



Washington County Housing and  
Redevelopment Authority

Housing Tax Credit Program

Amended and Restated  
2016 Procedural Manual

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## **Introduction**

The Federal Tax Reform Act of 1986 created the Housing Tax Credit Program (see Section 42 of the Internal Revenue Code of 1986, as amended (the “Code”)) for qualified residential rental properties. The Housing Tax Credit Program offers a reduction in tax liability to owners and investors in eligible low income rental housing projects involving new construction, rehabilitation or acquisition with rehabilitation.

The Minnesota Housing Finance Agency (“Minnesota Housing”) has been designated by the Minnesota legislature as the primary allocating agency of housing Tax Credits (“Credit(s)” or “Tax Credit(s)”) in Minnesota. In addition, qualified local cities and counties have also been designated by the Minnesota legislature, pursuant to Minnesota Statutes sections 462A.221 to 462A.225, as amended (the “Act”), as suballocators of Tax Credits for the purpose of allocating a portion of the available state cap. The Washington County Housing and Redevelopment Authority (the “Authority”) has been designated by the Minnesota legislature as a suballocator of Tax Credits in Minnesota for eligible projects located in Washington County.

Section 42 of the Code (“Section 42”) requires that Tax Credit allocating agencies develop an allocation plan for the distribution of the Tax Credits within the jurisdiction of the allocating agency (see 26 C.F.R. § 1.42-17). The Authority’s Qualified Allocation Plan (the “QAP”) combines state and federally legislated priorities with other priorities established by the Authority following receipt of comments from the public. The QAP is subject to modification or amendment to ensure the provisions conform to the changing requirements of Section 42 and applicable state statutes. No assurances can be given that Internal Revenue Service (“IRS”) guidance will not require further adjustments to the QAP and additional review of selected developments.

The Authority or its designee is also required to monitor Tax Credit projects during the compliance period, as well as notify the IRS of any noncompliance with the requirements of Section 42 of which it becomes aware. All applicants should review the IRS regulations regarding monitoring compliance at 26 C.F.R. § 1.42-5. In addition, the Authority will monitor the projects during the remaining term of the Declaration of Land Use Restrictive Covenants (the “Declaration”).

This information summarizing the Tax Credit program is provided as a brief overview. It is not comprehensive and should not be relied upon for income tax purposes. The Tax Credits are allocated to the owner (taxpayer). The owner is solely responsible for compliance with Section 42.

The Authority is under no obligation to undertake an investigation of the accuracy of the information submitted in an application for Tax Credits. The Authority’s review of a proposed housing project does not constitute a warranty of the accuracy of the information, nor of the quality or marketability of the housing to be purchased, constructed or rehabilitated pursuant to the Tax Credit program. Developers, potential investors and interested parties should undertake their own independent evaluation of the feasibility, suitability and risk of the project. If any information submitted by the applicant in connection with the allocation of Tax Credits by the Authority is later found to have been incorrect or there has been a subsequent change in any

material respect, it is the responsibility of the applicant to inform the Authority and to request a reexamination of the application.

This Housing Tax Credit Program Procedural Manual (this “Manual”) is provided solely for use in applying for Tax Credits from the Authority and may not be relied upon in structuring or investing in specific transactions or for compliance with the Code, Treasury Regulations or any other laws or regulations governing Tax Credits. Interested parties should consult with a knowledgeable tax professional prior to entering into any commitment concerning the use and claim of Tax Credits.

## **Chapter 1 – Authority Mission Statement**

Through innovation, the Authority promotes community and economic development, and provides and maintains affordable, decent and safe housing opportunities in Washington County.

## **Chapter 2 – Role of the Authority as a Suballocator**

Suballocators such as the Authority were authorized by the Minnesota legislature in 1990 to allocate and monitor Tax Credits to eligible projects in their cities or counties. The Authority awards its allotted Tax Credits in Round 1 of competition.

### **A. Round 1**

During Round 1, for-profit applicants for projects to be located in Washington County must apply directly to the Authority for a Credit allocation. Nonprofit applicants may apply to the Minnesota Housing nonprofit set-aside, or the Authority individually, or concurrently to both. Any Tax Credits not used by the Authority prior to Round 2 are returned to Minnesota Housing.

### **B. Round 2**

In Round 2, projects located in Washington County may apply directly to Minnesota Housing.

### **C. Subsidy Layering Review**

Section 911 of the Housing and Community Development Act of 1992 requires that specific procedures be followed for subsidy layering review when Tax Credits and assistance from the United States Department of Housing and Urban Development (“HUD”) are combined in a single project. Applicants whose developments combine assistance from HUD and Tax Credits should be aware that subsidy layering review must be completed by the Authority for their development and should contact HUD and the Authority to receive additional information prior to submitting an application.

Subsidy layering review is required for, but is not limited to, the following programs: HUD insurance and Section 8 project based rental assistance, etc. At a minimum, the following documents must be submitted:

1. Rental Housing Project Income Analysis and Appraisal, signed and dated by HUD (Form 2264a);
2. A line item sources and uses statement;
3. Syndication Agreement, spelling out the equity contributions and dates of disbursement; and
4. Copy of Multifamily Workbook.

## **Chapter 3 – Policies and Procedures**

### **A. Application Cycle**

The Authority will accept applications in accordance with the QAP and this Manual for Round 1. **Applications must be submitted in the manner required by this Manual and must comply with the Authority's submission requirements** utilizing forms supplied by the Authority or Minnesota Housing, including all required fees, deposits and exhibits. The closing date for receipt of applications for Round 1 is tentatively scheduled for June 18, 2015, but applicants should note that Minnesota Housing establishes the closing date for Round 1 and should confirm the actual deadline prior to submission.

The Authority will base its selection decision upon the application and attachments received on the application due date. The application and all required submissions must be complete and legible or the application will be returned. No applications, attachments or documentation will be accepted after the application due date unless requested or approved by the Authority. Applications will not be accepted by facsimile transmission.

Applications should be submitted no later than 4:30 p.m. on the application due date to:

Washington County Housing and Redevelopment Authority  
7645 Currell Boulevard  
Woodbury, MN 55125  
Phone: (651) 458-0936  
Email: mtaphorn@wchra.com

Upon receipt of an application, as required by federal law, the Authority will notify the chief executive officer (or the equivalent) of the local jurisdiction where the proposed project is planned. This notification will include characteristics of the proposed Tax Credit project and provide an opportunity for the local unit of government to comment on the project.

Information submitted in an application for Tax Credits is public information that is accessible to the public pursuant to Minnesota Statutes Chapter 13.

## **B. 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 person for federal income tax purposes and are financed pursuant to a common plan of financing. Scattered site buildings on different tracts of land will also qualify if the project meets all of the other requirements described above and the project is 100 percent rent restricted.

## **C. Nonprofit Set-aside**

Federal law requires that 10 percent of the total annual Credit available be reserved each year exclusively for projects involving ownership by nonprofit organizations which have a 501(c)(3) or (c)(4) status or appropriate equivalent designation approval from the IRS. On an annual basis, the Authority may reserve an additional five percent, for a total annual nonprofit set-aside of 15 percent.

The nonprofit must be local, organized and incorporated in the State of Minnesota and have significant experience in Minnesota as a sponsor, owner or manager of low income housing. The nonprofit must have the fostering of low income housing as one of its exempt purposes and must “materially participate” in the ownership, development and operation of the low income project through the term of the Declaration.

The intent of Section 42 is to ensure that a for-profit entity or individual does not set up a “sham” nonprofit organization in order to tap the nonprofit set-aside. This could include establishing a nonprofit organization for the specific project, without any history, experience, local community involvement or financial strength.

The nonprofit organization must demonstrate that the nonprofit is acting independently and free from influence or control by the for-profit project team members. The Authority reserves the right to contact the officers and directors of the nonprofit organization to determine their independence.

The Authority will require that all nonprofits applying for the nonprofit set-aside disclose all identity of interest between the nonprofit and any member of the for-profit project team. An identity of interest would include any officer, director, partner, stockholder, relative, seller or owner of land or building involved, processing agent, real estate salesperson or broker, employee or anyone acting to represent any for-profit member of the project team who controls or influences the decisions of the nonprofit.

If there is an identity of interest, affiliation or conflict, as determined by the Authority, the Authority may disqualify the nonprofit from receiving Credits from the nonprofit set-aside. In making this determination, the Authority will consider the following:

1. The nonprofit’s history, funding sources and composition of its board;
2. Past experience and anticipated future activities of the nonprofit, including involvement in the local community;

3. Sources and manner of funding of the nonprofit;
4. The nonprofit's degree of financial strength for completion and operation of the project during the term of the Declaration;
5. The relationship of the principals involved in the formation of the nonprofit organization with for-profit individuals concerning the Tax Credit application. A nonprofit cannot be affiliated with or controlled by a for-profit entity by:
  - a. Having more than a 25 percent share of common board members; or
  - b. Having more than 25 percent of its funding, directly or indirectly, from the parent entity; or
  - c. Having any other type of association that is not considered an arms-length affiliation; and
6. The extent to which the nonprofit materially participates, within the meaning of Section 469(h) of the Code, in the development and operation of the project throughout the term of the Declaration. The Authority will also look at the nonprofit's involvement in the project-related construction, management, ownership interest, sharing of fees and funding provisions.

If the nonprofit set-aside is exhausted during a round, the nonprofit applicant with proposed projects in the Authority's jurisdiction may be eligible for Tax Credits from the appropriate for-profit set-aside and selected based upon its point ranking. However, any proposal with a qualified nonprofit applicant must comply with the nonprofit requirements of Section 42(h)(5)(C) and (D) of the Code, including material participation for the term of the Declaration. This requirement is a covenant on the land that shall apply to all subsequent owners.

#### **D. Transfer of Ownership**

The Authority strongly discourages the transfer of ownership in projects that have been awarded Tax Credits. For the long-term viability of quality housing, the Authority's position is that the development and management teams making the decisions in developing the Tax Credit housing need to also own and operate the project for the long term. Any transfer of title of a selected project or transfer of more than a 50 percent interest in a general partner or change in a nonprofit partner prior to a date five years after the project's new construction/rehabilitation placed in service date will be considered a material change in the project and **will be subject to the approval of the Authority**. Owners wishing to change or transfer ownership must submit a revised application along with a completed and executed Notice of Intent to Transfer Ownership (HTC 27), Transfer Agreement if prior to issuance of IRS Form 8609 ("IRS Form 8609" or "Form 8609") (HTC 20), a transfer of ownership fee (see Chapter 9.), and any other documentation that the Authority deems necessary.

## **E. Unacceptable Practices**

### **1. Unapproved Transfer of Ownership:**

Any unapproved change or transfer of ownership from selection through five years after the project's new construction/rehabilitation placed in service date will have an effect on all individuals/entities from the development and management team on each side of the transfer that submit applications in future Tax Credit rounds. These entities may be penalized as follows:

At the application stage for the year the transfer took place and one year after:

- a. First Transfer (-10 points on each application submittal); and
- b. Two or More Transfers (-25 points on each application submittal).

In addition, if the Authority becomes aware of a transfer of ownership by an individual or entity without proper notification and approval by the Authority, the Authority reserves the right to determine that all parties involved in the transfer will not be eligible for future participation in Authority's Tax Credit program for a period of 10 years.

### **2. Displacement of Section 8 Tenants:**

The Authority 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 rehabilitation.

- a. The Authority may partner with the local HUD area office to determine if tenants of rehabilitation projects:
  1. Were displaced prior to application; and/or
  2. Are displaced after rehabilitation has been completed.
- b. If the Authority and the local HUD area office agree that intentional displacement of Section 8 tenants has occurred, with exception given to lease violations by the tenant, the Authority will:
  1. Reduce, rescind or recapture any Tax Credits reserved/allocated to the project prior to the issuance of Form 8609; and
  2. Assess a -25 point penalty to all parties involved in ownership/management of the project for future Tax Credits. The penalty points will remain in place for two years. This also applies to tax-exempt Tax Credit projects, owners and managers.

3. Changes to Project:

The award of Tax Credits is based upon information provided in the application and the preliminary plans submitted with the application. Until the property is placed in service, any material changes to the project or building design (i.e., changes in unit mix or unit size, that affect applicable Minnesota Housing Finance Agency Rental Housing Design/Construction Standards (the “Design Standards”) or in design features required for preference points) as submitted in the application require written notification to and approval from the Authority. Any changes that have not been previously approved by the Authority could result in a proportional loss of Tax Credits up to the full amount of the allocation, as well as the assessment of penalty points to the owner/developer of up to -25 points.

4. Late Form 8609 Application Submissions Resulting in the Loss of Tax Credit Authority to the State:

When the Authority becomes aware that a late submission of a complete and acceptable Form 8609 application package by a development’s owner/agent results in the loss of any volume of Tax Credit authority to the State of Minnesota, the Authority reserves the right to determine that all parties involved will not be eligible for future participation in its Tax Credit program for a period of 10 years.

5. Filing of Non-Authority Approved Form 8609 with the IRS:

When the Authority becomes aware that a development’s owner/agent has filed a Form 8609 with the IRS in advance of the owner/agent’s receipt of the Authority signed version of the approved Form 8609, or if the owner/agent electronically files a Form 8609 with the IRS which does not accurately reflect the information contained on the Authority signed version of the approved Form 8609, the Authority will file a Form 8823 Notice of Non-Compliance with the IRS and reserves the right to determine that all parties involved will not be eligible for future participation in its Tax Credit program for up to a period of 10 years. This applies to Credits allocated by the Authority, including without limitation, those allocated in conjunction with tax-exempt bonds.

6. Repeated non-compliance with the Authority’s Fair Housing Policies, Procedures, and/or Requirements:

Repeated failure to comply with the Authority’s Fair Housing policies, procedures or requirements will be penalized. The Authority will impose up to a -25 point penalty on future Tax Credit developments to all parties involved in ownership and/or management on the development(s) that repeatedly is found in non-compliance. The penalty points will be in effect for two years following notification of the assessment of the negative points by the Authority. This also applies to tax-exempt Tax Credit projects, owners and managers.

**F. Minimum Underwriting Factors**

A development selected for a reservation of Tax Credits is selected based upon the underwriting factors relating to maintenance and operating expenses and permanent financing stated by the applicant in its application and as approved by the Authority (see Chapter 5.B.). These factors will be monitored throughout the Tax Credit process until the Authority's issuance of the approved IRS Form 8609. The Authority WILL NOT ALLOW ANY SIGNIFICANT ADJUSTMENTS TO THESE FACTORS. Changes in these factors could lead to the revocation of the Tax Credit allocation.

**G. Identity of Interest**

The applicant must disclose any and all relationships (generally based on financial interests or family ties) with others involved in the project. A written disclosure to the Authority detailing the nature of all identity of interest relationships is required for all parties.

**H. Disclosure and Eligibility of Development Team**

The applicant must disclose the names and addresses, including corporate officials where applicable, of all parties that have a significant role in the project ("Significant Parties"). These Significant Parties include, but are not limited to, general partners, accountants, architects, engineers, financial consultants, any other consultants, management agents and the general contractor (each team member must complete a Qualification Form for their respective role (HTC Forms 203A, 210A, 205A, 208A, 206A, 209A and other applicable forms)). The Authority must be satisfied that those who will own and operate the project are familiar with and prepared to comply with the requirements of the program.

