CITY OF NEW YORK
MANHATTAN COMMUNITY BOARD FOUR
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Delores Rubin
Chair

Jesse Bodine
District Manager

January 25, 2017

Vicki Been
Commissioner
NYC Dept. of Housing Preservation & Development
100 Gold Street
New York, NY 10038

Re: HPD Affordable Housing Eligibility
Changes to Applicant Asset Caps 10/4/16

Dear Commissioner Been:

On October 4, 2016, the Department of Housing Preservation and Development (HDP) made changes to its income eligibility[1]. Part of those changes set new Asset Cap limits for applicants falling in 100%-165% of the Area Median Income (AMI) for the first time.

On the recommendation of its Housing, Health, and Human Services (HH&HS) Committee, Manhattan Community Board 4 (MCB4) proposes amendments to the recent changes to the City's affordable housing Applicant Asset Caps to ensure both fairness to applicants who applied prior to October 4th, 2016 and to those with episodic and fluctuating income and seniors who have retired from nontraditional fields of employment.

MCB4 recommends that:

- Applicants who applied before October 4, 2016 be grandfathered in under the old Asset Cap guidelines.
- New Asset Caps be doubled to two times the current HUD income limit for a four person household

Background

Manhattan Community Board 4 (MCB4) has a long history of working to preserve affordable housing in its district. Due to the prevalence of developers combining 421(a) and Inclusionary Housing in Manhattan Community District 4 (MCD4), more low-income housing has been built in the district than moderate to middle income housing. As the real estate prices in our neighborhood have risen substantially, the need for moderate and middle income housing has

[1] See Appendix A: HPD Marketing Handbook

grown. Children who grew up in the area are now unable to afford to live here. The growing need for moderate to middle income residents was codified in the Points of Agreement, which provide for a tiering of inclusionary bonus to higher income levels[2].

> West Chelsea Points of Agreement:
> *Section 1(e): Tiering of inclusionary bonus to higher income levels*
> The Administration agrees to allow developers to provide inclusionary housing units to higher income levels in exchange for providing more affordable units, as detailed in the modified zoning text.
>
> Hudson Yards Points of Agreement:
> *Section 3(e): Tiering of inclusionary bonus to higher income levels*
> The Administration agrees to allow developers to provide inclusionary housing units to higher income levels in exchange for providing more affordable units, as detailed in the modified zoning text.
>
> Western Rail Yards Points of Agreement:
> *Section 2a(iii):*
> "WRY & ERY Affordable Units will convert to permanent affordability to households at an average income of up to 90% AMI, not to exceed 125% AMI…"
> *Section 3a(ii):*
> [in reference to HPD's RFP for the DEP and MTA sites] "An AMI mix of 165% or under"
> *Section 3d:*
> "HPD commits to develop the [DSNY] site for affordable housing at a range of incomes up to 165% AMI."
> *Section 3h:*
> [in reference to related off-site 80/20s] "The Westport (at 500 West 56th Street) and the Tate (at 535 West 23rd Street) in Community District 4 will remain permanently affordable to households at an average income of up to 90% AMI, not to exceed 125% AMI."

MCB4 has consistently advocated for middle and moderate income affordable housing. From 2006 until 2015, the Voluntary Inclusionary Housing Program (VIH) produced 2,571 units of affordable housing in MCB4[3]. 93.7% of these units were for individuals and families earning 60% AMI or below[4]. The AMI distribution of Inclusionary Units is as follows:

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[2] See Appendix B:Points of Agreement
[3] See Appendix C: Inclusionary Housing Developments in MCB4

AMI	Number of Units	Percent of Total Units	Income Range (for 1 – 4 persons)
40%	187	7.3%	$24,200-$34,520
50%	1,574	61.2%	$30,250 - $43,150
60%	647	25.2%	$36,300 - $51,780
80%	64	2.5%	$48,350-$69,050
100%	27	1.1%	$60,500 - $86,300
130%	27	1.1%	$78,650-$112,200
165%	47	1.8%	$99,850-$142,400
>165%	8	0.3%	$99,900 and above
Total:	2,571		

The need for affordable housing for moderate to middle income households is evident. In the past, an Asset Cap of $250,000 was applied to low-income applicants of affordable housing, with the exclusion of retirement accounts. Moderate to middle income applicants were not subject to an Asset Cap.

