or other items approved, **in advance**, by **AMU.**

Owners must make monthly deposits to the Replacement Reserve Account in an amount which HTFC determines is necessary to maintain an adequate Replacement Reserve for the project. The monthly Replacement Reserve Account deposit will be made with monies withdrawn from the General Operating Account. If necessary, the monthly deposit established by HTFC may be adjusted by **AMU** after initial project occupancy.

All expenditures from the Replacement Reserve Account will require the prior approval of **AMU**. The signatures of **AMU** and the owner **are** required for the release of funds from any project account.

All requests for withdrawals from the Replacement Reserve Account must be submitted in writing to **AMU**. The request must include, but is not limited to, a description/scope of work or replacement, three bids (if possible), the proposed bidder's Liability Insurance Certificate, copy of existing warrantee and a current copy of the Replacement Reserve Account bank statement.

7.03.06 Real Estate Tax and Insurance Escrow Account

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

7.03.07 Tenant Security Deposit Account

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

For projects with less than six units, the tenant security deposits do not have to be placed in an interest bearing account, but must be held in a banking institution, until such time as they are repaid to the tenant, or applied toward damages.

The project owner must provide each tenant with written notification of the name and address of the bank where the money is deposited, as well as the amount of the tenant's deposit. If the account is interest-bearing, the project owner is entitled to an administration expense fee equal to one percent per annum on the security money deposited. This shall be in lieu of all other administrative and custodial expenses. The balance of the interest earned is the property of the tenant and it must be paid annually to the tenant. If a tenant's lease terminates at a time when the banking organization at which the security money is deposited does not regularly pay interest, the project owner must pay the tenant any interest that it is able to collect at the time that the lease terminates.

All tenant security deposits must be considered the property of the tenant, and may not be commingled with the personal monies, or become an asset, of the project owner.

7.03.08 Operating Budget

An annual operating budget must be submitted for each project no later than three months before the start of the project's fiscal year. **Extensions may be granted, for good cause, upon written request.**

Section: 7.0 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS

Sub Section 7.04 Insurance Requirements for Owners

The project owner is required to maintain the following insurances throughout the project's regulatory period. The DHCR Standard Insurance Certificate Form should always be used and may be obtained from the **AMU.**

Liability Insurance

Comprehensive General Liability

- monetary limits of not less than $1,000,000
- contractual coverage
- DHCR and HTFC to be named as additionally insured
- 30-day prior written notice to HTFC of cancellation, non-renewal or change in coverage

Fire and Casualty Insurance

Fire and Casualty Insurance with Extended Coverage

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

Flood Insurance

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

Automobile Liability Insurance

Liability

- monetary limit of not less than $1,000,000
- coverage of owned (if applicable), hired and non-owned vehicles
- 30-day prior written notice to HTFC of cancellation, non-renewal or change in coverage

Worker's Compensation and Disability Benefits

Insurance Blanket Position Fidelity Bond

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

7.04.01 For Homesteading Owners

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

Liability Insurance

Comprehensive General Liability

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

Fire and Casualty Insurance

Fire and Casualty Insurance with Extended Coverage

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

Section: 7.0 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS

Sub Section 7.05 Annual Audit Reports

Projects funded by the HTFC are required to provide an annual audit report to AMU. The audit report must be prepared by a Certified Public Accountant (CPA) in accordance with DHCR's Audit and Accounting Manual and accepted audit and accounting practices, and is due 120 days after the end of the project's fiscal year. The audits should be sent to the AMU, Attention to the Director of Asset Management, 38-40 State Street, Albany, NY 12207. Electronic submissions via email to the project's assigned DHCR Asset Management Representative is encouraged. HTF subrecipients must submit their financial statements to LPAs within 120 days of the end of the subrecipient's fiscal year; the LPAs, in turn, must submit those statements received to AMU within 30 days.

Audit reports must include the status of the project's operations, income received, and deposits and withdrawals made to all required operating accounts. The CPA must certify that the owner has complied with all Program Rules and Regulations, the Regulatory Agreement, and any attachments thereto, including the maintenance of information and documentation regarding procedures for tenant selection and income verification. All mortgagors have been sent correspondence which describes the HTFC required additional disclosures and information to be included in the Annual Audit, as well as a notification that indicates that failure to include this information and schedule will result in the audit report being considered incomplete upon its receipt by the HTFC. The cost of the annual audit should be an itemized expense in the project's annual operating budget.

