



# NYS Division of Housing and Community Renewal

## TECHNICAL SERVICES UNIT

### Unified Funding Common Application Issues

November 2008

**Underwriting**

# Common Underwriting Application Flaws

1. DHCR Reserve Requirements Not Met (CPM Sections 2.01.04.A , 5.06 (iii), and 5.07.06 (iii) )
  - HTF/HOME projects
    - Minimum Capitalization of the lesser of 1% of TDC or 50% of project's gross rents, **only if LIHC/SLIHC also requested.**
    - Annual operating reserve contribution of 3% of project's gross rents.
    - Annual replacement reserve contributions of .5% **of total construction cost, up to a maximum of \$800 per unit** for family projects
    - Annual replacement reserve contributions of \$400 per unit for senior projects.
  - LIHC/SLIHC Only Projects
    - Annual replacement reserve contributions of \$250 per unit for new construction senior projects.
    - Annual replacement reserve contributions of \$300 per unit for new construction family projects and any renovation projects.
2. Insufficient or Inconsistent Operating Budget Documentation (CPM Section 5.06 iii)
  - Real Estate Taxes, Utilities and Insurance – Estimates not provided, incomplete or inconsistent with the operating budget. Basis for tenant paid utilities must also be included.
  - Deferred Developer Fees: Operating budget projection does not support the ability to repay fee within 15 years.
3. Rents Do Not Support Operating & Maintenance Budget (CPM Section 5.06 ii)
  - 1% debt service on HOME/HTF loan not included.
  - Required reserves not budgeted correctly.
  - Debt service calculations are inconsistent with funding commitment documentation.
  - Debt service coverage does not meet lender's minimum requirement.
  - Any rental assistance that is to be paid by government or other subsidy was not documented.

4. Market Not Documented or Supported (CPM Section 5.06 i)

- The market study does not demonstrate a convincing need for the housing type to be constructed.
- Primary Market Area is not clearly defined or supported, e.g. unclear market area maps or exclusion of adjacent municipalities without clear justification.
- Demand information (Census data tables) or supply information (existing affordable project information including number of households on waitlists, vacancy levels, and contact numbers) is not included in the market study.
- Project rents in market study are inconsistent with application rent plan.
- Market study's adjustments to demand do not include all existing affordable housing projects in the market area.
- Proposed rents exceed market area street rents.

5. Insufficient Capital Funds (CPM Section 5.06 iv)

- All financing was not documented for both construction and permanent financing phases.
- Deferred Developer Fees - more than 1/3rd of anticipated fee was to be deferred.
- LIHC Equity pay-ins during construction are overstated in the development budget.

6. Separate Residential/Commercial/Community Service Facility (CSF) Budgets Not Submitted (CPM Section 5.06 ii & HTF/HOME Project Application I- General Instructions for Exhibits 3 and 5)

- Commercial /CSF Space - Development costs not properly allocated to commercial CSF space, including acquisition, soft, and hard costs.
- Insufficient information was submitted to evaluate the functional, physical and financial elements of both the housing and the commercial/CSF space-separately and together.
- Eligibility for CSF LIHC credit is assumed on a site which is not within a Qualified Census Tract as required under the IRC.
- Separate development budgets for the residential project, the commercial project, the CSF, and the combined project were not submitted and/or the individual budgets do not add up to the total project cost.

- Operating budgets for residential, commercial, and CSF did not add up to the combined budget.
- Operating expense assumptions/lease terms for the non-residential space not clearly explained, i.e. master lease.

7. Other Application Flaws

- Appraisal does not support acquisition cost budgeted.
- Appraisal prepared more than 6 months prior to application with no letter from appraiser indicating appraised value is still valid in current real estate market. (Appraisals prepared 12 months or more prior to application submission will not be accepted.)
- Appraisal of large sites should only review costs of the land necessary for the project. (CPM Section 5.03.02)
- Household income targets are not achievable with rents proposed.

**Design**

## **Common Design Flaws**

1. Non-compliance with Section 5.03, Site Suitability, of the Capital Programs Manual
  - Site is incompatible with adjacent uses.
  - Site is not within walking distance to services.
  - Site is not relatively level.
  - Site is of greater size than that which is necessary to accommodate the proposed project.
  
2. Non-compliance with Section 4 of the Design Handbook
  - Submission deviates in enough areas to call the validity of the construction estimate into question (ie: incomplete scope).
  - Major design requirements not met:
    - ie: Unit sizes not met.
    - Elevator requirements not met.
  
