

Marketing Handbook

Policies and Procedures for Resident Selection and Occupancy

January 2020



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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/creed, gender, sexual orientation, gender identity or expression, national origin, age, disability, military service/veteran status, immigration status, lawful occupation, lawful source of income, marital or partnership status, pregnancy, presence of children, or status as a victim of domestic violence, sexual violence, or stalking. 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.

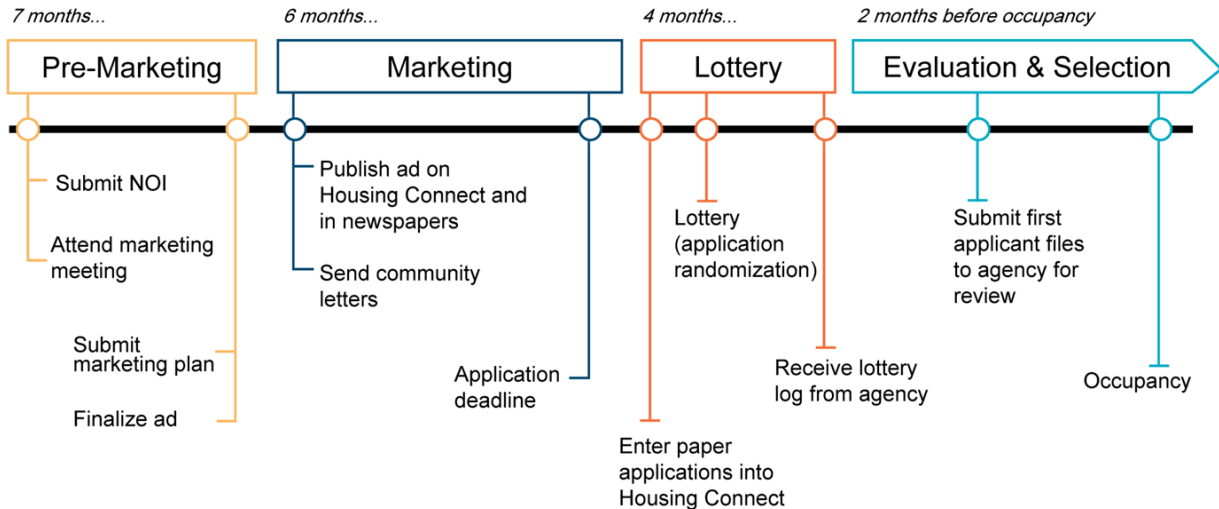
1-3 Revisions

This handbook includes policies effective January 31, 2020. The Agencies reserve the right to make additional changes to the handbook.

2. Timeline

2-1 Phases of the Marketing Process

Note: Timelines are approximate and may vary by project.



2-2 Major Milestones in the Marketing Process

Activity

Timeline

Prior to the marketing process:

Developer maintains inquiry list of interested potential applicants

From the start of construction until commencement of the marketing period

At the beginning of the marketing process and afterwards:

1. Agency approves proposed Marketing Agent
2. Marketing Meeting held with Agency, Marketing Agent submits outline of Marketing Plan

Typically, seven months prior to anticipated occupancy (or approximately 70% construction completion for projects requiring C of O)

3. PO 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 standard marketing; may be shorter for modified marketing
5. Community contact letters mailed	At commencement of the marketing period
6. Marketing sign posted on project site (design is project ad in multiple languages, at least 28" tall)	At commencement of the marketing period
7. Advertisements sent 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. For homeownership projects, first-time homebuyer seminars conducted	Two weeks after the beginning of the application period and two weeks before the application deadline
10. Paper applications retrieved at Post Office or caller service box and entered into Housing Connect	Seven to ten business days after application deadline
11. Lottery log is generated and available for download from Housing Connect	Approximately one week after entry of paper applications into Housing Connect
12. Resident selection process commences	Approximately two weeks after lottery log is generated
13. Rentals: Lease is offered to eligible applicant and occupancy begins	After verification of eligibility from Agency and receipt of TCO
14. 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 PO Box or caller service box (see Section 4-2.E.2).

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

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

15. Agency accompanies Marketing Agent to pick up paper applications from Post Office (see section 4-3.A).
16. Agency oversees Marketing Agent's entry of paper application information into Housing Connect (see Section 4-3.B).
17. Lottery log is generated by the Housing Connect system (see Section 4-3.C).
18. Marketing Agent attends compliance meeting with Agency (see Section 4-2.A).
19. Marketing Agent submits applicant files to Agency for review (see Section 4-4.K).
20. Marketing Agent submits log updates with disposition comments to Agency at least bi-weekly (see Section 4-4.C).
21. If needed, Marketing Agent requests written approval from Agency to commence remarketing (see Section 4-4.I).
22. Marketing Agent submits initial move-in certification to Agency, if required by Agency (see *Attachment W, Owner Certification of Initial Move-in Date*).
23. At 100 percent occupancy, Marketing Agent submits final log with disposition comments, statistical report, and initial rent roll to the Agency.

4. Outline of Procedures

4-1. Pre-Marketing

4-2. Marketing

4-3. The Lottery Process

4-4. 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 include a copy of the inquiry list, as well as an outline of the Developer's 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* ("Notice of Intent," *Attachment A-1*) 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 percent 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 or sales, 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 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. In considering approval of a Marketing Agent, the Agency takes into consideration factors including, but not limited to:
 - a. Prior experience marketing affordable projects through the Agency's Housing Connect lottery system;
 - b. Current workload of Housing Connect lotteries;
 - c. Staffing and organizational capacity of the marketing agent;
 - d. Demonstrated performance on past and current lottery projects, including but not limited to:
 - i. Proper processing of applicants;
 - ii. Proper management of the lottery log;
 - iii. Proper determination of applicants' eligibility, including accurate income calculations, proper application of the Continuing Need criteria and resident selection standards from the Marketing Handbook;
 - iv. Timely and complete submission of applicant files to the Agency for review; and
 - v. Timely, accurate, and complete submission of the statistical report, and final log, as well as the certified rent roll upon full lease up for rentals and executed contract for sales.
6. 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 *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 ("Marketing Plan"). See *Attachment B, Marketing Plan Summary*, 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 unsure of the program's income or rent limits*)
 - d. Approved Marketing Agent and, if applicable, managing or other 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. Standards for accessibility, privacy/confidentiality, and data security in relation to applicant eligibility appointments and review processes;
 - o. Language access plan (see *Attachments C-1 and C-2*);
 - 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*).
- a. 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 percent of AMI" shall mean 160 percent of the income levels as modified by household size for the New York metropolitan statistical area for 50 percent 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).

- b. **Credit and background check fees may only be collected in accordance with Section 5-6, “Background Checks and Other Factors,” 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 eligibility determination, they may do so provided (i) that the applicant consents, (ii) that the applicant knows that consenting to the early credit and/or background 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 time.)

