



Federal Home Loan Bank  
NEW YORK

# Affordable Housing Program 2018 Implementation Plan

As Adopted March 22, 2018





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## Introduction

The Federal Home Loan Bank of New York ("FHLBNY" or "Bank") herein presents its 2018 Affordable Housing Program ("AHP") Implementation Plan ("Plan"). The Plan is written in accordance with the Federal Housing Finance Agency ("FHFA") rules and regulations governing the Bank's AHP, 12 C.F.R. Part 1291("Regulations") and any applicable FHLBNY policies and standards.

FHLBNY reserves the right to amend the Plan as necessary throughout the year. Per the Regulations, the Plan and any amendments are created in consultation with and reviewed by the FHLBNY's Affordable Housing Advisory Council ("AHAC"). The Plan and any amendments are approved by FHLBNY's Board of Directors.

Within 30 days of approval by its Board of Directors, FHLBNY shall publish the Plan on its website and provide notification to the FHFA.

AHP is offered in two forms: a competitive program ("Competitive AHP") and a homeownership set-aside program, First Home Club ("FHC").

### **SUBMISSION OF HOUSEHOLD INFORMATION**

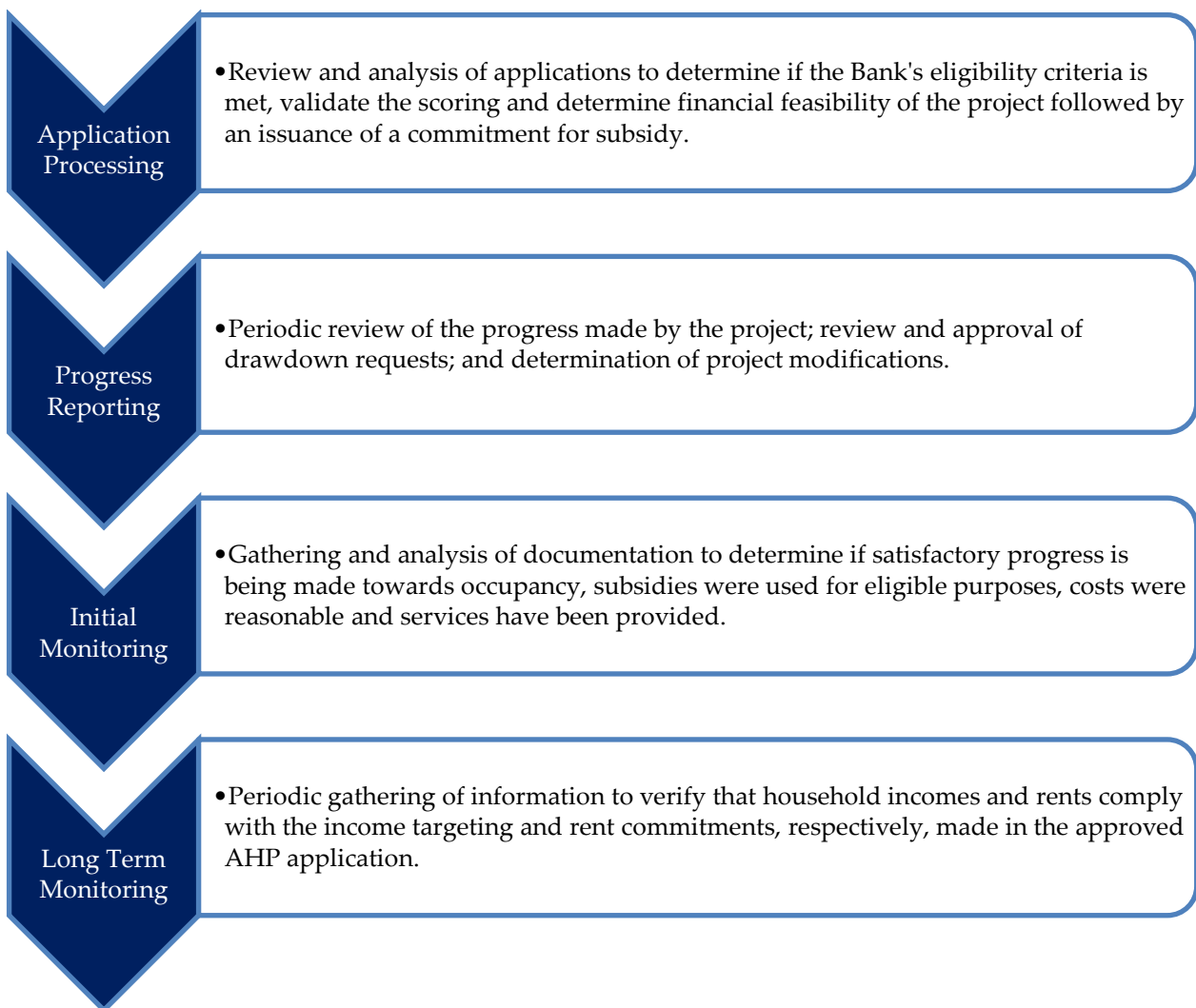
The Gramm-Leach-Bliley Safeguard Rule, the Identity Theft Act, Privacy State Laws and the Fair and Accurate Credit Transactions Act ("FACTA") are laws enacted to protect consumers from identity theft. To protect borrower information that may be utilized to develop a 'credit profile' if intercepted by an unauthorized third party, the FHLBNY requires that all household information be submitted in a secure manner.

## Competitive AHP

### BRIEF OVERVIEW OF COMPETITIVE AHP LIFE CYCLE

AHP provides grants and subsidized advances to our FHLB NY Member Financial Institutions to help households earning 80% or less of the area median income purchase or maintain their homes. It also enables organizations to purchase, rehabilitate, or construct apartment buildings in which at least 20% of the units are affordable to households earning 50% or less of the area median income.

The Competitive AHP life cycle is comprised of four distinct phases:



## APPLICATION PROCESSING

### Application Processing

- Review and analysis of applications to determine if the Bank's eligibility criteria is met, validate the scoring and determine financial feasibility of the project followed by an issuance of a commitment for subsidy.

## SCHEDULE FOR ANNUAL COMPETITIVE ROUNDS

FHLB NY will conduct one Competitive AHP application period annually. The application deadline date for receipt of applications by the FHLB NY for the 2018 Competitive AHP offering will be announced approximately 45 calendar days prior to the deadline.

## MINIMUM ELIGIBILITY REQUIREMENTS

FHLB NY requires all projects that apply for and receive Competitive AHP subsidy meet the following ten minimum eligibility requirements:

1. Using AHP subsidy to finance the purchase, construction, or rehabilitation of owner-occupied or rental housing;
2. Using the AHP subsidy within 12 months of approval to procure other financing or draw funds down;
3. Demonstrating site control by the project's sponsor by providing satisfactory current executed third-party documentation that evidences the primary sponsor has obtained control of each parcel that comprises the project;
4. Demonstrating project feasibility by providing development and operating budgets that reflect a need for AHP subsidy and reasonable costs; documentation from other funding sources that offer reasonable terms; and other information showing that the project is likely to be completed, and occupied;
5. Indication that the AHP subsidy will not be used for non-eligible costs;
6. Using AHP subsidy for refinancing only if specific conditions are met;
7. Agreeing to execute and record appropriate documents to secure the AHP subsidy throughout the project's long term retention period;
8. Having a sponsor who is qualified and able to perform its responsibilities committed to in the Competitive AHP application; and
9. Complying with applicable Fair Housing Laws; and local building code standards,
10. The rate of interest, points, fees, and any other charges for all loans that are made for the project in conjunction with the AHP subsidy shall not exceed a reasonable market rate of interest, points, fees, and other charges for loans of similar maturity, terms, and risk.

**In addition to the requirements noted above, Owner-occupied and Rental Projects have the following eligibility requirements:**

### **Owner-Occupied Housing**

- a) AHP subsidy must be used exclusively to assist in financing the purchase, construction, or rehabilitation of a 1-to-4-family owner-occupied dwelling, condominium, or cooperative unit for a qualified household whose income does not exceed 80% of the area median, adjusted for family size, based on the median income standard that the project sponsor selected from the list specified in the Plan.
- b) At the time that a household is qualified for participation in an AHP-assisted owner-occupied housing project by the sponsor, the household must have an income that meets the income occupancy targets specified and approved in the competitive application to the AHP.
- c) A maximum of \$500 in AHP subsidy per household may be used to finance homebuyer education, only in cases where:
  - i. Such costs were incurred in connection with a qualified household who has attended and successfully completed a formal counseling program;
  - ii. The cost of such counseling has not been covered by another funding source, including the FHLBNY Member Financial Institution;
  - iii. The amount of the AHP subsidy funded to each household, including any homebuyer counseling costs, must be reflected in the AHP Subordinate Mortgage and on the HUD-1 Settlement Statement or Closing Disclosure with the exception of owner-occupied rehabilitation projects ; and,
  - iv. If applicable, proof of homeownership counseling costs.

### **Rental Housing**

- a) AHP subsidy must be used exclusively to assist in financing the purchase, construction, or rehabilitation of a single-family or multi-family rental housing project where at least 20% of the units (or beds, if applicable) in the project are reserved for and occupied by qualified households whose income does not exceed 50% of the area median income, adjusted for family size, based on the median income standard that the project sponsor selected from the options specified in the Plan.
- b) Upon initial occupancy of the AHP assisted rental unit, a household must have an income that meets the income occupancy targets specified and approved in the Competitive AHP application.
- c) For an AHP assisted rental project that is already occupied, a household must have an income that meets the income occupancy targets specified and approved in the Competitive AHP application.
- d) A rental unit must be affordable, which means that:
  - i. The rent charged to a household for a unit that has been reserved for occupancy by a household with an income at or below 80 percent of the median income for the area, does not exceed 30 percent of the income of a household of the maximum income and size expected, under the commitment made in the AHP application, to occupy the unit (assuming occupancy of 1.5 persons per bedroom or 1.0 persons per unit without a separate bedroom); or
  - ii. The rent charged to a household, for rental units subsidized with Section 8 assistance under 42 U.S.C. § 1437f or subsidized under another assistance program where the rents are charged in the same way as under the Section 8 program, if the rent complied with this at the time of the household's initial occupancy

and the household continues to be assisted through the Section 8 or another assistance program, respectively.

