

# Marketing Handbook

Policies and Procedures for Resident Selection and Occupancy



*October, 2016 (Revised)*

# CONTENTS

---

- 1. INTRODUCTION ..... 5
  - 1-1 What This Handbook Is..... 5
  - 1-2 What This Handbook Is Not..... 5
  - 1-3 Revisions ..... 6
  
- 2. TIMELINE ..... 7
  - 2-1 Phases of the Marketing Process ..... 7
  - 2-2 Major Milestones in the Marketing Process ..... 7
  
- 3. BASIC SEQUENCE OF ACTIVITIES..... 9
  
- 4. OUTLINE OF PROCEDURES ..... 11
  - 4-1 Pre-Marketing..... 12
    - A. Inquiry List ..... 12
    - B. Marketing Meeting..... 12
    - C. Marketing Plan..... 13
  
  - 4-2 Marketing ..... 15
    - A. General Information ..... 15
    - B. Outreach ..... 16
    - C. Advertisements..... 17
    - D. Project Site Marketing Sign ..... 18
    - E. Applications ..... 19
  
  - 4-3 The Lottery Process ..... 20
    - A. Application Collection..... 20
    - B. Paper Application Entry ..... 20
    - C. Log Generation ..... 21
  
  - 4-4 Applicant Evaluation and Resident Selection ..... 21
    - A. Ineligibility Policies ..... 21
    - B. Order of Processing ..... 23
    - C. Reporting ..... 24
    - D. Appeals ..... 26
    - E. Complaints ..... 26

F. Interviews ..... 27

G. Open Marketing..... 29

H. Waiting List (Rental Units Only)..... 30

I. Agency Review..... 31

5. DETAILED SELECTION POLICIES..... 33

    5-1 Set-Asides and Preferences ..... 34

        A. Disability Set-Asides..... 34

        B. Community Preference..... 35

        C. Municipal Employee Preference ..... 35

        D. Residency Preference for New York City Residents ..... 36

        E. Additional Set-Asides and Preferences ..... 36

        F. Homeless Referrals..... 36

        G. Referrals..... 36

    5-2 Changes to an Application ..... 37

        A. Changes to Income ..... 37

        B. Changes to Household Composition ..... 37

        C. Proof of Extenuating Circumstances ..... 37

        D. Post-Interview ..... 38

    5-3 Qualification as a Household..... 38

        A. Definitions..... 38

        B. Separation..... 39

    5-4 Income Eligibility..... 39

        A. Income Eligibility at Admission..... 39

        B. Employment Income ..... 40

        C. Self-Employment Income ..... 41

        D. Income Received for Less than One Year ..... 43

        E. Sporadic Income ..... 44

        F. GI Bill Income..... 44

        G. Asset Certification..... 45

    5-5 Continuing Need ..... 45

        A. Recent Income History ..... 46

        B. Asset Limits..... 46

C. Property Ownership ..... 47

D. Primary Residence ..... 48

E. Other Restrictions..... 48

5-6 Background Checks and Other Factors..... 48

    A. Student Status (IRS Program Units)..... 48

    B. Disability Verification..... 49

    C. Immigration Status/Credit History ..... 49

    D. Criminal Checks..... 49

    E. Home Visits ..... 50

    F. Discovery of False Information..... 50

    G. Credit and Housing Court History..... 50

5-7 Occupancy Guidelines and Unit Distribution ..... 54

    A. Occupancy Guidelines ..... 54

    B. Unit Distribution ..... 54

    C. Rent Levels and Income Standards..... 55

5-8 Other..... 56

6. SUBMISSIONS AND ONGOING REPORTING REQUIREMENTS ..... 58

7. ATTACHMENTS..... 59

# 1. INTRODUCTION

---

## 1-1 What this Handbook Is

- A. This handbook (the “Marketing Handbook”) contains the policies, procedures, and requirements for marketing and selection of residents for developments (“Projects”) assisted by the New York City Department of Housing Preservation and Development (“HPD”) and the New York City Housing Development Corporation (“HDC”) (together, the “Agencies”).
- B. Developers, owners, and sponsors of Projects (“Developers”), as well as other agents or entities responsible for the marketing and resident selection for Projects (“Marketing Agents”) must comply with the Marketing Handbook’s policies, procedures, and requirements. Marketing Agents may include in-house departments of the Developer, subsidiaries, or affiliates of the Developer, or third-party marketing, leasing, managing, monitoring, or administering agents. All Marketing Agents must meet certain qualifications and must be approved by the Agency prior to marketing, regardless of whether they are part of the Developer’s organization or a third party.
- C. Compliance with the Marketing Handbook will be monitored by either HPD or HDC (whichever is applicable for a particular project is referred to herein as the “Agency”), depending on the project.
- D. The primary objective of the marketing, lease-up, and sales effort is to ensure that the process is fair and provides equal opportunity to all applicants, regardless of race, color, religion, gender, sexual orientation, gender identity or expression, national origin, age, genetic information, disability, or veteran status. In addition, the process should affirmatively further fair housing by promoting racial, ethnic, income, and geographic diversity among residents and within the neighborhood, and by providing applicants with mobility, vision, or hearing disabilities that require accessible/adaptable units priority for those units.

## 1-2 What this Handbook Is Not

- A. The Marketing Handbook is not a comprehensive compliance manual. Developers and Marketing Agents must ensure that their employees are fully trained in all facets of the program and all aspects of the specific occupancy requirements of each Project. Maintaining compliance is the responsibility of the Developer and Marketing Agent.
- B. This handbook also does not contain specific occupancy requirements for individual Projects. Each Developer and Marketing Agent must refer to its Project’s Regulatory

Agreement and other applicable regulations and regulatory documents for income, rent, and other occupancy restrictions.

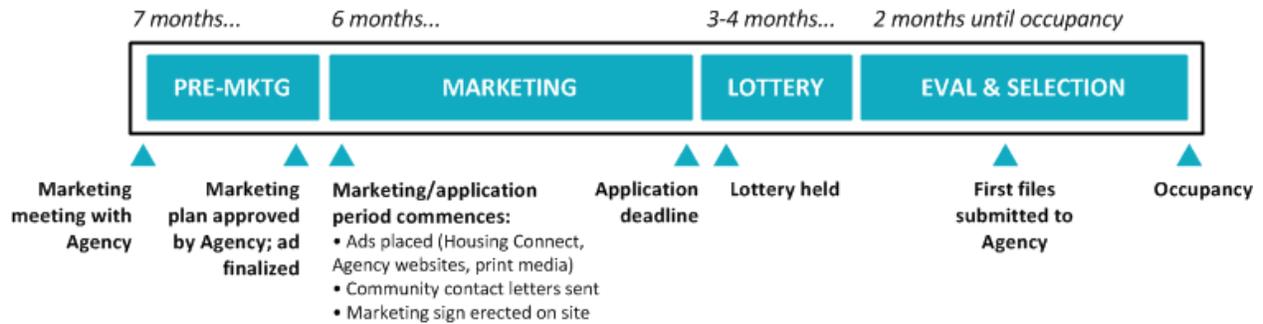
- C. The Developer or Marketing Agent should consult with the Agency if any questions or concerns arise with respect to the policies, procedures, and requirements set forth in the Marketing Handbook.
- D. Actual marketing and resident selection will be conducted in accordance with a marketing plan created according to the specifications in this handbook (“Marketing Plan”) by the Marketing Agent for each Project. The Marketing Plan must comply with the Marketing Handbook and other Project requirements and must be approved by the Agency before marketing can begin.

### **1-3 Revisions**

This handbook includes updates as of October 14, 2016. The Agencies expect to make additional changes to the handbook.

## 2. TIMELINE

### 2-1 Phases of the Marketing Process



### 2-2 Major Milestones in the Marketing Process

Activity	Timeline
<u>Prior to the marketing process:</u>	
Developer maintains inquiry list of interested potential applicants	From the start of construction until commencement of the marketing period
<u>At the beginning of the marketing process and afterwards:</u>	
1. Agency approves proposed Marketing Agent	Typically seven months prior to anticipated occupancy (or approximately 70% construction completion for projects requiring C of O)
2. Marketing Meeting held with Agency, Marketing Agent submits outline of Marketing Plan	
3. P.O. Box / caller service box established for receipt of paper applications	Prior to commencement of the marketing period

4. Marketing Plan approved, advertisements posted on Housing Connect* and Agency websites; print advertisements placed	Represents commencement of the marketing period: at least 60 days prior to application deadline date for full marketing; may be shorter for modified marketing
5. Community contact letters mailed	At commencement of the marketing period
6. Marketing sign erected on project site (design is project ad enlarged proportionally to 40" wide)	At commencement of the marketing period
7. Advertisements mailed to inquiry list; requests for paper applications processed as received	At commencement of and throughout the marketing period
8. Compliance meeting held with Agency	Two weeks before or after the lottery
9. Paper applications retrieved at Post Office or caller service box and entered into Housing Connect	Seven to ten business days after application deadline
10. Lottery log is generated and available for download from Housing Connect	Approximately two weeks after entry of paper applications into Housing Connect
11. Resident selection process commences	Approximately two weeks after lottery log is generated
12. Rentals: Lease is offered to eligible applicant and occupancy begins	After verification of eligibility from Agency and receipt of TCO
13. Homeownership: End loan closing, or purchase of co-op shares, and occupancy begins	After verification of eligibility from Agency, approval for private mortgage, and receipt of TCO

\*NYC Housing Connect (or "Housing Connect") is the online application system for HPD/HDC-assisted affordable housing. Some Programs or Projects may not be advertised on Housing Connect, but through other channels as determined by the Agency.

### 3. BASIC SEQUENCE OF ACTIVITIES

---

The following activities take place **before** the Agency approves the Marketing Plan:

1. Developer files a *Notice of Intent to Begin Marketing* with Agency to propose Marketing Agent and schedule a Marketing Meeting (see *Attachments A-1 and A-2*, and Section 4-1.B)
2. Developer, Marketing Agent and Agency hold the Marketing Meeting (see Section 4-1.B)
3. Marketing Agent submits proposed Marketing Plan to Agency (see Section 4-1.C)
4. Agency and Marketing Agent establish P.O. Box or caller service box (see Section 4-2.E.3)
5. Marketing Agent remits payment to Agency for caller service box (HDC only)

The following activities take place **after** the Agency approves the Marketing Plan:

6. Marketing Agent erects marketing sign on Project site (enlarged Project advertisement on outdoor-durable material) (see Section 4-2.D)
7. Marketing Agent publishes advertisements in newspapers and other media outlets and provides Agency with all copies of actual newspaper advertisements (See Section 4-2.C)
8. Agency posts advertisement on Housing Connect and, when applicable, Agency website
9. Marketing Agent sends copies of the approved advertisement to interested applicants on inquiry list (see Section 4-1.A)
10. Marketing Agent sends community contact letters (see Section 4-2.B.3)
11. Agency sends elected official letters (full marketing only) (see Section 4-2.B.2)
12. Marketing Agent processes requests for paper applications as received (see Section 4-2.E)
13. Marketing Agent holds informational seminars at local facilities, such as community board(s) and/or local organizations (required for homeownership only)
14. Marketing Agent and Agency schedule paper application pickup and entry (see Section 4-3.A)
15. Marketing Agent hires staff for scheduled paper application entry date(s) (see Section 4-3.B)
16. Agency accompanies Marketing Agent to pick up paper applications from Post Office (See section 4-3.A)
17. Agency oversees Marketing Agent's entry of paper application information into Housing Connect (See Section 4-3.B)

- 18.** Lottery log is generated by the Housing Connect system (see Section 4-3.C)
- 19.** Marketing Agent attends compliance meeting with Agency (see Section 4-2.A)
- 20.** Marketing Agent submits applicant files to Agency for review (see Section 4-4.I)
- 21.** Marketing Agent submits log updates with disposition comments to Agency at least bi-weekly (see Section 4-4.C)
- 22.** Marketing Agent requests written approval from Agency to commence Open Marketing (see Section 4-4.G), if needed
- 23.** Marketing Agent submits initial move-in certification to Agency, if required by Agency (see *Attachment W*)
- 24.** Marketing Agent submits final log with disposition comments, statistical report, and initial rent roll, at 100% occupancy

# 4. OUTLINE OF PROCEDURES

---

- 1-1 Pre-Marketing**
- 1-2 Marketing**
- 1-3 The Lottery Process**
- 1-4 Applicant Evaluation and Resident Selection**

## 4-1 Pre-Marketing

### A. INQUIRY LIST

1. Commencing at the start of construction, the Developer must maintain a list of people who, before the deadline date for requests for applications, have inquired about renting or purchasing a unit. The inquiry list must include the following information:
  - a. Name and contact information of those who submitted an inquiry;
  - b. How the inquiry was received, e.g. via telephone, email, walk-in, or mail (the Developer may select the procedure for accepting inquiries).
2. The Marketing Plan must outline these inquiry list procedures, and the date at which they were implemented.