The following Significant Parties are not eligible to participate in the Tax Credit program:

1. Significant Parties who have been convicted of, enter an agreement for immunity from prosecution from, 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, other states' program(s) or any federal program(s);
3. At the sole discretion of the Authority, Significant Parties who have serious and persistent compliance monitoring violations may not be eligible; or
4. At the sole discretion of the Authority, Significant Parties having an identity of interest with persons or entities falling into any of the above categories may not be eligible.

## **I. Determination of Credit Amount**

Federal law mandates that, although a proposed project may be eligible for up to 70 percent or up to 30 percent present value Credit amount, the Authority may not allocate more Credit than is necessary for the financial feasibility of the project and its viability as a qualified affordable housing project throughout the compliance period.

After a project meets the development selection criteria, including marketability, the Authority will evaluate each proposed project, taking into consideration:

1. The percentage of the Credits used for development costs, including developer fees, builder profits, contractor overhead and general conditions, other than the cost of intermediaries;
2. The reasonableness of the development costs and operational costs of the development;
3. All sources and uses of funds and total financing planned for the development;
4. Projected income and expenses;
5. Proceeds expected to be generated from the sale of tax credits, including historic tax credits; and
6. The difference between total project costs and total available financing resources, which is referred to as the GAP. A calculation is made to determine the amount of Tax Credits needed by the project to fund the GAP over a 10-year period, based on the estimated market value of the Tax Credits.

Based on this evaluation, the Authority will estimate the amount of Credits to be reserved for each application. This determination is made solely at the Authority's discretion and is not a representation as to the feasibility of the project. Rather, it will serve as the basis for making a reservation of Credits. The amount of the Tax Credit can change during the process due to variations in cost, mortgage amount, Tax Credit percentage, syndication proceeds, etc.

This analysis to determine the maximum amount of Tax Credits must be performed by both the Authority and the owner/developer 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.

If there are changes in resources and/or uses of funds or other material changes, the Authority will adjust the Tax Credit amount to reflect the changes, and the Tax Credit may be reduced. Tax Credit amounts will not automatically be increased above the initial reservation request or allocation amount. Requests for additional Tax Credits for the project must follow the procedures in Chapter 3.J. of this Manual and will depend upon the availability of Credits.

## **J. Requests for Additional Credit Amounts**

Projects that have had a justifiable increase in eligible basis or previously received a partial allocation may be eligible to apply for additional Tax Credit amounts when applications are due for Round 1.

Developers who have carryover Tax Credit allocations from a prior year and request additional Tax Credits will be required to submit a revised application package with all attachments and a full application fee for the additional Tax Credits requested.

Applications that are submitted for an additional Tax Credit amount will be subject to the same evaluation process described above and the availability of Credits, as well as limitations on the time period for allocation of additional Credits under Section 42.

## **K. Increased Credit for Certain Projects**

Federal law permits, but does not require, the Authority to reserve a greater amount of Credits than the legislated maximum Credit percentage for certain projects meeting one of the following criteria:

1. A project located in a qualified census tract (“QCT”) designated by HUD in which 50 percent of the population has an income of less than 60 percent of the area median or has a poverty rate of at least 25 percent, where such areas do not comprise more than 20 percent of the overall population. For a current list of the HUD-designated QCTs on the Internet, go to [www.huduser.org/datasets/qct.html](http://www.huduser.org/datasets/qct.html); for general census tract information on the Internet, go to: <http://factfinder.census.gov>;
2. A project located in a difficult development area (“DDA”) designated by HUD as having high construction, land, and utility costs relative to area median income. For DDA information, go to the same website set forth for QCTs above; or
3. A project that is not in a QCT or a DDA, but meets the following criteria (the “Credit Enhancement Criteria”), which will be used to determine if, when, and in what amount, the Authority will provide a basis boost for housing tax credit developments on a building by building basis to obtain financial feasibility, as formally determined by the Authority\*:
  - a. The project does not use financing that is tax exempt under Section 103 of the Code;
  - b. The project meets the Authority’s identified housing priorities as evidenced by a competitive Tax Credit score;
  - c. There remains a funding gap; and
  - d. But for the additional reservation of Credits, the project would not be financially feasible.

\*Note: Requests by applicants/developers to the Authority to apply the 30% designated basis boost must be formally made in writing. The request should clearly outline the reasons supporting the request and clearly demonstrate how the proposal meets the Credit Enhancement Criteria.

The reservation of additional Credits will be limited to the Credits necessary to achieve financial feasibility.

**Note that there are currently no HUD-designated QCTs or DDAs in Washington County.**

#### **L. Reservations**

Once staff has ranked applications and determined allowable Credit amounts for each application, staff will make recommendations to the Authority's Board of Commissioners for final approval of the reservation of Tax Credits. After the ten-day adjustment period (referenced below), the selected applicant will have 20 days to acknowledge selection by returning an executed project profile, and the appropriate reservation fee (See Chapter 9.).

A development selected for a reservation of Tax Credits is selected based upon many specific factors relating to the application, including site location. Reservations **are site specific** and a development's site cannot be changed without the Authority's prior written consent. Changing a development's site could lead to the revocation of the Tax Credit reservation or allocation.

The Authority's Tax Credit program permits owners to elect the applicable percentage either at reservation or when the project is 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, the Authority will complete its reservation review and send a reservation agreement to be executed by the owner. Each reservation shall be conditioned upon receipt of written certification, evidence of timely progress toward completion of the project acceptable to the Authority, and evidence of compliance with federal tax 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 it must be done **prior to** the date the project is placed in service. If the owner chooses to make the election as of the date of the reservation, it must submit a fully executed Gross Rent Floor Election Form (HTC 26) that includes each building of the development in which there are Tax Credit units. If the required owner-executed forms with all elections made by the owner are not submitted to the Authority prior to the placed in service date, the gross rent floor date will be effective on the allocation date of the Tax Credits.

The Authority maintains the right not to reserve Tax Credits for any project if it determines, in its sole discretion, that a reservation for such project does not further the purpose and goals as set forth in Chapter 1. of this Manual.

**M. Administrative Errors/Appeals Process**

If the applicant believes that the Authority has misinterpreted, was not aware of a submission item, or miscalculated the applicant's selection points or Credit amount at the time of application/reservation, the applicant must submit a letter with an original signature stating that the communication is an appeal under Chapter 3.M. of this Manual, along with evidence supporting its position within five business days of the Authority's notification of application status. The letter containing the original signature may be submitted to the Authority in hard copy or through e-mail, to the address specified in Chapter 3.A. of this Manual. The Authority's notification will be in the form of a selection or non-selection letter. The first business day after the date on this letter will be the first day of the notification period. An applicant is not permitted to contest the scores of other applicants.

If the evidence provided by the applicant is accepted and the selection points of the project are affected, the Authority will re-rank all projects in the order of descending selection points. After an additional five-business day period, the Authority's rankings will stand and reservations of Tax Credits for selected projects will be distributed.

**N. Waiting List**

Eligible applications for which the Authority reserved no Tax Credits or fewer Tax Credits than were requested will be maintained on a waiting list in the event the Authority receives additional or returned Tax Credits. The waiting list will follow the Authority's selection point ranking. Generally, projects will be chosen in order; however, depending on time and funds available, the Authority reserves the right to make modifications to the waiting list. Projects placed on the waiting list must be fully evaluated for underwriting, market and financial viability prior to receiving consideration for a Tax Credit allocation. A project must satisfy these reviews to be eligible for selection from the waiting list. If an application is not selected for a reservation of Tax Credits by the deadline for return of unused Tax Credits to Minnesota Housing, there will be no further consideration. An applicant currently on the waiting list must submit a completely new application packet in the next funding round, which is a new Tax Credit year, to receive consideration for a Tax Credit allocation.

**O. Carryover Allocations**

Federal law (26 C.F.R. § 1.42-6 - Carryover Allocation) provides that the Authority may give a carryover allocation to certain qualified building(s), which are to be placed in service no later than December 31 of the second year after the allocation year for which the reservation was issued. To receive a carryover allocation, the owner must submit a complete carryover application package to the Authority no later than October 1 of the allocation year for which the reservation was issued. **Carryover applications must be**

**submitted in the manner required by this Manual and must comply with the Authority's submission requirements** utilizing forms supplied by the Authority or Minnesota Housing, including all required fees, deposits and exhibits.

Federal law requires that more than 10 percent of the expected basis in the project (including land) must be expended by the later of the date which is one year after the date that the allocation is made or the close of the calendar year in which the allocation is made. A written certification by a certified public accountant ("CPA") must be submitted verifying the owner has incurred the required expenditures. As decided by the owner, submission of the CPA certification may be made at the time of the carryover application or the deadline established in Chapter 7.B. of this Manual. However, the carryover allocation agreement must be executed prior to December 31 of the allocation year for which the reservation was issued. For a carryover agreement to be valid it must include, among other things, the amount of the reasonably expected basis at the end of the second year after the initial reservation and the carryover basis expended by the later of the date which is one year after the date that the allocation is made or the close of the calendar year in which the allocation is made. If the final CPA certified carryover basis and expenditure information is not available at the time the carryover application is due, an estimate of the expenditure of greater than 10 percent of the expected basis must be performed by the owner and submitted to the Authority no later than October 1 of the allocation year for which the commitment was issued. The final CPA certification must be submitted to the Authority prior to the deadlines established by Section 42 and by no later than the Authority's submission deadlines identified in Chapter 7.B. of this Manual. Failure to comply with the submission dates will result in significant penalties as outlined in Chapter 9.D. Additional carryover requirements are given in Chapter 7.B.

The Authority's Tax Credit carryover procedures are intended to conform to federal laws and are based upon the limited guidance received from the IRS. At any time, additional IRS guidance may be issued that will require further adjustments to the QAP and additional reviews of developments relating to carryover.

**P. Final Allocations**

Except for carryover allocations, no allocation of Tax Credits will be made until a building or project is placed in service, and the proper documentation and fees have been received. The final amount of Credits is determined when the project is placed in service.

Final allocations (Form 8609) may be requested when all eligible buildings are placed in service and the proper documentation and fees have been received. The Authority may establish, in its sole discretion, required deadlines prior to year-end for final allocation requests in order to permit timely processing of documents. If an owner of a Tax Credit development does not intend to obtain a carryover allocation, but instead intends to take a project from Credit reservation directly to placed-in-service status, an allocation via issuance of Form 8609 must be obtained prior to year-end of the allocation year for which the reservation was issued. For a Form 8609 to be issued by the Authority prior to year end, the Tax Credit application for issuance of such Form 8609 must be submitted to the Authority on or before November 1 of that year.

**A project that has neither received a carryover allocation, nor has been placed in service and issued Form 8609 before December 31 of the year of allocation will lose its entire allocation of Credits.**

The Tax Credit amount that will be allocated is based on the Authority's final determination of the qualified basis for the building or project and a review of the project costs as outlined in Chapter 6. of this Manual. The allocation may be reduced to comply with federal law based on the final review of the project.

Prior to final allocation, the project owner is required to execute and record the Declaration.

Non-compliance with the terms of a reservation of Tax Credits or a carryover allocation will result in a loss of Credits.

## **Q. Monitoring for Compliance**

Federal law requires that the Authority provide a procedure to be used in monitoring for compliance with Section 42 and for notifying the IRS of noncompliance. The Authority is required to apply the monitoring procedure to all Tax Credit projects developed within the Authority's jurisdiction, including Tax Credits issued with tax-exempt bonds, since the inception of the Tax Credit program. The Authority shall perform such duties in accordance with its Housing Tax Credit Compliance Manual (the "Authority's Compliance Manual"). Copies are available upon request.

1. All Tax Credit recipients shall submit an annual certification to the Authority in a manner, form and time established by the Authority. The certification will include, but is not limited to, the submission of completed IRS forms, a compliance report and compliance monitoring fees. Owners are required to certify whether or not the property is in compliance with Section 42 regulations and also whether or not the property complies with the restrictions and/or set-asides under which the allocation was awarded.

In addition to the annual owner certification requirements, owners shall submit a copy of the Characteristics of Tenant Household report, which details demographic data on households occupying units in the development.

2. A review of tenant certifications including the tenant applications, third party verifications and supporting documentation of income, as well as general project appearance will be conducted in accordance with the Authority's Compliance Manual. The compliance report, including tenant name(s), household information, amount and sources of income, rents, utility allowance or cost, and other unit information is required to be maintained at all times and will be submitted annually. All Tax Credit recipients will also maintain, as part of the official project records, the tenant applications, income certifications and verification of tenants' income. If a property received its Credit allocation based on serving specific targeted population(s), the tenant files must also contain supporting documentation showing that the unit is serving such population(s).

3. The Authority will conduct its first monitoring inspection no later than the end of the second year of the Credit period. Such inspection will include, but is not limited to, a review of tenant files and physical inspection of 20 percent of the low income units.
4. The Authority will conduct a compliance inspection of each development at least once every three years. Such inspection will include, but is not limited to, a review of tenant files and physical inspection of 20 percent of the low income units.
5. The Authority 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 Authority upon request.
6. To accomplish its compliance monitoring responsibilities, the Authority will charge an annual fee of \$55 per unit, based on the total number of units, with a minimum fee of \$500. During the extended use period required by Code Section 42(h)(6), the Authority will charge a monitoring fee of \$25 per unit per year. The Authority reserves the right to adjust the annual fee to offset administrative costs.
7. The Authority will promptly notify the IRS of any project noncompliance within its responsibility as contained in Section 42. The Authority has no jurisdiction to interpret or administer Section 42, except in those instances where specific delegation has been authorized.
8. Properties that received a credit allocation in 1990 and later are subject to a minimum 15-year Extended Use Period (the "Extended Use Period"). The Authority has defined compliance requirements and monitoring procedures during the Extended Use Period in the Authority's Compliance Manual.

**R. Qualified Contract**

Section 42(h)(6)(E)(i)(II) of the Code created a provision that Credit agencies respond to the request for presentation of a qualified contract for Tax Credit developments with expiring compliance periods. The request for presentation of a qualified contract may occur after year 14 of the compliance period. The request for presentation of a qualified contract is a request that the Credit agency find a buyer (who will continue to operate the property as a qualified low income property) to purchase the property for a "qualified contract" price pursuant to IRS regulations. If the Credit agency is unable to find a buyer within one year, the extended use period is terminated.

Many owners are required to or have chosen to waive the right to request a qualified contract and have committed to 30 years or more of operation as low income rental housing. Owners should review the applicable QAP, Tax Credit application, carryover agreement and Declaration to determine whether the owner has waived the right to request a qualified contract prior to contacting the Authority.

A request for a 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 Authority, no other opportunity to request a qualified contract will be available for the project in question.

Owners who are contemplating requesting the presentation of a qualified contract should directly contact the Authority or refer to Minnesota Housing's Qualified Contract Guide which sets forth the requirements and processes the Authority will follow with regard to a request for a qualified contract.

**S. Tenant Selection Plan**

The Authority requires that a tenant selection plan is readily available to anyone interested in such a plan for review and/or retention. The Authority will not develop or provide such a plan to owners or management companies.

Federal, State and local fair housing laws should be consulted when owners/managers are developing a plan. It is the responsibility of the owner/manager to have a thorough understanding of the basis under which discrimination is prohibited.

A plan developed for the purpose of objectively selecting potential residents should have a focus on demonstrating an ability to live in harmony with others in a respectful manner. Factors to consider of persons interested in the available housing should include, but not be limited to, income eligibility; ability to pay the required rent, deposits, and applicable tenant paid utilities; previous rental history; references; expectations of all residents to management, neighbors, visitors to the development, etc. (Also see related items in Chapter 7.B.12. and C.21., and Chapter 8.G.21.)

