

Page	Section Title	PROPOSED AMENDMENTS TO SAINT PAUL HRA 2020 LOW INCOME HOUSING TAX CREDIT – PROCEDURAL MANUAL	Comment	Accept Yes/No
P. 3	Section III – B	<p><b>Application Cycle</b></p> <p>CPED and HRA conduct an annual RFP for 9% HTCs in coordination with Minnesota Housing’s Round 1 funding cycle. Please refer to the current 9% RFP or contact CPED or HRA HTC program staff for 9% HTC application deadlines.</p> <p>Applications for 4% HTC are accepted on a pipeline basis; see the QAP and Section VII – B of this Procedural Manual for more information on 4% HTC application requirements.</p>	Update description of application processes	
P. 4-8	Section III – E	<p><b>Unacceptable Practices</b></p> <p><b>Transfer of Ownership</b></p> <p>1. Unapproved Transfer. Any unapproved change or transfer of ownership from the time of selection or preliminary determination letter through the term of the Declaration will have an effect on all individuals/entities with an ownership interest on each side of the Transfer that submit Applications in future HTC funding rounds.</p> <p>Any Unapproved Transfer after the placed in service date of a project is subject to CPED or 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 CPED’s or HRA’s HTC Program for up to five (5) years from the date of discovery.</p> <p>2. Failure to Notify. Existing HTC projects that did not have transfer approval requirements are required to notify CPED or HRA of a transfer of ownership throughout the term of the Declaration. Failure to notify will have an effect on all individuals/entities with an ownership interest on each side of the Transfer that submit Applications in future HTC funding rounds.</p> <p>Any Unapproved Transfer after the placed in service date of a project is subject to CPED or HRA review and approval. Upon notice of an unapproved Transfer, CPED or HRA reserve the right to determine that all parties involved with the Transfer will not be eligible to participate in CPED’s or HRA’s HTC Program for up to five (5) years from the date of discovery.</p>	<p>Changes to clarify and expand unacceptable practices specifically related to Transfer or Ownership, Displacement of Section 8 Tenants, Late 8609 Application Submissions Resulting in the Loss of HTC Authority to the Board, Filing of a Non-Agency Approved 8609 with the IRS.</p> <p>Some cleanup of language also proposed related to Changes to Project to be consistent with MN Housing and HRA Board requirements.</p>	

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

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) If CPED or HRA and the local HUD area office agree that intentional displacement of Section 8 tenants occurred, CPED and HRA reserve the right to reduce or rescind the reservation/allocation or award of the HTC to the project prior to issuance of the Form 8609.

**Changes to Project**

		<p>The award of HTCs is based upon information provided in the Application and the preliminary 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 Minneapolis City Council’s or HRA Board of Commissioners’ review and approval.</p> <p>Upon notice of any material change without prior CPED or HRA approval, CPED and HRA reserve the right to determine that all parties involved with the material change will not be eligible to participate in either city’s HTC Program for up to five (5) years.</p> <p><b>Late 8609 Application Submissions Resulting in the Loss of HTC Authority to the Board</b></p> <p>When CPED or HRA become aware that a late submission of a complete and acceptable 8609 application package by a project’s owner/agent results in the loss of any volume of HTC authority to the Board, CPED and HRA reserve the right to determine that all parties involved with not be eligible for future participation in the HTC Program for a period of up to ten (10) years.</p> <p><b>Filing of a Non-Agency Approved 8609 with the IRS</b></p> <p>When CPED or HRA become aware that a project’s owner/agent has filed an 8609 with the IRS in advance of the owner/agent’s receipt of the Board-signed version of the approved 8609, or if the owner/agent electronically files an 8609 with the IRS that does not accurately reflect the information contained on the Board-signed version of the approved 8609 or the carryover or reservation agreement, the Board will file an 8823 Notice of Non-Compliance with the IRS, and reserves the right to determine that all parties involved with not be eligible for future participation in the HTC Program for a period of up to ten (10) years.</p> <p><b>Repeated Non-Compliance with Fair Housing Policies, Procedures and/or Requirements</b></p>		
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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 (if located in Saint Paul). Upon notice of repeated non-compliance with fair housing laws and regulations, CPED or HRA, acting on behalf of the Board, reserve the right to determine that all parties involved with the project will not be eligible to participate in the HTC Program in either city for up to five (5) years. This also applies to 4% HTC projects, owners, and managers.