### **Project Feasibility**

- a) It must be likely for a project to be completed and occupied. FHLBNY has established cost guidelines that will be used to analyze and evaluate all projects during the life cycle of the project. FHLBNY reserves the right to consider project factors that are outside of the expected ranges stated within these guidelines, on a case-by-case basis, if reasonable explanations and adequate documents are presented.
- b) During the Competitive AHP application review process, FHLBNY will assess a project's demonstrated need for AHP subsidy, likelihood to be developed in a timely manner, and capacity to be operated in a financially sound manner. Projects that involve the use of AHP subsidy must demonstrate that the proposed targets are reasonable and AHP funds can be used effectively within a three-year period towards the completion of the project. FHLBNY shall evaluate all projects in accordance with the criteria as specified in section "Time Limits On The Use of AHP Subsidy."
- c) A project's sponsor must be qualified and able to perform its responsibilities as committed to in the application for AHP subsidy. FHLBNY, in its sole discretion, may prohibit a sponsor organization from qualifying for any new funding reservations of AHP subsidy, if the sponsor organization has committed AHP funds to other projects that are not fully drawn down.
- d) A project, as proposed, must comply with applicable federal and state laws on fair housing and housing accessibility, including, but not limited to, the Fair Housing Act, the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Architectural Barriers Act of 1969. The sponsor must also demonstrate how the project will be affirmatively marketed.
- e) All owners of AHP-assisted units must execute an AHP Subordinate Mortgage at time of funding and duly record the AHP Subordinate Mortgage with the appropriate municipal clerk's office.
- f) If AHP subsidy is proposed to refinance an existing mortgage loan on a single-family or multi-family residence, the application must furnish adequate evidence that the equity proceeds generated from the refinance, for an amount consistent with the requested AHP subsidy, shall be used only for the purchase, construction, or rehabilitation of additional housing units that meet the minimum eligibility requirements as outlined in this Plan.

### **FHLBNY Additional District Eligibility Requirements**

- a) Rental projects are limited to a per unit average of \$40,000 in AHP subsidy;
- b) Owner-occupied projects are limited to a maximum of \$40,000 in AHP subsidy per dwelling (inclusive of all AHP subsidies provided under the FHLBNY's set aside program);
- c) Limits the maximum amount of AHP subsidy granted to any one project to no more than seven percent (7%) of the total communicated subsidy available during a given competitive offering (not to exceed the \$40,000 per unit limit); and,
- d) Limits the amount of AHP subsidy to any project to no more than seven percent (7%) of the total initial communicated subsidy available for a given competitive offering. In cases of multiple AHP application submissions across multiple rounds, that pertain to a single project that is programmatic in nature (i.e., down payment/closing cost initiatives, owner-occupied rehabilitation programs or sponsor financed-type initiatives) the total AHP subsidy requested for all such submissions may be no more than seven percent (7%) of the total subsidy available during a given competitive offering.



## **MEDIAN INCOME STANDARDS**

FHLBNY has designated specific area median income (“AMI”) standards that can be used to qualify AHP-assisted households, depending on the nature of the project.

For the U.S. and Puerto Rico, owner-occupied projects must select either:

1. The median income for the area, as published annually by U.S. Department of Housing and Urban Development (“HUD”); or
2. The applicable median family income, as determined under 26 U.S.C. § 143(f) (Mortgage Revenue Bonds) and published by a State agency or instrumentality.

For the U.S. Virgin Islands, owner-occupied projects must select the median family income for the area as published annually by HUD.

Rental projects must use the median income for the area, as published annually by HUD.

Rental or Owner-occupied projects that serve households that are eligible for assistance from a Tribally Designated Housing Entity or housing department may use the greater of the HUD or Native American Housing Assistance and Self Determination Act of 1996 (“NAHASDA”) income guidelines.

FHLBNY may verify that the occupancy targets identified at time of application to the Competitive AHP are consistent with occupancy targets represented to other funding sources. The selected AMI standard must ensure that the project can feasibly attain its proposed targets in conformity with the requirements of the AHP and any applicable federal or state financing programs. The standard chosen will be applied to the project for the life of the Competitive AHP project life cycle. The FHLBNY may, on a case-by-case basis, allow a project sponsor the option to substitute one approved income standard for another, provided that only one income standard pertains to all households within a given project.

## **SCORING GUIDELINES**

The FHLBNY will only score those applications that meet the AHP eligibility standards. Each FHLBNY AHP scoring category, identified below, has been designated as either a fixed point or a variable point criterion in accordance with the following methodology:

- The criteria that comprise variable-point objectives may be satisfied in whole or in part. Therefore, the number of points awarded to an application for meeting a variable point objective may be partial and can vary, depending on the extent to which the project can realistically satisfy the criterion.
- Fixed-point objectives cannot be achieved in varying degrees and are either satisfied, or not. An application that adequately meets a fixed-point criterion shall be awarded the total number of points allocated to that criterion.

The FHLBNY has established 100 points as the highest possible score, allocated among nine (9) separate scoring categories. In accordance with the AHP Regulation, the Targeting objective must have a value of at least 20 points and each remaining category must carry a minimum value of five (5) points.

### Scoring Criteria

- a) Use of donated or conveyed government-owned or other properties  
5 points – Variable

The creation of housing using a significant proportion (at least 20%) of units or land:

- conveyed at any price by the Federal government or any agency or instrumentality thereof within five (5) years of the application deadline; or
- donated for a nominal price (\$1,000 or less) or conveyed at a price significantly below fair market value by any other party. For properties donated, or conveyed at a nominal price, or at a price significantly below market value within five (5) years of the application deadline, points awarded are based on the project meeting the applicable criteria.

Arms-Length Transaction - Donations of at least 20% of land or units from any party are eligible for up to five points provided that the conveyance of land or units was not from an affiliated party (e.g., transfers from a nonprofit organization to a nonprofit affiliate or from a general partner to a partnership entity).

Long-term Leases - Projects with annual land lease payments of \$1,000 or less over the retention period will receive full credit. (NOTE: The lease must be effective for at least 15 years from the date of the Certificate of Occupancy for rental projects). Long-term leases from a federal government entity greater than or equal to the AHP retention period also qualify for one point.

Federal Government - Properties conveyed by the federal government, its agencies, or instrumentalities at any price are automatically awarded one point, provided that the land or units constitute at least 20% of the project's total units. "Federal government or any agency or instrumentality" refers to the United States government and does not include state, county, or other local governments or their related agencies or instrumentalities.

Properties donated or conveyed for more than a nominal price, but below fair market value (FMV) may qualify for points in this category. The property's FMV must be established by an "As-is" appraisal or Broker Price Opinion. For projects greater than 25 units, the FMV will be determined by an as-is appraisal dated that is within six months of the fully executed acquisition agreement. Smaller projects (25 units or less) may provide a Broker Price Opinion ("BPO"). The appraisal, or if applicable a BPO, must specify an "as of" valuation date that is within six months of the fully executed acquisition agreement. Sponsors or developers that acquired property for \$1,000 or less would not need to submit an appraisal or BPO. The points are awarded as follows:

- 5 points: Property is donated or conveyed for less than or equal to 10% of FMV, or for less than or equal to \$1,000
- 3 points: Property is conveyed for greater than 10% and less than or equal to 30% of FMV
- 1 point: Property that is donated or conveyed at any price by the federal government or an instrumentality of the federal government

Points will be awarded based on the project meeting the above criteria and receipt of acceptable documentation.

b) Sponsorship by a not-for-profit organization or government entity  
7 points – Variable

Eligible projects are sponsored by: either a private, not-for-profit corporation, as designated under the Internal Revenue Service (“IRS”) Code; or a state or political subdivision of a state, a state housing agency, a local housing authority, a Native American Tribe, an Alaskan Native Village, or the government entity for Native Hawaiian Home Lands. A project sponsor is defined as an organization that has ownership interest (including any partnership interest) or an organization that is integrally involved in a project, such as by exercising control over the planning, development, or management of the project, or by qualifying borrowers and providing or arranging financing for the owners of the units, where applicable. Points will be awarded as follows:

- i. If a sponsor of an ownership project is integrally involved in the development of a project as evidenced by the following, seven (7) points will be awarded:
  - ownership of the land or building(s) that comprise the project during the construction and/or rehabilitation phase of development; and/or
  - responsibility as the primary contractor and/or construction manager of the properties that comprise the project.
- ii. If a sponsor of an ownership project evidences that they will perform at least one of the following roles, 3.5 points will be awarded:
  - screening or qualifying prospective project households;
  - arranging or providing mortgage financing;
  - conducting credit or homeownership counseling;
  - participating in the marketing of project units; or
  - other roles that demonstrate that the sponsor is integrally involved in the development of the project.
- iii. If a sponsor of a rental project owns or will own the land and/or the building(s) that comprise the project, seven (7) points will be awarded.

In order to confirm the sponsor’s ownership role, FHLBNY shall evaluate such supporting documentation as deeds, contracts of sale, purchase options, organization chart, or lease agreements.

- iv. If a sponsor of a rental project that is utilizing Low-Income Housing Tax Credits (LIHTC) is a not-for-profit entity and has or will have a majority ownership interest (e.g. 51% ownership interest or greater of the general partner / managing member) within the final ownership structure of the project, seven (7) points will be awarded.

In order to confirm the sponsor’s ownership role, FHLBNY shall evaluate such supporting documentation as a tax credit allocation award notice, partnership agreement, organization chart, or tax credit investor’s commitment letter.

- v. If a sponsor of a rental project that is utilizing LIHTC is a not-for-profit entity and will hold an ownership interest in the project, other than being a general partner, or holds a minority share of the general partner interest within the final ownership structure/limited partnership and is integrally involved in the project, 3.5 points will be awarded. In order to confirm the sponsor's ownership role, the FHLB NY shall evaluate such supporting documentation as a tax credit allocation award notice, partnership agreement, organization chart, or tax credit investor's commitment letter.

c) Targeting

The extent to which a project creates housing for very low-, low- or moderate-income households.

20 points – Variable

For purposes of this scoring criterion, applications for owner-occupied projects and rental projects will be scored separately.

i. Rental Projects

FHLB NY shall confirm the percentage of units that a particular rental project has proposed to reserve for households who earn  $\leq 50\%$  of area median income ("AMI"), adjusted for family size:

- If the percentage is less than 20%, the project cannot meet the AHP statutory minimum requirement and shall be eliminated from the competition.
- If the percentage is greater than or equal to 60%, the project receives the maximum 20 point score.

Applications for projects with less than 60 percent of the units reserved for occupancy by households with incomes at or below 50 percent of the median income for the area shall be awarded points based upon the below formula.

$$24 \left[ \frac{B - .20(A)}{.80(A)} \right] + 16 \left[ \frac{C}{.80(A)} \right] + 8 \left[ \frac{D}{.80(A)} \right] + 0[E] = Points$$

Where:

A = Total number of AHP-assisted units

B = Number of Units  $\leq 50\%$  of AMI

C = Number of Units  $> 50\%$  and  $\leq 60\%$  of AMI

D = Number of Units  $> 60\%$  and  $\leq 80\%$  of AMI

E = Number of Units  $> 80\%$  AMI

ii. Owner-Occupied Projects

To meet the AHP statutory requirements, owner-occupied project applications must be for units that are targeted only to households who earn 80% or less of AMI. Project applications that include units targeted to households earning greater than 80% of AMI shall be eliminated from the competition.

Owner-occupied projects will be scored based upon the following formula:

$$20 [ B / A ] + 14 [ C / A ] + 3 [ D / A ] = \text{POINT(S)}$$

Where:

A = Total number of AHP-assisted units

B = Number of Units  $\leq$  50% of AMI

C = Number of Units  $>$  50% and  $\leq$  60% of AMI

D = Number of Units  $>$  60% and  $\leq$  80% of AMI

d) Housing for Homeless Households

5 points – Variable

The financing of rental housing, excluding overnight shelters, reserving at least 20% of the units for homeless households, the creation of transitional housing for homeless households permitting a minimum of six months occupancy, or the creation of permanent owner-occupied housing reserving at least 20% of the units for homeless households.