**T. Other Conditions**

No member, officer, agent or employee of the Authority shall be personally liable concerning any matters arising out of, or in relation to, the allocation and monitoring of Tax Credits.

**U. Revisions to the Manual and QAP**

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

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

The QAP may be amended for substantive issues at any time following public notice and public hearing. Said hearing will be held at the main offices of the Authority or at such other location as designated by the Authority.

To the extent that anything contained in this Manual or the QAP does not meet the minimum requirements of federal law or regulations, such law or regulation shall take precedence.

## **Chapter 4 – Federal Program Requirements**

### **A. Eligible Activities**

Eligible activities for Tax Credits include new construction, Substantial Rehabilitation, or acquisition with Substantial Rehabilitation.

### **B. Applicable Percentage**

There are two levels of applicable percentage, depending upon whether the building is new or existing, whether there are rehabilitation expenditures and whether the building is federally subsidized.

1. New Buildings and Qualifying Rehabilitation Expenditures (if neither is federally subsidized):

With respect to new buildings or qualifying rehabilitation expenditures which are not federally subsidized, the applicable percentage is an amount resulting in aggregate Credits having a present value of 70 percent of qualified basis. Traditionally, this has resulted in a Credit percentage of approximately nine percent.

2. New Buildings and Qualifying Rehabilitation Expenditures that are Federally Subsidized and Existing Buildings:

With respect to new buildings or qualifying rehabilitation expenditures which are federally subsidized and the acquisition of existing buildings that are substantially rehabilitated, the applicable percentage is an amount which results in aggregate Credits having a present value of 30 percent of qualified basis. Traditionally, this has resulted in a Credit percentage of approximately four percent.

The nine percent and four percent Credit percentage represents the maximum potential rate.

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 nine percent or the four percent Tax Credit. Also consult with your tax credit professionals for the current nine percent and four percent Credit rate.

### **C. Qualifying Rehabilitation**

Rehabilitation expenditure requirements are established both by state and federal law.

Under Section 42(e), rehabilitation expenses qualify for the Credit if the expenditures for each building:

1. Are able to be allocated to one or more low income units or substantially benefit low income units; and
2. Equal the greater of:
  - a. \$6,500 in qualified basis per low income unit for a building, which amount shall be adjusted by a cost-of-living adjustment pursuant to Section 42(e)(3)(D) of the Code; 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).

In addition to the Section 42(e) requirements, Minnesota Statutes section 462A.221, subdivision 5, requires rehabilitation expenditures for the project of at least \$5,000 per unit.

It is necessary to acquire an existing building in order to incur qualifying rehabilitation expenditures with respect to that building. In such a case, the costs of acquiring the existing building may be eligible for the 30 percent present value Credit and the rehabilitation expenditures may be eligible for the 70 percent present value Credit.

### **D. Existing Buildings**

In order for an existing building to qualify for the 30 percent acquisition Credit in connection with rehabilitation, there must have been a period of at least 10 years between the date the building was acquired and the date it was last placed in service. See Section 42(d)(2).

Please note that the ten-year rule also applies to existing Tax Credit projects applying for a new allocation of acquisition Credits at the end of the original 15-year compliance period.

### **E. Exception to the 10-Year Rule**

Federally-assisted or state-assisted buildings are exempt from the 10-year rule as provided in Section 42(d)(6) of the Code. Waiver of the 10-year rule may also be sought for buildings acquired from insured financial institutions in default or from a receiver or conservator of such institution.

In addition, certain other situations are exempt from the 10-year rule, such as:

1. A person who inherits a property;
2. A government unit or qualified nonprofit group if income from the property is exempt from federal income taxation;
3. A person who gains a property through foreclosure (or instrument in lieu of foreclosure) of any purchase money security interest, provided the person resells the building within 12 months after placing the building in service following foreclosure; or
4. Single family residences that had no use during the prior 10-year period except as an owner-occupied principal residence will not be treated as being placed in service for purposes of the 10-year holding period. Note that although the 10-year rule does not apply, the property must still be rehabilitated to claim the acquisition costs of such a property.

#### **F. Federal Subsidies**

The determination of whether a building is federally subsidized is addressed in Section 42(i)(2). In general, a building is treated as federally subsidized if there is financing which is tax exempt under Section 103 of the Code, the proceeds of which were used (directly or indirectly) in the building or its operation. 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 or costs against which the amount of the Credit is calculated.

Federal grants are not to be taken into account in determining eligible basis. The eligible basis of a building shall not include any costs financed with the proceeds of a federally funded grant.

#### **G. Federal Subsidy Layering Review**

See Chapter 2.C. above.

#### **H. Project Eligibility**

The purpose of the Tax Credit is to assure that a sufficient number of rental 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 rent and income restrictions to qualify for Tax Credits for each year of the Credit period. A project must, for a specific period of time, meet one of the following minimum tests:

- 20/50 Test:

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

Multifamily Tax Subsidy Project limits, “MTSP limits” (as established for different geographical areas and published by HUD), adjusted for family size; or

- 40/60 Test:

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 MTSP limits, adjusted for family size; or

- Average Income Test:

To meet the Average Income Test, the average of the imputed income limitations designated by the applicant for a minimum of 40 percent of the residential units must be both rent restricted and occupied by individuals whose income does not exceed 60 percent MTSP limits, adjusted for family size.

Once made, the choice of the 20 percent at 50 percent formulation, the 40 percent at 60 percent formulation, or the Average Income formulation is irrevocable.

Note: The actual number of restricted units within the project must be consistent with the initial applicable fraction selected at the time of reservation. Also, the IRS defines each building as a separate project unless the owner elects to treat certain buildings as a multiple-building project on IRS Form 8609. See the instructions for making a multiple-building election on Form 8609.

## **I. Affordable Rents**

The rent restrictions for the units are governed by Section 42 and 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 in Section 42 may result in project ineligibility or a reduction in basis and/or Credit amount.

Rent Restriction: For a unit to count as a low income 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 limitations 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 low income unit is determined by which test is elected and how many bedrooms are contained in the unit. Current income limits, as derived from HUD, for the Authority are described on the HUD website at [www.huduser.org/datasets/il.html](http://www.huduser.org/datasets/il.html).

For Tax Credit compliance purposes, “gross rent” means all payments by the tenant, including non-optional charges and payments 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 (26 C.F.R. § 1.42-10, as amended - Utility Allowance) provide guidance relating to utility allowances and lay out options for establishing them. The options, depending on assistance or regulation characteristics of the project or the tenant, may require use of an RD utility allowance, a HUD utility allowance, a PHA/HRA utility allowance, an Agency Estimate, a HUD utility Schedule Model, an Energy Consumption Model, or a utility allowance produced with information obtained through a local utility company in a manner consistent with Regulation § 1.42-10. Utility allowances must be updated at least annually.

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

Additional rent restrictions may apply if the award of Tax Credits was made based on such additional restrictions.

## **J. Tenant Eligibility**

To be a low income unit for purposes of determining the qualified basis, the tenant must have income at or below 50 percent of the applicable MTSP limits if the 20/50 Test is elected, 60 percent of MTSP limits if the 40/60 Test is elected, or an average imputed income which does not exceed 60 percent of MTSP limits if the Average Income Test is elected. 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 Tax Credit eligible unit must be less than or equal to the elected income requirements.

Section 42 does not allow households comprised of full time students to qualify as low income units unless certain exceptions are met. The student exceptions are found in Section 42(i)(3)(D):

Certain students not to disqualify unit. A unit shall not fail to be treated as a low income unit merely because it is occupied:

1. By an individual who is:
  - a. A student and receiving assistance under title IV of the Social Security Act; or
  - b. A student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act (i.e. foster care); or

- c. Enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State or local laws; or
2. Entirely by full time students if such students are:
- a. Single parents and their children and such parents are not dependents (as defined in Code Section 152 determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual and such children are not dependents of another individual other than a parent of such children; or
  - b. Married and file a joint tax return.

See Chapter 17. of the Guide for Completing IRS Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition, for additional guidance.

#### **K. 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, subject to certain conditions and modifications set forth in Section 42(d). 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) are:

The eligible basis may be increased for new buildings and Substantial Rehabilitation to existing buildings that are located in designated QCTs or DDAs or that meet the Credit Enhancement Criteria. (See Chapter 3.K.)

The cost of the non-low income residential units in a building is included in eligible basis only if the quality of these units does not exceed the average quality of the low income units. If the cost of a non-low income unit exceeds the cost of a low income unit (using the average cost per square foot and assuming the same size) by more than 15 percent, the entire cost of the non-low income unit 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-low income unit(s) from eligible basis.

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 available to all tenants in the project.

The cost of a community service facility is included in basis only if the building is located in a QCT. The eligible basis of that facility must not exceed 25 percent of the first \$15 million in eligible basis plus 10 percent of the remaining eligible basis in the

project. All community service facilities that are part of the same qualified low income housing project shall be treated as one facility. A community service facility is defined as a facility that is part of the qualified low income housing project designed to serve primarily individuals including tenants and non-tenants whose income is 60 percent or less of area median income. **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.**

Eligible basis is reduced by residential rental units that are above the average quality standard of the low income units, historic rehabilitation credits and nonresidential rental property, and does not include any costs financed with the proceeds of a federally funded grant. Buildings located in areas designated as a QCT or DDA or that meet the Credit Enhancement Criteria may be eligible for an increase in allowable basis. (See Chapter 3.K.)

**Note that there are currently no HUD-designated QCTs or DDAs in Washington County.**

**L. Qualified Basis**

Qualified basis is the portion of the eligible basis applicable to low income housing units in a building. Qualified basis is the product of a project's eligible basis multiplied by the applicable fraction.

**M. Applicable Fraction**

The applicable fraction is the lesser of:

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

A full time resident manager's unit is not considered a residential unit and must not be included in the numerator or denominator for calculating the applicable fraction.

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 eligible units and square footage needed and an estimate of the total amount of Tax Credits necessary for a particular project.

At the time that the placed in service application for Form 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 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.

**N. Economically Integrated Projects**

To promote economic integration, projects are awarded points for being located in higher income communities that are close to jobs. An economic integration area map overlay can be found on Minnesota Housing's community profiles interactive mapping tool.

**O. Annual Credit Amount**

The Tax Credit is available each year for 10 years. The amount of Tax Credit awarded is based on the qualified basis multiplied by the applicable percentage. However, Section 42(m)(2) requires the Authority to limit the amount of Credit to the amount necessary to assure project feasibility under rules established by the IRS. Therefore, the actual amount of Tax Credits awarded could be less than the maximum allowable if the analysis reveals the project would still be feasible with fewer Tax Credits.

The IRS publishes the applicable percentages on a monthly basis. These figures are used to calculate the maximum allowable annual Credit amount for which the project will be eligible. (Also see Chapter 4.B.)

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

Prior to an allocation of Section 42 Tax Credits, a project will be subject to a Declaration between the owner and the Authority through which the owner commits the building(s) to low income use for an extended use period of at least 15 years after the conclusion of the 15-year compliance period (a total of 30 years).

The Declaration terminates upon: (a) foreclosure of the building (or deed in lieu of foreclosure); or (b) during the extended use period, upon failure of the Authority to find a purchaser by the end of one year after a request by the owner to the Authority to find a purchaser for the low income portion of the building, at a statutory minimum purchase price, unless the owner has waived its right to exercise this option. Throughout the term of the Declaration and for a three year period after the termination of the Declaration, the owner shall not evict or terminate the tenancy of an existing tenant of any low income unit other than for good cause and shall not increase the gross rent above the maximum allowed under the Code with respect to such low income unit. Note that the QAP requires applicants to waive the right to request a qualified contract. For those projects electing the Income Average Set Aside, the Declaration must include the designation of imputed income limitations below 60%.

The Declaration must be recorded in accordance with Section 42(h)(6) as a restrictive covenant and submitted to the Authority prior to the Authority issuing the allocation (IRS

Form 8609). The Declaration will set forth the commitments made by the owner to the Authority in obtaining points, including any additional rent restrictions and occupancy requirements placed upon the building at the time of reservation. Non-compliance with these additional conditions may result in serious penalties being applied to the owner entities which could result in a ban on future allocations of Tax Credits being made to the owner entities. Any projects that apply for Tax Credits as a part of a resyndication process must comply with the original Declaration.

**Q. Ineligible Properties**

Any residential rental unit that is part of a hospital, nursing home, sanitarium, lifecare 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 Credit under Section 42. Projects with buildings having four or fewer residential units must comply with Section 42(i)(3)(c).

**R. Passive Loss Restrictions**

There is a limit on the amount of Credit any 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.

**S. State Volume Limits**

Each state is limited to the amount of Tax Credits it may allocate annually. The Authority's 2016 per capita volume limit is expected to be approximately \$545,390.00.

Projects with tax-exempt bond financing, which are subject to a separate volume limitation, are not counted against the state volume limit. (See Article XII of the QAP and Chapter 8. of this Manual for further details.)

**T. Recapture**

The Authority reserves the right to recapture Tax Credits from projects that do not provide evidence satisfactory to the Authority of progress toward completion of the project in accordance with the project schedule (submitted at initial application and updated at carryover), or for noncompliance with the terms of the allocation.

Part of the Credit will also be recaptured if the qualified basis 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 low income units is not maintained for the complete extended use period.

**U. Market Study**

Code Section 42(m)(1)(A)(iii) requires that a comprehensive market study of the housing needs of low income individuals in the area to be served by a developer's housing credit project must be conducted by a disinterested party, at the developer's expense, who is

approved by the housing credit agency. (Also refer to the Market Study Guidelines on Minnesota Housing's website.)

**V. Tenant Ownership**

The Authority will review projects incorporating tenant ownership provisions in accordance with Section 42(h)(6), IRS Revenue Ruling 95-49 and the Authority's requirements. It is the responsibility of the applicant to provide the Authority with any additional information or clarification as may be necessary. The Authority requires that developments proposing an eventual tenant ownership component must have 100 percent of the development's Tax Credit units specified for this ownership component. (See also Chapter 7.A.36.)

**W. Fair Housing and Contract Compliance Policy**

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

All Authority programs, including Tax Credits, are required to market affirmatively using specific steps for each program. These steps include, but are not limited to:

1. Conducting public information forums and other outreach activities geared toward informing and encouraging participation of protected groups.
2. Marketing strategies that reach protected groups using conventional methods such as print and electronic media, as well as personal contact, mailings and use of consultants.
3. Reviewing federal, state and/or local fair housing guidelines periodically to ensure compliance.

Failure to comply with the foregoing requirements could result in appropriate action by the Authority, including expulsion from Authority programs.

**Chapter 5 – Development Standards**

All applications to the Authority for Tax Credits will be evaluated according to the following standards. Small projects, local redevelopment or revitalization projects, and projects developed in difficult-to-develop areas may be considered eligible for variances from these standards, if justified.

**A. Project Cost Reasonableness**

The Authority will evaluate the costs of each proposed project in comparison to current comparable projects to determine whether the proposed costs are reasonable. The

Authority will take into consideration unique characteristics of the project and its comparability to similar projects. The Authority will require additional documentation if it determines the proposed costs are not comparable or reasonable.