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

7.05.01 Performance Report

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

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

7.05.02 HOME Monitoring Checklist

To demonstrate on-going project compliance with HOME Program regulations, Project Owners are required to submit annually to DHCR, HUD form **HOME Monitoring Checklist 6-D** entitled **Project Compliance Report: Rental Housing** (the Form). The Form must be submitted to your assigned DHCR Asset Management Representative within 120 days of the close of the project's fiscal year.

Section: 7.0 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS

Sub Section 7.06 Tenant Management Requirements

This Section establishes tenant management requirements which are designed to:

(i) meet the statutory provisions of the Programs;

(ii) protect the State's investment in the units;

(iii) establish a level of owner accountability which can be verified by DHCR; and

(iv) provide a basis for ensuring the future viability of projects.

7.06.01 General Tenant Selection Process

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

HOME:

Refer to Section 2.05.04C

LIHC blended project:

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

The selection of tenants for all projects must comply with all federal and State fair housing laws, Title VIII of the Federal Civil Rights Act of 1968, and the New York State Human Rights Law. (See Section 4.00, General Requirements, for further discussion of fair housing requirements). **Fees: i.e. application fees, apartment prep fees, credit check fees, advance security deposits, etc. may not be charged to prospective tenants for admission to any HTF and HOME funded project.**

The Owner should begin the tenant selection process no later than the point at which the project's construction is 75% completed. This will ensure that there is adequate time to market, advertise and select the project's initial occupants. The Owner is required to describe the procedures which will be used to market the units in a marketing plan. The Owner must then follow this marketing plan. All owners of **HTFC funded projects are required to conform to the following occupancy chart:**

OCCUPANT DENSITY RANGE

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

Owners must comply with all local, State, and federal codes pertaining to handicapped accessibility, including the Americans with Disabilities Act (ADA).

Owners of **HTFC** projects with handicapped-accessible units should include affirmative measures to identify sources of referrals for these units in their management plans. The owner should also establish linkages with local agencies or groups prior to the initial project rent-up for the ongoing referral of occupants to these units. Handicapped-accessible units should be reserved for persons with disabilities. Project owners with agencies and groups agreements with persons with special needs must adhere to their persons with special needs marketing plan.

Project owners should refer to the project regulatory agreement for project specific requirements. Records must be available on site to document compliance with any required persons with special needs program.

General Tenant Selection From Waiting List

HTF/Turnkey Projects: During initial project rent-up, and thereafter, owners must select applicants from the waiting list which match the lowest income eligible applicant with the correct basic rent level(s). If the income amount is the same, then the earliest dated application is selected.

HOME Projects: Applicants must be selected in chronological order.

Affordable Housing Directory Requirements

Once a date to begin marketing project units has been **determined,** the owner must notify the **DHCR** project manager of the date and provide information regarding how to obtain and submit an application and a contact person and phone number or address. The project will then be added to the " New Affordable Housing Projects Now Accepting Applications" link on the DHCR Affordable Housing Directory Website (AHD).

After the rent-up period has ended, the project will be listed on the AHD. The AHD is part of the DHCR Internet website that allows the general public to search for affordable housing funded by the DHCR/ HTFC. Project information on the site includes; number of units, number of bedrooms per unit, availability of an elevator, general vacancy status and property management contact information. Inquiries will be received from the general public, as a result of the AHD, regarding the availability of units at the project. These calls must be handled courteously, accurately and promptly. Compliance will be monitored through a random quality control survey conducted by DHCR.

HTF Program Tenant Selection

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

Owners must establish a waiting list for persons of low-income, which may be developed by advertising through the municipality's office newspaper or a newspaper of general circulation in the neighborhood or municipality in which the project is located, or from existing waiting lists for social service, charitable or philanthropic facilities. Owners must follow their approved Marketing Plan for project specific requirements.

Turnkey Program Tenant Selection

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

For LIHC blended projects, the previous sentence does not apply.
See Sub-Section 7.10.01.
HOME Program Tenant Selection:
Refer to Section 2.05.03.E

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

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

Such waiting lists should be developed in the same manner as outlined previously under General Tenant Selection From Waiting List criteria.

7.06.02 **<u>Establishing and Adjusting Project Rents</u>**

Project applicants/owners submit a rent plan with their application which sets the rental charge for each unit based upon tenant income levels, number of bedrooms per unit, and the project's operating budget. The DHCR/HTFC approved rent plan establishes the initial basic rent for each of the units in the project. For units which are to be occupied by persons with incomes above the public assistance level, the basic rent should be set so that project income is sufficient to support the project's expenses.

