MINNEAPOLIS/SAINT PAUL HOUSING FINANCE BOARD

HOUSING TAX CREDIT

2024-2025 QUALIFIED ALLOCATION PLAN

Adopted: May 30, 2023

Table of Contents

I Purpose 1

II Authority 1

III Definitions 2

IV General Concepts 3

V Amount of 9% HTC for 2024-2025 4

VI Application Process – 9% 4

- **A. Applicants 4**
- **B. HRA or CPED 4**
- **C. Special Tax Counsel. 4**
- **D. Applicants submitting Applications for projects located in Minneapolis 5**
- **E. Applicants submitting Applications for projects located in Saint Paul 5**
- **F. The Mayor of the appropriate City. 5**
- **G. The Minneapolis Council or the HRA Board of Commissioners 5**

VII Procedure for Selecting Projects; Project Threshold Requirements 5

VIII HTC for Projects Financed with Tax-Exempt Housing Revenue Bonds 8

IX Compliance Monitoring 8

- **A. Statutory Requirements 8**
- **B. Monitoring Procedure 9**

Attachment 1 Minneapolis Selection Priorities and Self-Scoring Worksheet
Attachment 2 Saint Paul Selection Priorities and Self-Scoring Worksheet
Attachment 3 Self-Scoring Worksheet-4% HTC - City of Minneapolis
Attachment 4 Self-Scoring Worksheet – 4% HTC – Saint Paul HRA

ARTICLE I
Purpose

The Housing Tax Credit (the "HTC") is a federal tax credit provided for in Section 42 (“Section 42”) of the Internal Revenue Code of 1986 (the “Code”), and is designed to assist in the development of affordable rental housing (the “HTC Program”).

To allocate the HTC to owners of rental projects and administer the HTC Program, each state is required to designate a “housing credit agency”. For the state of Minnesota, the Minnesota Housing Finance Agency ("Minnesota Housing") has been designated as the primary allocator of HTCs in Minnesota. Pursuant to Minnesota Statues, 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”). In accordance with 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 to 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.

ARTICLE II
Authority

Section 42(m) of the Code requires housing tax credit agencies, such as the Board, to develop and adopt a “qualified allocation plan”. The Qualified Allocation Plan sets forth selection criteria to be used to determine housing priorities of the housing credit agency that are appropriate to local conditions. It also establishes certain priorities and preferences as a condition to allocating HTCs for rental housing projects. It has been determined to be in the best interest of the public health, safety and welfare of the residents of the Cities of Minneapolis and Saint Paul that an effective qualified allocation plan be adopted.

This Qualified Allocation Plan (“QAP”), which incorporates by reference the Procedural Manual and Compliance Manual (as described herein), adopted by the Board, shall be construed and governed pursuant to the laws of the State of Minnesota (including but not limited to the Act) and Section 42 of the Code and the regulations promulgated in connection with Section 42 (the “Treasury Regulations”). Allocations of HTCs by Minnesota Housing to Minneapolis and Saint Paul pursuant to the Act shall be allocated to specific project owners by the Board, as the designated housing tax credit agency for the Cities of Minneapolis and Saint Paul, in accordance with this QAP.

This QAP was prepared by the staff of the Community Planning & Economic Development Department (“CPED”) of the City of Minneapolis and the Department of Planning and Economic Development of the City of Saint Paul (“PED”), as staff for the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota (“HRA”), in each case, on behalf and at the request of the Board in accordance with the procedures set forth in Section 42 of the Code.

This QAP may be amended from time to time as new guidelines and regulations are issued in connection with Section 42 of the Code, the Act or as the Board deems necessary or desirable to facilitate the public purposes of the Board’s HTC Program.

ARTICLE III
Definitions

"Application" means the application submitted by an applicant for HTCs pursuant to this QAP, which application shall be submitted as described in the Procedural Manual.

"Costs of Intermediaries" means those costs referred to as "costs of intermediaries" as that phrase is used in Section 42(m)(2)(B)(iii) of the Code and as may be defined in any regulations promulgated pursuant thereto. In the absence of federal regulations or rulings to the contrary, such costs shall be consistent with Minnesota Housing requirements.

