

COVID-19 - GUIDANCE & UPDATES FOR HDC PROGRAMS

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Applicant Processing and Submission

Electronic Signatures: (added 3/20/2020)

HDC is providing guidance on electronic signature requirements for all of our programs, in particular for the Low-Income Housing Tax Credit (LIHTC) program. Electronic signatures are acceptable for initial certifications as well as ongoing recertifications so long as these signatures adhere to the standards outlined on the attached 10.10.1 IRS Electronic Signature (e-signature) Program memorandum. These include, but may not be limited to:

- The signer(s) using an acceptable form of electronic signature(s)
- The signer(s) consenting to the electronic signature(s) protocol
- The electronic signature(s) being attached to or associated with the electronic record being signed
- There is a means to identify and authenticate the person(s) as the signer(s)
- There is a means of preserving the integrity of the signed electronic record

When using electronic signatures, Owners and Agents must continue to ensure that they collect all required supporting documentation for initial certifications and/or ongoing recertifications and that certifications are made under the penalty of perjury.

Note: Though managers may choose to implement an e-signature process, this process cannot be mandatory. Applicants and tenants who have limited electronic access may not be penalized or bypassed. As such, owners must either continue to provide an alternative to electronic signatures (ink signatures) that complies with all Federal, State and Local safety guidance, or ensure that units are held for any applicant until such time that the City can resume normal business practices.

Applicant File Submission and HDC Approval: (added 3/20/2020)

HDC will continue to review and approve all applicant files prior to lease signing. In order to minimize face to face interactions with applicants and tenants, please note the following:

1. Electronic signatures are permitted for all file documents as long as they adhere to the attached IRS guidance. Should this not be possible,
2. HDC will temporarily waive applicant signature requirements on documents submitted for HDC review (i.e. Tenant Income Certification (TIC), Asset Certification, etc.). All other applicant file protocols will remain in place. Should the file otherwise appear to meet eligibility criteria, HDC will issue a contingent approval letter. (Contingent approvals are conditioned on management confirming eligibility and ensuring that all documents are properly executed and notarized prior to lease signing.)

[Relaxed Documents for LIHTC and non-LIHTC units \(added 4/20/2020\)](#)

A reduced checklist of documents required for verifying student status, income, and assets will be implemented immediately (see Attachment L-1) for LIHTC and Federally assisted affordable units. These changes, combined with the ability to obtain documentation electronically, should accelerate the intake process while encouraging social distancing and optimizing safety for all. The agencies reserve the right to request additional information should the documentation provided be insufficient to make a reasonable determination of eligibility. As always, Owners are responsible for ensuring that eligibility is properly documented in the tenant file in accordance with the policies, procedures, and statutory requirements of the program.

[Certification of Disability for use during COVID crisis \(added 7/14/2020\)](#)

The standard Certification of Disability form requires that applicants processed for a disability set aside unit complete both pages of the form, however, given this challenging time, HDC will accept page one of the form accompanied by the attached Applicant Affirmation Cover Letter when the verification from a medical professional is not obtainable. Please note that this form is temporary and is not meant to be used once the crisis has ended. Attached are updated versions of the CERTIFICATION OF ELIGIBILITY FOR DISABILITY UNIT and the referenced APPLICANT AFFIRMATION COVER LETTER (FOR USE DURING COVID-19 CRISIS).

[Guidance on Calculating and Projecting Income: \(added 3/24/2020\)](#)

As many people's circumstances are affected by the COVID-19 crisis, we remind you that Owners and Agents are expected to perform due diligence to make reasonable judgments regarding the most reliable method for calculating and projecting the earned and unearned income an applicant will receive in a twelve (12) month period pursuant to the guidance outlined in HUD's Handbook 4350.3, Chapter 5.

It is expected that workers providing essential services (such as healthcare or civil service) may be working additional hours during this crisis, or conversely workers in impacted industries (such as retail or hospitality) may have reduced income. Therefore, owners and agents must ensure that an applicant is being processed for an AMI tier that reflects their actual anticipated twelve (12) month income projection. Applicants should not be processed or rejected solely on the basis of current income. As always, third-party verifications and clarifications are required as part of the comparison and determination during the eligibility process; specifically, when an applicant's projected income (through the same employer) is not in line with their historical income.