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. *Standard vs. Modified Marketing - Rentals*
 - a. The requirements for the marketing process may differ based on the type of project and number of affordable units being marketed. All standard and modified marketing requirements are subject to the Agency’s discretion.
 - b. “Standard marketing” (20 or more units) has a 60-day advertising period whereas “modified marketing” may have a shorter advertising period. Standard 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 standard 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 percent construction completion for projects requiring a Certificate of Occupancy (C of O). See *Attachments A-1 and A-2*.
- 6. Advertising – Homeownership (Coops, Condos, and Small Homes)**
- a. The advertising period for projects of one to six homeownership units is 30 days. For projects of seven or more homeownership units, the advertising period is 60 days.
 - b. All homeownership advertisements must indicate that the housing is for first-time homebuyers only.

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 standard 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 – Rental and Homeownership:*
 - a. The Marketing Agent must conduct outreach to citywide and targeted audiences in order to ensure all groups are informed. For both standard 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.

- d. *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, but all must include:
 - i. information on how to approve tenants in two-family homes; and
 - ii. that all homeownership lotteries are for first-time homebuyers only. This means no member of the applicant household may currently own or ever have purchased a home in the past.

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;
- ✓ Specific efforts to reach groups that are likely to be underrepresented in the applicant pool;
- ✓ For homeownership projects, 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 standard marketing, the date of the first published advertisement must coincide with the date of the advertisement posted on the Housing Connect website.
2. Advertisements in print publications and other media for “standard marketing” (rentals) and homeownership projects of seven or more affordable units ONLY:
 - 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 (one ad placement in a weekly publication meets both the three-day and weekend requirements). 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 units set aside for people with mobility, vision, and hearing disabilities, 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 in multiple languages. See *Attachment F-6, Project Site Marketing Sign* for instructions and layout options. The full sign must be at least 28" tall, with advertisements enlarged proportionally.
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 notices to applicants. Any changes to the application, cover letter, or response notices 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-8*).
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.

- a. 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. The Agency will accompany the Marketing Agent to the designated post office on the day of the opening to purchase and open the PO Box or caller service box.
3. 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 PO 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. For **all** rental projects, and homeownership projects of seven or more units, all paper applications must be opened and entered into the Housing Connect system.
2. Homeownership projects of one to six units:
 - a. The Marketing Agent must initially open and enter a number of paper applications equal to $100 + 50$ times the number of units. For example, a project of 4 units would require initial opening and entering of 300 applications.
 - b. If preferences, set-asides, and units are not filled after processing the number of applications opened according to the formula above, the Marketing Agent must proceed to open and process a second round of the same number of applications.
 - c. In the event that the initial amount of applications opened does not fill the units with residents of New York City (within the five boroughs), the marketing agent must process non-New York City applications before opening a second round.
3. 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 10 to 15 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.
4. 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. 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.
5. 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.

6. The Marketing Agent must ensure that all paper and digital applications and applicant personal information are 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 take approximately five 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 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. 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.
2. *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.
3. *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).
4. 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.
5. **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.
6. Employees of HDC are prohibited from seeking a unit in any project in which HDC is involved.
7. 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 invited to confirm their eligibility for a lottery project 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 regarding conflicts of interest 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 present a conflict of interest.

✓ **The Marketing Plan must specify criteria to be used for resident selection and rejection.**

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, when applicable, must be processed in the following order:
 - (1) People with disabilities (five percent mobility; two percent vision/hearing)
 - (2) Community Board residents
 - (3) New York City municipal employees (paid by the City of New York)
3. Applications containing content entered by the applicant in a language other than English must be translated before the Marketing Agent makes any determination of apparent eligibility. The Marketing Agent is responsible for arranging professional translation services.
4. When confirming the eligibility of applicants in each set-aside and preference category, eligible New York City residents must be submitted to the Agency for review (“processed”) before non-residents. If there are insufficient New York City residents to meet the set-aside or preference requirement, the Marketing Agent must then process non-residents to fulfill it. *Note: After initial lease-up or sales, the New York City resident preference no longer applies.*
5. After identifying applicants in the Community Board, municipal employee, and other preference categories (if applicable), applicants in the general pool who reside in New York City must be reviewed for eligibility and processed before non-residents.
6. Subject to Agency approval, set-aside and preference applicants may be processed simultaneously with non-preference applicants. This allowance is contingent on agency review of the lottery log and the staffing and organizational capacity of the Marketing Agent. Once applicants for the set-asides and preferences have been identified, non-preference applications may be submitted to the Agency for review. The submission of non-preference applicants may begin prior to achieving all set-asides or preferences, so long as non-preference applicants are not processed for units that are intended for applicants eligible for 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. When the applicant's household and income are verified at signing of the *Tenant Income Certification (Attachment L-3)* the Marketing Agent must make the applicant aware of all available unit types for which they are eligible and offer to the applicant the opportunity to select the unit type.
 10. Applications should be processed for submission to the Agency in batches 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. A general rule of thumb is to process applications in batches of 50, although the number may vary based on project specifics. Even within those batches, attention must be given to remaining available units based on bedroom sizes and (for mixed-income buildings) income levels to allow for such appeals. If the Marketing Agent has questions about appropriate batch size, it should consult the Agency.
 11. If no unit of appropriate size is available to an eligible applicant when the applicant's log number is reached, the applicant's name will remain on the log until an appropriate unit becomes available or until the log expires. Applicants in this situation must be sent a notice that no units are currently available (see *Attachment H-8, No Unit Available Notice*).
 12. Any eligible applicants still in process when all units are filled will be assigned to the Project's waiting list in log order. The Marketing Agent must send each such applicant a *Waiting List Notice, Attachment H-6* and process applicants from this list upon turnover.
 13. An applicant to whom a unit has been offered must be given five business days to respond to the offer, and a reasonable specific amount of time for a lease signing, before the Marketing Agent can proceed to offer a unit to the next eligible applicant on the log.
 14. Depending on the number of applications received, lease-up or sales 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" – their status after eligibility review (for example, approved for unit, rejected for being over-income, applicant withdrew from lottery, etc.). This is to ensure that applicants are being processed in the proper order. The Marketing Agent may not submit to the Agency an applicant file when there are applicants with lower log numbers whose statuses have not been updated.
2. The Agency will not waive any preferences and/or set-asides until the updated log is received and reviewed.

3. 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.
4. 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. This final log must also be accompanied by a Statistical Report that includes, but is not limited to, the following:
 - a. Number of applications in each set-aside or preference category, in the general pool, and in each required language:
 - i. Approved
 - ii. Moved in
 - iii. Waitlisted
 - iv. 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. Household composition;
 - vii. Failure to submit requested additional documentation;
 - viii. Submitting multiple applications;
 - ix. Household being comprised of full-time student(s) and not meeting any of the exceptions (in applicable programs);
 - x. Household size; and
 - xi. No-shows (including the no-show dates).
 - 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.
5. 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 and maintaining applicants' private information in a secure and confidential manner.

D. APPEALS

1. Applicants have 10 business days from the sent date or postmark of the ineligibility or rejection notice 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 notice must provide specific and detailed reasons why an applicant cannot be approved, according to the template provided by the Agency. See *Appeal Rejection Notice, Attachment H-7*.