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

(i) the basic rent for tenants with incomes at the public assistance level must be set at the Shelter Allowance level, and is not subject to an annual increase unless the Shelter Allowance is also raised by the State of New York;

(ii) The basic rent for tenants with income above the public assistance level, but below 90 percent of the Area Median Income (AMI), will initially be set so that the project's rental income is sufficient to cover all projected operating and maintenance expenses, including Reserve Fund deposits; these basic rents may be skewed so that various segments of the target population may be reached, based upon 30 percent of tenants' income being devoted to housing costs.

(iii) for projects in jurisdictions which are subject to the Rent Stabilization Law (RSL) or the Emergency Tenant Protection Act (ETPA), the applicable Rent Guidelines Board increase (see Section 7.06.03 for a discussion of initial rents for projects located in areas subject to RSL or ETPA); and,

(iv) for tenants whose incomes rise above the persons of low-income level, as determined by the owner's annual income verification procedure, the basic rent will be adjusted to the lesser of the market rent or 30 percent of the tenant's annual income less the allowance for tenant paid utilities **except in HOME funded projects. In these properties tenants whose income exceeds 80% of AMI must comply with Section 92.252 (i) (2) of the final HOME rule**. Tenants who do not submit, or falsify their income verification documents, will pay the market rent (described below).

(v) The following documents are needed to review a rent increase submission. Back-up documentation may be requested on a case by case basis.

a. Budget supporting the proposed rent increase with explanation of line item budget increases.

b. The schedule of current rents, proposed dollar amount of increase, proposed rents, and utility allowance per bedroom size (if applicable).

c. A current rent roll.

d. Last audit report if not previously submitted (see subsection 7.05).

e. If Managing Agent is submitting request, letter from Owner indicating their approval of the proposed rent increase.

Budget and Rent Plan forms have been developed by AMU's Accounting Staff to streamline the review process. Please contact your assigned AMU Representative to obtain these forms in order to expedite the project's request for rent increase.

For LIHC Standalone or LIHC blended projects see Sub-Section 7.10.02 regarding paragraph (ii) and Sub- Section 7.10.03 regarding paragraph (iv).

At the time of contract closing, OCD will establish the market rent for each unit. This is the maximum amount of rent that can be charged for the unit if a tenant's income increases to a point where they are no longer low-income, or if the tenant fails to submit or falsifies their income. No tenant may be charged more than the market rent to occupy a unit. The market rent is established as a function of the basic rent for the unit, plus an additional amount which would be payable if all HTFC payments, grants and/or loans made to the project were treated as a 30-year amortizing interest-bearing loan at the 30-year U.S. Treasury bond yield rate in effect at the time of the project's contract closing. The market rent will be adjusted annually by an amount equal to the basic rent increase; however, in jurisdictions which are subject to the RSL or ETPA, the increase may not exceed the lawful annual increase authorized under such laws. If the project's operating budget does not warrant it, the owner need not increase basic rents.

If, after paying all of the project's annual operating and maintenance expenses, there is excess annual income over and above an amount equal to three month's rent roll, such amount must be deposited into the project's Operating Reserve Account. See Operating Reserve Account Sub-Section 7.03.04 for details.

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

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

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

7.06.04 Tenant Occupancy Requirements

At initial project rent-up, no unit may be leased to a household which would be paying housing costs (basic rent plus the allowance for tenant-paid utilities) which are less than 25 percent, or more than 48 percent of that household's income.

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

Should the owner at any time be unable to lease the project's units in accordance with the occupancy requirements set forth above, the owner may submit a written request to AMU for a waiver of these requirements.

For **HTFC** projects, the maximum number of persons per bedroom is two. In addition, each HTF or Turnkey-assisted unit must be the principal residence of its occupant(s). The following apply to HTF Program projects only:

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

(ii) legal occupants of a property rehabilitated under the HTF Program who are temporarily relocated during such rehabilitation may not be permanently displaced; and

(iii) subsequent to rehabilitation or conversion, an eligible occupant must be a person of low-income at the time of application for occupancy of the unit.

7.06.05 Tenant Income Verification

The owner is responsible for determining the income of tenants and verifying and certifying to DHCR/HTFC that such tenants are eligible for project occupancy. Tenant income verification may include but is not limited to certification by the Department of Social Services, the Veteran's Administration, a public assistance agency, or a written statement from the tenant's employer (third party verification). **Refer to HUD Handbook 4350.3** Rev-1 dated 5/03.

For LIHC blended projects, see Sub-Section 7.10.04 regarding tenant income certification and Sub-Section 7.10.05 regarding student eligibility.

Tenant recertification to determine continued eligibility, to verify income, and to establish rental amounts, will be on a yearly basis. In performing the project's annual audit, the CPA will be required to certify that the owner has sufficient documentation and procedures in place to accurately verify the income of tenants.