**Non-Compliance with the Board’s Compliance Policies, Procedures, and/or Requirements.**

Failure to comply with the Board’s compliance policies, procedures, or requirements after repeated notices may be considered an unacceptable practice and result in negative points or ineligibility.

1. On the date of submission of an application for an allocation of HTCs, if the applicant or any party with an identity of interest with the applicant who will have an ownership interest in the proposed project has been issued a notice of failure to comply involving any of the following violations, but has not submitted an acceptable plan and timeline to correct by the response due date, the application will receive -25 points under Unacceptable Practices.
  - a. Failed minimum set-aside
  - b. Any Exigent Health and Safety Violation under Uniform Physical Conditions Standards
  - c. Owner is charging rent on any HTC unit that exceeds the allowable rent limit
  - d. HTC unit rented to an ineligible household (i.e. household not properly certified, over income at initial occupancy, or ineligible full-time student)
  - e. Project not available to the general public for fair housing violation
  - f. Owner failed to respond to CPED or HRA (or agent) request for inspection
  
2. On the date of submission of an application for an allocation of HTCs, if the applicant or any party with an identity of interest with the applicant who will have an ownership interest in the proposed project 1) has been reported to the IRS by the Board or MN Housing as no longer in compliance, nor participating in Section 42 on line 11p of IRS Form 8823 and has not taken steps to bring the property back into compliance to the satisfaction of the Board or MN Housing (as applicable), or 2) is on the Board’s or MN Housing’s list of Properties Not in Good Standing in the Extended Use Period and has not taken steps to bring the property back into compliance to the satisfaction of the Board or MN Housing (as applicable), the applicant may be deemed ineligible to receive an allocation of HTCs.

<b>P. 8</b>	<b>Section III – F</b>	<p><b>Minimum Underwriting Standards</b></p> <p>A project selected for a reservation or preliminary determination of HTCs is selected based upon underwriting standards, including but not limited to, acquisition costs, maintenance and operating expenses, etc. These factors will be monitored throughout the HTC process until the Board issues Form 8609. CPED and HRA will not allow any significant adjustments to these standards. Not complying with these standards could lead to the revocation of the HTC allocation.</p>	Define minimum underwriting standards for the HTC program	
<b>P. 8</b>	<b>Section III – G</b>	<p><b>Identity of Interest and Related Parties</b></p> <p>The applicant must disclose any and all relationships (generally based on financial interests or family ties) with any other parties involved in the project. A written disclosure to CPED or HRA detailing the nature of all identity of interest relationships is required for all parties. An entity will be deemed, at the discretion of CPED or HRA, to have an identity of interest with, or be a related party to, an applicant if there is a financial or familial relationship between the entities, including parent and subsidiary entities.</p>	Clarify that a financial or familial relationship between entities is considered an identity of interest, and that a written disclosure detailing any identity of interest relationships is required	
<b>P.8</b>	<b>Section III – G</b>	<p><b>Identity of Interest and Related Parties</b></p> <p>The applicant must disclose any and all relationships (generally based on financial interests or family ties) with any other parties involved in the project. A written disclosure to CPED or HRA detailing the nature of all identity of interest relationships is required for all parties. An entity will be deemed, at the discretion of CPED or HRA, to have an identity of interest with, or be a related</p>		

