

---

**MINNEAPOLIS/SAINT PAUL HOUSING FINANCE BOARD**

*2020 HOUSING  
TAX CREDIT PROCEDURAL MANUAL*

**Published May 8, 2019**

---

## TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. ROLE OF THE SUBALLOCATORS	2
III. POLICIES AND PROCEDURES	
A. Allocation Policies .....	2
B. Application Cycle .....	3
C. Multiple Buildings .....	4
D. Transfer of Ownership .....	4
E. Unacceptable Practices .....	4
F. Identity of Interest.....	6
G. Disclosure of Interest.....	6
H. Determination of HTC Amount.....	7
I. Requests for Additional HTC Amounts.....	8
J. Qualified Census Tracts and Difficult Development Areas.....	8
J. Tax Exempt Projects and 4% HTC.....	9
L. Reservations.....	11
M. Administration Errors .....	12
N. Allocation of Returned or Additional 9% HTC – Waiting List.....	13
O. Carryover Allocations.....	13
P. Final Allocations.....	14
Q. Monitoring for Compliance .....	14
R. Qualified Contract .....	15
S. Other Conditions.....	16
T. Revisions to Procedural Manual and QAP .....	16
IV. HTC PROGRAM REQUIREMENTS	
A. Eligible Activities .....	17
B. Applicable Percentage .....	17
C. Review of Federally Assisted Projects .....	18
D. Federal Subsidy Layering Review .....	18
E. Project Eligibility .....	18
F. Tenant Eligibility .....	20
G. Eligible Basis .....	20
H. Qualified Basis/Applicable Fraction.....	21
I. Annual HTC Amount .....	20
J. Declaration of Land Use Restrictive Covenants.....	20
K. Ineligible Projects .....	21
L. Limits On HTC:.....	23
M. Volume Limits: .....	23
N. Market Review.....	23
O. Tenant Ownership.....	23
P. Revocation of HTC.....	23
Q. Fair Housing Policy .....	23

V. DEVELOPMENT STANDARDS

A. Project Cost Reasonableness .....25  
B. Costs of Intermediaries .....25  
C. Reserves/Contingencies .....25  
D. Comparative Analyses .....25

VI. PROJECT SELECTION

A. Threshold Requirements .....26  
B. Market Review .....26  
C. Site Review .....27  
D. Selection Priorities .....28  
E. Management Review .....28  
F. Compliance Agreement .....28

VII. SUBMISSION REQUIREMENTS

A. Application Requirements .....29  
B. Submission Requirements for Projects Financed with Tax-Exempt Bonds .....31  
C. Carryover Allocation Requirements .....33  
D. Placed in Service – Final Allocation .....35

VIII. FEES

A. Application Fee .....37  
B. Allocation Special Counsel Fee .....37  
C. Allocation Fee .....37  
D. Monitoring Fee .....37  
E. Transfer of Ownership Fee .....38  
F. Late Fee .....38  
G. Qualified Contract Fee .....38

## I. INTRODUCTION

The Housing Tax Credit (the "HTC") Program (the "HTC Program") was enacted as part of the federal Tax Reform Act of 1986. The HTC Program is governed by Section 42 ("Section 42") of the Internal Revenue Code of 1986 (the "Code") and the Treasury Regulations thereunder (the "Treasury Regulations"). The HTC offers a reduction in tax liability to owners of qualified low-income rental housing projects relating to the acquisition, construction or rehabilitation of low-income rental housing units.

Pursuant to Section 42 of the Code, each state is required to designate a "housing credit agency" to allocate the HTC and administer the HTC Program. The Minnesota Housing Finance Agency (the "Minnesota Housing") has been designated by the Minnesota Legislature as the primary allocator of HTC in Minnesota. In addition, pursuant to Minnesota Statutes, Sections 462A.220 to 462A.225 (the "Act") certain local governmental entities are authorized to act as housing credit agencies for the purpose of allocating a portion of the available state 9% HTC (the "9% HTC"). Pursuant to the Act, the City Councils of the Cities of Minneapolis ("Minneapolis") and Saint Paul ("Saint Paul") have authorized the Minneapolis/Saint Paul Housing Finance Board (the "Board") to act as the housing credit agency for purposes of Section 42 of the Code with respect to the portion of the 9% HTC allocated by Minnesota Housing for each city, as well as with respect to the allocation of the HTC available in connection with the issuance of tax-exempt bonds (the "4% HTC") issued pursuant to Section 142 of the Code.

This 2020 Housing Tax Credit Procedural Manual ("Procedural Manual") governs both the allocation of the 9% HTC and the 4% HTC by the Board. This Procedural Manual constitutes a part of the Qualified Allocation Plan described in the following paragraph.

Section 42(m) of the Code requires tax credit allocating agencies, such as the Board, to develop a qualified allocation plan for the allocation of the 9% HTC and the 4% HTC within the jurisdiction of the allocating agency. The Qualified Allocation Plan ("QAP"), attached hereto as Exhibit A, sets forth those housing priorities and housing preferences required by Section 42 of the Code, together with housing priorities established by the Board. The QAP, together with this Procedural Manual, provide policies and procedures for the allocation of HTC by the Board. The QAP and this Procedural Manual may be amended from time to time as new guidelines and regulations are issued pursuant to the Code and/or the Act or as the Board deems necessary to meet the goals of the HTC Program.

Pursuant to Section 42 of the Code, the Board, as an HTC allocating agency, is required to provide procedures for monitoring projects for compliance with the requirements of the HTC Program and for notifying the Internal Revenue Service ("IRS") of any non-compliance. All applicants should review Treasury Regulation §1.42-5, Monitoring compliance with low-income housing requirements and Section 42, Housing Tax Credit Program Compliance Manual for Minneapolis – Saint Paul Housing Finance Board, which are a part of the QAP, and attached hereto as Exhibit Q.

The publication of this Procedural Manual is for convenience only and is to be used only as a supplement to existing laws and regulations. This Procedural Manual is not intended to be a comprehensive guide to the HTC Program and all of its requirements. This Procedural Manual was designed to assist owners and managers of HTC projects to better ensure that the projects remain in compliance with Section 42 of the Code.

Your use or reliance upon any of the provisions contained in this Procedural Manual does not, expressly or impliedly, directly or indirectly, suggest, represent or warrant that the user will be in compliance with the requirements of Section 42 of the Code. The Board hereby disclaims any and all responsibility of liability which may be asserted or claimed arising from reliance upon the procedures and information in this Procedural Manual. Owners and managers are urged to consult with attorneys and/or accountants that specialize in the HTC Program in the administration of their HTC projects.

## **II. ROLE OF THE SUBALLOCATORS**

The Board, as a suballocator of 9% HTCs, is authorized to allocate 9% HTC to projects within the Board's jurisdiction pursuant to the QAP. The Board will also allocate the 4% HTC and will be assisted in the allocation of both the 9% HTC and the 4% HTC by the City of Minneapolis Department of the Community Planning & Economic Development ("CPED") for projects located in Minneapolis and by the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota ("HRA") for projects located in Saint Paul.

In connection with a direct request to the Minnesota Housing for HTCs, Minnesota Housing may request comments from the Board with respect to projects to be developed using HTCs that will be located in the Board's jurisdiction.

## **III. POLICIES AND PROCEDURES**

### **A. Allocation Policies**

- (1) The Board shall act as the designated housing credit agency on behalf of the Cities of Minneapolis and Saint Paul.
- (2) The Board's 9% HTC allocation will be divided between the Cities of Minneapolis and Saint Paul as follows:
  - (a) HRA and CPED shall each administer, reserve and allocate that portion of the Board's 9% HTC allocation equal to the Cities' 9% HTC apportionments pursuant to the formula established pursuant to the Act.
  - (b) Should a City not be able to use its portion of the 9% HTC apportionment, it may transfer its apportionment to the other City.
  - (c) The City of Minneapolis or HRA, on behalf of Saint Paul, as applicable, must approve a resolution validating the transfer of 9% HTC to the other City.
  - (d) Upon approval by the City Council of the City of Minneapolis (the "Minneapolis Council") or HRA as provided in the immediately preceding paragraph, the Board will consider the authorization of the transfer of HTCs between the Cities and shall maintain a record thereof.
  - (e) Any 9% HTCs which are not allocated by the Board during a

particular year funding round will be returned to Minnesota Housing for subsequent allocation. Subsequent to a particular year funding round conducted by the Board, applicants of projects to be developed within the Board's jurisdiction may apply directly to the Minnesota Housing for 9% HTCs.

## **B. Application Cycle**

Applications for 9% HTCs must be submitted no later than [ ], 2019 in accordance with this Procedural Manual and the QAP.

Applications for the 9% HTC or 4% HTC must be submitted to CPED or HRA, as applicable, by the date(s) set forth herein. Refer to Section VII for Application Submission requirements.

It is the applicant's responsibility to submit a complete Application. The City of Minneapolis and HRA will award 9% HTCs based upon the Applications received by the application due date.

If the Application and required exhibits are not legible and/or complete, the Application will be returned to the applicant and the application fee will be forfeited. No Applications, exhibits, documentation or application fees will be accepted after the Application due date.

Applications will not be accepted by facsimile or email.

Applications are required to be submitted to:

Community Planning & Economic Development  
Crown Roller Mill, Suite 200  
105 5<sup>th</sup> Avenue South  
Minneapolis, MN 55401

or

Saint Paul Housing and Redevelopment Authority  
Low Income Housing Tax Credit Program  
11<sup>th</sup> Floor, City Hall Annex  
25 West Fourth Street  
Saint Paul, MN 55102

Upon receipt of an Application, the Board will notify the Mayor of the local jurisdiction in which the proposed project is planned to be developed. This notification will include characteristics of the proposed HTC project and provide an opportunity for the local government to comment on the project.

**C. Multiple Buildings**

Projects may include "multiple buildings" having similarly constructed housing units, provided the buildings are located on the same tract of land, are owned by the same legal entity and are financed pursuant to a common plan of financing. Scattered site buildings not located on the same tract of land may also qualify for HTC if the project meets all of the other requirements and all units in the project are both income and rent restricted.

**D. Transfer of Ownership**

The Board strongly discourages the transfer of ownership in projects that have been awarded HTC. Any transfer of title of a project or transfer of more than 50% of the ownership interest of a general partner or change in a nonprofit partner after placement in service and through the fifth year of the 15-year compliance period will be considered a material change in the project ("Transfer") and will be subject to the review and approval of the Board. To request Transfer approval, a project owner must submit a revised Application along with a completed and executed Transfer of Interest Form (LIHC-27 Exhibit N) and pay the Transfer Fee set forth in Section VIII of this Procedural Manual to CPED or HRA, as applicable, together with any other documentation that the Board deems necessary.