3. Non-compliance with Building Codes, Regulations & Laws (Design Handbook Section 4.02)
  - Common deficiencies: Sprinkler system not included.  
Exiting requirements not met.  
Handicap accessibility requirements not met.  
Lead based paint remediation not identified.
  
4. Inadequate preliminary design submission (Design Handbook Section 3.01.01)
  - Documents illegible or missing information.
  
5. Construction Cost (Design Handbook Section 3.01.01)
  - Construction cost estimate does not include completed worksheets.
  - Construction cost estimate does not correspond to development budget.
  - Construction costs not consistent with comparable projects:
    - Too high or too low.
    - Site development cost unrealistic.
  - Inadequate documentation of non-residential construction costs.
  - Davis Bacon wage rates not utilized in HOME projects.

6. Local and Government Approvals (Design Handbook Section 4.02)
  - Insufficient documentation that approval can be obtained.
  - Development Timetable can not be met given approval requirements.
  
7. Physical Needs Assessment (Attachment B6 for LIHC, Attachment B13 for HTFC)
  - Part A and/or B have not been signed.
  - Part B is lacking the required information, specifically:
    - Existing conditions sections have not been completed for existing items.
    - Life Expectancy of System information is not completed when an existing system is not being rehabilitated.
  - Form not filled out by a licensed architect or engineer, or not sealed.
  - Life span reference standard not indicated.
  - Totals for the Life Cycle Replacement Cost not filled in.
  
8. Green Building Initiative
  - Green development plan not included.
  - Energy Star appliances, lighting, heating systems, and air conditioning not indicated.
  - Sealed combustion heating systems not indicated.
  - Lead based paint not addressed in pre 1978 buildings.
  - Radon reduction systems not indicated.
  - Surface water management plan not indicated.
  
9. Energy Efficiency Initiative
  - Signed agreements between NYSERDA approved partner and applicant not submitted.
  - Insufficient documentation that a project is designed to meet certification guidelines for NY Energy Star Labeled Homes.
  - Signed agreements between a BPI certified contractor and applicant not submitted.
  - In non-SBC areas, REScheck not the current NY version, inaccurately filled out and not coordinated to the wall section or outline specifications.
  - In non-SBC areas, energy analysis not included for moderate rehabilitation buildings.
  
10. Accessibility
  - Roll-in showers not indicated on the plans for dwelling units seeking points for fully accessible move in ready units.
  - Adequate door clearances not provided.
  - Bathrooms and kitchen layouts and sizes not to compliance standards.
  - Inadequate exterior accessible routes.
  - Undersized laundry rooms.



## 11. Visitability

- Ground floor bathroom not provided in grade level, two story dwelling units.
- Existing at grade dwelling units not meeting the standard, where it is feasible to do so.
- Not providing 36 inch wide doors **to** all visitable **areas within the** apartment, including all bedrooms & bathrooms on the visitable level.
- Undersized bathrooms.

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**Environmental**

## Common Environmental Submission Flaws

1. **Exhibit 3 – Development Budgets/Funding sources:** Failure to include costs for environmental investigations and remediation.
2. **Exhibit 8 – Site and Building Information:** Sections A and B incomplete, failure to fully describe site characteristics and existing building information.
3. **Attachment A2 - Zoning Compliance:** Failure to provide documentation that the project site is or will be properly zoned for the proposed project.
4. **Attachment A3 - Public Approvals:** Failure to provide documentation of all required local approvals, such as site plan approval and subdivision approval, that have been obtained or are in the process of being obtained.
5. **Attachment A4 – SHPO Submission:** Incomplete submission information for SHPO Consultation. Copy of final "Determination" letter not submitted with application.
6. **Attachment A5 – State Environmental Quality Review (SEQR) Submissions:**
  - Failure to submit signed, SEQR Short Environmental Assessment Form (EAF).
  - Failure to include pertinent information and documentation of previously completed or on-going SEQR or NEPA (National Environmental Policy Act) determination completed by other entities having jurisdiction.
  - Failure to adequately describe the entire scope of project activities, e.g. site work, demolition, or if the project is a component of a larger action.
  - Failure to include documents regarding asbestos and lead based paint surveys, removals and clearance certifications for work completed prior to application.
  - Failure to include an entire copy of any Phase I reports that was completed in the previous year.
7. **Attachment A6 - Environmental Approvals:** Failure to provide documentation that all required environmental approvals, such as a wetlands or SPDES permit, have been obtained or are in the process of being obtained.
8. **Attachment B1 – Outline Specifications:** Failure to include sufficient information regarding scope of work in Section 2, Site Work; i.e. demolition, site preparation.