E. COMPLAINTS

1. The appeal rejection notice will contain information for the applicant on how to contact the appropriate Agency (HPD or HDC) if 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 notice'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. PROCESSING APPLICANTS

1. Applicants who appear eligible on the log must be contacted via their preferred method of contact (email or regular mail) to provide documentation for the Marketing Agent to review.
2. Marketing Agents have two options for the method of collecting documentation from the applicant: direct document submission or in-person eligibility appointments. Whichever method is used must be identified in the Marketing Plan and done consistently with all applicants.
3. Additional or missing documents must be requested in writing and the applicant must be given at least 5 business days to provide the documents either in person or electronically.
4. All physical locations where applicants may go in person (e.g., for document drop-off, eligibility appointment, or to sign a lease or other documents) must be accessible to applicants with disabilities and be within New York City limits, that is, in New York, Bronx, Kings, Queens, or Richmond Counties.

G. OPTION 1: DIRECT DOCUMENT SUBMISSION

1. The Marketing Agent will send a notice to each applicant to submit supporting documentation, 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 notice alerts applicants of their apparent eligibility and requests that they submit documentation to the Marketing Agent to review. Notice must include:
 - a. List of required documents for applicant to submit (see *Attachment H-1C, Document List*);
 - b. Ways in which the applicant can submit the documents to the Marketing Agent. Agents must provide at least one electronic option (e.g. email address) and one in-person option (e.g. address and office hours for which applicants can drop off documents);
 - c. 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 professional. The Marketing Agent will attach the form to the eligibility notice and indicate that it must be completed and submitted along with the other documents; and
 - d. Request to respond within reasonable amount of time (but **not less than ten business days** from the sent date or postmark of the notice).
 - i. Applicants who do not respond within the first five days shall be sent a second and final eligibility notice, reminding the applicant of their deadline date.
 - ii. If the applicant does not respond within the allotted timeframe, the Marketing Agent may send a rejection notice.
2. Upon receipt of the applicant's documentation, the Marketing Agent must provide confirmation to the applicant that the documentation was received. Then, the Marketing Agent will review the submitted documentation for eligibility.
3. If the review of income and household documentation reveals that the applicant is not eligible, the Marketing Agent will send a rejection notice (Attachment H-4).

H. OPTION 2: ELIGIBILITY APPOINTMENTS (FORMERLY "INTERVIEWS")

1. The Marketing Agent will send a notice to each applicant to be invited to an eligibility appointment, 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 notice alerts applicants of their apparent eligibility and requests that they respond to schedule an eligibility appointment. Format

for the notice will be provided by the Agency. See *Appointment Scheduling/Document Request Notice, Attachment H-1A*. Notice must include:

- a. Phone number, email address, and, where applicable, online calendaring system where applicant can schedule an eligibility appointment;
 - b. Hours during which the Marketing Agent is open to receive calls to schedule eligibility appointments;
 - c. Dates of eligibility appointment period, which must begin at no sooner than two weeks after the date of the notice;
 - d. Overview of days and times during which appointments are generally available, including the process for scheduling evening or weekend appointments;
 - e. Location of eligibility appointment;
 - 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 notice).
 - i. Applicants who do not respond within the requested timeframe shall be sent a second and final eligibility appointment scheduling notice, requesting a response within an additional period of time, no less than five business days from the sent date or postmark of the notice.
 - ii. If the applicant does not respond to the second eligibility appointment scheduling request within the allotted timeframe, the Marketing Agent may send a rejection notice.
2. After the applicant has scheduled an eligibility appointment, the Marketing Agent will send a follow-up notice confirming the appointment, using the applicant's contact method of choice (see *Appointment/Document Submission Confirmation Notice, Attachment H-1B*). The eligibility appointment confirmation notice must include:
- a. Date, time, location of appointment;
 - b. Phone number or other contact information (e.g. email, online calendaring system) should applicant be unable to appear;
 - c. List of required documents for applicant to bring to the appointment on behalf of all household members (see *Attachment H-1C, Document List*), and that all household members in attendance must be adults; and
 - d. 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 professional. The Marketing Agent will attach the form to the eligibility and eligibility appointment notice and indicate that it must be completed prior to the appointment.

3. The Marketing Agent is responsible for maintaining standards during applicant eligibility appointments, 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. Eligibility appointments must be available outside of typical work hours (i.e., evening/weekend appointments);
 - f. Marketing Agents must ensure that applicants are seen at their scheduled appointment time;
 - g. Eligibility appointments must be conducted in private, where applicants' personal information is not visible or audible to anyone other than themselves and the reviewer; and
 - h. Paper and digital applicant information must be stored in a secure and private place.

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

I. REMARKETING

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 Marketing Agent must provide the Agency with the list of units that will not be filled from the lottery so that homeless referrals may be initiated for those units.
2. At the discretion of the Agency, these units may also be remarketed through a second lottery. The Marketing Agent is required to complete a Notice of Remarketing document (see *Attachment K, Notice of Remarketing*). The timeline requirement for a remarketing campaign will

follow the “modified marketing” policy detailed in Section 4-2, A-5.

3. Under remarketing, the Marketing Agent must conduct robust outreach to attract applicants to the second lottery. Proposed strategies should be detailed in the submitted *Attachment K*.
4. Unless a waiver is requested and approved, applicants in a second lottery must meet all eligibility requirements applicable to initial lottery applicants.

J. WAITING LISTS

1. After the Project is initially occupied, the development must maintain a waiting list from which to fill vacancies. The list must include applicants who were placed on the low-priority list and not reached, and those who were contacted and appeared eligible but for whom there were no units available at the end of lease-up or sales. 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 also include a sufficient number of applicants who have self-identified as seeking a disability set-aside unit to cover turnover in those units for 12-18 months. A general rule of thumb is to multiply the number of disability set-aside units by five and include on the waiting list that number of apparently eligible applicants with disabilities from the log, in log order.
3. When a disability 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: five percent mobility disabled, two percent hearing or vision disabled.
5. When the Project’s waiting list is exhausted, the Developer or re-rental agent must notify the Agency. The Agency requires a fair resident selection process and compliance with HPD-HDC eligibility criteria for re-rentals, for the duration of the regulatory agreement and in accordance with all applicable laws.
6. 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.
7. 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 percent AMI. In the case of such units, a broker fee may be charged for no greater amount than limits set forth in state and/or local laws. Any fee above that amount must be absorbed by the Marketing Agent.

✓ **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.**

K. 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 IRS program units (Low-Income Housing Tax Credits (LIHTC) or tax-exempt bonds):*
 - 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 Notice, Attachment L-*

2; TIC form, Attachment 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.
 - a. *Tenant lease and related documents*

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-1*). 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.
 - c. For rental 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 for IRS program units, the 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. The Marketing Plan must include a copy of the lease package for review.
5. HPD and HDC allow Marketing Agents and Developers to use an electronic signing process for leases and other documents, as applicable.