### B. MARKETING MEETING

1. The Developer must submit a *Notice of Intent to Begin Marketing (Attachment A-1)* (“Notice of Intent”) to the Agency to initiate the marketing process, propose a Marketing Agent for the Project, and schedule a Marketing Meeting. This typically happens at approximately seven months prior to anticipated occupancy, but timing may vary based on project type.
2. The Agency may ask that projects requiring a Certificate of Occupancy also reach 70% construction completion before advertising may commence.
3. The Notice of Intent must identify the Marketing Agent the Developer intends to use or retain to perform marketing and initial lease-up, and must propose any separate entity, if known, the Developer intends to use or retain for ongoing resident selection for re-rental units or resales. For example, a Developer may retain a third-party marketing company to conduct a new Project’s initial lease-up or sales, but when the Project is fully occupied, the Developer may assign a property management company the responsibility of overseeing re-rentals or resales.
4. With the Notice of Intent, the Developer must submit a summary of the experience and expertise of the Marketing Agent (*see Attachment A-2, Marketing Agent Approval Request Form*). If the entity responsible for ongoing re-rentals or resales is expected to be different than the initial Marketing Agent, then the Developer must submit another version of *Attachment A-2* for that entity.
5. After Agency approval of the Marketing Agent, the Developer, the Marketing Agent, and the Agency will hold a Marketing Meeting to review the policies,

procedures, and requirements for marketing, applicant evaluation and resident selection, occupancy, ongoing re-rental leasing, and resales, as well as any related documents and reports.

✓ **The Marketing Plan must include a dated copy of the Notice of Intent and Marketing Agent Approval Request.** See *Sample Notice of Intent (Attachment A-1)* and *Marketing Agent Approval Request Form (Attachment A-2)*.

## C. MARKETING PLAN

1. At the time of, or immediately following, the Marketing Meeting, the Marketing Agent must submit to the Agency for review and comment a proposed Marketing Plan which will outline procedures to be followed in the pre-marketing, marketing, applicant evaluation, resident selection, re-rental, and resale phases of the Project. See *Marketing Plan Summary Sheet, Attachment B* and Section 3 of this Handbook, “Basic Sequence of Activities.”
2. The following items must be outlined in the Marketing Plan in order that the Agency may be afforded an opportunity to comment:
  - a. Number and type of units (if this description does not match the original underwriting and unit distribution described in the Regulatory Agreement, then the Marketing Agent must bring the discrepancy to the Agency’s attention in writing);
  - b. Initial rents or selling prices to be charged;\*
  - c. Minimum and maximum income range for each type of unit; (*\*Marketing Agents should contact the Agency if they are unclear about the program’s income or rent limits*)
  - d. Approved Marketing Agent and, if applicable, managing or other re-rental/resale agent;
  - e. Dates of construction start and completion, advertising start, and application deadline date;
  - f. Inquiry list maintained since beginning of construction;
  - g. Marketing sign to be erected on site premises during advertising;
  - h. Set-asides and preferences;
  - i. Listing of proposed fees;
  - j. Resident selection and rejection criteria;
  - k. Estimate of groups least likely to apply;
  - l. Audience demographics for advertisements in different publications;
  - m. Community groups to be contacted;

- n. Applicant interview standards for accessibility, privacy/confidentiality, and data security;
  - o. Language access plan (see *Attachment C*);
  - p. Waiting list management; and
  - q. Methods for future marketing activities.
- 3.** At the time of submission of the Marketing Plan, the Marketing Agent must also submit to the Agency an outline of the management plan for ongoing operations (see *Outline for Management Plan, Attachment E*), and how the distribution and eligibility requirements of units will meet the program eligibility criteria (see *Apartment Distribution Chart, Attachment U*).
- 4. Credit and Background Check Fees**
- a. Applicants must not be required to pay an application fee, but may be charged a non-refundable credit check fee:
    - i. For units with income limits set at or below 80% of New York City's Area Median Income (AMI\*) limit, the fee is not to exceed **\$25** per application (for households consisting of one or two adult members), or **\$50** per application (for households with three or more adult household members).
    - ii. For units with income limits set above 80% AMI, the fee is not to exceed **\$50** per application (for households with one or two adult members) or **\$75** per application (for households with three or more adult members).
    - iii. No credit/background check fees may be charged to homeless applicants referred directly by the city.
  - b. \*Note: "AMI" shall mean the area median income for the primary metropolitan statistical area as determined by the United States Department of Housing and Urban Development or its successors ("HUD") from time to time for a family of four, as adjusted for family size. "80% of AMI" shall mean 160% of the income levels as modified by household size for the New York metropolitan statistical area for 50% of median income families (a.k.a. as "very low-income families") as determined from time to time by HUD under Section 3(b) (2) of the United States Housing Act of 1937 (or, if such program is terminated, under such program as was in effect immediately before such termination).
  - c. **Credit fees may only be collected when (a) an applicant appears to be otherwise eligible and (b) it is clear that a unit will be available if the applicant is approved.** If the Marketing Agent wishes to conduct a credit/background check prior to interview, they may do so provided (i) that the applicant consents, (ii) that the applicant knows that consenting

to the early credit check is optional with no consequences to declining, and (iii) that the Marketing Agent subsidizes the up-front cost of the check. (If the applicant subsequently accepts and signs a lease for the unit, the Marketing Agent may collect the fee at that point.)

## 4-2 Marketing

### A. GENERAL INFORMATION

1. The official marketing period, during which the Project is advertised and people may submit applications, typically should begin at least six months prior to the anticipated occupancy of the first unit.
2. The opening of the lottery for applications on Housing Connect, the publication of advertisements on Housing Connect and Agency websites as well as in print and in other media, and other outreach efforts commence the official marketing period.
3. The Developer and Marketing Agent must ensure that the Project is always in compliance with the provisions of the Project's Regulatory Agreement. The Developer and Marketing Agent must be aware of their obligation to obtain, verify, and provide the Agency, on an ongoing basis, with all required information. The Developer and Marketing Agent must fully familiarize themselves with the provisions of the Project's Regulatory Agreement.
4. The Agencies require a Compliance Meeting to be held within approximately two weeks of the lottery date. The Agency may recommend that this take place either before or after the lottery date.
5. *Full vs. Modified Marketing*
  - a. The requirements for the marketing process may differ based on the type of project and number of affordable units being marketed. All full and modified marketing requirements are subject to the Agency's discretion.
  - b. "Full marketing" (20 or more units) has a 60-day advertising period whereas "modified marketing" may have a shorter advertising period. Full marketing for rental units requires a lottery through the NYC Housing Connect online application system, posting on Agency websites, advertising in newspapers, publicity targeted to people with disabilities and those least likely to apply; modified marketing requires posting on Agency websites and may require a lottery through Housing Connect.
  - c. Both full and modified marketing processes begin with the Developer's submission to the Agency of the *Notice of Intent to Begin Marketing* and *Marketing Agent Approval Request*, typically seven months before

anticipated occupancy, or 70% construction completion for projects requiring a Certificate of Occupancy (C of O). See *Attachments A-1 and A-2*.

## B. OUTREACH

1. Marketing aims to achieve the broadest practical citywide representation in its outreach efforts. The Marketing Agent's outreach efforts are an essential element in the development of a diverse pool of applicants and residents. The Agency expects the Project's Marketing Plan to be designed to achieve this objective. The Agency requires the use of community and citywide civic organizations as part of the marketing effort.
2. *Elected Official and Community Board Letters:* At the commencement of full marketing, the Agency submits letters to the Community Board and elected officials affiliated with the district in which the development is located.
3. *Community Outreach:*
  - a. The Marketing Agent must conduct outreach to citywide and targeted audiences in order to ensure all groups are informed. For both full and modified marketing, the Marketing Agent must provide methods of community contact and describe these methods in the Marketing Plan.
  - b. The Marketing Agent must send community outreach letters simultaneous with the opening of the lottery on Housing Connect and publication of the advertisement. See *Community Contact Letters, Attachment D*.
  - c. The Marketing Agent must initiate contact with organizations serving people with mobility, hearing, and vision disabilities, and the local Community Board.

- ✓ **The Marketing Plan must describe all methods of outreach, including, but not limited to:**
- ✓ The intended outreach time schedules and types of materials to be distributed;
- ✓ Specific organizations and institutions (e.g., Community Board, private and not-for-profit organizations, citywide, ethnic, and local newspapers, senior centers, labor unions, government agencies), and their respective roles in the marketing process;
- ✓ Specific efforts to reach people with mobility, hearing, and vision disabilities; and
- ✓ Specific efforts to reach groups that are likely to be underrepresented in the applicant pool.

4. *Homeownership Information Sessions*: Certain homeownership programs require the Marketing Agent to offer two information sessions to the public during the application period. The Agency will provide guidance on the content of the informational sessions.

✓ **The Marketing Plan and Project advertisement must include the dates and locations of the homeownership information sessions.**

## C. ADVERTISEMENTS

1. The Agency will post the approved advertisement and open the lottery on the Housing Connect website and the Agency website(s). For full marketing, the date of the first published advertisement must coincide with the date of the advertisement posted on the Housing Connect website.
2. (FULL MARKETING ONLY) Advertisements in print publications and other media:
  - a. Advertisements must appear at least 60 days prior to the application deadline date. *See Attachments F-1, F-2, and F-3.*
  - b. The Marketing Agent must begin marketing by placing an advertisement in accordance with the following:
    - i. The Agency will provide the Marketing Agent with a template for the final advertisement format. No changes to the format will be permitted without the prior written approval of the Agency.
    - ii. Copies of the advertisements must be submitted to the Agency for approval prior to publication. Advertisement draft approvals are required from multiple parties, in addition to the Agency, depending on the number of vested parties involved in the project. The Marketing Agent must allow enough time to receive each of these approvals. *See Routing Slip of Advertisement Approvals, Attachment F-4.*
    - iii. After obtaining Agency approval, and simultaneously with the posting of the advertisement on Housing Connect, the Marketing Agent is responsible for placing the advertisement in newspapers and media outlets.
    - iv. The advertisement must be advertised in at least three newspapers, including:
      - One citywide daily newspaper with a circulation of at least 200,000;
      - One ethnic-based newspaper with a circulation of at least 10,000. In addition to choosing a citywide publication that

is generally read by all ethnic groups, the ethnic publication chosen must be one that serves the minority group(s) least likely to apply for this housing (included in *Marketing Plan Summary Sheet, Attachment B*); and

- One local newspaper.
- v. If the ethnic-based or local newspapers are printed in a language other than English, the advertisement must also appear in the language of those publications. The Agency will provide translated versions of the advertisement in select languages. If the language of the newspaper is not included in the Agency's translated versions, the Marketing Agent is responsible for having the advertisement translated.
- vi. The newspaper advertisement is to run at least three days in each publication with at least one day falling on a weekend (weekly publications automatically meet this requirement). The initial publication must be at least 60 days prior to the application deadline. The Marketing Agent must run the additional two advertisements within two weeks of the initial publication. Any delays must be reported to the Agency.
- vii. The Marketing Agent must provide the Agency with a copy of all tear sheets immediately after the advertisements run (see *Evidence of Affordable Fair Housing Marketing, Attachment F-5*).
- viii. The Marketing Agent must target advertising to people who may be eligible for the mobility, vision, and hearing disabled set-asides by contacting organizations who have established communications channels with those populations.
- ix. The Marketing Agent must ensure that at least one organization or media outlet serving people with mobility, visual, and hearing disabilities places the advertisement in any publications or public spaces.