The term “homeless”, “homeless individual,” or “homeless person” shall mean an individual or family who is homeless or at risk of homelessness based on third-party evidence demonstrating that the individual or household:

- i. Lacks a fixed, regular, and adequate nighttime residence;
- ii. Has a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings or an individual who is exiting an institution where he or she temporarily resided;
- iii. Lives in a supervised publicly or privately operated shelter designated to provide temporary living arrangements;
- iv. Will imminently lose their housing, including housing they own, rent, or live in or family that they must leave within 14 days;
- v. A family with children who has experienced a long term period without living independently in permanent housing; or
- vi. Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life threatening conditions in the individual's or family's current housing situation.

Even if an individual or household’s current living situation may appear to qualify under the above criteria, the FHLBNY will not consider the following individuals or households as having met the criteria for homelessness:

- i. Someone who is currently imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

Points will be awarded based on the percentage of total units in the project meeting the above criteria as determined upon receipt of acceptable contractual evidence (e.g., referral letters, a grant award letter, executed contract or similar evidence from a third party entity) that requires the units within a certain project to be reserved for and occupied by a specified number of homeless households.

e) Promotion of Empowerment  
5 points – Variable

Points will be awarded based on a given project's ability to provide affordable housing in combination with a program that offers certain services or activities that economically empower project residents. Activities must be project specific and available to all tenants.

Acceptable economic empowerment for rental projects will include the following:

- Case management programs that support the residents' ability to find or sustain employment or be self-sufficient or promote their economic betterment
- Youth programs, including daycare services or formal recreational activities that serve as a substitute for childcare and thereby enable heads of household to find or sustain employment
- Primary health care services for households and their children
- Vaccination or medical screening programs for households and their children
- Job training programs or employment opportunities
- Services that provide residents with credit counseling, budgeting courses, or other financial education services
- Resident management opportunities, including involvement in decision making affecting the creation or operation of the project; and,
- Project-specific private transportation services for households to and from places of employment

Acceptable economic empowerment for owner-occupied projects will include the following:

- Project-specific case management programs that support the owner-occupants' ability to find or sustain employment or be self-sufficient or promote their economic betterment;
- Project-specific youth programs, including daycare services or formal recreational activities that serve as a substitute for childcare and thereby enable heads of household to find or sustain employment;
- Project-specific primary health care services for households and their children;
- Project-specific vaccination or medical screening programs for households and their children;
- Project-specific job training programs, employment opportunities or other educational services that economically benefit owner-occupants;



- Pre-purchase counseling for prospective first-time homebuyers, including all credit counseling, budgeting courses, financial literacy classes, or other financial services that economically benefit owner-occupants (as evidenced by a formal catalogue or syllabus, including an educational curriculum and a detailed synopsis of topics, that specifies the standard timeframe of the classes as well as the name of the agency or organization that will conduct the counseling);
- Foreclosure prevention (as evidenced by a formal catalogue or syllabus, as specified above);
- Predatory lending prevention and awareness counseling (as evidenced by a formal catalogue or syllabus, as specified above);
- Workshops for existing homeowners on maintenance, repairs, and improvements (evidenced by a formal catalogue or syllabus, as specified above);
- Resident management opportunities, including involvement in decision making affecting the development, design or operation of the project;
- Individual Development Accounts or “sweat equity” activities; and
- Project-specific private transportation services for households to and from places of employment.

A project will receive points based upon the following schedule:

1 activity:	1.25 points
2 – 3 activities:	2.5 points
4 – 5 activities:	3.75 points
≥ 6 activities:	5 points

f) First District Priority  
15 points – Variable

- i. In-District Projects: Projects that are located in New York, New Jersey, Puerto Rico, and the U.S. Virgin Islands will receive five (5) points.
- ii. Economic Diversity: Projects that incorporate mixed-income housing in the development scheme will receive up to 10 points.
  - a. Either a rental or owner project must have at least 20 percent or more units that are targeted to households with income greater than 60 percent of the AMI (the total number of AHP assisted units in the project will be used to determine the economic diversity score), and must be located in a low or moderate income neighborhood;

A Project will receive points based upon the following percentage of units above 60% of AMI (i.e., moderate income):

≥ 20% to < 30% reserved for moderate or higher income Units:	5 points
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≥ 30% reserved for moderate or higher income Units: 10 points

*Note: Owner-occupied project applications may not include units targeted to households greater than 80% of AMI.*

Or

- b. Either a rental or owner-occupied project must have at least 75 percent of the very low income units in the project located in a census tract(s) with a median family income that is equal to or greater than 100 percent of the regional median family income (Metropolitan Statistical Area [MSA]/Metropolitan Division [MD] or non-MSA/MD) as published on the Federal Financial Institutions Examination Council's (FFIEC) website. To receive points under this part of the definition, all properties in the project must be known and identified and the FFIEC printout must be included with the application for all project site(s). In instances where sites are known but addresses are not identified, FFIEC census tract documentation reflecting the exact property/properties must be provided.

A Project will receive points based upon the following schedule of units available to very low income households:

≥ 75% to < 100% very low income Units located in the qualifying tract: 5 points

100% very low income Units located in the qualifying tract: 10 points

g) Second District Priority

25 Points – Variable

- i. Project Readiness – A project that demonstrates readiness in accordance with the following criteria will qualify for a maximum of ten (10) points:
- Approvals: If the sponsor/developer has obtained final site plan approval or evidences that the project may be developed as-of-right (i.e. the development complies with all applicable zoning regulations and does not require any discretionary action by the city's planning commission or local municipality), five (5) points will be awarded.
  - Other Funding Commitment Procurements: With the exception of projects where AHP is requested to provide 50% or more of the project's funding, five (5) points will be awarded to sponsors who have procured or closed on at least 75% of a project's proposed permanent funding sources. This percentage will be determined by dividing the total permanent funding sources procured by the total project costs less the amount of the AHP subsidy request.
- ii. Owner-Occupied Projects – Five (5) points for projects in which 100% of the primary units in the project are owner-occupied units.
- iii. Small Projects – Projects with 25 units or less are defined as small projects and will qualify for five (5) points.



- iv. Desirable Sites – Up to five (5) points are available for projects that can demonstrate proximity/access to public transportation and/or a food retailer. Projects involving multiple/scattered sites shall require a separate map for each location. Requirements for the scoring initiative must be demonstrated at all sites to be eligible for points. All sites of a scattered-site project would need to be within the identified distance of transit and/or a food retailer (though not necessarily the same individual stop or store).
- (1) Proximity to Public Transit and/or Food Retailer
    - (a) Applicants that can demonstrate proximity to a public transportation stop (i.e. bus stop, train stop) can receive 2.5 points. Appropriate evidence must be furnished to verify that the project is located within 1/4 mile of a bus stop OR 1/2 mile from a train station.
    - (b) Applicants that can demonstrate proximity to a food retailer can receive 2.5 points. Appropriate evidence must be furnished to verify that the project is located within 1 mile from a food retailer.
  - (2) Documentation Requirements
    - (a) Documentation must include a Google site map indicating the specific location of the amenity in proximity to the project site. The map must be legible and display or calculate the distance from the project site to the public transportation stop and have a clear scale. An indication of major roads/intersections must be included on the map. In lieu of a Google site map, a letter from the municipality or a market study that explicitly identifies the distance of the project site from the amenity is acceptable. *Photographs of the site and surrounding area including the applicable transportation stop must be provided.*
  - (3) Criteria for a Food Retailer – A food retailer must either be a USDA Supplemental Nutrition Assistance Program (SNAP) certified store OR sell food for home preparation and consumption and meet the criteria below:
    - Offer for sale, on a continuous basis, at least three varieties of qualifying foods in each of the following four staple food groups, with perishable foods in at least two of the categories:
      - Meat, poultry or fish
      - Bread or cereal
      - Vegetables or fruits
      - Dairy products
    - Definitions
      - Continuous basis means that on any given day of operation, a store must offer for sale and normally display in a public area, qualifying staple food items, with no fewer than three different varieties of food items in each of the four staple food categories.
      - Perishable foods are items that are either frozen staple food items; or, fresh, unrefrigerated or refrigerated staple food items that will spoil or suffer significant deterioration in quality within 2 to 3 weeks.
      - Variety means different types of foods, such as apples, cabbage and squash in the fruit or vegetable category; or, milk, cheese and butter in the dairy category. The following does not meet the variety requirement: having different brands and sizes;

- having the same item but with varying ingredients (e.g., plain sausage and spicy sausage); or having the same item but offering different types of the item (e.g., Granny Smith and Red Delicious apples). Food items with multiple eligible ingredients (e.g., pizza, frozen dinners) will be counted only once as a staple food, in the category of the main ingredient.
- o Staple foods do not include accessory foods such as coffee; tea; cocoa; soda; non-carbonated drinks such as sports drinks, punches, and flavored waters; candy; condiments; spices; hot foods; or, foods ready to go or made to take out, like prepared sandwiches or salads.
  - o Ineligible firms include, but are not limited to, stores selling only accessory foods or ice cream, specialty doughnut shops, and restaurants (i.e. firms whose primary gross retail sales are from hot and/or cold prepared foods not intended for home preparation and consumption shall not qualify for participation as a food retailer). This includes firms that primarily sell prepared foods that are consumed on the premises or sold for carryout.
- v. Supportive Housing – Five (5) points will be awarded for the financing of housing in which at least 20 percent of the units are reserved for occupancy by households with special needs. A supportive housing project must have a social services plan that addresses the needs of the identified special needs population AND a fully executed agreement with a social service provider. *Units should not be double-counted if that unit qualifies under more than one special need category.*
- (1) Special Needs are defined as:
- (a) *Physically and/or mentally disabled* – A person (1) with a physical and/or mental (i.e., psychiatric disorder) impairment that results in substantial functional limitations or (2) who is deemed physically and/or mentally disabled and by reason of this impairment, the person is unable to perform life roles in at least one of the major domains of living, working, learning or socializing.
  - (b) *Developmentally disabled* – A person (1) with a severe chronic developmental disability who has been diagnosed with mental retardation or (2) who is deemed developmentally disabled and by reason of this impairment, the person is unable to perform life roles in at least one of the major domains of living, working, learning or socializing.
  - (c) *Persons recovering from domestic abuse (physical abuse)* – A person who has been subjected to a willful action of inflicting bodily injury or physical mistreatment.
  - (d) *Persons recovering from domestic abuse (emotional abuse)* – A person who has been subjected to a willful action of inflicting emotional mistreatment, but has not been physically abused.
  - (e) *Persons recovering from chemical dependency* – A person with a history of substance abuse and/or dependency who is receiving treatment for the abuse and/or dependency from a service provider.
  - (f) *Ex-offender* – A person that was previously convicted of a crime and was detained in a local, state or federal jail or prison.