5. Detailed Selection Policies

- 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 Guidelines 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 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
6. If the disability set-aside requirement is not fulfilled from applicants on the lottery log, the Marketing Agent must notify the Agency indicating how many units could not be filled through the lottery. 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). After review, the Agency may require the remaining units to be remarketed.

B. COMMUNITY PREFERENCE

1. As instructed by the Agency prior to the marketing effort, the Marketing Agent may be required during initial lease-up or sales 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 Project.
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 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). 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 nyc.gov for reference, but to be eligible for this preference, the applicant must 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

1. 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.
2. 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. Before eligibility appointment (formerly “pre-interview”)
 - a. In the case that there are changes to an applicant’s source(s) of income since the application was submitted, the applicant must provide, at the time of eligibility appointment or in an appeal of an ineligibility notice, documentation supporting such changes. Documentation requirements vary depending on the income source. For specifics, see section 5-4, *Income Eligibility*, and where applicable, the HUD Occupancy Handbook 4350.3.
 - b. If the applicant cannot provide supporting documentation for such changes, the application will be rejected.
2. After eligibility appointment (formerly “post-interview”)
 - a. In the case that an applicant’s income changes after the eligibility appointment (for reasons other than change in household composition, which is addressed below in B(2)), and such change impacts their eligibility for the unit for which they are in process, the Marketing Agent will not reconsider the application unless the change is due to an extenuating circumstance. In this case, an extenuating circumstance is a change in income that is outside of the applicant’s control. If the Marketing Agent has questions regarding extenuating circumstances, it must contact the Agency.
 - b. In the case of an extenuating circumstance, the application will be reconsidered for an appropriate unit type in log order.

B. CHANGES TO HOUSEHOLD COMPOSITION

1. Before eligibility appointment
 - a. Changes to household composition during the time between application submission and eligibility appointment are acceptable, provided that the change does not affect the applicant’s qualification as a household or their ability to meet the household size requirements for available units within the project. See Section 5-3: Qualification of a Household.
 - b. In the case that an applicant appeals an ineligibility notice citing a change in household composition, and such change would make them apparently eligible for an available unit, the Marketing Agent must invite them to schedule an eligibility appointment (see *Appointment Scheduling/Document Request Notice, Attachment H-1A*).
2. At and after eligibility appointment

- a. After the eligibility appointment, changes to household composition will result in the application being deemed low priority. The Marketing Agent must send them a Low Priority Notice (*Attachment H-5*).
- b. In the case that an applicant appeals citing a change in household composition that occurred after the eligibility appointment, the Marketing Agent must only reconsider the application if such change is due to an extenuating circumstance.
 - i. Extenuating circumstances in this case may include but are not limited to:
 - Death of a member of the household
 - Birth in the household
 - Separation or divorce
 - Court order of custody
 - Domestic violence

C. PROOF OF EXTENUATING CIRCUMSTANCES

1. The Marketing Agent will require the applicant to provide, at the time of appeal, documents to support any changes in household composition that occurred after the eligibility appointment. A notarized statement alone is not sufficient documentation of an extenuating circumstance, except when permissible in sections 2 and 3 below. Common examples of documentation for extenuating circumstances include but are not limited to: birth or death certificates, hospital records, divorce records, and court records.
2. Legal or legitimate separation
 - a. Examples of proof of a legal separation would be either (i) a duly executed and acknowledged separation agreement filed with the county clerk where either spouse lives, or (ii) a judgment of separation 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 other government-issued documentation, establishing one partner's absence from the household for at least six months prior to date of eligibility appointment and a notarized affidavit from the applicant representing that they are separated and have no intention of reuniting.
 - b. If legal proof of separation or divorce is not available to the applicant, they must provide an explanation for the lack of legal proof as well as documentation supporting such separation or divorce.
3. Domestic violence
 - a. When an applicant provides domestic violence as the reason for changes to income or household composition after eligibility appointment, and such changes affect eligibility, the Marketing Agent

must follow the Agencies' appeal review processes under the Violence Against Women Act (see section 5-6.I and *Attachment Z, VAWA Marketing Guidance*).

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
- c. 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 their spouse or significant other are separated and there is otherwise evidence of interdependence, 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

1. 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.* The Marketing Agent must refer to the latest Code of Federal Regulations (24 CFR Part 5) and obtain a current copy of the HUD Handbook 4350.3 (Chapter 5), which respectively state and explain these requirements. The HUD handbook is available to print or view at hud.gov. In addition, the Marketing Agent must require its marketing staff to attend an industry training where these requirements are reviewed in detail.
2. Generally, the Marketing Agent must use current circumstances to anticipate income. Projected annual income is calculated by annualizing current income documents. 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”).

*Unlike the federal Section 8 program, income calculations for these programs are not made for the purposes of determining or adjusting rents, but only for determining eligibility at admission.

B. EMPLOYMENT INCOME

1. The Marketing Agent must require all adult household members reporting employment income to provide all of the following:
 - a. *The most recent year’s complete federal and state tax returns, including all W-2’s and 1099’s.* The highest income reflected on the most recent W-2 or tax return will be “the tax return income.”

Example 1: Tax Return vs. W2 Income

Through a benefit program offered by her employer, Angelina Medina purchases a monthly transit pass with pre-tax dollars. Ms. Medina's W2 reflects the pre-tax income that she spends on the transit pass, while her tax return does not.

The Agent should use the W2 income in the annual income calculation because it reflects her gross earnings.

- b. *Four to six most recent consecutive pay stubs.* Income must be calculated by both (i) projecting the year-to-date, and (ii) averaging the pay stubs. The higher of these two amounts (i or ii) will be "the pay stub income."
 - i. To best illustrate variations in hours worked, no fewer than the four most recent consecutive pay stubs must be used to calculate pay stub income, and six pay stubs is preferable. The Marketing Agent must establish in the Marketing Plan the initial number of pay stubs they will request from applicants. Regardless of whether four or six pay stubs are requested, applicants may be asked to provide additional pay stubs to help confirm patterns or variations.
 - ii. If there is evidence that the pay rate has increased or decreased over the course of the paystubs provided, the Marketing Agent must use the amount reflective of current circumstances, rather than an average.

Example 2: When Averaging Pay Stubs is Unreliable

Aidan Reynolds is paid bi-weekly and provides his six most recent pay stubs at his eligibility appointment:

Pay Date	Amount
1. 03/02	\$951.20
2. 03/16	\$951.20
3. 03/30	\$1,205.88
4. 04/13	\$1,205.88
5. 04/27	\$1,205.88
6. 05/11	\$1,205.88

An average of the six payments is **\$1,120.99**. However, the change in pay-rate beginning at his 3/30 paystub suggests that Mr. Reynolds may have received a raise.

The Marketing Agent explores further to determine if his income has increased permanently by requesting a clarification from his employer.

In response to the agent's request for income verification, Mr. Reynolds' employer confirms that his new bi-weekly rate is **\$1,205.88**. The Agent must use this amount in projecting the annual income, rather than the average, because the raise most accurately reflects current circumstances.

c. Third Party Verification directly from the employer.

