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**MINNEAPOLIS/SAINT PAUL HOUSING FINANCE BOARD**

*2017 LOW INCOME HOUSING  
TAX CREDIT PROCEDURAL MANUAL*

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## I. INTRODUCTION

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

The Minnesota Housing Finance Agency (the "MHFA") has been designated by the Minnesota Legislature as the primary allocator of LIHC in Minnesota. In addition, pursuant to Minnesota Statutes, Sections 462A.220 to 462A.225 (the "Act") certain local governmental entities are authorized to act as housing credit agencies for the purpose of allocating a portion of the available state cap. Pursuant to the Act, the City Councils of the Cities of Minneapolis and Saint Paul have authorized the Minneapolis/Saint Paul Housing Finance Board (the "Board") to act as the housing credit agency for purposes of Section 42 of the Code with respect to the portion of the state cap for which each such city is eligible. Pursuant to the Act, the Board is authorized to allocate an estimated \$1,223,745 of LIHC for Minneapolis and \$755.842 of LIHC for the City of Saint Paul for calendar year 2017.

Section 42 of the Internal Revenue 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. The Allocation Plan (attached as Exhibit A) combines federally legislated priorities with other priorities established by the Board. The Allocation Plan and this Procedural Manual provide a system for the allocation of tax credits. The Allocation Plan and this Procedural Manual are subject to modification or amendment to ensure that their provisions conform to the changing requirements of Section 42 and the applicable state statutes.

Several changes to Section 42 of the Internal Revenue Code were included in legislation passed by Congress in December 2000 as part of the Community Renewal Tax Relief Act of 2000. The Board's amended Tax Credit Procedural Manual includes these changes. However, no guidance has yet been issued by the IRS with respect to these changes. It is possible that IRS guidance will require a further review of selected developments.

The Board is also required to monitor LIHC projects during the Compliance Period as well as notify the Internal Revenue Service (the "IRS") of any noncompliance with the requirements of Section 42 of which it becomes aware. All applicants should review the proposed IRS Rules for Monitoring Compliance attached hereto (Exhibit Q).

**The information summarizing the LIHC program is provided as a brief overview. It is not comprehensive and should not be relied upon for income tax purposes. Individual applicants and investors are solely responsible for compliance with Section 42.**

The Board is under no obligation to undertake an investigation of the accuracy of the information submitted in an application. The Board's review of an application (development) 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 LIHC 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 LIHCs by the

Board 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 Board and to request a reexamination of the application.

This manual is provided solely for use in applying for the low income housing tax credits from the Board and may not be relied upon in structuring or investing in specific transactions, compliance with the Internal Revenue Code, Treasury Regulations or any other laws or regulations governing low income housing tax credits. Interested parties should consult with a knowledgeable tax professional prior to entering into any commitment concerning the use and claim of low-income housing tax credits.

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

The Board, as a suballocator of tax credits, is authorized by the legislature to allocate and monitor tax credits to eligible projects within the Board's jurisdiction in Round 1 of competition. The Board will be guided in allocating credits by the City of Minneapolis and the Community Planning & Economic Development (CPED) for projects in Minneapolis and by the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota (the "HRA") for projects in Saint Paul. Any tax credits which CPED or HRA do not intend to allocate on the basis of applications received in the first round of allocations will be returned to the MHFA to be available in subsequent rounds. After Round 1, projects located in the Board's jurisdiction may apply directly to the MHFA.

The MHFA will ask the suballocator for comments regarding any project that falls within a suballocator's jurisdiction after Round 1.

## **III. POLICIES AND PROCEDURES**

### **A. Allocation Policies:**

1. The Board shall act as the designated housing credit agency on behalf of the Cities of Minneapolis and Saint Paul.
2. The Board's aggregate allocation will be divided between the Cities as follows:
  - (a) The HRA and CPED shall each administer, reserve and allocate that portion of the Board's total allocation equal to the Cities' LIHC apportionments pursuant to the formula established under existing State law.
  - (b) Should a City not be able to use its portion of the Credit apportionment, it may share its apportionment with the other City.
  - (c) The City of Minneapolis or HRA as applicable must approve a resolution validating the sharing of Credits with the other City.
  - (d) Upon approval by the City Council of the City of Minneapolis (the "Minneapolis Council") or HRA as provided in the immediately preceding paragraph, the Board hereby authorizes the sharing arrangement between the Cities and shall maintain a record thereof.

3. Applicants for LIHC must apply to the Department of Planning and Economic Development of the City of Saint Paul (or any successor department which provides staff assistance to the HRA) ("PED") for development proposals located in Saint Paul and to CPED for project proposals located in Minneapolis.

**B. Application Cycle:**

CPED and the HRA will each accept applications for their respective cities in accordance with the Allocation Plan attached as Exhibit A. The closing date for receipt of applications by CPED is June 30, 2016 and HRA is June 30, 2016.

Beginning in 1999, the allocation procedure for housing tax credits was converted from three funding cycles to two funding cycles annually, beginning with the 1999 tax credit allocations. Project selection and reservation of credits now takes place in the fall of the previous year, so that tax credit developers can begin construction in the spring.

In the Spring Round, MHFA will offer for allocation, credit authority remaining or returned since the Fall Round. Additionally, the Spring Round will establish a waiting list for credits that may be returned by projects that are not able to complete carryover requirements by November 1<sup>st</sup> of the allocation year.

Sponsors applying to CPED or HRA for the credits must submit to the respective agency four copies of the Low Income Housing Tax Credit Application (MHFA Form LIHC-1) and required exhibits, one which shall be original typed, signed and dated, together with the application fee. It is the applicant's responsibility to submit a complete application. The City of Minneapolis and the HRA will base their selection decisions upon the application and exhibits received on the application due date.