"Declaration" means the Declaration of Land Use Restrictive Covenants entered into by the project owner in connection with agreements to comply with provisions of the Act and Section 42 of the Code.

"Delegate" means an agent or other private contractor retained by The Board to perform HTC compliance monitoring.

"Extended Use Period" means the time period set forth in the Declaration of Land Use Restrictive Covenants for which units within a project must comply with Section 42 of the Code.

"Minimum Set-Aside Test" refers to the options available to meet the minimum set aside test required under Section 42 of the Code:

(a) 20/50 test
(b) 40/60 test
(c) Average Income test

"Qualified Census Tract" means any qualified census tract as defined in Section 42(d)(5)(C) of the Code.

"Substantial Rehabilitation" means a rehabilitation expenditure equal to the greater of:

(a) an average qualified basis amount per HTC unit for a building which meets the inflation adjusted amount published by the IRS annually in accordance with Section 42(e)(3)(D); or

(b) 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.

ARTICLE IV
General Concepts

A. This QAP sets forth selection criteria that reflect the housing policies of the Board and will be used to determine the priorities for the allocation of HTC for rental housing developed within the Cities of Minneapolis and Saint Paul. This QAP incorporates the three (3) statutory preferences, as required by Section 42 of the Code, in allocating HTC to those projects:

(1) for which the project owner agrees to serve the lowest income tenants;

(2) for which the project owner agrees to serve qualified tenants for the longest periods; and

(3) which are located in a Qualified Census Tract and contribute to a "concerted community revitalization plan."

B. The following factors required pursuant to Section 42(m)(1)(C) of the Code have been incorporated into the selection criteria to be used to allocate HTCs:

(1) project location;

(2) housing needs characteristics;

(3) project characteristics;

(4) sponsor characteristics;

(5) tenant populations with special housing needs;

(6) public housing waiting lists;

(7) tenant populations of individuals with children;

(8) projects intended for eventual tenant ownership;

(9) the energy efficiency of the project; and

(10) the historic nature of the project.

C. This QAP provides for the financial feasibility review of each project and its viability as a qualified HTC project throughout the 10-year credit period as of the application date, the carryover allocation date and the placed in service date, all as required by Section 42(m)(2) of the Code.

D. This QAP provides procedures that the Board (or its agent(s), designees or private contractual parties) will follow in monitoring compliance with the provisions of Section 42 and in notifying the Internal Revenue Service ("IRS") of any noncompliance of which the Board or such monitoring agent, authorized designee or contracting party becomes aware of.

ARTICLE V
Amount of 9% HTC for 2024-2025

The maximum amount of 9% HTC that may be allocated by the Board in any calendar year will be determined in accordance with Section 42 and the Act. The available amount of 9% HTC for each City will be announced as part of the RFP/NOFA.

ARTICLE VI
Application Process – 9%

The application process for reserving and allocating 9% HTC pursuant to this QAP shall consist of the following steps:

A. **Applicants** shall submit to CPED or HRA, as appropriate, the following:

(1) a completed, signed and dated original Application, as described in Section VII of the Procedural Manual, and

(2) a completed Self-Scoring Worksheet (attached hereto as Attachment 1 or Attachment 2, as appropriate)

B. **HRA or CPED**, as applicable, shall review and evaluate the Applications in accordance with this QAP and the Procedural Manual to:

(1) determine whether the applicable minimum threshold requirements set forth in Article VII hereof have been satisfied;

(2) assign points to the project Application in accordance with the selection priorities set forth in Attachment 1 (Minneapolis projects) and Attachment 2 (Saint Paul projects), as applicable;

(3) determine the minimum amount of HTC necessary to make the project financially feasible and viable as a qualified low-income project throughout the 10-year credit period; and

(4) determine whether the applicant is current on the payment of compliance monitoring or other fees for projects for which the Board has allocated prior HTCs to the applicant.

C. **Special Tax Counsel** (the "Special Tax Counsel") appointed by The Board for Saint Paul projects and for Minneapolis projects will also review the Applications.

D. **Applicants submitting Applications for projects located in Minneapolis** shall present the project to the applicable neighborhood group for review, comment and recommendations, which recommendations shall then be submitted as part of the Application to CPED.