To ensure competitive construction pricing and cost reasonableness, all projects must meet the Authority contracting requirements. Furthermore, when a Tax Credit proposal receives deferred loan funds from the Authority, the development is subject to an additional Authority design review and cost reasonableness analysis, which may result in lower fees than allowed under Chapter 5.C.

**B. Maintenance and Operating Expenses and Multifamily Underwriting Guidelines**

The Authority will review the applicant’s proposed Management and Operating Expenses (M&O) and compare it with M&O data available from the Authority’s or Minnesota Housing’s maintenance and expense data based on comparable projects. Determinations on whether proposed budgets are reasonable will also be based on the Authority’s management, maintenance and operating experience. M&O numbers will be evaluated on an expense per room/per year basis; the M&O numbers will not include reserves, taxes and other tax assessments. The Authority will require all first mortgage lenders to use underwriting standards that include maintenance and operating expenses estimates that can be supported by actual operating experience by the developer in their underwriting calculations. Written lender certification and supporting documentation is required.

**C. Eligible Basis Tax Credit Fees**

*Developer Fees:* Include developer overhead, developer processing fees, developer profit, and any other amounts received by the developer. The Authority will limit the amount of developer fees for the purposes of calculating eligible basis to determine the amount of Tax Credit. The developer fee is calculated by the Authority as follows:

The maximum allowable developer fee is calculated on a percentage of the total development cost less the developer fee.

In some instances, the developer may want to delegate some of the responsibilities to a third party, such as a processing agent or consultant. In such cases, the delegated responsibilities must be thoroughly understood by all parties involved and the fee paid to the third party shall be included as part of the developer fee. The limits are subject to Authority review. The following limits will be used by the Authority:

Project Type	Development Limits	Maximum Developer Fee
New Construction or Substantial Rehabilitation	First 50 Units	15%
New Construction or Substantial Rehabilitation	Units 51 and over	8%

*Consultant Fees:* Consultant application processing fees will be included within the developer fee limitation and should not exceed two percent of total mortgageable costs. Syndication related consultant fees are not to be included in the eligible basis of the project.

*Net Construction Cost:* Construction costs and on-site work not including contractor profit, general requirements and overhead. The Authority will limit the amount of contractor fees for the purpose of calculating eligible basis to determine the amount of Tax Credit.

*Contractor Profit:* The maximum contractor profit is six percent of net construction costs.

*General Requirements:* Items of costs to be considered in this allowance include: on-site supervision, signs, field office expenses, temporary sheds and toilets, temporary utilities, equipment rental, clean-up costs, rubbish removal, permits, watchmen's wages, material inspection and tests, all of the builder's insurance (except builder's risk), temporary walkways, fences, roads and other similar expenses. The maximum general requirements allowed is six percent of the net construction cost.

*Contractor Overhead:* The Authority allows a contractor an overhead allowance based on a percentage of the net construction cost. The permitted maximum allowance is two percent. It is possible to exceed expenses in one area, if other areas are not at their maximum. The Authority will allow the collective balance of contractor profit, general requirements and contractor overhead to equal 14 percent.

*Developer as Contractor:* When the developer and the contractor are the same entity, in addition to the fee limits stated above, the combined balance of developer fee, contractor profit, contractor overhead and general requirements may not exceed 20 percent of the total development cost.

*Total Mortgageable Cost:* The following is a partial listing of cost items that are mortgageable within total development costs:

1. Construction costs, including material and labor costs for all residential structures, site preparation, residential parking facilities and site improvements, demolition, general requirements, general contractor's overhead and profit;
2. Fees, including architectural design and construction administration, soils exploration, environmental analysis, survey, attorney and other consultant fees, Tax Credit program syndication fees, developer's fees (subject to maximum amounts set by the Authority), reasonable marketing costs and contractor's bond premium;
3. Financing and carrying costs, including interest during construction, insurance, real estate taxes, Authority financing and inspection fees, title and recording costs and, where applicable, the development contingency fund (the Authority retains the right to limit carrying costs);

4. Land and improvements, building acquisition, subject to Authority property valuation policy;
5. Development Cost Escrow (DCE);
6. Furnishings and equipment; and
7. Cost of providing letters of credit.

**D. Reserves/Contingencies**

The Authority will require documentation of the amount and disposition of reserves/contingencies. If they revert back to the developer, general partner or any ownership interest, the Authority will consider the reserves/contingencies as deferred developer fees and the above limits will apply. For letters of credit, bonds, etc., use the actual cost, not face value, when completing the development cost section (Section VI) of the Tax Credit application.

**E. Comparative Analysis**

Notwithstanding these development standards and the selection criteria within this Manual and the QAP, each and every proposed project is analyzed on a comparative basis in a variety of categories to ensure the highest value for the Tax Credits awarded.

**F. Property Standard**

The purpose of design standards is to ensure rental housing projects awarded Tax Credits are cost reasonable and of similar quality and livability as any other housing financed by or in part with the Authority's assistance. The Authority 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 long-term maintenance and operation. All completed developments must comply with the Design Standards. The Design Standards can be found at:  
[http://www.mnhousing.gov/get/MHFA\\_010794](http://www.mnhousing.gov/get/MHFA_010794)

Additional design requirements will also be imposed if a developer claims and is awarded high speed internet points on the *Self-Scoring Worksheet*.

If the project is for Family Housing (as defined in the QAP), all of the units included in the application/project must meet the following **minimum** dimensions:

- For the living room - 11 feet 6 inches.
- For the bedrooms – 9 feet 6 inches, and 100 sq. ft. in area.

The owner and architect must certify compliance with all required Design Standards and that all the applicable standards and development features have been incorporated into the final working plans.

## **Chapter 6 – Project Selection**

### **A. Threshold Requirements**

All applicants must meet one of the threshold types as required by Statute and defined in Section 9.1 of the QAP. Cautionary note: in meeting the requirements of thresholds, fractions of units are not counted as a whole unit. Where unit percentage calculations result in a fraction of a unit being required, the fraction of a unit must be rounded up to next whole unit.

### **B. Scoring**

To efficiently and effectively process the applications submitted, the Authority will first rank proposals in accordance with the Selection Priorities and Preference Priorities points (*Self-Scoring Worksheet*) and, if necessary, Chapter 6.C., Tie Breakers, below. The highest-ranking proposals based on the Selection Priorities and Preference Points will then be reviewed in accordance with the following project selection requirements described in Sections D. through I. of this Chapter. Lower ranking proposals will only be processed further if Tax Credit volume cap remains available after the higher-ranking proposals are processed; provided, however, that the Authority reserves the right (but shall not be obligated) to grant priority over higher ranking projects to projects that (i) have previously received Tax Credits and have an annual Tax Credit shortfall of at least five percent, but no more than 50 percent, of the total qualified annual Tax Credit amount and (ii) demonstrate readiness to proceed by having city approvals and all funding commitments in place (other than the Tax Credits the applicant is presently requesting). The Authority shall provide a written explanation, available to the general public, for any allocation of Tax Credits which is made in accordance with the above provision.

### **C. Tie Breakers**

If two or more proposals have an equal number of points, the following will be used to determine selection:

1. First tie breaker will be the total number of points in the Preference Priorities criteria;
2. If a tie still remains, the second tie breaker will be if the city in which the project is located has not received Tax Credits in the last two years;
3. If a tie still remains, the third tie breaker will be the lowest percentage of cost of intermediaries; and
4. If a tie still remains, the fourth tie breaker will be by lot.

**D. Market Review**

A comprehensive market study of the housing needs of low income individuals in the area to be served by the project conducted at the developer's expense by a disinterested party who is on the Minnesota Housing Authorized Contractor List must be submitted with the application. Developers/owners will contact and hire the authorized contractor of their choice to perform the required market study in the form and format outlined in Minnesota Housing's Market Study Guidelines found at:  
[http://www.mnhousing.gov/get/MHFA\\_007956](http://www.mnhousing.gov/get/MHFA_007956)

Schedules and fees will be arranged between the developer/owner and the authorized contractor. The Authority will not endorse or recommend any contractor on the authorized contractor list and will not be a party to the individual transactions.

The Authority will review the market study and may contact the applicant if there is a question as to the marketability of the proposed project. The applicant may be given an opportunity to adjust the unit mix and/or number of units and resubmit prior to the Authority scoring of selection priority points.

Proposed projects that do not appear marketable and do not modify their proposal will not receive further consideration in the current funding round.

**E. Design Review**

The proposed owner and architect must certify compliance with all the required development features outlined in the Design Standards before the project will be scored and ranked. (Also refer to Chapter 5.F., Property Standard.)

**F. Development Team Review**

The Authority will also consider the following factors when evaluating an application for a Tax Credit allocation:

1. The ability and capacity of the development team to proceed expeditiously to complete the proposed project;
2. The prior record of the development team in meeting Authority and IRS reporting requirements; and
3. The experience of the development team in developing and managing similar residential housing.

Proposed projects from applicants that do not appear to have the experience, capacity or ability will not receive further consideration in the current funding cycle.

## **G. Site Review**

Authority staff will conduct a site review for each project passing all the project selection requirements described in Sections A. through F. of this Chapter. Site reviews will consider physical characteristics, surrounding property and community, location of schools, shopping, public transportation, employment centers, community and housing service facilities, availability of utilities, water and sewage treatment facilities, and the suitability of the site for the proposed housing.

The Authority may, in its sole discretion, reject applications or recapture Tax Credits from projects that appear unsuitable for the housing proposed.

## **H. Maintenance and Operating Expense Review and Underwriting Certification**

The Authority will review the applicant's Management and Operating Expenses (M&O) and compare it with the M&O data available from the Authority's or Minnesota Housing's maintenance expense data based on comparable projects. (Also see Chapter 5.B.) Determinations on whether proposed budgets are reasonable will also be based upon the Authority's management, maintenance and operating experience. M&O numbers will be evaluated on an expense per room/per year basis; the M&O numbers will not include reserves, taxes and other tax assessments.

The Authority requires all first mortgage lenders to use underwriting standards that include maintenance and operating expenses estimates that can be supported by actual operating experience by the developer in their underwriting calculations. Written lender certification and supporting documentation is required. The Authority will evaluate the completed Multifamily Workbook and lender certification contained in the Maintenance and Operating Expense Review and Underwriting Certification Form (HTC 29) to determine the underwriting criteria used to calculate amortizing debt, including, but not limited to vacancy rates, debt coverage ratios, construction contingencies, management and operating expenses, reserve accounts, and inflation factors.

The Authority will contact the applicant if there are any questions regarding the maintenance and operating budget. At a minimum, the following information must be submitted with the Multifamily Workbook:

1. Owner narrative summary supporting the proposed maintenance and operating number included in the application. The proposed M&O expenses should be based on the developer/management company's current portfolio and supported by:
  - a. Actual operating data provided by the developer/management company for similar developments.
  - b. Circumstances and/or significant changes to the economics of the development's current marketplace, such as increased utility costs and property insurance.

- c. Operating trends of the developer or management company.
2. For new construction: Copies of year-end operating information from three comparable developments that have been in operation at least five years.
3. For existing developments: Copies of audited financial statements for at least three stabilized years.

The Authority reserves the right to reject or adjust the maintenance and operating numbers based upon the information supplied, specific development type, circumstances, and/or significant changes to the economics of the development's current marketplace.

### **I. Financial Feasibility**

Proposals that meet the project selection requirements in Sections B. through H. above and J. below will be evaluated for financial feasibility as required by 26 C.F.R. § 1.42-17(a)(3) and Chapter 3.I. of this Manual. Projects determined not to be financially feasible will not be processed further, unless the Authority determines that the project meets the Credit Enhancement Criteria and qualifies for an additional reservation of Credits. (See Chapter 3.K.)

### **J. Development Cost Review**

The Authority will review project costs based on comparability and reasonableness. The Authority may, in its sole discretion, reject applications that appear to have excessive project costs. (Also refer to Chapter 5.A., Project Cost Reasonableness.)

## **Chapter 7 – Submission Requirements**

It is the applicant's responsibility to be aware of the submission requirements needed to proceed to the next step in obtaining an allocation. If the applicant is unable to meet the submission requirements (financing, zoning, site control, syndication, construction start, etc.) in a timely manner, or if approvals have expired, the application will no longer be processed and the application fee will be forfeited.

**Tax Credit applications must be submitted in the manner required by this Manual and comply with the Authority's submission requirements** utilizing forms supplied by the Authority or Minnesota Housing.

All submissions must be separated by tabs with an index listing each attached submission item. **DO NOT** submit applications in three ring binders or with plastic casing around the pages. Submissions should be bound only by staples, binder clips, or rubber bands. All submission items identified as electronic submissions must be submitted on a CD with the application package.

The application for Tax Credits must be signed by one general partner (and the nonprofit partner if appropriate), officer, director or corporate officer stating that under penalties of perjury, all

facts and statements contained in the application and all documents and attachments submitted are true to the best of their knowledge.

**Any submissions not meeting the directions above will be returned to the applicant and fees paid will not be refunded.**

**A. Application Requirements**

At a minimum, one original and two copies of the following application submittals must be completed as applicable, based upon the specific housing proposal, and submitted in this order within the application package. Refer to the Washington County HRA LIHTC Application Checklist. **Note: submission requirements vary from Minnesota Housing’s application requirements.** If a submittal item within a specific subgroup is not applicable to your application, list the item and indicate “not applicable.” If the application and required attachments are not legible and complete, the application will be returned. No application, attachments or documentation will be accepted after the application due date unless requested or approved by the Authority.

1. **Multifamily Workbook (submit electronically).** Submit an Excel version and a PDF of the completed Multifamily Workbook, using the current Minnesota Housing form, signed by at least one general partner involved in the project and the nonprofit corporation where a nonprofit set-aside is requested. An incomplete Multifamily Workbook will not be accepted and will be returned to the applicant. Complete and provide all required information for all team members listed on the Multifamily Workbook.
2. **Market Study.** A comprehensive market study of the housing needs of low income individuals in the area to be served by the project conducted by a disinterested party on the Minnesota Housing Authorized Contractor List must be submitted with the application at the developer’s expense.

The market study must have an effective date within six months of the date of application. An update may be accepted if the effective date of the market study is within 12 months of the application date.

Developers/owners will contact and hire the contractor of their choice from the Authorized Contractor List to perform the required market study in the form and format outlined in Minnesota Housing’s Market Study Guidelines found at: [http://www.mnhousing.gov/get/MHFA\\_007956](http://www.mnhousing.gov/get/MHFA_007956)

Schedules and fees will be arranged between the developer/owner and the authorized contractor. The Authority will not endorse or recommend any contractor on the Authorized Contractor List and will not be a party to the individual transactions.

3. **Narratives (submit electronically).** The Minnesota Multifamily Rental Housing Narrative Questions must be specific to your housing proposal. Note: Requests by applicants/developers to the Authority to apply the State designated 30 percent

basis boost must be formally made in writing. The request should clearly outline the reasons supporting the request and clearly demonstrate how the proposal meets the Credit Enhancement Criteria. When part of an application package, the request should be incorporated into the required narrative component.