**If the application and all required exhibits are not legible and complete, the application will be returned. No applications, exhibits, documentation or application fees will be accepted after the application due date unless requested by CPED or HRA.**

Applications will not be accepted by fax.

Applications should be submitted to:

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

Or

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

Upon receipt of an application, as required by federal law, the Board will notify the Chief Executive Officer of the local jurisdiction where the proposed project is planned. This notification will include characteristics of the proposed LIHC project and provide an opportunity for the local government to comment on the project.

**C. Multiple Buildings:**

Projects may include "multiple buildings" having similarly constructed housing units, provided the buildings are located on the same tract of land, are owned by the same person for Federal income tax purposes and are financed pursuant to a common plan of financing. Scattered site buildings not on the same tract of land will also qualify if the project meets all of the other requirements described above and the project is 100 percent rent restricted.

**D. Transfer of Ownership:**

The Board strongly discourages the transfer of ownership in projects that have been awarded tax credits. The Board feels that for the long term viability of quality housing, the development and management teams making the decisions in developing the tax credit housing need to also own and operate the development for the long term. Any transfer of title of a selected project or transfer of more than 50% in the composition of general partner interests or change in a nonprofit partner prior to a date 2 years after the project has been placed in service will be considered a material change in the project and will be subject to the approval of the Board. Sponsors wishing to change or transfer ownership must submit a revised application along with a completed and executed Transfer Of Interest Form (LIHC-27 Exhibit N) and a transfer of interest fee (see Section VIII) to CPED or HRA and any other documentation that the Board deems necessary.

Any change or transfer of ownership prior to two years after the placed in service date will have an effect on all individuals/entities that wish to submit applications in future LIHC competitions. Each and every member of the project and management team on each side of the transfer will be penalized as follows:

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

- First Transfer (-10 points on each submittal)
- Two or More Transfers (-25 points on each submittal)

If the Board becomes aware of an individual's/entity's transfer of ownership without proper notification and approval by the Board, the Board will ban all parties involved in the transfer from the Board's LIHC Program for a period of 10 (ten) years.

**E. 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 as submitted in the application require written notification to and approval from CPED or HRA, as applicable, and the Board.

**F. 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. This disclosure is required for all parties.

**G. Disclosure of Interest:**

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

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

The following significant parties are ineligible to participate in the Tax Credit Program.

1. Significant parties who have been convicted of, enter an agreement for immunity from prosecution from, or plead guilty, including a plea of nolo contendere, to: a crime of dishonesty, moral turpitude, fraud, bribery, payment of illegal gratuities, perjury, false statement, racketeering, blackmail, extortion, falsification or destruction of records are ineligible.
2. Significant parties who are currently debarred from any Minnesota program, any other state's program, or any federal program are ineligible.
3. Significant parties who have significant and persistent compliance monitoring violations are ineligible at the sole discretion of CPED or HRA.
4. Significant parties having an Identity of Interest with persons or entities falling into any of the above categories may not be eligible at the sole discretion of CPED or HRA.

**H. 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 Board 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 project selection criteria, including marketability, CPED, for projects in Minneapolis, and the HRA, for projects in Saint Paul, will evaluate each proposed project, taking into consideration:

1. Development costs, including: developer fees, builder's profits, contractors overhead, and general conditions.



2. All sources and uses of funds.
3. Projected income and expenses.
4. Proceeds expected to be generated from the sale of tax credits, including historic tax credits.
5. 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, CPED and HRA, respectively, will estimate the amount of credit to be reserved for each application. This determination is made solely at CPED's or HRA's discretion and is in no way 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 variables in cost, mortgage amount, tax credit percentage, syndication proceeds, etc. The Board will make reservations for credits on the recommendations of the City of Minneapolis and the HRA, as applicable.

This analysis to determine tax credits necessary will be done at the time of application, at the time a carryover allocation is approved, and at the time the project is placed in service, provided all project costs are finalized and certified.

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

**I. Requests for Additional Credit Amounts:**

Developers which have carryover credit allocations from a prior year may be eligible to apply for increases in tax credit amounts if there are increases in project costs (in the year in which credits are initially reserved and in subsequent years) which result in increases in eligible basis. The increase must be as a result of justified changes to the project.

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

In both of the above cases, applications requesting increases in tax credit amounts will be subject to the same evaluation process described above and to the availability of credits. Sponsors wishing to revise and resubmit their application must also submit an additional application fee to CPED or HRA, as applicable.

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

Federal law permits, but does not require, the Board to reserve a greater amount of credits than the legislated maximum credit percentage for projects in areas that meet the following criteria:

1. Qualified census tracts designated by HUD in which 50 percent of the population has an income of less than 60 percent of the area median where such areas do not comprise more than 20 percent of the overall area population, or has a poverty rate of at least 25 percent; or
2. Difficult development areas designated by HUD as having high construction, land, and utility costs relative to area median income.
3. Pursuant to IRC 42 (d)(5)(C)(v), any building which is designated by the State housing credit agency as requiring the increase in credits under this section in order for such building to be financially feasible as part of a qualified low-income housing project shall be treated for the purposes of this section as located in a difficult development area. The preceding sentence will not apply to buildings that need more credits than the actual credit amount allocated to the Suballocator by Minnesota Housing Finance Agency for projects in Saint Paul and Minneapolis.