For applicants that are currently not working and receiving unemployment benefits, the unemployment is annualized unless an expected date of return to work or confirmation of anticipated employment is established by a third-party employment verification. The historic income earned is not used as part of the comparison to determine the household's eligibility as only information available on changes expected to occur during the following 12 months is used to determine the total anticipated income.

Income Guidance – CARES Act – Stimulus Payments & Federal Unemployment Compensation (added 4/20/2020)

Per HUD & IRS guidance, household stimulus payments received under the CARES Act, i.e. the household stimulus payments of up to \$1,200 and the temporary \$600 per week federal enhancement to unemployment insurance, are not to be included in calculations of household income. State unemployment insurance compensation will continue to be annualized and included in household income.

Additional federal unemployment benefits under the Lost Wages Assistance (LWA) program (Added 12/8/2020)

The below guidance is provided as an update to the original Income Guidance HDC provided on the CARES Act – Stimulus Payments & Federal Unemployment Compensation, issued on April 4, 2020.

Per HUD & IRS guidance, several payments provided by the CARES Act are not to be included in calculations of tenant income. Furthermore, as an extension to the CARES ACT, the Presidential Memorandum issued on August 8, 2020, developed the Lost Wages Assistance (LWA) program which extended benefits to a \$400 weekly benefit of additional federal unemployment benefit where FEMA contributes 75% (\$300) and a state may contribute the remaining 25% (\$100). Some states have opted to pay only the federal portion of \$300 per week, while other states have opted to pay the federal portion plus the state portion that results in \$400 per week.

Below please find a list of income inclusions and exclusions for the different types of unemployment compensation granted under The CARES Act and Presidential Memorandum:

Income Inclusions:

- **Section 2102: Pandemic Unemployment Assistance (PUA):**
This is an unemployment benefit for individuals who are self-employed, seeking part-time employment, or who otherwise would not qualify for regular unemployment insurance (UI). HUD has determined that PUA benefits must be included as annual income.
- **Section 2107: Pandemic Emergency Unemployment Compensation (PEUC) program:**
This program provides an extension to regular unemployment insurance benefits for eligible individuals, allowing them to receive up to 13 weeks of additional benefits (this extends UI from 26 weeks to 39 weeks in total). HUD has determined that PEUC benefits must be included in annual income.
- HUD also notes that regular payments of unemployment insurance (issued by the state) are treated as annual income according to existing HUD policy.

Income Exclusions:

- **Section 2104: Federal Pandemic Unemployment Compensation (FPUC) program:**
This program provides eligible individuals who are collecting certain UI benefits, including regular unemployment compensation to receive an additional \$600 in federal benefits per week for weeks of unemployment ending on or before July 31, 2020. HUD has Office of MFH Programs COVID-19 Q&A 12 determined that FPUC benefits meet the definition of temporary income and must NOT be included in annual income.

- Lost Wages Assistance (LWA) program:
Eligible New Yorkers under the LWA program received individual payments of \$300 per week. While HUD's Office of Multifamily Housing Programs has not published specific guidance on the Presidential Memorandum for LWA, HUD's Office of Public and Indian Housing (PIH) clarified that income calculations must exclude the \$400 per week (or in some states \$300 per week) extra unemployment benefit allowed under the Presidential Memorandum as PIH clarifies that FEMA assistance is temporary and does NOT count as income.

Hero Pay/Hazard Pay: (added 6/9/2020)

Certain businesses may be supplementing wages due to the COVID19 crisis by providing Hero Pay, also known as Hazard Pay, to essential workers. Unlike the stimulus payments provided through the CARES Act, at this time HUD has not excluded these payments from income projection requirements. However, additional information is needed in order to accurately project these households' income. In these cases, HDC requires that the applicant's intake process include direct outreach to their employer. Agents must endeavor to obtain a written or verbal verification from the employer as to when the temporary payments will end to properly calculate the household's twelve-month income projection. For your convenience, we have attached the "HDC Guidance on Calculating and Projecting Income" released on March 24, 2020.