- i. The Marketing Agent must send an employment verification form (see *Attachment I-3* for a sample) directly to the applicant's employer, with instructions for the employer to return it directly to the Marketing Agent. Envelopes, email, or fax confirmations must be maintained to document that the information was obtained via direct third-party procedures, and not transmitted through the applicant.
- ii. This form will request current salary, year-to-date income, information about bonuses, overtime, etc., and anticipated increases. The highest amount calculated based on this information will be "the third-party income."
- iii. 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 provide evidence of at least three attempts, within a period of time deemed reasonable by the Agency, to obtain such third-party employment verification.
- iv. For units that are not part of an IRS program, employer verification is not required when an applicant provides tax returns and pay stubs from the same employer.
- v. The Marketing Agent must also obtain Third Party Verification of Termination directly from previous employers who are listed on

the application and/or most recent year's tax return.

Example 3: Change in Employment *with* Tax Returns

Monique Lograsso applied to a 130% AMI unit at Highland Gardens indicating she worked for Company A. When she is contacted for an appointment, she informs the agent that she now works for Company B.

She can provide 6 paystubs from Company B and her most recent tax returns which contain her W2 from Company B.

Employer verification from Company B is not needed for Ms. Lograsso because she has both paystubs and W2s from Company B, and the unit she is in process for is not part of an IRS program. A self-affidavit from Ms. Lograsso indicating she no longer works for Company A is sufficient to process the file.

Example 4: Change in Employment *without* Tax Returns

David Goldberg applied to a 130% AMI unit at Highland Gardens indicating he worked for Company X. When he is contacted for an appointment, he informs the agent that he now works for Company Y.

He can provide 6 paystubs from Company Y and his most recent tax returns, but his taxes contain his W2 from Company X.

Employer verification from Company Y is needed. The Agent should also attempt to get third-party verification of termination directly from Company X. However, if it is not possible to obtain, a self-affidavit from Mr. Goldberg indicating he no longer works for Company X is sufficient to process the file.

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. Unless a compelling argument can be made as to why an applicant's income decreased, the highest income of the sources must be used. Some exceptions include a decrease in income due to retirement or disability, or a change in employment.
- c. If the results of the different calculation methods described above have significant discrepancies that impact eligibility, the Marketing Agent must conduct further review to determine whether the highest calculation is also the most accurate. Marketing Agents may request additional documentation from applicants or third-party sources to perform this additional review.
- d. If an applicant qualifies for a tax filing exemption under the Internal

Revenue Code (see “Publication 501” on irs.gov), they must complete *Attachment R-6, Affidavit of Non-filing of Income Tax Return*.

Example 5: Factoring in a One-time Bonus

While determining income for an applicant, Joseph Brown, the Agent notices that the paystub average is significantly higher than the year-to-date and tax returns. Upon closer review, the Agent discovers that Mr. Brown was awarded a performance bonus of \$2,000 in one of the six paystubs provided. Mr. Brown is paid bi-weekly.

In order to accurately project income, the Agent must average the paystub amounts excluding the bonus. The bonus is then added to the projection of Mr. Brown’s annual income:

- 1. [6 Paystubs – Bonus] / 6 = Paystub Average**
(Gross income from 6 paystubs, minus bonus, divided by 6)
- 2. Paystub Average x 26 = Projected Annual Income**
(Paystub Average from step 1, multiplied by 26 pay periods)
- 3. Projected Annual Income + Bonus = Total**

Note: Agents should confirm the frequency and amount of the applicant’s bonus(es) with the employer directly through the Employer Verification.

3. Tax Release Request Forms

- a. If a tax return provided by the applicant appears to have potentially been altered or a file is otherwise suspicious, the Marketing Agent should request a transcript from the IRS. For third parties such as Marketing Agents to receive a tax transcript, they must first register to become an Income Verification Express Service (IVES) participant with the IRS. The IRS website (irs.gov) provides instructions for IVES registration.
- b. As an alternative to participating in the IVES program, Marketing Agents may collect one copy of the 4506-T completed by the applicant; if the Marketing Agent or the Agency deem that a transcript is needed, the applicant will need to request it and submit the original transcript.
- c. The applicant must complete an IRS Form 4506 – Request for a Copy of Tax Return – with DOI contact information listed on line 5, in cases where DOI needs to request a copy of a tax return. The applicant must also complete a New York State DTF-505 Form — Authorization for Release of Photocopies of Tax Returns and/or Tax Information. See IRS and State Forms, *Attachments R-1 through R-4*.

C. SELF-EMPLOYMENT INCOME

Because self-employment income is more difficult to document via third party than traditional employment income, and is 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 documentation described below in order to establish as reliable and accurate a projection of income as possible.

1. Self-employment income with documented two-year history

- a. *Documentation.* Applicants who have reported self-employment income in the same line of work for at least the two previous years must provide:
 - i. Tax returns for the last two years. (If after the current year's filing deadline, the applicant *must* provide the most recent year due to be filed by the preceding deadline unless they provide documentation of an IRS extension filing.) The Marketing Agent must evaluate the net income from both Schedule Cs by calculating the average to be used as the "*historical self-employment income.*" The Marketing Agent must also compare the historical average to the applicant's most recent tax return. If the tax return is higher, that amount should be used as historical income.
 - ii. An estimate of current year's net self-employment earnings certified in: (i) a letter from a licensed accountant or tax preparer, or (ii) a notarized self-statement.
- b. *Evaluation and Determination.* The projected and historical incomes are compared, and the higher amount is generally what is used as income for the purposes of income eligibility. If there is a significant discrepancy between the historical income and the projected income, the Marketing Agent must request additional documentation from the applicant or third-party sources.
 - i. The projected self-employment income must be evaluated by the Marketing Agent in an effort to identify any patterns that may logically result in a conclusion that the current or next year's income will increase or decrease.
 - ii. If the projection is higher and in line with the progression of the historical self-employment income, the projected amount should be used as income.
 - iii. If the projection is lower than the historical self-employment income, there must be an apparent pattern or trend to support utilizing a lower amount as income.
 - iv. If no pattern or trend is present, the higher amount from the historical self-employment income must be used.

- v. If a self-employed applicant is not compliant with tax filing requirements, the applicant will not be eligible for an affordable unit (unless the applicant qualifies for a filing exemption (see 5-4.B(2)(D), above). The City will not make available its limited housing resources to applicants with income that is required to be reported, but is not being reported, to governmental tax authorities.