It is the goal of CPED and the HRA to optimize the use of all available sources of funding for multifamily developments; including private investor equity, amortizing loans and deferred loans to produce the maximum number of affordable rental units in the most sustainable, equitable, cost-effective, and geographically diverse developments possible which meet CPED and HRA strategic priorities. Consistent with this goal, the following criteria will be used to determine if, when, and in what amount, CPED or HRA will provide a basic boost for housing tax credit developments on a building by building basis to attain financial feasibility.

Development must meet CPED or HRA identified housing priorities by competitive tax credit score, and involve community revitalization, preservation of existing federally-assisted buildings, housing with rents affordable to households at or below 30 percent of median income, including homeless households with supportive services, or in response to significant proposed expansions in area employment or natural disaster recovery efforts,

- a) Funding gaps remain for top ranking tax credit developments.
- b) Credits allocated in connection with basis boost shall be no more than needed to achieve financial feasibility.

Requests must be made formally in writing and should clearly outline the reasons for supporting the request and demonstrate how the proposal meets the criteria established by CPED or HRA for receiving boost considerations.

**K. Reservations:**

1. Once staff of CPED and the HRA, respectively, has ranked applications and determined allowable credit amounts for each application, staff will make recommendations to the City Council, in Minneapolis, or the HRA, in Saint Paul, and to the Board for final approval of the reservation of credits. Each reservation shall be conditioned upon receipt of written certification and evidence of timely progress toward completion of the project acceptable to CPED and HRA, respectively, and evidence of compliance with federal tax credit requirements. Refer to Section VI.B. for Board reservation requirements.
2. The Minneapolis City Council and the Board reserve the right not to commit tax credits for any project if it is determined, in the sole discretion of the Minneapolis City Council that a reservation for such project does not further the purpose and goals set forth in the City of Minneapolis Comprehensive Plan and Directions Framework. The HRA and the Board reserve the right not to commit tax credits for any project if it is determined, in the sole discretion of the HRA that a reservation for such project does not further the purpose and goals set forth in the Housing Chapter of the Saint Paul Comprehensive Plan. Refer to Section VI and the Allocation Plan for the Board's Development Selection Procedures and Criteria.
3. Within ten (10) days after a Minneapolis Council/HRA Board decision to deny an applicant credits, staff will notify the applicant in writing of the reason for denying the commitment or allocation of credits.
4. The reason(s) the commitments or allocation of credits may be denied include but are not limited to the following:
  - (a) Falsifying information on the application or misrepresentation of the applicant; or
  - (b) Past, outstanding, current or pending litigation against the applicant or principals which may pose a liability to the proposed project; or
  - (c) Judgments against the applicant or principals regarding bankruptcy, loan default, mechanic's lien, tax liens or non-payment of bills; or
  - (d) Applicant incompetence or inadequate past performance regarding the subcontracting or completion of work, timely completion of projects, or financial wherewithal to undertake the proposed project; or
  - (e) Proposed project does not qualify for Credits pursuant to the Tax Reform Act of 1986 under Section 42 of the Internal Revenue Code of 1986, as amended or under applicable State law; or
  - (f) The project does not qualify for credits under the applicable priority selection policies and procedures described in this Procedural Manual; or

- (g) The project does not meet the minimum threshold criteria; or
- (h) The HRA or Minneapolis Council determines that significant comments by the Mayor or Neighborhood Group or Citizen Participation District are not adequately addressed by the developer.
- (i) Available credits have been committed or allocated to other projects for the respective credit allocation year.
- (j) The proposed project costs for rehabilitation exceed current comparable projects and are unreasonable.

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

5. A written explanation for any allocation of credit that is not made with the established priorities and selection criteria from the Board's Qualified Allocation Plan will be made available to the general public.

**L. Administration Errors:**

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

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

**M. Allocation of Returned Credits – Waiting List:**

With respect to the commitment by CPED or HRA, and the Board, of any returned credits or increased credits allocated to the Board by the MHFA, a waiting list shall be established. Projects which will be placed on such waiting list will include (1) projects which received some, but not all of the credits which they requested because of the unavailability of sufficient credits; (2) projects which received all of the credits which were requested at the time of initial application, but have determined that additional credits will be needed; and (3) project which were eligible to receive credits, but did not receive any because of its low selection point ranking. Projects in the first category will be placed first on the waiting list in the order of each project's selection point rankings within that group. Following that, projects in the second group will be placed on the waiting list in the order of each project's selection point rankings within that group. Finally, projects in the third group will be placed on the waiting list in the order of each project's selection point rankings within that group. Generally, projects will be chosen in the order they are shown on the waiting list; however, depending on the time and funds available, CPED and the HRA reserve the right to make modifications to their waiting lists. CPED and the HRA may request updated or additional application documentation prior to making an award to a project on the waiting list. If either CPED or the HRA are unable to allocate all of the returned credits or increased credits, it may share its apportionment with the other City pursuant to Article VI of the QAP. If both cities are unable to allocate all of the returned credits or increased credits, those credits will be returned to the MHFA.

With respect to any returned credits, CPED and HRA, for their respective city, will maintain eligible applications on waiting lists until the end of the year in the event that CPED or HRA received returned credits. For projects in Minneapolis, the waiting list will follow CPED's selection point ranking. For projects in Saint Paul, the waiting list will follow HRA's selection point ranking. Generally, the projects will be chosen in order; however, depending upon time and funds available, CPED or HRA 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 credit by the end of the calendar year, 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.