- (g) *Persons with HIV/AIDS* – A person with a medical diagnosis of Auto Immune Deficiency Syndrome or who is medically diagnosed as HIV positive and who is receiving medical care for the condition diagnosed.

- h) AHP Subsidy Per Unit (“SPU”)  
10 points – Variable

Points will be awarded based upon the formula below.

$$[(\text{Maximum SPU} - X) / (\text{Maximum SPU} - \text{Minimum SPU})] \times 10$$

Where:

Maximum SPU = \$40,000

X = SPU requested

Minimum Rental SPU = \$9,119

Minimum Owner-occupied SPU = \$15,000

Minimum SPU is for scoring purposes only. An applicant can request any subsidy amount within the stated guidelines (up to \$40,000 per unit). For purposes of this scoring criterion, applications for owner-occupied projects and rental projects will be scored separately.

- i) Community Stability  
8 points – Variable

Projects that promote community stability may be awarded up to eight (8) points, as follows:

i. Preservation of Housing Units

If a project preserves existing occupied housing units, up to eight (8) points will be awarded, subject to a project’s satisfaction of the following conditions:

Rental Projects:

- Confirmation that a rental project is operational, has at least 50% of its units occupied at time of application to the AHP, and displacement of the current occupants will not occur or, if displacement of the current occupants will occur, adequate procedures and a formal relocation plan are in place that will minimize the impact of such displacement;
- The project will undergo rehabilitation or other housing-related capital improvements that average at least \$15,000 per unit, excluding contingency; and
- The rehabilitation work must be sufficient to achieve the Housing Quality Standards established by the HUD and ensure that the remaining economic life of the major building systems will survive the 15-year AHP compliance period.

Owner-occupied Projects:

- Confirmation that a owner-occupied project involves the rehabilitation of dwellings that are owned and occupied by existing homeowners;
- The cost of renovating or rehabilitating the average project unit is at least \$10,000; and
- The rehabilitation work for each household must be sufficient to address all local building code requirements and ensure that the remaining economic life of the major building systems will survive the 5-year AHP compliance period.

ii. Difficult Development Area (“DDA”) or Qualified Census Tract (“QCT”)

A project can be awarded up to 8 points for demonstrating it was constructed or is located in a DDA or QCT. In order to qualify for this category, at least 80% of its proposed units will involve the creation of new housing units, either through rehabilitation or new construction, on sites that are located within DDA or QCTs, as determined under Internal Revenue Code Section 42 and in effect as of the submission date of the application for AHP subsidy and published on HUD’s website.

## **METHODOLOGY TO BREAK SCORING TIES**

The below methodology will be utilized in the following situations:

- If two applications receive identical scores and those applications are on the threshold between primary and alternate approval;
- If two applications receive identical scores and those applications are on the threshold between alternate approval and not being approved.

**Step 1:** Compare the applications’ scores in the Second District Priority. The application that scored the highest number of points within this component will be ranked higher. If the applications’ scores are still tied, proceed to Step 2.

**Step 2:** Compare the applications’ scores under the First District Priority for the In-District component. The application that scored the highest number of points within this component will be ranked higher. If the applications’ scores are still tied, proceed to Step 3.

**Step 3:** Compare the applications’ scores under the Community Stability category in the following order until the tie is resolved: Preservation of Housing Units, and Difficult Development Area or Qualified Census Tract. The application that scored the highest number of points in the first component above that breaks the tie will be ranked higher.

## **PROGRESS REPORTING**



Progress  
Reporting

- Periodic review of the progress made by the project; review and approval of drawdown requests; and determination of project modifications.

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## **TIME LIMITS ON THE USE OF AHP SUBSIDY**

The AHP subsidy must be used by the sponsor to procure other financing commitments within 12 months of the date commitment and drawn down within 36 months of the commitment date. The commitment period is 36 months with 6 month progress reporting intervals.

## **PROGRESS REPORTING REQUIREMENTS**

The total duration for progress reporting will be 48 months during which progress milestones will be reviewed to ensure that progress is being made towards project completion. The FHLBNY reserves the right, in its sole discretion, to cancel the AHP commitment or recapture funds, at any time during the Progress Reporting period, if the project does not demonstrate satisfactorily advancement as per the progress milestones.

For every progress reporting milestone, the sponsor is responsible for providing (1) an updated timetable that provides reasonable assurance that the development of the project is imminent and is scheduled to be completed in a timely manner and (2) confirmation that the project continues to demonstrate a need for AHP subsidy. In addition the following milestone criteria must also be met:

- a) By the 6-month milestone, the sponsor is responsible for submitting a progress report to the FHLBNY that includes:
  - i. A certification that the sponsor/owner has completed AHP Life Cycle training.
- b) By the 12-month milestone, the sponsor is responsible for submitting a progress report to the FHLBNY that includes:
  - i. A certification that the sponsor/owner maintains control of the project site(s).
- c) By the 18-month milestone, the sponsor is responsible for submitting a progress report to the FHLBNY that includes:

- i. Evidence that the sponsor/owner has obtained building permits, if applicable; and
  - ii. Evidence that at least 100% of all proposed sources of financing (for both the construction and permanent phases of development) have been committed, if applicable.
- d) By the 24-month milestone, the sponsor is responsible for submitting a draw down requisition(s) to the FHLBNY.
- e) By the 30-month milestone, the sponsor is responsible for submitting a progress report to the FHLBNY that includes:
- i. A detailed update on the status of construction.
- f) If there is a balance of AHP subsidy that remains on account, it should be fully funded by the 36-month milestone.
- g) At the 42-month milestone, a progress report is required to demonstrate that a rental project is leasing up at a sufficient rate to reach the 80% occupancy threshold by 48 months.
- h) By the 48-month milestone, the project should be fully constructed and at least 80% occupied.

FHLBNY reserves the right, in its sole discretion, based on progress reports and other supporting documentation, to cancel a commitment under certain circumstances, including but not limited to the following:

- a) Delays related to the development of an approved project, including, but not limited to, the failure to construct and/or rehabilitate the number of units proposed in the application for AHP subsidy in a timely manner;
- b) The failure of an approved project to feasibly attain other targets, objectives, and obligations that were set forth in the application for AHP subsidy, exclusive of formally authorized modifications;
- c) The inability of the project's sponsor to procure all required financing (for both the construction and permanent phases of development) in a timely manner; or
- d) Noteworthy revisions, errors, or omissions related to a project's proposed financial structure (i.e., development budget and operating budget), including any changes that adversely impact the project's demonstrated need for AHP subsidy and timeliness of completion; or
- e) The project sponsor's failure to provide complete and accurate information and documentation required and or requested by the Bank in a timely fashion.

### **Increases in Subsidy**

Projects with a Competitive AHP award may, under certain circumstances, request an increase in AHP subsidy which must be made through the modification process. The decision to increase AHP funds to previously awarded projects is at the sole discretion of FHLBNY and must be approved by its Board of Directors. FHLBNY will take into consideration the extent to which the project has met the regulatory thresholds and the amount of AHP funds

available to fund such modification. Sponsors of projects who request to modify and increase an existing reservation of AHP subsidy must satisfy the following criteria:

- a) All regulatory thresholds for a modification, as stated in §1291.5(f) of the AHP Regulation;
- b) The modified project must score competitively in the funding round in which it was approved and continue to meet all feasibility guidelines;
- c) The total amount of AHP subsidy from the original award plus the increase through the modification cannot exceed the *lesser* of the following: (i) maximum percentage of the total subsidy available in the funding round in which it was originally approved; **or** (ii) the maximum per unit limit in the funding round in which it was originally approved;
- d) Requests to increase the AHP commitment are limited to change orders, overruns limited to construction/rehabilitation costs or repricing of tax credits that resulted in the loss of tax credit equity. Conversely, such requests cannot be used to reduce a deferred developer fee, finance increases to soft costs or offset escalated reserve requirements.

The sponsor of an incomplete project that still requires additional funding and does not meet the foregoing thresholds, may reapply for a larger allocation of AHP subsidy in an upcoming AHP competitive offering. However, under such circumstances, the sponsor will be required to cancel their existing AHP commitment prior to submitting a new AHP application.

Fully constructed/rehabilitated projects are not permitted to submit a new AHP application.

## **DRAWDOWN REQUISITIONS**

A FHLBNY Member Financial Institution that maintains an active AHP commitment may request to drawdown on behalf of the project sponsor all or part of the AHP subsidy reservation at their discretion subject to review and approval by FHLBNY.

The following milestones must be met prior to submitting a drawdown requisition:

- The sponsor has ownership of the site(s);
- All of the building permits have been obtained;
- All of the project's construction and permanent financing in place; and,
- The sponsor can demonstrate that enough construction work has been completed to warrant reimbursement.

The purpose of the financial review of a drawdown requisition is to ensure that the project has: (1) continued to demonstrate a need for subsidy; (2) can exhibit that it will be operationally sustainable throughout the retention period; and (3) meets the AHP's financial feasibility requirements.

The prerequisite to processing an AHP drawdown requisition is the timely, complete and accurate submission of the following types of supporting source documents:



- AHP Funding Application for Rental or Owner-occupied Projects,
- AHP Rental or Owner-occupied Project Workbook,
- AHP Project Construction Form, if applicable,
- Site Control evidence such as sales contracts, deeds, and ordinances,
- Site approval evidence such as building permits and certificates of occupancy,
- Cost documentation such as the Application and Certificate for Payment or Final Cost Certification,
- Financial documentation such as loan commitments, notes, mortgages, and grant agreements, and financial statements,
- AHP Subordinate Mortgage,



## INITIAL MONITORING

### Initial Monitoring

- Gathering and analysis of documentation to determine if satisfactory progress is being made towards occupancy, subsidies were used for eligible purposes, costs were reasonable and services have been provided.

FHLBNY shall monitor each AHP owner-occupied and rental project under its Competitive AHP application program prior to, and within a reasonable period of time after, project completion to determine, at a minimum, whether:

- a) The project is making satisfactory progress towards completion and remains in compliance with the commitments made in the approved Competitive AHP application, executed agreements and in accordance with FHLBNY policies.
- b) Following completion of the project, satisfactory progress is being made towards occupancy of the project by eligible households; and
- c) Within a reasonable period of time after project completion, the project meets the following requirements, at a minimum:
  - i. The AHP subsidies were used for eligible purposes according to the commitments made in the approved Competitive AHP application;
  - ii. The household incomes and rents comply with the income targeting and rent commitments made in the approved Competitive AHP application;
  - iii. The project's actual costs were reasonable in accordance with FHLBNY's project cost guidelines, and the AHP subsidies were necessary for the completion of the project as currently structured;
  - iv. Each AHP-assisted unit of an owner-occupied project and rental project is subject to recorded AHP Subordinate Mortgage; and
  - v. The services and activities committed to in the approved Competitive AHP application have been provided in connection with the project.

