

# MARKETING GUIDELINES

*Updated March 2012*



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# INTRODUCTION



## MARKETING GUIDELINES – INTRODUCTION

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### WHAT THIS MANUAL IS:

The Marketing Guidelines describe policies, procedures, and certain requirements for the marketing and selection of residents for developments (“Projects”) subsidized by the New York City Department of Housing Preservation and Development (“HPD”) and/or the New York City Housing Development Corporation (“HDC”) (together, the “Agencies”). Developers, owners, marketing agents, and sponsors of Projects (“Developer(s)”) must follow these guidelines in preparing marketing plans for their Projects and comply with its specific requirements.

The Developer should consult the monitoring agency in the event any questions or concerns arise with respect to the procedures set forth in these guidelines, as well as the occupancy requirements.

The primary objective of the marketing effort for the Project is to select diverse tenants, including those with mobility, visual, or hearing impairments that require an adaptable/accessible apartment. Outreach efforts utilized by the Developer are a critical tool in the development of a diverse applicant pool and tenancy.

The Developer must also comply with all applicable fair housing and equal housing opportunity requirements and the requirements of any other governmental agencies.

# MARKETING GUIDELINES – INTRODUCTION

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## WHAT THIS MANUAL IS NOT

The Marketing Guidelines are not a comprehensive compliance manual. The Developer must ensure that its employees and agents are fully trained in all facets of the program and all requirements of the specific occupancy requirements of each Project. Maintaining compliance is the Developer's responsibility.

This manual also does not contain specific occupancy requirements for Projects. Developers must refer to their Project's Regulatory Agreement for income, rent, and other occupancy restrictions.

# BASIC SEQUENCE OF ACTIVITIES



# MARKETING GUIDELINES – BASIC SEQUENCE OF ACTIVITIES

## BASIC SEQUENCE OF ACTIVITIES

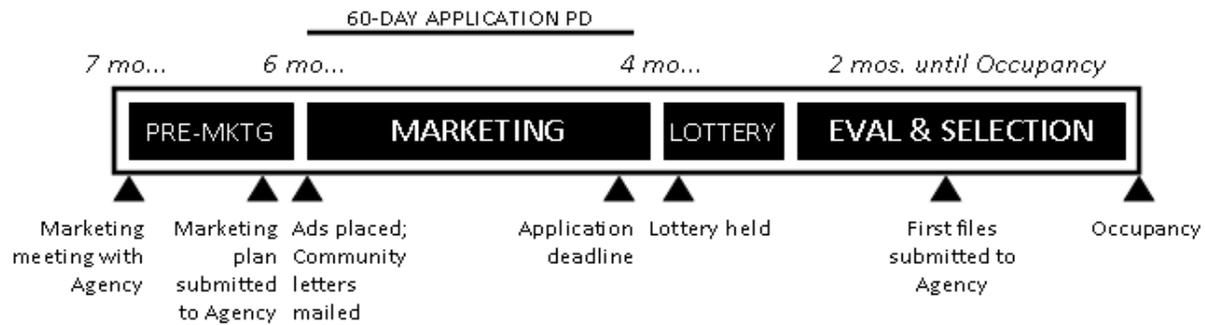


Figure 1: Major milestones in marketing process

ACTIVITY	TIMELINE
1. Project site sign erected and information posted on website and hotline	At the start of construction
2. Inquiry list maintained	On an ongoing basis
3. Marketing meeting held with Agency	Seven (7) months prior to anticipated occupancy
4. Marketing Plan submitted to Agency at Marketing meeting	At least six (6) months prior to anticipated occupancy
5. Community contact letters mailed and advertisements placed	Represents commencement of marketing period, at least sixty (60) days prior to application deadline date.
6. Marketing sign erected with information on how to obtain applications	At commencement of the marketing period
7. Lock box/P.O. Box established for receipt of applications	At commencement of the marketing period
8. Applications mailed to inquiry list; requests for applications processed as received	When first advertisement is published
9. Application postmark deadline	Represents completion of sixty (60) day marketing period
10. Compliance Meeting held with Agency	Two weeks before the Lottery
11. Lockbox/P.O. Box is opened; Hold	Seven (7) to ten (10) days after application

## MARKETING GUIDELINES – BASIC SEQUENCE OF ACTIVITIES

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lottery	deadline
12. Log applicants; review applications	Approximately 2-3 months before occupancy.
13. Submit files to monitoring agency	
14. After approval from agency, occupancy begins	Occupancy begins.

# MARKETING PLAN CHECKLIST



Prior to implementing the Developer's marketing plan for the Project ("Marketing Plan"), the Developer must submit the Marketing Plan for Agency review and approval. Below is a Marketing Plan Checklist.

- ✓ CONSTRUCTION SITE SIGNAGE ERECTED
- ✓ INQUIRY LIST MAINTAINED
- ✓ FILE NOTICE OF INTENT WITH AGENCY
- ✓ MARKETING MEETING WITH AGENCY
- ✓ FILE MARKETING PLAN WITH AGENCY
- ✓ SUBMIT DRAFT OF ADVERTISEMENT TO AGENCY FOR APPROVAL
- ✓ SUBMIT MARKETING AGENT AND/OR MANAGING AGENT AGREEMENT TO AGENCY
- ✓ AGENCY ESTABLISHES CALLER SERVICE BOX
- ✓ REMIT PAYMENT TO AGENCY FOR CALLER SERVICE BOX
- ✓ DRAFT AND MAIL COMMUNITY CONTACT LETTERS
- ✓ AGENCY MAILES ELECTED OFFICIAL LETTERS
- ✓ MARKETING SIGN ERECTED WITH INFORMATION ON HOW TO OBTAIN APPLICATIONS
- ✓ PLACE ADVERTISEMENTS IN NEWSPAPERS
- ✓ PROVIDE AGENCY WITH ALL COPIES OF ACTUAL ADVERTISEMENTS
- ✓ MAIL APPLICATIONS TO INTERESTED APPLICANTS ON INQUIRY LIST; REQUESTS FOR APPLICATIONS PROCESSED AS RECEIVED
- ✓ HOLD INFORMATIONAL SEMINARS AT LOCAL FACILITIES, SUCH AS COMMUNITY BOARD(S) AND/OR LOCAL ORGANIZATIONS
- ✓ SCHEDULE LOTTERY WITH AGENCY
- ✓ HIRE STAFF FOR SCHEDULE LOTTERY DATE(S)
- ✓ HOLD LOTTERY
- ✓ ATTEND COMPLIANCE MEETING WITH AGENCY
- ✓ SUBMIT ELECTRONIC LOG TO AGENCY FOR REVIEW
- ✓ PROCESS LOTTERY LOG
- ✓ SUBMIT FILES TO AGENCY FOR REVIEW AND APPROVAL
- ✓ SUBMIT INTERMITTENT LOG UPDATES WITH DISPOSITION COMMENTS AND STATS REPORT
- ✓ REQUEST WAIVER(S), IF NEEDED  
AGENCY APPROVAL DATE \_\_\_\_\_
- ✓ REQUEST OPEN MARKET, IF NEEDED  
AGENCY APPROVAL DATE \_\_\_\_\_
- ✓ SUBMIT INITIAL MOVE-IN CERTIFICATION TO AGENCY
- ✓ SUBMIT FINAL LOG WITH DISPOSITION COMMENTS AND STATS REPORT

# OUTLINE OF PROCEDURES

- I. PRE-MARKETING
- II. MARKETING
- III. LOTTERY
- IV. APPLICANT EVALUATION & RESIDENT SELECTION



# MARKETING GUIDELINES - OUTLINE OF PROCEDURES

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## I. PRE-MARKETING

### A. PROJECT SITE SIGN AND MARKETING SIGN

The Developer must display a project site sign, provided by the Agency, on site in public view, beginning at the start of construction. The project sign is to remain erected on the site until construction is substantially complete. See *Site Sign Request Form, Attachment A-1*.