**E. Unacceptable Practices**

**Unapproved Transfer of Ownership**

Any unapproved Transfer will have an effect on all individuals/entities associated with the project and management team on each side of the Transfer that submit Applications in future HTC funding rounds. These entities may be assessed the following negative points:

For Minneapolis projects: for four (4) funding rounds from the date CPED discovers an unapproved Transfer:

- (1) First Transfer (3 negative points will be assessed on each subsequent Application submittal)
- (2) Two or more Transfers (15 negative points will be assessed on each subsequent Application submittal)

In addition, if CPED becomes aware of an unapproved Transfer, CPED reserves the right to determine that all parties involved in the Transfer will not be eligible to participate in CPED's HTC Program for a period of ten (10) years from the date of discovery.

For Saint Paul projects: any unapproved Transfer after the placed in service date of a project is subject to HRA review and approval. Upon notice of an unapproved Transfer, HRA reserves the right to determine that all parties involved with the Transfer will not be eligible to participate in HRA's HTC Program for up to five (5) years from the date of discovery.

### **Failure to Meet Requirements of Cost Containment Priority**

For Minneapolis projects: if a project received points for cost containment and the owner failed to keep project costs under the applicable cost threshold through final allocation, HTC Applications submitted in the next funding round will be assessed 4 negative points.

For Saint Paul projects: all projects must comply with cost-containment thresholds established by HRA. Projects with unique urban redevelopment conditions may request a cost containment adjustment subject to HRA's review and approval.

### **Displacement of Section 8 Tenants**

CPED and HRA will not accept Applications that have displaced (or will displace) Section 8 tenants in a housing project because rents will be increased above the Section 8 Payment Standard Rent limit. Rehabilitation projects that have existing Section 8 tenants may not increase those rents (in Section 8 units only) above HUD's Payment Standard Rents after completion of the rehabilitation.

- (1) CPED and HRA have agreed to partner with the local HUD area office to determine if tenants of rehabilitation projects:
  - (a) Were displaced prior to submission of an Application
  - (b) Will be displaced after completion of the rehabilitation
- (2) For Minneapolis projects: if CPED, and the local HUD area office agree that intentional displacement of Section 8 tenants has occurred, CPED will:
  - (a) Reduce or rescind the reservation/allocation of the HTC to the project prior to issuance of the Form 8609.
  - (b) Assess 25 negative points to all parties involved in ownership/management of the project for the next four (4) funding rounds following notification of the assessment of negative points by CPED. This also applies to 4% HTC projects, owners and managers.
- (3) For Saint Paul projects: if HRA and the local HUD area office agree that intentional displacement of Section 8 tenants occurred, HRA reserves the right to reduce or rescind the reservation/allocation of the HTC to the project prior to issuance of the Form 8609.

### **Changes to Project**

The award of HTCs is based upon information provided in the Application and the preliminary building plans submitted with the Application. Until the project is placed in service, any material change in the project or building design as submitted in the Application will require CPED or HRA's review and approval, as applicable, and the Board's review and approval.



For Minneapolis projects: any material project change not been previously approved by CPED may result in loss of HTC up to the full amount of the allocation as well as the assessment of up to 25 negative points to the ownership/developer for the next four (4) funding rounds.

For Saint Paul projects: upon notice of any material change without prior HRA approval, HRA reserves the right to determine that all parties involved with the material change will not be eligible to participation in the HTC Program for Saint Paul for up to five (5) years.

### **Repeated Non-Compliance with Fair Housing Policies, Procedures and/or Requirements**

For Minneapolis projects: Repeated failure to comply with CPED's Fair Housing policies, procedures, or requirements at all times will be penalized. CPED will assess up to 25 negative points on future HTC applications for all parties involved in the ownership and/or management of the project. Negative point assessments will be in effect for the next four (4) funding rounds following notification of the assessment of the negative points by CPED. This also applies to 4% HTC projects, owners, and managers.

For Saint Paul projects: All projects must at all times affirmatively further fair housing by complying with federal, state, local laws, rules, regulations, including Section 183 of the Saint Paul Legislative Code. Upon notice of repeated non-compliance with fair housing laws and regulations, HRA, acting on behalf of the Board, reserves the right to determine that all parties involved with the project will not be eligible to participate in the HTC Program for projects to be located in Saint Paul for up to five (5) years.

### **F. Identity of Interest**

The applicant, and any other parties involved with the project, must disclose in the Application any and all relationships (generally based on financial interests or family ties) or other identities of interest (collectively, "Identities of Interest") with any other parties involved in the project.

### **G. Disclosure of Interest**

The applicant must disclose in the Application the names and addresses, including corporate officials where applicable, of all parties that have or will have a significant role in the development and/or operation of the project. Significant parties include, but are not limited to, general partners, accountants, architects, engineers, financial consultants, lawyers and any other consultants, management agents and the general contractor (collectively "Significant Parties"). (See LIHC-19, Exhibit M, Development Team Resume).

CPED and HRA, respectively, must be satisfied that those who will own and operate the project are familiar with and are prepared to comply with the requirements of the HTC Program.

The following Significant Parties are ineligible to participate in the HTC Program.

- (1) Significant Parties who have been convicted of, enter an agreement for immunity from prosecution for, or plead guilty, including a plea of nolo contendere, to: a crime of dishonesty, moral turpitude, fraud, bribery, payment of illegal gratuities, perjury, false statement, racketeering, blackmail, extortion, falsification or destruction of records.
- (2) Significant Parties who are currently debarred from any Minnesota program, any other state program, or any federal program.
- (3) Significant Parties who have been notified by CPED or HRA, as applicable, that such Significant Party is in violation of the requirements of the HTC Program.
- (4) Significant Parties having an Identity of Interest with persons or entities falling into any of the above categories.

#### **H. Determination of HTC Amount**

Pursuant to Section 42 of the Code, the Board may not allocate more HTC to an applicant than is necessary for the financial feasibility of the project and its viability as a qualified affordable housing project throughout the 10-year credit period.

All applications for HTCs must meet the threshold requirements set forth in the QAP in order to be considered for HTCs. For applications for which the threshold requirements have been met, CPED and HRA, respectively, will evaluate the applications for HTCs for proposed projects, taking into consideration the following:

- (1) Development costs, including developer fees, builder's profits, contractors overhead, and general conditions.
- (2) All sources and uses of funds.
- (3) Projected income and expenses.
- (4) Proceeds expected to be generated from the sale of HTC, including any historic tax credits.
- (5) The difference (the "GAP") between total project costs and total available financing resources. A calculation will be made to determine the amount of HTC needed by the project to fund the GAP over the 10-year credit period.

Based on this evaluation, CPED and HRA, respectively, will determine the amount of HTC to be reserved for each applicant. HTC awards will be limited to the amount necessary to ensure the financial feasibility of the project. The ultimate amount of the HTC award may change during the construction/development process due to variables in costs, loan amounts, HTC

rate percentage, syndication proceeds, etc. The Board will make reservations of HTC for particular projects based on the recommendations of the City of Minneapolis and HRA, as applicable.

The analysis of the amount of HTC necessary to fund the GAP will be done at the time of application, at the time a carryover allocation is approved, and at the time the project is placed in service, provided all project costs are finalized and certified in accordance with the requirements of the QAP.

If there are changes in sources and/or uses of funds or other material changes with respect to a particular project, the Board will adjust the HTC amount to reflect the changes, and the HTC may be reduced at the direction of the City of Minneapolis or HRA, as applicable. Any requests for additional HTC for the project will depend upon the availability of HTC and the determination of the City of Minneapolis or HRA, as applicable.

#### **I. Requests for Additional HTC Amounts**

Developers which have carryover allocations from a prior year may be eligible to apply for additional HTCs if there has been an increase in project costs (in the year in which HTC were initially reserved and in subsequent years) which results in an increase in eligible basis of the project.

Projects which qualified for a higher amount of HTC at HTC reservation, but did not receive a full reservation due to unavailability of HTC, are also eligible to apply for additional HTCs in subsequent years.

In both of the above cases, applications requesting additional HTC will be subject to the same evaluation process described above and to the availability of HTC. Developers requesting addition HTC must revise and resubmit their Application and also submit an additional application fee, as set forth in Section VIII hereof, to CPED or HRA, as applicable.

#### **J. Qualified Census Tracts and Difficult Development Areas**

Pursuant to Section 42(d)(5) of the Code, the Board may increase or “boost” the eligible basis of a building for purposes of the allocation of HTC by up to 30 percent (“Basis Boost”) for projects located in a HUD designated qualified census tract (“QCT”) or a HUD designated difficult development area (“DDA”).

In addition, as authorized by, the Housing and Economic Recovery Act of 2008, the Board may increase or “boost” the eligible basis of a building for purposes of the allocation of HTC by up to 30 percent (“Discretionary Boost”) for buildings that are located outside of a QCT or DDA. The Board will review the financial feasibility of the project and the request for the Discretionary Boost in accordance with this Procedural Manual. The Discretionary Boost will not apply to buildings that need more HTC than the actual HTC allocated to the Board by Minnesota Housing or to projects receiving an allocation of 4% HTC.

9% HTC applicants may request, in writing, the Discretionary Boost under the

following guidelines if the Discretionary Boost is needed to make the project financially feasible:

- (1) Projects meeting CPED or HRA's identified housing priorities set forth in the QAP, and which involve community revitalization, preservation of existing federally-assisted buildings, housing with rents affordable to households at or below 30 percent of area median income, including homeless households with supportive services, or in response to significant proposed expansions in area employment or natural disaster recovery efforts or
- (2) Funding gaps remain for top ranking HTC projects.

**K. Tax Exempt Projects and 4% HTC**

(1) **General**

Section 42 of the Code establishes a separate set of procedures for the allocation of HTCs in connection with the issuance of tax exempt bonds pursuant to Section 42 of the Code. (Please review Article VIII of the QAP.)

Applicants seeking an allocation of 4% HTC in connection with the development of a project must comply with the provisions of the QAP that is in effect for the calendar year in which the tax exempt bonds are first issued.

**NOTE:** In addition, MINN. Stat. § 474A.047, including subdivision 1, requires the extension of existing U.S. Department of Housing and Urban Development (HUD) Housing Assistance Payment (HAP) contracts to the full extent available.

(2) **Minimum Threshold for 4% HTC Projects – Minneapolis projects only**

For projects located in Minneapolis. An applicant for 4% HTC must demonstrate that the project is eligible for no less than 35 points under the 4% HTC Selection Criteria of the QAP. Applicants may request a predictive model and scoring determination prior to submitting a formal Application.. See Article VIII of this Procedural Manual for specific HTC application and fee requirements. 4% HTC Applications and related fees must be prepared and submitted separately in accordance with the City of Minneapolis Conduit Bonds Policy and Housing Revenue Bonds Procedural Guide.

In September of each year, the City of Minneapolis will establish a maximum per unit cost that any project seeking an allocation of tax exempt bonds and 4% HTC during that year must not exceed in order to receive cost containment points.