		<p>party to, an applicant if there is a financial or familial relationship between the entities, including parent and subsidiary entities.</p>		
<p><b>P.8</b></p>	<p><b>Section III – H</b></p>	<p><b>Disclosure and Eligibility of Development Team</b></p> <p>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).</p> <p>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.</p> <p>The following Significant Parties are ineligible to participate in the HTC Program.</p> <ol style="list-style-type: none"> <li>(1) Significant Parties who have been convicted of, enter an agreement for immunity from prosecution for, or plead guilty, including a plea of <i>nolo contendere</i>, to: a crime of dishonesty, moral turpitude, fraud, bribery, payment of illegal gratuities, perjury, false statement, racketeering, blackmail, extortion, falsification or destruction of records.</li> <li>(2) Significant Parties who are currently debarred from any Minnesota program, any other state program, or any federal program.</li> <li>(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.</li> </ol>	<p>Clarify language on Disclosure and Eligibility of Development Team of Interest to determine whether identity of interest or ongoing compliance monitoring issues exist for any parties involved on the development team.</p>	

		<p>(4) At the sole discretion of CPED or HRA, Significant Parties who have serious and persistent compliance monitoring violations may not be eligible.</p> <p>At the sole discretion of CPED or HRA, Significant Parties having an Identity of Interest with persons or entities falling into any of the above categories may not be eligible.</p>		
<b>P.10</b>	<b>Section III – J</b>	<p><b>Requests for Additional HTC Amounts</b></p> <p>Projects that have had a justifiable increase in eligible basis or previously received a partial allocation may be eligible to apply for supplemental HTC amounts.</p> <p>Projects that 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.</p> <p>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 additional 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.</p>	Clarify language on Requests for Additional HTC Amounts to be consistent with MN Housing language	
<b>P.13-15</b>	<b>Section III – M</b>	<p><b>Reservations – 9% HTCs</b></p> <p>(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 for final approval of a 9% HTC reservation (“Reservation”); such recommendations shall be binding upon the Board. 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.</p>	Clarify language on election of applicable percentage and gross rent floor to be consistent with MN Housing requirements	

		<p>(2) <u>For Minneapolis projects.</u> The Minneapolis City Council and the Board reserve the right to not commit 9% HTC to any project if they determine, in the 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.</p> <p><u>For Saint Paul projects:</u> 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.</p> <p>(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.</p> <p>(4) 9% HTC requests may be denied for reasons, including, but are not limited to, the following:</p> <ul style="list-style-type: none"> <li>(a) Falsifying information in the Application or misrepresentations of the applicant;</li> <li>(b) Past, outstanding, current or pending litigation against the applicant or principals which may pose a liability to the proposed project;</li> <li>(c) Judgments against the applicant or principals regarding bankruptcy, loan default, mechanic's lien, tax liens or non-payment of bills;</li> <li>(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;</li> <li>(e) The proposed project does not qualify for 9% HTC pursuant to Section 42 of the Code;</li> <li>(f) The proposed project does not qualify for 9% HTC under the applicable priority selection policies and procedures described in this Procedural Manual;</li> </ul>		
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- (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.

(6) The Board's HTC Program permits its owners to elect the applicable percentage either at reservation or placed in service. If the election is not made at the time the reservation letter is issued, the percentage will be fixed for the month in which the building is placed in service. The owner must be sure to consider the best options for this election and make sure the election is made at the correct time. Once made, the election is irrevocable. Upon receipt of the required documents and fees, the Board will complete its reservation review and send reservation agreements to be executed by the owner. Each reservation must be conditioned upon receipt of written certification, evidence of timely progress towards completion of the project acceptable to the Board, and evidence of compliance with federal tax requirements. Refer to Section VII for Reservation Fee requirements.