- ✓ **The Marketing Plan should state the date that the project site sign was erected.**

The Developer must also design and display on site and in public view a legible marketing sign with information on how to obtain an application for a unit. The marketing sign should be displayed upon commencement of the marketing period and remain until the conclusion of the marketing effort.

- ✓ **The Marketing Plan should include a sample marketing sign and should state the approximate date on which the sign will be erected.**

### B. INQUIRY LIST

At the start of construction, an inquiry list should be maintained by the Developer's office. Inquiries must be accepted up to the deadline date for requests for applications. The inquiry list should include the following information:

- Name and contact information of those interested in renting/purchasing a unit;
- How the inquiry was received, e.g. via telephone, email, walk-in, or mail. (The Developer may select the procedure for accepting inquiries.)
- ✓ **The Marketing Plan should outline these inquiry list procedures.**

### C. AGENCY WEB SITE AND HOTLINE POSTING

The Developer must make the following information available to the Agency for posting on the Web site and Affordable Housing Hotline (See *Web Site Posting Form, Attachment A-2*):

- Information related to the development (e.g. number of units; initial rents/sale prices);
- Developer or marketing agent contact info, if applicable;
- Expected construction completion date;
- Method for interested parties to be placed on an inquiry list.
- ✓ **The Marketing Plan should also include this basic project information.**

# MARKETING GUIDELINES - OUTLINE OF PROCEDURES

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## D. PRE-MARKETING MEETING

At least seven (7) months prior to anticipated occupancy, the Developer must contact the Agency to schedule a marketing meeting. At that time, Developer and Agency will meet to review the procedures for marketing, applicant evaluation and resident selection, occupancy, and management, as well as any related documents and reports. The Developer shall submit to the Agency a "Notice of Intent" form to initiate the marketing process.

- ✓ **The Marketing Plan should include a dated copy of the Notice of Intent.** See *Sample Notice of Intent to Market, Attachment C.*

## E. MARKETING PLAN

Following the pre-marketing meeting, the Developer 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, and Applicant Evaluation and Resident Selection phases. See *Marketing Plan Summary Sheet, Attachment B* and See *Marketing Plan Checklist, p. 10.*

- ✓ **The Marketing Plan should include the approximate date at which each of these items will be implemented/completed.**

## II. MARKETING

The formal marketing process should begin at least six (6) months prior to the anticipated occupancy of the first unit. The placement of advertisements and other outreach efforts commences the official 60-day marketing period.

The Developer must ensure that the Project is always in compliance with the provisions of the Project's Regulatory Agreement. The Developer should be aware of its obligation to obtain, verify and provide the Agency, on an ongoing basis, with all required information. The Developer should fully familiarize themselves with the provisions of the Regulatory Agreement.

### A. OUTREACH

Marketing aims to achieve the broadest practical citywide representation in its outreach efforts. The Developer's outreach effort is an essential element in the development of a diverse applicant pool and tenancy. The Agency expects the Developer'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.

#### *Elected Official and Community Board Letters*

At the commencement of marketing, the Agency submits letters to the Community Board and elected officials affiliated with the district in which the development is located.

# MARKETING GUIDELINES - OUTLINE OF PROCEDURES

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## *Community Outreach Letters*

The Developer must provide additional methods of community contact and describe these methods in the Marketing Plan. It should be stressed that targeted outreach is extremely important to the marketing process in order to adequately fill the preference categories. Community outreach letters should be mailed by the Developer at least sixty (60) days prior to the deadline date for receipt of applications. See *Outline of Contents for Community Contact Letter(s), Attachment D*.

At a minimum, the Developer should initiate contact with the local Community Board to discuss the project and possible outreach options. Some other examples of outreach methods include:

- Attending a monthly Community Board meeting to discuss the project;
  - Meeting with other local community groups, e.g. religious congregations;
  - Discussing project outreach with private and not-for-profit community organizations; and
  - Posting flyers in local unions or governmental agencies.
- ✓ **The Marketing Plan must describe all methods of community contact, including, but not limited to:**
- Any marketing consultants the Developer intends to retain, providing the Agency with a statement summarizing their relevant experience and expertise. All marketing consultants must be approved by the Agency;
  - Any management companies the Developer intends to retain, providing the Agency with a statement summarizing their relevant experience and expertise and include a brief management plan See *Outline of Management Plan, Attachment E*;
  - 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, local newspapers, senior centers, labor unions, government agencies), and their respective roles in the marketing process.

## **B. ADVERTISEMENTS**

- Advertisements should appear at least sixty (60) days prior to the deadline date for receipt of applications. See *Sample Advertisement with Logos, Attachments F-1 and F-2*.
- ✓ **The Marketing Plan must list advertisement publication dates and indicate the name(s) of the publications and the proposed dates of the advertisements to be utilized.**

# MARKETING GUIDELINES - OUTLINE OF PROCEDURES

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- The Developer shall begin marketing by placing an advertisement for applicants in accordance with the following:
  - a. The Agency will provide the Developer with the final advertisement format. No changes to the format will be permitted without the prior written approval of the Agency.
  - b. 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 Developer should ensure to allow enough time to receive each of these approvals. *See Sample Routing Slip, Attachment F-3.*
  - c. After obtaining Agency approval, the Developer is responsible for placing the ad. The ad must be advertised in at least three (3) newspapers, including:
    - ❖ One (1) citywide daily newspaper with a circulation of at least 200,000;
    - ❖ One (1) ethnic-based newspaper with a circulation of at least 10,000;  
In order to insure that your marketing meets the Affirmative Fair Housing Requirements, in addition to choosing a citywide publication that is generally read by all ethnic groups, the ethnic publication chosen should be one that serves the minority group(s) least likely to apply for this housing. *For further guidance, see Attachment F-4 and F-5.*
    - ❖ One (1) local newspaper.
  - d. The ad is to run at least three (3) days with at least one (1) day falling on a weekend. The first day an Ad appears must be at least sixty (60) days prior to the application deadline. The Developer must run the additional two ads no later than 10 days after the first ad runs. Any delays must be reported to the Agency.
  - e. The Developer must provide the Agency with a copy of the tear sheet immediately after the advertisement runs.

## **C. APPLICATIONS**

- ✓ **The Marketing Plan must include a sample of the proposed application and cover letter to prospective applicants and samples of the response letters to applicants.**

The Marketing Plan is to include a statement that family members and employees of the Developers and its principals are ineligible to apply for or receive an apartment. The cover letter should reiterate program guidelines and highlight the post office box to which applications may be returned. The format will be provided by the Agency. Any changes to the letter must receive prior approval from the Agency. *See Sample Cover Letter and Application, Attachments G1-3. See also Sample Letters, Attachments H-1 through H-6.*

Additionally, the following subjects should be outlined in order that the Agency may be afforded an opportunity to comment:

## MARKETING GUIDELINES - OUTLINE OF PROCEDURES

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- Number and type of units (if this description does not match the original underwriting and unit distribution described in the Regulatory Agreement, then the Developer must bring the discrepancy to the Agency's attention in writing);
- Initial rents or selling price to be charged;
- Minimum and maximum income range for each type of unit;  
*\*Note: Please contact the Agency if you are unclear about the program's income and rent limits.*
- Listing of proposed fees
  - Applicants shall not be required to pay an application fee, but may be charged a non-refundable credit check fee:
  - For Units with Income Limits set at or below 60% of New York City's Area Median Income (AMI) Limit: The fee is not to exceed **\$25** per application (for households consisting of 1 or 2 adult members), or **\$50** (for households with 3 or more adult household members).
  - For Units with Income Limits set above 60% of New York City's Area Median Income (AMI) Limit: the fee is not to exceed **\$50** per application (for households with 1 or 2 adult members) or **\$75** per application (for households with 3 or more adult members).
  - **\*Credit fees should only be collected when (a) an applicant appears to be otherwise eligible and (b) it is clear that a unit will be available if the applicant is approved.**
- The Developer's system and procedures for receipt and logging or numbering applications. *See Sample Log Sheet for Rental Units, Attachment J-1 and See Sample Log for Home Units – Attachment J-2. For more information about the logging and receipt of applications, please see the following "Lottery" section.*