New York State Supplement Payment Program (SSP): (added 6/9/2020)

SSP provides state-funded financial assistance to most aged, blind, and disabled individuals as part of their monthly Supplemental Security Income (SSI) benefit. An award letter from NYS-OTDA is the ideal method of verifying this income. However, we have been made aware that this form is often not easily obtained. As such, below are alternative acceptable methods of verification that would adequately document an applicant's SSP payments:

- Current SSP check stubs with date, amount, and check number indicating the amount paid, or
- Banking information that evidences the SSP payments, or
- Utilizing the SSI and SSP Maximum Benefit Levels Chart, accompanied by a notarized self-declaration, to project the SSP payments.
- If the SSP income benefit for an SSI recipient is zero, a notarized self-declaration is required to affirm that no income from SSP is received.

Award letters can be obtained via fax through NYS-OTDA's fax #: 518-486-3459. Please also see attached the most recent SSI/SSP Benefit Level Chart effective January 1, 2020, for additional reference. This chart can be found on NY's OTDA website: <https://otda.ny.gov/programs/ssp>

Third Party Review (updated 7/14/2020)

For projects that are utilizing a third-party consultant to verify the agent's income and eligibility certification prior to submission to the agencies, HPD and HDC will waive the agency file review upon submission of an affirmation of eligibility from the third-party reviewer. The agency will continue to review compliance with lottery procedures to ensure that applicants are processed in the appropriate order and are afforded all of the protections outlined in the Marketing Handbook. This change will reduce agency review of approved applicants from 5 to 2 business days.

Effective Monday, July 20th, HDC requires that complete applicant files be submitted to the agency. Complete applicant files are required by HDC for ongoing compliance functions. The agency's review of these files will continue to be expedited for projects that are utilizing a third-party consultant to verify the agent's income and eligibility certification before submission to HDC.

In addition to taking note of the Third-Party Review Affirmation, HDC will perform periodic internal audits of third-party file submissions. In this manner, HDC will ensure that owners and agents are adhering to the requirements detailed in the agency's marketing guidelines, as required under the development's Regulatory Agreement.

Agents should continue to indicate that a file has been reviewed by a Third-Party Reviewer by including the following in submissions to HDC:

- File submission cover email must note "Third-Party Certified."
- A certification from the third-party reviewing service indicating income eligibility in the attached "THIRD-PARTY CONSULTANT CERTIFICATION OF ELIGIBILITY" form on the third-party consultant's letterhead.
 - *A third-party reviewing service may use its own form as long as the form includes all information requested in the attached "third-party consultant certification of eligibility" form.*
- The complete applicant file. (Please endeavor to scan the Cover Letter/Memorandum (Attachment L-2), AIF (Attachment M), TIC (Attachment L-3), and letter/certification from third-party service indicating income eligibility as the first documents of the file).

This change will not impact the agency's review time of third-party reviewed applicant files, which will remain at two business days.

As a reminder, no resident may be moved into the building, and no lease or contract may be signed until the agency has completed its review of the information submitted and issued a formal response.

**Files subject to the modified third-party review by HDC must include the attached Tenant Income Certification (TIC) form that requires a complete social security number.*

Marketing Process Changes

Reduced Appeal Period (added 4/20/2020)

Effective immediately, the appeal period for rejected applicants will be reduced from 10 business days to 5 business days. Marketing agents will only be required to hold a unit for a rejected applicant for five days before moving on to the next eligible applicant, expediting the processing for subsequent applicants. Applicants who request to be contacted via paper-mail, rather than email, are to be contacted by telephone to inform them of their rejection and their opportunity to appeal, as USPS mail communication will not provide sufficient time for an applicant to receive a rejection letter and assemble an appeal. Agents are expected to update their H-2 and H-4 notices to indicate this new appeal period; this change will be implemented moving forward only for applicants who are sent a notice after this updated policy has gone into effect.

Affirmation of Interest (added 4/20/2020)

In order to expedite processing of the log, Marketing Agents may conduct outreach to larger batches of apparently eligible applicants to affirm interest in the development before they are reached for processing. The notice must contain details about the project, such as location, amenities, income qualifications, and rent amounts. Applicants must be offered five business days to respond affirming their interest. Communication with applicants who requested to be contacted by email may be conducted by email. Applicants who requested to be contacted by paper-mail must be contacted by phone; those who indicate they are no longer interested or do not respond within five days must receive a letter communication documenting the phone call. Applicants who do not respond are considered rejected. No rejection notice is required to be sent.