Projects that do not score a minimum of 35 points under the 4% Tax Credit Selection Criteria of the QAP are not eligible for a private activity bond allocation award. If the private activity bond allocation for Minneapolis is over-subscribed, the City of Minneapolis, at its discretion, will prioritize projects based upon total project points received pursuant to the QAP, whether the project is on City owned land, the readiness of the project to proceed, the amount and term of the private activity bond allocation requested, and the overall feasibility of the project.

Upon approval of the project by the City Council, the developer/owner will be required to close on the project by no later than 180 days from the date of the bond public hearing. If the project does not close within the time allotted, the City of Minneapolis will in its sole discretion make a determination whether or not to grant a one-time extension to allow up to a full year after the public hearing, or require that the developer/owner relinquish the bond allocation.

#### **~~Pre-Application Determination Letter~~ Minimum Threshold for 4% Projects – Saint Paul projects only**

For projects located in Saint Paul. An applicant for 4% HTC must demonstrate that the project is eligible for no less than 35 points under the 4% HTC Selection Criteria of the QAP.

An applicant for 4% HTC must demonstrate that the project is eligible for no less than 35 points under the 4% HTC Selection Criteria of the QAP. Applicants may request a predictive model and scoring determination prior to submitting a formal Application.. See Article VIII of this Procedural Manual for specific HTC application and fee requirements. 4% HTC Applications and related fees must be prepared and submitted separately in accordance with the Saint Paul Housing and Redevelopment Authority (HRA) Conduit Revenue Application Process and Procedures. ~~Pre-application is strongly encouraged prior to requesting an allocation of private activity bond authority.~~

#### **~~Process for Pre-Application~~**

All projects must be reviewed and determined to be consistent with City/ HRA plans, Saint Paul Comprehensive Plan, or Small Area Plans. All projects must comply with cost containment thresholds established by the HRA. Projects with unique urban redevelopment conditions may request a cost containment adjustment, subject to HRA approval.

~~During September 1<sup>st</sup> to November 1<sup>st</sup>, an applicant may submit a pre-application letter of Intent to apply, which shall include the standard Workbook, a written description of the project, and completed scoring worksheet. There is no fee required in connection with the pre-application process. This information will assist HRA staff in determining whether the project meets the minimum 35 point requirement under the QAP.~~

~~Starting in January of each year, the HRA will accept HTC applications for projects seeking an allocation of private activity bond cap. See: Article VIII of this Procedural Manual for specific HTC application and fee requirements. 4% HTC Allocation Fee (See Section VIII) is required with at the time of closing.~~

Projects that do not score a minimum of 35 points under the 4% Tax Credit Selection Criteria of the QAP are not eligible for a private activity bond allocation award. If the private activity bond allocation for Minneapolis is over-subscribed, the HRA, at its discretion, will prioritize projects based upon total project points received pursuant to the QAP, whether the project is on City/HRA-owned land, the readiness of the project to proceed, the amount and term of the private activity bond allocation requested, and the overall feasibility of the project.

Upon final approval of the project by the HRA, the developer/owner will be required to close on the project by no later than 180 days from the date of the City Council Bond approval. If the project does not close within the time allotted, the HRA will in its sole discretion make a determination whether or not to grant a one-time extension of up to 180 days or require that the developer/owner relinquish the bond allocation.

#### **L. Reservations**

- (1) Once CPED and HRA staff, respectively, have ranked the 9% HTC applications and determined allowable 9% HTC amount for each application, staff will make recommendations to the City Council, in Minneapolis, or the HRA and to the Board for final approval of a 9% HTC reservation (“Reservation”). Each Reservation shall be conditioned upon receipt of a written certification from the applicant and evidence of timely progress toward completion of the project acceptable to CPED and HRA, respectively, and evidence of compliance with the requirements of Section 42 of the Code. Refer to Section VIII for Reservation requirements.
- (2) For Minneapolis projects. The Minneapolis City Council and the Board reserve the right to not commit 9% HTC to any project if they determine, in their sole discretion of the Minneapolis City Council that a Reservation to such project does not further the purpose and goals set forth in the City of Minneapolis Consolidated Plan, Comprehensive Plan or any city adopted Neighborhood Plan document.

For Saint Paul projects: HRA and the Board reserve the right to not commit 9% HTC to any project if they determined, in the sole discretion of HRA that a Reservation for such project does not further the purpose and goals set forth in the City of Saint Paul Consolidated Plan, Comprehensive Plan or Small Area Plans.

- (3) Within ten (10) days after a Minneapolis Council/HRA Board decision to deny a 9% HTC application, respective staff will notify the applicant in writing of the reason for denying the request for 9% HTC.

- (4) 9% HTC requests may be denied, including, but are not limited to, the following:
- (a) Falsifying information in the Application or misrepresentations of the applicant;
  - (b) Past, outstanding, current or pending litigation against the applicant or principals which may pose a liability to the proposed project;
  - (c) Judgments against the applicant or principals regarding bankruptcy, loan default, mechanic's lien, tax liens or non-payment of bills;
  - (d) Applicant incompetence or inadequate past performance regarding the subcontracting or completion of work, timely completion of projects, or financial wherewithal to undertake the proposed project;
  - (e) The proposed project does not qualify for 9% HTC pursuant to Section 42 of the Code;
  - (f) The proposed project does not qualify for 9% HTC under the applicable priority selection policies and procedures described in this Procedural Manual;
  - (g) The proposed project does not meet the minimum threshold criteria;
  - (h) The HRA or Minneapolis Council determines that significant comments by the Mayor or Neighborhood Group or Citizen Participation District are not adequately addressed by the developer;
  - (i) Available 9% HTC have been committed or allocated to other projects for the respective 9% HTC allocation year; or
  - (j) The proposed project costs exceed current comparable projects and are unreasonable.

*A Reservation may be revoked at any time after issuance for the reasons set forth in clause (a) through (j) above.*

- (5) A written explanation for any Reservation of 9% HTC that is not awarded with the established priorities and selection criteria set forth in the QAP will be made available to the general public.

#### **M. Administration Errors**

Notification of 9% HTC Reservation or denial will be in the form of a reservation

selection or rejection letter. If the applicant believes that CPED or HRA has misinterpreted, was not aware of, or miscalculated the applicant's 9% HTC Reservation request at the time of application/reservation, the applicant must submit, in writing, evidence supporting their position within 15 days of CPED's or HRA's notification letter of application status. The day after the date of CPED's or HRA's notification letter will be the first day of the 15-day period.

If the applicant's evidence is accepted and the project's selection points are affected, CPED or HRA, as applicable, and the Board will re-rank all projects in the order of ascending selection points. After an additional 15-day period, CPED's, HRA's and the Board's rankings will stand and 9% HTC Reservations for selected projects will be distributed.

#### **N. Allocation of Returned or Additional 9% HTC – Waiting List**

With respect to the commitment by CPED or HRA, and the Board, of any returned 9% HTC or increased 9% HTC allocated to the Board by the Minnesota Housing, a waiting list shall be established. Projects which will be placed on such waiting list will include: (1) projects which received some, but not all of the 9% HTC which they requested because of the unavailability of 9% HTC; (2) projects which received all of the 9% HTC which were requested at the time of initial application, but have determined that additional 9% HTC are needed; and (3) projects which were eligible to receive 9% HTC, but did not receive any because of its low selection point ranking. Projects in the first category will be placed first on the waiting list in the order of each project's selection point rankings within that group. Following that, projects in the second group will be placed on the waiting list in the order of each project's selection point rankings within that group. Finally, projects in the third group will be placed on the waiting list in the order of each project's selection point rankings within that group. Generally, projects will be chosen in the order they are shown on the waiting list; however, depending on the time and funds available, CPED and HRA reserve the right to make modifications to their respectively waiting lists. CPED and HRA may request updated or additional application documentation prior to making a Reservation to a project on the waiting list.

With respect to any returned 9% HTC, CPED and HRA, for their respective City, will maintain eligible applications on waiting lists until the end of the year in which CPED or HRA received the returned 9% HTC. For projects located in Minneapolis, the waiting list will follow CPED's selection point ranking. For projects located in Saint Paul, the waiting list will follow HRA's selection point ranking. Generally, projects will be chosen in order; however, depending upon time and funds available, CPED or HRA reserves the right to make modifications to their respective waiting list. Projects placed on a waiting list will be fully evaluated for underwriting, market, and financial viability prior to receiving consideration for a HTC Reservation. A project must satisfy these reviews to be eligible for selection from a waiting list. If an Application is not selected for a Reservation of 9% HTC by the end of the calendar year, there will be no further consideration. An applicant currently on a waiting list must submit a completely new Application packet in the next funding round, which is a new 9% HTC year, to receive consideration for a 9% HTC Reservation.



**O. Carryover Allocations**

Section 42 of the Code provides that the Board may issue a carryover allocation to certain qualified projects which are to be placed in service no later than December 31 of the second year after the 9% HTC reservation ("Carryover Allocation"). This provision requires that costs in an amount equal to 10% or more of the expected basis in the project must be incurred within one (1) year from the date of the Carryover Allocation.

To receive a Carryover Allocation, the owner must submit three (3) copies of a completed carryover allocation application package to HRA or CPED no later than November 1, 2019. Additional Carryover Allocation requirements are set forth in Section VII.C hereof.

**P. Final Allocations**

Except for Carryover Allocations, no allocation will be made until a project is placed in service, and the proper documentation and fees have been submitted to the Board. Final allocations may be requested as soon as a project is placed in service. The Board in its sole discretion may establish the required deadlines prior to year-end for final allocation requests in order to permit timely processing of documents.

If an owner of a project does not intend to obtain a Carryover Allocation, but instead intends to take a project from Reservation directly to placed-in-service status, an allocation via issuance of Form 8609 must be obtained prior to year-end of the year in which the Reservation was issued. The HTC application for issuance of Form 8609's must be submitted to Minnesota Housing on or before November 1 for the year in which the Reservation was issued. A project that has not received a Carryover Allocation nor has been placed in service before December 31<sup>st</sup> of the year of Reservation will lose its Reservation of 9% HTC.

The 9% HTC amount which will be allocated is based on the Board's final determination of the qualified basis for the project and a review of the project costs as outlined in Section VII.D, hereof, which shall in turn be based on a determination made by the City of Minneapolis or HRA, as applicable. The final allocation may be reduced to comply with Section 42 of the Code based on the final review of the project costs.

Prior to final allocation, the owner is required to execute and record a Declaration which must be effective for the term of the previously agreed upon extended use period binding all parties to comply with Section 42 of the Code, Treasury Regulation Section 1.42-5 and any other applicable regulations.

## Q. Monitoring for Compliance

During the 15-year compliance period, the Board is required to adopt and adhere to compliance monitoring procedures which will: (i) monitor projects for noncompliance and (ii) notify the IRS of any noncompliance of which the Board becomes aware of in accordance with Section 42(m) of the Code, Treasury Regulation Section 1.42-5 and any other applicable regulations. The Board or its Authorized Delegate shall perform such duties in accordance with the **Low income Housing Tax Credit Compliance Manual**, a copy of which is available upon request from the Board.