# MARKETING GUIDELINES - OUTLINE OF PROCEDURES

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## III. LOTTERY

- The Agency requires a Compliance Meeting to be held approximately two weeks before the lottery date.
- The lottery will be held on a date or dates mutually agreed by the Developer and Agency, generally seven (7) to ten (10) business days following the close of the application period, if not sooner.
- **An Agency representative must be present at the time of the lock box/post office box opening and at the time applications are opened and logged.**
- Based on anticipated response volume, the Agency will recommend a minimum number of staff or volunteers to be provided by the Developer for the full day of the lottery. The Agency recommends that there be 20-25 staff members per day during a lottery, which may be adjusted by the Agency based on lottery response. Developer staff should be made familiar with the application log process, and freed from any other duties or distractions on the day of the lottery. Additional people made available will maximize the number of applications opened and logged. Agency monitors will be present strictly to observe the opening of applications and completion of the log sheets; they will be unable to assist in the actual opening and logging as not to divert their attention from their oversight responsibilities.
- If more than one day is required for the lottery, remaining applications must be secured in a locker or footlocker (to be provided by the Developer), which can accommodate a standard combination lock. The Agency will provide the lock with a combination known only to Agency staff. This locker or footlocker will be stored by the Developer in a location approved by the Agency monitor and subsequent days of opening and logging must also occur under Agency supervision. At the completion of rent-up/sales, after enough applications have been opened to achieve occupancy and establish a waiting list equal to at least the number of units in the building, any surplus applications will be shredded by the Developer.

## A. APPLICATION COLLECTION AND PICK-UP

- The post office box used will 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 P.O. Box location must be pre-approved by the Agency, as certain branches with a history of problems may be excluded. Protocol for the opening of the P.O. Box varies by agency:
  - HDC will purchase and reserve the P.O. Box, with all charges and fees to be reimbursed by the Developer.
  - HPD will accompany the Developer to the designated post office on the day of the opening to purchase and open the P.O. Box.

## MARKETING GUIDELINES - OUTLINE OF PROCEDURES

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- **Applications will be picked up from the P.O. Box on the day of the lottery, generally seven (7) to ten (10) business days following the close of the application period. The applications must be picked up by the Developer in the presence of Agency staff.**
- If the post office requires that letters be picked up on a regular basis due to large volume of mail, the USPS will notify the Agency prior to picking up the mail and the Agency and Developer will place all letters, unopened, in a secure locker or footlocker. The Developer will then return to the post office on the day of the scheduled lottery to pick up, in the presence of Agency staff, any remaining mail.
- On the day of the lottery, Agency staff will meet the Developer at the applicable post office for the opening of the P.O. Box and the gathering of applications. Applications will be transported in the presence of at least one Agency monitor (such transportation to be provided by the Developer) to the identified location provided by the Developer for the opening of the applications.
- Any applications postmarked after the application deadline (“late applications”) will be set aside for possible consideration pursuant to this Outline of Procedures, and only after all applications postmarked by the deadline have been processed.
- Any applications received by means other than regular mail (e.g. overnight, certified or registered mail) will be set aside for possible future consideration.

### B. LOG GENERATION

- On the initial lottery days scheduled, all applications, or a minimum number of applications equal to **at least fifty (50) times the number of affordable units that are being marketed**, will be opened and entered in a log in the order in which they were randomly opened. All names will then be selected in number order from this log. All subsequent loggings from this applicant pool, unless waived by the Agency, must take place in the presence of Agency staff. **No preferences will be waived unless all applications received on time have been opened.** *For more information on preferences, see Section IV-B “Order of Processing” or Section IV-H-1 “Preferences.”*
- The log sheets have been revised in a new format and will be provided by the Agency. Rather than merely logging in the head of household, the names of all household members identified on an application must now be recorded in the log sheets. *See Sample Log Sheet for Rental Units, Attachment J-1 and See Sample Log for Home Units – Attachment J-2.*
- A delineated line must be drawn at the end of the last log page containing all applications received up to the deadline date. Applications received after the deadline date or by other methods, such as overnight, certified or registered mail, are to be logged after the delineated line. *For information on maintaining a*

## MARKETING GUIDELINES - OUTLINE OF PROCEDURES

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*waiting list, see Section IV-F “Waiting List” or Attachment H-6 for a Sample Waiting List Letter.*

- Developer must provide an electronic copy of the log to the Agency immediately after the lottery is completed.
- If the lottery takes more than one (1) day, the Developer must provide a copy of the updated log after each day’s logging is completed. In this case, remaining applications must be secured in a locker or footlocker (to be provided by Developer), which can accommodate a standard combination lock. The Agency will provide the lock with a combination known only to the Agency. This locker or footlocker will be stored by the Developer in a location approved by Agency monitors and subsequent days of opening and logging must also occur under Agency supervision. At the completion of rent-up/sales, after enough applications have been opened to achieve occupancy and establish a waiting list equal to at least the number of units in the building, the Developer must shred any surplus applications.
- Developer or representative must also provide copies of the log to the Agency for review indicating each applicant’s selection status. **Copies of the log must be provided prior to offering units to eligible applicants.** *For more information about Agency approvals required prior to signing leases and/or contracts, see Section IV-G “Agency Approval.”*
- Developer must offer units only to applicants who meet eligibility requirements in numbered order from this log, as long as units of appropriate size are available. An applicant to whom a unit has been offered must be given a reasonable specific amount of time to respond to the offer, and **not less than 5 business days** for a lease signing, before a Developer can proceed to offer a unit to the next eligible applicant on the log.
- If units of appropriate size are unavailable to eligible applicants from the log as they are being reviewed, the applicant’s name will remain on the log until an appropriate unit becomes available or until the log expires.
- Developer must retain the applicant log and all associated applications as a record for no less than three (3) years.

Depending on the level of response generated by the lotteries, particularly for low-income developments, it may not be practical to open and process all received applications. However, the Developer must initially open and log a number of applications that is at least fifty (50) times the number of available units. **This must be explained in the cover letter that accompanies the application.** If this pool is sufficient to fulfill all preferences, achieve rent-up/sales, and establish an adequate waiting list, the Agency may not require that additional applications be opened at that time. If preferences cannot be met, additional applications will need to be opened. The Agency will not waive any mandatory preferences unless all received applications have been

# MARKETING GUIDELINES - OUTLINE OF PROCEDURES

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processed. Agency staff must be present to supervise the opening and numbering of all applications involved in the initial lottery of a project.

## IV. APPLICANT EVALUATION AND RESIDENT SELECTION

The Developer will have primary responsibility for applicant evaluation and resident selection. Developer must select all prospective residents from the log sheet in the order logged in, with exceptions for permitted preferences only. Residents of the City of New York are to be given preference in the selection process over non-residents. Other statutory preferences are outlined below. *See Section IV-H-1 "Preferences."*

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

An applicant cannot be rejected for any reason other than a reason that is consistent with the rejection criteria stated in the Marketing Plan. The Agency will approve the selection and rejection criteria outlined in the Marketing Plan prior to the start of marketing. The rejection criteria must be applied fairly and equitably to all applicants.