Agents who choose to implement this notice must provide the following information to their Marketing Project Manager for review:

- Draft Notice of Affirmation of Interest
- Updated lottery log with an additional column indicating the date this notice was sent for those applicants who are rejected on the basis of non-response.

Applicant Concessions (added 4/20/2020)

Owners may consider offering rental concessions, such as eliminating first month's rent and/or security deposit for approved applicants. Where the first month's rent is eliminated, the minimum income requirement will be re-calculated based on the year's net rent, increasing the marketing band and, ultimately, the number of applicants deemed eligible. Increasing the number of eligible applicants can expedite the lease up of the project. Likewise, eliminating the security deposit removes barriers for applicants to accept a unit for which they have been approved.

If a rental concession is being offered and the first month's rent is being eliminated, please inform your Marketing Project Manager so that the minimum income calculations for the project may be adjusted.

Voluntary Homeless Preference (added 4/20/2020)

Commissioner Carroll has asked Developers of City-financed affordable housing projects that are or will soon be in the marketing process increase the number of units made available to homeless New Yorkers to up to 30% of the overall unit count. This would be a one-time preference and would not need to be maintained at re-rental. Although previously marketed units could be re-designated for this homeless preference, units that have lottery applicants in process cannot be offered. To initiate this process, an updated Attachment U indicating which units are being re-designated as homeless, along with confirmation that there are no lottery applicants in process for these units, must be submitted to your Marketing Project Manager.

Homeless Referral Process Changes

Non-LIHTC, Non-Federally Assisted Units (revised 8/18/2020)

Homeless clients referred to non-LIHTC and non-Federally assisted affordable units with CityFHEPS rental assistance or Section 8 Housing Choice Vouchers will not be subject to further income documentation requirements. The voucher eligibility determination will serve as qualifying evidence of eligibility for the affordable unit. No further income documentation will be collected by HPD, HDC, or the marketing agent. This policy applies to homeless referrals to all non-LIHTC and non-Federally assisted affordable units overseen by HPD or HDC, including capitably financed units, units subject to a standalone tax exemption, and standalone Inclusionary Housing units, among others.

For clients being processed for CityFheps, eligibility for the subsidy is not confirmed until the landlord package is submitted to HRA, therefore, HDC has changed the file submission protocol so that these files may be submitted to HDC *after* the client has been issued the Rental Assistance Approval Notice. Prior to lease signing, the agent is to submit the following documents to HDC:

- Cover Letter/Memorandum (Attachment L-2) – Must indicate Homeless in the preference column
- AIF (Attachment M) – Subsidy portion must identify the subsidy type
- TIC (Attachment L-3) – The full SS # of all adult HH members must be included
 - The income section may reflect “As determined by DSS/HRA to be below 60% AMI”
- Copy of CityFHEPs Landlord Approval Notice or S8 voucher
- Copy of HPD Homeless Housing Application
- Signed authorization to release information form (Attachment R-5)

For any files submitted to the agency for approval, please ensure that the file submission cover email and subject line indicate “Homeless Preference Non-Tax code” to allow the agency to identify the file is not subject to income documentation requirements.

Subsidy Qualification and Budgeting (added 5/28/2020)

HRA recently lightened the documentation and eligibility requirements for clients moving into affordable housing units to qualify for CityFHEPS rental assistance. This change not only expedites placements, but also helps to ensure that clients do not fall out of eligibility during the referral process.

Additionally, DHS and HRA will now collect the required documentation to budget the tenant’s share of rent and public assistance earlier in the referral process. To date, this budgeting has occurred after a client is approved for a unit; going forward, it will be conducted to align with the marketing agent’s approval of the client, shortening the total timeframe from referral to lease up.

Inspections (added 5/28/2020)

For the initial lease up of new construction buildings or preservation buildings with multiple vacancies, Homeless Placement Services will coordinate a single inspection process to satisfy the requirements of all of the tenant-based subsidy types of the pool of clients referred. For instance, projects which have referrals of clients with a mix of Section 8 and CityFHEPS subsidies will have one coordinated HQS inspection, the results of which will satisfy the requirements of the issuing agencies. This relieves building

owners of the burden of providing access on a unit-by-unit basis as tenants are approved and undergoing multiple inspection types for the homeless lease ups in a building. For large projects, scheduling may occur over two or more days to complete all of the units, but every effort will be made to schedule on consecutive business days and minimize the number of visits.