- (1) Annually, HTC recipients must submit an annual certification to the Board in a manner, form, and time established by the Board. The certification will include, but is not limited to, the number of units set aside, tenant name(s), household information, rents, utility allowance or cost, amount and sources of income, and unit information.
- (2) The Board will conduct its first compliance monitoring inspection no later than the end of the second year of the 10-year credit period. Such inspection will include, but is not limited to, a review of tenant files and physical inspection of 20 percent of the HTC units.
- (3) At least once every three (3) years, CPED staff and PED staff (or Delegate, as defined in the Qualified Allocation Plan) shall review the tenant files, including but not limited to the annual income certification, the documentation the owner has received to support that certification, and the rent records for at least 20% of the HTC tenants in a project. For projects subject to their first review of tenant files where 100% of the units are HTC units, 50% of tenant files will be subject to review.
- (4) At least once every three (3) years, CPED staff and PED staff (or Authorized Delegate) will conduct a physical inspection of each project. Such inspections will include all buildings in a project, all common areas, and at least 20% of the HTC units in the project.
- (5) The Board and its Authorized Delegate shall have access to all official project records, including IRS reporting forms, upon reasonable notification. All official project records or complete copies of such records must be made available to the Board upon request.
- (6) Please see Section VIII.D for a summary of the Compliance Monitoring Fees.
- (7) The Board will promptly notify the IRS of any project noncompliance within its responsibility as set forth in the Section 42 of the Code.
- (8) Additional information related to compliance monitoring of projects that elect Income Averaging will be detailed in the Suballocator Compliance Monitoring Manual that is applicable to the initial year HTC are claimed.

**R. Qualified Contract**

Provided the owner did not waive such rights in the Declaration, Section 42(h)(6)(E) of the Code allows the extended use period to terminate after the original 15 year compliance period, if HRA or CPED is unable to present a qualified contract (the "Qualified Contract") for the acquisition of the HTC project by any person willing to continue to operate the HTC project as a qualified low income building. HRA or CPED shall have a one year period to respond to a Qualified Contract request from the owner.

Pursuant to Section 42(h)(6)(E) of the Code, an owner's request for a Qualified Contract must comply with the following:

- (1) The HTC project must have completed the 14<sup>th</sup> year of its 15-year compliance period. For projects with multiple buildings that were placed in service in different years, this time period means the end of the 14<sup>th</sup> year of the last building in the project that was placed in service.
- (2) The HTC project must be in compliance with all requirements of Section 42 of the Code and all Board requirements. Owners must correct all compliance violations prior to submitting a request for a Qualified Contract.
- (3) The owner must certify that it has not been notified of any audit, investigation, or disallowance pertaining to Section 42 of the Code and must provide any copies of IRS audit findings or disallowances which it has received during the 15-year compliance period.
- (4) The owner must have secured a complete, unconditional waiver of all purchase options and rights, including the right of first refusal to a non-profit.
- (5) The owner must have the written consent of all its limited partners to negotiate on behalf of the owner for a Qualified Contract.
- (6) The owner may only request a Qualified Contract one time from CPED or HRA.
- (7) The owner will be required to cover all costs, including third party costs, incurred by CPED or HRA in processing and evaluating a Qualified Contract request. The owner has thirty (30) days to pay the costs incurred by CPED or HRA. If requested funds are not paid within thirty (30) days of notice to owner, the Qualified Contract request will be terminated. Suspension in accordance with this paragraph of any requirement set forth herein shall also suspend the one (1) year time period for CPED or HRA action.
- (8) Payment of a non-refundable fee in the amount of \$5,000 for processing a Qualified Contract request.

Any owner's request for a Qualified Contract with expiring compliance periods

must also comply with Minnesota Housing's Credit QAP and the Qualified Contract Process Guide and the owner must submit evidence of the same to CPED and HRA. CPED for Minneapolis projects and HRA for Saint Paul projects shall each undertake this function as requested by the owner referencing the Minnesota Housing as the guidelines.

#### **S. Other Conditions**

All submissions to CPED, HRA or Board will be considered public information in accordance with the Minnesota Government Data Practices Act (Minnesota Statutes, Chapter 13). PED or the HRA (or their Delegate) will provide the form.

No member, officer, agent, or employee of the City of Minneapolis, the City of Saint Paul, CPED, HRA, or the Board shall be personally liable concerning any matters arising out of, or in relation to, the allocation of HTCs.

A written explanation will be made available to the general public for any allocation of 9% HTCs that is not made in accordance with the Board's established priorities and selection criteria.

#### **T. Revisions to this Procedure Manual and QAP**

To the extent necessary to facilitate the award of HTC that would not otherwise be awarded, this Procedural Manual and the attached QAP may be modified by the Board from time to time. The Board staff may make minor administrative modifications deemed necessary to facilitate the administration of the HTC Program or to address unforeseen circumstances. Further, the Board is authorized to waive any conditions, which are not mandated by Section 42 of the Code on a case by case basis for good cause shown.

The attached QAP may be amended by the Board with the approval of both of the cities for substantive issues at any time following public notice and a public hearing. The public hearing will be held at locations specified in the notice of public hearing.

To the extent that anything contained in this Procedural Manual or the QAP does not meet the minimum requirements of Section 42 of the Code or the Treasury Regulations, such law or regulation shall take precedence.

### **IV. HTC PROGRAM REQUIREMENTS**

#### **A. Eligible Activities**

Eligible activities for HTC include new construction, or acquisition with substantial rehabilitation as required by Section 42 of the Code.

#### **B. Applicable Percentage**

There are two levels of applicable percentages depending upon whether the building is new or existing, whether there are rehabilitation expenditures and whether the buildings are financed with tax exempt bonds.

*New Buildings and Substantial Rehabilitation Expenditures (if neither is financed with tax exempt bonds):* New buildings or qualifying rehabilitation which are not financed with tax exempt bonds are eligible for the 9% HTC.

*New Buildings and Qualifying Rehabilitation Expenditures Which are Financed with Tax Exempt Bonds and Existing Buildings:* With respect to new buildings and substantial rehabilitation which are financed with tax exempt bonds, and with respect to the acquisition of existing buildings that are substantially rehabilitated, the applicable percentage is an amount which results in aggregate HTC having a present value of 30 percent of qualified basis. Traditionally, this has resulted in a credit percentage of approximately four-percent.

*Substantial Rehabilitation:* Rehabilitation expenditures qualify for the HTC if the expenditures:

- (1) an average qualified basis amount per low income unit for a building which meets the inflation adjusted amount published by the IRS annually in accordance with Section 42(e)(3)(D); or
- (2) an amount that is not less than 20 percent of the adjusted basis of the building, as determined pursuant to Section 42(e)(3) of the Code.

In addition to the Code Section 42(e) requirements, Section 462A.221, Subdivision 5 of the Act requires rehabilitation expenditures of at least an average of \$5,000 per unit.

In the case of an acquisition and rehabilitation project, the cost of acquiring the existing building may be eligible for HTC.

*Existing Buildings:* In order for an existing building to qualify for HTC in connection with a Substantial Rehabilitation, there must have been a period of at least 10 years, between the date the building was acquired by purchase and the date it was last placed in service.

Exceptions to the 10-year rule are provided in Section 42(d)(6) of the Code and include federally and state assisted buildings, certain low income buildings subject to mortgage prepayment, and buildings acquired from insured financial institutions in default.

*Grants:* Federal grants are excluded from eligible basis in determining the amount of HTC, but do not otherwise affect the availability or amount of the HTC.

Owners of a property receiving a federal subsidy have the option of treating the subsidy amount as if it were a federal grant and deducting the amount of the subsidy from the qualified basis.

Applicants are strongly advised to consult closely with their tax credit professionals (legal and tax) for guidance with respect to structuring a project to use either the 9% HTC or the 4% HTC.

**C. Review of Federally Assisted Projects**

In accordance with the HUD Reform Act of 1989, any project for which assistance is received in any form from the Department of Housing and Urban Development (HUD) must have documents submitted in accordance with HUD Notice H 90-17, or succeeding notices. A copy of the notice will be provided on request.

**D. Federal Subsidy Layering Review**

Section 911 of the Housing and Community Development Act of 1992 requires that specific procedures be followed for a subsidy layering review when HTC and HUD assistance are combined in a single project. Sponsors of projects which combine HUD funding and HTC should be aware that a subsidy layering review must be completed for their projects and should contact CPED or HRA to receive additional information prior to submitting their applications.

**E. Project Eligibility**

The purpose of the HTC Program is to assure that a sufficient number of HTC units are available on an affordable basis to low income persons. Applicants should be cautioned that this set aside represents the minimum number of units that must meet both the rent and income restrictions to qualify for HTC for each year of the 15-year compliance period. The owner must elect one of the following:

- (1) 20% of the residential units must be rented to individuals whose income is 50% or less of the area median gross income ("AMGI"); or
- (2) 40% of the residential units must be rented to individuals whose income is 60% or less of the AMGI.
- (3) Income Averaging. In addition to meeting all Federal requirements, projects electing Income Averaging must meet the following additional requirements:
  - (a) Income Averaging may only be elected for 100% HTC projects that have not yet filed Form 8609. Additionally, for 4% HTC projects, Income Averaging may only be elected for projects that have not yet received a 42(m) letter

For Saint Paul projects only: 100% HTC projects (4% Credit projects or 9% Credit projects) that have not yet filed Form 8609 (i.e. "ongoing projects") may elect Income Averaging only if the project has not received funds that would otherwise restrict rent affordability (i.e. soft costs, such as HOME funds or other funds identified by HRA)

- (b) Income and rent tiers may be set in 10% increments, beginning at 20% AMI up to 80% AMI. A maximum of 4 tiers are allowed.
- (c) Reasonable parity in unit types/sizes across income tiers is required.

- (d) Rent and income tiers will be designated at time of initial Application. HTC units at 50% AMI and below will be fixed throughout the term of the Declaration. Other AMI designations may float, as long as rents and incomes average to 60% AMI.
- (e) Projects with project-based rental assistance will be considered 50% units for purposes of Income Averaging.
- (f) The Income Averaging set-aside must be met on a project-wide basis; owners must select 'yes' on Line 8b of Form 8609 and include the required attachments.
- (g) Resyndications must comply with the terms of the original Declaration, if still in effect
- (h) Income Averaged projects will not be allowed a higher developer fee, when compared to non-Income Averaged project
- (i) The Board reserves the right to negotiate specific terms for projects electing the Income Averaging set-aside. Electing Income Averaging for projects with existing HTC and City deferred funding awards will be considered only if needed for financial feasibility, or to include/increase extremely low income HTC units.
- (j) Rent and income restrictions in the initial 15-year compliance period will also apply in the extended use period.
- (k) 4% HTC projects electing Income Averaging must still meet all requirements associated with tax exempt bond financing

Other aspects of the Minimum Set-Aside:

- (a) A minimum set-aside election, once made by the owner, is irrevocable.
- (b) The minimum set-aside must be met on a project-wide basis. (See Form 8609, Line 8b, regarding the building-by-building exception.)
- (c) HTCs cannot be claimed until the minimum set-aside has been met.
- (d) If the project fails to meet the minimum set-aside by the end of the first year of the 10-year credit period, the project will not qualify as a HTC project and HTCs cannot be claimed.
- (e) If the project falls below the minimum set-aside during the 10-year credit period, HTC's cannot be claimed for that year.