### A. DISQUALIFICATION POLICIES

- No application will be disqualified prior to entering the lottery. Every opened application received will be assigned a unique log number. Disqualification letters, for reasons outlined below, will be processed and sent in order of log number.
- After the lottery, applicants may be disqualified, regardless of other eligibility factors, for one of several reasons:
  - Developer must disqualify those applicants for whom multiple copies of an application are received.
    - A "multiple" or "duplicate" application is defined as the appearance of any single applicant across two or more applications for any given project, whether or not the same household members are present.
  - **Developer, employees, agents, employees of agents, and family members of Developer, are prohibited from seeking a unit through the Developer's lotteries or Open Market, and are further prohibited from being considered through any other means for any unit being marketed by this Developer pursuant to this Outline of Procedures, regardless of their position with the firm.**
  - Employees of the Housing Development Corporation (HDC) are prohibited from seeking a unit in any project in which HDC is involved that is being marketed by the agent. \*Note: HPD employees who apply for HPD involved projects should receive a Conflict of Interest waiver from HPD.
  - Applicant is not a resident of New York City.

# MARKETING GUIDELINES - OUTLINE OF PROCEDURES

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- Applicants may **not** be disqualified on rental projects solely on the basis that the applicant receives Section 8 assistance.
- **Note on Missing Information:**  
Applications with missing required information, such as income or household size, would be processed as such. For instance, applicants without a stated income would be calculated as \$0 income, and likewise, unlisted household members would not be calculated. Unless qualified as an “extenuating circumstance,” changes to blank income and/or household size would result in an applicant being placed at the bottom of the log for consideration only after all other applications are exhausted.

Extenuating circumstances include:

- Death of a member of the household;
- Birth in the household;
- Divorce or other spousal situation;
- Court order of custody.

Developer must require the applicant to provide evidence of the extenuating circumstance.

## **B. ORDER OF PROCESSING**

- The first applications processed and submitted to the agencies from the log must be those that meet one of the approved housing preferences. The order of preference category must maximize the number of applicants filling the preference categories. Experience suggests that this order, depending on lottery results and other factors, may help boost the filling of preference categories if generally followed:
  - (1) Disability
  - (2) Community Board
  - (3) Municipal Employee

*For more information on processing of preferences, see “Preferences” Section IV-H-1.*

- If preferences are not met and there are still unopened applications remaining, another day of opening applications to identify additional preference applicants must be scheduled with the Agency. No preferences will be waived unless all received applications have been opened.
- Only after all preferences have been achieved (or waived by the Agency following the exhaustion of the lottery) may non-preference applications be submitted to the Agency for approval. This is to prevent non-preference applicants from being processed for units that are intended for preference-eligible applicants. The screening of non-preference applicants may begin prior to achieving all preferences with Agency approval.

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- If units are still available after the Developer has exhausted all remaining applications, Developer must notify the Agency and randomly open and log a number of “late” applications set aside with the Developer sufficient to tenant the remaining vacancies. The Developer, or a representative, will then follow all procedures as outlined in this Section.
- Applications should be processed for submission to the Agency in groups of fifty (50) to prevent getting too far ahead in the lottery and potentially bypassing eligible applicants who are placed earlier on the log and appeal successfully within the two (2) week appeal timeframe. Even within those groups of fifty (50), attention must be given to remaining available units based on bedroom sizes and (for mixed-income buildings) income levels to allow for such appeals.
- At a minimum, a status report must periodically be issued by the Developer to the Agency to ensure that applicants are being processed in proper order. The report must outline the status of applicants on the log (i.e. if they were rejected the reason must be provided) and must be submitted electronically in an Excel format. Developer therefore must not submit a “Read Only” version. This is to ensure that applicants are being processed in proper order. Such status reports should be issued: (a) upon completion of the preferences before processing the general lottery pool and (b) upon the completion of each group of fifty (50) general lottery applicants thereafter. If a file is submitted for an applicant but there are applicants with lower log numbers whose status have not been confirmed, the agencies will withhold further approvals until the information has been satisfactorily documented. The status report, which must include all status comments, must also be accompanied by a letter reporting on the statistics, such as, but not limited to:
  - Number of logged applicants;
  - Number of units for each preference;
  - Status of each preference;
  - Number rejected for being over income;
  - Number rejected for being under income;
  - Number of applicants that fell within the income ranges; if applicable;
  - Number rejected for credit reasons;
  - Number rejected for criminal history;
  - Number rejected for housing court activity as further described in *Section IV-H-5*;
  - Number rejected for household composition;
  - Number of no-shows (include the no-show dates);
  - # terminated as per applicant’s request (applicant withdrew/cancelled application)
  - # rejected for failure to submit requested additional documentation;
  - # rejected for submitting duplicate applications ;
  - # rejected because household is comprised of full-time student(s) and does not meet any of the exceptions (in applicable programs);
  - # rejected because of household size;
  - # placed on low priority list and specify the reasons, e.g. living out of city;
  - any other rejection criteria used by the agent; and Number rejected for

# MARKETING GUIDELINES - OUTLINE OF PROCEDURES

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submission of fraudulent information, etc.

- Stats Report Requirement is mandatory so that the Agencies may monitor the process of the lottery log. Further, such stat report information may be used to report on the statistics of the individual project and analysis of its lease-up.
- Developer must notify all applicants processed of their selection status by regular mail as soon as a determination has been made. A copy of the letter must be attached to the application and kept on file.

## C. APPEALS

Ineligibility and Rejection Letters to Applicants must provide a specific reason why an applicant cannot be approved. Responses to appeals must be even more specific and detailed. For example, stating, “You are rejected because you are over-income” is not sufficient. The letter would need to state more specifically, as an example, “You have been deemed ineligible for this housing program because you do not meet the maximum income required for your family and unit size. The maximum income is \$35,000 and your household’s annual income has been determined to be \$36,000”.

- Developer will provide the Agency with a copy of the completed Log, indicating the final selection status of each applicant and reason for rejection. This includes, but is not limited to:
  - Income ineligibility;
  - Applicant is an employee or family member of Developer;
  - Applicant is not a resident of New York City;
  - Lack of adequate income to support mortgage payments;
  - Ineligible household size;
  - Poor payment or credit history;
  - Receipt of more than one application per household;
  - Falsification of information, etc.

## D. INTERVIEWS

- All applicant/prospective tenant interviews, as well as lease signings, must be conducted within New York City limits (i.e. New York, Bronx, Kings, Queens, or Richmond Counties).
- Developer will notify each applicant to be interviewed by regular mail. Format for letter will be provided by the Agency. Letter will indicate:
  - Date, time, location of interview and phone number should applicant be unable to appear;
  - Required minimum amount of time, and **not less than ten (10) business days**, between letter postmark and interview date;

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- List of required documents to be brought to interview by applicant;
  - That Developer may make home visits or other appropriate inquiries to assist in qualifying;
  - That no broker or application fees will be charged to the applicant, except in New HOP programs;
  - If credit checks will be conducted by Developer, then that fee must be approved by the Agency.
    - For Units with Income Limits set at or below 60% of New York City's Area Median Income (AMI) Limit: Credit check fees are not to exceed \$25 for households with 1 or 2 adult members; \$50 for households with 3 or more adult members.
    - For Units with Income Limits set above 60% of New York City's Area Median Income (AMI) Limit: Credit check fees are not to exceed \$50 for households with 1 or 2 adult members; \$75 for households with 3 or more adult members.
    - No credit check fees may be charged to homeless applicants in designated special needs programs referred by the city.
    - A credit check fee can only be charged after an interview has been conducted and all other threshold selection criteria have been met.
- In cases where an applicant fails to appear for an interview, Developer must send a second letter by regular mail to schedule another interview. The applicant will be given a reasonable specific amount of time, but **not less than five (5) business days** from the postmarked date of the second letter in which to respond.
  - \*Note: If the Developer elects in the Marketing Plan to perform home visits, such home visits **MUST** occur before submitting files for approval but after the interview. Further, if an applicant is rejected for a home visit, then the rejection letter must state the reason of the home visit rejection. The letter cannot simply state that the applicant failed the home visit.