## INITIAL MONITORING REVIEW

AHP owner-occupied and rental projects under the Competitive AHP program enter the Initial Monitoring phase once the entire approved AHP subsidy has been fully drawn, the project is fully constructed and at least 80% occupied. Within eighteen months of entering initial monitoring the FHLBNY should have confirmed that the project has fully attained the proposed levels of performance that were made in the AHP application. In addition to the

supplemental documentation that was previously received during the AHP funding process, the FHLBNY shall request submission of the following documents, as applicable:

### Owner-occupied Projects

- i. Copies of any outstanding transmittal summaries or HUD-1 Settlement Statements or Closing Disclosures as evidence that the household received the direct benefit of the AHP subsidy;
- ii. Copies of any outstanding Final Truth-in-Lending Disclosure Statements or Loan Estimates;
- iii. Copies of any outstanding income source documents;
- iv. Copies of any outstanding counseling completion certificates;
- v. Confirmation that the project households have benefited from all empowerment activities that were specified and approved in the AHP application;
- vi. Confirmation that the sponsor received the total AHP subsidy from the FHLBNY Member Financial Institution generally within 30 days of the disbursement date ; and
- vii. Copies of any outstanding executed and recorded AHP Subordinate Mortgages.

### Rental Projects

- i. Evidence of timely disbursement of the AHP subsidy from the FHLBNY Member Financial Institution to the project sponsor, or affiliate thereof;
- ii. Copies of final Certificate(s) of Occupancy, Certificate(s) of Substantial Completion, or other comparable documentation;
- iii. An executed 8609 form for projects that have been financed through LIHTC;
- iv. AHP Rental Income Verification Form (reflective of household income, family size, and monthly rent);
- v. Copies of any outstanding income source documents, rental leases, referral letters, and/or rental income subsidy agreements/vouchers that have been issued by public agencies;
- vi. Third-party documentation that confirms all expenses related to the construction/rehabilitation of the project (e.g., a final contractor's application for payment, a final cost certification, and/or an independent auditor's financial report);
- vii. Confirmation that the tenants have benefited from all empowerment activities and/or supportive services that were specified and approved in the AHP application;
- viii. Stabilized income and expense documentation;
- ix. Confirmation that the sponsor received the total AHP subsidy from the FHLBNY Member Financial Institution generally within 30 days of the disbursement date; and,
- x. If applicable, copies of any outstanding executed and recorded AHP Subordinate Mortgages.

## LONG TERM MONITORING

### Long Term Monitoring

- Periodic gathering of information to verify that household incomes and rents comply with the income targeting and rent commitments, respectively, made in the approved AHP application.

## RETENTION PERIODS

All AHP-assisted projects must continue to comply with the requirements of the AHP Regulation and meet the income targeting and rent commitments set forth in the approved AHP application for a finite period of time, known as the “Retention Period.” The Retention Period:

- a) Shall be five (5) years from the date of closing for an AHP-assisted owner-occupied unit:
  - For owner-occupied rehabilitation projects, the FHLB NY shall consider the Retention Period to be five (5) years from the date of the final cost certification. The final cost certification will evidence completion of the proposed renovations.
- b) Shall be fifteen (15) years from the date of project completion for a rental project:
  - For all rental projects, the FHLB NY has determined that the completion date commences on the issuance date of the Certificate of Occupancy, Certificate of Substantial Completion, or other comparable documentation.

## LONG-TERM MONITORING

Long Term Monitoring occurs during the retention period of an AHP-assisted project or household and during this time, the project or household must continue to operate in accordance with the representations made in the AHP application or subsequent modifications. The Long Term Monitoring period and compliance reporting requirements differ based on the type of project.

### a) **Owner-occupied Projects**

Transfers of title for owner-occupied projects are effectively monitored through deed restrictions, security instruments or the AHP Subordinate Mortgage.

### b) **Rental Projects**

The required documentation schedule for rental projects is as follows:

Long Term Monitoring Documentation Schedule		
Project Characteristics	Status Report Frequency	Annual Certifications
LIHTC allocation	None required	No
AHP subsidy ≤ \$50,000	None required	Yes
Project-based rental assistance	6 years	Yes
AHP subsidy > \$50,000 & ≤ \$400,000	6 years	Yes
AHP subsidy > \$400,000 & ≤ \$750,000	4 years	Yes
AHP subsidy > \$750,000	2 years	Yes

**Rental Projects That Have an Allocation of Federal Low Income Housing Tax Credits**

For rental projects that receive an allocation of Federal Low Income Housing Tax Credits (“LIHTC”) or (“tax credits”) as a funding source, the Bank will rely on the compliance monitoring performed by the state-designated housing credit agency administering the tax credits of the income targeting and rent requirements applicable under the LIHTC Program. The FHLBNY will not obtain and review reports from the tax credit agency or otherwise monitor the project’s long-term AHP compliance.

**Rental Projects Without LIHTCs**

Rental Projects that do not have an LIHTC allocation are subject to the following requirements:

i. Requirements for Project Sponsors

Projects sponsors will be required to submit long-term monitoring reports in accordance with the above Long Term Monitoring Documentation Schedule and related supporting documentation.

In the second year after project completion and annually thereafter until the end of the project’s Retention Period, the project sponsor must maintain documentation and certify to the FHLBNY:

- that that the project continues to be owned and managed in a satisfactory manner;
- that tenant rents and incomes are in compliance with the rent and income targeting commitments which were originally specified in the AHP application;
- that all real estate tax remittances are current;
- that any debt payments on the project are current; and

ii. Income Eligibility Documentation and Rent Structure Verification

FHLBNY must ensure that the incomes of tenants and the rent structure of an AHP-assisted project comply with the income targeting and rent commitments made in the approved AHP application. A risk based sample of the occupied units will be selected for review by the Bank in conjunction with the Status Report. For each household selected as part of the sample, income source documentation and a copy of the rental lease must be submitted. Dependent upon the project characteristics, alternative documentation requirements may exist as follows:

- If a project receives project-based Section 8 assistance, a copy of the Section 8 contract may be submitted to the FHLBNY in lieu of income source documents.
- If a project receives tenant-based Section 8 assistance, a copy of the Section 8 voucher (or other comparable evidence) may be submitted to the FHLBNY in lieu of income source documents.
- If a project receives rent subsidy from a city, county, state, or federal agency that targets very low- and low-income households, a copy of the executed subsidy contract/agreement may, at the discretion of the FHLBNY, be submitted in lieu of income source documents, provided that the income references set forth in the subsidy contract/agreement are consistent with the income targeting commitments made in the Competitive AHP application.
- If a project targets homeless households, the FHLBNY will not require supporting income documentation for the units that are allocated for the housing of homeless households.
- For AHP rental projects that received funds other than tax credits from federal, state, or local government entities, FHLBNY may rely on the monitoring by these entities of the income targeting and rent requirements, provided that FHLBNY can show that: (i) the compliance profiles regarding income targeting, rent, and retention period requirements of the AHP and the other program are substantively equivalent; (ii) the entity has demonstrated and continues to demonstrate its ability to monitor the project; (iii) the entity agrees to provide reports to the FHLBNY on the project's incomes and rents for the full 15-year AHP retention period; and (iv) FHLBNY receives and reviews the reports from the monitoring entity to confirm that they comply with the FHLBNY's monitoring policies.

iii. Requirements for the FHLBNY

- The FHLBNY shall review the Monitoring Reports and supporting documentation provided by project sponsors and/or public agencies regarding tenant rents and incomes in order to verify compliance with the commitments made in the AHP application.
- For the purposes of determining a project's on-going compliance with the approved targets, the FHLBNY will utilize current annual median income data, adjusted for family size, when verifying the eligibility of a new tenant which has been approved to occupy a recently vacated unit.

The FHLBNY staff reserves the right to perform site visits or increase the frequency of monitoring for AHP-assisted projects as needed.

### **SITE VISIT CRITERIA**

Throughout an AHP project's life cycle, the FHLBNY collects documentation to evaluate whether each project is in compliance with the AHP regulation and commitments made in the project's AHP application. The FHLBNY, in its sole discretion, may visit a project site to perform an on-site review.

Factors to be considered when determining whether to conduct an on-site review may include, but are not limited to, the following:

- a) The FHLBNY has obtained information that a project is not in compliance with the AHP regulation or has become aware of possible problems that suggests that a project may not be in compliance with the AHP regulations;
- b) The owner, sponsor, managing agent, or other party associated with the project have demonstrated a pattern of submitting inconsistent, evasive and/or incomplete information;
- c) The FHLBNY suspects the possible misuse of AHP funds, misrepresentation of factual information, the alteration of project documentation, or the failure to complete or continue to operate the project;
- d) The FHLBNY has received credible complaints about the project's development or operation; and
- e) The ability of the project sponsor or owner to develop or operate the project appears to be threatened by newly discovered information or a change in circumstance.

Depending on the circumstances resulting in the FHLBNY's decision to conduct a site visit, the site visit by the FHLBNY or its designee may involve, but is not limited to, the following:

- a) A meeting with project representatives and/or other stakeholders such as other project funders;
- b) An on-site review of tenant files or other project records;
- c) An inspection of the project including residential units, administrative offices and common areas; and
- d) A drive by inspection to confirm whether the project is in the stage of its life cycle as reported by project representatives.

### **AHP RECORD RETENTION REQUIREMENTS**

Owner Occupied Projects:

All loan documents shall be maintained by the FHLBNY Member Financial Institution during the five-year retention period, plus the current year and two additional years.

Rental Projects:

All loan documents shall be maintained by the FHLBNY Member Financial Institution during the fifteen-year retention period, plus the current year and two additional years.

## **RECAPTURES AND DEOBLIGATIONS**

FHLBNY may determine, via monitoring, evaluating funding requisitions, or receiving notification from a FHLBNY Member Financial Institution that AHP subsidy will not be, or is no longer being used for purposes that conform to the objectives set forth in the Competitive AHP application or the AHP Regulation. Such a situation would constitute an event of non-compliance which may result in the recapture or deobligation of AHP subsidy.

The AHP Regulation requires FHLBNY Member Financial Institutions who pass AHP subsidy on to project sponsors and/or owners to have the recipients of AHP subsidy execute a legally enforceable retention mechanism which is recorded with the appropriate municipality and secures the AHP-assisted property and will authorize the Member to recover subsidy from a project sponsor/owner or subsidy recipient if an event of non-compliance should occur which the sponsor/owner or subsidy recipient fails to remedy.

### **Duration for Recaptures**

AHP funds are subject to recapture by the FHLBNY from the time that the FHLBNY Member Financial Institution draws down AHP funds until the end of the retention period.

- a) The retention period for owner-occupied units receiving AHP direct subsidies will equal 5 years from the respective date of closing;
- b) The retention period for rental projects will equal 15 years from the date of the issuance of a final Certificate(s) of Occupancy or, if applicable, Certificate(s) of Final Completion; and
- c) For subsidized advances, the retention period will equal the term of the subsidized advance (i.e., its maturity date). The retention period may be prematurely terminated with the prepayment in full of a subsidized advance.

