



# Washington County Community Development Agency

## Housing Tax Credit Program

### 2020 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 Community Development Agency (the “Agency”) 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 Agency’s Qualified Allocation Plan (the “QAP”) combines state and federally legislated priorities with other priorities established by the Agency 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 Agency 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 Agency 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 Agency is under no obligation to undertake an investigation of the accuracy of the information submitted in an application for Tax Credits. The Agency’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 Agency 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 Agency 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 Agency 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 – Agency Mission Statement**

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

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

Suballocators such as the Agency were authorized by the Minnesota legislature in 1990 to allocate and monitor Tax Credits to eligible projects in their cities or counties. The Agency 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 Agency for a Credit allocation. Nonprofit applicants may apply to the Minnesota Housing nonprofit set-aside, or the Agency individually, or concurrently to both. Any Tax Credits not used by the Agency 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. Federal 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 Agency for their development and should contact HUD and the Agency 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. Partnership Agreement, spelling out the equity contributions and dates of disbursement; and
3. Copy of Multifamily Workbook.

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

### **A. Application Cycle**

The Agency 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 Agency’s submission requirements** utilizing forms supplied by the Agency or Minnesota Housing, including all required fees, deposits and exhibits.

**The closing date for receipt of applications for Round 1 is scheduled for June 3, 2019.**

The Agency 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 Agency. 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 Community Development Agency  
7645 Currell Boulevard  
Woodbury, MN 55125  
Phone: (651) 458-0936  
Email: melissat@washingtoncountycda.org

Upon receipt of an application, as required by federal law, the Agency 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**

Minnesota Housing complies with Federal law which 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.

If the nonprofit set-aside is exhausted during Round 1, the nonprofit applicant with proposed projects in the Agency'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 Agency strongly discourages the transfer of ownership in projects that have been awarded Tax Credits. For the long-term viability of quality housing, the Agency'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 from the time of selection or preliminary determination letter through the term of the Declaration will be considered a material change in the project and **will be subject to the approval of the Agency**. Owners wishing to change or transfer ownership must submit a Request for Action form, Transfer Agreement (HTC 20), a transfer of ownership fee (see Chapter 9), and any other documentation that the Agency deems necessary.

**E. Unacceptable Practices**

1. Unapproved Transfer of Ownership:

Any unapproved change or transfer of ownership from the time of selection or preliminary determination letter through the term of the Declaration will have an effect on all individuals/entities 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:

For two calendar years from the date the Agency discovers an unapproved change or transfer of ownership:

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

2. Failure to Notify:

Existing Tax Credit projects that did not have a transfer approval requirement are required to notify the Agency of a transfer of ownership throughout the term of the Declaration. Failure to notify the Agency will have an effect on all individuals/entities from the development and management team on each side of the transfer that submit an application in future application rounds. These entities may be penalized as follows:

For two calendar years from the date the Agency discovers an unapproved change or transfer of ownership:

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

3. Displacement of Section 8 Tenants:

The Agency 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 Agency 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 Agency 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 Agency 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 Credit projects financed by tax-exempt volume limited bonds, owners and managers.

4. 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 Agency. Any changes that have not been previously approved by the Agency 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.

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

When the Agency 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 Agency 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.

6. Filing of Non-Agency Approved Form 8609 with the IRS:

When the Agency 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 Agency 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 Agency signed version of the approved Form 8609, the Agency 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 Agency, including without limitation, those allocated in conjunction with tax-exempt volume limited bonds.

7. Repeated Non-Compliance with the Agency’s Fair Housing Policies, Procedures, and/or Requirements:

Repeated failure to comply with the Agency’s Fair Housing policies, procedures or requirements will be penalized. The Agency 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 Agency. This also

applies to Tax Credit projects financed by tax-exempt volume limited bonds, owners and managers.

8. Non-Compliance with Agency's Compliance Policies, Procedures, and/or Requirements:

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

a. On the date of submission of an application for an allocation of Tax Credits, if the applicant or any party with an identity of interest with the applicant who will have an ownership interest in the proposed development has been issued a notice of failure to comply involving any of the following violations, but has not submitted an acceptable plan and timeline to correct by the response due date, under Unacceptable Practices, the application will receive -25 points.

1. Failed minimum set-aside.
2. Any Exigent Health and Safety violation under Uniform Physical Conditions Standards.
3. Owner is charging rent on any Tax Credit unit that exceeds the allowable rent limit.
4. Tax Credit unit rented to an ineligible households (i.e., household not properly certified, over income at initial occupancy, or ineligible full time student).
5. Project not available to the general public or fair housing violation.
6. Owner failed to respond to Agency or Agency's representative request for inspection.

b. On the date of submission of an application for an allocation of Tax Credits the applicant is ineligible to receive an allocation of Tax Credits, if the applicant or development:

1. Has been reported to the IRS by the Agency, Minnesota Housing or another suballocator as no longer in compliance, nor participating in Section 42 program on line 11p of IRS Form 8823 and has not taken steps to bring the property back into compliance to the satisfaction of the Agency, Minnesota Housing or suballocator; or
2. Is on the Agency's, Minnesota Housing's, or another suballocator's list of Properties Not in Good Standing in the

Extended Use Period and has not taken steps to bring the property back into compliance to the satisfaction of the Agency, Minnesota Housing or suballocator.

**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 Agency (see Chapter 5.B). These factors will be monitored throughout the Tax Credit process until the Agency's issuance of the approved IRS Form 8609. The Agency **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 Agency detailing the nature of all identity of interest relationships is required for all parties. An entity will be deemed, at the discretion of the Agency, to have an identity of interest with an applicant if there is a financial or familiar relationship between the entities, including parent and subsidiary entities.

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

The applicant must disclose on the Multifamily Workbook 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). The Agency 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 to, including a plea of *nolo contendere*, 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 Agency, Significant Parties who have serious and persistent compliance monitoring violations may not be eligible; or

4. At the sole discretion of the Agency, 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 Agency 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 Agency will evaluate each proposed project, taking into consideration:

1. Development costs, including acquisition costs, developer fees, builder profits, contractor overhead and general conditions;
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 Agency will estimate the amount of Credits to be reserved for each application. This determination is made solely at the Agency'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 Agency 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 Agency 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. Qualified Census Tracts, Difficult to Develop Areas, and Agency Designated Basis Boosts**

Federal law permits, but does not require, the Agency 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. **There is one QCT in Washington County, Census Tract 709.12 located in the City of Oakdale.** 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. **There are two DDAs in Washington County, zip codes 55001 in Afton and 55129 in Woodbury.** 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 Agency 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 Agency:
  - a. The project does not use financing that is tax-exempt under Section 103 of the Code;

- b. The project meets the Agency’s identified housing priorities as evidenced by a competitive Tax Credit score;
- c. There remains a significant funding gap and all funding resources have been investigated; and
- d. But for the additional reservation of Credits, the project would not be financially feasible.