The rent restrictions for the HTC units are governed by Section 42 of the Code and Treasure Regulations, rulings and other announcements by the IRS. The following summary is not intended to be comprehensive. A violation of the tenant income or rental restrictions under Section 42 of the Code may result in project ineligibility, a reduction in eligible basis, or recapture of HTC.

Rent Restriction: For a unit to qualify as a HTC unit, the gross rent may not exceed 30 percent of the imputed tenant income limitation. The imputed income limitation applicable to a unit equals the permissible income limitation that would apply if the number of individuals occupying the unit were:

- (1) One individual in the case of a studio apartment; and
- (2) 1.5 individuals per bedroom in the case of a unit with one or more

separate bedrooms.

*Therefore, the rent restriction applicable to a HTC unit is determined by which test is elected and how many bedrooms are contained in the unit. Current income limits, as published by HUD, are attached as Exhibit O.*

"Gross rent" means all payments by the tenant, including payments to the owner for utilities other than telephone. If the tenant pays utilities directly, the maximum rent that can be paid to the landlord is reduced by a utility allowance determined in accordance with rules under Section 8 of the U.S. Housing Act of 1937 ("Section 8"). IRS Regulations (Section 1.42-10 Utility Allowance, as amended) provide guidance relating to Utility Allowances and lay out options for establishing them. The options, depending on assistance or regulation characteristics of a project or the tenant, may require use of a HUD utility allowance. For buildings that are not required to use a HUD utility allowance, the building owner may use the applicable Public Housing Authority ("PHA") utility allowance or the Agency estimate schedule provided by CPED or the HRA. Other methods of utility allowance determination consistent with Section 1.42-10 may be approved by CPED or the HRA on a case by case basis. Utility allowances must be updated at least annually. See IRS Notice 94-60 and Section 1.42-10 of the Treasury Regulations attached as Exhibit G for more detailed information.

Federal, state and local rental assistance payments (such as Section 8 payments) made on behalf of the tenant are not included in gross rent.

During the term of a tenant lease, the rental rate may be altered downward, but not upward, due to annual changes in the maximum income and rent limits set for HTC projects by the Board on behalf of HRA or due to changes in the Utility Allowances which are governed by HUD.

## **F. Tenant Eligibility**

To be a HTC unit for purposes of determining the qualified basis, the tenant must have income at or below 50 percent of AMGI if the 20/50 Test is elected, or 60 percent of AMGI if the 40/60 Test is elected. For the Income Averaging set-aside, tenants must have income at or below the corresponding rent tier. The unit must be rent restricted as set forth above, and the unit must be suitable for occupancy.

The combined household income of all tenants occupying a HTC unit must be less than or equal to the elected income requirements as shown on Exhibit O. Note that the percentage of eligible units must match the applicable fraction.

Generally, units are not eligible for HTC if they are occupied entirely by full-time students. Exceptions to this rule are outlined in Code Section 42(i)(3)(D). Refer to the current Housing Tax Credit Compliance Manual for details.



## **G. Eligible Basis**

In general, the eligible basis of a building is equal to the building's adjusted basis for acquisition, rehabilitation or construction costs for the entire building ("Eligible Basis"), subject to certain conditions and modifications set forth in Section 42(d) of the Code. As a general rule, the adjusted basis rules of Section 1016 of the Code apply, with the exception that no adjustments are made for depreciation. Some of the special provisions for determining Eligible Basis under Section 42(d) of the Code are:

- (1) Eligible Basis for new buildings and substantial rehabilitation of existing buildings that are located in designated QCT and DDA may be increase by up to 30 percent. Buildings not located in a QCT may be eligible for the Discretionary Boost.
- (2) The cost of depreciable property used in common areas or provided as comparable amenities to all residential units (e.g. carpeting and appliances) is included in determining Eligible Basis. The cost of tenant facilities (e.g. parking, garages, and swimming pools) may be included in Eligible Basis if there is no separate charge for use of the facilities and they are made available on a comparable basis to all tenants in the project.
- (3) The cost of a community service facility is included in Eligible Basis only if the building is located in a QCT and the facility is part of the qualified low-income project designed to provide appropriate and helpful services to individuals in the area whose income is 60 percent or less of AMGI. Costs includable in Eligible Basis cannot exceed 25 percent of the first \$15,000,000 in Eligible Basis and 10 percent thereafter. All community service facilities that are part of the same qualified low-income project shall be treated as one facility and must be located on the same tract of land as the one used for the project.
- (4) Eligible Basis is reduced by federal grants, market rate residential rental units, historic rehabilitation tax credits, and nonresidential rental property.

## **H. Qualified Basis/Applicable Fraction**

Qualified basis is the portion of the Eligible Basis applicable to low income housing units in a building ("Qualified Basis"). Qualified Basis is the product of a project's Eligible Basis multiplied by the Applicable Fraction. The Applicable Fraction is the lesser of:

- (1) The unit fraction, which is the number of HTC units in a building divided by the total number of residential rental units; or
- (2) The floor space fraction which is the total of floor space of the HTC units in the building divided by the total floor space of the residential rental units in the building.

An on-site manager's unit is not considered a residential rental unit and must not be included in either the numerator or denominator for calculating the applicable fraction.

**I. Annual HTC Amount**

The HTC is available each year for over a 10-year period. The amount of HTC awarded is based on the Qualified Basis multiplied by the Applicable Credit Rate. However, Section 42(m)(2) of the Code requires the Board to limit the amount of the HTC to the amount necessary to ensure the financial feasibility of a project; therefore, the actual amount of HTC awarded could be less than the maximum allowable if the Board analysis reveals the project would still be feasible with less HTC.

The IRS publishes on a monthly basis the applicable percentages (Applicable Credit Rate) to be used in calculating the maximum allowable annual 4% HTC amount for which the project will be eligible.

**J. Declaration of Land Use Restrictive Covenants**

Prior to an allocation of HTC, a project must be subject to a Declaration between the owner and the Board, through which the owner commits the project to low income use for a period of at least 15 years after the conclusion of the 15-year compliance period (a total of 30 years).

During the extended use period, the Declaration terminates only upon foreclosure of the project or a Qualified Contract. For a period of three (3) years after the termination of the Declaration, the owner may not evict low income tenants (other than for good cause) and may not increase the gross rent above the maximum allowed under Section 42 of the Code with respect to such low income units. Beginning with the 2018 HTC Program, owners who have financed their projects with tax exempt bonds and are receiving 4% HTC must make a minimum commitment to Section 42 of the Code income and rent restrictions for a period of 20 years beginning with the first day of the 15-year compliance period and must agree to waive the provisions with respect to Sections 42(h)(6)(E)(i)(II) and 42(h)(6)(F) of the Code in the Declaration. For Minneapolis and Saint Paul projects, if the owner of such 4% HTC project received preference priority points for either a 30 or 45 year long-term affordability period, the Declaration must reflect that selected long-term affordability period.

Beginning with the 2006 HTC Program, owners applying for the 9% HTC must commit their projects to Section 42 of the Code income and rent restrictions for a period of 30 years beginning with the first day of the 15-year compliance period.

The Declaration must be recorded as a restrictive covenant and submitted to the Board prior to the Board issuing Form 8609(s) and may include additional rent restrictions and occupancy requirements placed upon the building at the time of HTC reservation. Non-compliance with these additional conditions will result in a permanent ban on future allocations of HTC for all parties involved.

**K. Ineligible Projects**

Ineligible projects include properties of four (4) units or less which are occupied by the owner or a relative of the owner (unless owned by a 501(c)(3) entity); life care facilities; and trailer parks.

Acquisition and/or Substantial Rehabilitation with a preexisting subsidy (any building substantially assisted, financed, or operated under HUD Section 8, Section 221 (d)(3), (d)(4) Section 220, Section 8 existing, Moderate Rehabilitation, or the Section 236 program or under the Farmer's Home Administration Section 515 program) will be eligible to apply for HTC only under the following conditions:

- (1) It preserves assisted low income housing which, due to mortgage prepayments or expiring rental assistance, would convert to market rate use. This must be demonstrated to the satisfaction of the Board; or
- (2) It has been demonstrated to the satisfaction of the Minneapolis Council or HRA, as applicable, that the building qualifies as a "troubled property." In order to qualify as such, a responsible official of a governmental lender, such as Minnesota Housing, HUD, or FMHA, must provide written documentation that the property is troubled along with an explanation. Generally, the project must be in default or foreclosure.

Any Application involving acquisition and Substantial Rehabilitation of a Minnesota Housing financed project MUST submit a certification as to need for a substantial rehabilitation of the project. The certification shall include a rehabilitation inspection report. This inspection shall be prepared by a representative of the appropriate agency or a person approved by that agency. The inspection report will not be accepted if completed more than 6 months prior to the Application submission.

**L. Limits On HTC:**

There is a limit on the amount of HTC an individual may effectively use due to passive loss restrictions and alternative minimum tax provisions. Consult your tax attorney or accountant for clarification of this regulation.

**M. Volume Limits:**

Each state is limited to the amount of HTC it may allocate annually. The 2020 volume limits for the Cities to be allocated by the Board are as follows:

Minneapolis - ~~\$1,453,932~~ \$1,453,890  
Saint Paul - ~~\$895,688~~ \$901,241

Projects with tax-exempt bond financing, which are subject to a separate volume limitation, are not counted against the state 9% HTC amount. See the QAP for further details.

**N. Market Review**

The applicant must submit a comprehensive market review of the housing needs of low-income individuals in the area served by the project. The review must be conducted before the HTC allocation is made and at the developer's expense by an unrelated third party acceptable to HRA or CPED.

**O. Tenant Ownership**

The Board will review projects incorporating tenant ownership provisions in accordance with Section 42 of the Code and IRS Revenue Ruling 95-49. It is the responsibility of the applicant to provide the Board with any additional information or clarification as may be necessary.

**P. Revocation of HTC**

The Board reserves the right to revoke HTC from projects that do not provide evidence satisfactory to the Board of progress toward completion of the project in accordance with their construction schedule provided at Carryover Allocation or noncompliance with the terms of the Carryover Allocation.