### **Events of Non-Compliance**

An AHP-assisted project may experience an Event of Non-Compliance when it fails to attain a level of performance which was specified and approved at time of application. Examples of Events of Non-Compliance may include, but are not limited to:

- a) Failure of a FHLBNY Member Financial Institution and/or sponsor to submit monitoring reports in a timely fashion;
- b) Failure to furnish required project monitoring documentation in a timely fashion;
- c) Failure of a project sponsor to properly maintain their nonprofit status;
- d) Failure of a project to attain its specified priorities/objectives (e.g., property use restrictions, occupancy targets, income restrictions, empowerment activities, long-term retention periods, etc.) regardless of minimal AHP regulatory requirements;
- e) Evidence of fraud or willful non-compliance by a project sponsor or owner;
- f) Failure to ensure or maintain the long-term affordability of all project units in accordance with the specified terms and conditions of the approved Competitive AHP Application; or

- g) Failure of a project to demonstrate that AHP subsidy continues to be essential for its financial feasibility (e.g., changes in the financial structure of a project, changes in the sources and uses of funds, violations of the maximum subsidy requirements, etc.).

## Recapture

- a) Direct Subsidy Held by the FHLBNY Member Financial Institution Not Disbursed to Project

A FHLBNY Member Financial Institution which has been funded AHP subsidy is required to notify the FHLBNY immediately upon receiving information that the subsidy will not be or is no longer being used for the purposes approved by the FHLBNY. If a Member has not disbursed all or part of a direct subsidy to a project, the FHLBNY will require the FHLBNY Member Financial Institution to immediately reimburse the FHLBNY for the full amount not disbursed.

If the Member does not reimburse the FHLBNY, the FHLBNY will then notify the Member that the Member's Demand Deposit Account or any other deposits, credits or moneys of the Member then in the possession of the FHLBNY will be debited.

In either case, if the subsidy subject to recapture remained in the possession of the Member for more than 30 days, the FHLBNY may, in its sole discretion, assess the Member a per diem rate of interest.

- b) Subsidized Advance

If a Member has not disbursed all or any part of a Subsidized Advance to a project, the FHLBNY may at its option:

- i. Retroactively reprice the advance to the interest rate charged to FHLBNY members on non-subsidized advances of comparable type and maturity at the time when the original advance was funded;
- ii. Require immediate repayment of all or any part of the advance (subject to prepayment fees); and/or
- iii. Assess a recapture fee for misuse of subsidy while the advance remained outstanding.

- c) Direct Subsidy Disbursed to Project

If a project sponsor fails to correct the event of non-compliance and the remediation period (if applicable) has expired, the Member is accountable for recovering all AHP subsidy from a project on a "pro rata" basis, as determined by the FHLBNY. In order to effectively implement the FHLBNY's recapture requirements, the AHP Regulation requires the Member to have on public record a soft subordinate lien (or other legally enforceable agreement) secured by the project property which may permit the Member to recover subsidy from the sponsor or subsidy recipient.

In the event that the FHLBNY needs to initiate recapture proceedings against a project, the Member is responsible for making reasonable efforts to collect it from the sponsor. If the Member, in good faith, opts to



directly reimburse the FHLBNY for any misused AHP subsidy, the FHLBNY will debit the Member's Demand Deposit Account for the amount of AHP subsidy to be recaptured.

There are situations where the FHLBNY may determine that a sponsor either misused AHP funds or failed to bring a project to completion due to their own failure to properly oversee and implement the project or negligence. In such special cases, the FHLBNY may, in its sole discretion, require that the sponsor be personally liable for repaying for the full amount of the AHP subsidy subject to recovery.

If the Member has *not* taken steps to record a lien or otherwise safeguard their interest in a project and enforce the AHP Regulation, the Member will be liable for reimbursing the FHLBNY for the pro rata portion of the misused AHP subsidy.

d) Sale, Transfer, or Refinancing of Rental Projects Prior to Conclusion of Retention Period

To preclude potential windfall profits from the sale of rental projects prior to the end of the retention period which were either developed or rehabilitated with AHP subsidy, Members are required, in the event of such a sale or transfer, to provide the FHLBNY with:

- i. Evidence that a deed restriction or other legally enforceable retention mechanism is in place that ensures ongoing affordability and that the rental property will continue to be used for the purpose originally intended;
- ii. Evidence if the project is refinanced that the project continues to be subject to a deed restriction or other legally enforceable Subordinate Mortgage and the successor sponsor or Member agrees to continue monitoring reporting for the remainder of the project; or
- iii. Reimbursement of the full amount of the AHP subsidy provided to the project.

e) Sale, Transfer, or Refinancing of Owner-occupied Project Units Prior to Conclusion of Retention Period

If an owner-occupant decides to sell or refinance his or her AHP-assisted unit during the retention period, a pro rata portion of the AHP subsidy may need to be repaid to the FHLBNY from any *net gain* realized upon the sale or refinancing, unless:

- i. The sale is by the household to a low-or moderate income household, defined as having an AMI  $\leq 80\%$ , the household has fulfilled the conditions of the AHP Subordinate Mortgage, which terminates the agreement. The new purchaser is not subject to the Subordinate Mortgage and does not have any AHP subsidy repayment obligations;
- ii. The AHP Subordinate Mortgage terminates at the time of the first refinancing by the AHP assisted household, in the absence of a net gain. (E.g. rate and term refinance);
- iii. Inheritance of an AHP assisted home by the heirs of an AHP assisted owner(s) of the home does not constitute a "sale" or "refinancing" of the home. Upon the death of the AHP assisted owner, the AHP Subordinate Mortgage terminates and there is no obligation to repay; or
- iv. Following a refinancing, the unit remains subject to a standard, legally enforceable AHP retention agreement.

f) Foreclosure

A foreclosure or deed-in-lieu of foreclosure terminates the obligation to repay the subsidy. In addition, when an AHP assisted home is financed with an FHA-insured first mortgage, an assignment of the mortgage to the Secretary of HUD terminates the household's obligation to repay.

- i. If authorized by the FHLBNY, in its discretion, the projects households are relocated, due to the exercise of eminent domain, or for expansion of housing or services, to another property that is made subject to a deed restriction or other legally enforceable AHP Subordinate Mortgage or mechanism incorporating the income-eligibility and affordability restrictions committed to in the approved AHP application for the remainder of the retention period.

g) AHP Settlements

In certain instances, the FHLBNY may consider waiving recovery of the total or a portion of the remaining balance of AHP subsidy that is subject to recapture when all economically sensible means of recovery have been exhausted. Such consideration will include, but not limited to, the following:

- i. The dollar amount of AHP subsidy that was disbursed to a particular project or property;
- ii. The market value of the project or property in comparison to the AHP subsidy subject to recapture;
- iii. The dollar value of improvements made to the AHP-assisted project or property;
- iv. The inhabitable condition of an AHP-assisted project or property; or
- v. A sponsor's insolvency or other adverse financial condition that impedes their reasonable ability to repay the AHP obligation.

## Alternatives to Recapture

a) Project Modifications

Circumstances beyond the control of the sponsor may prevent the project from attaining all of the levels of performance which were specified and approved in the AHP application. In an effort to assist the sponsor in fully attaining a project's objectives as required by the approved application, the FHLBNY will initially consider and, when feasible, approve a Remediation Period (as defined below in Section b).

Prior to the final disbursement of funds from all financing sources to an AHP-assisted project, a Member may request a modification to the specified terms of an approved AHP application (including a request for additional AHP subsidy) if there is or will be a change in the project which materially affects the facts under which the AHP application was originally scored and approved. The FHLBNY, in its sole discretion, may approve such a request under the following conditions:

- i. The project will continue to meet AHP eligibility requirements;

- ii. The application will continue to score and rank high enough to have been approved in its respective competitive funding period, reflective of the modified characteristics; and
- iii. The FHLBNY determines that, based on justifiable circumstances, there is good cause for the modification.

Once an AHP-assisted project has been completed and all funding sources have fully advanced their respective financing commitments, the Member may request a modification to the terms of an approved AHP application (*except* for requesting an increase in AHP subsidy) if there is, or will be a change in the project which materially affects the facts under which the AHP application was originally scored and approved. The FHLBNY may approve such a request based upon the following:

- i. The project is in financial distress, or is at substantial risk of falling into such distress;
- ii. The project sponsor has made best efforts to avoid noncompliance with the terms of the approved AHP application;
- iii. The project will continue to meet AHP eligibility requirements; and
- iv. The application will continue to score high enough to have been approved in the funding period in which it was originally scored and approved by the FHLBNY.

b) Remediation Periods

If a project does not qualify for a modification, the FHLBNY will require the Member to demand that the sponsor restore the project to full compliance within a reasonable period of time.

Under such circumstances, the Member may submit a written request to the FHLBNY for a remediation period. The written request should include a formal Plan of Action, which the project sponsor will implement during remediation period in order to restore the project to compliance. The FHLBNY, in its sole discretion, may approve a remediation period (for a specified period of time not to exceed 12 months) for a project if the Member or project can effectively justify the request and the Plan of Action is acceptable.

During the remediation period, the FHLBNY, in its sole discretion, also reserves the right to temporarily suspend the project and/or project sponsor from participation in AHP-related activities (i.e., draw downs, modifications, or submission of new AHP applications).

**Deobligation of AHP Subsidy**

The following may cause the FHLBNY to un-commit, or deobligate, any unfunded AHP subsidy that was committed to a project:

- a) the Member or project sponsor formally withdraws an approved AHP project;
- b) a project cannot be brought to fruition and cannot meet the progress reporting milestones; or



- c) FHLBNY cancels the balance of an AHP Commitment because an event of non-compliance has not been satisfactorily or timely remedied.
- d) The project sponsor's failure to provide complete and accurate information and documentation required and or requested by the Bank in a timely fashion.

## First Home Club

### ENROLLMENT PERIODS

Households are enrolled with FHLB NY on a monthly basis by approved FHC Members.

### PROGRAM OVERVIEW

FHC assistance is provided in the form of matching funds based on the household's systematic savings within a dedicated savings account which may be used toward the down payment and/or closing costs for the purchase of a home.