**N. Carryover Allocations:**

Federal law provides that the Board may give a carryover allocation to certain qualified building(s) which are to be placed in service no later than December 31 of the 2nd year after the initial reservation. To receive a carryover allocation, the owner must submit three copies of a complete carryover application package to the HRA or CPED no later than November 1 of the allocation year for which the reservation was issued. Recent changes in the housing tax credit allocation law require 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 six months after the date that the allocation is made or the close of the calendar year for which the allocation was

made. However, the carryover allocation must be executed prior to December 31 of the allocation year for which the reservation was made. For a carryover agreement to be valid, it must include, among other things, the amount of 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 six months after the date that the allocation is made or the close of the calendar year for which the allocation was made. An estimate of the 10-percent expenditure must be certified by an independent CPA no later than November 1 of the allocation year for which the reservation was made. Additional carryover requirements are set forth in Section VII.B.

Several changes to Section 42 of the Internal Revenue Code were included in legislation passed by Congress as part of the Community Tax Relief Act of 2000. These amendments made certain changes to the Carryover Allocation requirements. However, no guidance has yet been issued by the IRS. The Board's carryover procedures will likely be modified to further conform with the new laws when sufficient guidance is received from the IRS. The final carryover procedures will be included in the carryover package for owners of selected developments at the appropriate time.

**O. Final Allocations:**

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

If an owner of a tax credit project 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 8609 must be obtained prior to year-end of the allocation year for which the reservation was issued. The tax credit application for issuance of such 8609's must be submitted to MHFA on or before November 1 of the allocation year for which the reservation was issued. A project that has neither received a carryover allocation nor has been placed in service and issued appropriate 8609's before December 31<sup>st</sup> of the year of allocation will lose its entire reservation of credits.

The tax credit amount which will be allocated is based on the Board's final determination of the qualified basis for the building or project and a review of the project costs as outlined in Section VII.C, which shall in turn be based on a determination made by the City of Minneapolis or the HRA, as applicable. 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 a Declaration of Restrictive Land Use Covenant (Exhibit R) which must be effective for the term of the previously agreed upon extended use period.

**P. Monitoring for Compliance:**

Federal law requires that the Board provide a procedure to be used in monitoring for noncompliance with the Code and of notifying the Internal Revenue Service of such noncompliance. The Board is required to apply the monitoring procedure to all tax credit projects developed since the inception of the Low Income Housing Tax Credit Program. The Board shall perform such duties in accordance with its Low income Housing Tax Credit Monitoring Plan, a copy of which is available upon request from the Board.

1. All tax credit recipients shall submit an annual certification to the Board in a manner, form, and time established by the Board. The certification will include, but is not limited to, the number of units set aside, tenant name(s), household information, rents, utility allowance or cost, amount and sources of income, and unit information.
2. The Board will conduct its first 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.
3. The owners of at least 50% of all low-income housing projects in each of the Cities must submit to CPED or to the HRA, as applicable, or their designee, for compliance review a copy of the annual income certification, the documentation the owner has received to support that certification, and the rent record for each low-income tenant in at least 20% of the low-income units in their projects.
4. The Board 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 Board and its designee shall have access to all official project records, including IRS reporting forms, upon reasonable notification. All official project records or complete copies of such records must be made available to the Board upon request.
6. Please see Section VIII Rents Paragraph F for a summary of Compliance Monitoring Fees.
7. The Board will promptly notify the IRS of any project noncompliance within its responsibility as contained in the Code. The Board has no jurisdiction to interpret or administer the Code, except in those instances where specific delegation has been authorized.

Beginning in 2001, the HRA and CPED will allow properties with 100% tax credit units to apply to the IRS for a waiver from re-certifying existing tenant incomes annually. This frees the owner from obligations to provide annual re-verification of income for existing tenants. Certifications for new tenants, changes in households, student status, and other monitoring procedures will still be required. Only buildings

that have been placed in service for at least one year, have no other legal obligations to verify tenant incomes, are in good standing with the Board and have no outstanding items of noncompliance are eligible for a waiver.

To apply for this waiver, eligible owners should submit a request to the HRA or CPED in accordance with the Tax Credit Monitoring Plan. Owners who request the waiver must have a Board-approved contractor certify to the Board that current monitoring records are up to date and in compliance with Section 42 of the federal code. Once this certificate is received, the HRA or CPED will forward the waiver request to the IRS. All waivers will be granted or denied solely by the IRS.

**Q. Qualified Contract**

Provided that owner did not waive such rights in the Land Use Restrictive Covenants, Section 42(h)(6)(E) of the Internal Revenue Code allows the extended use period to terminate after the original 15 year compliance period, if the housing credit agency (HRA or CPED) is unable to present a qualified contract for acquisition of the Tax Credit property by any persons who will continue to operate the Tax Credit property as a qualified low income building. The housing credit agency has a one year period to respond to a formal request from the owner.

Pursuant to IRC Section 42(h)(6)(E), any owner's request for a qualified contract from CPED or HRA acting on behalf of the Minneapolis/Saint Paul Housing Finance Board must comply with the following

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



8. CPED or HRA will require the owners pay a non-refundable fee of \$5,000 for processing a qualified contract request.

Any owner's request for a Qualified Contract with expiring compliance periods must also comply with the State of Minnesota Housing Tax Credit Qualified Allocation Plan and the Qualified Contract Process Guide and owner must submit evidence of the same to CPED and HRA. CPED for Minneapolis projects and HRA for Saint Paul projects shall each undertake this function as requested by the owner referencing the Minnesota Housing Finance Agency as the guidelines.

**R Other Conditions:**

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

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

A written explanation will be made available to the general public for any allocation of a housing tax credit dollar amount that is not made in accordance with the Board's established priorities and selection criteria.

**S Revisions to the Manual and Allocation Plan:**

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

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

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

**IV. FEDERAL PROGRAM REQUIREMENTS**

**A. Eligible Activities:**

Eligible activities for tax credits include new construction, 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 buildings are federally subsidized.