A portion of the HTC will also be revoked if the Qualified Basis of the project at the close of any year is less than the amount of such basis at the close of the preceding taxable year, or if the minimum number of qualified HTC units is not maintained for the 15-year compliance period.

**Q. Fair Housing Policy**

It is the policy of the Board to ensure fair housing opportunity in all Board programs and to administer its housing programs affirmatively, so that all residents of similar income levels have equal access to Board programs regardless of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, or familial status.

Participants in the HTC Program will be required to use affirmative fair housing marketing practices in soliciting renters, determining eligibility, and concluding all transactions as addressed in Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendment Act of 1988, as well as the fair housing protections provided by the Minnesota Human Rights Act, which adds creed, marital status, status with regard to public housing, and sexual orientation, and any applicable City Civil Rights ordinances. In part, regarding rental housing issues, Title VIII, the Human Rights Act, and applicable City Civil Rights ordinances make it unlawful to: (i) discriminate in the selection/acceptance of applicants in the rental of housing units; (ii) discriminate in terms, conditions or privileges of the rental of a dwelling unit; (iii) engage in any conduct relating to the provision of housing that otherwise make unavailable or denies the rental of a dwelling unit; (iv) make or publish (or have anyone else make or publish) advertisements that indicate preferences or limitations based on race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, familial status, or sexual orientation.; (v) tell a person that because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, familial status, or sexual orientation, a

dwelling unit is not available when it is; and (vi) deny access to, or membership or participation in, associations or other services organizations or facilities relating to the business of renting a dwelling or discriminate in the terms or conditions of membership or participation.

Owners will be required to affirmatively market the availability of units in any project that receives HTC. Owners shall develop and submit with their Application an Affirmative Marketing Plan that includes:

- (1) Specific steps to reach out to all groups protected by the Civil Rights Act of 1968, as amended in 1988, and those protected by the Minnesota Human Rights Act and applicable City Civil Rights ordinances, particularly protected groups that likely would not otherwise be aware of housing opportunities in the project.
- (2) An analysis to ensure that all steps in the rental process are non-discriminatory
- (3) A commitment that upon request by CPED staff or HRA staff respectively, the owner will submit additional marketing plans, reports and documents that confirm the owner's fair housing efforts.

Selected projects must maintain an Affirmative Marketing Plan for the project through the term of the Declaration. Failure to comply with the foregoing requirements will prompt Board staff to prepare a full report to the Executive Director of the Board, or to the Executive Director of CPED or HRA. Non-compliance could result in appropriate action by the Board, CPED or HRA, including expulsion from the Board, CPED or HRA programs.

- R. Tenant Selection Plan.** All projects awarded HTC will be required to create a Tenant Selection Plan. See Exhibit AE for further information including but not limited to guidance on criminal background screening, Violence Against Women Act (VAWA) requirements, tenant-based rental assistance and more.

## V. DEVELOPMENT STANDARDS

The Board will review project costs based on comparability and reasonableness. The Board will take into consideration unique characteristics of the project and its comparability to similar projects. The Board will require additional documentation if it determines that the proposed costs are not comparable or reasonable. Projects funded under the HTC Program will be evaluated according to the following standards. Small projects, hard-to-develop projects, and projects located in difficult-to-develop areas may be considered eligible for variances from these standards, if justified.

### A. Project Cost Reasonableness

CPED or HRA will evaluate the costs of each proposed project in comparison to current comparable projects to determine whether the proposed costs are reasonable. Current Board HTC project comparables will continue to be the driving factor in approving project costs.

**B. Costs of Intermediaries**

CPED and HRA will evaluate costs of intermediaries with a view toward minimizing such fees. All costs of intermediaries must be reasonable, in the sole discretion of CPED or HRA, as applicable.

For purposes of this provision, "Costs of Intermediaries" shall be consistent with Minnesota Housing.

**Developer Fee Limits**

The developer fee (paid either upfront or deferred) is provided to the developer of project for time expended and risks associated with developing a project. Developer fees include developer overhead, developer processing fee, developer profit, developer construction management and any other amounts received by the developer as approved by HRA or CPED.

The following maximum developer fee limit shall apply:

**New construction**

No greater than 15% of the total development costs, excluding the developer fee, construction consulting fee and capitalized reserves for the first 50 units, and no more than 8% of the total development costs, excluding the developer fee, construction consulting fee and capitalized reserves, for 51 units and over.

**Acquisition/Rehabilitation or Adaptive Reuse Projects**

No greater than 15% of total development costs, excluding the developer fee, construction consulting fee, capitalized reserves and acquisition costs.

**C. Reserves/Contingencies**

CPED or HRA will require documentation of the amount and disposition of reserves/contingencies. If they revert back to the developer, general partner, or any other ownership interest, CPED or HRA will consider the reserves/contingencies as deferred developer fee and the above limits will apply.

**D. Comparative Analyses**

Notwithstanding the Development Standards and the Selection Criteria set forth in the QAP, each project will be analyzed on a comparative basis in a variety of categories to ensure the highest value for the HTCs awarded.

**VI. PROJECT SELECTION**

Each Application submitted to CPED or HRA for HTC must meet Sections A-C below before moving to the Selection Priorities (Section D below).

**A. Threshold Requirements**

CPED or HRA will determine whether the project meets the minimum threshold requirements as set forth in the QAP.

**B. Market Review**

CPED or HRA shall require the applicant to submit a comprehensive market study of the housing needs of low-income individuals in the area to be served by the project. This review must be conducted before the issuances of the Carryover Allocation and at the developer's expense by an unrelated third party acceptable to HRA or CPED staff. At a minimum, such comprehensive market study shall include the following:

- (1) A statement of the competence of the market study provider, detailing education and experience of primary author and including a statement of non-interest.
- (2) Signature of preparer(s) and date the study was completed.
- (3) Description of the proposed site and neighborhood, including physical attributes of site, surrounding land uses, and proximity to community amenities or neighborhood features including shopping, healthcare, schools, and transportation.
- (4) A map and photos of the subject site and surroundings showing location of community services.
- (5) A description of the proposed development, detailing proposed unit mix (number of bedrooms, bathrooms, square footage, proposed rents, AMI level, utility allowances, and any utilities included in rent), proposed unit features and community amenities, and target population including age restrictions and/or special needs populations.
- (6) Demographic analysis of the number of eligible households in the market area that are part of the target market, income eligible, and can afford the proposed rent.
- (7) Analysis of household sizes and types in the market area, including households by tenure, income, and persons per household.
- (8) A description of rent levels and occupancy rates in existing comparable developments in the market area, segmented by property type and with rents adjusted to account for utility differences and concessions or other incentives. Such description should include all existing HTC developments in the primary market area and any planned additions to the rental housing stock, including any recently approved HTC developments.
- (9) Review of population characteristics and projected trends.
- (10) Review of employment and economic development characteristics, including a list of major employers and labor force employment and unemployment trends over the past 5-10 years.

- (11) Geographic definition and analysis of market area, including a description of methodology used to define market area and map of market area including proposed site.
- (12) Analysis of operating expenses of comparable properties in the market area.
- (13) Expected market absorption of proposed development, including capture/penetration rate analysis of target populations.
- (14) A description of the effect on the market area, including the impact on HTC and other existing affordable rental housing.
- (15) Indicate whether or not the proposed development meets the identified housing needs of the community's overall housing plan.
- (16) A written narrative on the assumptions and methods used in the market study, including data sources.

CPED or HRA may also require an independent market study to determine the financial feasibility of the proposed project. CPED or HRA will contact the applicant if there is a question as to the marketability of the proposed project. The applicant will be given an opportunity to adjust the unit mix and/or number and resubmit prior to CPED or HRA scoring of selection priority points.

CPED or HRA may require that the applicant submit a current appraisal following selection of a project for a HTC Reservation in the event CPED or HRA determine that an appraisal is necessary to determine marketability or the appropriate sale price for the project. Appraisals must be ordered by HRA, CPED or Minnesota Housing.

Proposed projects which do not appear marketable and do not modify their Application will not receive further consideration.

### **C. Site Review**

CPED or HRA staff will analyze the site for each project meeting the requirements of Sections A and B of the project selection criteria. Site analysis will consider: physical characteristics, surrounding property and community, location of schools, shopping, public transportation, employment centers, and community facilities, availability of utilities, water and sewage treatment facilities, the suitability of the site for the project and other CPED or HRA standards.

CPED or HRA will consider, but is not limited to, the following environmental criteria when evaluating a proposed site:

- Noise
- Flood plains and wetlands
- Site safety
- Toxic and hazardous waste
- Underground storage tanks
- Asbestos



CPED or HRA may in their sole discretion reject projects on behalf of the Board, for Applications that appear unsuitable for the proposed project.

**D. Selection Priorities**

Upon completion of Sections A, B and C, an Application will then be ranked according to the points awarded for the selection priorities and the preference priorities set forth in the QAP.

**E. Management Review**

Significant Parties who have serious and persistent compliance monitoring violations may be declared ineligible at the sole discretion of HRA's Board of Commissioners. HRA staff will review the compliance history of past and existing HTC projects in which the applicant has served as general partner or management agent prior to making a recommendation on the allocation of HTC to HRA's Board.

**F. Contract Compliance Agreement**

For Saint Paul projects only: Saint Paul HRA shall require all applicants to execute a Contract Compliance Agreement that certifies that the owner will comply with employment, contracting, wage and other requirements, affirmative action/equal opportunity, Apprenticeship Training Programs, Labor Standards, Vendor Outreach, Contract Documents, Section 3 requirements, Preconstruction Conference, and other compliance requirements as HRA deems necessary. The owner of the project may be subject to collection of liquidated damages for violations of compliance requirements, and other HRA remedies.

## VII. SUBMISSION REQUIREMENTS

It is the applicant's responsibility to be aware of the processing submittals required to proceed to the next step in obtaining a Reservation. If the applicant is unable to obtain these submittals (financing, zoning, site control, syndication, construction start, etc.) in a timely manner, or if such approvals have expired, the Application will no longer be processed and the application fee will be forfeited.