### **E. OPEN MARKETING**

If all applications have been processed and the entire applicant log has been reviewed for eligibility and there are still units available, **the Developer must contact the Agency for written approval to commence open marketing.** The Developer is required to complete a **Notice of Remarketing document** See *Notice of Remarketing, Attachment K*. Upon receipt of these forms, the Agency will create an advertisement for its website. Under open marketing, the Developer may utilize other methods to identify applicants beyond the scope of the lottery. Such methods may include additional advertising, signage on the building to attract walk-ins, or the use of brokers.

If using a broker, the Developer 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 HDC's New HOP programs. In the case of New HOP, a fee equal to half (1/2) of one month's rent is the maximum amount that may be charged to the residents as a broker fee. Any fee above that amount must be absorbed by the Developer.

# MARKETING GUIDELINES - OUTLINE OF PROCEDURES

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## F. WAITING LIST

After the Project is initially occupied, the Developer must maintain a waiting list indicating persons interested in residing in the development and must fill vacancies from the waiting list. Whenever possible, the Developer must fill vacancies in units that have been adapted for households with disability preferences to a household that fulfills such preference. The Developer is to inform wait-listed applicants that it is the applicant's responsibility to notify the owner/manager every six (6) months that they wish to remain on the waiting list.

Upon conclusion of the rent-up, the Developer must document to the Agency how it plans to manage its waiting list going forward.

When the Developer needs to replenish a Project's waiting list, the Developer may request Agency approval to commence remarketing activity. The Agency does not supervise this process as closely as the initial marketing. However, the attached form must be completed and receive Agency approval before remarketing. See *Notice of Remarketing Attachment K*.

## G. AGENCY APPROVAL

**No residents may be moved into the building, and no leases or contracts signed, until Agency has approved the applicant in writing. This is true both during initial rent-up or sales and thereafter. Concurrent approvals by other involved agencies may also be required.**

**Developer may also not collect funds from prospective residents (i.e. security deposits, rents, etc.) until written Agency approval is received.**

If files are complete in accordance with the revised procedures which follow, and no additional issues are raised with any of the information contained therein, Agency approval timetable is three (3) to five (5) business days from receipt of a file. However, if files are incomplete or if issues are raised that require further review either internally or with the NYC Department of Investigation (DOI), the process will take as long as necessary to (a) acquire the missing or additional paperwork from the Developer's management staff or (b) to complete an additional review with DOI. On a case-by-case basis, if such processes extend past ten (10) business days without a resolution, the agencies may grant permission to place such questionable applicants on hold and proceed with other applications while such special reviews are being completed. Although an added step, these procedures will both ensure the integrity of the Agency's programs and protect the Developer from the potential regulatory defaults for non-compliance, which can result from admitting applicants who are not truly eligible.

- ✓ **The Marketing Plan must also include procedures for determining applicant eligibility and verifying income and family size.**

HPD and HDC perform independent review of applicant income eligibility as an

## MARKETING GUIDELINES - OUTLINE OF PROCEDURES

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additional means of ensuring compliance with the Regulatory Agreement. The approvals are based on information in the files submitted to us by the Developer. HPD will review a percentage of applicants, while HDC will review all applicants. *Refer to Checklist for Tenant Income Certification, Attachment L-1.*

Applicant approval letters are not given under our role as low-income housing tax credit monitoring agencies and so these letters alone are not verification of tax credit compliance. Upon the Developer's annual tax credit certification review (as required by IRS monitoring rules), the Compliance Unit in the respective agencies will review files in their entirety to monitor compliance.

Developer must submit Tenant Income Certification (TIC) and verifications to the Agency along with the Applicant Information Form (AIF) to enable a review of the Developer's computation of eligibility. Developer must inform applicants that they will not be allowed to occupy a unit until the Agency has reviewed and approved their Tenant Income Certification. All such Approvals are given to the Developer in writing. See *Tenant Income Certification Cover Letter, Attachment L-2, See Tenant Income Certification form, Attachment for Low Income Attachment L-3 or Tenant Income Verification for Middle Income Attachment L-4. See also AIF, Attachment M.*

### Tenant Lease and Related Documents

- Immediately prior to signing the lease, the statement in Pre-lease Acknowledgement and Certification must be reviewed with, and signed by, all adult household members. *See Pre-Lease Acknowledgement and Certification, Attachment N.* This statement warns against violating the primary residence rule, as well as provides a final confirmation as to the honesty of all information the applicants submitted throughout the process.
- Owners must use a lease that complies with the Rent Stabilization Law and regulations.
- **The Marketing Plan must include a copy of the lease for review.**
- For Projects financed by HDC, owners must execute an HDC lease rider which outlines the unique aspects of the program and how it differs from standard rent stabilization (such as the prohibition on sublets). *See Rider to Standard Rent Stabilization Lease for Low Income, Attachment O or See Rider to Standard Rent Stabilization for Middle Income, Attachment P.*
- If Developer finds an applicant eligible for a unit designated at 60% of AMI or below, then at the time of lease signing, the tenant must complete an Affirmation of Income. *See Affirmation of Income, Attachment Q.*
- If Developer finds an applicant to be eligible for a unit, then at the time of lease signing or sale closing, Developer must require that all adult household members execute three new IRS Form 4506-T, one listing the Developer, one listing the

# MARKETING GUIDELINES - OUTLINE OF PROCEDURES

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Agency and the other listing the NYC DOI in Line 5 of the form. See *IRS and State Forms, Attachments R-1 through R-5*.

## H. **DETAILED SELECTION POLICIES**

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

- 1) Preferences
- 2) Household Composition Changes to an Application
- 3) Qualification As A Household
- 4) Income Eligibility
- 5) Background Checks And Other Factors
- 6) Occupancy Standards And Unit Distribution
- 7) Rent Levels and Income Standards
- 8) Other

### 1) **PREFERENCES**

#### a. **OVERALL RESIDENCY PREFERENCE FOR NEW YORK CITY RESIDENTS**

Non-residents of New York City can only be considered after all eligible, current New York City residents have been processed.

#### b. **MANDATORY PREFERENCES**

The following must also be considered and detailed in the plan:

- Community Preference

The Developer must, during initial rent-up, give an occupancy preference for fifty percent (50%) of the units to applicants who, at the time of application, are residents of the Community District in which the building is located. Applicants with community resident status must meet all other programmatic requirements of the Agency and the Developer (e.g., income qualification, credit worthiness).

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If after all applications have been opened and processed the community preference cannot be filled from applicants in the logbook, the Developer must provide a letter to the Agency stating how much of the preference has been achieved. The letter must include, but is not limited to the following information:

- Number of logged applicants;
- Number of units available for each preference;
- Number of applications approved for each preference;
- Number rejected for being over income;
- Number rejected for being under income;
- Number of applicants that fell within the income gap, if applicable;
- Number rejected for credit reasons;
- Number rejected for criminal history;
- Number rejected for housing court activity as further described in *Section IV-H-5*;
- Number rejected for household composition;
- Number of no-shows (include the no-show dates);
- # terminated as per applicant's request (applicant withdrew/cancelled application);
- # rejected for failure to submit requested additional documentation;
- # rejected for submitting duplicate applications;
- # rejected because household is comprised of full-time student(s) and does not meet any of the exceptions (in applicable programs);
- # rejected because of household size;
- # placed on low priority list and specify the reasons, e.g. living out of city;
- any other rejection criteria used by the agent;
- If any of the above rejection criteria does not apply or no applicant had been rejected for that criteria, please indicate "N/A" or "0 applicants", respectively; and
- Number rejected for submission of fraudulent information, etc.

*See Stats Report Requirements p. 22-23*

After review, the Agency may waive the remainder of this preference and authorize the Developer to proceed with the remainder of the log sequentially. If the community preference is fully achieved, any remaining community applicants will be processed from the log in the same order as other applicants.

### ○ Disability Preferences

The Developer must also give an occupancy preference to applicants for certain units who have at least one household member with a mobility,

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visual and/or hearing impairment and, as a result, require an accessible/adaptable unit. These preferences are as follows:

- Five percent (5%) of the units in the project (or one unit, whichever is greater) will have a preference for and are to be made adaptable/accessible for disabled persons with mobility impairments.
- Two percent (2%) of the units (or one unit, whichever is greater) will have a preference for and are to be made adaptable/accessible for disabled persons with visual and/or hearing impairments.