4. **Project Schedule.** Submit a Project Schedule in format provided by Minnesota Housing specific to your housing proposal.
5. **Notification of Local Official Form (HTC 18) (submit electronically).** The Authority will ask the local official for comments regarding any project that falls within their jurisdiction.
6. **Local HRA/PHA Notice and Agreement Form (HTC 11) (submit electronically).** Section 42(m)(1)(C) requires the Authority to consider the applicant's ability to utilize the local public housing authority's waiting list when filling vacant Tax Credit units. Complete form in full and attach letters of intent (described in the following submittals section) as applicable.
7. **Market Qualification Form (submit electronically).** Complete the Market Qualification Form and attachments as appropriate. (See also Chapter 6.D.)
8. **Qualifications Forms (submit electronically).** Complete all of the following applicable qualification forms for purposes of evaluating organizational capacity:
  - Qualifications of Developer – Form 203A
  - Qualifications of Architect – Form 206A
  - Qualifications of General Contractor – Form 209A
  - Qualifications of Management and Marketing Agent – Form 210A
  - Qualifications of Processing Agent – Form 205A
  - Qualifications of Attorney – Form 208A
  - Qualifications of Primary Service Provider – Form 215A
  - Qualifications of Rental Assistance Administrator – Form 216A
9. **Nonprofit Proof of Status.** If nonprofit, proof of nonprofit status (IRS approval) must be included. (See Chapter 3.C. for more details.) Also include:
  - a. A description of the nonprofit's intended participation in the development and operation of the project.
  - b. Articles of Incorporation.
  - c. IRS documentation of status. A nonprofit must have IRS 501(c)(3) or (4) or appropriate approval from the IRS or expect to receive such designation prior to carryover allocation and meet requirements of Code Section 42(h)(5).

10. **Release of Information Authorization Form (HTC 17).** Form to be completed by the developer/owner and if known, the management firm.
11. **Determination of Tax Credit Form (optional) (HTC 8).** Complete to determine the maximum allowed Tax Credit amount (results on this form should be cross-referenced with the Determination of Credit section in the Multifamily Workbook).
12. **Ten Year Rule Compliance.** For applications seeking acquisition Credits, provide evidence that each building complies with the 10-year rule in Section 42(d) or an approved IRS waiver of the 10-year rule.
13. **Rent Roll (submit electronically).** If existing development, provide the most recent rent roll.
14. **A 15-year after tax cash flow pro forma.** Must reflect required payments of any deferred developer fees, as required by the Authority.
15. **Utility Allowance Schedule (submit electronically).** Provide a current utility allowance in a manner consistent with the options provided in 26 C.F.R. § 1.42-10, as amended (i.e. as appropriate, a utility allowance from RD, HUD, PHA/HRA, local utility company, an Agency Estimate, a HUD utility Schedule Model, an Energy Consumption Model). Include a breakdown of the utilities that a tenant pays directly (i.e., heat, electricity, etc.), the utility allowance for each type of utility (i.e., gas, electric, etc.), and for the various unit types (one bedroom, two bedroom, etc.) and housing types (apartments, townhomes, etc.). Also, include a list of each unit type, total tenant paid utilities, contract rent, and gross rent.
16. **Maintenance and Operating Expense Review and Underwriting Certification Form (HTC 29).** (See Chapter 6.H.)
17. **Design Standards Certification (HTC 33).**
18. **Affirmative Fair Housing Marketing Plan.** Complete this form that describes the marketing strategies that an owner will use, including, but not limited to special efforts the owner will make to attract persons who are least likely to apply in addition to a broad cross section of the local population without regard to religion, sex, national origin or status as a recipient of public assistance.
19. **Appraisal.** To help ensure cost reasonableness of projects awarded Tax Credits, for all projects with acquisition costs in excess of \$100,000, the applicant must provide an as-is appraisal of the property. If the Authority, in its sole discretion, has concerns or issues with the applicant's provided appraisal, the Authority may require that the applicant obtain another appraisal from an Authority selected appraiser, at the applicant's sole cost and expense.

20. **Evidence of Site Control (submit electronically).** Evidence of title or adequate site control must be submitted with the application. Acceptable evidence includes the following: warranty deed, contract for deed, purchase commitment, option, or letter of intent from governmental body for sole developer, etc. The evidence of site control must be current, fully executed and extend to anticipated date of carryover allocation and placed in service or provide provisions for extension. For allocation, an attorney's opinion that the applicant has ownership of the property will be required in accordance with Section 42.

Owners should be cautioned that Tax Credit 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 reservation or carryover allocation.

The Authority will not accept applications from different applicants for the same site.

21. **Legal description of land** (not property Tax ID Number). Provide the legal description of the land on a separate 8½ by 11 sheet of paper labeled "Exhibit A, Legal Description."

22. **Location map (submit electronically).** Provide a legible map including major roads, cross streets and clear directions to the site. Do not use a zoning map for a location map. Site maps must identify the location of:

- Usable park space/dedicated walking or biking trails;
- Public schools;
- Sources of employment;
- Shopping and retail services;
- Public transit routes and stops;
- Regional and interregional transportation corridors and transit ways;
- Recreational facilities;
- Social and special service institutions;
- Hospitals and health clinics;
- Licensed child care centers; and
- Competitive developments.

Also, provide a list with distances from the proposed housing to each of the items above.

23. **Photographs (submit electronically).** Provide clear digital photographs of exterior and interior of building, if existing; or site and surrounding areas, if new construction. Photographs must show clear and unobstructed views of the property (e.g. no snow cover).

24. **Planning and Development.** Submit evidence showing that the housing proposal is in compliance with the local comprehensive plan or city or regional master plan.
25. **Self-Scoring Worksheet Form.** Submit a completed original *Self-Scoring Worksheet* and documentation supporting all points claimed signed by at least one general partner and if applicable, nonprofit general partner. For additional details, see Chapter 6.B.
26. **Threshold Evidence.** Provide evidence of meeting one of the threshold types defined in Section 9.1(a) of the QAP.
  - a. Evidence of Supportive Services. If a proposal sets aside a percentage of units for persons with disabilities and if the project will be delivering supportive services to residents in these units, the applicant must complete and submit the supportive housing application materials, including the narratives, forms and submittals identified in the Minnesota Multifamily Rental Housing Narrative Questions.
  - b. Housing for Persons with Disabilities (submit electronically). The applicant must contact the county human services department to discuss the proposal. The applicant must submit a letter from the human services department indicating that its staff has reviewed the proposed project, and stating whether there is a need for such housing and if the project would be eligible for funds to assist with the social service needs of the residents.
27. **Preliminary Architectural/Construction Requirements for New Construction (submit electronically).** For building schematics/concept design review:
  - a. Site Plan (generally no less than 1/32" per foot scale for the original, printable on no larger than 11x17 for electronic submission);
  - b. Building Plans (generally no less than 1/16" per foot scale and printable on no larger than 11x17 for electronic submission);
  - c. Typical dwelling unit plans (generally no less than 1/8" per foot scale and printable on no larger than 11x17 for electronic submission);
  - d. Building Elevations (generally no less than 1/16" per foot scale and printable on no larger than 11x17 for electronic submission);
  - e. Building Section (generally no less than 1/16" per foot scale and printable on no larger than 11x17 for electronic submission);
  - f. Intended Method of Meeting the Criteria as required for compliance with meeting Mandatory Green Communities Criteria and MN Overlay; and
  - g. HTC Design Standards/Review Process Certification form.

28. **Strategically Targeted Resources.** If the proposal is for the rehabilitation of an existing structure, which is part of a community revitalization plan or stabilization effort and claims points under Selection Priority (a) on the Self-Scoring Worksheet, provide a letter from the city verifying that the proposed project is part of an approved community revitalization area as established by resolution or other legal action, or evidence from the applicable entity that the proposal has undergone a stabilization needs assessment. Also, the amount of rehabilitation expenditures must meet or exceed:
- a. \$5,000 per low income unit for the project; and
  - b. The greater of:
    1. \$6,500 in qualified basis per low income unit per building (as adjusted annually by the cost-of-living adjustment pursuant to Section 42(e)(3)(D) of the Code); or
    2. An amount that is not less than 20 percent of the adjusted basis of the building

A qualified preservation project that receives points for “Preservation of Federally Assisted Units” may qualify if rehabilitation exceeds the greater of b.1. or 2. above. Calculation is based on rehabilitation hard costs and cannot include intermediary costs or soft costs identified in the application; plans and/or scope of work must be provided at time of application.

If the proposal is for new construction, provide evidence the proposed housing development will utilize existing sewer and water lines without substantial extensions.

29. **Scope of Work (submit electronically).** For applications involving acquisition and rehabilitation of existing buildings, submit the following:

- a. Physical Needs Assessment (PNA) or Capital Needs Assessment (CNA). Applicants shall submit either a full Capital Needs Assessment or a Physical Needs Assessment.

If the applicant chooses to submit the Physical Needs Assessment, it shall consist of a completed Minnesota Housing Physical Needs Assessment Template and the Minnesota Housing 20 Year Capital Expenditure Template (see Minnesota Housing website), or the preparer may use their own document with a similar format. When completing the 20 Year Capital Expenditure Template, it shall be completed “As Is” with the proposed immediate needs and rehabilitation scope of work noted in the “Year One” column.

If the applicant chooses to submit a full Capital Needs Assessment, it shall be completed by a third party qualified needs assessor and can be in any of

the following established formats: USDA Rural Development, HUD/FHA Project Capital Needs Assessment (PCNA), ASTM E 2018-08 Standard Guide for Property Conditions Assessment, or other Minnesota Housing approved format.

Developments not required to complete a PNA or CNA are new construction projects, gut rehabilitation projects and adaptive re-use projects.

Both the PNA and CNA shall provide a Life Expectancy analysis including Estimated Age, Expected Useful Life (EUL), and Effective Remaining Life (ERL) of the following minimum elements: roof; siding/exterior walls; windows; doors (interior/exterior, and overhead garage); plumbing fixtures; HVAC Systems; and kitchen appliances.

The inspection shall be conducted to identify deficiencies under applicable state and local codes and ordinances, and The Minimum Essential Physical Needs as per Chapter 3 of Minnesota Housing' Rental Housing Design/Construction Standards.

- b. Intended Method of Meeting the Criteria as required for compliance for meeting Mandatory Green Communities Criteria and MN Overlay; and
- c. HTC Design Standards/Review Process Certification form.

Selected applicants receiving Tax Credits for rehabilitation may be required to get a capital needs assessment (CNA) by a competent third party, such as a licensed architect or engineer. The CNA identifies capital needs predicted over the next 20 years. The CNA should include a site visit and physical inspection of the interior and exterior of units and structures, as well as an interview with available on-site property management and maintenance personnel to inquire about past repairs/improvements, pending repairs, and existing or chronic physical deficiencies. The CNA should also consider the presence of hazardous materials on site.

If a current CNA performed by a qualified individual is available at the time of application, it must be submitted with the application package. If one is required for the proposal by funders other than the Authority, it must be submitted to the Authority as soon as it becomes available. The Authority reserves the right to require that a CNA be produced by a qualified individual and submitted as part of the underwriting and due diligence submissions it requires for the proposal.

- 30. **Relocation Plan (submit electronically).** If temporary or permanent displacement or relocation of current tenants is necessary, include a relocation plan for minimizing relocation and displacement of tenants and a relocation budget.

31. **Letter of Intent to Provide Project Based Rental Assistance (submit electronically).** For proposals planning to obtain project based rental assistance, at the time of application, the applicant must submit a letter of intent signed by the Authority. The letter of intent must establish that the Authority: (1) will submit an application for HUD project based assistance; or (2) has sufficient project based authority available; or (3) has authority available to convert to project based units; or (4) is willing to commit the project based assistance to the proposed development. As a condition of carryover or Form 8609, whichever occurs first, the applicant must submit a fully executed copy of the HUD approval for the project based assistance to be included in the development. Various combinations of contract terms may apply. It is important that applicants also refer to the *Self-Scoring Worksheet* for additional details and requirements.
32. **Rent Assistance Payment Standards (submit electronically).** If proposing use of project based rent assistance, or if project based **other** rent assistance exists in the development, attach a copy of the Payment Standards or Payment Standard Exceptions for the community in which the housing is proposed.
33. **Letter of Intent to Produce a Cooperatively Developed Housing Plan.** For developments proposing some form of non project based **other** rental assistance, such as Section 8, Shelter Care, portable tenant based, formal recommendation for McKinney Vento funding, HUD operating subsidy or other similar rent assistance programs approved by the Authority, submit a letter of intent to develop a cooperatively developed housing plan or agreement which is signed by the applicant and the Authority or other similar entity, along with the completed Local HRA/PHA Notice and Agreement to Utilize Public Housing and Section 8 Waiting Lists (HTC 11). As a condition of carryover or Form 8609, whichever occurs first, the applicant must submit a fully executed copy of the cooperatively developed housing plan.
34. **All Proposed Sources of Funds Including Federal, Local and Philanthropic Contributions (submit electronically).** Provide a current form of documentation of proposed sources of funds including, but not limited to a. through f. below, stating all terms and conditions (including dollar amount, term, amortization as applicable, interest rate, debt service coverage, etc.):
  - a. Construction financing;
  - b. Permanent financing (for RD Projects AD622 and letter of conditions);
  - c. Secondary financing;
  - d. Grants – letter from granting authority;
  - e. Letter of Intent or commitment for Syndication proceeds; and
  - f. Other sources of funds and contributions, including any federal, state, local and private contributions or subsidies.

Federal/Local/Philanthropic Contributions include:

- Monetary grants/donations;
- Tax increment financing - calculate Net Present Value (NPV) by using NPV discounted by Applicable Federal Rate (AFR);
- Tax abatement (calculate NPV by using NPV discounted by AFR);
- Land donation or write down of the development site;
- In-kind work and materials donated at no cost;
- Local government donation/waiver of project specific costs, assessments or fees (e.g. SAC/WAC);
- Reservation land not subject to local property taxes;
- Reservation land with long-term low cost leases;
- Deferred loans with a minimum term that is co-terminus with the Declaration of Land Use Restrictive Covenants with an interest rate at or below the AFR;
- Grants from nonprofit charitable organizations converted to deferred loans with a minimum term that is coterminous with the Declaration of Land Use Restrictive Covenants with an interest rate at or below the AFR;
- Below Market Interest Rate (BMIR) Loans – calculate NPV based on the difference between the AFR and the BMIR rate (e.g. RD 515, NHASDA first mortgage); and/or
- Historic tax credits.

Documentation as to the amount and terms of the proposed sources of funds must be provided by the provider of the funds at the time of application in the form of a development specific letter of intent. In the case of below market rate financing, the applicant must secure a firm financing commitment signed by both the applicant and the lender. Documentation for federal, local and philanthropic contributions must be consistent with current market comparable costs. The value of donations and in-kind contributions assistance must be consistent with current market comparable costs for materials and services. The documentation must state the amount, terms and conditions and be executed or approved at a minimum by the lender or contributor.

Documentation containing words synonymous with “consider” or “may” (as in “may award”) regarding a commitment of funding will not be considered acceptable. Lack of acceptable documentation may result in the reevaluation and

adjustment of the Tax Credits, up to and including the total recapture of the Tax Credits.

Additionally, for Tax Credit developments using tax increment financing, historic credits and tax abatement, there must be satisfactory documentation that the resource will provide additional positive investment capital to the development that will reduce the demands on state and federal housing resources. For tax increment financing or tax abatement to qualify for points, there must be satisfactory documentation that the resource is committed to the development at the time of application. For historic tax credits, there must be written documentation of eligibility through evidence of Historic Register listing or approval of Part 1 – Evaluation of Significance at the time of application.

35. **Status of Zoning.** Provide a 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, indicate the steps required and the timetable for rezoning.
36. **Tenant Ownership Plan.** If applicable, provide a detailed proposal for eventual tenant ownership. The proposal should incorporate a financially viable plan to transfer 100 percent of the Tax Credit unit ownership after the 15-year compliance period from the initial ownership entity of the project (or Authority approved transfer of ownership) to tenant ownership.

