

Extremely Low & Low-Income Affordability (ELLA) Program Term Sheet

<p>Program Description</p>	<p>HPD's ELLA Program funds the new construction of low-income multi-family rental projects in which a minimum of 80% of the units are at low income rents affordable to households earning up to 80% of Area Median Income (AMI). Up to 20% of the units may have rents affordable to moderate income households earning between 90% - 100% of AMI. At least 15% of units must be set aside for formerly homeless households.</p> <p>HPD subsidy is to be paired with other public and private sources including but not limited to: private institutional lenders; the New York City Housing Development Corporation's (HDC) Extremely Low & Low-Income Affordability (ELLA) Program; HCR programs such as the New Construction Capital Program (NCP), the Supportive Housing Opportunity Program (SHOP), Homes for Working Families Initiative (HWF), the Low Income Housing Trust Fund Program (HTF), Middle Income Housing Program (MIP), New York State Low Income Housing Tax Credit Program (SLIHC), etc.; 4% Federal Low Income Housing Tax Credits (4% LIHTC) with Tax Exempt Bond Financing from HDC or the New York State Housing Finance Agency, or 9% Federal Low Income Housing Tax Credits (9% LIHTC) awarded by HPD or HCR.</p>
<p>Eligible Borrowers and Sponsors</p>	<p>In order to be eligible for Capital funds, a borrower must be a Housing Development Fund Corporation either alone or in partnership with non-profit entities, for-profit Developers, limited partnerships, corporations, trusts, joint ventures, or limited liability companies.</p> <p>The development team must have a demonstrated track record of successfully developing, marketing, and managing the type of project proposed or must form a joint venture with an entity with such expertise. Borrowers must demonstrate sufficient financial stability and liquidity to construct and operate the project.</p>
<p>Required Affordability Tiers</p>	<p>Projects may use income averaging for LIHTC, must have average underwritten rents within the AMI ranges levels listed below, and either be 100% LIHTC or 80% LIHTC. For 80% LIHTC projects, the non-LIHTC units must be 90-100% of AMI.</p> <div style="text-align: center; border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> <p>Weighted Average AMI Range*</p> <p>53%-54%</p> </div> <p><i>* Total Weighted Average AMI based on the Underwritten Rent Levels as defined in the Rents and Marketing Bands section of this term sheet, except for rental assistance units which are outlined above.</i></p> <p>Developers can choose the affordability tiers that arrive at the above averages. All buildings may include up to 30% of the units for formerly homeless households, with a minimum requirement of a 15% homeless set aside. These units may be either Our Space units, or an alternative framework as approved by HPD. At HPD's discretion, Program may choose to reduce or waive that requirement for buildings with 40 units or less. Affordability tiers should include a minimum of 50% ELI/VLI units, with at least 25% of units at ELI levels inclusive of units for formerly homeless households.** Projects are subject to a maximum of 4 non-homeless affordability tiers, preferably with 20% of AMI between tiers when possible.</p> <p><i>** Extremely Low Income (ELI) units are units at 30% AMI or below; Very Low Income (VLI) units are units at 31% - 50% AMI</i></p> <p>Projects considering a homeless component with rental assistance other than PBV (for example ESSHI or 15/15) must have at least 30 units under the contract to be considered. For the purpose of calculating the average AMI for the project, the rental assistance units replacing the OurSpace units shall have an AMI proxy as follows:</p>

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Project Size	AMI Proxy for 15/15or ESSHI Units replacing OurSpace Units
<150 Units	20% AMI
150 – 199 Units	40% AMI
200+ Units	60% AMI

Any rental assistance units over the 15% OurSpace requirement shall be considered 77% of AMI units for calculating the average AMI for the project.

HPD Loan Amount

HPD subsidy is based on the percentage of LIHTC units, as outlined in the table below. Note that all units within a project will receive the same subsidy amount per unit.

% of project that is LIHTC	Subsidy per Unit
100% LIHTC	\$122,500 per Unit
80% LIHTC	\$137,500 per Unit

Per unit subsidy amounts represent the maximum subsidy per unit and may be reduced based on the actual financing needs of the project.

Project Selection: Preference will be given to projects that: (1) request subsidy at or below maximum calculated term sheet subsidy; and/or (2) achieve multiple Housing New York 2.0 policy goals.