Requests by applicants/developers to the Agency to apply the 30% designated basis boost must be formally made in writing as an application submittal item. 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.

#### **L. Reservations**

Once staff has ranked applications and determined allowable Credit amounts for each application, staff will make recommendations to the Agency’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 Agency’s prior written consent. Changing a development’s site could lead to the revocation of the Tax Credit reservation or allocation.

The Agency’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 Agency 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 Agency, 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 Agency prior to the placed in service date, the gross rent floor date will be effective on the allocation date of the Tax Credits.

The Agency 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**

Applications requesting Tax Credits in the Agency's Round 1 9% Tax Credits can request an appeal. If the applicant believes that the Agency 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 Agency's notification of application status. The letter containing the original signature may be submitted to the Agency in hard copy or through e-mail, to the address specified in Chapter 3.A of this Manual. The Agency'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 Agency will re-rank all projects in the order of descending selection points. After an additional five-business day period, the Agency's rankings will stand and reservations of Tax Credits for selected projects will be distributed.

**N. Waiting List**

Eligible applications for which the Agency reserved no Tax Credits or fewer Tax Credits than were requested will be maintained on a waiting list in the event the Agency receives additional or returned Tax Credits. The waiting list will follow the Agency's selection point ranking. Generally, projects will be chosen in order; however, depending on time and funds available, the Agency 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 Agency 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 Agency 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 Agency's submission requirements** utilizing forms supplied by the Agency 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 Agency no later than October 1 of the allocation year for which the commitment was issued. The final CPA certification must be submitted to the Agency prior to the deadlines established by Section 42 and by no later than the Agency'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 Agency'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 Agency 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 Agency prior to year-end, the Tax Credit application for issuance of such Form 8609 must be submitted to the Agency 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 Agency'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 Agency provide a procedure to be used in monitoring for compliance with Section 42 and for notifying the IRS of noncompliance. The Agency is required to apply the monitoring procedure to all Tax Credit projects developed within the Agency's jurisdiction, including Tax Credits issued in connection with tax-exempt volume limited bonds, since the inception of the Tax Credit program. The Agency shall perform such duties in accordance with its Housing Tax Credit Compliance Manual (the "Agency's Compliance Manual"). Copies are available upon request.

1. All Tax Credit recipients shall submit an annual certification to the Agency in a manner, form and time established by the Agency. 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 Agency'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 Agency 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 Agency 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 Agency 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 Agency upon request.
6. To accomplish its compliance monitoring responsibilities, the Agency will charge an annual fee of \$60 per unit, based on the total number of units, with a minimum fee of \$600. During the extended use period required by Code Section 42(h)(6), the Agency will charge a monitoring fee of \$35 per unit per year, with a minimum fee of \$350. A unit inspection fee of \$60 per unit is charged for all units inspected and/or tenant files reviewed for a first year project, subject to the minimum fee of \$900. The Agency reserves the right to adjust the annual fee to offset administrative costs.
7. The Agency will promptly notify the IRS of any project noncompliance within its responsibility as contained in Section 42. The Agency 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 Agency has defined compliance requirements and monitoring procedures during the Extended Use Period in the Agency's Compliance Manual.

## **R. Qualified Contract**

All properties will be subject to a Declaration of Land Use Restrictive Covenants (the "Declaration") with a term of 30 years or longer. 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 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, subject to a three-year period following its termination where existing low income tenants cannot be evicted or tenancy terminated for other than good cause and rents cannot exceed the allowable Tax Credit rent limits.

Owners of properties that receive 9% Credits are required by the Agency to waive the right to request a qualified contract for a minimum of 30 years. Owners of properties that receive 4% Credits are required to waive their right to request a qualified contract for a minimum of 20 years, which means the request for presentation of a qualified contract may not occur until after year 19. Some owners have agreed to waive their right to request a qualified contract for a longer period and in some cases extend the term of the Declaration. 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 Agency.

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

Owners who have not waived the right to request a qualified contract and are contemplating requesting the presentation of a qualified contract should directly contact the Agency. The Agency will follow the requirements and processes in Minnesota Housing’s Qualified Contract Guide with regard to a request for a qualified contract.

**S. Tenant Selection Plan**

The Agency requires that a tenant selection plan is readily available to anyone interested in such a plan for review and/or retention. The Agency 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. See Minnesota Housing’s Tenant Selection Plan Guidance.

**T. Other Conditions**

No member, officer, agent or employee of the Agency 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 Agency from time to time. The Agency staff may make minor administrative modifications deemed necessary to facilitate the administration of the Tax Credit program or to address unforeseen circumstances. Further, the Agency 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 Agency'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 Agency or at such other location as designated by the Agency.

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. An average qualified basis amount per low income unit for a building, which meets the inflation adjusted amount published by the IRS annually in accordance with Section 42(e)(3)(D) 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 the interest on which is exempt from tax 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:

1. 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

2. 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

3. 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. The election of the eligibility formulation must be made at initial application.

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.

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 Agency 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. 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. The Agency’s Tax Credit Compliance Manual provides additional information and instructions.

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):

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:

1. 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)
2. 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.

3. The cost of depreciable property used in common areas or provided as comparable amenities to all residential units (e.g., carpeting and appliances) is included in determining eligible basis. The cost of tenant facilities (e.g., parking, garages and swimming pools) may be included in eligible basis if there is no separate charge for use of the facilities and they are available to all tenants in the project.
4. 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.
5. 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)

#### **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**

The Agency is interested in providing affordable housing to persons employed in Washington County. Development is encouraged in census tracts with high paying employment and where the housing costs are high.

**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 Agency 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 Agency through which the owner commits the building(s) to low income use for an extended use period of at least 5 (for tax-exempt volume limited

bond projects) or 15 (for all other projects) years after the conclusion of the 15-year compliance period (a total of 20 or 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 Agency to find a purchaser by the end of one year after a request by the owner to the Agency 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.