*New Buildings and Qualifying Rehabilitation Expenditures (if neither is federally subsidized):* With respect to new buildings or qualifying rehabilitation 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.

*New Buildings and Qualifying Rehabilitation Expenditures Which are Federally Subsidized and Existing Buildings:* With respect to new buildings and qualifying rehabilitation which are federally subsidized, and with respect to 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.

*Qualifying Rehabilitation:* Rehabilitation expenditures qualify for the credit if the expenditures:

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) \$5,000 per low income unit; or
  - (b) An amount which is not less than 10 percent of the adjusted basis of the building, as determined pursuant to Section 42(E)(3).

It is not necessary to acquire an existing building to incur qualifying rehabilitation expenditures with respect to that building. However, in the case of acquisition and rehabilitation, the cost of acquiring the existing building may be eligible for the 30 percent present value credit and the rehabilitation expenditures may be subject to the 70 percent present value credit.

*Existing Buildings:* In order for an existing building to qualify for the 30% credit in connection with substantial rehabilitation, there must have been a period of at least 10 years, between the date the building was acquired and:

1. The date it was last placed in service; or
2. The date of its most recent nonqualified substantial improvement, whichever is later (See Section 42(d)(2)).

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

*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 a financing which is tax exempt under Section 103 or there is a "below market Federal Loan", the proceeds of which were used (directly or indirectly) with respect to the building or the operation thereof.

Section 42(i)(2) lists certain types of assistance which it states to be below market Federal Loans and provides for certain exceptions. In addition, there have been Revenue Rulings in this area.

HOME Investment Partnership Program ("HOME") or Native American Housing Assistance and Self Determination Act of 1996 ("NAHASDA") dollars are not considered federal subsidy as long as at least 40% of the units in the proposed property are occupied by individuals whose income is 50% or less of area median gross income ("AMGI").

Assistance derived from federal grants such as HODAG or UDAG will not be treated as a federal subsidy, but must be subtracted from the qualifying basis.

Section 8 rental "certificate" or "voucher" subsidy and funds received through the Community Development Block Grant Program ("CDBG") are not considered to be a federal subsidy.

Under the Federal Home Finance Board ("FHFB") Affordable Housing Program, established in 1989, Federal Home Loan Banks are able to make subsidized advances to member banks which are in turn to be used for affordable housing projects in its area. The Treasury Department has ruled that for tax credit purposes, loans provided by the FHFB will **not** be considered as federal loans. Thus a FHFB below-market rate loan with an interest rate lower than the Applicable Federal Rate (AFR) will be eligible for the 70 percent tax credit percentage rate for new construction or rehabilitation expenditures rather than the 30 percent rate.

Federal grants are excluded from basis in determining the amount of credit, but do not otherwise affect the availability or amount of the credit.

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.

Any type of tax-exempt financing provided by state or local governments, the interest on which is exempt from Federal taxation under the Internal Revenue Code, is also considered a federal subsidy.

Section 42(b)(2)(A) and (B) of the Internal Revenue Code establishes a **temporary** minimum credit rate for non-federally subsidized buildings. In the case of any new building which is placed in service by the taxpayer after July 30, 2008 and before December 31, 2013, and which is not federally subsidized for the taxable year, the applicable percentage shall not be less than 9 percent.

**Those preparing an application for tax credits are strongly cautioned to carefully evaluate the Applicable Percentage anticipated for the**

**proposed project and the date on which its buildings are expected to be placed in service. As stated above, Section 42(b)(2) of the Internal Revenue Code, establishes a temporary 9 percent minimum credit rate for certain non-federally subsidized new buildings placed in service BEFORE DECEMBER 31, 2013.**

**Depending upon the Applicable Percentage assumptions you choose to use in your project's application, and the Applicable Percentage elections you may make at a time of credit Reservation, placing a building in service on or after December 31, 2013 may have very significant impacts upon the financial viability of your project. A 9 percent Applicable Percentage may not be available to a building if it is placed in service on or after December 31, 2013.**)

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

**C. Review of Federally Assisted Projects:**

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

**D. Federal Subsidy Layering Review:**

Section 911 of the Housing and Community Development Act of 1992 requires that specific procedures be followed for subsidy layering review when tax credits and HUD assistance are combined in a single project. Sponsors of projects which combine HUD assistance and tax credits should be aware that subsidy layering review must be completed for their projects and should contact CPED or HRA to receive additional information prior to submitting their applications. Federal Subsidy Layering Reviews, as required by HUD, will be completed in accordance with the Federal Register dated February 25, 1994.

**E. Project Eligibility:**

The purpose of the low income housing 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 tests:

*20/50 Test:* To meet the 20/50 Test, a minimum of 20 percent of the residential units must be both rent restricted and occupied by individuals whose income is 50 percent or less of area median gross income ("AMGI") (as established for different geographical areas by the U.S. Department of Housing and Urban Development) adjusted for family size; **OR**

*40/60 Test:* To meet the 40/60 Test, a minimum 40 percent of the residential units

must be both rent restricted and occupied by individuals whose income is 60 percent or less of AMGI adjusted for family size.

Once made, the choice between the 20 percent at 50 percent formulation and the 40 percent at 60 percent formulation is irrevocable. 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.

**F. 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, a reduction in basis, or recapture of tax credits.

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

1. One individual in the case of a studio apartment; and
2. 1.5 individuals per bedroom in the case of a unit with one or more separate bedrooms.