Choosing the gross rent floor date as the date of allocation or the date of placed in service can be done at any time from reservation forward, but the election must be made and the completed election form received

		<p>by the Board no later than the date the project is placed in service. If the owner chooses to make the election as of the date of the reservation, submit a fully executed Gross Rent Floor Election Form (HTC 26) including each building for the development in which there are HTC units. If the required owner-executed forms with all elections made by the owner are not submitted to the Board by a date no later than the placed in service date, the gross rent floor will be effective on the allocation date of the HTCs.</p>		
<b>P. 15</b>	<b>Section III – N</b>	<p><b>Administration Errors/Appeals Process</b></p> <p>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 selection points or 9% HTC amount at the time of application/reservation, the applicant must submit, in writing, evidence supporting their position within 5 business 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 5-day period. The letter should clearly state it is an appeal, and be addressed to the CPED or HRA HTC Program Administrator, as applicable. An applicant is not permitted to contest the scores of other applicants.</p> <p>If the applicant's evidence is accepted and the project's selection points are affected, CPED or HRA, as applicable, will re-rank all projects in the order of descending selection points. The Minneapolis City Council or HRA Board of Commissioners, as applicable, will review the re-ranking for approval. After an additional 5-business-day period after said approval, CPED's and the HRA's rankings will stand and 9% HTC Reservations for selected projects will be distributed.</p>	Clarify language around administrative appeals	
<b>P.16</b>	<b>Section III – O</b>	<p><b>Carryover Allocations</b></p> <p>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 allocation year in which the 9% HTC reservation was issued (“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.</p>		

		To receive a Carryover Allocation, the owner must submit a completed carryover allocation application package to HRA or CPED no later than November 1 of the allocation year for which the reservation was issued. Additional Carryover Allocation requirements are set forth in Section VII.C hereof	
<b>P.16</b>	<b>Section III – P</b>	<p><b>Final Allocations</b></p> <p>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.</p> <p>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 CPED or HRA 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.</p> <p>The 9% HTC amount that 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 this Procedural Manual, 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.</p> <p>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.</p> <p>Non-compliance with the terms of a reservation/preliminary determination of HTCs or a Carryover Allocation will result in a loss of HTCs.</p>	Cleanup language proposed

<p><b>P.18</b></p>	<p><b>Section III – R</b></p>	<p style="text-align: center;"><b>Qualified Contract</b></p> <p>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.</p> <p>A request for Qualified Contract may be submitted only once for each project. If an owner rejects an offer presented under the Qualified Contract or withdraws its request at any time after the notification letter and application materials have been received by the Board, no other opportunity to request a Qualified Contract will be available for the project in question.</p> <p>Owners who are contemplating requesting the presentation of a Qualified Contract must directly contact CPED or HRA’s HTC Program Manager, and consult Minnesota Housing’s Qualified Contract Guide.</p> <p>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.</p> <p>Payment of a non-refundable fee in the amount of \$5,000 is required for processing a Qualified Contract request.</p>	<p>Clarify Qualified Contract language to be consistent with MN Housing language</p>	
<p><b>P.20</b></p>	<p><b>Section IV – B</b></p>		<p>Clarify language on Substantial Rehab that is established by both State and Federal laws</p>	

**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 Federally Subsidized Financed with Tax Exempt Bonds and Existing Buildings:* With respect to new buildings and substantial rehabilitation that are financed with tax exempt bonds, and the acquisition of existing buildings that are substantially rehabilitated, the applicable percentage is an amount that results in aggregate HTC having a present value of 30 percent of qualified basis. Traditionally, this has resulted in a credit percentage of approximately 4percent.

*Substantial Rehabilitation:* Rehabilitation expenditure requirements are established both by state and federal law. Rehabilitation expenditures qualify for the HTC if the expenditures:

- (1) Are able to be awarded to one or more low-income units or substantially benefit low-income units; and
- (2) Are equal to the greater of:
  - a. 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

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.