E. **Applicants submitting Applications for projects located in Saint Paul** shall present the project to the applicable Citizen Participation District Council for review, comment and recommendations, which recommendations shall then be submitted as part of the Application process to the HRA.

F. **The Mayor of the appropriate City** will be notified of the receipt of an Application for a project in their jurisdiction by the appropriate staff and provided with a reasonable opportunity to comment on the project.

G. The Minneapolis Council or the HRA Board of Commissioners, as applicable, upon recommendation from their respective staffs, shall make a determination to approve or deny a commitment for HTC for a project pursuant to Article VIII and the appropriate

Attachment 1 or 2 of this QAP and the Procedural Manual. Such recommendations shall be binding upon the Board.

ARTICLE VII
Procedure for Selecting Projects; Project Threshold Requirements

A. For each year in which 9% HTCs are to be allocated, there will be a funding round for 9% HTC ("Round 1"), which shall coincide with the "first round" allocation procedure established by Minnesota Housing pursuant to Minnesota Statutes § 462A.222, Subd. 3.

To participate in Round 1 for 2024-2025, all Applications (and required accompanying documentation) must be submitted on or before the deadline as posted in the RFP/NOFA. In order to participate in any subsequent competition rounds, Applications (and required accompanying documentation) must be submitted to CPED or PED by no later than the deadline established by the Executive Director of the Board following publication by Minnesota Housing of the dates for the various rounds of competition for the 9% HTC.

B. Those Applications for 9% HTC which the Board determines have satisfied the threshold requirements set forth in this Article will then be scored in accordance with the selection and preference priority point system set forth in Attachment 1 (Minneapolis projects) and Attachment 2 (Saint Paul projects), as attached to and made a part of this QAP.

C. As required by the Act, all 9% HTC Applications considered during Round 1 must meet one of the following threshold types:

(1) New construction or Substantial Rehabilitation in which, for the term of the extended use period (term of the Declaration), at least 75% of the total HTC units are single-room occupancy, efficiency, or one bedroom units with rents affordable to households whose income does not exceed 30% of the area median income ("AMI");

(2) New construction or Substantial Rehabilitation family projects that are <u>not</u> restricted to persons who are 55 years of age or older and in which, for the term of the extended use period (term of the Declaration), at least 75% of the total HTC units contain two or more bedrooms and at least one-third of the 75% contain three or more bedrooms;

(3) Substantial Rehabilitation projects of existing housing in neighborhoods targeted by Minneapolis or Saint Paul for revitalization;

(4) Projects that are not restricted to persons of a particular age group and in which, for the term of the extended use period (term of the Declaration) a percentage of the units are set aside and rented to persons:

(a) With a serious and persistent mental illness as defined in Minnesota Statutes 245.462, Subdivision 20, paragraph (c);

(b) With a developmental disability as defined in United States Code, Title 42, Section 6001, paragraph 5;

(c) Who have been assessed as drug dependent persons as defined in Minnesota Statutes 254A.02, Subdivision 5, and are receiving or will receive care and treatment services provided by an approved treatment program as defined in Minnesota Statutes 254A.02, Subdivision 2;

(d) With a brain injury as defined in Minnesota Statutes 256B.093, Subdivision 4, paragraph (a); or
(e) With permanent physical disabilities that substantially limit major life activities, if at least 50% of the units in the project are accessible as provided under Minnesota Rules Chapter 1341

(5) Projects, whether or not restricted to persons of a particular age group, which preserve existing subsidized housing, if the allocation of HTC is necessary to: (a) prevent conversion to market rate use, or (b) to remedy physical deterioration of the project, which would result in loss of existing federal subsidies.