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

"Gross rent" means all payments by the tenant, including payments to the owner for utilities other than telephone. If the tenant pays utilities directly, the maximum rent that can be paid to the landlord is reduced by a utility allowance determined in accordance with rules under Section 8 of the U.S. Housing Act of 1937 ("Section 8"). For a building that is not assisted by HUD the building owner may use either the applicable Public Housing Authority (PHA) utility allowance or the owner may obtain a letter from the local utility company providing the estimated cost of that utility for each unit of similar size, construction, and geographic area. See Notice 94-60 and §1.142-10 of the Treasury Regulations attached as Exhibit G for more detailed information.

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

**G. 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 AMGI if the 20/50 Test is elected, or 60 percent of AMGI if the 40/60 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 as shown on Exhibit O. Note that the percent of eligible units must match the applicable fraction.

Units are not eligible for the tax credits if they are occupied entirely by students who do not file a joint income tax return. Exceptions to this rule are:

1. Unmarried students who are aid-for-dependent-children (AFDC) recipients or single parents and their children, as long as neither parent nor children are dependents of another individual.
2. Units occupied by students enrolled in a job training program under the Job Training Partnership Act or a similar federal, state, or local program or receiving assistance under Title IV of the Social Security Act will not be disqualified from the program because of this enrollment.

#### **H. 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 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 is increased for new buildings and substantial rehabilitation to existing buildings that are located in designated qualified census tracts and difficult development areas.
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 square foot cost 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 (or units) from the 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 made available on a comparable basis 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 qualified census tract. The eligible basis of that facility must not exceed 10 percent of the total 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. No guidance has been issued by the IRS with regard to community service facilities. The Board's Procedural Manual may have to be modified further to conform to the new tax credit laws when the IRS issues guidance.

5. Eligible Basis is reduced by federal grants, residential rental units which are above the average quality standard of the low-income units, any historic rehabilitation credits, and nonresidential rental property.
6. Buildings located in areas designated as a "qualified census tracts" or "difficult development areas" may be eligible for an increase in allowable basis.

**I. Qualified Basis/Applicable Fraction:**

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. 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 of floor space of the low-income units in the building divided by the total floor space of the residential rental units in the building.

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

**J. 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 Credit Rate. However, Section 42(m)(2) requires the Board to limit the amount of the 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 Board analysis reveals the project would still be feasible with fewer tax credits.

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

**K. Declaration Of Land Use Restrictive Covenants:**

Prior to an allocation of Section 42 tax credits, a building must be subject to a Declaration of Land Use Restrictive Covenants (Declaration) between the owner and the Board, through which the owner commits the building to low income use for a period of at least 15 years after the conclusion of the 15-year compliance period (a total of 30 years).

During the extended use period, the Declaration terminates only upon foreclosure of the building. For a period of three years after termination of the Declaration, the owner may not evict existing low income tenants (other than for good cause) and may not increase the gross rent of low income units.

The Declaration must be recorded as a restrictive covenant and submitted to the Board prior to the Board issuing the allocation 42(h)(6) and may include additional rent restrictions and occupancy requirements placed upon the building at the time of reservation.

Non-compliance with these additional conditions will result in a permanent ban on future allocations of tax credits for all parties involved.

**L. Ineligible Properties:**

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

Any building that receives Section 8 Moderate Rehabilitation Assistance at any time during the minimum 15-year compliance period is ineligible for the Tax Credit. Projects that receive assistance under the Stewart B. McKinney Homeless Assistance Act are eligible, as provided in Section 42(c)(2)(B).

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

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

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



**M. Limits On Credits:**

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

**N. Volume Limits:**

Each state is limited to the amount of tax credits it may allocate annually. The 2016 volume limits for the Cities to be allocated by the Board are as follows:

**Minneapolis - \$1,223,745**  
**Saint Paul - \$755,842**

Projects with tax-exempt bond financing, which are subject to a separate volume limitation, are not counted against the state volume limit. See the Allocation Plan for further details.

**O. Market Review**

The applicant must submit a comprehensive market review of the housing needs of low-income individuals in the area served by the project. The review must be conducted before the credit allocation is made and at the developer's expense by a disinterested party who is approved by the Board.

**P. Tenant Ownership**

The Board will review projects incorporating tenant ownership provisions in accordance with Section 42(h)(6) and IRS Revenue Ruling 95-49. It is the responsibility of the applicant to provide the Board with any additional information or clarification as may be necessary.

**Q. Revocation:**

**The Board reserves the right to revoke tax credits from developments that do not provide evidence satisfactory to the Board of progress toward completion of the project in accordance with their construction schedule provided at carryover or noncompliance with the terms of the allocation.**

**Part of the credit will also be revoked 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 time period.**

**R. Fair Housing Policy:**

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

All programs will use affirmative fair housing marketing practices in soliciting buyers, borrowers and renters, or any other participants, and in determining eligibility and concluding all transactions.

All Board programs are required to market affirmatively using specific steps for each program. These steps include:

1. Conducting public information and outreach programs geared to inform and encourage protected groups to participate.
2. Marketing strategies that reach protected groups using conventional methods such as newspapers and other media, as well as personal contact, mailings, and use of consultants.
3. Reviewing federal and state fair housing guidelines periodically to ensure all steps are non-discriminatory.

Failure to comply with the foregoing requirements will prompt Board staff to prepare a full report to the Executive Director of the Board, or to the Executive Director of CPED or HRA. Noncompliance could result in appropriate action by the Board, CPED or HRA, including expulsion from Board, CPED or HRA programs.