The Developer must write to The Mayor's Office for People with Disabilities to request potential referrals (with a copy to the Agency) at the time community letters are mailed out:

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

If the disability preference is not fulfilled, applicants shall be processed from the logbook in the same order as other applicants.

- o Municipal Employee Preference:

The Developer must give an occupancy preference for five percent (5%) of the units (or one unit, whichever is greater) to municipal employees of the City of New York. *See Attachment S for a list of agencies whose employees are eligible for the preferences.* (\*Note: HDC employees are not eligible for this preference. Employees of certain other agencies, such as HPD, are only eligible if they can provide a statement of no-conflict from their agency's ethics officer).

### c. ADDITIONAL PREFERENCES AND SET-ASIDES:

There may be additional mandatory preferences tied to certain government programs or funding sources. These mandatory set asides are not to be marketed to the general public; however, they are subject to the same selection criteria and application process and must be approved by the Agency.

- ✓ **The Marketing Plan must reflect such preferences.**

- o Referrals:

The Agency may refer to the Developer potential residents who are

# MARKETING GUIDELINES - OUTLINE OF PROCEDURES

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being relocated or displaced due to a governmental action. Developer, if directed by the Agency, must first offer units to these referrals, and their applications must be processed according to program selection criteria for eligibility and must be approved by the Agency. Referrals must be entered into a separate log by the Developer or a representative. Developer must indicate the source of the referral on the log.

No additional, optional preferences may be implemented without the prior written approval of the Agency.

## **2) HOUSEHOLD COMPOSITION CHANGES TO AN APPLICATION**

Changes to household composition in the application after it has been received will not be recognized, unless such change is an extenuating circumstance. Extenuating circumstances may include:

- Death of a member of the household;
- Birth in the household;
- Divorce or other spousal situation;
- Court order of custody.

The Developer must obtain from the applicant legitimate evidence of the extenuation circumstance, such as birth certificates.

## **3) QUALIFICATION AS A HOUSEHOLD**

For the purposes of applying to HPD/HDC-financed affordable housing, the following terms shall have the meanings set forth below:

1. "Minor" shall mean a person under the age of 18 years.
2. "Adult" shall mean a person at or above the age of 18 years.
3. "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.
4. "Guardian" shall mean an adult who is legally responsible for a Dependent.

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5. "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.
6. "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" 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, and (ii) documentation, such as bank accounts, demonstrating shared assets.

If an applicant states that the applicant and his/her spouse are separated, then the Developer must require the applicant to provide "proof of a legitimate separation." A notarized statement is not sufficient proof of a legitimate separation. Examples of proof of a legitimate separation would be bank accounts or leases once held jointly are now no longer held jointly due to the separation. Both the latter and former documents must be provided to prove that the assets and/or lease were once held jointly but are no longer.

\*Note on Student Rule for IRS Program Units: Low-income units in these programs are not to be occupied exclusively by students (for Low-Income housing tax credits, the IRS defines a "student" as a full-time student during five (5) 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.

#### **4) INCOME ELIGIBILITY**

Income is determined in the same way income is determined under the federal Section 8 program. Developers should therefore obtain a current copy of the HUD Handbook 4350.3, which outlines these requirements. This handbook is available to print or view at <http://www.hud.gov>. In addition, the Developer should require its

# MARKETING GUIDELINES - OUTLINE OF PROCEDURES

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marketing staff to attend an industry training where these requirements are reviewed in detail.

## A1. Assets

### GENERAL PROGRAMS

The Developer must require that all adult members of the applicant household complete a certification of assets, which must be signed and notarized. Samples of such certifications are included in this manual. See *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).

- If the total value of assets on the certification form is less than \$5,000, and such information is consistent with the assets identified on the applicant's housing application, IRS rules for Tax Credit compliance allow that this self-certification is the only documentation required and the identified 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.*
- If the total value of assets equals or exceeds \$5,000—or if there is an unexplained difference between the assets noted on the application and those subsequently noted on the certification—complete asset verification documents must be obtained. Refer to HUD Handbook 4350.3 for guidance regarding the appropriate documents to be obtained based on the type of assets being verified. As required under tax credit rules for all verification, documents must be current within 120 days of the tenant income certification (TIC) effective date (which is ultimately the move-in date). When over \$5,000 total, the actual earned income from the asset is compared to the imputed value (2% of the total) and the higher of these amounts is added to the household income.

### HDC's NEW HOP PROGRAM

**Income from assets is only considered when the applicant's income falls within \$10,000 of the maximum income level for the unit; however, applicants may submit asset income for consideration if they need it to meet the minimum income. When a household's total annual income is within \$10,000 of the program maximum income then all adult members of the applicant household must complete a certification of assets, which must be signed and notarized.**

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Samples of such certifications are included in this manual and 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). See *Asset Certification, Attachment T*.

\*Note: 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. All asset requirements must be disclosed in the Marketing Plan and approved by the agencies.

## A2. Employment Income

The Developer must require that for all adult household members reporting general employment income, **all of the following** must be provided:

- *The most recent year's complete tax return.* If after May 1, the most recent year's tax documents due by the preceding April *must* be provided *unless* an applicant provides a copy of his request to the IRS for an extension (IRS Form 4868). In such cases the *previous* year's complete tax return may be accepted until October 15<sup>th</sup>, when the extension expires. The gross income reflected on the most recent tax return will be "the tax return income".
- *The most recent consecutive pay stubs (minimum of 6).* Income must be calculated by both (a) averaging the pay stubs and (b) projecting the year-to-date. The higher of these two amounts will be "the pay stub income".
- *Third Party Verification directly from the employer.* The Developer must mail or fax this form (See *Attachment Z-1*) directly to the applicant's employer, with instructions for the employer to return directly to the Developer. Envelopes and fax confirmations must be maintained to document that the information was obtained via direct third party procedures, and not transmitted through the applicant's hands. This form will request current salary, year-to-date income, and information about bonuses and anticipated increases. The highest amount calculated based on this information will be "the third party income". An applicant cannot be penalized for the lack of response from his/her employer in completing and returning the verification. However, the Developer must make at least three (3) attempts to obtain such third party employment verification. Developer must also obtain Third Party Verification of Termination directly from previous employers who are listed on the applicant's application and/or previous year's tax return.
- *COMPARISON and DETERMINATION:* Based on the three employment income verification sources above, the Developer must compare the tax

## MARKETING GUIDELINES - OUTLINE OF PROCEDURES

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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.*

- \*Note: If an applicant has not filed taxes on reported income, the applicant will not be eligible for Agency-financed housing unless the applicant qualifies for a filing exemption under The Internal Revenue Code (see “Publication 501” on irs.gov). The Agency 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.
- \*Note: Unless a compelling argument can be made as to why an applicant’s income decreased, the tax return income will be the income calculated if it is the highest. The most obvious exceptions would be a decrease in income due to retirement or disability (or a widowed or divorced applicant whose most recent tax return still showed their spouse’s income).
- \*Note: The Developer may request in writing that the Agency grant an exception to the above criteria if any other truly extenuating circumstance exists. The Agency will consider such requests on a case-by-case basis.

### A3. Self-employment Income

Since self-employment income is more difficult to document via third party and subject to more variables and potential manipulation, special care must be given in the review of such income. The Developer must require that all adult household members reporting self-employment income provide both of the following:

- *Projected Self-Employment Income:* An estimate of current year’s earnings certified in (a) a letter from the applicant’s accountant, tax preparer or business manager OR (b) a notarized self-statement. If (b), the self –statement must be accompanied by additional documentation such as income receipts, a current financial statement/budget, or other information which supports the projection. This income will be “the projected self-employment income”.
- *Historical Self-Employment Income:* Most recent tax returns for the last three (3) years. (\*Again, if after May 1, the most recent year due to be filed by the preceding April deadline must be provided unless documentation of an IRS extension filing is provided). If the applicant reported self-employment income in the same line of work for each of the three (3) years, then all three should be averaged *and evaluated*. If only the most recent two (2) years reflect self-employment income in the same

## MARKETING GUIDELINES - OUTLINE OF PROCEDURES

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line of work, then those two years should be averaged and evaluated. The income calculated through these averages and evaluations will be “the historical self-employment income”.