Example of IRS Form 1040 for Self-Employed Applicants

Form 1040 (2018)						Page 2		
Attach Form(s) W-2. Also attach Form(s) W-2G and 1099-R if tax was withheld.	1	Wages, salaries, tips, etc. Attach Form(s) W-2		1				
	2a	Tax-exempt interest	2a		b	Taxable interest	2b	
	3a	Qualified dividends	3a		b	Ordinary dividends	3b	
	4a	IRAs, pensions, and annuities	4a		b	Taxable amount	4b	
	5a	Social security benefits	5a		b	Taxable amount	5b	
	6	Total income. Add lines 1 through 5. Add any amount from Schedule 1, line 22	6	22,043	6		22,043	
	7	Adjusted gross income. If you have no adjustments to income, enter the amount from line 6; otherwise, subtract Schedule 1, line 36, from line 6	7		7		22,043	

2. Self-employment income *without* documented two-year history

a. *Documentation.* Applicants who are not able to provide filed self-employment tax returns from the two previous years must provide:

1. Tax returns from at least the previous year, even if the income was not from self-employment.
2. An estimate of current year’s net self-employment earnings certified in: (i) a letter from a licensed accountant or tax preparer, or (ii) a notarized self-statement.
3. All third-party documentation supporting the estimate so that the Agent may make a reasonable attempt to establish the applicant’s self-employment income and determine eligibility. See *Attachment I-4* for examples of self-employment records.

b. *Evaluation and Determination.* The Agent must use the provided third-party documentation to make a reasonable attempt to calculate the applicant’s gross earnings and expenses to establish the applicant’s net self-employment income and determine eligibility. If an applicant cannot provide sufficient documentation to support their estimate of self-employment income, they may be disqualified.

Example 6: Successfully Calculating Self-Employment for Less Than Two Years

Emily Oswald began driving a taxi five months ago. Ms. Oswald is able to provide a letter from her accountant and transaction receipts for the rides she has completed in the past five months. She also provides copies of her monthly car insurance bill. The Agent can use these documents to project the next twelve months of self-employment income for Ms. Oswald:

5 months gross earnings / 5 months = Average monthly earnings

Average monthly earnings x 12 = Projected gross receipts

Monthly car insurance charge x 12 = Projected gross expenses

Gross receipts – Gross expenses = Projected net income

The projected net income calculated by the Agent is in line with the accountant's projection, and therefore the Agent may use this amount to proceed with determining Ms. Oswald's eligibility.

Example 7: Unsuccessfully Calculating Self-Employment for Less Than Two Years

Victoria Fernandez began working as a swim instructor at a local beach in June and comes to her eligibility appointment in September, providing three months of invoices, bank deposits, notarized letters and cancelled checks from her clients. With this information, Ms. Fernandez projects she will make \$24,000 over the next twelve months.

The Agent reviews the submitted documentation and determines the applicant earned \$6,000 in the past three months. However, the nature of Ms. Fernandez's work does not allow for her to work outside of the summer months. The Agent cannot use these documents to annualize Ms. Fernandez's income and therefore must only use the \$6,000 earned amount when determining eligibility.

D. COMBINATION INCOME

1. An applicant may have a combination of wages and self-employment income. Such applicants may also have sporadic unemployment income. Their income should be evaluated similarly to the instructions outlined in the self-employment section above; however, the evaluation will include both W2 wages and self-employment income.

2. For applicants with “combination income,” the most recent two years of tax returns should be reviewed and evaluated.

Example of IRS Form 1040 for Applicants with “Combination Income”:

Form 1040 (2018)		Page 2	
	1 Wages, salaries, tips, etc. Attach Form(s) W-2	1	40,729
Attach Form(s) W-2. Also attach Form(s) W-2G and 1099-R if tax was withheld.	2a Tax-exempt interest	2a	
	3a Qualified dividends	3a	
	4a IRAs, pensions, and annuities	4a	
	5a Social security benefits	5a	
	6 Total income. Add lines 1 through 5. Add any amount from Schedule 1, line 22		2,043
	7 Adjusted gross income. If you have no adjustments to income, enter the amount from line 6; otherwise, subtract Schedule 1, line 36, from line 6	7	42,772

E. 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.

- a. *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.
- b. *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.
- c. *Example 3:* If an applicant is claiming unemployment benefits for one or more periods during the year due to layoffs or furloughs with an expected return to work date, or if they have a mix of employment income and unemployment benefits throughout the year, income from unemployment would be calculated by projecting the number of weeks per year that they receive benefits. Third-party documentation such as employer verifications or tax returns

establishing the duration of the layoff is required to accurately project the total amount of unemployment income to be received.

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

F. INCOME FROM OTHER SOURCES

1. 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.**

2. Income earned from the applicant's current residence is not included in the income calculation if that source of income is not permitted in the affordable unit. For example, income from using space in the applicant's current residence as a source of rental income or for subleasing would not be included.

3. Child support income

- a. Income from court-ordered child support should be supported with an official statement showing activity and amounts.
- b. Income from non-court-ordered child support may be documented with a self-statement of frequency and amount, by either or both the payer and recipient.

G. SPORADIC OR NON-RECURRING INCOME

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. All sources of income must be disclosed, but such non-recurring income may be excluded from the income calculation.

H. 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 Occupancy 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 percent of the total) and the higher of these amounts is added to the household income.

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 percent. Marketing Agents should refer to hud.gov for updates to the passbook savings rate.

I. CLARIFYING BANK DEPOSITS

1. The Marketing Agent must review bank statements to determine if there are unreported sources of income reflected in the applicant's bank statements. For applicants who use payment apps to receive and hold income separate from a traditional bank account, "bank statements" may include records of transactions in a banking app (e.g., Venmo, Cash app).
2. Consistent, recurring, determinable, and/or regular deposits in an applicant's bank account must be questioned by the Marketing Agent and clarified by the applicant.
3. As per HUD, temporary, nonrecurring, and/or sporadic deposits are excluded from income calculations. (See HUD Occupancy Handbook 4350.3, Exhibit 5-1, Income Inclusions and Exclusions)

Example 8: When to Clarify Bank Deposits

Tony Pell submitted his 6 checking statements to the Marketing Agent along with the rest of his documentation. The Agent notices Mr. Pell receives a \$200 Venmo deposit one or two times per month over the course of the 6 bank statements. Likewise, in his May bank statement, he had a \$50 cash deposit from an ATM and a \$85 deposit from Paypal.

The Agent must contact Mr. Pell and ask him to clarify, in writing, the source of the Venmo deposits in his checking account because this consistent, recurring deposit may be an unreported income source.

The Agent does not need to clarify the cash deposit nor the PayPal deposit because they are sporadic and do not impact eligibility.

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 an accountant 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 accounting firm pays her \$28,000 a year as documented by her pay stubs and 3rd 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 3rd 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 3rd 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.
3. 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.
4. 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.
5. 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.
6. 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 percent HUD income limit for a four-person household is \$55,000, a household of any size applying for a 60 percent AMI unit is not eligible if its total household assets exceed \$55,000. If the 80 percent limit is \$72,000, a household applying for an 80 percent AMI unit may not have more than \$72,000 in assets.

7. 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 percent AMI, plus a pre-determined percentage of minimum required down payment.

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. GIFTS AND DOWN PAYMENTS

For homeownership affordable units, no more than half of the down payment amount may come to the applicant as a gift. The applicant can demonstrate this by providing bank statements from the three months prior to closing that show at least half of the down payment amount in the applicant's account.