Tax Credits allocated in association with the issuance of tax-exempt volume limited bonds must commit their developments to Section 42 income and rent restrictions for a period of 20 years beginning with the first day of the compliance period in which the building is part of a qualified low-income housing project. Owners applying for 9 percent credits must commit their developments to Section 42 income and rent restriction for a period of 30 years beginning with the first day of the compliance period in which the building is part of a qualified low-income housing project. 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 Agency prior to the Agency issuing the allocation (IRS Form 8609). The Declaration will set forth the commitments made by the owner to the Agency 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 State of Minnesota has established a formula by which it will suballocate a portion of its Credits and publishes an estimate of its suballocation each April. The Agency's 2018 per capita volume limit is expected to be approximately \$636,395.00.

Projects financed by tax-exempt volume limited bonds which are subject to a separate volume limitation, are not counted against the state Tax Credit volume limit. (See Article XII of the QAP and Chapter 8 of this Manual for further details.)

**T. Recapture**

The Agency reserves the right to recapture Tax Credits from projects that do not provide evidence satisfactory to the Agency 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 Agency will review projects incorporating tenant ownership provisions in accordance with Section 42(h)(6), IRS Revenue Ruling 95-49 and the Agency's requirements. It is the responsibility of the applicant to provide the Agency with any additional information or clarification as may be necessary. The Agency 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.15)

**W. Fair Housing, Equal Opportunity, and Contract Compliance Policy**

It is the policy of the Agency to affirmatively further fair housing in all Agency programs so that all residents of similar income levels have equal access to Agency 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.

The Agency's fair housing policy incorporates the affirmative fair housing marketing practices addressed in Title VII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendment Act of 1988, which states that it is unlawful to discriminate in the sale, rental, and financing of housing based on race, color, religion, sex, handicap, familial status or national origin; as well as the fair housing protections provided by the Minnesota Human Rights Act, which adds creed, marital status, status with regard to public housing, and sexual orientation.

In part, regarding rental housing issues, Title VIII and the Human Rights Act makes it unlawful to: (1) discriminate in the selection/acceptance of applicants in the rental of housing units; (2) discriminate in terms, conditions or privileges of the rental of a dwelling unit; (3) engage in any conduct relating to the provision of housing that otherwise makes unavailable or denies the rental of a dwelling unit; (4) make or publish (or having anyone else make or publish) advertisements that indicate preferences or limitations based on race, etc.; (5) tell a person that because of race, etc., a dwelling unit is not available when it is; and (6) deny access to, or membership or participation in, associations or other services, organizations or facilities relating to the business of renting a dwelling or discriminate in the terms or conditions of membership or participation.

The Agency has a commitment to affirmatively further fair housing for members of the disabled communities by promoting the accessibility requirements set out in the Fair Housing Amendment Act of 1988, which establish design and construction mandates and provide for the residents' right to make reasonable accommodations under certain conditions. (Applicable to covered multifamily dwelling, which are buildings consisting of four or more units if such buildings have one or more elevators. It is also applicable to ground floor dwelling units in other buildings consisting of four or more dwelling units.)

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

1. Outreach to all groups protected by the Civil Rights Act of 1968, as amended in 1988, and those protected by the Minnesota Human Rights Act.
2. Affirmative marketing strategies that reach protected groups.
3. Self-analysis to make sure all steps are non-discriminatory.
4. Upon request by the Agency, the submission of reports and documents that confirm the owner's fair housing efforts.

Affirmative Fair Housing Marketing regulations, held as centrally important by the Agency, require that each applicant carry out an affirmative marketing program to attract prospective buyers or tenants in the housing market area who are least likely to apply, regardless of race, creed, color, religion, sex, national origin, marital status, status with regard to public assistance, disability, sexual orientation, gender identity, or familial status. Applicants will be required to submit an Affirmative Fair Housing Marketing Plan at the time of 8609/placed in service application and use affirmative fair housing marketing practices in soliciting renters, determining eligibility, and concluding all

transactions. Throughout the Extended Use Period, owners must regularly update their Affirmative Fair Housing Marketing Plan and maintain a copy with their property records.

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

## **X. Occupancy Restrictions**

Under the Tax Credit general public use regulations, residential rental units must be for use by the general public, which incorporates HUD housing policy governing non-discrimination. Residential units provided only for a member of a social organization or provided by an employer for its employees are not considered for use by the general public and are examples of restrictions not allowed under the Tax Credit program. The Agency has an obligation to affirmatively further fair housing, and occupancy restrictions must comply with the Fair Housing Act and the Minnesota Human Rights Act. Projects must also comply with any occupancy limitations imposed by any additional source of funds provided by the Agency, Minnesota Housing, or other public funding partners.

Age-related occupancy restrictions or preferences will be approved only if set out in the QAP or if the property qualifies as housing for older persons under the Fair Housing Act and the Minnesota Human Rights Act. The Fair Housing Act exempts “housing for older persons” from the Act’s prohibition of discrimination against families with children in two categories: 100% of the occupants must be 62 years of age or older or 80% of the occupied units must be occupied by at least one person who is 55 or older.

## **Chapter 5 – Development Standards**

All applications to the Agency 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 Agency will evaluate the costs of each proposed project in comparison to current comparable projects to determine whether the proposed costs are reasonable. The Agency will take into consideration unique characteristics of the project and its comparability to similar projects. The Agency will require additional documentation if it determines the proposed costs are not comparable or reasonable.

The Agency will use Minnesota Housing’s predictive cost model to test cost reasonableness for all projects. The model uses costs data from Tax Credit properties, industry costs data from RSMMeans and regression analysis to predict total project costs. Based on a project’s characteristics (building type, building characteristics, project size, project location, population served, financing, etc.), the model predicts the total development costs.

The Agency will evaluate the cost reasonableness of proposed acquisition costs through an as-is appraisal. The as-is appraisal and related costs will be the responsibility of the applicant. Appraisals must be completed within one year of the date of the initial application and will be considered expired by the Agency one year after the effective date of the report.

The Agency reserves the right to reject applications that appear, at the Agency’s sole discretion, to have excessive costs, or to size its award based on the lesser of the option/purchase agreement purchase price or the appraised value of the property.

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

The Agency will review the applicant’s proposed Management and Operating Expenses (M&O) and compare it with M&O data available from the Agency’s data based on comparable projects. Determinations on whether proposed budgets are reasonable will also be based on the Agency’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. In sizing its funding awards, the Agency reserves the right to adjust the proposed M&O expense numbers based upon the information supplied, specified development type, circumstances and/or significant changes to the economics of the development’s current marketplace. The Agency will also use its M&O database to compare projected M&O expenses with audit data from comparable property types.