- *COMPARISON AND DETERMINATION:* The projected and historical incomes are compared, and *the higher amount is what is used as income for the purposes of income eligibility.*

“Evaluated” means that the Developer must make an effort to identify any patterns that may logically result in a conclusion that the current or next year’s income will increase beyond the three (or two) year average. For example, the incomes for the past three (3) years for a self-employed applicant were \$30,000; \$32,000 and \$34,000. The straight average would be \$32,000. However, there is a clear pattern reflecting a gradual increase in this income source and so, consistent with that pattern, a logical evaluation of this applicant’s income would conclude that \$36,000 would be the current/next year’s income.

At least the most recent two years of tax returns must document that the applicant’s income has come from self-employment in the same line of work. Applicants who do not meet this “time test” have not established a suitable income-earning history through their self-employment, and there is insufficient data to accurately evaluate their income.

#### A4. Sporadic 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. All sources of income must be disclosed, but such non-recurring income may be excluded in the calculation process.

#### A5. Unemployed Household Members 18 and over

If a household member, who is 18 years of age or over, is unemployed, then the household member must complete an Unemployment Affidavit. See *Sample Unemployment Affidavit, Attachment I.*

#### A6. Continuing Need

For programs designed to be affordable for households at or below 60% of AMI, the applicant’s eligibility is also dependent on whether the applicant can demonstrate a “continuing need” for housing assistance. Any Agency-subsidized 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 below criteria must be satisfied, or the tenant is not eligible:**

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- Asset Cap

The tenant must not have assets in an amount equal to or greater than \$250,000 (\*Note: This does not include specifically designated retirement funds. A portion of retirement accounts may be counted to determine overall assets and income from assets, but such funds are not to be included in the \$250,000 cap.)

- Recent Income History

In addition to reviewing current income verifications, Developers must also evaluate an applicant's most recent income history based on their most recent tax returns. Unless a compelling argument can be made as to why an applicant's income decreased, the tax return income will be the income calculated if it is the highest. The most obvious exceptions would be an increase in income due to retirement or disability (or a widowed or divorced applicant whose most recent tax return still showed their spouse's income).

Here are examples:

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

- Mary Smith is a seamstress who was laid off by her previous employer, where her tax return shows she earned \$32,000 a year. Her new employment with a different garment company pays her \$28,000 a year as documented by her pay stubs and 3<sup>rd</sup> party employer letter. *In this case, a compelling argument can be made not to use Mary's tax return income, even though that is the highest amount. The change in Mary's income was not voluntary and her new job/earnings are generally consistent with her recent history. The amount from her current pay stubs and 3<sup>rd</sup> party should therefore be used, under which she is eligible.*
- John Hower recently quit his job as a college professor, where his tax return shows he earned \$75,000 a year, to pursue other interests. He has recently started working as a waiter and presently earns \$27,000 a year based on his pay stubs and 3<sup>rd</sup> party verification. *In this case, no exception is warranted. John has clearly demonstrated a recent history of significantly higher earning patterns. The change appears to be voluntary and/or temporary in nature, which is not the intent of Agency-financed low-income housing programs (including those participating in the LIHTC Program). 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.*

The Developer may request in writing that the Agency grant an exception to the above criteria if a truly extenuating circumstance exists. The Agency will consider such requests on a case-by-case basis.

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## A7. IRS Form 4506-T

The Developer must require all adult household members to execute three copies of IRS Form 4506-T, one for the owner/managing agent identified in line #5, the other for the Agency identified on the same line, and one with the New York City Department of Investigation noted in the same line. This form is a release by which the applicant authorizes the IRS to release transcripts directly to a third party. Furthermore, the applicant must complete an IRS Form 4506 – Request for a Copy of Tax Return, as well as a New York State DTF-505 Form Authorization for Release of Photocopies of Tax Returns and/or Tax Information. In the event that a tax return provided by the applicant appears to have potentially been altered or a file is otherwise suspicious, the Developer should make use of this form. The Agency also may make use of this form. Developers are encouraged to send these requests to the IRS upon receipt, so that in the event that files are flagged later at the Agency, an IRS response may already have been received back. Developer is to ONLY send in their copy. Do not send in Agency or DOI copies of forms.

If an applicant has been found to be eligible for a unit, then at the time of lease signing or sale closing, all adult household members must execute three new IRS Form 4506-T, Form 4506 and DTS-505 Form in accordance with the above. *See IRS and State Forms, Attachments R-1 through R-5.*

## A8. Authorization to Release Information Form

The Developer must require that all adult household members execute a copy of the Authorization to Release Information Form.

## **5) BACKGROUND CHECKS AND OTHER FACTORS**

### Immigration Status/Credit History

Immigration status is not a condition of eligibility for any HPD- or HDC-financed building. Immigration status may not be questioned in any manner on the application, during the interview, or at any other time during the tenant screening process. This doesn't prevent a Developer from rejecting an applicant for failure to provide a Social Security Number or an Individual Tax Identification Number (TIN) when the Developer needs such information to check credit history. All applicants must be able to provide verifiable proof of legal income. Inability to provide documentation to verify income and credit is a basis for rejection, not immigration status.

### Criminal Checks

The Developer must obtain a criminal background check for every applicant. The Developer must disclose in the project's selection plan which types of information revealed through such a check will or will not adversely impact an

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applicant's eligibility. The Developer must find an applicant ineligible if one or both of the following criminal findings is flagged during the criminal background check:

- A prior conviction of fraud in connection to any governmental housing program;
- An applicant is a criminal fugitive being sought by law enforcement for either incarceration or deportation (as such applicants would not lawfully be able to "anticipate" income or even be anticipated to be an included member of the household).

## Housing Court Records.

The Developer may not automatically reject an applicant based on the applicant's housing court records. For instance, if the applicant can show that the case was brought about at no fault of their own, the applicant would remain eligible. The Developer must allow a reasonable amount of time, **and not less than 10 days**, for an applicant to contest a housing court record. If the applicant does not provide proof of no fault within the 10 day period, then the Developer may reject the applicant for failing to provide proof of no fault. The applicant then has the allotted time to appeal the decision.

## Discovery of False Information

Submitting false or knowingly incomplete information to induce eligibility is grounds for rejection and may also lead to further investigation and, potentially, criminal prosecution.

Even before a file is submitted to the Agency, there are times when Developers may independently detect applicants who have falsified information. For example, the tax transcripts may come back and 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. Developers and their agents may report such findings to the Agency or, if they prefer, directly to The NYC Department of Investigation.

## **6) OCCUPANCY STANDARDS AND UNIT DISTRIBUTION**

### Occupancy Guidelines

The Developer must establish occupancy criteria based on unit size. Such criteria must be consistent with federal, state and local laws and with the Agency Regulatory Agreement. 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.

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For example, it is not for the owner to determine whether an unmarried couple may share the same bedroom or whether a young child can share a bedroom with a parent.

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

- ✓ **The Marketing Plan must clearly outline the Developer's occupancy criteria and associated statutory requirements.**

### Unit Distribution

*See Attachment U, Sample Apartment Distribution Chart.*

The allocation of units (total number and number for each unit size) must match the information in the Agency Regulatory Agreement. For mixed-income buildings, please also note the following requirement pertaining to the distribution of units:

#### ***For 80/20 and other mixed-income developments only:***

As soon as any of the units in the development are available for occupancy, at least twenty percent of those units must be occupied, or made continuously available for occupancy, by low-income households. The Developer 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. The Developer must also ensure that approximately twenty percent of each unit type (i.e. studio, one-bedroom, two-bedroom units) is low-income.