F. OTHER RESTRICTIONS

1. 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.
2. 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 *Tenant Income Certification (TIC)*, *Attachment L-3*, for exceptions.

B. DISABILITY VERIFICATION

Units set aside 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 eligibility appointment, or at any other time during the applicant review process. Projects assisted with non-City funds may be subject to different requirements related to immigration status.
2. The Marketing Agent may reject 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 criminal background or credit history.
3. 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 BACKGROUND CHECKS

1. The Marketing Agent must obtain a criminal background check for every member of the applicant household 18 years or older.
2. The Marketing Agent must find an applicant ineligible if a prior conviction of fraud in connection to any governmental housing program is flagged during the criminal background check.
3. The Marketing Agent must describe in detail in the Marketing Plan which additional types of information revealed through a criminal background check will or will not adversely impact an applicant's eligibility.
4. Any rejection based on criminal justice information, pursuant to the Marketing Plan, must be consistent with current HUD guidance (available at www.hud.gov). At publication of this Handbook, HUD guidance was 4/4/2016 *HUD Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real-Estate Related Transactions*.
5. HUD Guidance supersedes any contradictory information in the Marketing Plan.

E. 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 *Rent Payment History or Credit Review & Authorization to Release Information Form, Attachment R-5*.

F. RENTAL HISTORY AND CREDIT CHECKS: RENTALS

1. The following policies are the most stringent criteria permitted for evaluating rental and credit history. The Marketing Agent may implement less stringent policies, which must be described in the Marketing Plan and approved by the Agency. Selection criteria must be applied consistently to all applicants. This applies to:
 - Evidence of Rent Payments
 - Credit Checks and Fees
 - Credit Score
 - Bankruptcy
 - Delinquencies, Collections, Money Judgments, and Liens

Note: Use of information regarding landlord-tenant actions is no longer permitted in tenant selection. Please refer to Section 227-f of the New York State Real Property Law.

2. Applicants may choose to provide evidence of complete monthly rent payments for the preceding 12-month period in lieu of a credit check. If the applicant choosing this option currently resides in a City homeless shelter, they may provide evidence of rent payments for the 12-month period preceding their entry into shelter.
3. After the Marketing Agent has determined that the applicant is otherwise eligible for an available affordable unit, the Agent must provide the applicant *Attachment R-5 (Rent Payment History or Credit Review & Authorization to Release Information)* in which to indicate their decision to provide evidence of rent payments or proceed with a credit review.
4. The applicant must be given no fewer than five business days from the date the Marketing Agent provides *Attachment R-5* to submit the completed form and, if applicable, documentation supporting rent payment history to the Marketing Agent. Attachment H-1C, *Document List*, provides applicants with information on these options at the time they are invited to submit initial documents for eligibility review or schedule an eligibility appointment.
5. Evidence of Rent Payments

- a. Applicants who opt to submit evidence of monthly rent payments must provide proof of the monthly rental amount they were required to pay for the preceding 12 months (in accordance with Section 5-6 F.2) AND any of the following as evidence of monthly rent payments:
 - i. Formal rent receipts
 - ii. Evidence of monthly withdrawals, payments, or transfers e.g., bank statements
 - iii. Money order receipts or copies
 - iv. Canceled checks
 - v. Landlord's written record of rent payment, i.e., rent ledger
 - vi. Other evidence subject to agency approval
- b. If the applicant provides evidence of monthly rent payments (in accordance with Section 5-6 F.2), the Marketing Agent will process the application without running a credit check.
- c. If the rent payment information that the applicant provides is incomplete or of unclear validity, the Marketing Agent must request the applicant's written consent to either (i) contact the owner/manager(s) of applicant's residence(s) in the preceding 12 months (in accordance with Section 5-6 F.2) to request a ledger; or (ii) run a credit check as described below in *Credit Checks and Fees*.

6. Credit Checks and Fees

Note: Please refer to Section 238-a(1)(b) of the New York State Real Property Law.

- a. If the applicant provides for review a copy of a credit check conducted within the past 30 days, the Marketing Agent may not run a credit check or charge a credit check fee.
- b. When a credit check must be run, the Marketing Agent may charge the actual fees for background checks and credit checks or \$20 per application, whichever is less.
- c. The Marketing Agent must provide the applicant with a copy of the background or credit check and the receipt or invoice from the entity that conducted the check; after which the applicant may be charged a fee.

No credit/background check fees may be charged to homeless applicants referred directly by the city.

1. Credit Findings: All Applicants

The Marketing Agent may only reject for the one of the reasons stated below.

- a. Bankruptcy: Marketing Agents may only use past bankruptcy as grounds for rejection if the bankruptcy was filed or executed upon within the 12 months prior to the date of the credit report.

b. Delinquencies, Collections, Money Judgments, and Liens:

- i. The Marketing Agent may only reject applicants with open or unsatisfied delinquencies, collections, money judgments, and liens exceeding \$5,000 in total.
- ii. Inclusions and exclusions:
 - Included in total: Money judgments, liens, and accounts on the credit report that are either over 120 days delinquent as of the date of the credit report or have been transferred to a collections agency and are currently being pursued for collection.
 - Excluded from total: Delinquencies, collections, money judgments, and liens due to medical or student loan debt.

2. *Settled and Satisfied Accounts*

The following policies apply to delinquencies, collections, money judgments, and liens revealed in the credit check with a total exceeding \$5,000. Totals \$5,000 and below shall not be grounds for rejection.

- a. Satisfied and settled accounts that have been paid in full or as agreed, prior to the date of the rejection notice, are not grounds for rejection.
- b. Settled accounts in repayment are not grounds for rejection, provided the applicant can show proof of being up-to-date on payments toward the settlement.
- c. If an applicant is not up-to-date on repayment of their settled account, the pre-settlement delinquency counts towards the \$5,000 threshold.
- d. Balances reflected on charged off accounts should not be counted towards the \$5,000 threshold; a charged-off account indicates the balance has been transferred to a third-party agency and will either be reflected elsewhere on the credit report or, if paid off, should not be counted as a delinquent balance.
- e. If the applicant has settled an account but the credit report does not yet reflect this, the applicant must provide the Marketing Agent proof of payment and, if applicable, a copy of the settlement agreement with the creditor. Payment or settlement agreement must have occurred prior to the date of the rejection notice.

3. *Prohibited information and criteria*

- a. Use of the following information and criteria is not permitted in rental resident selection:
 - i. Debt to income ratios
 - ii. Housing Court history
 - iii. Lack of credit history or rental history
 - iv. Guarantors or co-signers

- v. Home visits, photos/videos, or other representations of the applicant's living situation
- vi. Personal references
- vii. Outreach to current or previous landlords, neighbors, or others associated with the applicant's living situation (except when requested by the applicant).

G. CREDIT ISSUES AND APPEAL PROCESS

1. If an applicant was rejected for failing to meet credit history criteria, the applicant must be reinstated into the selection process if they provide evidence within the 10-day appeal period that the negative finding was resolved prior to the date of the rejection notice.
2. If an applicant was rejected for failing to meet credit criteria, the rejection notice must specify the relevant negative finding and the standard it failed.
3. Marketing Agents must comply with the Fair Credit Reporting Act and all other applicable laws when issuing a rejection for reasons of credit.