D. To qualify for Round 1, a project must be financially feasible and viable as a qualified low-income project throughout the 15-year compliance period as documented by information in the Application which satisfies the underwriting standards used by CPED or PED, as appropriate, including sources and uses of funds, the total financing planned for the Project, any proceeds or receipts expected to be generated by reason of tax benefits, and the percentage of the housing credit dollar amount used for project costs other than Costs of Intermediaries. The information must show that, at a minimum (i) the applicant/sponsor is creditworthy, (ii) the applicant/sponsor has site control, (iii) the applicant/sponsor has the financial ability to undertake the project, including preliminary financing commitments, (iv) that the project can be completed in a timely manner, (v) the project is forecasted to have positive cash flow after required debt service, (vi) that the project demonstrates reasonable operating expenses when compared to projects for which the Board has awarded HTCs previously, and (vii) that when constructed or rehabilitated, the project will be in compliance with all applicable building, land use and zoning ordinances and requirements, (viii) the Costs of Intermediaries are not excessive for a project of that nature in that location, and (ix) the project conforms to the City of Minneapolis' Consolidated Plan, Comprehensive Plan, or any City adopted neighborhood plan document (if located in Minneapolis) or the City of Saint Paul's Consolidated Plan, Comprehensive Plan or Small Area Plans as approved by the Department of Housing and Urban Development (if located in Saint Paul).

E. The project owner must agree to enter into a Declaration as required by Section 42 of the Code in form and substance satisfactory to CPED or PED, as applicable.

F. The project owner must agree to waive its rights under Sections 42(h)(6)(E)(i)(II) and 42(h)(6)(F) of the Code which, if applicable, would otherwise allow the project owner to, in some cases, terminate the Declaration after the end of the 15-year compliance period. Applicants applying for 9% and 4% HTC in conjunction with the issuance of tax-exempt bonds must agree to extend the long-term affordability of the project and maintain the duration of low-income/rent restricted housing use for a minimum of thirty (30) years.

G. The project owner must agree to utilize public housing waiting list(s) in marketing units to the public. The applicable public housing authority must agree with the project owner to provide referrals from its waiting list to which the owner will provide a notice of initial vacancies, including notices of open units.

H. The project must create housing that is durable, healthy, and efficient. Owners are required to incorporate sustainability elements consistent with the most current Enterprise Green Communities Criteria and Minnesota Overlay and Guide to the Enterprise Green Communities Criteria (as established by Minnesota Housing). Specifically for Saint Paul projects, all new construction projects must comply with Saint Paul Sustainable Building Policy.

I. After reviewing the 9% HTC applications and recommendations of their respective staffs, the HRA Board of Commissioners/Minneapolis Council reserves the right not to award any HTCs. The HRA Board of Commissioners/Minneapolis Council further reserves the right not to give partial HTCs to a higher ranking application but to give the HTC to the next ranking Application that can use the balance of the HTC. The HRA Board reserves the right to award HTCs to a project that received a prior HTC allocation from the HRA Board regardless of its current year ranking pursuant to Attachment 1. The HRA Board of Commissioners/Minneapolis Council further reserves the right to terminate any further award of HTCs after a portion of the total HTCs available have been awarded.

J**.** HRA Board/Minneapolis Council reserves the right in their sole discretion not to award HTCs to an applicant (including with significant parties who have serious and persistent compliance monitoring violations); or to an applicant with significant parties who have an adverse lending position due to any delinquencies, foreclosures, or nonperformance of contractual obligations.

K. For each of the Cities, Applications for 9% HTCs will be ranked from highest to lowest scores based on the points received as set forth in Attachment 1 or Attachment 2, as applicable.

For projects located in Minneapolis: In the event two or more Applications receive overall point totals which are within 10 points of one another, the Application which scores at least 10 points higher than the other based exclusively on the "Minneapolis Preference Priorities" set forth in Attachment 1, Section B shall be ranked higher. In the event neither project receives a score which exceeds the other by 10 or more points based upon the "Minneapolis Preference Priorities" points, the projects shall be deemed to be substantially equivalent and the Board will award HTCs to the project which best addresses the City's current housing priorities.

For projects located in Saint Paul: In the event two or more projects have overall point totals which are within 2 points of one another, the projects shall be deemed to be substantially equivalent, and the HRA Board will select the project which best addresses the City's housing priorities.

L. Projects selected and approved by the HRA Board of Commissioners or Minneapolis Council will be eligible to proceed toward a commitment and approval of allocation of 9% HTC.

M. Any 9% HTC not committed or allocated by the Board as of the last day of Round 1 will be returned to Minnesota Housing. If any commitment for 9% HTC is reduced or revoked, the amount of such reduction or revocation of 9% HTC may be reallocated by the Board before the end of the last day of Round 1 as provided in the Procedural Manual.