✓ **The Marketing Plan must list the name(s) of the publications and the proposed dates of the advertisement's publication schedule.**

## D. PROJECT SITE MARKETING SIGN

1. The Developer or Marketing Agent must display on the Project site and in public view a legible marketing sign that is a version of the Project advertisement (see *Attachment F-2* or *F-3*) enlarged proportionally to at least 14" wide and approximately 40" tall.

2. The sign must be laminated and durable in outdoor conditions.
3. The sign must be displayed upon commencement of the marketing period and remain until the conclusion of the marketing effort.

## E. APPLICATIONS

1. The Agency will provide, in English and additional required languages, templates for the paper application, cover letter, and response letters to applicants. Any changes to the application, cover letter, or response letters must receive prior approval from the Agency. (See sample applications with cover letters, *Attachments G-1 and G-2*. See also templates for communication with applicants, *Attachments H-1A through H-7*).
2. The application must include a statement that the Developer and the Developer's family members, employees, agents, and employees of agents are prohibited from seeking or obtaining an affordable unit in the Project at any time, regardless of their position with the firm (please see Section 4-4.A.6 for a detailed list of the parties to which this applies). The cover letter must reiterate program guidelines and highlight the post office box to which applications may be returned. The format and translations in required languages will be provided by the Agency.
3. The post office box or caller service box used for receipt of paper applications must be one governed by the United States Postal Service (i.e., not a privately owned business such as "Mailboxes Etcetera," etc.) and must be located within New York City limits (i.e., New York, Bronx, Kings, Queens or Richmond Counties). The location must be pre-approved by the Agency. Protocol for the opening of the P.O. Box or caller service box varies by agency:
  - a. HDC will purchase and reserve the P.O. Box or caller service box, with all charges and fees to be reimbursed by the Developer or Marketing Agent.
  - b. HPD will accompany the Marketing Agent to the designated post office on the day of the opening to purchase and open the P.O. Box or caller service box.
4. During the advertising period, the Marketing Agent may receive requests from the public for the following:
  - a. Paper applications in English; and/or
  - b. Advertisements with paper applications in select other required languages (the "application package").

Upon receipt of such a request, the Marketing Agent must mail the relevant application or application package immediately. The Marketing Agent must also keep a record of applications and application packages requested and mailed, in each language, including English.

- ✓ **The Marketing Plan must include a final paper application and cover letter that include Project-specific information. The application and cover letter must use the format and language from the required template provided by the Agency.**

## 4-3 The Lottery Process

### A. APPLICATION COLLECTION

1. On a date mutually agreed to by the Marketing Agent and Agency, Agency staff and the Marketing Agent will meet at the applicable post office for the opening of the P.O. Box or caller service box and the gathering of paper applications. This generally happens seven to ten business days following the application deadline to allow for the receipt of paper applications.
2. The Marketing Agent will, in the presence of at least one Agency monitor, transport the paper applications to the location where Marketing Agent staff will enter all applications postmarked or date-stamped by the application deadline into Housing Connect (see 4-3.B, “Paper Application Entry”).
3. The Marketing Agent must identify the paper application entry site and provide the transportation to that site from the post office or caller service box.

### B. PAPER APPLICATION ENTRY

1. Based on anticipated response volume, the Agency will recommend a minimum number of staff to be provided by the Marketing Agent for the full day(s) of the paper application entry. The Agency generally recommends that there be ten to fifteen staff members per day during paper application entry, but it may adjust this recommendation based on the volume of paper applications received. Additional people made available will minimize the number of days required to enter all applications received.
2. Marketing Agent staff will enter information from each paper application into the Housing Connect system in order to assign application identification numbers. Paper and online applications all receive unique identification numbers prior to and separate from randomization and assignment of lottery log numbers.
3. The paper application entry site must have a sufficient number of computers with internet access to accommodate the number of staff members present and Agency monitors. Marketing Agent staff must be made familiar with the application entry process, and freed from any other duties or distractions on the day of the paper application entry. Agency monitors will be present strictly to

observe the opening of applications and completion of the paper entry; they will be unable to assist in the actual opening and entry as not to divert their attention from their oversight responsibilities.

4. If more than one day is required for the paper application entry, the Marketing Agent must provide a locker or footlocker that can accommodate a standard combination lock, to secure the applications until entry resumes. The Agency will provide the lock with a combination known only to Agency staff. The Marketing Agent will store this locker or footlocker in a location approved by the Agency monitor. Subsequent days of opening and logging must also occur under Agency supervision.
5. The Marketing Agent must ensure that all paper applications and applicant personal information is stored securely and kept on file for five years.

### **C. LOG GENERATION**

1. Once all paper applications have been entered, the Housing Connect system randomizes both online and paper applications, which generates an electronic log. The randomization and log generation generally takes approximately ten business days.
2. The electronic log will be made available to the Marketing Agent for download from the Housing Connect website. The Marketing Agent will work off of this log to evaluate applicants and select residents.

## **4-4 Applicant Evaluation and Resident Selection**

The Marketing Agent will have primary responsibility for applicant evaluation and resident selection. The Marketing Agent must select all prospective residents from the lottery log in numerical order, with exceptions only for permitted set-asides and preferences, which are outlined below. (See Section 4-4.B, "Order of Processing," or Section 5-1, "Set-Asides and Preferences.")

### **A. INELIGIBILITY POLICIES**

1. An applicant shall not be rejected for any reason that is not consistent with the rejection criteria stated in the Marketing Plan and Agency resident selection policies (see Section 5, "Detailed Selection Policies"). The selection and rejection criteria outlined in the Marketing Plan must be approved by the Agency prior to the start of marketing. The rejection criteria must be applied fairly and equitably to all applicants.
2. No application will be found ineligible prior to entering the lottery. Every

application received via Housing Connect and every paper application postmarked or date-stamped prior to the application deadline will be assigned a unique log number. Ineligibility letters, for reasons outlined below, must be processed and sent in order of log number.

**3. *Multiple applications***

- a. A “multiple application” is defined as the appearance of any single person across two or more applications for any given project, where the applications differ in the number or composition of household members present.
- b. In the case that multiple applications are received for any single person, all applications for that applicant must be found ineligible.

**4. *Duplicate applications***

- a. A “duplicate application” is defined as the appearance of any single person across two or more applications for any given project, where the same household members are present and all other information is the same.
- b. Upon receipt of duplicate applications, the Marketing Agent will not find the applicant ineligible, but will consider only the application with the highest log number (lowest chance of being selected).

**5.** Applicants to rental projects may not be found ineligible or be rejected solely on the basis that the applicant receives Section 8 assistance or other qualifying government rental subsidy.

**6. The Developer and the Developer’s family members, employees, agents, and employees of agents are prohibited from seeking or obtaining an affordable unit in the Project at any time, regardless of their position with the firm. This applies to the following parties:**

- a. Any person holding an equity interest in the developer or any agent of the Developer;
- b. Any director, officer, member or employee of the Developer or of any agent of the developer;
- c. The spouse of any such person;
- d. Any of their respective siblings, parents, grandparents, children, or grandchildren; or
- e. Their respective spouses.

**7.** Employees of HDC are prohibited from seeking a unit in any project in which HDC is involved.

**8.** Employees of HPD may not seek units in buildings that have been involved in HPD programs or projects in the last three years if the employee either (i) works

in the division which administers such HPD program or project, (ii) works in the Marketing Unit, (iii) is or was involved in decisions concerning such HPD program or project, or (iv) seeks, obtains, or purchases the housing through a process that is different in any way from the process through which members of the general public seek, obtain, or purchase such housing. Any HPD employee who is selected in the lottery must consult with the agency's Office of Legal Affairs to determine whether the City Charter, HPD policies or orders, or any other law or rule prohibits such employee from leasing or purchasing the apartment or home. The employee will be required to submit a statement from HPD that receiving such unit does not violate any applicable law, rule, or policy.

✓ **The Marketing Plan must specify criteria to be used for resident selection and rejection, along with procedures for handling appeals of rejected applications.**

## B. ORDER OF PROCESSING

1. The first applications that the Marketing Agent processes from the log and submits to the Agency for review must be those that meet the approved set-aside categories or preferences. For more information on processing of preferences, see Section 5-1, "Set-Asides and Preferences."
2. Set-aside and preference categories must be processed in the following order:
  - (1) People with disabilities (5% mobility; 2% vision/hearing)
  - (2) Community Board residents
  - (3) New York City municipal employees
3. Applications containing content entered by the applicant in a language other than English must be translated before being processed. The Marketing Agent is responsible for arranging professional translation services.
4. When processing applicants for disability set-asides, New York City residents must be processed before non-residents. If there are insufficient New York City residents to meet the set-aside requirement, the Marketing Agent may then process non-residents to fulfill the set-aside. *Note: After initial lease-up, the New York City resident preference no longer applies.*
5. After fulfilling the Community Board, municipal employee, and other preference categories if applicable, applicants in the general pool who reside in New York City must be processed before non-residents.
6. Only after all set-asides and preferences have been fulfilled may non-set-aside or non-preference applications be submitted to the Agency for review. This is to prevent non-set-aside or non-preference applicants from being processed for units that are intended for applicants eligible for set-asides or preferences. With

Agency approval, the screening of non-set-aside or non-preference applicants may begin prior to achieving all set-asides or preferences.

7. If the Marketing Agent is unable to fulfill any set-aside or preference categories, it must contact the Agency for further instructions.
8. The Marketing Agent must offer units only to applicants who meet eligibility requirements, and only in numbered order from the lottery log (after first processing applicants for set-asides and preferences), for whom units of appropriate size are available.
9. If an applicant meets eligibility requirements for more than one available unit type in a project, the Marketing Agent must make the applicant aware of all available unit types for which the applicant is eligible, and offer to the applicant the opportunity to select the unit type.
10. If units of appropriate size are unavailable to an eligible applicant as such applicant is being reviewed, the applicant's name will remain on the log until an appropriate unit becomes available or until the log expires.
11. Applications should be processed for submission to the Agency in groups of 50 to prevent getting too far ahead in the lottery and potentially bypassing eligible applicants who are placed earlier on the log and appeal successfully within the two week appeal timeframe. Even within those groups of 50, attention must be given to remaining available units based on bedroom sizes and (for mixed-income buildings) income levels to allow for such appeals.
12. An applicant to whom a unit has been offered must be given a reasonable specific amount of time to respond to the offer, and not less than five business days for a lease signing, before the Marketing Agent can proceed to offer a unit to the next eligible applicant on the log.
13. Depending on the number of applications received, lease-up may be completed before all applicants on the log have been processed or contacted.

## C. REPORTING

1. The Marketing Agent must provide, **on at least a bi-weekly basis during the resident selection process**, a lottery log update to the Agency for review, indicating each applicant's selection status. This is to ensure that applicants are being processed in proper order. The Marketing Agent may not submit an applicant file when there are applicants with lower log numbers whose statuses have not been confirmed.
2. The lottery log update must outline the status of applicants on the log (i.e., if rejected, the reason must be provided) and must be submitted to the Agency in an editable electronic format. The Marketing Agent therefore must not submit a read-only version. This *lottery log update*, which must include all status codes and comments, must also be accompanied by a letter reporting on the statistics ("Statistical Report"), such as, but not limited to:

- a. Number of applications in each set-aside or preference category, in the general pool, and in each required language:
    - i. Received
    - ii. Scheduled for interview
    - iii. In process
    - iv. Appeal under review
    - v. Sent to Agency
    - vi. Approved
    - vii. Moved in
    - viii. Waiting list
    - ix. Rejected
  - b. Of those rejected, number rejected because of:
    - i. Being over income;
    - ii. Being under income;
    - iii. Falling between the income ranges; if applicable;
    - iv. Credit reasons;
    - v. Criminal history;
    - vi. Housing court activity as further described in Section 5-6.G;
    - vii. Household composition;
    - viii. Failure to submit requested additional documentation;
    - ix. Submitting multiple applications;
    - x. Household being comprised of full-time student(s) and not meeting any of the exceptions (in applicable programs);
    - xi. Household size;
    - xii. No-shows (including the no-show dates); and
    - xiii. Any other rejection criteria used by the Marketing Agent.
  - c. Number terminated as per applicant's request (applicant withdrew/cancelled application);
  - d. Number placed on low priority list and specific reasons, e.g. living out of city.
3. The Agency will not waive any preferences and/or set-asides until the updated log is received and reviewed.
  4. The lottery log update and statistical report requirement is mandatory so that the Agencies may monitor the process of the lottery log. Further, such statistical report information may be used to report on the statistics of the individual project and analysis of its lease-up.
  5. The Marketing Agent must notify all applicants processed of their selection status by regular mail or email, as designated by the applicant, as soon as a determination has been made. A copy of the notification must be attached to the application and kept on file.