## **V. DEVELOPMENT STANDARDS**

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

### **A. Project Cost Reasonableness:**

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

### **B. Costs of Intermediaries:**

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

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

For Saint Paul projects the following maximum developer fee shall apply:

### **Developer Fee Limits**

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

#### **New construction:**

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

#### **Acquisition/Rehabilitation or Adaptive Reuse Projects.**

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

#### **C. Reserves/Contingencies:**

CPED or HRA will require documentation of the amount and disposition of reserves/contingencies. If they revert back to the developer, general partner, or any ownership interest, CPED or HRA 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 Project Cost Section (#13) of the application, MHFA Form LIHC-1.

#### **D. Comparative Analyses:**

Notwithstanding these Development Standards and the Selection Criteria within this Allocation Plan, 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.

## **VI. PROJECT SELECTION**

Each application submitted to CPED or HRA for low income tax credits must meet parts A-C below before moving to the Selection Priorities (part D below).

#### **A. Threshold Requirements:**

CPED or HRA will determine whether the project meets the minimum threshold requirements as outlined in the Allocation Plan.

#### **B. Market Review:**

CPED or HRA shall require the applicant to provide a comprehensive market review of the housing needs of low-income individuals in the area to be served by the project. This review must be conducted before the credit allocation is made at the

developer's expense by a disinterested third party to be approved by HRA or CPED staff.

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

CPED or HRA may require that the applicant submit a current appraisal following selection of a project for a commitment in the event CPED or HRA decides an appraisal is necessary to determine marketability or CPED or HRA thinks there is a question regarding the appropriate sale price of the property.

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

**C. Site Review:**

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

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

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

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

**D. Selection Priorities:**

Upon completion of the project selection parts A, B and C, an application may then be ranked according to the points awarded for the selection priorities and the preference priorities set forth in the Qualified Allocation Plan, attached hereto as Exhibit A.

**E. Management Review:**

For Saint Paul projects only, significant parties who have serious and persistent compliance monitoring violations may be declared ineligible at the sole discretion of the HRA Board of Commissioners. HRA staff will review the compliance history of

past or existing LIHTC projects in which the applicant has served as general partner or management agent prior to making a recommendation on the allocation of credits to the HRA Board.

**F. Compliance Agreement:**

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

**VII. SUBMISSION REQUIREMENTS**

It is the applicant's responsibility to be aware of the processing submittals required in order to proceed to the next step in obtaining an allocation. If the applicant is unable to obtain these submittals (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.

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

**A. Application Requirements:**

1. A check for the appropriate application fee.
2. Opinion of Counsel (Exhibit B).
3. Completed MHFA Form LIHC-1, Application for Tax Credits, signed by at least one general partner involved in this project (Exhibit I). An incomplete or computer generated Form LIHC-1 will not be accepted and will be returned to the applicant. NOTE: Applications receiving an allocation of tax credits will be required to submit original LIHC-1 in its original electronic XLS format.
4. Original photographs exterior and interior of building, if existing, or site and surrounding area, if new construction.
5. Evidence of Site Control. Evidence of title or adequate site control must be submitted with the application. Acceptable evidence includes the following: warranty deed, contract for deed, purchase contract, option, or letter of intent from governmental body for sole developer, etc. The evidence of site control

must be current and extend to anticipated date of "placed in service" or provisions for extension provided. For allocation, an attorney's opinion that the applicant has ownership of the property as required and in accordance with Section 42 will be required. 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 of Land Use Restrictive Covenants for Low Income Housing Credits. Loss of site control will result in cancellation of application reservation or Carryover. CPED and HRA will not accept applications from different applicants for the same site.

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

16. Special Services. For projects meeting the Threshold Requirement set forth in VIII.C.3 of the Allocation Plan, evidence of such support must be provided to CPED or the HRA before a reservation of credit is granted.
17. Location Map. Legible map with clear directions and cross streets or roads must be provided.
18. Documentation for Utility Allowance. (See #7, page 3 of LIHC 1).
19. Preliminary drawings, at a minimum include site plan, elevations and unit plans.
20. If acquisition and rehabilitation, a scope of work must be submitted for each building. Any application involving acquisition and rehabilitation of a CPED or HRA financed project must submit a rehabilitation report performed or approved by a representative of the appropriate agency or a person approved by the agency.
21. Relocation Plan, if applicable.
22. Letter of Support from the applicable neighborhood association.
23. A statement indicating whether the Applicant, if selected, chooses to use the credit rate applicable on the commitment date or the one applicable on the placed in service date.
24. Maintenance and Operating Expense Review and Underwriting Certification. (Exhibit X)
25. Third-party comprehensive market review of housing needs of low-income individuals in the area to be served by the project.

**B. Submission Requirements for Buildings Financed by Tax-Exempt Bonds**

1. A check for the appropriate application fee.
2. Opinion of Counsel (Exhibit B).
3. Completed MHFA Form LIHC-1, Application for Tax Credits, signed by at least one general partner involved in this project (Exhibit I). An incomplete or computer generated Form LIHC-1 will not be accepted and will be returned to the applicant. NOTE: Applicant must also submit LIHC-1 in its original electronic XLS format.
4. Original photographs exterior and interior of building, if existing, or site and surrounding area, if new construction.
5. Evidence of Site Control. Evidence of title or adequate site control must be submitted with the application. Acceptable evidence includes the following: warranty deed, contract for deed, purchase contract, option, or letter of intent

from governmental body for sole developer, etc. The evidence of site control must be current and extend to anticipated date of "placed in service" or provisions for extension provided. For allocation, an attorney's opinion that the applicant has ownership of the property as required and in accordance with Section 42 will be required. 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 of Land Use Restrictive Covenants for Low Income Housing Credits. Loss of site control will result in cancellation of application reservation or Carryover. CPED and HRA will not accept applications from different applicants for the same site.