The following guidelines apply to the FHC:

- a) The FHLB NY will reserve up to the greater of \$4.5 million or 35% of its annual AHP allocation in order to finance the FHC.
- b) The FHLB NY may limit the number of households Members enroll in the FHC based on past performance, membership need, a maximum annual enrollment allotment to any one Member, or any other criteria the FHLB NY determines appropriate in its sole discretion.
- c) The FHLB NY, in its sole discretion, reserves the right to use any FHC funds that are periodically deemed to be surplus to replenish its Competitive AHP.
- d) Members will provide set-aside funds only to households that meet the following criteria:
  - i. Satisfy the definition of a first-time home buyer, based upon the U.S. Department of Housing and Urban Development ("HUD"):
    - An individual who has had no ownership in a principal residence during the 3-year period ending on the date of purchase of the property. This includes a spouse (if either meets the above test, they are considered first-time homebuyers).
    - A single parent who has only owned a principal residence with a former spouse while married.
    - An individual who is a displaced homemaker and has only owned a principal residence with a spouse.
    - An individual who has only owned a principal residence not permanently affixed to a permanent foundation in accordance with applicable Regulations.
    - An individual who has only owned a property that was not in compliance with state, local or model building codes and that cannot be brought into compliance for less than the cost of constructing a permanent structure.
  - ii. Be a resident in the FHLB NY district of New York, New Jersey, Puerto Rico or the U.S. Virgin Islands.
  - iii. Purchase an eligible property type:
    - 1 - 4 family homes;
    - Condominiums;
    - Co-operatives; or
    - Manufactured homes permanently affixed to a foundation



- iv. Be enrolled through a FHC participating Member.
  - v. Have a household income of 80% or less of the area median for their current place of residence, adjusted for family size, at the time a dedicated savings account is established.
  - vi. Open a dedicated account with an approved Member and systematically save on a monthly basis for a period in accordance with the FHC Guidelines.
  - vii. Complete a homebuyer counseling program.
  - viii. Obtain mortgage financing from the Member, or a wholly owned subsidiary, for the purchase of a primary residence. The rate of interest, points, fees, and any other charges for the mortgage financing that are made to the household in conjunction with the FHC subsidy shall not exceed a reasonable market rate of interest, points, fees, and other charges for loans of similar maturity, terms, and risk.
  - ix. Sign, at the time of closing, a five-year Subordinate Mortgage or deed restriction, if applicable, with the Member to be recorded for the amount of the FHC grant.
  - x. Meet the underwriting standards of the FHLBNY.
- e) FHLBNY will utilize a 4:1 ratio in matching a household's savings. For every \$1 saved and deposited into the dedicated account with the Member under a systematic schedule of savings, the FHLBNY will match \$4 in set-aside funds, not to exceed \$7,500 in matching funds per household.
- f) FHC funds may be used toward the down payment and/or closing costs for the purchase of a home by a qualified household.
- g) FHC funds may only be disbursed to the Member and the appropriate Subordinate Mortgage must be in the Member's name.
- h) The Member may provide cash back to a household at closing in an amount not exceeding \$250 above the sum of the items reflected on a HUD-1 Settlement Statement and/or a Closing Disclosure, in order to partially reimburse the household for any pre-closing expenses directly related to the acquisition of their dwelling, i.e., mortgage application fees, credit report fees, appraisal fees, or property inspection fees, or down payment costs.
- i) FHC provides up to \$500 towards the defrayment of non-profit housing agency counseling costs, which will be provided on behalf of the household via the Member to the non-profit housing agency. providing:
- i. Such costs were incurred in connection with a qualified household who has attended and successfully completed a formal counseling program and ultimately purchases an AHP-assisted unit;
  - ii. The cost of such counseling has not been covered by another funding source, including the Member; and
  - iii. The cumulative amount of the FHC subsidy funded to each household, including any homebuyer counseling costs (e.g., \$7,500 + \$500 = \$8,000), must be reflected in the Subordinate Mortgage and reflected on the HUD-1 Settlement Statement and/or the Closing Disclosure.

### MEDIAN INCOME

Households must meet the income guidelines at the time of enrollment with a total Household income of 80% or less of the area median income for their current place of residence, adjusted for family size, as determined under 26 U.S.C. § 143(f), Mortgage Revenue Bonds, ("MRB"), as published by a State agency or instrumentality. For the U.S. Virgin

Islands, the median family income for the area as published annually by U.S. Department of Housing and Urban Development (“HUD”) is used.

The intent is to use MRB; however, in the event the income limits are not available or stale (defined as over 5 years), the Bank has the option to use HUD median income limits.

## **FUNDING FHC SUBSIDY**

The Member must submit the First Home Club Funding Certification and accompanying documentation, as outlined in the FHC Guidelines, at the time of request for commitment of funds.

## **ENROLLMENT TIMEFRAME**

Households will be afforded twenty-four (24) months from enrollment to close and fund on a property.

A household that has withdrawn from the program can be considered again; however, that household must be submitted under a new enrollment period and evidence satisfaction of all program requirements.

## **RETENTION PERIOD**

All FHC-assisted households must continue to comply with the requirements of the AHP Regulation for a minimal period of time, known as the “Retention Period.” The Retention Period shall be five (5) years from the date of closing.

## **MONITORING PRACTICES**

Transfers of title for owner-occupied properties are effectively monitored through legally enforceable FHC Retention Agreements. On an annual basis the FHC will require its participating Members certify households within the five year retention period have not had an event of non-compliance.

## **RECAPTURE AND EVENTS OF NON-COMPLIANCE**

FHLBNY may determine by receiving notification from a Member that FHC subsidy will not be, or is no longer being used for purposes that conform to the AHP Regulation. Such a situation would constitute an event of non-compliance which may result in the recapture of FHC subsidy.

### **Recapture**

#### a) Direct Subsidy Held by the Member Not Disbursed to Household

A Member which has been funded FHC subsidy is required to notify FHLBNY immediately upon receiving information that the subsidy will not be or is no longer being used for the intended purchase of the home by the household approved for subsidy.

If the Member does not reimburse FHLBNY, the Member's Demand Deposit Account or any other deposits, credits or moneys of the Member then in the possession of the FHLBNY may be debited at the sole discretion of FHLBNY.

If the subsidy subject to recapture remains in the possession of the Member for more than 30 days, the FHLBNY may, in its sole discretion, assess the Member a per diem rate of interest.

#### b) Direct Subsidy Disbursed to Household

If a household fails to correct an event of non-compliance, the Member is accountable for recovering all FHC subsidy from a household on a “pro rata” basis as determined by FHLBNY. If the Member does not reimburse FHLBNY, the Member's Demand Deposit Account or any other deposits, credits or moneys of the Member then in the possession of the FHLBNY may be debited at the sole discretion of FHLBNY.

c) Sale, Transfer, or Refinancing Prior to Conclusion of Retention Period

If an owner-occupant decides to sell or refinance the FHC-assisted unit during the Retention Period, a pro rata portion of the FHC grant may need to be repaid to the FHLBNY from any *net gain* realized upon the sale or refinancing, unless:

- i. The sale is by the household to a low-or moderate income household, defined as having an AMI  $\leq$  80%, the household has fulfilled the conditions of the retention agreement, which terminates the agreement. The new purchaser is not subject to the FHC retention agreement and does not have any FHC subsidy repayment obligations;
- ii. The FHC retention agreement terminates at the time of the first refinancing by the FHC assisted household, in the absence of a net gain (E.g. rate and term refinance);
- iii. Inheritance of a FHC assisted home by the heirs of an FHC assisted owner(s) of the home does not constitute a “sale” or “refinancing” of the home. Upon the death of the FHC assisted owner, the FHC retention agreement terminates and there is no obligation to repay; or
- iv. Following a refinancing, the unit remains subject to a standard, legally enforceable AHP retention agreement.

d) Foreclosure

A foreclosure or deed-in-lieu of foreclosure terminates the household’s obligation to repay the subsidy. In addition, when a FHC assisted home is financed with an FHA-insured first mortgage, an assignment of the mortgage to the Secretary of HUD terminates the household’s obligation to repay.

## Events of Non-Compliance

A FHC-assisted property may experience an event of non-compliance when it fails to attain a level of performance which was specified and approved at time of enrollment. Examples of events of non-compliance may include, but are not limited to:

- a) Evidence of fraud or willful non-compliance by a homeowner, Member or counseling agency;
- b) The homeowner refinances or obtains additional subordinate debt (including a home equity loan) prior to the expiration of the five-year Retention Period unless the property continues to be subject to a legally enforceable AHP retention agreement.

## FHC RECORD RETENTION REQUIREMENTS

All loan documents shall be maintained by the Member during the five-year retention period, plus the current year and two additional years.





**RE-USE OF REPAID AHP SUBSIDIES**

FHLBNY will not allow Members or project sponsors to re-use repaid AHP subsidies. Any repaid AHP subsidies must be returned to FHLBNY for use by eligible projects and/or eligible households.

**REVOLVING LOAN FUNDS AND LOAN POOLS**

As specified above, FHLBNY will not allow Members or project sponsors to re-use repaid AHP subsidies. Consequently, FHLBNY will not authorize AHP subsidy to finance any revolving loan funds or loan pools.

**CONFLICT OF INTEREST**

FHLBNY's Board of Directors has adopted a written policy regarding the Code of Business Conduct and Ethics which is available on FHLBNY's website. Pursuant to this policy, conflicts of interests or attempts to influence any action that would affect the funding on a project are not permitted by the following parties: 1) Members of the Affordable Housing Advisory Council; 2) Members of the Board of Directors; and 3) Bank staff and management.

APPENDIX

**AHP FINANCIAL FEASIBILITY GUIDELINES**

The financial feasibility requirements ensure that the project is in compliance with the Bank's financial thresholds. Below is a list of the financial guidelines for both rental and owner-occupied projects.

Development Budget Costs for Rental Projects

**Developer's Retention (Rehabilitation and New Construction)**

**Minimum:** 5% of Total Development Costs (net of developer's retention and any consulting fees with the exception of projects that are being funded under the U.S. Department of Housing and Urban Development's ("HUD") Section 202 or 811 programs.

Development Budget Analysis		Result	Maximum	Minimum	OK?
6	Is the developer's fee (including any additional fees for housing consultants) within the standard?	17.51%	15.00%	5.00%	Explain

**Maximum:** 15% of Total Development Costs.

Development Budget Analysis		Result	Maximum	Minimum	OK?
6	Is the developer's fee (including any additional fees for housing consultants) within the standard?	17.51%	15.00%	5.00%	Explain

**Construction and Renovation Costs**

Rehabilitation must be done in compliance with applicable health, fire prevention, building, and housing codes and standards. At completion of rehabilitation, each AHP-assisted unit or dwelling must meet HUD minimum habitability standards.

A sponsor of a project that presents hard costs that exceed the customary limits as determined by the applicable standard (see above) must provide a valid explanation, including supporting documentation or a formal opinion letter from a qualified third-party professional.

**1. Rehabilitation**

- a. **Substantial rehabilitation of multi-family rental housing or single-family dwellings built on infill developments** will be evaluated by a third party resource to determine whether the rehabilitation costs appear reasonable on a cost per square foot basis, including remaining useful life, or other basis of measurement as determined by the FHLBNY.
- b. **Substantial rehabilitation of group homes or substantial rehabilitation of 1-to-4-family dwellings** will be evaluated in accordance with industry construction cost data to determine whether the rehabilitation costs appear reasonable, including remaining useful life, as determined by the FHLBNY.
- c. **Moderate rehabilitation of multi-family housing** will be evaluated by a third party resource to determine whether the rehabilitation costs appear reasonable, including remaining useful life, as determined by the FHLBNY.



2. **New Construction**

- a. **New construction of multi-family rental housing or single-family dwellings built on infill developments** will be evaluated by a third party resource to determine whether the rehabilitation costs appear reasonable on a cost per square foot basis, including remaining useful life, or other basis of measurement as determined by the FHLBNY.
- b. **New construction of group homes or new construction of 1-to-4-family dwellings** will be evaluated in accordance with industry construction cost data to determine whether the rehabilitation costs appear reasonable, including remaining useful life, as determined by the FHLBNY.