Requests for Above Term Sheet Subsidy: Projects that request more than the maximum subsidy will be considered for funding, but will not receive preference. HPD may require that for every dollar of additional subsidy requested above term sheet maximum, the borrower will put in an equal or greater amount of additional cash equity, deferred Developer fee, and/or sponsor loan. Additionally, for every \$1,000 per unit in additional subsidy provided above the term sheet maximum, projects will be required to provide an additional 1% of units to serve formerly homeless families or make an additional 1% of units affordable in perpetuity. However, providing additional permanent affordability itself does not entitle a project to additional subsidy as-of-right.

Mandatory Inclusionary Housing (MIH): MIH projects that request subsidy for the MIH units will be required to provide an additional 15% of permanently affordable units.

Voluntary Inclusionary Housing/Other Sources: Maximum per-unit subsidies may be reduced for projects utilizing other sources, such as the sale of voluntary inclusionary FAR, absent broader/deeper affordability or project benefits.

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Rents and Marketing Bands

Underwritten Rent Level	Income Limits	Maximum Initial Rents			
		Studio*	1 BR	2 BR	3 BR
OurSpace**	40% of AMI	\$215	\$283	\$425	\$512
27% of AMI	30% of AMI	For current initial rent figures, please refer to the HPD website at https://www1.nyc.gov/site/hpd/services-and-information/area-median-income.page . Please note rents should be adjusted per the appropriate utility allowance for the project.			
37% of AMI	40% of AMI				
47% of AMI	50% of AMI				
57% of AMI	60% of AMI				
67% of AMI	70% of AMI				
77% of AMI	80% of AMI				
90% of AMI	110% of AMI				
100% of AMI	120% of AMI				

* Studio Rents are sized based on a 0.6 Household Factor

** OurSpace units are underwritten at Shelter Rent Allowance and have income limits to 40% AMI

Initial Rents: Initial rents for tax credit units (30% of AMI, 40% of AMI, 50% of AMI, 60% of AMI, 70% of AMI, and 80% of AMI) are calculated at 30% of 27% of AMI, 30% of 37% of AMI, 30% of 47% of AMI, 30% of 57% of AMI, 30% of 67% of AMI, and 30% of 77% of AMI. All other rents are calculated at 30% of the target AMI. All rent levels are calculated as gross rents less a utility allowance.

Initial Legal Rent Setting: The initial legal rent for any given unit shall be the greater of 100% of AMI or 20% of AMI above the rent restriction for that unit.

Income Averaging: The maximum income for a LIHTC unit is 80% AMI and the average income for all LIHTC units in the project must be less than 60% AMI and meet the average ranges described above.

Rent Increases: Subsequent rent increases for restricted units will be governed by the lower of AMI or rent stabilization increases. No vacancy, luxury decontrol, or rent increases pursuant to Individual Apartment Improvements (IAI) or vacancy will be permitted for the duration of the HPD restriction period for all unit types.

Marketing Bands: Projects must comply with the above listed marketing bands, or where other funding sources restrict the allowable maximum income. In addition, there may not be any overlapping income limits between tiers.

Loan Terms

- **Loan Term:** 30 year minimum (Loan terms vary by funding source and lending authority).
- **Interest Rate:** Applicable Federal Rate (AFR) monthly long-term rate simple during construction and compounding monthly at permanent conversion. An additional 0.25% servicing fee will be applied during construction, as applicable. The actual paid rate during construction will be up to 1% per annum in addition to the servicing fee. The actual paid rate after permanent conversion will be up to 1% per annum, inclusive of the servicing fee. The difference between AFR and the paid rate will defer and accrue, with balloon due at maturity. HPD may reduce the interest rate to below AFR in return for extended affordability of 60 years or permanent affordability for at least 15% of the units.
- **Amortization:** Balloon payment up to principal plus accrued interest.
- **Debt Service Coverage:** 1.15 on all financing. Ratio may be higher on projects whose debt service coverage ratio falls below 1.00 before year 21.
- **Loan to Cost:** May not to exceed 90% overall of total development cost.

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- **Income to Expense:** Minimum of 1.05 on all financing; 1.10 when non-residential income is more than 25% of gross income.
- **Developer’s Fee:** As described in the HPD Low Income Housing Tax Credit Qualified Action Plan (QAP), total developer fee is not to exceed 15% of improvement costs (excluding developer fee, reserves, and syndication and partnership expenses) and 10% of acquisition costs for tax credit projects for projects that are within term sheet subsidy limits. Up to 10% of the fee may be paid during construction. HPD requires that the deferred developer fee be based on 15 years of cash flow.
- If a project requires subsidy financing above term sheet limits, HPD will recognize developer fee up to the amount outlined in the Qualified Allocation Plan. However, the paid developer fee shall not exceed the amount per the following schedule. The paid developer fee schedule will be allowed on units with or without LIHTC financing on a per unit basis relative to the underwritten AMI of the unit.