N. Participants in the HTC Program will be required to use affirmative fair housing marketing practices in soliciting renters, determining eligibility, and concluding all transactions addressed in Title VII 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 with regard to public housing, and sexual orientation, and any applicable City Civil Rights ordinances.

ARTICLE VIII
HTC for Projects Financed with Tax-Exempt Housing Revenue Bonds

Section 42(h)(4) of the Code provides that, under certain circumstances, owners of buildings or a portion thereof financed with private activity bonds issued by a governmental entity pursuant to Section 142 of the Code may qualify for the 4% HTC pursuant to Section 42 of the Code. In order to qualify for 4% HTCs, an applicant must submit an Application pursuant to this QAP, which Application must satisfy the requirements of this QAP.

Note: Bond volume cap will not be issued in an amount greater than 53% of basis as defined in tax-exempt bond rules.

To qualify for 4% HTC, the Application submitted by the applicant must demonstrate that the project is eligible for no less than 30 points for projects located in the City of Minneapolis or 40 points for projects located in the City of Saint Paul on the Self-Scoring Worksheet attached hereto as Attachment 3 or Attachment 4 for Minneapolis and Saint Paul, respectively.

In addition to the requirements of this QAP, HRA and CPED have set forth various procedures in the Procedural Manual (see Section VII(B**),** or supplements thereto), for reviewing Applications for the allocation of 4% HTCs in connection with the issuance of tax-exempt bonds pursuant to Section 142 of the Code. Refer to Section VII of the HTC Procedural Manual for Application requirements. The requirements set forth in Article VII C. of this QAP do not apply to such projects. The proposed project must comply with the QAP that is in effect at the time Tax-Exempt Housing Revenue Bonds are issued sufficient, together with any Tax-Exempt Housing Revenue Bonds issued previously for the same project, to finance at least 50% of the aggregate basis of the building(s) and land it is located on.

ARTICLE IX
Compliance Monitoring

A. Statutory Requirements

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. The Procedural Manual and Compliance Manual includes those provisions for monitoring compliance as are required by the Code or as are determined to be reasonably necessary by the Board's compliance monitoring agent to enforce those provisions.

The Board will require that all Declarations include the following provisions:

B. Monitoring Procedure

(1) Recordkeeping and Retention

(a) Records Required

The owner for each year of the 15-year compliance period will be required to keep records for each qualified low income building in the project. Such records must show at a minimum:

(i) The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential unit);

(ii) The percentage of residential rental units in the building that are HTC units;

(iii) The rent charged on each residential rental unit in the building (including any utility allowances). Documentation including rent rolls, leases, and utility allowances per IRS Notice 94-60 issued June, 1994;

(iv) The HTC unit vacancies in the building and information that shows when, and to whom, the next available units were rented. Information on HTC unit vacancies must be retained and reported on annually to the City or Delegate;

(vi) For projects with market rate units, the annual income certification of each low-income tenant per unit on forms provided by the Board;

(vii) Documentation to support each HTC tenant's income certification. Such documentation shall be consistent with that required under Section 8 of the United States Housing Act of 1937 ("Section 8"), Chapter 5 of the HUD Occupancy Requirements of Subsidized Multifamily Housing Programs, related appendices, and the Suballocator Compliance Manual, not in accordance with the determination of gross income for federal income tax liability. In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement of this paragraph is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant's income does not exceed the applicable income limit under section 42(g);

(viii) The eligible basis and qualified basis of the building at the end of the first year of the credit period; and

(ix) The character and use of the nonresidential portion of the building which is included in the building's eligible basis under Code Section 42(d) (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project).

(b) Retention Policy

The owner will be required to retain the records for each building in the project for at least six (6) years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least six (6) years beyond the due date (with extensions) for filing the federal income tax return for the last year of the 15-year compliance period of the building.