Virtual Unit Viewings (added 5/28/2020)

All unit viewings, with the allowable exception of units set aside for applicants with disabilities, will be conducted virtually. Owners are required to provide 2 out of 3 of the following: photos, video, and floor plan of the unit, showing full perspectives of each room. Neither owners nor clients may require in person viewings, with the exception that clients with disabilities may require in person viewings to ensure that the unit properly accommodates their needs. Owners should send the photos, videos, or plans to HPD as soon as vacancies are reported, so that clients may view the units as the referral process proceeds.

Expedited Lease Signing and Move In (added 5/28/2020)

Lease signings and move ins will be scheduled upon issuance of the CityFHEPS Approval Notice to Landlord. The Approval Notice certifies that the client is eligible to receive rental assistance payments; confirms the approved monthly rent for the unit, including the rental assistance amount and the tenant portion; and triggers processing of the rent checks and security deposit for the unit. These checks will be delivered to the owner within 5 – 7 business days.

LIHTC Recertifications and Compliance Monitoring Reviews

[Recertifications and Compliance Monitoring Reviews \(added 7/21/2020\)](#)

The Internal Revenue Service (IRS) recently released Notice 2020-53. This notice provides temporary relief from certain requirements under Section 42 of the Internal Revenue Code for qualified low-income housing projects and under Section 142(d) of the Code for qualified residential rental projects. Below is the New York City Housing Development Corporation's guidance on this notice:

A. INCOME RECERTIFICATIONS

- Tenant income recertifications due between 4/1/2020 – 12/31/2020 are not required to be performed.
 - If a low-income tenant's income recertification is due between 4/1/2020 – 12/31/2020 and it is not performed, the owner should include a memo in the tenant file to document that the income recertification was not obtained due to the COVID-19 pandemic.
 - Owner/agent does not have to retroactively complete these 2020 recertifications after 1/1/2021.
- Owner must resume the income recertifications as due under Section 1.42-5(c)(1)(iii) after December 31, 2020.
 - Owners would still need to reach out in late 2020 to complete any recertification due in early 2021.

B. STUDENT STATUS RECERTIFICATIONS

- Annual Student Status recertifications for calendar 2020 must be performed for all low-income units.

C. INITIAL INCOME CERTIFICATIONS

- Initial income certifications must continue to be performed and all income, assets, and any additional required eligibility criteria. All qualifying documents must be within 120 days prior to the tenant's initial move-in/effective date.
- All initial income certifications must continue to be sent to HDC for review prior to lease signing/move-in. As a reminder, no resident may be moved into the building, and no lease or contract may be signed until the Agency has completed its review of the information submitted and issued a formal response.

D. COMPLIANCE-MONITORING REVIEWS

- HDC will perform electronic LIHTC File Audits for calendar year 2019 on designated developments. Our office will contact owners/agents two weeks prior to the scheduled audit and provide instructions on uploading the files selected for review.
 - HDC will not be performing LIHTC unit inspections for the remainder of this year.

As a reminder, the above guidance only applies to projects monitored by HDC. If there are other programs (i.e. HOME or NYCHA, etc.) or agencies involved in these projects, please consult with the agencies that monitor these programs for their specific documentation and recertification requirements.

Ongoing Annual (Re)Certifications: (added 3/20/2020)

The HUD Handbook 4350.3 provides guidance on extenuating circumstances that may result in households not being able to complete their recertification by their effective date (late recertifications). Given the current crisis, the required documentation and/or signature(s) may be obtained afterwards when the household is able to complete a retroactive recertification. HDC will not issue an 8823 for those households who are unable to complete their recertification electronically and in a timely matter assuming a correct retroactive recertification is available prior to the compliance review. However, this is contingent on owners:

1. Documenting the file to indicate why the signature(s) was not obtained within the required period and
2. Completing an accurate retroactive recertification that is true and correct as of the household's 2020 effective date.