The unit purchase price at the time of sale must be affordable to incomes meeting Tax Credit eligibility requirements. To be eligible, the buyer must have a Tax Credit qualifying income at the time of initial occupancy (Tax Credit rental tenant) or at the time of purchase. The plan must incorporate an ownership exit strategy and the provision of services including home ownership education and training. The Declaration will contain provisions ensuring compliance with these home ownership program commitments by the owner. (Refer also to Chapter 4.V. of this Manual for additional information.)

37. **Evidence of Targeting Units for Households Experiencing Long-Term Homelessness (LTH).** In accordance with the State’s Plan to End Long-Term Homelessness, the Authority, in cooperation with the Departments of Human Services and Corrections, and a broadly inclusive working group, has developed a business plan to achieve this goal. Tax Credits represent one of several resources selected to attain this goal.

To receive points under this category, the proposal must meet all of the following conditions:

- a. Proposals must set aside a minimum of five percent of the total units, but no fewer than four units serving households experiencing long-term homelessness as defined in Minnesota Rules, Chapter 4900.3705;

- b. The applicant must complete and submit the Supportive Housing application materials, including the narratives, forms and submittals identified in the Multifamily Rental Housing Narrative Questions, a plan outlining the services to be provided, a budget to support the plan, and such other items as are required by the Authority for applications serving Households Experiencing Long-Term Homelessness; and
- c. The applicant must agree to pursue and continue renewal of rental assistance, operating subsidy or service funding contracts for as long as the funding is available.

A proposal which is selected to receive Tax Credits will be required to comply with the Long-Term Homelessness reporting requirements as defined by the Authority. The Declaration will contain performance requirements related to these Long-Term Homelessness units, which may include a specific rider.

If, for a particular LTH unit(s), the necessary rental assistance or operating support (collectively “LTH unit subsidy”) is (i) withdrawn or terminated due to reasons not attributable to the actions or inactions of the owner; (ii) such withdrawal or termination materially adversely impacts the financial feasibility of the project; (iii) alternative funding is unavailable; and (iv) the project is otherwise in full compliance with all the terms of the funding for the project, the owner may petition the Authority to eliminate its requirements for the affected LTH unit(s). Such petition shall contain all material facts and supporting documentation substantiating the owner’s request including, but not limited to items (i), (ii) and (iii) above. Upon confirmation of such facts, which confirmation shall not be unreasonably withheld or delayed, the owner shall no longer be required to treat such LTH unit(s) as LTH unit(s), but must convert the rents of those units to the 50% Tax Credit rent limit; provided that more restrictive threshold, selection priority or funding requirements, if any, do not apply. If such conversion occurs, in order to retain the Tax Credit allocation, the above described 50% Tax Credit rent limit and the Section 42 minimum set-aside elected for the project by the owner must be maintained for the remainder of the Tax Credit compliance and extended use periods.

If the Authority shall, at any time thereafter, in its sole discretion, determine that a LTH unit subsidy may be available for the remainder of the Tax Credit compliance and extended use periods, that would not adversely affect the full availability of the Tax Credit allocation and would permit the LTH unit(s) to again serve households experiencing long-term homelessness, then at the Authority’s request, the owner shall promptly apply for such LTH unit subsidy for the LTH unit(s) upon terms reasonably acceptable to such owner and, if such LTH unit subsidy is obtained, shall again set aside such LTH unit(s), when and to the extent then available, to households experiencing long-term homelessness.

If, for a particular LTH unit(s), the necessary tenant support services funding is (i) withdrawn or terminated due to reasons not attributable to the actions or

inactions of the owner; (ii) alternative funding or an alternative service provider is unavailable; and (iii) the project is otherwise in full compliance with all the terms of the funding for the project, the owner may petition the Authority to modify its requirements for the provision of such tenant services for the affected LTH unit(s). Such petition shall contain all material facts and supporting documentation substantiating the owner's request including, but not limited to items (i) and (ii) above. Upon confirmation of such facts, which confirmation shall not be unreasonably withheld or delayed, the owner shall modify such tenant support services for the affected LTH unit(s).

38. **Minimizing Transportation Costs and Promoting Access to Transit map.** When required as supporting documentation for points claimed on the *Self-Scoring Worksheet* in the Minimizing Transportation Costs; Promoting Access to Transit priority, the applicant must submit a map identifying the location of the project with exact distances to the eligible public transit station, corridor or stop and include a copy of the route, span and frequency of service.
39. **Smoke Free Buildings.** If applicable, provide the written policy prohibiting smoking in all the units and common areas within the building(s) of the project for the term of the Declaration. The project must include a non-smoking clause in the lease for every household.

The written policy must be submitted with the application and should include procedures regarding transitioning to smoke-free for existing residents and establishment of smoking areas outside of units and common areas if applicable. Consequences for violating the smoke-free policy are determined by owner, but must be included in the written policy.

Projects will be required to maintain the smoke-free policy for the term of the Declaration.

40. **Preservation of Federally Assisted Housing.** If the proposal is for preservation of federally assisted housing, please provide a copy of all relevant documents, including, but not limited to the following, as applicable:
- a. Preservation Data tab of Multifamily Workbook;
  - b. Housing Assistance Payment (HAP) Contract;
  - c. Regulatory Agreement;
  - d. Filing documents of intent to opt out;
  - e. Loan documents that describe the ability to prepay the financing including required approvals and/or penalties;
  - f. Copy of most recent REAC or RD Inspection Report or other evidence of physical deterioration that would threaten the HAP Contract;

- g. A map detailing the strategic location, including specific proximity to services, transit and employment centers;
- h. At least three market comparables for each bedroom size to indicate what market rents might be achievable at the property without the federal assistance restrictions; and
- i. Narrative describing the deterioration of current ownership/management entity capacity.

If applicable, following selection, developments awarded points in this category which have an identity of interest will be required to provide an as-is appraisal acceptable to the Authority to substantiate the acquisition price reflected in the application. Prices which are unsubstantiated or inconsistent with comparable current market pricing will be subject to re-evaluation and adjustment of the Tax Credits up to and including the total recapture of the Tax Credits.

41. **Preservation of Existing Housing Tax Credits.** If the proposal is for preservation of existing Tax Credits, please provide Preservation Data tab of Multifamily Workbook, relevant documents and information related to the existing Tax Credits, eligibility to exercise option under Sections 42(h)(6)(E)(i) and 42(h)(6)(F) of the Code (Qualified Contract) within the next 12 months, and the risk of conversion to market rents.

If applicable, following selection, developments awarded points in this category which have an identity of interest will be required to provide an as-is appraisal acceptable to the Authority to substantiate the acquisition price reflected in the application. Prices which are unsubstantiated or inconsistent with comparable current market pricing will be subject to re-evaluation and adjustment of the Tax Credits up to and including the total recapture of the Tax Credits.

42. **Stabilization.** If the proposal is for stabilization, the applicant must provide Preservation Data tab of Multifamily Workbook and narratives to support the approach of a planned, long-term and cost effective stabilization that meets all of the criteria set forth in the QAP.
43. **Application Fee.** Submit a check for the appropriate application fee and Authority counsel fee. (See Chapter 9.) Complete an Application Fee Remittance Form and attach with payment to top of application package.
44. **Other documents.** Instruments as are necessary and as may be required by the Authority.

## **B. Carryover Requirements**

Several changes to Section 42 of the Code were included in legislation passed by Congress in July 2008 as part of the Housing and Economic Recovery Act of 2008. These amendments made certain changes to the carryover allocation requirements. 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 developments relating to carryover.

In addition to meeting requirements of federal law, the applicant of a selected project must provide no later than 4:30 p.m., **October 1 or the next calendar business day** of the year in which the reservation was issued, a complete carryover package in final form containing all the required documents in a form satisfactory to the Authority. One original and two copies are required. Late fees will be enforced. (See Chapter 9.)

1. **Multifamily Workbook.** As part of your carryover application package, an updated Multifamily Workbook, using the current Minnesota Housing Form, must be submitted in both printed and electronic form. Please refer to Minnesota Housing's website for additional important carryover information and related forms. A printed and fully signed/executed version of the Multifamily Workbook, with all changes from initial credit reservation application highlighted and initialed, must be submitted with your application package. The updated Multifamily Workbook must be signed by at least one general partner involved in the project and if applicable, the nonprofit partner. For material changes, refer to Chapter 3.E.3. of this Manual. An electronic version of the Excel version of the submitted Multifamily Workbook and a PDF of the signed and updated Multifamily Workbook should be submitted on CD to the Authority at the same time you submit your printed application package.

Multifamily Workbooks containing incomplete revisions including those not highlighted, initialed and dated are not acceptable and will be returned to the applicant.

2. **Project Schedule (Form 104).** Provide an updated Project Schedule.
3. **Owner Certification/Application for Carryover Allocation (HTC 4).** Provide a completed, signed and notarized Owner Certification/Application for Carryover Allocation Form for every building.
4. **Building Information (HTC 5).** Provide a completed Building Information Form.
5. **Attorney's Opinion Letter.** Provide an Attorney's Opinion Letter in an approved Authority form verifying:
  - a. The legal description of the project property (to be attached to the opinion and labeled Exhibit A) and that it is correct and identical to the property identified in the application and the reservation letter.
  - b. The name, legal designation and Tax Identification Number (TIN) of the entity that will be/is the owner for tax purposes, and/or has demonstrated continued site control of the land and depreciable real property identified as the project in the application and the reservation letter.

- c. The name, legal designation and Tax Identification Number (TIN) of the ownership entity that will receive the Tax Credits, and the legal designation of the party that signed the application.
  - d. The name, legal designation and Tax Identification Number (TIN) of all general partner(s), and the names of the managing partner(s), contact person(s) and the required authorized signatories. If the partners are an organized entity, such as a limited liability company, a limited liability partnership, or an organized partnership, provide the above information for each such entity.
  - e. Identification and copies of any waivers required by Section 42 obtained from the IRS.
6. **Certified Public Accountant's Certification (HTC 6).** Provide a written Certified Public Accountant's Certification (HTC 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 on the project must be expended by the later of the date which is one year after the date that the allocation is made or the close of the calendar year in which the allocation is made. If the final carryover basis and expenditures information is not available at the time the carryover application is due, the application must include a written estimate of this information prepared by the owner. Final CPA certifications of this information must be submitted to the Authority prior to the deadlines established by Section 42 and by no later than the Authority submission deadline of **May 1, 2017.\*** Upon written request by the owner/applicant, the Authority will consider an extension to this deadline. The Authority will issue a written response to all extension requests. An extension until **October 1, 2017\*\*** will be the maximum allowable.
- (\*If not a business day, then the next calendar business day.)
- (\*\*If not a business day, then the prior calendar business day.)
- c. Also include a statement of non-affiliation with the developer and/or owner.
7. **Sources of Funds.** Identify the sources of construction, interim and permanent financing arrangements. Provide a firm letter of commitment in the form of a binding agreement as required in Minnesota Statutes section 513.33. The agreement must:
- a. Be in writing;

- b. Specify the consideration for the transaction and pertinent terms;
  - c. Be signed by both the lender and the borrower (for RD Projects, Form 1994-51); and
  - d. Be current and state both the effective and expiration dates.
8. **Maintenance and Operating Expense Review and Underwriting Certification (HTC 29).** Provide a completed form signed and dated by the primary lender.
9. **Rental Assistance.** Provide 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 for the project. This also includes copies of cooperatively developed housing plans/agreements between the owner and local housing authority or similar entity if Rental Assistance points were awarded to the development. (Refer to the Rental Assistance section of the *Self-Scoring Worksheet*.)
10. **Gross Rent Floor Election (HTC 26).** If choosing to make the election at this time, supply a fully executed Statement of Election of Gross Rent Floor including each building of the development in which there are Tax Credit units. If the required fully executed form(s) with all elections made by the owner is(are) not submitted to the Authority prior to the placed-in-service date, the gross rent floor will be determined to have been elected as the gross rent effective on the allocation date (the earlier of carryover or Form 8609) of the Tax Credits.
11. **Fair Housing and Equal Employment Opportunity Forms.** It is the policy of the Authority to take affirmative action to provide equal opportunity in all of its endeavors. Complete, execute and return the following forms:
- a. **Affirmative Fair Housing Marketing Plan** describing the marketing strategies that an owner will use, including, but not limited to special efforts the owner will make to attract persons who are least likely to apply, in addition to a broad cross section of the local population without regard to religion, sex, national origin or status as a recipient of public assistance.
  - b. **Equal Employment Opportunity Policy Statement.**
12. **Tenant Selection Plan.** The written tenant selection plan describing the tenant selection policy that an owner will use must be submitted, reviewed and approved by the Authority prior to the issuance of Form 8609. The written tenant selection plan must establish procedures that, at a minimum, meet the following applicable requirements:
- a. **Minimum and Maximum Household Size:** While IRS regulations do not specifically address occupancy requirements, the Authority encourages maximum utilization of space for developments serving large families; therefore:

1. The written occupancy policies should set a minimum of at least one person per bedroom and set maximum standards of at least two persons per bedroom. Owners should also comply with state and local laws, regulations and financing requirements (e.g., if Rural Housing Service, use RHS regulations); and
  2. Where two equally qualified households apply for a unit, preference should be given to the larger household that is most suitable to the unit size.
- b. **Cooperatively Developed Housing Plan or Agreement to Provide Other Rental Assistance:** The Authority requires a development receiving priority under the Rental Assistance category to enter into a cooperatively developed housing plan or agreement with the local public housing authority or redevelopment authority to provide other rental assistance. Therefore, the written selection plan between the owner and the Authority or other similar entity must include provisions to support and implement the cooperatively developed housing plan or agreement to provide other rental assistance.
13. **Smoke Free Buildings.** If applicable, provide the written policy prohibiting smoking in all the units and common areas within the building(s) of the project for the term of the Declaration. The project must include a non-smoking clause in the lease for every household.
- The written policy must be submitted with the application and should include procedures regarding transitioning to smoke-free for existing residents and establishment of smoking areas outside of units and common areas if applicable. Consequences for violating the smoke-free policy are determined by owner, but must be included in the written policy.
- Projects will be required to maintain the smoke-free policy for the term of the Declaration.
14. **Identity of Interest.** Provide a written disclosure as to any and all identity of interest parties. (See Chapter 3.G. and H.)
15. **Allocation Fee.** Submit the nonrefundable allocation fee and Authority counsel fee. (See Chapter 9.) Complete an Application Fee Remittance Form and attach with the payment to top of application package.
16. **Project Design Certification Form.** Provide a completed form signed and dated by the developer and the architect.
17. **Unit and Development Characteristics Profile Form.** Provide a completed form indicating the unit counts and the related funding sources.

### C. **Placed in Service Requirements**

Generally, the placed in service date for Tax Credit purposes, for a newly constructed building or for rehabilitation expenditures in an existing building, is the date when the first unit in the building is certified as available for occupancy. The placed in service date must occur for all buildings within a project within two years after the allocation year of Tax Credits.