Development Budget Analysis		Result	Maximum	Minimum	OK?	
9	Is the "hard" project development cost per unit within the Bank's limits?	\$6,500,250.00	\$5,023,447.00	-	Explain	29.40%

**Architectural Fees**

**Minimum:** 2.5% of Total Construction Costs

**Maximum:** 7% of Total Construction Costs

Any project that involves the new construction or rehabilitation of rental units or the development of homes to be sold to qualified purchasers must have a qualified third-party professional certify that the quality of the completed work is in accordance with the contract documents and that the amount to be paid is reasonable.

Development Budget Analysis		Result	Maximum	Minimum	OK?
7	Is the Architecture Fee within the standard?	9.73%	7.00%	2.50%	Explain

**Contingencies**

1. **Newly Constructed**

- a. **Hard Cost Contingency Expenses Maximum:** 10% of hard costs
- b. **Soft Cost Contingency Expenses Maximum:** 5% of total soft development costs (if combined with the hard cost contingency guideline, maximum of 10%)
- c. **Combined Hard and Soft Cost Contingency Expenses Minimum:** 5% of total construction and soft costs

Contingency Analysis		Result	Maximum	Minimum	OK?
2	If the project is a new construction project, is the hard cost contingency within the standard?	11.50%	10.00%	-	Explain

2. **Renovated or Rehabilitated**

- a. **Hard Cost Contingency Expenses Maximum:** 15% of hard costs
- b. **Soft Cost Contingency Expenses Maximum:** 5% of total soft development costs (if combined with the hard cost contingency guideline, maximum of 15%)
- c. **Combined Hard and Soft Cost Contingency Expenses Minimum:** 5% of total construction and soft costs



Contingency Analysis		Result	Maximum	Minimum	OK?
1	If the project is a rehabilitation project, is the hard cost contingency within the standard?	16.78%	15.00%	-	Explain

**Note:** Soft cost contingency expenses that exceed 5% of total soft development costs will require further explanation *unless*, when combined with the hard cost contingency guideline, are within an acceptable range (i.e., 10% for newly constructed projects and 15% for rehabilitated projects).

Contingency Analysis		Result	Maximum	Minimum	OK?
3	Is the soft cost contingency within the standard?	6.12%	5.00%	-	See Combined Standard
4	or is the rehabilitation projects combined soft and hard cost contingency both within the standard?	NA	15.00%	5.00%	NA
5	or is the new construction projects combined soft and hard cost contingency both within the standard?	5.96%	10.00%	5.00%	Yes

### Builder's Profit, Overhead, and General Requirements ("POGR")

**Minimum:** 9% of total construction costs

**Maximum:** 16% net of total construction costs (i.e., an average of 7% builder's profit, 3% overhead, and 6% general requirements)

Development Budget Analysis		Result	Maximum	Minimum	OK?
8	Is the Profit, Overhead & General Requirement cost with the standard?	18.17%	16.00%	9.00%	Explain

### Soft Costs

- For rental projects in New York located within the counties that comprise the New York metropolitan region** (i.e., Manhattan, Bronx, Kings, Queens, Richmond, Nassau, Suffolk, Westchester, Rockland, and Putman), total soft cost expenses (i.e., all costs other than acquisition and direct construction expenses) should not exceed 17% of total development costs. Projects that present budgeted soft costs between 17% and 22% of total development costs will require an explanation from an architect or other third-party professional or may be disqualified from consideration. Projects with soft costs that exceed 22% of total development costs may not be considered reasonable and may be disqualified from consideration.
- For rental projects located in New Jersey**, total soft cost expenses (i.e., all costs other than acquisition and direct construction expenses) should not exceed 19% of total development costs. Projects that present budgeted soft costs between 19% and 25% of total development costs will require an explanation from an architect or other third-party professional or may be disqualified from consideration. Projects with soft costs that exceed 22% of total development costs may not be considered reasonable and may be disqualified from consideration.
- For rental projects located in all other areas within the FHLBNY District**, including those outside the District, total soft cost expenses (i.e., all costs other than acquisition and direct construction expenses) should not exceed 17% of total development costs. Projects that present budgeted soft costs between 17% and 23% of total development costs will require



an explanation from an architect or other third-party professional or may be disqualified from consideration. Projects with soft costs that exceed 23% of total development costs may not be considered reasonable and may be disqualified from consideration.

Development Budget Analysis		Result	Maximum	Minimum	OK?
10	Are the "soft" project costs within the Bank's limits?	21.35%	17.00%	-	Explain

### Initial Operating Deficit Reserve

A proposed reserve that exceeds six months of the first year's forecasted operating expenses plus debt service will require further explanation and must include supporting documentation from another lender or funding provider that substantiates the proposed reserve requirement.

Reserve Analysis		Result	Maximum	Minimum	OK?
25	Is the initial operating deficit reserve greater than 6 months of operating expenses plus debt service?	0.64	0.50	-	Explain

### Operating Costs for Rental Projects

#### Vacancy Rates

Minimum: 4% of Annual Gross Rent

Maximum: 7% of Annual Gross Rent

Operating Pro Forma Analysis		Result	Maximum	Minimum	OK?
19	Is the vacancy rate within the standard?	2.56%	7.00%	4.00%	Explain

#### Reserves

##### 1. Annual Reserves

Annual contributions to the replacement reserve that exceed the greater of \$500 per unit or .50% of the total development cost (less the cost of land acquisition) will require further explanation. Conversely, annual contributions to the replacement reserve that are less than \$250 per unit or .25% of the total development cost (less the cost of land acquisition) will require further explanation.

Where applicable, annual contributions to the operating reserve that exceed 3% of a project's gross rents will require further explanation.

##### 2. Capitalized Operating Reserves

Capitalized operating reserves that exceed the lesser of 1% of Total Development Costs or 50% of gross rents will require further explanation.

### 3. Capitalized Replacement Reserves

Capitalized replacement reserve that exceed \$1,000 per unit will require further explanation.

**For projects utilizing state-administered funding, the Bank may defer to the requirements published by the state HFA or its equivalent**

**Management Fees** (operating budgets for projects that are not charging a management fee and do not contain a line item expense for a property manager's salary will require further explanation)

Maximum: 8% of Total Effective Income *or* \$53 per unit per month

Operating Pro Forma Analysis		Result	Maximum	Minimum	OK?
20	Is there a manager salary expense line item and is the annual management fee $\leq$ 8% of total effective income or $\leq$ \$53/unit/month?				
	Management Fee %	0.00%	8.00%	-	Explain
	Management Fee/Unit/month	\$0.00	\$53.00	-	

### Revenue and Expense Increase per Year

Minimum: 1% per annum

Maximum: 3% per annum

### Tax Credit Sale Price

Minimum for State Low-Income Housing Tax Credit Financing: \$0.62 per \$1.00

Minimum for Federal Low-Income Housing Tax Credit Financing: \$0.85 per \$1.00

Development Budget Analysis		Result	Maximum	Minimum	OK?
11	If the project's financing includes <i>State Low-income Housing Tax Credit Financing</i> , is the net equity received greater than or equal to the standard?	NA	-	\$0.62	NA
12	If the project's financing includes <i>Federal Low-Income Housing Tax Credit financing</i> , is the net equity received greater than or equal to the standard?	\$0.77	-	\$0.85	Explain

### Operating Expense per Unit per Year

Expenses for projects that exceed \$8,000 per unit or are below \$3,000 per unit will require further explanation.

## Debt Coverage Ratio

Minimum: 1.10 in the first year of operation on mandatory debt

Maximum: 1.30 in the first year of operation on all debt

Debt ratios beyond the first year must reflect a reasonable trending pattern. For projects with no debt service payments, the cash flow will be analyzed to assess if it is insufficient to support debt and/or will be deposited in an operating reserve to offset future operating deficits.

## Development Budget Costs for Owner-Occupied Projects

### Developer's Retention

1. Sponsors of projects that involve the resale of properties to first-time homebuyers on the open market will be limited to a \$500 credit counseling or financial literacy education fee if they provide such services.
2. Sponsors of other homeownership projects whose roles are limited to homebuyer screening, mortgage application preparation, marketing, or other administrative functions will not be entitled to any developer fee.
3. Sponsors of projects that involve rehabilitation of existing owner-occupied dwellings will be permitted a 15% developer fee (which may not be charged in addition to related salary or administrative expenses).

### Construction and Renovation Costs

Rehabilitation must be done in compliance with applicable health, fire prevention, building, and housing codes and standards. At completion of rehabilitation, each AHP-assisted unit or dwelling must meet HUD minimum habitability standards.

For projects that involve the rehabilitation of existing owner-occupied dwellings and proposed hard costs exceed the customary limits as determined by the applicable standard (see above), a qualified rehabilitation specialist (who is employed by the sponsor) or a qualified third-party professional must explain the bidding process that was used to select the project contractor(s). Such professionals must also certify that the quality of the completed work is in conformity with the contract documents and they have determined that the amount to be paid is reasonable.

Moderate rehabilitation of, or emergency repairs to, existing owner-occupied 1-to-4-family dwellings will be evaluated in accordance with industry construction cost data to determine whether the rehabilitation costs appear reasonable, including remaining useful life, as determined by the FHLB NY.

### Architectural Fees

**Minimum: 2.5% of Total Construction Costs**

**Maximum: 7% of Total Construction Costs**

Any project that involves the rehabilitation of existing owner-occupied dwellings must have a qualified rehabilitation specialist who is employed by the sponsor or a qualified third-party professional to certify that the quality of the completed work is in conformity with the contract documents and that the amount to be paid is reasonable.

### Contingencies

#### 1. Newly Constructed

- a. **Hard Cost Contingency Expenses Maximum:** 10% of hard costs
- b. **Soft Cost Contingency Expenses Maximum:** 5% of total soft development costs (if combined with the hard cost contingency guideline, maximum of 10%)
- c. **Combined Hard and Soft Cost Contingency Expenses Minimum:** 5% of total construction and soft costs

#### 2. Renovated or Rehabilitated

- d. **Hard Cost Contingency Expenses Maximum:** 15% of hard costs
- e. **Soft Cost Contingency Expenses Maximum:** 5% of total soft development costs (if combined with the hard cost contingency guideline, maximum of 15%)
- f. **Combined Hard and Soft Cost Contingency Expenses Minimum:** 5% of total construction and soft costs

### Builder's Profit, Overhead, and General Requirements ("POGR")

**Minimum: 9% of total construction costs**

**Maximum: 16% net of total construction costs (i.e., an average of 7% builder's profit, 3% overhead, and 6% general requirements)**

### Soft Costs

Projects that involve the construction or rehabilitation of homeownership units with total soft cost expenses (i.e., all costs other than direct construction expenses and acquisition, if applicable) that do not exceed 10% of the total development cost for each unit will be deemed acceptable. Such projects with soft costs that exceed 10% to a maximum of 15% of total development costs will require an explanation from a third-party (e.g., architect, attorney, insurance agent, lender, assessor, etc.) or may be disqualified from consideration. Projects with soft costs that exceed 15% of total development costs may not be considered reasonable and may be disqualified from consideration.