		<p>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.</p> <p>In the case of an acquisition and rehabilitation project, the cost of acquiring the existing building may be eligible for HTC.</p> <p><i>Existing Buildings:</i> 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.</p> <p>Please note that the 10-year rule also applies to existing HTC projects applying for a new allocation of acquisition HTCs at the end of the original 15-year compliance period.</p> <p>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.</p> <p><i>Grants:</i> 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.</p> <p>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.</p> <p>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.</p>		
<b>P.21</b>	<b>Section IV – B</b>		The Act cited here is outdated	
<b>P. 21</b>	<b>Section IV – C</b>	<b>Federal Subsidy Layering Review</b>	Clarify language on Federal Subsidy Layering Review to be consistent with MN Housing requirements	

		<p>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.</p> <p>Subsidy layering review is required for the following programs, but not limited to:</p> <ol style="list-style-type: none"> <li>(1) Metropolitan Housing Opportunity Program (MHOP)</li> <li>(2) U.S. Housing and Urban Development (HUD) Risk Share Insurance</li> <li>(3) Section 8 Project-Based Rental Assistance</li> <li>(4) Home Investment Partnership (HOME)</li> <li>(5) National Housing Trust Fund (NHTF)</li> </ol> <p>At a minimum, the following documents must be submitted:</p> <ol style="list-style-type: none"> <li>(1) Partnership (Syndication) Agreement, spelling out the equity contributions and dates of disbursement; and</li> <li>(2) Copy of MN Housing’s Multifamily Workbook</li> </ol>		
<p><b>P.22</b></p>	<p><b>Section IV – D</b></p>	<p><b>Minimum Set-Aside Elections</b></p> <p>Applicants must set aside a minimum number of units that meet both rent and income restrictions to qualify for HTCs for each year of the HTC period. A project must, for a specific period of time, meet one of the following tests:</p> <ol style="list-style-type: none"> <li>(1) 20/50 Test (20 percent at 50 percent AMI). To meet the 20/50 test, a minimum of 20 percent of the residential units must be both rent restricted and occupied by individuals whose income is at or below the 50 percent AMI, as established for different geographic areas and published by the U.S. Department of Housing and Urban Development (HUD)</li> <li>(2) 40/60 Test (40 percent at 60 percent AMI). To meet the 40/60 test, a minimum of 40 percent of the residential units must be both rent restricted and occupied by individuals whose income is at or below the 60 percent AMI income limits, adjusted for family size.</li> </ol>	<p>Clarify language on Minimum Set-Aside elections, including clarification that 100% project-based rental assistance projects do not need Average Income because they are already serving the lowest incomes. Other cleanup language to be consistent with MN Housing requirements</p>	

		<p>(3) Average Income Test. In addition to meeting all Federal requirements, projects electing the Average Income test must meet the following additional requirements:</p> <ul style="list-style-type: none"> <li>(a) Average Income may only be elected for 100% HTC projects that have not yet filed Form 8609.</li> <li>(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.</li> <li>(c) Reasonable parity in unit types/sizes across income tiers is required.</li> <li>(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.</li> <li>(e) Projects with project-based rental assistance will be considered 50% units for purposes of the Average Income Test, unless the project is 100% project-based rental assistance. .</li> <li>(f) The Average Income test must be met on a project-wide basis; owners must select ‘yes’ on Line 8b of Form 8609 and include the required attachments.</li> <li>(g) Resyndications must comply with the terms of the original Declaration, if still in effect.</li> <li>(h) Average Income projects will not be allowed a higher developer fee, when compared to non-Average Income projects.</li> <li>(i) The Board reserves the right to negotiate specific terms for projects electing the Average Income set-aside. For Minneapolis projects only: electing Average Income for projects with existing HTC and/or deferred funding awards will be considered only if needed for financial feasibility, or to include/increase extremely low income HTC units. For Saint Paul projects only: projects with existing HTC and/or deferred funding awards will be considered only if needed to increase the number of extremely low income HTC units.</li> <li>(j) Rent and income restrictions in the initial 15-year compliance period will also apply in the extended use period.</li> <li>(k) 4% HTC projects electing Average Income must still meet all requirements associated with tax exempt bond financing.</li> </ul>		
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<p><b>P.23-25</b></p>	<p><b>Section IV – E</b></p>	<p style="text-align: center;"><b>Rent Restrictions/Utility Allowances</b></p> <p>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.</p> <p>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:</p> <ol style="list-style-type: none"> <li>(1) One individual in the case of a studio apartment; and</li> <li>(2) 1.5 individuals per bedroom in the case of a unit with one or more separate bedrooms.</li> </ol> <p>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.</p> <p>For HTC compliance purposes, "Gross rent" means all payments by the tenant, including payments to the owner for utilities other than telephone and cable. 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.</p>	<p>Clarify language on Utility Allowances and add new language limiting rent increases in HTC units to no more than once per year to be consistent with MN Housing guidance</p>	