**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 Agency 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 Agency 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 Agency review. The following limits will be used by the Agency:

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 Agency 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 Agency 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 Agency 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 Agency), reasonable marketing costs and contractor's bond premium;
3. Financing and carrying costs, including interest during construction, insurance, real estate taxes, Agency financing and inspection fees, title and recording costs and, where applicable, the development contingency fund (the Agency retains the right to limit carrying costs);

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

**D. Reserves/Contingencies**

The Agency 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 Agency 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 tab of the Multifamily Workbook.

**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. Design Standards**

The Agency encourages sustainable, healthy housing that optimizes the use of cost effective durable building materials and systems and that minimizes the consumption of natural resources during construction, and in the long-term, maintenance and operation. All completed developments must comply with the Minnesota Overlay to the Enterprise Green Communities Criteria and Minnesota Housing's Rental Housing Design/Construction Standards.

If the project meets the Family Housing (as defined in the QAP) threshold criteria, 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 applying for a portion of the Agency’s Tax Credit volume cap must meet one of the threshold types as required by Statute and defined in Section 9.1 of the QAP. 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 Agency 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 Agency 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 (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 Agency 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 municipality 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 as measured by the Intermediary Costs selection criterion formula; 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/idc/groups/public/documents/document/mhfa\\_006757.pdf](http://www.mnhousing.gov/idc/groups/public/documents/document/mhfa_006757.pdf)

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

The Agency 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 Agency 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, Design Standards.)

#### **F. Development Team Review**

The Agency 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 Agency 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**

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

#### **H. Underwriting Standards**

Proposals must meet all Minnesota Housing Multifamily Underwriting Standards to receive an allocation of Tax Credits. All operating assumptions, including for rent, vacancy, operating expenses, reserves, inflation assumptions and debt coverage ratios, must be consistent with the requirements of the Underwriting Standards. The structure of the development budget, including acquisition price; architect, general contracting, and developer fees; sales tax and energy rebates; as well as construction contingency, must also meet the Underwriting Standards.

#### **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. The primary financing proposed must meet the Agency's underwriting standards or demonstrate to the sole satisfaction of the Agency that the development can remain financially feasible for the entire duration of the Tax Credit use. Projects determined not to be financially feasible will not be processed further, unless the Agency 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 Agency will review project costs based on comparability and reasonableness. The Agency 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. **Any submissions not meeting the requirements in this Chapter will be returned to the applicant and fees paid will not be refunded.**

**Tax Credit applications must be submitted in the manner required by this Manual and must comply with the Agency's submission requirements.** All applicants must utilize forms supplied by the Agency, including the Notice of Intent to Apply, or Minnesota Housing, where indicated. The application materials can be found on the Agency's web page ([www.washingtoncountycda.org](http://www.washingtoncountycda.org)) and on Minnesota Housing's Multifamily Common Application and Tax Credits web page ([www.mnhousing.gov](http://www.mnhousing.gov)).

All submission items must be separately indexed in the order presented on the appropriate checklist. After receiving an applicant's Notice of Intent to Apply, the Agency will create a Box.com account, the submission tool for the full application, as well as future allocation or placed in service applications. The Agency will also require one hard copy of all submission items. **DO NOT** submit printed applications in three ring binders or with plastic casing around the pages. Submissions should be bound only by staples, binder clips, or rubber bands.

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.

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

#### **A. Application Requirements**

**Notice of Intent to Apply.** For Round 1 applicants, submit a completed Agency Notice of Intent to Apply form no later than **May 17, 2019** to melissat@washingtoncountycda.org or by mail to Washington County CDA, Attn.: Melissa Taphorn, 7645 Currell Boulevard, Woodbury, MN 55125.

Applicants must submit one original printed version of the following application submittals, based upon the specific housing proposal, and submitted in this order within the application package. The application submittals shall also be individually indexed within the Box.com account created for each application. The Agency's LIHTC Application Checklist should accompany all applications. **Note: submission requirements differ from Minnesota Housing's submission requirements.**

If a submittal item 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 Agency.

1. **Multifamily Workbook.** Submit an Excel version of the completed Multifamily Workbook and a printed version signed by at least one general partner involved in the project, and the nonprofit corporation where a nonprofit partner is involved. The Cash Flow tab of the Multifamily Workbook must reflect required payments of any deferred developer fees and demonstrate the payments after debt service agreed upon with the Tax Credit investor. 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. **Self-Scoring Worksheet Form.** Submit a completed Agency Self-Scoring Worksheet form signed by at least one general partner and if applicable, nonprofit general partner. For additional details, see Chapter 6.B.

3. **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.** 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.
  
4. **Smoke Free Buildings.** 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.
  
5. **Local HRA/PHA Notice and Agreement to Utilize Public Housing and Section 8 Waiting Lists (HTC 11).** Provide a HTC 11 Local HRA/PHA Notice and Agreement to Utilize Public Housing and Section 8 Waiting Lists form signed by both the Owner and the Agency.
  
6. **Strategically Targeted Resources.** If the proposal is for the rehabilitation of an existing structure, which is part of a Community Development Initiative and claims points under Selection Priority 1.A on the Self-Scoring Worksheet, an applicant must submit the Community Development Initiative Narrative form from Minnesota Housing and supporting documentation, including planning documents that support the initiative. A Community Development Initiative is an initiative which includes the following elements: a targeted geography with clearly defined boundaries, a scope that is larger than the proposed housing development, affordable housing units, milestones with dates for each key implementation step, and stakeholder involvement.

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

A qualified preservation project that receives points for “Preservation of Federally Assisted Units” may qualify if rehabilitation exceeds the greater of b.1 or b.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.

7. **Status of Municipal Approvals.** 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. The letter should include the status of any other land use approvals needed. The letter should also include the status of water and sewer service to the site and its appropriateness for the proposed project.
8. **Transit Oriented Development Map.** When required as supporting documentation for points claimed on Selection Priority 1.C, 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.

Applicants claiming additional points in Selection Priority 1.C, must provide evidence of the intended transit oriented design features for the project.
9. **Community Priority Locations.** Applicants claiming points in Selection Priority 1.D must submit evidence of the public ownership of the proposed property.
10. **All Proposed Sources of Funds Including Federal, Local and Philanthropic Contributions.** Provide a current form of documentation of proposed sources of funds including, but not limited to a. through g. 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;
- f. Other sources of funds and contributions, including any federal, state, local and private contributions or subsidies; and
- g. Regulatory cost avoidance/cost reduction – letter of intent or approval, municipal resolution, or other agreement of the terms and conditions of a cost avoidance/cost reduction measure from the contributor of the assistance or authorized local official.