(2) Certification and Review

(a) Certification

The owner will be required to certify the following on an annual basis covering the preceding 12-month period:

(i) The project met the requirements of the 20-50 test under Section 42(g)(1)(A), or the 40-60 test under Section 42(g)(1)(B) of the Code, or Average Income under Section 42(g)(1)(c), whichever Minimum Set-Aside Test is applicable to the project, and the 15-40 test under Sections 42(g)(4) and 142(d)(4)(B) of the Code for "deep rent skewed", projects, if applicable to the project;

(ii) There was no change in the applicable fraction (as defined in Section 42(c)(1)(B) of the Code) of any building in the project, or that there was a change, and a description of the change;

(iii) At initial occupancy the owner has received a Tenant Income Certification with supporting documentation and an Annual Student Certification (if applicable) from each HTC tenant. At annual recertification, owner has received an Annual Student Certification and, where applicable, a Tenant Income Certification with supporting documentation from each HTC tenant, except for projects that meet the requirements under Section 42(g)(8)(B), and documentation to support that certification or, in the case of a tenant receiving Section 8 housing assistance payments, the statement from a public housing authority described above in Section B.1.(a)(vii);

(iv) Each HTC unit in the project is rent-restricted under Section 42(g)(2) of the Code.

(v) No tenants in HTC units were evicted or had their tenancies terminated other than for good cause and no tenants had an increase in the gross rent with respect to a HTC unit not otherwise permitted under Section 42;

(vi) All units in the project are for use by the general public and are used on a non-transient basis (except for transitional housing for the homeless provided pursuant to Section 42(i)(4)(B)(iii) of the Code).

(vii) No finding of discrimination under the Fair Housing Act, 42 U.S.C 3601-3619, has occurred for the project. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development (HUD), 42 U.S.C 3616a(a)(1), or an adverse judgment from a federal court;

(viii) Each building and HTC unit in the project is suitable for occupancy, taking into account local health, safety, and building codes and the State or local government unit responsible for

making local health, safety or building code inspections did not issue a violation report for any building of HTC unit in the project;

(ix) There has been no change in the eligible basis (as defined in Section 42(d) of the Code) of any building in the project or that there has been a change, and the nature of the change;

(x) All tenant facilities included by the owner in the eligible basis pursuant to Section 42(d) of the Code of any building in the project, such as swimming pools, other recreational facilities, and parking areas, are provided on a comparable basis without charge to all tenants in the building;

(xi) If a HTC unit in the project became vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income;

(xii) If the income of tenants of a HTC unit in the project increases above the limit allowed in Section 42(g)(2)(D)(ii) of the Code, the next available unit of comparable or smaller size in the project was or will be rented to tenants having a qualifying income; and

(xiv) A Declaration, which constitutes an extended HTC housing commitment as described in Section 42(h)(6) of the Code was in effect.

(xv) If the owner received its HTC allocation from the portion of the state ceiling set-aside for a project involving "qualified non-profit organizations" under Section 42(h)(5) of the Code and its non-profit entity materially participated in the operation of the development within the meaning of Section 469(h) of the Code.

(b) Review

CPED staff and PED staff (or Delegate) shall review the certifications and supporting reports and documentation submitted by the owner pursuant to Section IX(2)(a) above for compliance with the requirements of Section 42 of the Code. In addition, pursuant to the Treasury Regulation §1.42-5(c)(2)(ii)(b) and the Procedural Manual at least every three (3) years;

(i) CPED staff and PED staff (or Delegate) 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 record 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 low-income, 50% of tenant files will be subject to review;

(ii) CPED staff and PED staff (or Delegate) must physically inspect all buildings in a project, all common areas, and at least 20% of the HTC units in the project

If CPED staff and PED staff (or Delegate) provide in the Procedural Manual for the inspection of a reasonable number of projects pursuant to (ii) above, the HTC housing projects to be inspected shall be chosen in a manner that will not give owners of HTC housing projects advance notice that their records for a particular year will or will not be inspected. However, the Delegate may give an owner reasonable notice that an inspection will occur so that the owner may assemble records, for example, 30 days advance notice of inspection. In any event, CPED staff and PED staff (or Delegate) shall determine which tenants' records are to be inspected or submitted by the owners for review.

(3) Inspection Provision

The Delegate and the Board shall have the right to inspect HTC projects through the term of the Declaration. The inspection provisions of this Section 3 are required in addition to any inspections of low-income certifications and documentation under paragraph 2(b) of this Article IX.