6. The Marketing Agent will provide the Agency with a copy of the completed log, indicating the final selection status of each applicant and reason for rejection (Please refer to lottery log update, Section 4-4.C).
7. The Marketing Agent must retain the lottery log and all associated applications (digitized or paper versions) as a record for no less than five years. The Marketing Agent is responsible for complying with the retention policies of all applicable programs.

## D. APPEALS

1. Applicants have ten business days from the postmark date of the ineligibility or rejection letter (or from the date of the ineligibility email) to appeal in writing to the Marketing Agent. The applicant's place on the log is maintained while the appeal is under review.
2. Upon receipt of an appeal, the appeal and application must be reviewed by a supervisor, and this reviewer may not be the same person as the initial reviewer. Any questions during appeal review should be directed to the Agency.
3. If the Marketing Agent finds the application still to be ineligible after the appeal review, the appeal rejection letter must provide specific and detailed reason why an applicant cannot be approved. For example, stating, "You are rejected because you are over-income" is not sufficient. The letter would need to state more specifically, as an example, "You have been deemed ineligible for this housing program because you do not meet the maximum income required for your family and unit size. The maximum income is \$35,000 and your household's annual income has been determined to be \$36,000." See *Sample Appeal Rejection Letter, Attachment H-7*.

## E. COMPLAINTS

1. The Appeal Rejection Letter will contain information for the applicant on how to contact the appropriate Agency (HPD or HDC) in the event that the applicant has a complaint. See *Attachment H-7*.
2. If the applicant's complaint concerns the rejection of their appeal, the applicant must submit their complaint to the Agency within five business days of the appeal rejection letter's postmark or sent date to initiate a review. Such a complaint must include a written explanation of why the applicant believes the appeal was rejected in error and documentation to support the explanation.
3. The Agency may require that the Marketing Agent hold a unit depending on the circumstances of the case and if units are available.

## F. INTERVIEWS

1. All applicant/prospective tenant interviews, as well as lease signings, must be conducted within New York City limits (i.e., New York, Bronx, Kings, Queens, or Richmond Counties) and at a location that is accessible to applicants with disabilities.
2. All adult household members of the applicant household must attend the interview. Temporarily absent household members may be excused from attending the interview. Circumstances of temporarily absent household members may include:
  - a. Children away at college;
  - b. A household member who is in a hospital or rehabilitation facility for periods of limited or fixed duration;
  - c. A household member on active military duty.
3. If credit checks will be conducted, then the fees may not exceed those approved by the Agencies:
  - a. For units with income limits set at or below 80% AMI, credit check fees are not to exceed **\$25** for households with one or two adult members or **\$50** for households with three or more adult members.
  - b. For units with income limits set above 80% AMI, credit check fees are not to exceed **\$50** for households with one or two adult members or **\$75** for households with three or more adult members.
  - c. No credit check fees may be charged to homeless applicants referred directly by the city.
  - d. **Credit checks may only be conducted when (a) an applicant appears to be otherwise eligible and (b) it is clear that a unit will be available if the applicant is approved.** If the Marketing Agent wishes to conduct a credit/background check prior to interview, they may do so provided (i) that the applicant consents, (ii) that the applicant knows that consenting to the early credit check is optional with no consequences to declining, and (iii) that the Marketing Agent subsidizes the up-front cost of the check. (If the applicant subsequently accepts and signs a lease for the unit, the Marketing Agent may collect the fee at that point.)
4. The Marketing Agent will send a letter to each applicant to be interviewed using the applicant's preferred method of contact (email or regular mail) and in the applicant's preferred language. Contact method and language preferences are indicated on the application. The letter is to notify applicants of their apparent eligibility and request that they respond to schedule an interview. Format for the letter will be provided by the Agency. See *Sample Eligibility and Interview Scheduling Letter, Attachment H-1A*. Letter must include:

- a. Phone number, email address, and, where applicable, online calendaring system where applicant can schedule an interview;
  - b. Hours during which the Marketing Agent is open to receive calls to schedule interviews;
  - c. That all adult household members of the applicant household must attend the interview;
  - d. Interview period, which must be at least two weeks after the date of the letter;
  - e. Location of interview;
  - f. That language interpretation services are available upon request; and
  - g. Request to respond within reasonable amount of time (but **not less than five business days** from the sent date or postmark of the letter). Applicants who do not respond within the requested timeframe shall be sent a second and final interview scheduling letter, requesting a response within an additional period of time, no less than five business days from the sent date or postmark of the letter.
  - h. If the applicant does not respond to the second interview scheduling request interview within the allotted timeframe, the Marketing Agent may send a rejection letter.
5. After the applicant has scheduled an interview, the Marketing Agent will send a follow-up letter confirming the interview, using the applicant's contact method of choice (see *Sample Interview Confirmation Letter, Attachment H-1B*). The interview confirmation letter must include:
- a. Date, time, location of interview;
  - b. Phone number or other contact information (e.g. email, online calendaring system) should applicant be unable to appear;
  - c. That all adult household members of the applicant household must attend the interview;
  - d. List of required documents for applicant to bring to the interview;
  - e. That applicants who have indicated they have mobility, vision, or hearing disabilities are required to submit third party verification of their need for the set-aside unit using the form, *Certification of Eligibility for Disability Set-Aside Unit, Attachment I-2*, completed by the applicant and a medical doctor. The Marketing Agent will attach the form to the eligibility and interview letter and indicate that it must be completed prior to the interview; and
  - f. That no broker or application fees will be charged to the applicant, except for units with income limits above 165% AMI, as described in Section 4-4.G, "Open Marketing."

6. The Marketing Agent is responsible for maintaining standards during applicant interviews, including but not limited to the following:
  - a. Space must be accessible and clearly marked for people with disabilities;
  - b. Staff must be trained in HUD income calculations and the content of *HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs* (available at hud.gov), and fair housing, language access procedures, and Agency marketing requirements;
  - c. Instructions for staff and applicants on how to access language interpretation and translation services must be on display;
  - d. Applicants must be provided quality language interpretation services free of cost (including American Sign Language);
  - e. Marketing Agents must ensure that applicants are interviewed at their scheduled appointment time;
  - f. Interviews must be conducted in private, where interviewees' personal information is not visible or audible to anyone other than the interviewer; and
  - g. Paper and digital applicant information must be stored in a secure and private place.

✓ **The Marketing Plan must specify how the applicant interview standards above will be achieved.**

## G. OPEN MARKETING

1. If the lottery log has been reviewed for eligibility and it is clear that it will be exhausted before filling all affordable units, the project will require additional outreach. **The Marketing Agent must contact the Agency for written approval to commence open marketing.** The Marketing Agent is required to complete a Notice of Remarketing document (**see Attachment K, Notice of Remarketing**). Upon receipt of this information, the Agency will create an advertisement for its website. Under open marketing, the Marketing Agent may utilize other methods to identify applicants beyond the scope of the lottery. Such methods may include additional advertising, signage on the building to attract walk-ins, or the use of brokers.
2. If using a broker, the Marketing Agent must fully absorb any related broker fees. No such fees may be passed on to applicants/residents of units. The exception to this, unless otherwise noted, is with units with income limits above 165% AMI. In the case of such units, a fee equal to half (1/2) of one month's rent is the

maximum amount that may be charged to the residents as a broker fee. Any fee above that amount must be absorbed by the Marketing Agent.

## H. WAITING LISTS (RENTAL UNITS ONLY)

1. After the Project is initially occupied, the development must maintain a waiting list based on the lottery log and must fill vacancies from the waiting list. The list must include applicants who were contacted and appeared eligible but for whom there were no apartments available at the end of lease-up, as well as enough additional applicants from the log to contact for units upon turnover. The Developer or agent responsible for re-rentals may, with the written permission of the Agency, modify its processing of the waiting list to provide a preference or set-aside for emergency housing placements or relocations.
2. Because of set-aside requirements upon turnover, the waiting list must include the maximum number possible of applicants who have self-identified as seeking a disability set-aside unit. This list must include partially-processed and unreached applicants who self-identified as requiring an accessible/adaptable unit. When a non-set-aside unit becomes available, the Developer or re-rental agent must contact applicants in log order, including set-aside applicants, in the event that an applicant with a disability does not require a modified unit.
3. When a set-aside unit becomes available, the unit must first be offered to any current occupant(s) of the development with a mobility, vision, or hearing disability that initially applied for a set-aside, but opted for a non-set-aside unit because an appropriately sized set-aside unit was not available. If no such occupants exist or wish to apply for the vacant unit, the unit must be offered to any current occupant of a non-set-aside unit who has a disability requiring the accessibility features of the vacant unit.
4. If no occupant with a disability wishes to move into the vacant set-aside unit, the Developer or re-rental agent must next contact applicants on the waiting list who indicated that they were seeking a set-aside unit. This is in order to maintain the distribution of disability set-asides: 5% mobility disabled, 2% hearing or vision disabled.
5. When the Project's waiting list is exhausted, Developer or re-rental agent must notify the Agency. The Agency requires a fair applicant selection process and compliance with resident eligibility criteria for re-rentals, for the duration of the regulatory agreement and in accordance with all applicable laws.
6. When the Project's waiting list needs to be replenished, the Developer or agent must notify the Agency prior to commencing remarketing activity. A *Notice of Remarketing* form (*Attachment K*) must be completed and receive Agency approval before remarketing.

✓ **The Marketing Agent must document to the Agency in the Marketing Plan how it or the Owner, Developer, or other agent of the Project plans to manage its waiting list.**

## I. AGENCY REVIEW

1. **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 applicant file. This is true both during initial lease-up or sales and thereafter. Concurrent reviews by other involved agencies may also be required.**
2. **The Marketing Agent may not collect funds from prospective residents (e.g., security deposits, rents, etc.) until Agency review has completed.**
3. HPD and HDC perform independent reviews of applicant income eligibility as an additional means of ensuring compliance with the Regulatory Agreement and any statutory requirements of the affordable housing or financing program. Verification of program eligibility is based on information in the files submitted by the Marketing Agent.
4. *Tenant Income Certification for Low-Income Housing Tax Credit (LIHTC) Units:*
  - a. Reviews are conducted under HPD's and HDC's role as LIHTC monitoring agencies; however, these reviews alone are not verification of tax credit compliance. Upon the Marketing Agent's annual tax credit certification review (as required by IRS monitoring rules), the compliance unit in the respective Agency will review files in their entirety to monitor compliance.
  - b. The Marketing Agent must submit *Tenant Income Certification ("TIC")* and verifications to the Agency along with the *Applicant Information Form ("AIF")* to enable a review of the Marketing Agent's computation of eligibility. The Marketing Agent must inform applicants that they will not be allowed to occupy a unit until the Agency has reviewed their *Tenant Income Certification*. The Marketing Agent will be notified in writing once the file review has been completed. See *TIC Submission Cover Letter, Attachment L-2; TIC forms, Attachments L-2 and L-3; and AIF, Attachment M*.
  - c. If the applicant file is complete as described above, and the information contained therein raises no additional issues, Agency review timetable is three to five business days from receipt of the file. However, if the file is incomplete, or if its contents present issues that require special review either internally or with the City's Department of Investigation ("DOI"),

the review process will take as long as necessary to (a) acquire the missing or additional paperwork from the Marketing Agent or (b) to complete an additional review with DOI. On a case-by-case basis, if such process extends past ten business days without a resolution, the Agency may grant the Marketing Agent permission to place such applicant on hold and proceed with other applications while such special reviews are being completed. Although an added step, these procedures will ensure both the integrity of the Agency's programs and protect the Developer from the potential regulatory defaults for non-compliance that can result from admitting applicants who are not truly eligible.