H. CREDIT CHECKS: HOMEOWNERSHIP

1. Because the primary purpose of a credit and background review in the homeownership application process is to determine applicants' eligibility for an outside mortgage, Marketing Agents may use different criteria than those required for rentals.
2. The Marketing Plan must include a detailed set of proposed minimum criteria, supported by examples of at least three sets of mortgage eligibility criteria from outside lenders from whom applicants may seek a mortgage.
3. Use of the following information and criteria is not permitted in homeownership resident selection:
 - a. Housing Court history
 - b. Guarantors or co-signers
 - c. Home visits, photos/videos, or other representations of the applicant's living situation
 - d. Personal references
 - e. Outreach to current or previous landlords, neighbors, or others associated with the applicant's living situation (except when requested by the applicant).
4. All fees to be charged to applicants for credit and background checks must be included in the Marketing plan and approved by the Agency.

I. VIOLENCE AGAINST WOMEN ACT (VAWA)

In an effort to ensure any applicant who has been a victim of domestic violence, dating violence, sexual assault, or stalking (further summarized as "domestic

violence”) is not denied from an HPD/HDC financed project based on an adverse factor that is a direct result of the fact that the applicant is or has been a victim, HPD/HDC requires the following protocol to be incorporated into the marketing process:

1. *VAWA Notice of Rights* must be included with the following decision notices sent by the Marketing Agent to the applicant:
 - i. Attachment H-2: Ineligibility Notice
 - ii. Attachment H-4: Rejection Notice
2. If an applicant otherwise qualifies for the unit and claims during the eligibility review process or submits an appeal in response to an ineligibility or rejection letter indicating that the applicant has been a victim of domestic violence, the claim or appeal must be reviewed following the VAWA Marketing Guidance (*Attachment Z*).
3. If the Marketing Agent determines the applicant remains ineligible after the review, the Marketing Agent must provide the file and written decision to the Agency prior to the issuance of a final rejection notice (*Attachment H-7*).
4. If the Marketing Agent cannot come to a determination in a reasonable time frame, the Agencies should be consulted for guidance.

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:

ALL UNITS (RENTAL AND HOMEOWNERSHIP)	
Unit Size	Number of People
Studio	1 - 2
1 Bedroom	1 - 3
2 Bedroom	2 - 5
3 Bedroom	3 - 7
4 Bedroom	4 - 9

- a. 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.” If a family (i) qualifies as a household as defined in this Marketing Handbook 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, or when the occupancy standards cannot be implemented due to local Housing Maintenance Code restrictions.

✓ **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 percent 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. The Agency will provide minimum income eligibility levels based on 35 percent of the gross annual rent for the unit.
- b. 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 percent of all the low-income units occupied by tenants with incomes that are 40 percent AMI or less and rents are restricted.
 - ii. If a tenant’s income increases to over 170 percent 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 percent of AMI at a restricted rent. As long as one resident’s income is more than 170 percent of the income limit for the unit, the Marketing Agent must rent all available tax credit units to residents with income no greater than 40% of AMI.
 - 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 percent 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.

If the next available unit is smaller than the tax credit unit that exceeds 140 percent of the then-current income limit, the Marketing Agent may have to rent more than one comparable or smaller size unit in the same building to tax-credit eligible households until the actual applicable fraction is at least equal to the first year's applicable fraction. 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

A. Incorporation of “Fair Housing Laws”

Federal, State and local laws, orders and regulations prohibiting housing discrimination (“Fair Housing Laws”) are hereby explicitly incorporated in this Marketing Handbook. 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.

B. Amendments

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

C. Inspections

The Agency reserves the right to conduct periodic inspections and spot-checks of the Developer and Marketing Agent’s records, including but not limited to: lottery logs, applicant files, marketing budgets, and procedures.

D. Brokers

The *Broker/Third Party Certification* forms, *Attachments S-1 and S-2*, are to be completed and submitted to the Agency with all applicant files that are not from the original lottery. The *Broker/Third Party Certification* form is intended for re-rentals and does not need to be submitted for an applicant from the initial lottery.

E. 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*.

F. 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 – L3*.
 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 or sales 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

A-1	Notice of Intent to Begin Marketing
A-2	Marketing Agent Approval Request Form
B	Marketing Plan Summary
C-1	Language Access Plan
C-2	Guide to Language Access for Marketing
D	Community Contact Letters
E	Outline for Management Plan
F-1	Advertisement Instructions
F-2	Rental Advertisement
F-3	Homeownership Advertisement
F-4	Routing Slip of Advertisement Approvals
F-5	Evidence of AFHM
F-6	Project Site Marketing Sign
G-1	Rental Application
G-2	Homeownership Application
H-1A	Appointment Scheduling/Document Request Notice
H-1B	Appointment/Document Submission Confirmation Notice
H-1C	Document List
H-2	Ineligibility Notice
H-3	Approval Notice
H-4	Rejection Notice
H-5	Low Priority Notice
H-6	Waiting List Notice
H-7	Appeal Rejection Notice
H-8	No Unit Available Notice
I-1	Sample Unemployment Affidavit
I-2	Certification of Disability for Set-aside Unit
I-3	Sample Employment Verification Form
I-4	Guidance for Documenting Self-Employment
J-1	Student Status Affidavit at Initial Certification

J-2	Household Student Status Affidavit at Recertification
K	Notice of Remarketing
L-1	Checklist for Income Certification
L-2	TIC Submission Cover Letter
L-3	Tenant Income Certification (TIC)
M	Applicant Information Form (AIF)
N-1	Pre-lease Acknowledgement and Certification
N-2	Primary Residency Affidavit - Rentals
N-3	Primary Residency Affidavit - Homeownership
O	HDC Rider to Standard Rent Stabilization Lease (Low-Income)
P	HDC Rider to Standard Rent Stabilization Lease (Middle-Income)
Q	Reaffirmation of Income
R-2	IRS Form 4506-T (Applicant)
R-3	IRS 4506 (DOI/HDC) & (DOI/HPD)
R-4	NYS DTF-505 Form (DOI/HDC) & (DOI/HPD)
R-5	Rent Payment History or Credit Review & Authorization to Release Information Form
R-6	Affidavit of Non-filing of Income Tax
S-1	Broker/Third Party Certification ($\leq 165\%$ AMI)
S-2	Broker/Third Party Certification ($> 165\%$ AMI)
T	Asset Certification
U	Apartment Distribution Chart
V-1	Certification for Deep Rent Skewed Projects (HDC)
V-2	Certification for Mixed Income / "Non-Deep Rent Skewed" Projects (HDC)
W	Owner Certification of Initial Move-In Date
X	Unit Inspection Form
Y-1	Unit Vacancy Report Instructions
Y-2	Unit Vacancy Report
Z	VAWA Marketing Guidance