The following is a summary of the sources of utility allowances:

- (1) HUD regulated buildings must use the HUD utility allowance (project based HUD financing)
- (2) Any individual units occupied by residents who receive HUD assistance (Section 8 existing, etc), must use the HUD utility allowance from the Public Housing Authority (PHA) administering the assistance.
- (3) For Section 42 buildings without HUD assistance, the following options may be used:
  - a. A PHA utility allowance from the local housing authority administering Section 8 vouchers for the area in which the property is located
  - b. A utility company estimate
  - c. An “Agency Estimate” based on actual utility usage data and rates for the building
  - d. A HUD Utility Schedule Model
  - e. An Energy Consumption Model using an energy and water and sewage consumption and analysis model.

The HTC Compliance Manual provides additional information and instructions for utility allowances, including procedures for requesting a change to utility allowance methodology. Requests to change methodologies are limited to once per calendar year.

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

Beginning on January 1, 2020, rent increases for occupied HTC units are limited to once annually. This limit applies to the rent charged for the unit and not the portion of tenant paid rent for residents assisted with Section 8 or other rental assistance, which may increase or decrease based on changes in income. This limit also applies regardless of the term of the lease or any language in the lease that would allow rents to increase more than once annually. Rents must always comply with limits imposed by the program(s) that financed the development and/or respective unit. This includes Minneapolis or Saint Paul funding sources as well as funding sources provided by other funders. Refer to the HTC Compliance Manual for additional detail.

<p><b>P. 25-26</b></p>	<p><b>Section IV – H</b></p>	<p style="text-align: center;"><b>Tenant Eligibility</b></p> <p>To be a HTC unit for purposes of determining the qualified basis, the tenant must have income at or below 50 percent of AMI, as defined in Section IV.E., if the 20/50 Test is elected, or 60 percent of AMGI if the 40/60 Test is elected. For the Average Income set-aside, as defined in Section IV.E, 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.</p> <p>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.</p> <p style="padding-left: 40px;">(a) Owners may not refuse to lease any unit in a project to a prospective resident because the prospective resident is a Section 8 certificate or voucher holder, or a participant in any other tenant-based assistance program.</p> <p>Section 42 of the Code does not allow households comprised of full-time students to qualify as HTC units unless certain conditions are met. There are five exceptions to the limitation on households where all members are full-time students. Full-time students that are income eligible and satisfy one or more of the following conditions are considered eligible:</p> <ol style="list-style-type: none"> <li>(1) Students are married and entitled to file a joint tax return. A married couple that is entitled to file a joint tax return, but has not filed one, still satisfies the exception.</li> <li>(2) The household consists of a single-parent with child(ren) and the parent is not a dependent of someone else, and the child(ren) is/are not dependents of someone other than a parent;</li> <li>(3) At least one member of the household receives assistance under Title IV of the Social Security Act (formerly Aid to Families with Dependent Children (AFDC), now known as Temporary Assistance for Needy Families (TANF), or in Minnesota, the Minnesota Family Investment Program (MFIP);</li> <li>(4) At least one member of the household participates in a program receiving assistance under the Job Training Partnership Act (JTPA) or other similar federal, state, or local</li> </ol>	<p>Clarify existing language prohibiting project owners from refusing tenants based on participation in Section 8 or other tenant-based assistance programs. Clarify existing language on student eligibility in HTC projects.</p>	
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laws; or  
 (5) At least one member of the household was previously in foster care.