**5. Tenant Lease and Related Documents**

- a. Immediately prior to signing the lease, the statement in the Pre-lease Acknowledgement and Certification must be reviewed with, and signed by, all adult household members (see *Pre-lease Acknowledgement and Certification, Attachment N*). This statement warns against violating the primary residence rule, as well as provides a final confirmation as to the veracity of all information the applicants submitted throughout the process.
- b. The Marketing Agent must use a lease that complies with the Rent Stabilization Law and regulations.

✓ **The Marketing Plan must include a copy of the lease package for review.**

- c. For Projects financed by HDC, owners must execute an HDC lease rider, which outlines the unique aspects of the program and how it differs from standard rent stabilization (such as the prohibition on sublets). See *Rider to Standard Rent Stabilization Lease for Low-Income, Attachment O*, or see *Rider to Standard Rent Stabilization Lease for Middle-Income, Attachment P*.
- d. At the time of lease signing applicant must complete a Reaffirmation of Income. The Marketing Agent must confirm that all income documents comply with the 120-day rule. See *Reaffirmation of Income, Attachment Q*.

## 5. DETAILED SELECTION POLICIES

---

**Additional guidance on evaluation criteria and selection factors is provided on the following pages as follows:**

- 5-1 Set-Asides and Preferences**
- 5-2 Changes to an Application**
- 5-3 Qualification as a Household**
- 5-4 Income Eligibility**
- 5-5 Continuing Need**
- 5-6 Background Checks and Other Factors**
- 5-7 Occupancy Standards and Unit Distribution**
- 5-8 Rent Levels and Income Standards**
- 5-9 Other**

## 5-1 Set-Asides and Preferences

### A. DISABILITY SET-ASIDES

1. All City-assisted projects must comply with the accessibility requirements of Section 504 of the Rehabilitation Act of 1973. Section 504 requires that, for Projects involving the new construction of housing containing five or more dwelling units and for Projects involving the substantial alteration of housing containing 15 or more dwelling units, a minimum of five percent of units in the Project must be accessible and set aside for households with a person with a mobility disability (“Mobility Disability Set-Aside Units”). An additional minimum of two percent of units must be set aside for households with a person with a hearing or vision disability (“Hearing/Vision Disability Set-Aside Units”). *See the HPD Design Guidelines for more information, available at [www.nyc.gov/hpd](http://www.nyc.gov/hpd).*
2. Marketing Agents must make the Mobility Disability Set-Aside Units (five percent of units in the Project or one unit, whichever is greater) available first to any applicants with mobility disabilities.
3. Marketing Agents must make the Hearing/Vision Set-Aside Units (two percent of units in the Project or one unit, whichever is greater) available first to any applicants with hearing and/or vision disabilities.
4. When processing applicants for disability set-asides, New York City residents must be processed before non-residents. If there are insufficient New York City residents to meet the set-aside requirement, the Marketing Agent may then process non-residents to fulfill the set-aside requirement.
5. At the time community letters are mailed out, the Marketing Agent must notify the Mayor’s Office for People with Disabilities of the Project in writing (with a copy to the Agency):

Mayor’s Office for People with Disabilities  
100 Gold Street, 2nd Floor  
New York, NY 10038  
Tel (212) 788-2830  
Fax (212) 341-9843  
TTY (212) 788-2838  
Email: [mopd@cityhall.nyc.gov](mailto:mopd@cityhall.nyc.gov)
6. If the disability set-aside requirement is not fulfilled from applicants on the lottery log, the Marketing Agent must contact the Agency for guidance.

## B. COMMUNITY PREFERENCE

1. As instructed by the Agency prior to the marketing effort, the Marketing Agent may be required during initial lease-up to give an occupancy preference for a percentage of the units to applicants who, at the time of application and processing, are residents of the Community District in which the building is located (“Community Preference Units”). Applicants with community resident status must meet all other eligibility requirements of the Agency and the Marketing Agent (e.g., income qualification, credit history) to qualify.
2. When the community preference is fully achieved, any remaining community applicants will be processed from the log in the same order as other applicants.
3. If after all applications have been processed the community preference cannot be filled from applicants in the log, the Marketing Agent must notify to the Agency indicating how much of the preference has been achieved. The notice must be accompanied by an updated lottery log that details the status of applicants on the log (i.e., if they were rejected the reason must be provided). It should include, but is not limited to, the information on the Statistical Report (See Statistical Report requirements, Section 4-4.C.2). After review, the Agency may waive the remainder of this preference and authorize the Marketing Agent to proceed with the remainder of the log sequentially.

## C. MUNICIPAL EMPLOYEE PREFERENCE

1. The Marketing Agent must give an occupancy preference for five percent of the units (or one unit, whichever is greater) to municipal employees of the City of New York (“Municipal Employee Preference Units”). At least one household member must be a municipal employee for an applicant to be eligible for this preference. A general list of New York City agencies is available at [www.nyc.gov](http://www.nyc.gov) for reference, but to be eligible for this preference, the applicant must also be paid by the City of New York. (Note: HDC employees are not eligible for this preference. Employees of HPD are only eligible if they can provide a statement from HPD that receiving such unit does not violate any applicable law, rule, or policy.)
2. When processing applicants for the municipal employee preference, New York City residents must be processed before non-residents. If there are insufficient New York City residents to meet the municipal employee preference, the Marketing Agent may then process non-resident municipal employees of the City of New York.

## D. RESIDENCY PREFERENCE FOR NEW YORK CITY RESIDENTS

After fulfilling the disability set-asides and Community Board, municipal employee, and any remaining preference requirements, applicants in the general pool who reside in New York City must be processed before non-residents.

## E. ADDITIONAL SET-ASIDES AND PREFERENCES

There may be additional preferences and set-asides tied to certain government programs or funding sources. However, they are subject to the same resident selection criteria and application process and must be approved by the Agency.

✓ **The Marketing Plan and Project advertisement must reflect all set-asides and preferences.**

## F. HOMELESS REFERRALS

The Agency may require that all or a portion of the Mobility Disability Set-Aside Units and Hearing/Vision Disability Set-Aside Units, the Community Preference Units, the Municipal Employee Preference Units and/or units associated with any other additional preference and set-aside then existing, be set aside as housing for households then residing in emergency shelter and referred by the City as long as such homeless applicants meet the requirements of the applicable preference or set aside and any other applicable program eligibility criteria. This requirement may apply to initial rentals and/or re-rentals.

The Agency may also amend these policies and procedures for individual Projects (for initial rentals or re-rentals from a waiting list) to authorize the owner to give a preference or set-aside for referrals of homeless persons from the Department of Homeless Services, provided that the homeless persons meet program eligibility criteria (i.e., have incomes at or below the maximum allowable income for eligibility).

## G. REFERRALS

The Agency may refer to the Marketing Agent potential applicants who are being relocated or displaced due to a governmental action. The Marketing Agent, if directed by the Agency, must first offer units to these referrals. Their applications must be processed according to program selection criteria for eligibility and the Agency must complete its review before any referred applicant may be offered a lease. Referrals must be entered into a separate log by the Marketing Agent or a representative. The Marketing Agent must indicate the source of the referral on the log.

## 5-2 Changes to an Application

### A. CHANGES TO INCOME

1. In the case that an applicant's income at the time of interview has changed since the application was submitted, the applicant must provide, at the time of interview, documentation supporting such changes. In addition, any income not listed on the application or income that ceases after application submission must be documented by third party sources.
2. If the applicant cannot provide supporting documentation for such changes, the application will be rejected.

### B. CHANGES TO HOUSEHOLD COMPOSITION

1. Changes to household composition on a submitted application that affect eligibility will not be recognized, unless such change is due to an extenuating circumstance. Extenuating circumstances may include but are not limited to:
  - a. Death of a member of the household;
  - b. Birth in the household;
  - c. Separation or divorce;
  - d. Court order of custody;
  - e. Domestic violence.

### C. PROOF OF EXTENUATING CIRCUMSTANCES

1. The Marketing Agent will require the applicant to provide, at the time of interview, documents to support any changes in household composition. A notarized statement alone is not sufficient documentation of extenuating circumstance. Common examples of documentation for extenuating circumstances include birth or death certificates, divorce records, and court records.

2. *Legal or Legitimate Separation*

Examples of proof of a legal separation would be either (i) a duly executed and acknowledged separation agreement was filed with the county clerk where either spouse lives, or (ii) a judgment of separation was granted by the New York Supreme Court, or (iii) proof of Divorce filing evidencing that a Summons and Complaint and an Affidavit of Service have been filed, or (iv) legal documentation, such as tax returns or government issued ID, evidencing one partner's absence from the household for at least six months prior to date of

interview and a notarized affidavit from the applicant representing that they are separated and have no intention of reuniting. Applicants without legal documentation must be able to evidence legitimate separation with additional documentation.

**3. *Domestic Violence***

When an applicant provides domestic violence as the reason for changes to household composition, the Marketing Agent may request, in writing, supporting documentation. Acceptable documentation may be from an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional service provider, from whom the applicant, their family, or household member has sought assistance in addressing domestic violence, sex offenses or stalking and the effects of the violence or stalking; a police or court record; or other corroborating evidence.

**D. POST-INTERVIEW**

After the interview, sources of income and household composition that impact eligibility may not be changed. If the Marketing Agent has questions regarding extenuating circumstances, it must contact the Agency.

## **5-3 Qualification as a Household**

**A. DEFINITIONS**

For the purposes of applying to City-assisted affordable housing, the following terms shall have the meanings set forth below:

"Minor" shall mean a person under the age of 18 years.

"Adult" shall mean a person at or above the age of 18 years.

"Dependent" shall mean a Minor who is the lawful dependent of an Adult in the Household, as indicated by (i) a court order or other binding document establishing that such Adult is the legal guardian of, or is otherwise responsible for the custody and care of, such Minor, (ii) school records identifying such Adult as such Minor's legal guardian; (iii) written verification from a government agency, or a social service provider under contract to a government agency, confirming the placement of the Minor in the custody and care of such Adult, or (iv) federal or state income tax returns in which such Adult claims such Minor as a dependent.

"Guardian" shall mean an adult who is legally responsible for a Dependent.

"Immediate Family Member" shall mean, with respect to any person, (i) his or her grandparent, parent or Guardian, child or Dependent (who meets the definition of "Dependent" set forth above), grandchild, sibling, spouse, or domestic partner, and (ii)

any of their respective grandparents, parents or Guardians, children or Dependents, grandchildren, siblings, spouses, or domestic partners.

"Extended Family Member" shall mean, with respect to any person, (i) his or her Immediate Family Member, and (ii) his or her aunt, uncle, or first cousin, or any of their respective Immediate Family Members.

"Household" at admission shall mean (i) a single person, or (ii) two or more persons who:

- a. are Immediate Family Members;
- b. are Extended Family Members who need to live together in order to support one another with respect to finances, child care, eldercare, medical care, or other extenuating family circumstance, as indicated by self-certifications explaining the family circumstances and needs; or are financially interdependent, as indicated by (i) current leases or utility records demonstrating a shared address, or (ii) documentation, such as bank accounts, demonstrating shared assets.

## **B. SEPARATION**

If an applicant states that the applicant and his/her spouse are separated, then the Marketing Agent must require the applicant to provide proof of a legal or legitimate separation. See Section 5-2.C, "Proof of Extenuating Circumstances" for documentation required.