7.06.06 Recertification Waiver for 100% LIHC Buildings

DHCR has adopted a recertification waiver procedure for 100% low income tax credit buildings. Specifically, Internal Revenue Service Procedure 2004-38 provides that an owner of a 100% low-income building may obtain an IRS waiver of the annual tenant income recertification requirement where the monitoring procedures of the housing credit agency contain waiver provisions and the conditions set by the IRS are satisfied. The waiver would exempt an owner of a 100% tax credit building from the requirements to:

- **keep records that show that an annual income recertification was obtained from all low-income tenants in the building who have previously had their annual income verified, documented, and certified;**
- **Maintain documentation to support the recertification and;**
- **The initial owner certification has been submitted to DHCR.**

The waiver does not, however, exempt owners from income certification requirements upon a tenant's initial occupancy of a residential rental unit in a 100% low-income building. DHCR procedure allows for a recertification waiver provided:

- **The building is 100% low income;**

- **There is no previous or current non compliance which would affect the buildings status as a 100% low-income building; and**
- **The initial move-in certification(s) has been submitted to DHCR**.

The waiver will not exempt the owner from tenant income recertification requirements imposed by any other federal, state or local housing program. For example, a building with Turnkey, Rural Development 515, HOME or project based Section 8 would be eligible for the waiver under Internal Revenue Code Section 42. However, the owner is still required to conduct annual income recertifications since the waiver does not apply to these other funding sources. Obtaining the waiver from the IRS for projects with these funding types means a failure to recertify tenants' income would not be reported to the IRS under the Low-Income Housing Credit Program. However, a failure to recertify tenants' income would be a violation of these other program funding requirements and regulatory agreements.

Owners must still determine tenant full-time student status on an ongoing basis, and buildings with credit allocated prior to 1990 must annually verify tenant household size if restricted rent is determined by number of persons in the household.

A project owner must obtain a DHCR statement prior to sending the written statement requesting a waiver to the IRS. The IRS will then send a letter to the owner either approving or denying the waiver. The owner must send a copy of the IRS approval or denial letter to DHCR.

7.06.07 HTF Tenant Income Recertification Waiver

The HTF has adopted a recertification waiver policy. HTF funded properties that (a) are not participating in other programs requiring annual verifications of income (i.e., HOME, Turnkey, Rural Housing, Section 8), (b) have been placed in service, (c) have completed one year of satisfactory annual compliance with the requirements set forth in Chapter 7 of the CPM, and are in good standing with DHCR, are eligible to apply for this waiver. Properties that are 100% LIHC and have received a recertification waiver from the IRS must include a copy of the IRS' waiver in their request to the HTF.

The HTF waiver relieves the property only from the obligation to perform annual income recertifications. Still required are: initial move-in certification, recertification due to changes in household composition, and submission by owners of annual reports as required in Chapter 7 of the CPM and cooperation during record inspections as required by monitoring regulations.

The waiver will take effect beginning with the compliance monitoring cycle following the date of the letter of approval. The waiver covers all subsequent compliance monitoring cycles during the buildings compliance period. If DHCR determines at any time following the grant of the waiver that substantial noncompliance has occurred, the waiver may be revoked and the owner must complete full annual income recerifications with third party verifications.

Waiver requests must be sent to the Director of Asset Management, 38-40 State Street, Albany, New York 12207.

Section: 7.0 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS

Sub Section 7.07 Tenant Lease Agreements

7.07 Tenant Lease Agreements

All tenants must sign written lease agreements with the owner or the owner's managing agent. A lease agreement is a contract which assures the tenant exclusive possession of a specific dwelling unit and reasonable use and protection of the property in exchange for payment of rent. Lease agreements should be written for a **minimum term of two-years,** although one-year leases are permitted at the request of the tenant.

Except where other more restrictive provisions are required by the RSL, ETPA or other applicable law, owners will use **the HTFC Lease.**

Should the Owner wish to add language to the HTF lease said language must be submitted for review and approval in the form of a Lease Addendum not later than 90 days following the date assigned for return of the executed HTFC commitment letter. In order to reduce processing time, review of proposed addendum/changes for compliance with applicable laws, by owner’s counsel, is highly recommended.

Section: 7.0 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS

Sub Section 7.08 Managing Agent/Tenant Management Services

Owners may manage their own project if they demonstrate management capacity. If, however, the services of a management agent are required, AMU should approve managing agent compensation and the type and frequency of the residential services to be provided by the managing agent; the owner must determine the following:

(i) the staffing necessary to provide such services;

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

The managing agent must be licensed as a Real Estate Broker by NYS; and, any employee of the agent who will show apartments, sign leases, or collects rents must be licensed as a Salesman or Associate Broker of the licensee.