\*Note: Distribution of all affordable units must be approved by the Agency.

## 7) **RENT LEVELS AND INCOME STANDARDS:**

### Rents:

The Developer must establish the rents in accordance with the Agency Regulatory Agreement.

### Maximum Income Levels:

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

# MARKETING GUIDELINES - OUTLINE OF PROCEDURES

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## Minimum Income Levels:

Minimum income levels are established by the Developer based on the rent levels. However, the standard barometer for affordability is a family paying 30% of household income for rent purposes. In no instance should the minimum income established for initial rent-up result in a family paying more than 35% of income for rent. Although established by the Developer, minimum income levels are subject to approval by the Agency. However, the Developer may not establish minimum income levels for applicants with Section 8 or similar forms of housing subsidy. Such applicants must be accepted provided they meet all other eligibility criteria outlined in the marketing plan.

## **FOR LOW INCOME HOUSING TAX CREDIT COMPLIANCE:**

Mixed-income projects participating in 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.

### Deep Rent Skewed Properties

Properties that Deep Rent Skew must have at least 15 percent of all the low income units occupied with tenants with incomes that are 40 percent or less of area gross median income and rents are restricted.

For properties that Deep Rent Skew, the Available Unit Rule must be implemented whenever a current household has an income level exceeding 170% of the current income limit. The Available Unit Rules states that if a tenant’s income increases to over 170% of the then-current income limit for the unit occupied by such tenant, the unit may continue to be deemed a low income unit provided the Developer rents the next available low income unit at the property to a family with an income equal to or below 40% of the area gross median (AMI) income at a restricted rent.

When a Developer of a property that Deep Rent Skews submits a re-rental file for Agency review, then the Developer must submit a Deep Rent Skew Certification, *Attachment V-1* along with the file.

### Mixed-Income / “Non-deep rent skewed” properties

A Mixed-Income building is a building that includes market-rate units. For buildings that are Mixed-Income, the Available Unit Rule must be implemented whenever a current tenant has a household income level exceeding 140% of the current income limit. If a Developer discovers that a tenant’s income is above 140% of the current income limit, the Developer may continue to include the unit in the applicable fraction if the Developer rents the next available unit of comparable or smaller size in the same building to a tax credit eligible family at a restricted rent.

# MARKETING GUIDELINES - OUTLINE OF PROCEDURES

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When a Developer of a Mixed-Income building submits a re-rental file for Agency review, then the Developer must submit a Mixed-Income Certification, *Attachment V-2* along with the file.

## 8) OTHER

### Incorporation of “Fair Housing Laws”

There are Federal, State and local laws, orders and regulations prohibiting housing discrimination (“Fair Housing Laws”). Such Fair Housing Laws, as they may be amended from time to time, are hereby explicitly incorporated in these Procedures, any violation thereof will be a violation of these procedures.

### Amendments

The Agency reserves the right to amend any provision of these procedures.

### Inspections

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

### Brokers

The Broker Forms, Attachments R-7 and R-8 are to be completed and submitted with all applicant files that are not from the original lottery. If a project has gone “Open Market,” then the appropriate form must be completed by the Managing Agent or the Developer. If a new project that is still in its initial lease up goes “Open Market,” then the appropriate form must be submitted for all applicants not received from the lottery. The Third Party/Broker form does not need to be submitted for an applicant from the initial lottery.

### Household Student Status Affidavit at Recertification

For units with income limits set at or below 60% of New York City’s Area Medium Income (AMI) Limit, please use Attachment Z-2 during the Annual Recertification process.

# SUBMISSIONS AND ONGOING REPORTING REQUIREMENTS



## MARKETING GUIDELINES – SUBMISSIONS

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Both HPD and HDC require submission of the following items during the pre-marketing and marketing periods:

- Marketing Plan (to include all required information as described herein). See *Marketing Plan Checklist, p. 10*.
- Applicant Information Forms (AIF) and Tenant Income Certifications (TIC) completed by applicants and Developer. See *Attachments M and L1 – L4*.

Only HDC requires submission of the following items during the pre-marketing and marketing periods:

- The form of lease and all riders for Agency review. Additionally, the Pre-lease Acknowledgement and Certification and the HDC Lease Rider is to be used with all units. See *Attachments N, O and P*.
- In addition to Tenant Income Certifications, HDC projects require 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 HDC for review *prior* to the anticipated dates of acceptance of the tenant and the signing of the lease.

For vacancies subsequent to initial project occupancy, the required Tenant Income Certifications and supporting documents must be transmitted for HDC review and approval prior to the signing of the lease.

**Applicants must be informed by the owner that they will not be allowed to occupy a unit until HDC has reviewed and approved their Tenant Income Certification (TIC).**

- Owner certification indicating the move-in date for the first tenant to occupy the development. (Once you have submitted this form for the “first tenant that occupies a unit in the project,” it does not have to be used thereafter.) See *Attachment W*.
- Unit Inspection Forms 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 *Attachment X*.
- After the initial lease-up of all the units in the project, certain obligations pertain to the project. In particular, Developers must submit on a quarterly basis, the move-out and/or unit transfer status report for the project along with the current rent roll. See *the Quarterly Unit Vacancy Report Instructions and Report, Attachment Y-1 and Y-2*.

# ATTACHMENTS



## MARKETING GUIDELINES – LIST OF ATTACHMENTS

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- A-1. Site Sign Request Form
- A-2. Web Site Posting Form
  
- B. Marketing Plan Summary Sheet
  
- C. Notice of Intent to Begin Marketing
  
- D. Community Contact Letters
  
- E. Outline for Management Plan
  
  
- F-1. Advertisement Instructions
- F-2. Sample Advertisement
- F-3. Routing Slip of Advertisement Approvals
- F-4. Evidence of AFHM
- F-5. HUD 935.2a Form
  
- G-1. Application Cover Letter (Low Income)
- G-2. Application Cover Letter (Middle Income)
- G-3. Sample Application
  
- H-1. Sample Eligibility and Interview Letter
- H-2. Sample Ineligibility Letter
- H-3. Sample Approval Letter
- H-4. Sample Rejection Letter
- H-5. Sample Low Priority Letter
- H-6. Sample Wait List Letter
  
- I. Sample Unemployment Affidavit
  
- J-1. Log Sheet Sample (Rental)
- J-2. Log Sheet Sample (Home)
  
- K. Notice of Remarketing
  
- L-1. Checklist for Income Cert
- L-2. TIC Submission Cover Letter
- L-3. TIC (Low Income)
- L-4. TIC Middle Income
  
- M. AIF
  
- N. Pre-lease Acknowledgement
  
- O. HDC Lease Rider (Low Income)
  
- P. HDC Lease Rider (Middle Income)
  
- Q. Reaffirmation of Income
  
- R-1. IRS Form 4506-T (HDC)
- R-2. IRS Form 4506-T (Agent)
- R-3. IRS Form 4506-T (DOI)
- R-4. IRS 4506 (DOI)
- R-5. NYS DTF-505 Form (DOI)
- R-6. Authorization to Release Information
- R-7 & R-8. Broker / Third Party Certification
  
- S. List of Agencies Eligible for Municipal Preference
  
- T. Asset Certification
  
- U. Unit Distribution Chart
  
- V-1. Certification for Deep Rent Skewed Projects
- V-2. Certification for Mixed Income / “Non-Deep Rent Skewed” Projects
  
- W. Owner Cert of Initial Move-In
  
- X. Unit Inspection Form
  
- Y-1. Quarterly Vacancy Report Instructions
- Y-2. Quarterly Unit Vacancy Report
  
- Z-1. Employment Verification Form
- Z-2. Household Student Status Affidavit at Recertification