An approved Authority Form 8609 must contain the signature of the authorized Authority representative. The Authority will issue an approved IRS Form 8609 within 30 days after all the following items have been received by the Authority in a satisfactory form and substance. Issuance of the Authority approved IRS Form 8609 is to be done only by Minnesota Housing or the Authority. An approved Form 8609 shall not be created nor the original filed with the IRS by any other entity. The owner/agent shall not file a Form 8609 with the IRS in advance of the owner/agent's receipt of the Authority signed version of the approved Form 8609. In addition, the owner/agent shall not electronically file a Form 8609 with the IRS which does not accurately reflect the information contained on the Authority signed version of the approved Form 8609. (Also refer to Chapter 3.E. Unacceptable Practices) A condition to this effect will be added to the Carryover Agreement.

Please refer to the Minnesota Housing website for additional important information and forms for filing a Form 8609 application with the Authority.

One original and two copies of the following must be submitted to the Authority **in the order of the documents listed below** to process the Form 8609 application:

1. **Transmittal Letter.** Provide a transmittal letter indicating the project name, address, reservation date and carryover date. The letter should request the issuance of IRS Form 8609 and list the documents and submittals described below. In the letter, please list the revised information and explain the basis for the changes. The letter must be dated and signed by the owner or authorized individual.
2. **Placed in Service Evidence.** Provide evidence that all buildings have been placed in service. Submit a copy of the Certificate of Occupancy provided by the 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. For acquisition and rehabilitation, the developer must provide supporting documentation for the elected date.
3. **Utility Allowance Schedule.** Provide a current utility allowance in a manner consistent with the options provided in 26 C.F.R. § 1.42-10, as amended (i.e. as appropriate, a utility allowance from RD, HUD, PHA/HRA, local utility company, an Agency Estimate, a HUD utility Schedule Model, an Energy Consumption Model). Include a breakdown of the utilities that a tenant pays directly (i.e., heat, electricity, etc.) and the utility allowance for each type of

utility (i.e., gas, electric, etc.), for the various unit types (one bedroom, two bedroom, etc.) and housing types (apartments, townhomes, etc.). Also, include a list of each unit type, total tenant paid utilities, contract rent and gross rent.

4. **Final Cost Certification (HTC 9).** Provide a final cost certification that evidences the CPA's audit report and cost certification based upon an audit of the owner's schedule of total project costs.

All costs of projects with five or more units owned by all entities must be cost certified by a CPA when construction has been completed and before the Authority can complete its final evaluation.

Projects with four or less units must submit a sworn construction statement and/or certification by owner, as appropriate.

5. **Multifamily Workbook.** As part of your Form 8609 application package, an updated Multifamily Workbook, using the current Minnesota Housing form, must be submitted in both printed and electronic form. All electronic submissions must be submitted on a CD. A printed and fully signed/executed version of the Multifamily Workbook, with all changes from the most recent of your initial credit reservation application or, as applicable, your carryover application highlighted and initialed, must be submitted with your application package. In particular, check to ensure that changes in number of units, rents, utility allowance, source of funds (loans, grants, etc.), hard and soft costs, and qualified basis are updated on the revised Multifamily Workbook pages. The updated Multifamily Workbook must be signed by at least one general partner involved in the project and if applicable, the nonprofit partner. For material changes, refer to Chapter 3.E.3. An electronic Excel version of this updated Multifamily Workbook should be submitted to the Authority at the same time as you submit your printed application package.

Multifamily Workbooks containing incomplete revisions, including those not highlighted, initialed and dated are not acceptable and will be returned to the applicant.

6. **Attorney's Opinion Letter.** Provide an Attorney's Opinion Letter in an approved Authority form verifying:
  - a. The legal description of the project property (to be attached to the opinion and labeled Exhibit A) and that it is correct and identical to the property identified in the application, the reservation letter and the carryover agreement (if one was issued for the project).
  - b. The name, legal designation and Tax Identification Number (TIN) of the entity that is the owner for tax purposes of the property to be part of the project and which is described in Exhibit A of the opinion.

- c. The name, legal designation and Tax Identification Number (TIN) of the ownership entity that will receive the Tax Credits, the legal designation of the party that signed the application, and that the business is in good standing and duly authorized to do business in Minnesota.
  - d. The name, legal designation and Tax Identification Number (TIN) of all general partner(s), and the names of the managing partner(s), contact person(s) and the required authorized signatories. If the partners are an organized entity, such as a limited liability company, a limited liability partnership, or an organized partnership, provide the above information for each such entity.
  - e. Identification and copies of any waivers required by Section 42 obtained from the IRS.
7. **Reserves, Contingencies, and any Cash Savings.** Provide a signed and dated statement documenting the amount and disposition of reserves, contingencies, and any cash savings. If any of the above reverts back to developer/owner, general partner or any ownership interest, the Authority will consider them deferred developer fees, and for purposes of Tax Credit allocation, restrict the developer fees as specified in this Manual.
8. **Declaration of Land Use Restrictive Covenants.** Provide a copy of the unrecorded Declaration. The Declaration must be completed and recorded before the end of the first credit period to preserve the Tax Credits allocated to the project. Check with your tax advisor as to timing of filing and claiming of Credits. HUD may require that certain riders be attached to the Declaration if your development has primary financing via a HUD direct insured loan. Check with your financing and legal advisors to determine if this may be required of your development.
9. **Final Tax Credit Proceeds or Receipts.** Documentation of the final amount of Tax Credit proceeds or receipts generated. Provide a copy of the final Syndication, Private Placement, or Individual Investment Agreements disclosing terms and conditions.
10. **Application for IRS Form 8609/Certification by Owner (HTC 3).** Submit a completed, executed and notarized original Application for IRS Form 8609/Certification by Owner with a completed Exhibit A, verifying:
- a. The placed in service date as defined in IRS Notice 88-116 for each building and/or type of Tax Credit. Month and year should correspond with occupancy certificate. If the month and year do not correspond, submit a written statement indicating the reason;
  - 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.
11. **Final Loan or Grant Documents.** Provide copies of final permanent loan and/or grant documents for all sources of funds (loan/grant agreements, mortgage and note) that support the amount, terms and conditions stated on the Multifamily Workbook. The Authority must evaluate all final sources of funds to ensure the amount of Tax Credits allocated to a project does not exceed the amount necessary for financial feasibility. Therefore, the Authority will not issue an IRS Form 8609 prior to the execution of final permanent loan documents, or its equivalent, for all funding sources.
12. **Maintenance and Operating Expenses Review and Underwriting Certification (HTC 29).**
13. **15-Year After-Tax Cash Flow Pro Forma.** Provide a 15-year after-tax cash flow pro forma. Where applicable, the cash flow pro forma must reflect required payment of deferred developer fees.
14. **Governmental Assistance and/or Rental Assistance.** If not previously provided as part of a carryover application, provide a description of any governmental assistance and/or rental assistance. This includes copies of any contracts or agreements executed or any applications made for rental assistance for the project. This also includes copies of Cooperatively Developed Housing Plans or Agreements between the owner and the Authority if Rental Assistance points were awarded to the development. (Refer to the Rental Assistance section of the *Self-Scoring Worksheet*.)
15. **Transfer of Ownership.** If the ownership entity has changed, provide a copy of the assignment, a Transfer Agreement (HTC 20), Notice of Intent to Transfer Ownership (HTC 27), Release of Information Authorization Form (HTC 17) (see Chapter 3.D.), and the transfer of ownership fee (see Chapter 9.).
16. **Partnership Agreement.** Provide a copy of the executed final Partnership Agreement.
17. **Photographs.** Provide clear photographs of completed building(s).
18. **Building Map (HTC 28).** Provide a completed Building Map for each building with a current rent roll attached.
19. **Identity of Interest.** Provide a written disclosure as to any and all identity of interest parties. (See Chapter 3.G. and H.)
20. **Affirmative Action and Equal Opportunity Forms.** It is the policy of the Authority to take affirmative action to provide equal opportunity in all of its endeavors. Complete, execute and return the following forms:

- a. **Affirmative Fair Housing Marketing Plan** describing the marketing strategies that an owner will use, including, but not limited to special efforts the owner will make to attract persons who are least likely to apply, in addition to a broad cross section of the local population without regard to religion, sex, national origin or status as a recipient of public assistance.
  - b. **Equal Employment Opportunity Policy Statement.**
21. **Tenant Selection Plan.** Provide a written tenant selection plan describing the tenant selection policy that an owner will use to be reviewed and approved by the Authority prior to the issuance of the IRS Form 8609. The written tenant selection plan must establish procedures that, at a minimum, meet the following applicable requirements:
- a. **Minimum and Maximum Household Size:** While IRS regulations do not specifically address occupancy requirements, the Authority encourages maximum utilization of space for developments serving large families; therefore:
    - 1. The written occupancy policies should set a minimum of at least one person per bedroom and set maximum standards of at least two persons per bedroom. Owners should also comply with state and local laws, regulations and financing requirements (e.g., if Rural Housing Service, use RHS regulations); and
    - 2. Where two equally qualified households apply for a unit, preference shall be given to the larger household that is most suitable to the unit size.
  - b. **Cooperatively Developed Housing Plan or Agreement to Provide Other Rental Assistance:** The Authority requires a development receiving priority under the Rental Assistance category to enter into a cooperatively developed housing plan or agreement with the Authority or other similar entity to provide other rental assistance. Therefore, the written selection plan between the owner and the Authority or other similar entity must include provisions to support and implement the cooperatively developed housing plan or agreement to provide other rental assistance.
22. **Gross Rent Floor Election.** A fully executed Statement of Election of Gross Rent Floor (HTC 26) if not previously provided pursuant to Chapter 7.B.
23. **Smoke Free Buildings.** If applicable, provide the written policy prohibiting smoking in all the units and common areas within the building(s) of the project for the term of the Declaration. The project must include a non-smoking clause in the lease for every household.

The written policy must be submitted with the application and should include procedures regarding transitioning to smoke-free for existing residents and

establishment of smoking areas outside of units and common areas if applicable. Consequences for violating the smoke-free policy are determined by owner, but must be included in the written policy.

24. **Allocation Fee.** Submit the non-refundable allocation fee, if not previously submitted at the time of carryover, and Authority counsel fee. (See Chapter 9.) Complete an Application Fee Remittance Form and attach with the payment to top of application package.
25. **Other Documents.** Provide such documents and instruments as are necessary and as may be required by the Authority.

## **Chapter 8 – Tax Exempt Projects Seeking Tax Credits**

### **A. General**

Section 42 of the Code establishes a separate set of procedures to obtain Tax Credits through the issuance of tax-exempt bonds. Although the Tax Credits are not counted in the Tax Credit volume cap for the State of Minnesota, developers of projects should be aware of the information contained in Article XII of the QAP.

The project must comply with the QAP that is in effect for the calendar year in which the tax-exempt bonds were first allocated by the Minnesota Department of Finance to the issuer. If the tax-exempt bonds are initially issued on a short-term basis, the year the tax-exempt bonds are reissued on a long-term basis may occur anytime after the year the tax-exempt bonds were allocated and the effective QAP will always be the QAP for the year in which the tax-exempt bonds were allocated.

The application and all required submissions must be complete and legible or the application will be returned. Applications should be submitted to:

Washington County Housing and Redevelopment Authority  
7645 Currell Boulevard  
Woodbury, MN 55125  
Phone: (651) 458-0936  
Email: mtaphorn@wchra.com

Developers should also be aware of the requirements of Minnesota Statutes section 474A.047, including subdivision 1, which requires the extension of existing HUD HAP contracts to the full extent available.

### **B. Application for Issuance of Preliminary Determination Letter**

Prior to bond issuance, the developer must submit to the Authority a full and complete application for issuance of a preliminary determination by the Authority pursuant to Section 42(m)(1)(D). See the QAP for additional details. The developer must submit to the Authority all documents required for an application for Tax Credits under Chapter 7. of this Manual and any additional information requested by the Authority. For projects

for which the Authority is the allocating agency, the developer must submit an application fee (review fee) (See Chapter 9.). In addition, if the issuer of the bonds is not the Authority, the initial submission must include a preliminary determination issued by the issuer of the bonds addressing the Tax Credit dollar amount and project costs pursuant to Section 42(m)(2)(D) of the Code. See the QAP for additional details. Based upon the submission of documents, the Authority will prepare a letter with its preliminary determination pursuant to Section 42(m)(1)(D) as to whether the project satisfies the requirements for allocation of Tax Credits under the QAP. A preliminary determination fee and Authority counsel fee must be submitted to the Authority prior to release of the letter. (See Chapter 9.) This process may take six weeks or more from the time the full application package is submitted. All applicants should develop their timelines and schedules accordingly.

**C. Election of Applicable Percentage**

Section 42 of the Code requires that the owner elect the applicable percentage for the project. The election is made at the time the tax-exempt obligations are issued to fix the percentage for the month in which the building is placed in service or the month in which the tax-exempt obligations are issued. If the election is not made at the time the tax-exempt obligations are 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.

**D. Requests for Building Identification Numbers (BIN)**

At the time of application for issuance of a preliminary determination letter, the applicant must obtain Building Identification Numbers (BIN) for each of the proposed buildings in the development. The applicant should submit a BIN Request Form (HTC 31) to the Authority to receive BIN numbers. The Authority will assign all BIN numbers. An address or other specific legal description is needed for each BIN number. The address and BIN numbers will be needed as part of an application for Form 8609.

**E. Election of Gross Rent Floor**

The owner/taxpayer of a qualified Tax Credit project financed with tax-exempt bonds is permitted under IRS Revenue Procedure 94-57 to fix the date of the gross rent floor to be the date on which the Authority initially issues its preliminary determination letter to the building or the placed in service date (Gross Rent Floor Election Form (HTC 2)). The election of one of the two timing options must be completed and the election form(s) received by the Authority by a date no later than the date the project is placed in service. If no election is made and/or no form(s) received by the Authority by a date no later than the date the project is placed in service, then the gross rent floor date will automatically be fixed by the Authority to be the initial issuance date of the preliminary determination letter for the building.

**F. Application for Issuance of Form 8609**

Subsequent to the project being placed in service and prior to a Form 8609 being issued for the project by the Authority, the owner must submit an application for the issuance of Form 8609 to the Authority. The application must contain those items as identified in Section G. below titled Tax Exempt Placed in Service. The developer must submit a Form 8609 fee based upon the requested annual Tax Credit amount and Authority counsel fee. (See Chapter 9.)

**G. Tax Exempt Placed in Service**

Placed in service dates for Tax Credit purposes must be established for all buildings using Credits, including acquisition Credits (which are treated as a separate building for Tax Credit purposes). Generally, the placed in service date for a newly constructed building or for rehabilitation expenditures in an existing building is the date when the first unit in the building is certified as available for occupancy. The placed in service date for acquisition Credits is generally the date of the acquisition of the building. Except for buildings eligible to receive Tax Credits outside the state cap by virtue of the issuance of tax-exempt financing, the placed in service date for all buildings of a Credit project must occur within two years after the allocation year of the Tax Credits. It is highly recommended that owners/developers of tax-exempt projects seek the appropriate legal and bond professional advice on these matters.