9. **Attachment B3:** Failure to include a preliminary Site Plan.

10. **Attachment B-5:** Failure to include a map accurately showing the location of the project site.

11. **Attachment B-6:** Failure to include a Floodplain letter stating FIRM panel # and date.

12. **Failure to address identifiable site concerns, ie:**

- Archaeological
- Historic properties
- Location in a 100-year Floodplain/Waterfront/Coastal Zone
- Wetlands and Stormwater
- Noise
- Hazardous Materials (underground storage tanks, contaminated soil, asbestos, lead based paint, etc.)
- Agricultural Districts/Farmland Protection
- Endangered species letter from Natural Heritage and FWS

**NOTE: Applicants should refer to section 5.01 thru 5.03 of the current Capital Programs Manual for further information and clarification of the environmental review process.**

October 2007

**Davis Bacon**

## Common Davis-Bacon Application Flaws

1. Failure to include costs for Davis Bacon. All "unified funded projects" financing **12 or more** units with HOME funds (combined from all Federal, State and local sources), including Seed Money, the Leveraged Loan Program or administered by Local Program Administrators must comply with Davis Bacon Related Acts & Federal Labor Standards Reporting. For example, a project with more than 12 units, which has only received HOME Seed money, will proceed as a Davis-Bacon project.
2. Housing Choice Project Based Voucher (HUD Section 8) projects have a similar **9 or more** new, additional unit reporting threshold. Again, any combination of new requested vouchers adding to any existing voucher total which exceed the 9 unit threshold, combine to trigger this requirement. Where units are being created or combined, it is strongly urged that you consult with the DHCR Davis-Bacon office to confirm eligibility.
3. Exhibit 3: Failure to properly identify Davis-Bacon Wage Rates on Section A2, Construction Cost Basis.
4. Exhibit 3 and Attachment B2 (Construction Cost Estimate):
  - Failure to budget appropriate labor and associated costs.
  - Failure to request labor wage rate lock-in if general contractor has been preselected. It is possible under some circumstances to lock in labor rates with the DHCR Davis-Bacon office prior to submitting your application.
  - Failure to distinguish between "Residential" rates (for buildings with four or fewer stories) or "Building" rates (for buildings with five or more stories, as defined by US Dept. of Labor, or buildings that contain commercial space).
  - Failure to budget for potential 'Combined' rate projects: Caution should be used when 'Non-Residential' components of your structures (as defined by US DOL) exceeds 20% or \$1,000,000 in value. These projects will often proceed as 'split' "Building"/ "Residential" rate projects unless, early enough in the planning process, a ruling is obtained through DHCR Davis-Bacon and HUD Office of Labor Relations offices, which may allow you to proceed under one unified 'Residential' rate. Allow five to six weeks for this process.
5. Misclassification of workers.
  - Under Executive Order #17, issued September 5, 2007, a Joint Enforcement Task Force on Employee Misclassification has been actively enforced by Task Force agencies. On Davis-Bacon projects, the DHCR Davis-Bacon office determines worker classifications. Consultation with this office early in the bidding process to ensure that all parties will be staffing with acceptable ratios; and appropriate trades, for the work to be performed is strongly suggested.

6. Accuracy of posted US DOL rates.

- In many instances, rate modifications posted on [www.WDOL.gov](http://www.WDOL.gov) during the bidding process may not be accurate, or may be due to be changed by ongoing surveys or other modifications by the US DOL.
- It is suggested, even where, on first impression, rates in a particular area or county may seem too high or low, that you contact the DHCR Davis-Bacon office to confirm the status of any ongoing process changing rates or known errors.

7. Assistance is available through the DHCR Davis-Bacon Office:

- Contact your Davis-Bacon Contracting Officer at (518) 473-0124 or [jmeyerson@nysdhcr.gov](mailto:jmeyerson@nysdhcr.gov)
- Some general questions may be answered by our training module, posted at: [http://www.dhcr.state.ny.us/general/training/06seminar4\\_HUD\\_DavisBacon.pdf](http://www.dhcr.state.ny.us/general/training/06seminar4_HUD_DavisBacon.pdf)
- Additional help is available through the HUD Office of Labor Relations at (716) 551-5755 (x5003). In many instances, staff training (for groups of over ten) may be arranged for on various Davis-Bacon subjects at no cost.

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