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 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 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 and developer.

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. For developments that have elected the Average Income Set Aside, the documentation from the permanent lender(s) and Tax Credit syndicator or equity provider must reference the specific Income Averaging rent and income designations.

11. **Letter of Intent to Provide Project Based Rental Assistance.** 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 rental assistance provider. The letter of intent must establish that the provider: (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.

12. **Letter of Intent to Produce a Cooperatively Developed Housing Plan.** For developments proposing some form of rental assistance, such as tenant based Section 8, Shelter Plus Care, Housing Support, portable tenant based, formal recommendation for McKinney Vento funding, HUD operating subsidy or other similar rental assistance programs approved by the Agency, submit a letter of intent to develop a cooperatively developed housing plan or agreement which is signed by the applicant and the Agency or other similar entity. 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. A cooperatively developed housing plan must include, at a minimum: a description of how the project meets a community's housing objectives; the type of rental assistance; the number of assisted households; the time period of the rental assistance; and the terms of agreement between the rental assistance provider and the owner.
13. **Rent Assistance Payment Standards.** If proposing use of project based rent assistance, or if project based **other** rental 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.
14. **Evidence of Ending Homelessness.** Tax Credits represent one of several resources selected to attain the Suburban Metropolitan Area Continuum of Care's goal of ending homelessness.

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; and
- b. The applicant must agree to accept Coordinated Entry referrals for openings in LTH units who score three or above on the assessment tool.
- c. The applicant must complete and submit the Continuum of Care Confirmation form from Minnesota Housing.

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

- a. 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 Agency for applications serving Households Experiencing Long-Term Homelessness; and

- b. 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, including, but not limited to, the Homeless Management Information System (HMIS) as defined by the Agency. 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”) (i) is 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 Agency 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 Agency 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 Agency’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 LTH units are re-instated, then the owner is still required to provide support services for those re-instated units and to provide for all necessary reporting requirements.

If, for a particular LTH unit(s), the necessary tenant support services funding (i) is 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 Agency 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).

15. **Eventual Tenant Ownership.** If applicable, provide a detailed proposal for Eventual Tenant Ownership (ETO). Only detached single family units are eligible for homeowner conversion. The project owner must submit a preliminary conversion plan with their application that is consistent with the requirements of Minnesota Housing's ETO Guide. The plan must address the transfer of 100 percent of the Tax Credit unit ownership after the 15-year compliance period from the initial ownership entity of the project (or Agency approved Transfer of Ownership entity) 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 an HTC qualifying income at the time of initial occupancy (Tax Credit rental tenant). The final conversion plan, to be submitted by the 15<sup>th</sup> year of initial compliance, must incorporate an ownership exit strategy, a third party Property Capital Needs Assessment report and a budget for capital improvements and services, including home ownership education and training. A final conversion plan complying with all of the requirements of the ETO Guide must be submitted to, and approved by, the Agency prior to commencing the conversion. The Declaration will contain provisions ensuring compliance with these ETO commitments by the owner, including a right of first refusal allowing tenants to purchase their units.
  
16. **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 Real Estate Assessment Center (REAC) or Rural Development (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 Agency 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.

17. **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 Agency 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.

18. **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.

19. **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 the most current Minnesota Housing's Market Study Guidelines

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

20. **Narratives.** Complete the Multifamily Rental Housing Narrative Questions form from Minnesota Housing with answers specific to your housing proposal.

Note: Requests by applicants/developers to the Agency 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.

21. **Project Schedule.** Submit a Project Schedule in format provided by Minnesota Housing (Form 104) specific to your housing proposal.

22. **Notification of Local Official Form (HTC 18).** Upon receipt of an application, as required by federal law, the Agency will notify the Chief Executive Officer 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.

23. **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.

24. **Rent Roll.** If existing development, provide the most recent rent roll.

25. **Planning and Development.** Submit evidence showing that the housing proposal is in compliance with the local comprehensive plan or city or regional master plan.

26. **Preliminary Architectural/Construction Requirements for New Construction.** 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. **Housing Tax Credit Design Standards/Review Process Certification** form from Minnesota Housing. Provide a completed form signed and dated by the developer and the architect; and
  - g. **Multifamily Intended Methods Worksheet** from Minnesota Housing. Provide a completed worksheet detailing how the applicant will comply with Green Communities Criteria and Minnesota Overlay with the Intent to Comply Certification signed by all parties.
27. **Scope of Work.** 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. Developments not required to complete a PNA or CNA are new construction projects, gut rehabilitation projects and adaptive re-use projects.

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.

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's Rental Housing Design/Construction Standards.

- b. **Housing Tax Credit Design Standards/Review Process Certification** form from Minnesota Housing. Provide a completed form signed and dated by the developer and the architect; and
- c. **Multifamily Intended Methods Worksheet** from Minnesota Housing. Provide a completed worksheet detailing how the applicant will comply with Green Communities Criteria and Minnesota Overlay with the Intent to Comply Certification signed by all parties.

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 Agency, it must be submitted to the Agency as soon as it becomes available. The Agency 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.

- 28. **Relocation Plan.** 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.
- 29. **Qualifications Forms.** Complete all of the following applicable forms from Minnesota Housing for purposes of evaluating organizational capacity:
  - Qualifications of Developer – Form 203A
  - Qualifications of Sponsor and/or Guarantor – Form 203B
  - Qualifications of Community Housing Development Organization – Form 203J
  - 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
  - Qualifications of Rental Rehabilitation Loan Administrator – Form 202A

30. **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).
31. **Release of Information Authorization Form (HTC 17).** Form to be completed by the developer/owner and if known, the management firm.
32. **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 Agency, in its sole discretion, has concerns or issues with the applicant’s provided appraisal, the Agency may require that the applicant obtain another appraisal from an Agency selected appraiser, at the applicant’s sole cost and expense.
33. **Evidence of Site Control.** 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 Agency will not accept applications from different applicants for the same site.
34. **Legal description of land.** Provide the legal description of the land (not property Tax ID Number) on a separate 8½ by 11 sheet of paper labeled “Exhibit A, Legal Description.”
35. **Location map.** Provide a legible map including major roads and cross streets which clearly identify the exact location of 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.
36. **Photographs.** 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).
37. **Utility Allowance Schedule.** Provide a current utility allowance schedule from the Agency. 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.).
38. **Management and Operating Expense Review and Underwriting Certification Form (HTC 29).** Submit a completed M&O Expense Review and Underwriting Certification and the following submittals, as applicable:
- a. Owner narrative summary supporting the proposed management and operating (M&O) number included in the application. The proposed M&O expenses should be based on the developer/management company's current portfolio and supported by:
    - Actual operating data provided by the developer/management company for similar developments.
    - Circumstances and/or significant changes to the economics of the development's current marketplace, such as increased utility costs and property insurance.
    - Operating trends of the developer or management company.
  - b. For new construction: Copies of year-end operating information from three comparable developments that have been in operation at least five years.
  - c. For existing developments: Copies of audited financial statements for at least three stabilized years.