Underwritten Rental Tier	Max Paid Fee per unit
27% - 47% of AMI*	\$35,000
57% - 77% of AMI	\$27,500
80% - 90% of AMI**	\$20,000
100% - 120% of AMI	\$12,500

* \$35,000 fee will be allowed for Homeless units with Rental Assistance
** \$20,000 fee will be allowed for Superintendent’s units
- HPD may make exceptions to the paid fee limit if the project is above term sheet due to explicit HPD or City RFP generated requirements. The amount of paid Developer Fee may also be higher than the schedule for projects that are 100 units or less, on a case-by-case basis.
- **Consultant Fees:** Consultant fees, including development consultants, owner’s representatives, etc. must be paid from the developer fee.
- **Land Acquisition:** Acquisition costs for privately owned land will be reviewed by HPD and may be approved at the lesser of the purchase price or up to appraised value. HPD will not recognize an increased acquisition price from a private site rezoning (or may require a sellers note for the difference).
 - For publicly owned sites: Disposition in most cases will be for \$1 per lot with the balance of appraised value in an enforcement note and mortgage, payable upon maturity with AFR compounded monthly. The enforcement note and mortgage may be structured as a forgivable loan in return for extended affordability beyond what is minimally required by other sources of funds. Publicly owned sites may include sites owned by HPD, other government agencies, and property owned by NYCHA.
- Projects funded with Federal funds require compliance with Section 3 new hires and Davis Bacon prevailing wages, as applicable.
- Preference will be given to projects demonstrating cost containment.

Equity Requirement	Developer’s equity will be required for all projects where the weighted average residential rent is greater than 60% of AMI. For every 5% of AMI above 60% AMI, an additional 1.25% of Total Development Costs (TDC) in Developer Equity will be required. Developer’s equity can be in the form of cash or a Sponsor Loan with repayments out of cash flow. Reduced land price below market value may be considered for up to 50% of the equity requirement, per HPD’s approval.
Brownfield Sites	At HPD's request, sites that qualify for the New York State Brownfield Cleanup Program will be expected to capitalize costs associated with the remediation work on the development budget. Developers will then be required to syndicate or directly purchase the associated Brownfield Tax Credits as an equity source at permanent conversion.
OurSpace Units for	<ul style="list-style-type: none"> • A minimum of 15% of units should be reserved for homeless individuals or families who reside in shelter facilities operated by or on behalf of the City or are otherwise in need of emergency shelter

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**Formerly
Homeless
Households**

as determined by the City. Projects may reserve up to 30% of units for homeless individuals or families. These units are known as the OurSpace units. The ELLA Term Sheet requires that homeless referrals come from the New York City Department of Homeless Services (DHS), HPD, or an alternate referral source acceptable to HPD, and such requirement will be memorialized in a Regulatory Agreement with HPD. HPD requires one year of services for OurSpace units using a service provider on [HPD's qualified list](#), but anticipates ongoing social services may be provided for OurSpace units on a case by case basis.

- For projects with OurSpace units that receive tenant based rental assistance, HPD will require 100% of rental income received from tenant-based rental assistance above the underwritten rent (Shelter Rent after accounting for RGB increases) to be swept. The money that is swept will first be used to fund the OurSpace reserve account to a balance equal to three years of service funding per OurSpace unit (\$5,000 per year per unit, up to \$15,000 per OurSpace Unit in total). The OurSpace reserve will be replenished through this cash flow sweep on an annual basis, and any excess cash flow will go towards repaying the HDC subsidy loans.
- All projects with homeless set-aside units must submit a **Social Service Plan** and a proposed **Social Service Provider** for HPD approval prior to marketing and lease-up of the homeless set-aside units, except those receiving referrals from a government agency under a social service contract.
- The unit distribution for homeless units must be approved by HPD.
- For projects with OurSpace units or without a social service contract, a capitalized **OurSpace Reserve** of up to \$7,500 per homeless unit may fund the approved social service plan.
- HPD may require an additional set-aside of up to \$2,000 per studio homeless unit, or up to \$3,000 if the homeless units include family units, to fund furnishings for homeless units at initial rent-up only if there is no other source (for example, under a social service contract) available to pay for homeless furnishings.