On October 4, 2016, HPD published its new Marketing Handbook, which included several significant changes that had not been previously announced or presented to MCB4. Section 5-5B of the Handbook states that:

> *"For a rental affordable unit, the value of the applicant's household assets may not exceed the amount of the current HUD income limit for a four person household for the AMI limit applicable to such unit."*

While previously there had only been a low-income cap, now for the first time a cap for moderate and middle income households has been imposed. The new guidelines add college savings accounts to the list of accounts (including retirement accounts) not subject to the asset limit, but counted toward overall assets.

These Asset Cap changes were not included in the press release or any other news reports regarding the changes in the guidelines. Nonetheless, HPD decided to put the new guidelines effect immediately. The new Asset Caps are as follows:

40%	50%	60%	80%	100%	120%	130%	165%
$36,240	$45,300	$54,360	$72,500	$90,600	$108,720	$117,780	$149,490

The imposition of Asset Caps on 100%-165% of AMI disqualifies potential tenants who are currently priced out of the housing market from qualifying for affordable housing. Savings for the future, do not imply adequate monthly income to pay monthly market rents. In our neighborhood, monthly rents of $3,800 for 1 bedroom or $5,500 for a 2 bedroom are the standard.

These caps operate as a disincentive for moderate to middle income applicants to save. Further such Asset Caps disqualify the very community residents, the Points of Agreement sought to house from the expanded moderate and middle income affordable housing in MCD4.

Recommendation for Amendments in Asset Caps

Grandfathering Applicants who Applied Prior to October 4, 2016

Applicants who submitted affordable housing applications before the new guidelines went into effect should be grandfathered in under the old Asset Cap. We are aware of applicants who submitted applications well before October 4th but were found to be ineligible based on the new cap when they came in for interviews. The new Asset Cap limits were never discussed publically before October 4th. If these changes had been presented to MCB4, the Board would have advised on the proposed new limits. It is unfair to deny housing to individuals who were unaware of the policy changes and change the rules of the game during an application process.

Individuals and Families with Fluctuating Incomes and Seniors Working Nontraditional Jobs

The new Asset Cap guidelines disproportionally affect applicants with fluctuating and episodic income. Many self-employed individuals do not have traditional retirement accounts and rely on savings to serve as a safety net during bad years. While they could contribute to a retirement account which would not count towards the cap, penalties on withdrawals from these accounts are high and a need for liquid assets is more likely for individuals who are self-employed than for individuals with stable and consistent income. The Freelancers Union estimates that nearly one in three working Americans is an independent worker. MCB4 urges HPD to study how the new guidelines affect individuals with fluctuating income.

Seniors who have worked in nontraditional fields of employment often do not have significant retirement accounts and plan for their savings accounts to serve as their entire retirement. Since the new asset requirements include a carve-out for retirement accounts, there should be a mechanism for seniors who for various reasons are unable to put the bulk of their assets in a formal retirement account.

Asset Cap Changes in Conflict with Points of Agreement for Hudson Yards, West Chelsea, and Western Rail Yards Rezonings

MCB4 is particularly concerned that the recent changes in the Asset Cap disproportionately affects moderate and middle income applicants. The Points of Agreement clearly outline a plan for providing much-needed housing for residents earning between 100-165% of AMI. It is typical of moderate and middle income families to have savings and assets that would exceed these amounts. Penalizing residents for saving is counterproductive to long-term success. Moderate and middle income households should be rewarded, not penalized, for saving to provide a long-term and sustainable future. For moderate and middle income housing to be successful in MCB4 and around the city, it is imperative that HPD take a second look at the Asset Caps and ask stakeholders for input into this important decision.

The new Asset Cap is based on the HUD income limit for a four person household at each applicable AMI**. MCB4 recommends that the cap be based on two times the AMI income limit for a four person household**. This would double the current Asset Cap to ensure a more fair system for individuals with fluctuating and episodic income, seniors whose career was in nontraditional fields of employment, and moderate and middle income applicants.

Conclusion

MCB4 urges HPD to, in the short term, grandfather applicants who applied prior to October 4th, and in the long term double the current Asset Cap guidelines so that all populations in need of affordable housing can be adequately served. The Board feels confident that these goals can be reached while still honoring the Points of Agreement and developing sustainable and long-term solutions for all residents.