**Required Documents/Exhibits.** It is very important that the applicant follow the order of the Required Documents/Exhibits below. Submissions should be separated by index tabs with corresponding numbers. DO NOT submit submissions in a three-ring binder or with plastic casing around the pages. Submissions should be bound only by staples, binder clips, or rubber bands. The submission should include one original and two (2) copies and one (1) electronic copy on USB drive. Any submission not meeting these requirements will be returned to the applicant. At a minimum, the following documents and exhibits are required to proceed toward HTC allocation at each stage of the process:

### A. Application Requirements - 9% HTC:

- (1) A check for the appropriate Application Fee (See Section VIII) is required with the submission of the Application. An Allocation Fee and Special Counsel Fee (See Section VIII) will be required upon HTC allocation.
- (2) Opinion of Counsel in the form of Exhibit B.
- (3) Completed Minnesota Housing Common Application Form, signed by at least one general partner involved in the project (Exhibit I). An incomplete Application Form will not be accepted and will be returned to the applicant. NOTE: Applicants receiving a Reservation of HTC will be required to submit an original Minnesota Housing Common Application Form in its original electronic XLS format.
- (4) Original photographs of the exterior and interior walls of each building, if existing, or of the site and surrounding area, if new construction.
- (5) Evidence of Site Control. Evidence of title or adequate site control must be submitted with the application. Acceptable evidence includes the following: warranty deed, purchase contract, option contract, or letter of intent from a governmental body for sole developer, etc. The evidence of site control must be current and extend to the anticipated date of "placed in service" or provisions for extension provided. For HTC allocations, an attorney's opinion that the applicant has ownership of the property as required and in accordance with Section 42 of the Code will be required. Owners should be cautioned that Reservations are site specific and the entire described project will be subject to the terms and covenants of the Declaration. Loss of site control will result in the cancellation of the Reservation or Carryover Allocation. CPED and HRA will not accept applications from different applicants for the same site.

- (6) Legal description of land (not property tax ID number) on separate 8-1/2" by 11" sheet of paper and labeled "Exhibit A."
- (7) Status of zoning. Letter from a local zoning official identifying the development, number of units, stories, and on-site parking spaces, and stating the current zoning of the land. If measures need to be taken to change the status of zoning, please indicate.
- (8) Proposed sources of funds. In the form of a letter of intent, commitment, etc. that states the terms, conditions (including dollar amount, number of years, interest rate, debt service coverage, etc.). An Application will not be accepted without financing terms.
  - (a) Construction financing - commitment from lender;
  - (b) Permanent financing - commitment from lender (for FMHA Projects AD622 and letter of conditions);
  - (c) Secondary financing – commitment from lender;
  - (d) Grants - letter from granting authority;
  - (e) Syndication proceeds – commitment from investor;
  - (f) Other sources of funds, including any federal, state, local and private subsidies.
- (9) Project Team resumes. One page maximum per individual, current within six months. Complete and attach to front of the submission Exhibit M (LIHC-19).
- (10) Previous participation. Complete in full Exhibit L (LIHC-17).
- (11) Agreement to utilize Public Housing Authority Waiting List, Exhibit J (LIHC-11).
- (12) Calculation of HTC, Exhibit I (LIHC-8 & Minnesota Housing Common Application Form).
- (13) A 15-year after tax cash flow pro forma (for projects with five or more units).
- (14) If non-profit, evidence of non-profit status and IRS approval.
- (15) Self-scoring worksheet for selection points, including documentation (Exhibit E).
- (16) Special Services. For projects meeting the Threshold Requirement set forth in VII.C.4 of the QAP, documentation must be provided to CPED or HRA before a Reservation of HTC will be issued.

- (17) Location Map of the project. Legible map with clear directions and cross streets or roads must be provided.
- (18) Documentation for Utility Allowance. (See #7, page 3 of LIHC 1).
- (19) Preliminary drawings, at a minimum including site plan, elevations and unit plans.
- (20) For acquisition and rehabilitation projects, a scope of work must be submitted for each building. Any Application involving the acquisition and rehabilitation of a CPED or HRA financed project must submit a rehabilitation report performed or approved by a representative of the appropriate agency or a person approved by the agency.
- (21) Relocation Plan, if applicable.
- (22) Letter of Support from the applicable neighborhood association.
- (23) Maintenance and Operating Expense Review and Underwriting Certification. (Exhibit X).
- (24) Third-party comprehensive market study of housing needs of low-income individuals in the area to be served by the project.
- (25) Affirmative Fair Housing Marketing Plan (AFHMP) - Multifamily Housing (HUD-935.2A) (Exhibit Z).
- (26) Equal Employment Opportunity Policy Statement (Exhibit AA).
- (27) Multifamily – Intended Methods Worksheet: MN Overlay to Green Communities (Exhibit AB).
- (28) Election of Applicable Rent Floor (Minnesota Housing Form LIHC-26 Exhibit W).
- (29) A complete appraisal, ordered by CPED or the HRA (as appropriate), or Minnesota Housing. The cost of the appraisal will be borne by the owner.
- (30) For projects electing Income Averaging, the following must also be submitted:
  - (a) MN Housing's Income Averaging Rent and Income Grid (Exhibit AC)
  - (b) Written approval from the permanent lender(s) and LIHTC syndicator/equity provider that the project may elect Income Averaging
  - (c) MN Housing's Income Averaging Certification Form (Exhibit AD)
  - (d) Other materials as requested by the Board
- (31) Draft tenant selection plan (See Exhibit AE for guidance)

**B. Submission Requirements for Projects Financed with Tax-Exempt**

**Bonds/4% HTC:**

- (1) A check for the appropriate Allocation Fee (See Section VIII) is required with the submission of the Application.
- (2) A check for the appropriate Special Counsel Fee (See Section VIII).
- (3) Opinion of Counsel in the form of Exhibit B.
- (4) Completed Minnesota Housing Common Application Form, Application for Tax Credits, signed by at least one general partner involved in this project (Exhibit I). An incomplete Minnesota Housing Common Application Form will not be accepted and will be returned to the applicant. NOTE: Applicant must also submit Minnesota Housing Common Application Form in its original electronic XLS format.
- (5) Original photographs of the exterior and interior walls of each building, if existing, or of the site and surrounding area, if new construction.
- (6) Evidence of Site Control. Evidence of title or adequate site control must be submitted with the application. Acceptable evidence includes the following: warranty deed, purchase contract, option contract, or letter of intent from governmental body for sole developer, etc. The evidence of site control must be current and extend to the anticipated date of "placed in service" or provisions for extension provided. For HTC allocations, an attorney's opinion that the applicant has ownership of the property as required and in accordance with Section 42 of the Code will be required. Owners should be cautioned that Reservations are site specific and the entire described property is subject to the terms and covenants of the Declaration. Loss of site control will result in cancellation of the Reservation or Carryover Allocation. CPED and HRA will not accept applications from different applicants for the same site.
- (7) Legal description of land (not property tax ID number) on separate 8-1/2" by 11" sheet of paper and labeled "Exhibit A".
- (8) Status of zoning. Letter from a local zoning official identifying the development, number of units, stories, and on-site parking spaces, and stating the current zoning of the land. If measures need to be taken to change the status of zoning, please indicate
- (9) Proposed sources of funds. In the form of a letter of intent, commitment, etc. that states terms, conditions (including dollar amount, number of years, interest rate, debt service coverage, etc.). Applications will not be accepted without financing terms.
  - (a) Construction financing - commitment from the lender;
  - (b) Permanent financing - commitment from lender (for FMHA Projects AD622 and letter of conditions);

- (c) Secondary financing - letter from the lender;
  - (d) Grants - letter from granting authority;
  - (e) Syndication proceeds – commitment from the investor;
  - (f) Other sources of funds, including any federal, state, local and private subsidies.
- (10) Project Team resumes. One page maximum per individual, current within six months. Complete and attach to front of the submission Exhibit M (LIHC-19).
  - (11) Previous participation. Complete in full Exhibit L (LIHC-17).
  - (12) Agreement to utilize Public Housing Authority Waiting List, Exhibit J (LIHC-11).
  - (13) Calculation of HTC, Exhibit I (LIHC-8 & Minnesota Housing Common Application Form).
  - (14) A 15-year after tax cash flow pro forma (for five or more units).
  - (15) If non-profit, evidence of non-profit status from IRS.
  - (16) Self-scoring worksheet for selection points, including documentation (Exhibit F).
  - (18) Location Map of the project. Legible map with clear directions and cross streets or roads must be provided.
  - (19) Documentation for Utility Allowance. (See #7, page 3 of LIHC 1).
  - (20) Preliminary drawings, at a minimum including site plan, elevations and unit plans.
  - (21) For acquisition and rehabilitation projects, a scope of work must be submitted for each building. Any Application for the acquisition and rehabilitation of a CPED or HRA financed project must be accompanied by a rehabilitation report performed or approved by a representative of the appropriate agency or a person approved by the agency.
  - (22) Relocation Plan, if applicable.
  - (23) Letter of Support from the applicable neighborhood association.
  - (24) Maintenance and Operating Expense Review and Underwriting Certification. (Exhibit X).
  - (25) Third-party comprehensive market study of housing needs of low-income

individuals in the area to be served by the project.

- (26) Affirmative Fair Housing Marketing Plan (AFHMP) - Multifamily Housing (HUD-935.2A) (Exhibit Z).
- (27) Equal Employment Opportunity Policy Statement (Exhibit AA).
- (28) Multifamily – Intended Methods Worksheet: MN Overlay to Green Communities (Exhibit AB).
- (29) Election of Applicable Rent Floor (Minnesota Housing Form LIHC-26 Exhibit W).
- (30) For projects electing Income Averaging, the following must also be submitted:
  - (a) MN Housing’s Income Averaging Rent and Income Grid (Exhibit AC)
  - (b) Written approval from the permanent lender(s) and LIHTC syndicator/equity provider that the project may elect Income Averaging
  - (c) MN Housing’s Income Averaging Certification Form (Exhibit AD)
  - (d) Other materials as requested by the Board
- (31) Draft tenant selection plan (See Exhibit AE for guidance)

### **C. Carryover Allocation Requirements**

In addition to meeting requirements of Section 42 of Code, the owner must provide by no later than September 15 of the year in which the Reservation was issued, a status report satisfactory to CPED or HRA staff of the progress of the project and the identification of any barriers to meeting the requirements of the Section 42 Code and this Procedural Manual to receive a Carryover Allocation for the project. The status report shall include, but not be limited to, status of private and public lender financing and HTC syndication commitment, project costs incurred to date, status of obtaining ownership of the project site, zoning status, and project budget. Failure to submit said status report shall be ground to revoke the Reservation by the Board.

No later than November 1 of the year the Carryover Allocation is to be issued the owner must submit evidence, satisfactory to CPED or HRA the following (if not already submitted as part of HTC Application requirements):

- (1) A check for the appropriate Allocation Fee (See Section VIII).
- (2) A check for the appropriate Special Counsel Fee (See Section VIII).
- (3) An updated Minnesota Housing Common Application Form. Revised pages should reflect any material changes including sources and uses of funds (highlight or circle in red all changes; initial and date each modified page). Incomplete revisions or those not highlighted on Minnesota

Housing Common Application Form are not acceptable and will be returned to the owner. The Carryover Allocation application must be signed by one general partner, officer, director or corporate officer stating that under penalties of perjury all facts and statements contained in application and all documents and exhibits submitted are true to the best of their knowledge. **NOTE:** Applicants must also submit the Minnesota Housing Common Application Form in its original electronic XLS format.