(4) Notification of Noncompliance Provisions

(a) General. CPED staff and PED staff (or Delegate) shall provide the notice described in paragraph (b) of this Section to the owner of a HTC project and the notice described in paragraph (c) of this Section to the IRS.

(b) Notice to Owner. CPED staff and PED staff (or Delegate) shall provide prompt written notice to the owner. If the Board does not receive the certification described in Section (2)(a) hereof or is not permitted to inspect the tenant income certifications, supporting documentation and rent records described in Section (2)(b) or (c) hereof or discovers by inspection or review, or in some other manner, that the project is not in compliance with the provisions of Section 42 of the Code.

(c) Notice to Internal Revenue Service. CPED staff and PED staff, on behalf of the Board shall file Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance, with the IRS no later than 45 days after the end of the correction period (as described in paragraph (d) of this Section, including extensions permitted under that paragraph) and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected. CPED staff and PED staff must explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis that results in a decrease in the qualified basis of a project under Code Section 42(c)(1)(A) is a noncompliance that must be reported to the IRS. If CPED staff and PED staff reports on Form 8823 that a building is entirely out of compliance and will not be back in compliance at any time in the future, the Board is not required to file Form 8823 in subsequent years to report that building's noncompliance.

(d) Correction Period. Owner will have an opportunity to supply any missing certifications and bring the project into compliance with the provisions of Section 42 of the Code within a period specified in the notice to the owner. The correction period will be no more than sixty days from the date of the notice to the owner described in paragraph (b) of this Section 4. CPED or PED staff (or Delegate) may extend the correction period for up to six (6) months upon the written request of the owner, but only if CPED or PED staff (or Delegate) determines that there is good cause for granting an extension. The Delegate will submit any proposed extension denials to CPED or PED for final determination. The Board may review and notify the IRS of corrective action taken by the owner if provided to the Board within 3 years of the Form 8823 filing.

(e) Retention of Records. CPED staff and PED staff must retain records of noncompliance or failure to certify for six (6) years beyond the Board's filling of the respective Form 8823. In all other cases, CPED staff and PED staff must retain the certifications and records described in Section IX of this QAP for three (3) years from the end of the calendar year CPED staff and PED staff receives the certifications and records.

(f) Owners shall provide to CPED staff or PED staff (or Delegate), whichever is applicable, any evidence of noncompliance correction and correspondence to or received from the IRS with respect to any reported noncompliance.

(5) Delegation of Authority

(a) General. The Board may retain an agent or other private contractor (the "Delegate") to perform compliance monitoring. The Delegate must be unrelated to the owner of any building that the Authorized Delegate monitors. The Delegate may be delegated all of the functions of the Board to monitor compliance, except for the responsibility of notifying the IRS under Section (4) of this Section. For example, the Delegate may be delegated the responsibility of reviewing tenant certifications and documentation under Section (2)(b) hereof, the right of inspect buildings as described in Section (3) hereof, and the responsibility of notifying building owners of lack of certification of noncompliance under Section (4) hereof. The Delegate must notify the Board of any noncompliance or failure to certify.

(b) Limitations. In the event the Board delegates compliance monitoring to a Delegate, the Board shall use reasonable diligence to ensure that the Delegate properly performs the delegated monitoring functions. Delegation by the Board of Compliance monitoring functions to a Delegate shall not relieve the Board of its obligation to notify the IRS of any noncompliance of which the Board becomes aware of.

(c) Liability. Compliance with the requirements of Section 42 of the Code is the responsibility of the owner of the project for which the HTCs are allowable. The Board's obligation to monitor for compliance with the requirements of Section 42 of the Code does not make the Board liable for an owner's noncompliance.

(6) Fees.

The owner will be required to pay CPED or HRA or their Delegate a monitoring fee as set forth in the Compliance Manual.

(7) Owner Responsible for Compliance.

The owner is solely responsible for ensuring that a project is all times in compliance with Section 42 of the Code. The procedures established in this Article IX are solely for purposes of establishing the Board's compliance with Section 42(m)(1)(B)(iii) of the Code, and shall not be deemed in any way to be for the benefit of any owner, developer, any partner thereof or investor therein, and may not be relied upon or used in connection with any offering to any such person of interests in the equity ownership in the project.