**Design and
Construction
Requirements**

- Projects must meet [HPD Design Guidelines for Multifamily New Construction and Senior Housing](#) and plans must be approved by HPD. HPD also strongly encourages the incorporation of the critical success factors outlined in "[Laying the Groundwork: Design Guidelines for Retail and Other Ground-Floor Uses in Mixed-Use Affordable Housing Developments](#)".

- HPD will approve unit distribution. Projects are suggested to have a minimum of 15% one-bedroom, a minimum of 30% two-bedroom or larger, and a maximum of 25% studio units. Projects that include supportive housing units for singles may be allowed to exceed the 25% studio threshold.

Unit Type	Net Square Footage
Studio	350 - 400 sq. ft.
1 BR	500 - 550 sq. ft.
2 BR	650 - 725 sq. ft.
3 BR	850 - 950 sq. ft.
4 BR	950 - 1,075 sq. ft.

- HPD reserves the right to participate in construction monitoring.
- HPD may at its discretion require competitive bidding for general contractors.
- All projects must achieve Green Communities Green Certification. The Green Communities Criteria and Certification portal is available online at <http://www.greencommunitiesonline.org/>
- All projects will be required to retain a qualified benchmarking service provider to track utility usage for heating, electric and water. The HPD Benchmarking and Performance Tracking Protocol is available online at <https://www1.nyc.gov/site/hpd/services-and-information/benchmarking-protocol.page>
- Projects must be in full compliance with the design requirements of all applicable laws, including, but not limited to, the *New York City Zoning Resolution*, the *New York City Building Code*, the *New York City Housing Maintenance code*, the *New York State Multiple Dwelling Law*, the *Fair Housing Act*, and *Section 504 of the Rehabilitation Act of 1973*. Projects receiving New York State Homes

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	<p>and Community Renewal (HCR) funding must also comply with the HCR Design Guidelines, as applicable.</p> <ul style="list-style-type: none"> • New York City Building Code regulations for construction in flood hazard areas are changing and will affect construction requirements for future development. To reduce risk, the agency may impose additional hazard mitigation requirements. Developers should verify and disclose if they are in the 100 year or 500-year flood plain. This information must be confirmed by a licensed surveyor, but Developers can perform an initial check here: www.nyc.gov/floodhazardmapper
Real Estate Tax Benefits	<ul style="list-style-type: none"> • Projects may qualify for §420-c, §421-a, or Article XI tax exemptions. See HPD Tax Credits and Incentives guidelines for more details. Projects may be subject to a PILOT in the HPD Regulatory Agreement depending on the availability of project cash flow. • Developers must provide proof of any such tax exemption prior to construction loan closing.
Closing Requirements	<p>Closing requirements prior to construction loan closing include (but are not limited to):</p> <ul style="list-style-type: none"> • Completed and satisfactory Sponsor Review disclosure documents for all applicable individuals and entities in the project. Further disclosure documentation may be required. • Completed and satisfactory Equal Opportunity documents for applicable entities, including contractors and sub-contractors, in the project. Further documentation may be required for contractors and sub-contractors on the Enhanced Contractor Review status list. • Completed and satisfactory HUD Section 3 documents for applicable entities in the project, if project is receiving federal funding, • Completed and satisfactory Campaign Finance documents for applicable individuals and organizations in the project. • Completed and satisfactory Environmental Review including, but not limited to, City Environmental Quality Review (CEQR), and/or State Environmental Quality Review Act (SEQRA), and/or National Environmental Policy Act (NEPA), as applicable, for projects with federal funding (Project Based Section 8 Vouchers, HOME Funds, etc.). Detailed environmental studies and compliance measures may be required. • Architectural plans approved by HPD’s Building and Land Development Services • Approval and Permits by the NYC Department of Buildings (DOB) • HPD may require the inclusion of an HPD rider as part of the construction contract. • Borrower’s organizational documents including W-9 forms and IRS EIN letters. • Projects with HOME funds must comply with HOME Compliance requirements. • HPD requires that the general contractor secures projects by a letter of credit for 10% of hard costs excluding contingency. Payment and Performance bond for 100% of hard costs may be accepted in lieu of letter of credit. • HPD may require that it be named beneficiary on documents, including but not limited to insurance certificates and completion guarantees.
Rent Up	<ul style="list-style-type: none"> • All projects must be marketed according to HPD and HDC Marketing Guidelines and Tenant Selection Criteria. The Developer must submit a marketing plan for agency review and approval prior to marketing. • On an annual basis, HPD may require a certified rent roll, written certification of tenant incomes, and other supporting documentation.
Conversion	<p>Conditions precedent to permanent loan conversion include (but are not limited to):</p>