- (4) An Opinion of Counsel in the form of Exhibit D verifying the owner of the project, or evidencing continued site control of the land and depreciable real property identified at application/reservation as the project. Specify a legal description for each building address; if more than one.
- (5) A written Accountant's Certification (preferably using Minnesota Housing's form LIHC-6) verifying:
  - (a) The amount of the reasonably expected basis, the carryover basis, and the percent of the expenses incurred.
  - (b) More than 10 percent of the reasonably expected basis of the project will be expended by the later of the date which is 12 months after the date that the Carryover Allocation is made or the close of the calendar year in which the Carryover Allocation is made.
- (6) Identification of the sources of construction, interim and permanent financing arrangements. Secure a firm lender commitment in the form of a binding agreement as required in Minnesota Section 513.33. The agreement must:
  - (a) Be in writing;
  - (b) Specify the consideration for the transaction and pertinent terms; and
  - (c) Be signed by both the lender and the owner.
- (7) A description of any governmental assistance and/or rental assistance. This includes copies of any contracts/agreements executed or any applications made for rental assistance grants for the project.
- (8) A 15-year pro forma signed by the lending institution signifying that they are aware of the figures presented in the HTC application;
- (9) Information on the ownership entity, including an executed copy of the partnership agreement or operating agreement, and a copy of the certificate of registration from the Secretary of State in the State of Minnesota; and
- (10) A comprehensive market study, conducted by a third party approved by CPED or HRA staff, of the housing needs of low-income individuals in the



area served by the project.

- (11) The owner must provide its tax identification number as part of the Carryover Allocation application.

#### **D. Placed in Service – Final Allocation**

The following documents must be submitted no later than **November 1<sup>st</sup>** if the owner has a year-end Form 8609 allocation deadline of HTC's:

*The placed-in-service date for HTC purposes of a newly constructed building, or for rehabilitation expenditures of an existing building, is the date when the first unit in the building is certified as available for occupancy generally. The placed-in-service date must occur for all buildings within a project within two years after the award of the HTC.*

The Board will issue Form 8609(s) when the following items have been received by the Board in satisfactory form and substance.

Submit the following with a transmittal letter indicating the project name, address and HTC commitment date. The letter should request the issuance of Form 8609(s) and list the following required documents. If there have been any changes from the original Application (e.g., rents, utility allowances, source of funds, uses of funds, etc.), submit the revised pages of the application, re-date the pages and initial. In the letter, please list the revised information and explain the basis for such changes. In particular, check to ensure that changes in number of units, rents, utility allowance, source of funds (loans, grants, etc.), hard and soft cost changes and qualified basis are updated on the revised Application pages. The letter must be dated and signed by the owner or authorized individual:

- (1) A check for the appropriate Special Counsel Fee (See Section VIII).
- (2) Evidence all buildings in the project have been Placed-in-Service. A copy of the Certificate of Occupancy provided by local governmental authority having jurisdiction for each building. If not available from the local government, a Certificate of Substantial Completion prepared by the architect will be accepted.
- (3) A current utility allowance schedule.
- (4) Cost certification by CPA (Minnesota Housing Form LIHC-9).
- (5) Updated Application (Minnesota Housing Common Application Form) signed by at least one general partner involved in the project. Include the revised pages of changes from carryover application, highlight all changes, and re-date and initial the pages.

**NOTE:** Applicant must also submit the Minnesota Housing Common Application Form in its original electronic XLS format.

- (6) Final Opinion of Counsel in the form of Exhibit Y.
- (7) Documentation of the amount and disposition of reserves, contingencies, and any cash savings. If the above revert back to developer, general partner or any ownership interest thereof, CPED or HRA and the Board will consider these as deferred developer fees.
- (8) A draft copy of the Declaration. The Declaration must be completed and recorded before the end of the first year of the 10-year credit period to preserve the HTC allocated to the project. Check with your tax advisor as to timing of filing and claiming of HTC.
- (9) Documentation of the final amount of HTC proceeds or receipts generated, copy of the final Syndication, Private Placement, or Individual Investment Agreements disclosing the terms and conditions.
- (10) Original Owner Certification (Minnesota Housing Form LIHC-3) verifying:
  - (a) The placed-in-service date as defined in IRS Notice 88-116 for each building and/or type of HTC. Month and year should correspond with the certificate of occupancy. If the month and year do not correspond, submit a written statement indicating the reason why.
  - (b) Compliance with all applicable design requirements; and
  - (c) Compliance with all requirements of selection; and additional or special conditions of Reservation, commitment or Carryover Allocation.
- (11) A 15-year after-tax cash flow pro forma (for projects with five or more units) signed by the lending institution signifying that they are aware of the figures presented in the HTC application.
- (12) Copies of all final executed loan or grant documents for all sources of funds (mortgage or note) which support the amount, terms, and conditions stated on Minnesota Housing Form LIHC-1.
- (13) If ownership entity has changed, copy of the assignment and updated resumes of project team.
- (14) Original photographs of the completed building(s).
- (15) Payment of fees required at the time of issuance of Form 8609(s) as provided in Section VIII below.
- (16) Evidence that the project is current in the payment of compliance monitoring fees, if applicable.
- (17) Current rent-roll.

- (18) Affirmative Fair Housing Marketing Plan (AFHMP) - Multifamily Housing (HUD-935.2A) (Exhibit Z).
- (19) Equal Employment Opportunity Policy Statement (Exhibit AA).
- (20) Final Tenant Selection Plan (see Exhibit AE for guidance)
- (20) Such documents and instruments as are necessary and as may be required by CPED, HRA or the Board.

**E. Changes to Projects Electing Income Averaging on Form 8609**

Projects that have elected Income Averaging on IRS Form 8609 and wish to change the HTC unit AMI tiers in the existing Declaration must submit a written request to the Board to change the AMI unit mix for the project along with the following documents:

- (1) Signed copies of the Form 8609s reflecting the Income Averaging election was made and if the project contains more than one building the election to treat the project as a multiple building project;
- (2) Updated market information that demonstrates sufficient market demand for each proposed AMI tier;
- (3) Updated 15-year pro forma reflecting the rents for the proposed AMI tier by unit type;
- (4) Letter from the investor approving the change in the proposed rents and AMI tiers;
- (5) Letter(s) from the permanent loan lender(s) approving the change in the proposed rents and AMI tiers.

Requests for changes to the HTC unit AMI tiers will be considered at the sole discretion of the Board. The Declaration will be amended to reflect any approved changes to the AMI tiers.

**VIII. FEES**

**A. Application Fee**

A non-refundable application fee equal to the greater of \$700 or \$30 times the total units in the project, with a maximum of \$2,000 for for-profit project entities. Non-profits will be charged a non-refundable application fee equal to \$700. The Application Fee must be payable to the City of Minneapolis for projects located in Minneapolis or to Saint Paul HRA for projects located in Saint Paul as set forth in Section VII. For multi-building projects, CPED or HRA, on behalf of the Board, will require only one application and a single fee.

**B. Allocation Special Counsel Fee**

A non-refundable Special Counsel Fee in the amount of \$3,500 payable to McDonough Law Firm (the “Special Counsel”) as set forth in Section VII.

**C. Allocation Fee**

A non-refundable allocation fee equal to 1.5% of the HTC allocation amount must be paid to the City of Minneapolis for projects located in Minneapolis or Saint Paul HRA for projects located in Saint Paul as set forth in Section VII.

**D. Monitoring Fee**

The Board or its Authorized Delegate will charge annual monitoring fees to cover the costs of conducting compliance monitoring. Fees are charged on all units within each project, and are published in the current Housing Tax Credit Compliance Manual. The Board reserves the right to adjust fees due to changing circumstances.

The annual fee(s) must be submitted by the due date shown on the billing invoice.

Additional monitoring fees may be required for projects electing the Income Averaging set-aside.

**E. Transfer of Ownership Fee**

Upon review and approval of a Transfer by CPED or HRA, a non-refundable Transfer fee of \$2,500 must be submitted to CPED or HRA, along with updated materials of the current owner/management team.

**F. Late Fee**

The developer shall be responsible for meeting the application submittal deadlines set forth in this Procedural Manual. A late fee of \$1,000 payable to the City of Minneapolis or Saint Paul HRA, respectively may apply. Late fees will not be considered an eligible project expense.

**G. Qualified Contract Fee**

For its respective projects, CPED or HRA will require that owners pay a non-refundable fee of \$5,000 for processing a request for a Qualified Contract.

**MINNEAPOLIS/SAINT PAUL HOUSING FINANCE BOARD  
LOW INCOME HOUSING TAX CREDIT PROGRAM**

**EXHIBITS**

Exhibit A	Qualified Allocation Plan
Exhibit B	Opinion of Counsel - Application
Exhibit C	Qualified Census Tracts/Saint Paul Impacted Areas
Exhibit D	Form of Opinion of Counsel Regarding Carryover Allocation
Exhibit E	Self Scoring Worksheet – 9%
Exhibit F	Self Scoring Worksheet – 4%
Exhibit G	IRS Notice 88-80 Determination of Income
Exhibit H	IRS Regulations § 1.42-6 Carryover and 1.42-10 Utility Allowance
Exhibit I	Section 42 Internal Revenue Code
Exhibit J	Determination of Tax Credit (Minnesota Housing Common Application Form & LIHC-8)
Exhibit K	Agreement to Utilize Public Housing Waiting List (Minnesota Housing LIHC-11)
Exhibit L	Previous Participation (Minnesota Housing LIHC-17)
Exhibit M	Project Team Resume (Minnesota Housing LIHC-19)
Exhibit N	Transfer of Interest Form (Minnesota Housing LIHC-27)
Exhibit O	Rent and Income Limits
Exhibit P	Guidelines for Determining Section 501(c)(3) Status
Exhibit Q	Treasury Regulation §1.42-5, Section 42 Housing Tax Credit Program Compliance Manual for Minneapolis – Saint Paul Housing Finance Board
Exhibit R Averaging)	Declaration of Restrictive Land Use Covenant (to be updated for Income
Exhibit S	Worksheet for Qualified Basis (Minnesota Housing LIHC-28)
Exhibit T	Final Cost Certification (Minnesota Housing LIHC-9)
Exhibit U LIHC-3)	Certification by Owner/Applicant for Issuance of IRS 8609 (Minnesota Housing

Exhibit V	ACP50 Map
Exhibit W	Rent Floor Election/Certification (Minnesota Housing LIHC-26)
Exhibit X	Maintenance and Operating Expense Review and Underwriting Certification (HTC-29)
Exhibit Y	Opinion of Counsel - Placed in Service
Exhibit Z	Affirmative Fair Housing Marketing Plan (AFHMP) - Multifamily Housing (HUD-935.2A)
Exhibit AA	Equal Employment Opportunity Policy Statement
Exhibit AB	Multifamily – Intended Methods Worksheet: MN Overlay to Green Communities
Exhibit AC	MN Housing’s Income Averaging Rent and Income Grid
Exhibit AD	MN Housing’s Income Averaging Certification Form
Exhibit AE	Tenant Selection Plan supporting documentation