39. **Credit Enhancement.** Developments seeking a boost in the eligible basis must provide evidence of the project's location in a QCT or DDA. For projects located in a QCT, submit evidence of a targeted geographic area for the community development initiative, a current implementation plan with goals or outcomes specific to the need identified by the initiative, and developments should demonstrate that affordable housing is a key strategy and there is active local stakeholder involvement. In addition, in order for a plan to be considered a concerted community revitalization plan, as defined in federal guidance, for purposes of the statutory preference, plans in a QCT should include a demonstrated strategy for obtaining a commitment of public or private investment (or both) in non-housing infrastructure, amenities or services. For Round 1 applicants not located in a QCT or DDA and requesting a basis boost, the applicant must submit a narrative request which clearly outlines the reasons supporting the request and clearly demonstrates how the proposal meets the Credit Enhancement Criteria (see Chapter 3.K).
40. **Average Income Set Aside Items.** For those projects that have elected the Average Income Set Aside, submit the following completed forms from Minnesota Housing:
  - a. **Income Average Election/Certification form.**
  - b. **Rent and Income Grid Income Averaging Test form.** The maximum number of increments is four.
41. **Other Documents.** Documents and instruments as are necessary and as may be required by the Agency. For Tax Credit projects financed by tax-exempt volume limited bonds applying for issuance of a preliminary determination letter, this includes, but is not limited to, the items listed in Chapter 8.B.
42. **Application Fee.** Submit a check for the appropriate application fee and Agency counsel fee. (See Chapter 9) Complete an Application Fee Remittance Form and attach with payment to top of application package.

## **B. Carryover Requirements**

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 Agency. One original carryover application should be mailed to the Agency and uploaded to the Box.com account. Late fees will be enforced. (See Chapter 9) Please refer to Minnesota Housing's website for additional important carryover information and related forms.

1. **Multifamily Workbook.** As part of your carryover application package, an updated Multifamily Workbook, must be submitted. An updated Excel version must be submitted. A printed and fully executed version of the Multifamily Workbook, with all changes from initial credit reservation application highlighted

and initialed, must also 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.

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 (Minnesota Housing 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 Agency 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 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 Agency prior to the deadlines established by Section 42 and by no later than the Agency submission deadline of **May 1, 2021**.\* Upon written request by the owner/applicant, the Agency will consider an extension to this deadline. The Agency will issue a written response to all extension requests. An extension until **October 1, 2021**\* will be the maximum allowable.  
  
(\*If not a business day, then the next 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. **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 Agency or similar entity if Rental Assistance points were awarded to the development. (Refer to the Rental Assistance section of the Agency's Self-Scoring Worksheet.)
9. **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 Agency 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.

10. **Fair Housing and Equal Employment Opportunity Forms.** It is the policy of the Agency 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** form from Minnesota Housing 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 race, color, creed, religion, national origin, sex, marital status, status as a recipient of public assistance, disability, familial status, or sexual orientation.
  - b. **Equal Employment Opportunity Policy Statement** form from Minnesota Housing.
11. **Tenant Selection Plan.** Provide a written Tenant Selection Plan describing the tenant selection policy that the owner will use. The Tenant Selection Plan must be reviewed and approved by the Agency prior to the issuance of Form 8609. See Minnesota Housing's Tenant Selection Plan Guidance.
12. **Smoke Free Buildings.** 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.
13. **Identity of Interest.** Provide a written disclosure as to any and all identity of interest parties. (See Chapter 3.G and H)
14. **Unit and Development Characteristics Profile Form.** Provide a completed form from Minnesota Housing indicating the unit counts and the related funding sources.
15. **Allocation Fee.** Submit the nonrefundable allocation fee and Agency counsel fee. (See Chapter 9) Complete an Application Fee Remittance Form and attach with the payment to top of application package.

### 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 Agency Form 8609 must contain the signature of the authorized Agency representative. The Agency will issue an approved IRS Form 8609 within 30 days after all the following items have been received by the Agency in a satisfactory form and substance. Issuance of the Agency approved IRS Form 8609 is to be done only by Minnesota Housing or the Agency. 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 Agency 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 Agency 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 Agency.

One original placed in service application should be mailed to the Agency and uploaded to the Box.com account. Both written and electronic materials should be individually indexed and submitted **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 copies of the temporary and final Certificates of Occupancy provided by the local governmental authority having jurisdiction for each building. The temporary Certificate of Occupancy is needed only if issued to determine date of initial occupancy. 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 schedule from the Agency. 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.).

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. The Agency must be included as a specified party intended to use the report under the Restriction on Use section.

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 Agency 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.** 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 Agency in addition to the signed Multifamily Workbook.

In the Cash Flow tab of the Multifamily Workbook, the cash flow pro forma must reflect required payment of deferred developer fees and the flow of funds as agreed upon in the Partnership Agreement.

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 Agency 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 Agency will consider them deferred developer fees, and for purposes of Tax Credit allocation, restrict the developer fees as specified in this Manual.
8. **Agency Declaration of Land Use Restrictive Covenants.** Provide a copy of the unrecorded Declaration in a format approved by the Agency. 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. For those projects that have elected the Income Average Set Aside, the Declaration must include the designation of imputed income limitations below 60%.
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 executed 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 Agency 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 Agency will not issue an IRS Form 8609 prior to the execution of final permanent loan documents, or its equivalent, for all funding sources. 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, if not previously provided.
12. **Management and Operating Expenses Review and Underwriting Certification (HTC 29).** Submit only if not previously submitted with initial application.
13. **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 Agency if Rental Assistance points were awarded to the development. (Refer to the Rental Assistance section of the Self-Scoring Worksheet.)
14. **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).
15. **Partnership Agreement.** Provide a copy of the executed final Partnership Agreement.
16. **Photographs.** Provide clear photographs of completed building(s) showing a representative sample of the building exterior, interior common spaces, and units.
17. **Building Map (HTC 28).** Provide a completed Building Map for each building with a current rent roll attached.
18. **Identity of Interest.** Provide a written disclosure as to any and all identity of interest parties. (See Chapter 3.G and H)
19. **Fair Housing and Equal Employment Opportunity Forms.** It is the policy of the Agency to take affirmative action to provide equal opportunity in all of its

endeavors. Submit only if not previously submitted or the plan has changed since submitted with a Carryover application. Complete, execute and return the following forms:

- a. **Affirmative Fair Housing Marketing Plan** form from Minnesota Housing 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 race, color, creed, religion, national origin, sex, marital status, status as a recipient of public assistance, disability, familial status, or sexual orientation.
  - b. **Equal Employment Opportunity Policy Statement** form from Minnesota Housing.
20. **Tenant Selection Plan.** Submit only if not previously submitted or the plan has changed since submitted with a Carryover application. Provide a written Tenant Selection Plan describing the tenant selection policy that the owner will use. The Tenant Selection Plan must be reviewed and approved by the Agency prior to the issuance of Form 8609. See Minnesota Housing's Tenant Selection Plan Guidance.
21. **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.
22. **Smoke Free Buildings.** 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. Submit only if not previously submitted or if policy has changed since Carryover application.
- 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.
23. **Design Certification.** Submit the two forms listed below to certify that the design standards were met:
- a. **Housing Tax Credits Design Standards/Review Process Certification form** from Minnesota Housing. Provide a completed form signed and dated by the developer and the architect, for recertification prior to issuance of 8609 Form.
  - b. **Multifamily Intended Methods Worksheet** form from Minnesota Housing. Provide a completed worksheet detailing how the applicant

complied with Green Communities Criteria and Minnesota Overlay with the Compliance Certification signed by all parties.

- c. **Certificate of General Contractor and Owner** form from Minnesota Housing. Provide a completed form certifying the close out of construction in accordance with Agency-approved plans and methods.
24. **Other Documents.** Provide such documents and instruments as are necessary and as may be required by the Agency.
25. **Allocation Fee.** Submit the non-refundable allocation fee, if not previously submitted at the time of carryover, and Agency counsel fee. (See Chapter 9) Complete an Application Fee Remittance Form and attach with the payment to top of application package.

## **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 volume limited 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 volume limited bonds were first allocated by the Minnesota Department of Finance to the issuer. If the tax-exempt volume limited bonds are initially issued on a short-term basis, the year the tax-exempt volume limited bonds are reissued on a long-term basis may occur any time after the year the tax-exempt volume limited bonds were allocated and the effective QAP will always be the QAP for the year in which the tax-exempt volume limited bonds were allocated.

Applicants may receive a predictive cost model prior to requesting preliminary determination via the pre-application process. Pre-application is strongly encouraged in order to receive a determination prior to seeking an allocation of bonding authority. Applicants must submit the predictive model determination document and will receive a predictive model determination letter upon approval. The predictive model determination letter will consist of Agency approval, expiration date of approval, the project's current percentage of the predictive model and project cap beyond which a Board waiver for per unit costs will be required. Developments with costs above the predictive model will be informed and, if required by the developer, will be presented to the Agency Board to determine if a waiver will be granted.

**Tax Credit applications must be submitted in the manner required by this Manual and must comply with the Agency's submission requirements.** All applicants must utilize forms supplied by the Agency or Minnesota Housing, where indicated. The application materials can be found on the Agency's Development Financing Tools web

page ([www.washingtoncountycda.org](http://www.washingtoncountycda.org)) and on the Minnesota Housing's Multifamily Common Application and Tax Credits web page ([www.mnhousing.gov](http://www.mnhousing.gov)).

The application and all required submissions must be complete and legible or the application will be returned. Prior to submitting, request a Box.com account, the tool for submitting electronic materials for a preliminary determination and subsequent placed in service application, by sending an email to [melissat@washingtoncountycda.org](mailto:melissat@washingtoncountycda.org). In addition to the submission of items through Box.com, one printed application should be submitted to:

Washington County Community Development Agency  
7645 Currell Boulevard  
Woodbury, MN 55125  
Phone: (651) 458-0936  
Email: [melissat@washingtoncountycda.org](mailto:melissat@washingtoncountycda.org)

All submission items must be separately indexed in the order presented on the appropriate checklist. DO NOT submit printed applications in three ring binders or with plastic casing around the pages. Submissions should be bound only by staples, binder clips, or rubber bands.

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**

An application for issuance of a preliminary determination letter may only be submitted following an allocation of a portion of the state ceiling for tax-exempt volume limited bonds. At least 30 days prior to the issuance of tax-exempt volume limited bonds in an amount sufficient enough to finance at least 50 percent of the aggregate basis of the building and land, the developer must submit to the Agency a full and complete application for issuance of a preliminary determination by the Agency pursuant to Section 42(m)(1)(D). See the QAP for additional details. The developer must submit to the Agency all documents required for an application for Tax Credits under Chapter 7.A of this Manual, the items listed below, and any additional information requested by the Agency.

1. **Election of Applicable Percentage.** Provide a written statement indicating the developer's preference to elect the applicable percentage at the time the tax-exempt obligations are made (month of closing) or at the time the building is placed in service.
2. **Building Identification Number (BIN) Request Form (HTC 31).** The applicant should submit a BIN Request Form (HTC 31) to the Agency to receive BIN numbers.

3. **Evidence of State Allocation of Tax-Exempt Volume Limited Bonds.** Provide evidence from the issuer of the bonds that the project received a portion of the state ceiling for the issuance of tax-exempt volume limited bonds from the State of Minnesota detailing the amount of bonds, date of allocation, and approval by entity that will issue the bonds.
4. **Bond Preliminary Determination Letter.** If the issuer of the bonds is not the Agency, 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. For developments electing the Average Income Set Aside, this letter or other documentation from the bond issuer must provide written approval referencing the specific Income Averaging rent and income designations.
5. **Gross Rent Floor Election Form (HTC 34).** Provide a fully executed Election of Gross Rent Floor form (HTC 34).

The developer must submit an Application Fee (See Chapter 9) at the time the application is submitted.

Based upon the submission of documents, the Agency 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 Agency counsel fee must be submitted to the Agency 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 volume limited bonds 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 volume limited bonds are issued. If the election is not made at the time the tax-exempt volume limited bonds 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 Agency 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 volume limited 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 Agency initially issues its preliminary determination letter to the building or the placed in service date. The election of one of the two timing options must be completed and the election form(s) received by the Agency 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 Agency 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 Agency 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 Agency, the owner must submit an application for the issuance of Form 8609 to the Agency. The application must contain those items as identified in Section G below titled Placed in Service. The developer must submit a Form 8609 fee based upon the requested annual Tax Credit amount and Agency counsel fee. (See Chapter 9)

**G. 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 volume limited bonds, 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 projects financed with tax-exempt volume limited bonds seek the appropriate legal and bond professional advice on these matters.