Selection of a qualified managing agent shall be subject to the approval of DHCR. The owner shall solicit bids, review bids, select a prospective agent and submit its selection to DHCR together with all bids. DHCR shall review the bids, considering primarily the qualifications and quality of the bidders, and either approve the owner's proposed agent or disapprove the agent and direct the owner to select another agent from among those acceptable to DHCR. If there are no other bidders, or no bidder acceptable to DHCR, the owner will be directed to re-bid. Continued eligibility to self manage the project will be conditioned upon the satisfactory operation of the project as determined by AMU. HTFC/AMU reserves the right to remove/replace an owner as managing agent. HTFC/AMU also reserves the right to approve, reject, or remove/replace an existing or proposed managing agent.

Section: 7.0 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS

Sub Section 7.09 Asset Management Performance Reviews

7.09 Asset Management Performance Reviews

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

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

- Annual Audit Reports
- General Operating Accounts (checking and savings)
- Reserve Accounts
- Operating Budget
- Insurance Certificates
- Performance Report
- Waiting List(s)
- Rent Roll/Rent Plan/Schedule
- Lease Agreement/Addenda
- Tenant Files
- Management Agreement
- Agent's Real Estate Broker License
- Licenses of Broker's Staff
- On site physical inspections

and other such information as DHCR may require in order to determine project recipient's compliance with the terms of recipient agreements, loan documents, and the rules and regulations of the HTFC.

Section: 7.0 PROJECT OPERATING AND MANAGEMENT REQUIREMENTS

Sub Section 7.10 AHTF/Turnkey/LIHC Blended Projects

The purpose of this Section is to **highlight** specific areas where LIHC requirements differ from HTF/Turnkey requirements.

In order to receive LIHC, the property owner and property manager must follow the Regulatory Agreement and I.R.S. regulations and requirements. Failure to follow these requirements (e.g., renting a unit to an over-income tenant, charging rent in excess of the maximum allowable, renting to ineligible students (See Section 7.10.05) or inadequately documenting a tenant file) may result in the recapture of credit with interest and penalty. For a detailed explanation of the LIHC Program requirements, refer to the **Low-Income Housing Credit Compliance Monitoring Guide** or contact the **AMU.**

7.10.01 Maximum Income Limits- LIHC Projects

Income limits for qualifying tenants depend on the projects set-aside election. On move-in, qualifying tenants in 20-50 set-aside projects may not have incomes which exceed 50% of the AMI by household size. Qualifying tenants in 40-60 and 25-60 set-aside projects may not have incomes which exceed 60% of the AMI by household size.

7.10.02 Restricted Rent Limit

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

7.10.03 Increases In Tenant Income - Next Available Unit Rule

Upon initial move-in certification, a household's annual income must not exceed the applicable area median (50% or 60%) income limit by household size. At recertification, if a tenant's income in a LIHC unit has increased above the maximum allowable income limit, the unit continues to qualify for tax credit purposes as long as the tenant qualified on move-in and the unit remains rent restricted. A LIHC unit occupied by a tenant whose income rises above 140% of the current maximum allowable income limit continues to qualify for tax credit purposes as long as the unit remains rent restricted and the next vacant unit of comparable or smaller size in the building is rented to a qualified LIHC tenant.

7.10.04 Tenant Income Certification

On move-in (prior to occupancy) and annually thereafter, the tenant must submit to the owner a signed Tenant Income Certification. Third party source documentation/verification must be obtained for all income sources at initial move-in certification and at each annual recertification. The date of third party source documentation/verification of income and assets must be within one hundred and twenty days prior to the effective date of the tenant certification. Guidance on the types of acceptable forms of verification and definition of assets and income to be included/excluded may be found in HUD Handbook 4350.3 (or its successor). A copy of HUD Handbook 4350.3 may be obtained by writing to: HUD, Directives Distribution Section, Room B-100, 451 7th Street SW, Washington DC 20410-3700, or by calling 1 (800) 767-7468.

7.10.05 Students

Full time students cannot reside in a LIHC unit unless they are in one of the following categories and are income eligible:

Unit occupied by an individual who is:

1) Receiving assistance under title IV of the Social Security Act (Aid to Families with Dependent Children)
2) Enrolled in a job training program under the Job Training Partnership Act, or other similar Federal, State, or local law;
3) A student formerly in a foster care program.

Unit occupied entirely by full time students who are:

1) Single parents and their children; and such parents are not dependents of another individual; and the children are not dependents of another individual other than a parent of such children.
2) **Married and file a joint income tax return.**