An approved Authority Form 8609 must contain the signature of the authorized Authority representative. The Authority will issue an approved IRS Form 8609 within 30 days after all the items set forth below have been received by the Authority in a satisfactory form and substance. Issuance of the Authority approved IRS Form 8609 and subsequent submission of the original to the IRS is to be done only by Minnesota Housing or the Authority. An approved Form 8609 shall not be created by any other entity. The owner/agent shall not file a Form 8609 with the IRS in advance of the owner/agent's receipt of the Authority signed version of the approved Form 8609. In addition, the owner/agent shall not electronically file a Form 8609 with the IRS which does not accurately reflect the information contained on the Authority signed version of the approved Form 8609. (Also refer to Chapter 3.E. Unacceptable Practices)

The applicant shall provide one original and two copies of the application **in the order of the documents listed below separated by index tabs:**

1. **Transmittal Letter.** Provide a transmittal letter indicating the project name, address and Authority assigned Tax Credit number. The letter should request the issuance of IRS Form 8609 and list the required documents or forms set forth below. In the letter, please list the revised information and explain the basis for the changes. The letter must be dated and signed by the owner or authorized individual.
2. **Placed in Service Evidence.** Provide evidence that all buildings have been placed in service. Submit a copy of the Certificate of Occupancy provided by the

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. For acquisition and rehabilitation, the developer must provide supporting documentation for the elected date.

3. **Evidence of Tax-Exempt Bond.** Submit evidence from the issuer of the bonds that the project received an approval of an allocation of tax-exempt bond volume cap from the State of Minnesota.
4. **Utility Allowance Schedule.** Provide a current utility allowance in a manner consistent with the options provided in 26 C.F.R. § 1.42-10, as amended (i.e. as appropriate, a utility allowance from RD, HUD, PHA/HRA, local utility company, an Agency Estimate, a HUD utility Schedule Model, an Energy Consumption Model). Include a breakdown of the utilities that a tenant pays directly (i.e., heat, electricity, etc.), and the utility allowance for each type of utility (i.e., gas, electric, etc.), for the various unit types (one bedroom, two bedroom, etc.) and housing types (apartments, townhomes, etc.). Also, include a list of each unit type, total tenant paid utilities, contract rent and gross rent.
5. **Final Cost Certification (HTC 9).** Provide a final cost certification when construction has been completed that evidences the CPA's audit report and cost certification based upon an audit of the owner's schedule of total project costs.
6. **Multifamily Workbook.** Provide an updated Multifamily Workbook, using the current Minnesota Housing form, signed by at least one general partner involved in this project and, if applicable, the nonprofit partner. Highlight all changes from Preliminary Determination Application, re-date and initial the revised pages. For material changes, refer to Chapter 3.E.3. Incomplete revisions or those not highlighted, initialed and dated are not acceptable and will be returned to the developer. In particular, check to ensure that changes in number of units, rents, utility allowance, source of funds (loans, grants, etc.), hard and soft costs, and qualified basis are updated on the revised Multifamily Workbook pages.
7. **Determination of Credits.** Provide evidence that the governmental unit which issued the bonds (or on behalf of which the bonds were issued) made a determination that the amount of Credits allocated to the project does not exceed the amount necessary to assure project feasibility pursuant to Section 42(m)(2)(A) and (B), including a copy of the final written determination (and the analysis on which it was based) that the Credits allocated to the building did not exceed the maximum Tax Credit based upon the lesser of the eligible basis or the amount necessary to achieve financial feasibility. The issuer analysis and determination must address all of the items set forth in Section 42(m)(2)(B). The determination must be based upon the list of the submission requirements described in Chapter 7.C. of this Manual.
8. **Attorney's Opinion Letter.** Provide an Attorney's Opinion Letter in an approved Authority form verifying:

- a. The legal description of the project property (to be attached to the opinion and labeled as Exhibit A) and that it is correct and identical to the property identified in the application, the preliminary determination letter issued by the Authority, and the legal description of the property financed with the tax-exempt bonds.
  - b. The name, legal description and Tax Identification Number (TIN) of the entity that is the owner for tax purposes of the property to be part of the project and which is described in Exhibit A of the opinion.
  - c. The name, legal designation and Tax Identification Number (TIN) of the ownership entity that will receive the Tax Credits, the legal designation of the party that signed the application, and that the business is in good standing and duly authorized to do business in Minnesota.
  - d. The name, legal designation and Tax Identification Number (TIN) of all general partner(s), and the names of the managing partner(s), contact person(s) and the required authorized signatories. If the partners are an organized entity, such as a limited liability company, a limited liability partnership, or an organized partnership, provide the above information for each such entity.
  - e. Identification and copies of any waivers required by Section 42 obtained from the IRS.
  - f. The buildings identified in the application qualify for an allocation of Credits under Section 42(h)(4).
9. **Reserves, Contingencies, and any Cash Savings.** Provide a signed and dated statement documenting the amount and disposition of reserves, contingencies, and any cash savings. If any of the above reverts back to developer/owner, general partner or any ownership interest, the Authority will consider them deferred developer fees, and for purposes of Tax Credit allocation, restrict the developer fees as specified in this Manual.
10. **Declaration of Land Use Restrictive Covenants.** Provide a copy of the unrecorded Declaration. For those projects that have elected the Average Income Set Aside, the Declaration shall include the designation of imputed income limitations below 60%.

Note: A copy of a properly recorded Declaration, in final form and content as approved by the Authority following its review, must be provided to the Authority prior to the release of any Form 8609 to the owner.

Note: A Declaration must be completed and recorded before the end of the first Credit period to preserve the Tax Credits allocated to the project. Check with your tax advisor as to timing of filing and claiming of Credits.

11. **Final Tax Credit Proceeds or Receipts.** Documentation of the final amount of Tax Credit proceeds or receipts generated. Provide a copy of the final Syndication, Private Placement, or Individual Investment Agreements disclosing terms and conditions.
12. **Application for IRS Form 8609/Certification by Owner.** Submit a fully completed, executed and notarized original Application for IRS Form 8609/Certification by Owner with a completed Exhibit A (HTC 3), verifying:
  - a. The placed in service date as defined in IRS Notice 88-116 for each building and/or type of Tax Credit. Month and year should correspond with occupancy certificate. If the month and year do not correspond, submit a written statement indicating the reason;  
  
Note: It is highly recommended that owners/developers of tax-exempt projects seek the appropriate legal and bond professional advice on these matters.
  - b. Compliance with all applicable design requirements; and
  - c. Compliance with all requirements of the preliminary determination letter issued by the Authority on the project and the requirements of Article XII of the QAP.
13. **Final Loan or Grant Documents.** Provide copies of final loan and/or grant documents for all sources of funds (loan/grant agreements, mortgage and note) that support the amount, terms and conditions stated on the Tax Credit application. For developments that have elected the Average Income Set Aside, provide written approval from the permanent lender(s), Tax Credit syndicator or equity provider and bond issuer referencing the specific Income Averaging rent and income designations.
14. **Maintenance and Operating Expenses Standards and Certification (HTC 29).**
15. **15-Year After-Tax Cash Flow Pro Forma.** Provide a 15-year after-tax cash flow pro forma signed by the lending institution or source of credit enhancement, if any, signifying that they are aware of the figures presented on the Tax Credit application. The pro forma must reflect required payments of any deferred developer fees.
16. **Transfer of Ownership.** If the ownership entity has changed, submit a copy of the assignment, a Transfer Agreement (HTC 20), Notice of Intent to Transfer Ownership (HTC 27), an updated Qualification Form for all the new team members, a written disclosure as to any and all identity of interest parties, Release of Information Authorization Form (HTC 17) (see Chapter 3.D.), and the transfer of ownership fee (see Chapter 9.).

17. **Partnership Agreement.** Provide a copy of the executed final Partnership Agreement.
18. **Photographs.** Provide clear photographs of completed building(s).
19. **Building Map Form (HTC 28).** Provide a completed Building Map Form for each building with a current rent roll attached.
20. **Affirmative Action and Equal Opportunity Forms.** It is the policy of the Authority to take affirmative action to provide equal opportunity in all of its endeavors. Complete, execute and return the following forms:
  - a. **Affirmative Fair Housing Marketing Plan** describing the marketing strategies that an owner will use, including, but not limited to special efforts the owner will make to attract persons who are least likely to apply, in addition to a broad cross section of the local population without regard to religion, sex, national origin or status as a recipient of public assistance.
  - b. **Equal Employment Opportunity Policy Statement.**
21. **Tenant Selection Plan.** Provide a written tenant selection plan describing the tenant selection policy that an owner will use to be reviewed and approved by the Authority prior to the issuance of the IRS Form 8609. The written tenant selection plan must establish procedures that, at a minimum, meet the following applicable requirements:
  - a. **Minimum and Maximum Household Size:** While IRS regulations do not specifically address occupancy requirements, the Authority encourages maximum utilization of space for developments serving large families; therefore:
    1. The written occupancy policies should set a minimum of at least one person per bedroom and set maximum standards of at least two persons per bedroom. Owners should also comply with state and local laws, regulations and financing requirements (e.g., if Rural Housing Service, use RHS regulations); and
    2. Where two equally qualified households apply for a unit, preference shall be given to the larger household that is most suitable to the unit size.
  - b. **Cooperatively Developed Housing Plan or Agreement to Provide Other Rental Assistance:** The Authority requires a development receiving priority under the Rental Assistance category to enter into a cooperatively developed housing plan or agreement with the Authority or similar entity to provide other rental assistance. Therefore, the written selection plan between the owner and the Authority or other similar entity must include

provisions to support and implement the cooperatively developed housing plan or agreement to provide other rental assistance.

22. **Gross Rent Floor Election.** A fully executed Statement of Election of Gross Rent Floor (HTC 26) if not previously provided pursuant to Chapter 8.E.
23. **Smoke Free Buildings.** If applicable, provide the written policy prohibiting smoking in all the units and common areas within the building(s) of the project for the term of the Declaration. The project must include a non-smoking clause in the lease for every household.

The written policy must be submitted with the application and should include procedures regarding transitioning to smoke-free for existing residents and establishment of smoking areas outside of units and common areas if applicable. Consequences for violating the smoke-free policy are determined by owner, but must be included in the written policy.

24. **Average Income Set Aside Items.** For those projects that have elected the Average Income Set Aside, submit the following items:
  - a. **Income Average Election/Certification form.** Provide the completed form from Minnesota Housing.
  - b. **Rent and Income Grid Income Averaging Test form.** Provide the completed form from Minnesota Housing. The maximum number of increments is four.
  - c. **Market Study.** Provide a current Market Study that complies with the most current Minnesota Housing Market Study Guidelines revised to incorporate Income Averaging.
25. **Form 8609 Fee.** Submit the non-refundable Form 8609 fee and Authority counsel fee (see Chapter 9.), along with a completed Fee Remittance Form and attach with the payment to the top of application package.
26. **Other Documents.** Provide such documents and instruments as are necessary and as may be required by the Authority.

## Chapter 9 – Fees

### A. Application Fee

An \$800.00 application fee must be submitted with all applications. The fee is non-refundable. For multi-building projects, the Authority will require only one application and a single fee.

**B. Reservation Fee**

After the project has been selected, a reservation fee of 1.5 percent of the annual Tax Credit amount must be paid to the Authority. The developer will have 30 days in which to pay the reservation fee and maintain the Tax Credit selection/reservation. An additional 3.5 percent reservation fee must also be paid for any additional Credits awarded and allocated through carryover and must be paid following issuance of the Carryover Agreement. A reservation fee is non-refundable and will not be adjusted if the final Tax Credit amount is reduced or the Tax Credits are returned or unused.

**C. Allocation Fee**

At the time the taxpayer/owner submits an application for a carryover allocation or for issuance of IRS Form(s) 8609 (whichever occurs earlier), an allocation fee of 3.5 percent of the annual Tax Credit amount will be due. This fee is non-refundable and will not be adjusted if the final Tax Credit amount is reduced or the Tax Credits are returned or unused.

Note: See Section B. above for fee information relating to additional Credits allocated at carryover.

**D. Allocation Late Fee**

Developers submitting a carryover package or, if an owner has elected not to request a carryover, an IRS Form 8609 package prior to the end of the year of allocation for which the reservation was issued that:

1. Do not submit a carryover/Form 8609 application by the established due date; or
2. Submit a substantially incomplete carryover/Form 8609 application by the established due date; or
3. Do not submit the carryover CPA final certification by the established due date;

must pay a \$1,000.00 late fee plus an additional penalty of \$200.00 for each business day from the original due date through the date on which the Authority receives a substantially complete carryover/Form 8609 application.

The late fee will not be allowed as an eligible cost in carryover/Form 8609 basis and must be paid at the time the carryover/Form 8609 application is substantially complete.

**E. Authority Counsel Fee**

The applicant shall pay non-refundable fees of the Authority's counsel of \$3,500.00 at the time of each review for: (1) initial applications; (2) carryover allocations; and (3) issuance of IRS Form 8609, as well as any additional fees required to reimburse the Authority for legal fees in excess of this amount and other legal costs incurred. (See Section J. below)

**F. Tax-Exempt Credit Preliminary Determination Fee**

A preliminary determination fee must be submitted to the Authority prior to issuance of a preliminary determination letter. The developer must submit a fee equal to 3.5 percent of the requested annual Tax Credit amount. This fee is non-refundable.

**G. Tax-Exempt Credit Form 8609 Fee**

An IRS Form 8609 fee must be submitted at the time of application to the Authority for Form 8609. The developer must submit a Form 8609 fee equal to 3.5 percent of the requested annual Tax Credit amount. This fee is non-refundable.

**H. Monitoring Fee**

The Authority or its designee will charge an annual monitoring fee of \$55 per unit, based on the total number of units, with a minimum fee of \$500. This fee may be increased depending upon the requirements of the U.S. Treasury, IRS or increased costs of the Authority. The fee will be due in a manner and time as prescribed by the Authority or its designee. Failure to pay the fee will result in the Authority notifying the IRS that the project is out of compliance.

During the extended use period required by Code Section 42(h)(6), the Authority will charge a monitoring fee of \$25 per unit per year or such other fee as set forth in the Authority's Compliance Manual. No Tax Credit monitoring will be required during this time for properties with project based Section 8, Rural Development or HUD Contract Administration since these properties are already subject to monitoring and consequences under those programs are in place, and no Tax Credit monitoring fee will be charged. However, if a property is no longer subject to monitoring for HUD and/or Rural Development programs, then the owner must notify the Authority Tax Credit compliance staff immediately so that the property can be placed back on the monitoring schedule. At that time, the property will be subject to the \$25 per unit per year monitoring fee.

**I. Transfer of Ownership Fee**

A non-refundable transfer of ownership fee of \$2,500 must be submitted to the Authority along with updated materials of the new owner/management team for each project in which 50 percent or more of the ownership entity is new since reservation or carryover allocation. Prior to IRS Form 8609, changes in ownership must be approved by the Authority. See Chapter 3.E. Unacceptable Practices for further details on transfer of ownership.

**J. Reimbursement of Authority**

In addition to the foregoing fees, a developer shall reimburse the Authority upon request for any out-of-pocket costs, including, but not limited to costs for legal counsel incurred by the Authority in connection with compliance monitoring issues or unusual circumstances involving such developer's project.

**K. Check Cashing Procedure**

Applicant's payments for fees (in the form of checks) will be held pending verification of the accuracy of the amount tendered and submitted materials.

**L. Right to Adjust Fees**

The Authority reserves the right to adjust fees due to changing circumstances to cover its costs associated with producing and delivering the Authority's Tax Credit program.

**Chapter 10 – Allocation Schedule of Critical Dates**

Please refer to Minnesota Housing's Housing Tax Credit Program Procedural Manual for critical dates that are not set forth in this Manual.

**Chapter 11 – Housing Tax Credit Forms and Reference Materials**

Please refer to Minnesota Housing's Housing Tax Credit Program Procedural Manual and website for Housing Tax Credit Forms and Reference Materials.

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