Sincerely,

Delores Rubin
MCB4 Chair

[Signed 1/25/17]
Barbara Davis, Co-Chair
Housing, Health &
Human Services Committee

Joe Restuccia, Co-Chair
Housing, Health &
Human Services Committee

Cc: Assembly Member L. Rosenthal
Council Member H. Rosenthal
Borough President G. Brewer
State Senator B. Hoylman
Veanda Simmons, HPD
S. Desmond, Housing Conservation Coordinators

Appendix A

The Marketing Handbook: Policies and Procedures for Resident Selection and Occupancy

Section 5-5 B. ASSET LIMITS:

1. Note: For purposes of these requirements, real property includes shares of stock in a cooperative housing corporation and ownership includes any type of direct or indirect ownership interest (including partial ownership).

2. The value of household assets may not exceed the asset limit for the unit to which the applicant is applying. The definition of household assets, as it pertains to real property, deviates from the definition of assets in the HUD Handbook 4350.3.

a. The entire market value of any interest in real property is subject to the asset limit; for other capital investments, only the applicant's equity in the investment is subject to the asset limit.

b. Balances in specifically designated retirement funds and college savings accounts are not subject to the asset limit, but are counted toward overall assets and income from assets.

c. Developers and Marketing Agents should refer to HUD 4350.3 Exhibit 5.2 for the definition of all other assets not listed in this section.

3. Asset Limit for Applicants of Rental Units

a. For a rental affordable unit, the value of the applicant's household assets may not exceed the amount of the current HUD income limit for a four person household for the AMI limit applicable to such unit.

b. For example, if the 60% HUD income limit for a four-person household is $55,000, a household of any size applying for a 60% AMI unit is not eligible if its total household assets exceed $55,000. If the 80% limit is $72,000, a household applying for an 80% AMI unit may not have more than $72,000 in assets.

4. Asset Limit for Applicants of Homeownership Units For a homeownership affordable unit, the value of the applicant's household assets may not exceed the current four-person HUD income limit for 175% AMI

Section 5-5 C. PROPERTY OWNERSHIP

1. Asset Calculation
    a. If an applicant owns any real property, the market value of that real property is included in the calculation of household assets and is subject to the asset limit (see Section 5-5.B, "Asset Limits").
2. Income Calculation
    a. If an applicant owns any real property, the actual or potential rental income from that real property is included in the income calculation.

3. Prohibition – Rental Affordable Unit
    a. For a rental affordable unit, no member of the applicant’s household may own any residential real property in, or within a 100-mile radius of, New York City.
4. Prohibition – Homeownership Affordable Unit
    a. For a homeownership affordable unit, no member of the applicant’s household may own, or have previously purchased, any interest in residential real property.

Appendix C
Inclusionary Housing Developments in MCB4

Project	Year	Address	Total Units	Total Affordable
Caledonia	2006	450 West 17th Street	288	59
TF Cornerstone	2007	455 West 37th Street	394	80
Clinton Housing	2007	505 West 51st Street	10	10
Douglaston Development	2007	316 11th Avenue	369	80
Emerald Green	2007	310-328 West 38th Street	569	120
River Place II	2007	600 West 42nd Street	1,169	234
Atlantic Development	2008	303 10th Avenue	89	18
TF Cornerstone	2008	505 West 37th Street	835	169
Avalon Bay	2009	525 West 28th Street	691	142
Tower 37 LLC	2009	350 W. 37th Street	207	42
Crystal Green	2010	330 West 39th Street	200	41
Gotham West	2011	550 West 45th Street	1,238	137
Mercedes House	2011	770 11th Avenue	900	171
Lalezarian	2012	515 West 28th Street	375	75
Related Companies	2012	500 West 30th Street	385	77
Arker Companies Development	2013	424 West 55th Street	17	17
DHA Capital	2013	546 West 44th Street	280	62
Extell Development	2013	551 10th Avenue	598	119
Moinian	2013	605 West 42nd Street	1,191	238
Iliad Development	2014	509 West 38th Street	224	46
Elad	2014	505 West 43rd	106	9
Manhattan West	2014	401 West 31st Street	844	169
Taconic/Ritterman	2014	525 West 52nd Street	392	79
TF Cornerstone	2014	606 West 57th Street	1,028	224
Site 7	2014	540 West 53rd	103	103
Lalezarian	2015	515 West 36th Street	251	50
		TOTAL	**12,753**	**2,571**