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

**Placed In Service applications must be submitted in the manner required by this Manual and must comply with the Agency's submission requirements.** All applicants must utilize forms supplied by the Agency or Minnesota Housing, where indicated. The application materials can be found on the Agency's Development Financing Tools web page ([www.washingtoncountycda.org](http://www.washingtoncountycda.org)) and on the Minnesota Housing's Multifamily Common Application and Tax Credits web page ([www.mnhousing.gov](http://www.mnhousing.gov)).

All submission items must be separately indexed in the order presented on the appropriate checklist. Submit one hard copy and upload indexed materials to the project's Box.com account:

1. **Transmittal Letter.** Provide a transmittal letter indicating the project name, address and Agency 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 copies of the temporary and final Certificates of Occupancy provided by the local governmental authority having jurisdiction for each building. The temporary Certificate of Occupancy is needed only if issued to determine date of initial occupancy. 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 Volume Limited Bond.** Submit evidence from the issuer of the bonds that the project received an approval of an allocation of a portion of the state ceiling for the issuance of tax-exempt volume limited bond from the State of Minnesota detailing the amount of bonds, date of allocation, and approval by entity that will issue the bonds.
4. **Utility Allowance Schedule.** Provide a current utility allowance from the Agency. 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.).
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. The Agency must be included as a specified party intended to use the report under the Restriction on Use section.

6. **Multifamily Workbook.** Provide an updated Multifamily Workbook 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 tax-exempt volume limited 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 Agency 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 Agency, and the legal description of the property financed with the tax-exempt volume limited 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 Agency will consider them deferred developer fees, and for purposes of Tax Credit allocation, restrict the developer fees as specified in this Manual.
10. **Agency Declaration of Land Use Restrictive Covenants.** Provide a copy of the unrecorded Declaration. 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. For those projects that have elected the Income Average 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 Agency following its review, must be provided to the Agency prior to the release of any Form 8609 to the owner.

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 volume limited 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 Agency on the project and the requirements of Article XII of the QAP.

13. **Final Loan or Grant Documents.** Provide copies of final executed 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, if not previously provided.
14. **Management and Operating Expenses Standards and Certification (HTC 29).**
15. **Governmental Assistance and/or Rental Assistance.** If not previously provided as part of the Preliminary Determination Letter 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 Agency if Rental Assistance points were awarded to the development. (Refer to the Rental Assistance section of the Self-Scoring Worksheet.)
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) showing a representative sample of the building exterior, interior common spaces, and units.
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 Agency 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** from Minnesota Housing 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 race, color, creed, religion, national origin, sex, marital status, status as a recipient of public assistance, disability, familial status, or sexual orientation.

- b. **Equal Employment Opportunity Policy Statement** from Minnesota Housing.
21. **Tenant Selection Plan.** Provide a written Tenant Selection Plan describing the tenant selection policy that the owner will use. The Tenant Selection Plan must be reviewed and approved by the Agency prior to the issuance of Form 8609. See Minnesota Housing's Tenant Selection Plan Guidance.
  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.B.
  23. **Smoke Free Buildings.** 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. **Design Certification.** Submit the two forms listed below to certify that the design standards were met:
    - a. **Housing Tax Credits Design Standards/Review Process Certification form** from Minnesota Housing. Provide a completed form signed and dated by the developer and the architect, for recertification prior to issuance of 8609 Form.
    - b. **Multifamily Intended Methods Worksheet** form from Minnesota Housing. Provide a completed worksheet detailing how the applicant complied with Green Communities Criteria and Minnesota Overlay with the Compliance Certification signed by all parties.
    - c. **Certificate of General Contractor and Owner** from Minnesota Housing. Provide a completed form certifying the close out of construction in accordance with Agency-approved plans and methods.
  25. **Other Documents.** Provide such documents and instruments as are necessary and as may be required by the Agency.
  26. **Form 8609 Fee.** Submit the non-refundable Form 8609 fee and Agency counsel fee (see Chapter 9), along with a completed Fee Remittance Form and attach with the payment to the top of application package.

## **Chapter 9 – Fees**

### **A. Application Fee**

An \$800.00 application fee must be submitted with all initial applications for Tax Credits. The fee is non-refundable. For multi-building projects, the Agency 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 Agency. 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 Agency 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. Agency Counsel Fee**

The applicant shall pay non-refundable fees of the Agency'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 Agency for legal fees in excess of this amount and other legal costs incurred. (See Section J below)

**F. Preliminary Determination Fee**

A preliminary determination fee must be submitted to the Agency 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. Form 8609 Fee**

An IRS Form 8609 fee must be submitted at the time of application to the Agency 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 Agency or its designee will charge an annual monitoring fee of \$60 per unit, based on the total number of units, with a minimum fee of \$600. This fee may be increased depending upon the requirements of the U.S. Treasury, IRS or increased costs of the Agency. The fee will be due in a manner and time as prescribed by the Agency or its designee. Failure to pay the fee will result in the Agency notifying the IRS that the project is out of compliance.

During the extended use period required by Code Section 42(h)(6), the Agency will charge a monitoring fee of \$35 per unit per year, based on the total number of units in the project, with a minimum fee of \$350 as set forth in the Agency'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 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 Agency 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 \$35 per unit per year monitoring fee.

The unit inspection fee (\$60) is charged for all units inspected and/or tenant files reviewed for a first year project, subject to the minimum fee of \$900. See also the Agency's Compliance Manual, Section C, related to monitoring fees for new tenant file reviews.

**I. Transfer of Ownership Fee**

All changes in ownership must be approved by the Agency. If the transfer occurs prior to a date five years after the project's new construction/rehabilitation placed in service date, a non-refundable transfer of ownership fee of \$2,500 must be submitted to the Agency 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 Agency. See Chapter 3.E Unacceptable Practices for further details on transfer of ownership.

**J. Reimbursement of Agency**

In addition to the foregoing fees, a developer shall reimburse the Agency upon request for any out-of-pocket costs, including, but not limited to costs for legal counsel incurred by the Agency 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 Agency reserves the right to adjust fees due to changing circumstances to cover its costs associated with producing and delivering the Agency'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, specified throughout and those with "HTC" in the form name, and Reference Materials.