## **5-4 Income Eligibility**

### **A. INCOME ELIGIBILITY AT ADMISSION**

- a. Income eligibility at admission is determined in the same way as it is determined under the federal Section 8 program except where the Agency specifies that additional requirements or restrictions apply. Income calculations apply to eligibility only; unlike the federal Section 8 program, income calculations are not made for the purposes of determining or adjusting rents. Gross income, before any expenses or deductions, is used to determine income eligibility, with the exception of self-employment income (see Section 5-4.C, "Self-Employment Income").
- b. The Marketing Agent must obtain a current copy of the HUD Handbook 4350.3 (Chapter 5), which outlines these requirements. This handbook is available to print or view at [hud.gov](http://hud.gov). In addition, the Marketing Agent must require its marketing staff to attend an industry training where these requirements are reviewed in detail.

## B. EMPLOYMENT INCOME

1. The Marketing Agent must require all adult household members reporting general employment income to provide **all of the following**:
  - a. *The most recent year's complete tax return.* If after May 1, the most recent year's tax documents due by the preceding April must be provided unless an applicant provides a copy of his request to the IRS for an extension (IRS Form 4868). In such cases the previous year's complete tax return may be accepted until October 15th, when the extension expires. The gross income reflected on the most recent tax return will be "the tax return income".
  - b. *The six most recent consecutive pay stubs.* Income must be calculated by both (a) averaging the pay stubs and (b) projecting the year-to-date. The higher of these two amounts will be "the pay stub income".

- c. *Third Party Verification directly from the employer.* The Marketing Agent must send this form (see *Attachment I-3*) directly to the applicant's employer, with instructions for the employer to return it directly to the Marketing Agent. Envelopes, email, and fax confirmations must be maintained to document that the information was obtained via direct third party procedures, and not transmitted through the applicant's hands. This form will request current salary, year-to-date income, and information about bonuses, overtime, etc., and anticipated increases. The highest amount calculated based on this information will be "the third party income." The Marketing Agent must also obtain Third Party Verification of Termination directly from previous employers who are listed on the application and/or previous year's tax return. An applicant cannot be penalized for the lack of response from his/her employer in completing and returning the verification. However, the Marketing Agent must evidence at least three attempts, within a period of time deemed reasonable by the Agency, to obtain such third party employment verification.

## 2. *Comparison and Determination*

- a. Based on the three employment income verification sources above, the Marketing Agent must compare the tax return income, the pay stub income, and the third party income. The highest of these amounts will be the employment income for the household member.
- b. If an applicant has not filed tax returns on reported income, the applicant will not be eligible for City-assisted housing unless the applicant qualifies for a filing exemption under The Internal Revenue Code (see "Publication 501" on irs.gov). The Agencies will not make available their limited housing resources to applicants with income that is required to be reported, but is not being reported, to governmental tax authorities.
- c. Unless a compelling argument can be made as to why an applicant's income decreased, the highest income of the three sources must be used. The most obvious exceptions would be a decrease in income due to retirement or disability, or a widowed or divorced applicant whose most recent tax return still shows his or her spouse's income.

## 3. *Tax Release Request Forms*

- a. The Marketing Agent must require all adult household members to execute two copies of IRS Form 4506-T, one for the owner/managing agent identified in line #5 and the other for DOI and the Agency noted in the same line. This form is a release by which the applicant authorizes the IRS to release transcripts directly to a third party.
- b. Furthermore, the applicant must complete an IRS Form 4506 – Request for a Copy of Tax Return, as well as a New York State DTF-505 Form

Authorization for Release of Photocopies of Tax Returns and/or Tax Information.

- c. If a tax return provided by the applicant appears to have potentially been altered or a file is otherwise suspicious, the Marketing Agent should make use of this form. The Agency also may make use of this form. The Marketing Agent is encouraged to send these requests to the IRS upon receipt, so that if files are flagged later at the Agency, an IRS response may already have been received back. The Marketing Agent is to send in **ONLY** its copy. **The Marketing Agent must not send in Agency or DOI copies of forms.**
- d. If an applicant has been found to be eligible for a unit, then at the time of lease signing or sale closing, all adult household members must execute two new IRS Form 4506-T, Form 4506 and DTF-505 Form in accordance with the above. See *IRS and State Forms, Attachments R-1 through R-4*.

## C. SELF-EMPLOYMENT INCOME

1. Because self-employment income is more difficult to document via third party and subject to more variables and potential manipulation, special care must be given in the review of such income. The Marketing Agent must require that all adult household members reporting self-employment income provide both of the following:
  - a. *Projected Self-Employment Income:* An estimate of current year's *net self-employment* earnings certified in (a) a letter from the applicant's accountant, tax preparer or business manager OR (b) a notarized self-statement. If (b), the self-statement must be accompanied by additional documentation such as income receipts, a current financial statement/budget, or other information which supports the projection. This income will be "the projected self-employment income."
  - b. *Historical Self-Employment Income:* Most recent tax returns for the last three years. (If after May 1, the most recent year due to be filed by the preceding April deadline *must* be provided unless documentation of an IRS extension filing is provided). If the applicant reported self-employment income in the same line of work for each of the three years, then all three must be averaged and evaluated. If only the most recent two years reflect self-employment income in the same line of work, then those two years must be averaged and **evaluated**. The income calculated through these averages and evaluations will be "the historical self-employment income."
2. *Comparison and Determination:* The projected and historical incomes are compared, and the higher amount is what is used as income for the purposes of income eligibility.

- a. “Evaluated” means that the Marketing Agent must make an effort to identify any patterns that may logically result in a conclusion that the current or next year’s income will increase beyond the three (or two) year average.
- b. An alternate calculation method may be warranted in the following example: The incomes for the past three years for a self-employed applicant were \$30,000; \$32,000 and \$34,000. The straight average would be \$32,000. However, there is a clear pattern reflecting a gradual increase in this income source and so, consistent with that pattern, a logical evaluation of this applicant’s income would conclude that \$36,000 would be the current/next year’s income.
- c. The Marketing Agent must compare the average or projected income to the applicant’s most recent tax return. If the tax return is higher, that amount should be used as income unless there is a compelling argument as to why an applicant’s income is expected to decrease. Such a compelling argument must be supported by documentation.
- d. If self-employment is the primary source of income at least the most recent two years of tax returns must document that the applicant’s income has come from self-employment in the same line of work. Applicants who do not meet this “time test” have not established a suitable income-earning history through their self-employment, and there is insufficient data to accurately evaluate their income.
- e. If self-employment is not the primary source of income, or if an applicant’s historical income is a combination of wages and self-employment *and* the self-employment income can be documented by a third party, the time test may not apply and the Agencies should be consulted for guidance.

#### **D. INCOME RECEIVED FOR LESS THAN ONE YEAR**

1. When calculating income that may not last for a full year, the Marketing Agent must use current and recent income information to anticipate or project income for the 12-month period following initial certification. If information is available regarding changes that are expected to occur during this 12-month period, the income calculation is adjusted, as described in the examples below, to reflect such expected changes.
2. *Example 1:* If a household member is expected to receive an increase in salary within the 12 months after initial certification, income is annualized by adding the number of pay periods at the current salary to the number of pay periods at the increased salary to arrive at projected income for the 12-month period following initial certification.
3. *Example 2:* If a household member is receiving unemployment benefits that will

end during the following 12 months, income is annualized by calculating the amount s/he would receive if the benefit were to continue at the same rate for the remainder of the 12-month period. The unemployment benefit is expected to bridge a temporary gap in employment as the recipient actively searches for work, and it is expected that the household member will earn income after termination of the unemployment benefits. Because it is not possible to predict whether his or her wages will immediately match their pre-unemployment levels, annualizing the benefit rate provides a reasonable projection of income as a person searches for employment and re-enters the workforce.

4. Note: Any household member over 18 years old who is unemployed must complete an Unemployment Affidavit. See *Sample Unemployment Affidavit, Attachment I-1*.

## E. SPORADIC INCOME

1. Certain forms of income that are sporadic and non-recurring are not considered when calculating maximum household income as they are considered temporary in nature. Examples of sporadic or non-recurring income include one-time gifts or lump-sum inheritance payments.
2. All sources of income must be disclosed, but such non-recurring income may be excluded in the calculation process.

## F. GI BILL INCOME

Consistent with the income calculation methods in the *HUD Occupancy Handbook 4350.3*, student financial assistance (grants, scholarships, educational entitlements, work study programs, and financial aid packages) is not included in the income calculation. **However, when an applicant receives GI Bill payments, the Marketing Agent must exclude only the amount paid directly to the educational institution; prorated payments to the veteran to cover housing and living expenses are included in the income calculation.**

## G. ASSET CERTIFICATION

1. The Marketing Agent must require that all adult members of the applicant household complete a certification of assets, which must be signed and notarized. A sample of such a certification is provided in *Asset Certification, Attachment T*. This form must identify both the specific assets and the actual income earned from the assets (such as the interest rate for a bank savings account). IRS rules for Tax Credit compliance allow that this self-certification is the only documentation required if the total value of an applicant's assets is less than \$5,000 and the asset information on the certification form and housing application are consistent. Income generated from the asset is added to employment and other income. *However, it is a common misconception that this*

*IRS rule is intended to exclude income from assets if the total value is under \$5,000. The income from assets must still be counted, but if it is under \$5,000 no further verification beyond the self-certification is required. The self-certification must still disclose the specific assets and the income from said assets.*

*Accordingly, vague certifications that merely certify that an applicant has less than \$5,000 in assets are **not** acceptable.*

2. With the exception of Projects financed with tax-exempt bonds, the Marketing Agent is not required to submit supporting asset verification documents to the Agency as part of the review process when assets are below \$5,000. However, the Marketing Agent must still collect and review such documents, as bank statements may reveal unreported income.
3. If the total value of assets equals or exceeds \$5,000, if the Project's financing includes tax-exempt bonds, and/or if there is an unexplained difference between the assets noted on the application and those subsequently noted on the certification, the Marketing Agent must obtain and submit complete asset verification documents. Refer to HUD Handbook 4350.3 for guidance regarding the appropriate documents to be obtained based on the type of assets being verified. As required under tax credit rules for all verification, documents must be current within 120 days of the tenant income certification (TIC) effective date (which is ultimately the move-in date). When over \$5,000 total, the actual earned income from the asset is compared to the imputed value (.06% of the total) and the higher of these amounts is added to the household income.
4. Note: The calculation of imputed value is dictated by the current HUD passbook savings rate. The rate in effect as of 2015 was 0.06%. Marketing Agents should refer to [hud.gov](http://hud.gov) for updates to the passbook savings rate.

## 5-5 Continuing Need

Eligibility is also dependent on whether the applicant can demonstrate a "continuing need" for housing assistance. Any City-assisted housing development aims to serve individuals and families with a true, continuing need for housing assistance and not those with other financial resources available or those who have a recent history of higher earning power and are only temporarily at an income level eligible for the program. In determining "continuing need" for these programs, the criteria in this section must be satisfied, or the applicant is not eligible.

Note: HPD and HDC's property ownership, asset limit, and primary residence policies differ from, or are required in addition to, those included in the *HUD Occupancy Handbook 4350.3*.

## A. RECENT INCOME HISTORY

1. In addition to reviewing current income verifications, the Marketing Agent must evaluate an applicant's most recent income history based on the applicant's most recent tax returns. Unless a compelling argument can be made as to why an applicant's income decreased, the highest income of the sources must be used.
2. Here are examples of continuing need demonstrated in changes to recent income history:

*The maximum income for a single applicant to Plaza Towers is \$30,000.*

*Example 1:* Mary Smith is a seamstress who was laid off by her previous employer, where her tax return shows she earned \$32,000 a year. Her new employment with a different garment company pays her \$28,000 a year as documented by her pay stubs and 3<sup>rd</sup> party employer letter. *In this case, a compelling argument can be made not to use Mary's tax return income, even though that is the highest amount. The change in Mary's income was not voluntary and her new job/earnings are generally consistent with her recent history. The amount from her current pay stubs and 3<sup>rd</sup> party should therefore be used, under which she is eligible.*

*Example 2:* John Hower recently quit his job as a college professor, where his tax return shows he earned \$75,000 a year, to pursue other interests. He has recently started working as a waiter and presently earns \$27,000 a year based on his pay stubs and 3<sup>rd</sup> party verification. *In this case, no exception is warranted. John has clearly demonstrated a recent history of significantly higher earning patterns. The change appears to be voluntary and/or temporary in nature, which is not the intent of City-assisted low-income housing programs. John is encouraged to apply to our programs in the future, after a minimum of a full year's tax returns as well as current verifications may document a suitable pattern of eligibility.*

3. The Marketing Agent may request in writing that the Agency grant an exception to the above criteria based on extenuating circumstances. The Agency will consider such requests on a case-by-case basis.