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- Evidence of rent registration with HCR in compliance with rent stabilization requirements
- 95% residential rental achievement
- 100% commercial/retail occupancy evidenced by executed leases
- Evidence of real estate tax benefits, including ICAP, if applicable
- Temporary or Final Certificate of Occupancy from NYC Department of Buildings (DOB)
- Architect’s Statement post-completion regarding accessibility
- Certificate of Completion from HPD on publicly owned sites
- Evidence of HOME compliance

Proposal Review Information

For consideration, please submit project information, including:

- Location (Borough/Block/Lot and address) and description of site and proposed development. Include commercial, community space, parking and residential square footage.
- Proposed pro-forma including development and operating budgets, as well as acquisition price per developable floor area for privately owned sites. Include an appraisal for private site acquisitions.
- Whether the project is generating tax benefits or zoning bonus to another project.
- Proposed development team (borrower, contactor, architect, management company), respective principals and previous development experience over the last 10 years. HPD and NYC development experience should be highlighted.

Housing+ Initiative: Underdeveloped land in regulated housing developments may provide opportunities for both new affordable housing and for extending/deepening affordability of the existing affordable housing. Developers considering developing on such land or preservation of existing housing which includes such underdeveloped land should refer to HPD’s [“Housing+”](#) page and review the checklist requirements for new proposal submission.

To facilitate affordable housing development opportunities on underdeveloped land and parking lots in regulated affordable housing, HPD may provide City Capital subsidy conforming with a New Construction term sheet or consider deepening the level of tax exemption on the preservation site in exchange for increased affordability on new construction projects. Priority will be given to projects that most efficiently use City resources.

Fees and Closing Costs

HPD requires a fee of \$1,400 for monitoring compliance with Executive Order 50 of 1980 (as amended by Executive Order 94 of 1986, Executive Order 108 of 1986, and Executive Order 159 of 2011) which requires equal employment opportunity in New York City contracting and monitoring compliance with the Federal Davis Bacon Act (40 U.S.C. §3141 et seq.), State Labor Law §§220 and 230, Real Property Tax Law §421-a(8), and New York City Administrative Code §6-109 which require the payment of prevailing wages and compliance with labor standards.

Additional Requirements

Developers are required to comply with all applicable Federal, State, and local laws, orders, and regulations prohibiting housing discrimination. The Developer must also construct the project in compliance with all laws regarding accessibility for people with disabilities, including but not limited to the New York City Building Code, the federal Fair Housing Act, the Americans With Disabilities Act, and Section 504 of the Rehabilitation Act of 1973.

The proposed residential development program will be evaluated within the context of New York City’s commitment to affirmatively further fair housing. Consistent with the Fair Housing Act, the City and HPD implement a balanced approach to fair housing planning, taking meaningful action to address disparities in housing needs that increases access to opportunity, fosters inclusive communities, and facilitates integrated living patterns, in addition to combating discrimination, throughout New York City.

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Eligible HPD-financed projects will be subject to the Agency's economic opportunity programs including HireNYC and M/WBE Build Up. Such projects must meet the obligations of each applicable program and initiative. Additional information can be found at:

<https://www1.nyc.gov/site/hpd/services-and-information/hirenyc.page> and
<https://www1.nyc.gov/site/hpd/services-and-information/m-wbe-build-up-program.page>.

All projects proposed to be located in an Opportunity Zone should consider Opportunity Funds as a potential source of equity. Projects that use Opportunity Fund investments must clearly identify the amount of all such investments, the name and location of the Opportunity Fund, and the tax payment implications and benefits for the Opportunity Zone investment. Any additional federal funding beyond the tax must also be disclosed and will be included in the evaluation of the project. Maps of the designated tracts can be found at this link <https://esd.ny.gov/opportunity-zones>

HPD Contact

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HPD, in its sole discretion, may, at any time and without prior notice, terminate the program, amend or waive compliance with any of its terms, or reject any or all proposals for funding.