**P. 26-27 Section IV – I**

**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 qualified census tracts (QCT), difficult development areas (DDA), or in 9% HTC projects granted the state designated basis boost.
- (2) The cost of the non-HTC residential units in a building is included in eligible basis only if the quality of those units does not exceed the average quality of the HTC units. If the cost of a non-HTC unit exceeds the cost of a HTC unit (using the average cost per square foot and assuming the same size) by more than 15 percent, the entire cost of the non-HTC units must be excluded from the building’s Eligible Basis. If the excess cost is not more than 15 percent, the owner may make an election to exclude only the excess cost of the non-HTC unit(s) from eligible basis.

Clarify language around Eligible and Qualified Basis to be consistent with MN Housing requirements

		<p>(3) 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.</p> <p>(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. The Eligible Basis of that facility cannot exceed 25 percent of the first \$15,000,000 in Eligible Basis plus 10 percent of additional basis in the project. All community service facilities that are part of the same qualified low-income project shall be treated as one facility. Only limited guidance has been issued by the IRS regarding these changes. No assurances can be given that additional IRS guidance will not require further adjustments to the QAP and additional reviews of selected projects.</p>		
<p><b>P. 27</b></p>	<p><b>Section IV – J</b></p>	<p><b>Qualified Basis/Applicable Fraction</b></p> <p>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.</p> <p>The Applicable Fraction is the lesser of:</p> <p>(1) The unit fraction, which is the number of HTC units in a building divided by the total number or residential rental units; or</p> <p>(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.</p>	<p>Clarify language on Qualified Basis/Applicable Fraction to be consistent with MN Housing language</p>	

		<p>A full-time resident 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.</p> <p>Throughout the planning, construction and placed in service periods, the applicable fraction has different nuances. At initial application and at carryover, the estimated project applicable fraction will be used. It is an approximate goal that the developer is striving to attain. It is calculated by project in order to obtain a rough estimate of the percentage of HTC units and square footage needed and an estimate of the total amount of HTCs necessary for a particular project.</p> <p>At the time that a building is placed in service application for 8609 is made, the targeted applicable fraction for each building is calculated. The targeted applicable fraction is determined on a building-by-building basis. Each building in a multiple building project could have a different applicable fraction. Because the estimated project applicable fraction is approximate, the targeted applicable fraction calculated by the building will frequently differ unless the project has a 100 percent applicable fraction. The targeted applicable fraction is also listed as part of the extended use criteria in the Declaration, which is recorded and remains with the property.</p>		
<p><b>P. 28</b></p>	<p><b>Section IV – K</b></p>	<p><b>Annual HTC Amount</b></p> <p>The HTC is available each year for over a 10-year period. The amount of HTC allocated or awarded is based on the Qualified Basis multiplied by the Applicable Percentage . 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 fewer HTC.</p> <p>The IRS publishes on a monthly basis the applicable percentages (Applicable Percentage to be used in calculating the maximum allowable annual 4% HTC amount for which the project will be eligible.</p>	<p>Cleanup language to be consistent with MN Housing requirements</p>	