## B. ASSET LIMITS

1. Note: For purposes of these requirements, real property includes shares of stock in a cooperative housing corporation and ownership includes any type of direct or indirect ownership interest (including partial ownership).
2. The value of household assets may not exceed the asset limit for the unit to which the applicant is applying. The definition of household assets, as it pertains to real property, deviates from the definition of assets in the HUD Handbook 4350.3.

- a. The entire market value of any interest in real property is subject to the asset limit; for other capital investments, only the applicant's equity in the investment is subject to the asset limit.
- b. Balances in specifically designated retirement funds and college savings accounts are not subject to the asset limit, but are counted toward overall assets and income from assets.
- c. Developers and Marketing Agents should refer to HUD 4350.3 Exhibit 5.2 for the definition of all other assets not listed in this section.

**3. *Asset Limit for Applicants of Rental Units***

- a. For a rental affordable unit, the value of the applicant's household assets may not exceed the amount of the current HUD income limit for a four-person household for the AMI limit applicable to such unit.
- b. For example, if the 60% HUD income limit for a four-person household is \$55,000, a household of any size applying for a 60% AMI unit is not eligible if its total household assets exceed \$55,000. If the 80% limit is \$72,000, a household applying for an 80% AMI unit may not have more than \$72,000 in assets.

**4. *Asset Limit for Applicants of Homeownership Units***

For a homeownership affordable unit, the value of the applicant's household assets may not exceed the current four-person HUD income limit for 175% AMI.

**C. PROPERTY OWNERSHIP**

**1. *Asset Calculation***

If an applicant owns any real property, the market value of that real property is included in the calculation of household assets and is subject to the asset limit (see Section 5-5.B, "Asset Limits").

**2. *Income Calculation***

If an applicant owns any real property, the actual or potential rental income from that real property is included in the income calculation.

**3. *Prohibition – Rental Affordable Unit***

For a rental affordable unit, no member of the applicant's household may own any residential real property in, or within a 100-mile radius of, New York City.

**4. *Prohibition – Homeownership Affordable Unit***

For a homeownership affordable unit, no member of the applicant's household may own, or have previously purchased, any interest in residential real property.

## D. PRIMARY RESIDENCE

1. If approved for an affordable housing unit, the applicant must surrender any unit where applicant is then currently residing. Each member of the applicant's household who leases rental residential real property must terminate the lease for and surrender possession of such rental property on or before the move-in date for a rental affordable unit or the date of purchase for a homeownership affordable unit.
2. For a homeownership affordable unit, the applicant must agree to continuously occupy the affordable housing unit as his or her sole primary residence, residing there no less than 270 days per year, with the exception of days spent on active military duty or subleasing (where permitted by the project's regulatory documents).
3. For a rental affordable unit, the applicant must agree to the requirements in 5-5.D.2 except where preempted by other laws.

## E. OTHER RESTRICTIONS

If a unit is also subject to statutory restrictions, such as Inclusionary Housing in the New York City Zoning Resolution, additional rules may apply to property ownership, asset limit, and primary residence policies. The Marketing Agent must consult the Project's regulatory requirements for details. If a unit is also subject to another governmental subsidy, such as State Tax Credits, that program's governing agency should be consulted regarding any additional or different income and asset requirements.

If, after processing the entire lottery log, a development is experiencing difficulty in leasing or selling the remaining units or subsequent re-rentals or resales, HPD/HDC may modify the Continuing Need policies to ensure that available affordable units are occupied in a timely manner.

✓ **All asset limit, property ownership, and occupancy requirements must be disclosed in the Marketing Plan and approved by the Agency.**

## 5-6 Background Checks and Other Factors

### A. STUDENT STATUS (IRS PROGRAM UNITS)

1. The Marketing Agent must require that all adult members of the applicant household complete a Student Status Affidavit, which must be signed and notarized. Samples of such certifications are included in this manual. See *Student Status Affidavit at Initial Certification, Attachment J-1*.

2. The Student Rule for IRS program units prohibits low-income units in these programs from being occupied exclusively by full-time students (for Low-Income Housing Tax Credits and tax-exempt bonds, the IRS defines a “student” as a full-time student during five calendar months of the calendar year at an educational institution, other than a correspondence school, with regular faculty and students), unless the household qualifies for an exception under the IRS code. See *TIC, Attachment L-3*, for exceptions.

## **B. DISABILITY VERIFICATION**

Units designated as set-asides for people with mobility, vision, or hearing disabilities must only be offered to applicant households who require the accessibility features of the accessible or adaptable unit. Any applicant who has indicated that they require an accessible or adaptable unit must provide verification from a medical professional that at least one household member has a disability that requires residence in an accessible unit. See *Certification of Eligibility for Disability Set-Aside Unit, Attachment I-2*.

## **C. IMMIGRATION STATUS/CREDIT HISTORY**

1. Immigration status is not a condition of eligibility for any City-assisted Project. Immigration status may not be questioned in any manner on the application, during the interview, or at any other time during the tenant screening process.
2. However, that does not prevent the Marketing Agent from rejecting an applicant for failure to provide a Social Security Number or an Individual Tax Identification Number (ITIN) when the Marketing Agent needs such information to check credit and background history. All applicants must be able to provide verifiable proof of legal income; inability to provide documentation to verify income and credit is a basis for rejection, not immigration status.

## **D. CRIMINAL CHECKS**

1. The Marketing Agent must obtain a criminal background check for every applicant.
2. The Marketing Agent must disclose in the Marketing Plan which types of information revealed through such a check will or will not adversely impact an applicant’s eligibility. The Marketing Agent must find an applicant ineligible if one or both of the following criminal findings is flagged during the criminal background check:
  - a. A prior conviction of fraud in connection to any governmental housing program;
  - b. **An applicant is a criminal fugitive being sought by law enforcement for either incarceration or deportation (as such applicants would not lawfully be able to “anticipate” income or even be anticipated to be an included member of the household).**

## E. HOME VISITS

Home visits may not be performed as part of resident selection.

## F. DISCOVERY OF FALSE INFORMATION

1. Submitting false or knowingly incomplete information to induce eligibility is grounds for rejection and may also lead to further investigation and, potentially, criminal prosecution.
2. Even before a file is submitted to the Agency, there are times when the Marketing Agent may independently detect applicants who have falsified information. For example, the tax transcripts may differ from the provided returns, or provided pay stubs or other documents may be detected as having been tampered with. In all such cases, this fraud (or potential fraud) must be reported. Even if it is detected early and does not result in the applicant receiving a unit, the attempt of fraud itself must be reported. The Marketing Agent must report such findings to the Agency or, if they prefer, directly to DOI.
3. *Authorization to Release Information Form*

The Marketing Agent must require each adult household member to execute a copy of the *Authorization to Release Information Form, Attachment R-5*.

## G. CREDIT AND HOUSING COURT HISTORY

1. **The following policies are the most stringent criteria permitted. The Marketing Agent may implement less stringent policies subject to agency review. This applies to:**
  - a. Credit Score
  - b. Eviction/Landlord-Tenant Action
  - c. MONTHLY Debt to Income Ratio
  - d. TOTAL Debt to Income Ratio
  - e. Bankruptcy
  - f. Money Judgments
  - g. Delinquencies
2. *Credit Score*
  - a. General Applicants
    - i. The Marketing Agent may not reject applicants based solely on credit score. Credit score may be used only as an indicator of financial stability.
    - ii. The Marketing Agent may choose to accept applicants with a credit score of 580 on a FICO scoring system without further review of their financial stability.

- iii. If applicant's credit score is below 580, the applicant may not be rejected unless it also fails to meet one of the other criteria detailed in this handbook.
- iv. If the Marketing Agent is using a credit scoring system other than FICO as an indicator of applicants' financial stability, s/he must provide the Agency with an explanation of the scale and scoring criteria for that model.

✓ **The Marketing Agent must explicitly state in the Marketing Plan how credit score will be used in evaluating applicants and must apply the policy consistently across applicants.**

- b. Homeless Shelter Referrals  
Same as criterion for general applicants, except that the Marketing Agent may choose to accept homeless applicants with a credit score of 500, rather than 580, without further review of their financial stability, provided that the client is receiving a rental subsidy or is participating in a credit repair or financial improvement program.

**3. *Eviction/Landlord-Tenant Action***

- a. General Applicants
  - i. The Marketing Agent may reject an applicant for a prior for-cause eviction, provided that a warrant of eviction was executed upon within the last four years and the tenant never restored to possession.
  - ii. The Marketing Agent may also reject an applicant for a history of multiple landlord-tenant actions within the last four years, provided that the actions were commenced by the landlord and resulted in a judgment of possession.
- b. Homeless Shelter Referrals
  - i. The Marketing Agent may reject an applicant for multiple prior for-cause evictions, provided that two or more warrants of eviction were executed upon within the last four years and the tenant never restored to possession.
  - ii. The Marketing Agent may also reject an applicant for a history of multiple landlord-tenant actions within the last four years, provided that the actions were commenced by the landlord and two or more of the actions resulted in judgments of possession.

**4. *MONTHLY Debt to Income Ratio***

The Marketing Agent may reject an applicant for monthly debt obligations (including gross rent and minimum credit card and loan payments) that bring an applicant's gross debt-to-income ratio above 50% (60% if the obligations include

scheduled repayments for incurred medical bills or student loan debt) at the time of processing.

**5. TOTAL Debt to Income Ratio**

- a. The Marketing Agent may reject an applicant for total outstanding debt (excluding rent) per household exceeding 25% of the household's annual gross income (30% if debt includes significant medical-related bills or student loan debt).
- b. In this "total" approach, rent is excluded to account for what actual "debts" a household has prior to executing a lease. Tenants with exorbitant debts pose financial risk for Marketing Agents, so the acceptable level of debt is capped at a reasonable level that (a) acknowledges the applicant has accrued some debt but is responsibly paying it off as an alternative to bankruptcy and (b) specifically recognizes an additional accommodation for hardships created by medical and health-related circumstances and the cost of education.

**6. Bankruptcy**

a. General Applicants

The Marketing Agent may reject an applicant for a prior or pending bankruptcy, provided that the bankruptcy filing occurred within in the last two years.

b. Homeless Shelter Referrals

- i. The Marketing Agent may not reject a homeless shelter referral on the basis of bankruptcy (even if the bankruptcy occurred recently) provided that (a) the applicant can document compliance with any and all terms of the bankruptcy order (including current standing with any ordered payments) and (b) the applicant can document participation in a credit repair or financial recovery program.
- ii. For shelter applicants, recent bankruptcy actions are common and affordable housing may be a critical component of their economic recovery.

**7. Money Judgments**

- a. The Marketing Agent may reject an applicant for open/unsatisfied money judgments or liens.
- b. The Marketing Agent may not reject applicants based on satisfied money judgments. If an applicant resolved a judgment in the past, it is a sign of positive progress and must not be held against an applicant.
- c. The Marketing Agent may not reject applicants for open/unsatisfied money judgments or liens, if such judgments or liens do not exceed

\$3,000 in total and the applicant can document participation in a credit repair or financial recovery program.

**8. Delinquencies**

**a. General Applicants**

- i. The Marketing Agent may reject an applicant based on rent delinquencies for which there is not an acceptable mitigating justification, if the delinquencies are (a) currently open or (b) if there is a history or pattern of rent delinquencies being a repetitive, chronic issue.
- ii. The Marketing Agent may reject an applicant for other, non-rent delinquencies only if the current outstanding amount exceeds \$500 (e.g., an applicant may not be rejected based on a single overdue cable bill).