<p><b>P.28-29</b></p>	<p><b>Section IV – L</b></p>	<p><b>Declaration of Land Use Restrictive Covenants</b></p> <p>As a condition of receiving HTCs, a project will be subject to a Declaration by the owner in favor of 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). The owner can elect to extend the term of the Declaration and Section 42 income and rental restrictions up to 55 years.</p> <p>The Declaration terminates upon:</p> <ol style="list-style-type: none"> <li>(1) Foreclosure of the building (or deed in lieu of foreclosure) unless the Secretary of the Treasury determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period; or</li> <li>(2) During the extended use period and, unless waived or conditioned in the Declaration, upon failure of the Board to find a purchaser by the end of one year after a request by the owner to the Board to find a purchaser for the HTC portion of the project, at a statutory minimum price, unless the owner has waived its right to a Qualified Contract.</li> </ol> <p>Throughout the term of the Declaration and for a three (3) year period after the termination of the Declaration, the owner may not evict or terminate the tenancy of 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.</p> <p>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.</p>	<p>Clarify Land Use Restrictive Covenants procedures to be consistent with MN Housing requirements</p>	
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<b>P.29</b>	<b>Section IV – M</b>	<p style="text-align: center;"><b>Ineligible Properties</b></p> <p>Any residential rental unit that is part of a hospital, nursing home, sanitarium, life care facility, manufactured housing park or intermediate care facility for the mentally and physically handicapped is not for use by the general public and is not eligible for HTCs under Section 42 of the Code. Projects with buildings having four or fewer residential units must comply with 42(i)(3)(C) of the Code.</p>	Clarify ineligible property types to be consistent with MN Housing language	
<b>P.30</b>	<b>Section IV – Q</b>	<p style="text-align: center;"><b>Tenant Ownership</b></p> <p>The Board will review projects incorporating tenant ownership provisions in accordance with Section 42 of the Code and IRS Revenue Ruling 95-49. The Board requires that projects proposing an Eventual Tenant Ownership (ETO) component must have 100 percent of the project’s HTC units specified for this ownership component. It is the responsibility of the applicant to provide the Board with any additional information or clarification as may be necessary.</p>	Update language to require projects claiming points for future Tenant Ownership to be 100% HTC for greater feasibility and likelihood of successful conversion	

<p><b>P.32</b></p>	<p><b>Section V – A</b></p>	<p><b>Project Cost Reasonableness</b></p> <p>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. CPED staff will also utilize Minnesota Housing’s predictive model to evaluate cost reasonableness.</p> <p>CPED and HRA will evaluate the cost reasonableness of proposed acquisition costs through an as-is appraisal. CPED or HRA will order the appraisal for 9% HTC projects (at the applicant’s expense). An appraisal conducted by Minnesota Housing may also be used. A lender’s appraisal is acceptable for 4% HTC projects. CPED and HRA reserve the right to conduct another appraisal, at the applicant’s expense.</p> <p>CPED and HRA reserve the right to reject applications that appear, at CPED’s or HRA’s sole discretion, to have excessive costs, or to size their HTC award based on the lesser of the option/purchase agreement purchase price or the appraised value of the property and buildings.</p>	<p>Clarify existing requirements around cost reasonableness and appraisal requirements</p>	
<p><b>P.33</b></p>	<p><b>Section V – C</b></p>	<p><b>Reserves/Contingencies</b></p> <p>All unexpended funds remaining in project reserve accounts must remain for development use during the term of any CPED or HRA deferred loans or the Extended Use Period, whichever is longer. The Limited Partnership Agreement (LPA) must include a provision addressing the terms and conditions for disbursement from the reserve accounts that specifically states that upon the transfer of any ownership interest or at the end of the compliance period, whichever is earlier, any funds remaining in the reserve accounts must remain with the project for the term of any CPED or HRA deferred loans or the Extended Use Period, whichever is longer. Existing projects applying for HTCs and/or refinancing will be required to show existing reserves as a source. Staff will review the draft LPA prior to closing to ensure compliance, and again upon submittal of the 8609 application.</p>	<p>Add new language to require project reserves to remain with the project for better tracking of the reserve funds</p>	

<p><b>P.34</b></p>	<p><b>Section V – E</b></p>	<p><b>Property Standard</b></p> <p>The Board encourages sustainable, healthy housing that optimizes the use of cost effective durable building materials and systems, and that minimizes the consumption of natural resources during construction, and in the long-term, maintenance and operation. All completed projects <b>MUST</b> comply with the Minnesota Overlay to the Enterprise Green Communities Criteria.</p> <p>Minneapolis projects only: all projects are subject to the Minneapolis Unified Housing Policy Design Standards.</p> <p>Saint Paul projects only: all projects must comply with the Sustainable Building Ordinance</p>	<p>New section to clarify Green Communities requirements and incorporate compliance to the City Sustainable Building Ordinance</p>	
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