**b. Homeless Shelter Referrals**

- i. The Marketing Agent may not reject a homeless client based on rent delinquencies occurring prior to shelter stay. Such circumstances are covered by the above criteria for “landlord-tenant action.”
- ii. The Marketing Agent may reject a homeless client for non-rent delinquencies only if (a) the delinquencies are current and (b) when added to liens/judgments described above they cumulatively exceed the \$3,000 threshold.

**5-7 Occupancy Guidelines and Unit Distribution**

**A. OCCUPANCY GUIDELINES**

- 1. The occupancy criteria established must be consistent with federal, state and local laws and with the HPD and HDC occupancy guidelines, as noted on the following chart:

Unit Size	Number of People*
Studio	1
1 Bedroom	1 - 2
2 Bedroom	2 - 4
3 Bedroom	3 - 6
4 Bedroom	4 - 8

*\*Plus one (+1) may be applied if reflected in the Project’s Marketing Plan.*

2. HUD has provided some guidance for establishing these criteria in the *HUD Handbook 4350.3, Chapter 3, and Paragraph 3-23*. This guidance states in part that, generally, a two person per bedroom standard is acceptable. However, it makes the following important distinction:

“Owners must avoid making social judgments on a family’s sleeping arrangement. For example, it is not for the owner to determine whether a young child can share a bedroom with a parent.”

- a. In keeping with the above guidance, to maximize the utilization of its affordable units (another point considered in HUD’s guidance) married or similarly committed couples are assumed to share one bedroom. Apart from that, however, if a family (i) qualifies as a household as defined in these Marketing Guidelines and (ii) qualifies by both number of persons and income for more than one unit size, then the family chooses the unit size.
- b. The only additional exceptions would be certain programs, which may have statutorily imposed occupancy standards.

✓ **The Marketing Plan must clearly outline the Marketing Agent’s occupancy criteria and associated statutory requirements.**

## B. UNIT DISTRIBUTION

*See Apartment Distribution Chart, Attachment U.*

1. The allocation of units (total number and number for each unit size) must match the information in the Agency Regulatory Agreement.
2. For mixed-income buildings, please also note the following requirements pertaining to the distribution of units, **for mixed-income developments only:**
  - a. As soon as any of the units in the development are available for occupancy, at least 10% of those units must be occupied, or made continuously available for occupancy, by low-income households.
  - b. The Marketing Agent is not to segregate or physically isolate the low-income units from those units not occupied by low-income tenants. Low-income tenants must be reasonably dispersed throughout the development.
  - c. The Marketing Agent must also ensure that the percentage required by the Agency of each unit type (i.e. studio, one-bedroom, two-bedroom units) is low-income.
  - d. Distribution of all affordable units must be approved by the Agency.

## C. RENT LEVELS AND INCOME STANDARDS

### 1. *Rents*

The Developer must establish the rents in accordance with the Agency regulatory documents and programmatic requirements.

### 2. *Maximum Income Levels*

The Agency will provide tenant income eligibility levels as modified by household size.

### 3. *Minimum Income Levels*

- a. Minimum income levels are established by the Developer based on the rent levels. However, the standard barometer for affordability is a household paying approximately one-third of household income for rent purposes. In no instance should the minimum income established for initial lease-up result in a family paying more than 35% of income for rent. Although established by the Developer, minimum income levels are subject to approval by the Agency.
- b. However, the Developer may not establish minimum income levels for applicants with tenant-based Section 8 and other qualifying rental subsidies. Such applicants must be accepted provided they meet all other eligibility criteria outlined in the marketing plan. If questions arise, the Agency will advise the Developer on the use of minimum income limits for forms of rental subsidy other than Section 8.

### 4. *For Low Income Housing Tax Credit Compliance*

- a. Mixed-income projects participating in the Low Income Housing Tax Credit program must elect designation as either “deep rent skewed” or “non-deep rent skewed” when they are originally placed in service.
- b. *Deep Rent Skewed Properties.* Properties that are designated as deep rent skewed must meet the following:
  - i. At least 15% of all the low-income units occupied with tenants with incomes that are 40% AMI or less and rents are restricted.
  - ii. If a tenant’s income increases to over 170% of the then-current income limit for the unit occupied by such tenant, the unit may continue to be deemed a low-income unit provided the Marketing Agent rents the next available low-income unit at the property to a family with an income equal to or below 40% of AMI at a restricted rent.
  - iii. When the Marketing Agent of a property that deep rent skews submits a re-rental file for Agency review, then the Marketing Agent must submit a *Certification for Deep Rent Skewed Projects*,

*Attachment V-1*, along with the file.

c. *Mixed-Income / “Non-Deep Rent Skewed” Properties*

- i. A Mixed-Income building is a building that includes market-rate units. For buildings that are Mixed-Income and have tax credits, if the Marketing Agent discovers that the income of a tenant in a tax credit unit exceeds 140% of the then-current income limit, the unit may continue to be deemed a low-income unit if the Marketing Agent rents the next available unit of comparable or smaller size in the same building to a tax credit-eligible household at a restricted rent. This rule also applies to projects financed solely with tax-exempt bonds, although the rule is implemented on a project level rather than a building level.
- ii. When the Marketing Agent of a Mixed-Income building submits a re-rental file for Agency review, then the Marketing Agent must submit a *Certification for Mixed-Income, Attachment V-2*, along with the file.

## 5-8 Other

1. *Incorporation of “Fair Housing Laws”*

Federal, State and local laws, orders and regulations prohibiting housing discrimination (“Fair Housing Laws”) are hereby explicitly incorporated in these Marketing Guidelines. The Developer and Marketing Agent(s) must comply with all Fair Housing Laws. Any violation thereof will be a violation of this Marketing Handbook and the Marketing Plan.

2. *Amendments*

The Agency reserves the right to amend any provision of this Marketing Handbook.

3. *Inspections*

The Agency reserves the right to conduct periodic inspections and spot-checks of the Developer and Marketing Agent’s marketing budget and procedures.

4. *Brokers*

The *Broker/Third Party Certification* forms, *Attachments R-6 and R-7*, are to be completed and submitted with all applicant files that are not from the original lottery. If a project has gone “Open Market,” then the appropriate form must be completed by the Developer or agent. If a new project that is still in its initial lease-up goes “Open Market,” then the appropriate form must be submitted for

all applicants not received from the lottery. The *Broker/Third Party Certification* form does not need to be submitted for an applicant from the initial lottery.

**5.** *Annual Unit Inspection Form*

This form must be executed by approved residents and the owner and placed in the tenant's file. This file must be kept at the management office. *See Unit Inspection Form, Attachment X.*

**6.** *Household Student Status Affidavit at Recertification*

For units financed with Low Income Housing Tax Credits (LIHTC) or tax-exempt bonds, *Household Student Status Affidavit at Recertification, Attachment J-2*, must be used during the Annual Recertification process.

## 6. SUBMISSIONS AND ONGOING REPORTING REQUIREMENTS

---

- A. The Agencies require submission of the following items during the pre-marketing, marketing, and resident selection periods:**
1. Marketing Plan (to include all required information as described herein). See Section 4-1 and *Marketing Plan Summary Sheet, Attachment B*.
  2. *Applicant Information Forms (AIF)* and *Tenant Income Certifications (TIC)* completed by applicants and the Marketing Agent. See *Attachments M* and *L1 – L4*.
  3. In addition to Tenant Income Certifications, the Marketing Agent must submit to the Agency all documentation verifying income eligibility and family size. These certifications and verification documents, along with the Tenant Income Certification Submission Cover Letter, must be immediately forwarded to Agency for review *prior* to the anticipated dates of acceptance of the tenant and the signing of the lease.
  4. The form of lease and all riders for Agency review. Additionally, the *Pre-lease Acknowledgement and Certification* and, for HDC Projects, the *HDC Lease Riders* are to be used with all units. See *Attachments N, O and P*.
  5. Owner certification indicating the move-in date for the first tenant to occupy the development. (Once the Marketing Agent has submitted this form for the “first tenant who occupies a unit in the Project,” it does not have to be used thereafter.) See *Owner Certification of Initial Move-in Date, Attachment W*.
  6. After the initial lease-up of all the units in the project, certain obligations pertain to the project. In particular, the Marketing Agent must submit the current rent roll on a regular basis, as determined by the Agency. See *Unit Vacancy Report Instructions and Report, Attachments Y-1 and Y-2*.
- B. For vacancies subsequent to initial project occupancy, the required Tenant Income Certifications and supporting documents must be transmitted for Agency review prior to the signing of the lease.**
- C. The Marketing Agent must inform applicants that they will not be allowed to occupy a unit until the Agency has completed its review of their *Tenant Income Certification (TIC)* and supporting documentation.**

# 7. ATTACHMENTS

<b>A-1</b>	Sample Notice of Intent to Begin Marketing	<b>J-2</b>	Household Student Status Affidavit at Recertification
<b>A-2</b>	Marketing Agent Approval Request Form	<b>K</b>	<b>Notice of Remarketing</b>
<b>B</b>	Marketing Plan Summary Sheet	<b>L-1</b>	Checklist for Income Certification
<b>C-1</b>	Language Access Plan	<b>L-2</b>	TIC Submission Cover Letter
<b>C-2</b>	Guide to Language Access for Marketing	<b>L-3</b>	TIC (Low-Income)
<b>D</b>	Community Contact Letters	<b>L-4</b>	TIC (Middle-Income)
<b>E</b>	Outline for Management Plan	<b>M</b>	Applicant Information Form (AIF)
<b>F-1</b>	Advertisement Instructions	<b>N</b>	Pre-lease Acknowledgement and Certification
<b>F-2</b>	Sample Rental Advertisement	<b>O</b>	HDC Rider to Standard Rent Stabilization Lease (Low-Income)
<b>F-3</b>	Sample Homeownership Advertisement	<b>P</b>	HDC Rider to Standard Rent Stabilization Lease (Middle-Income)
<b>F-4</b>	Routing Slip of Advertisement Approvals	<b>Q</b>	Reaffirmation of Income
<b>F-5</b>	Evidence of AFHM	<b>R-1</b>	IRS Form 4506-T (DOI/HDC) & (DOI/HPD)
<b>G-1</b>	Sample Rental Application	<b>R-2</b>	IRS Form 4506-T (Blank for Agent)
<b>G-2</b>	Sample Homeownership Application	<b>R-3</b>	IRS 4506 (DOI/HDC) & (DOI/HPD)
<b>H-1A</b>	Sample Eligibility Letter and Request to Schedule Interview	<b>R-4</b>	NYS DTF-505 Form (DOI/HDC) & (DOI/HPD)
<b>H-1B</b>	Sample Interview Confirmation Letter	<b>R-5</b>	Authorization to Release Information Form
<b>H-1C</b>	Document List	<b>R-6</b>	Broker/Third Party Certification (165% AMI & Below)
<b>H-2</b>	Sample Ineligibility Letter	<b>R-7</b>	Broker/Third Party Certification (Above 165% AMI)
<b>H-3</b>	Sample Approval Letter	<b>T</b>	Asset Certification
<b>H-4</b>	Sample Rejection Letter	<b>U</b>	Apartment Distribution Chart
<b>H-5</b>	Sample Low Priority Letter	<b>V-1</b>	Certification for Deep Rent Skewed Projects (HDC)
<b>H-6</b>	Sample Waiting List Letter	<b>V-2</b>	Certification for Mixed Income / "Non-Deep Rent Skewed" Projects (HDC)
<b>H-7</b>	Sample Appeal Rejection Letter	<b>W</b>	Owner Certification of Initial Move-In Date
<b>I-1</b>	Sample Unemployment Affidavit	<b>X</b>	Unit Inspection Form
<b>I-2</b>	Certification of Disability for Set-aside Unit	<b>Y-1</b>	Unit Vacancy Report Instructions
<b>I-3</b>	Employment Verification Form	<b>Y-2</b>	Unit Vacancy Report
<b>J-1</b>	Student Status Affidavit at Initial Certification		