6. Legal description of land (not property tax ID number) on separate 8-1/2" by 11" sheet of paper and labeled "Exhibit A".
7. Status of zoning. Letter from a local zoning official identifying the development, number of units, stories, and on-site parking spaces, and stating the current zoning of the land. If measures need to be taken to change the status of zoning, please indicate. (Exhibit K)
8. Proposed sources of funds. In the form of a letter of intent, commitment, etc. that states terms, conditions (including dollar amount, number of years, interest rate, debt service coverage, etc.). Application will not be accepted without terms.
  - (a) Construction financing - letter from lender;
  - (b) Permanent financing - letter from lender (for FMHA Projects AD622 and letter of conditions);
  - (c) Secondary financing - letter from lender;
  - (d) Grants - letter from granting authority;
  - (e) Syndication proceeds;
  - (f) Other sources of funds, including any federal, state, local and private subsidies.
9. Project Team resumes. One page maximum per individual, current within six months. Complete and attach to front of the submission Exhibit M (LIHC-19).
10. Previous participation. Complete in full Exhibit L (LIHC-17).
11. Agreement to utilize Public Waiting List, Exhibit J (LIHC-11).
12. Calculation of tax credit, Exhibit I (LIHC-8 & LIHC-1).
13. A 15-year after tax cash flow proforma (for five or more units).
14. If non-profit, proof of status and IRS approval must be included.



15. Special Services. For projects meeting the Threshold Requirement set forth in VIII.C.3 of the Allocation Plan, evidence of such support must be provided to CPED or the HRA before a reservation of credit is granted.
16. Location Map. Legible map with clear directions and cross streets or roads must be provided.
17. Documentation for Utility Allowance. (See #7, page 3 of LIHC 1).
18. Preliminary drawings, at a minimum include site plan, elevations and unit plans.
19. If acquisition and rehabilitation, a scope of work must be submitted for each building. Any application involving acquisition and rehabilitation of a CPED or HRA financed project must submit a rehabilitation report performed or approved by a representative of the appropriate agency or a person approved by the agency.
20. Relocation Plan, if applicable.
21. Letter of Support from the applicable neighborhood association.
22. A statement indicating whether the Applicant, if selected, chooses to use the credit rate applicable on the commitment date or the one applicable on the placed in service date.
23. Maintenance and Operating Expense Review and Underwriting Certification. (Exhibit X)
24. Third-party comprehensive market review of housing needs of low-income individuals in the area to be served by the project.

**C. Carryover Requirements:**

Several changes to Section 42 of the Internal Revenue Code were included in legislation passed by Congress in December 2000 as part of the Community Renewal Tax Relief Act of 2000. These amendments made certain changes to the Carryover Allocation requirements. However, no guidance has been issued by the IRS regarding these changes. The Board's carryover procedures may be modified further to conform with the new laws when sufficient guidance is issued by the IRS. The final carryover procedures will be included in the carryover package that will be available to owners of selected projects at the appropriate time.

In addition to meeting requirements of federal law, the applicant must provide no later than September 15 of the year in which the reservation was issued, a status report satisfactory to CPED or HRA staff, on behalf of the Board, on the progress of the project and identification of any barriers to meeting the requirements of the Code and this Procedural Manual to effect a carryover of tax credits for the project. The status report shall include, but not be limited to, status of private and public lender financing and tax credit syndication commitments, project costs incurred to date, status of obtaining ownership of the project site, zoning status, and project budget.

Failure to submit said status report shall be ground to revoke the applicant's reservation of tax credits by the Board.

No later than November 1 of the year for which the allocation is to be issued the applicant must submit evidence satisfactory to CPED or HRA, on behalf of the Board, of the following (if not already submitted as part of reservation requirements):

1. An updated MHFA Form LIHC-1 Application for Tax Credits. The revised pages should reflect any material changes including source and uses of funds (highlight or circle in red all changes; initial and date each modified page). Incomplete revisions or those not highlighted on MHFA Form LIHC-1 are not acceptable and will be returned to the developer. The application must be signed by one general partner, officer, director or corporate officer stating that under penalties of perjury all facts and statements contained in application and all documents and exhibits submitted are true to the best of their knowledge. NOTE: Applicant must also submit LIHC-1 in its original electronic XLS format.
2. An Attorney's Opinion Letter in the form of Exhibit D verifying the developer is the owner for tax purposes, or evidencing continued site control of the land and depreciable real property identified at application/reservation as the project. Specify a legal description for each building address; if more than one.
3. A written Accountant's Certification (preferably using MHFA's form LIHC-6) verifying:
  - a. The amount of the reasonably expected basis, the carryover basis, and the percent of the expenses incurred.
  - b. More than 10 percent of the reasonably expected basis on the project must be expended by the later of the date which is six months after the date that the allocation is made or the close of the calendar year in which the allocation is made. However, no guidance has been issued by the IRS on new carryover requirements. The Board's carryover procedures may have to be changed further to conform with the new laws when the IRS issues sufficient guidance. The final carryover procedures will be included in the carryover package that will be available to owners of selected projects at the appropriate time.
4. Identification of the sources of construction, interim and permanent financing arrangements. Secure a firm lender commitment in the form of a binding agreement as required in Minnesota Section 513.33. The agreement must:
  - (a) Be in writing;
  - (b) Specify the consideration for the transaction and pertinent terms; and
  - (c) Be signed by both the lender and the borrower.

5. A description of any governmental assistance and/or rental assistance. This includes copies of any contracts/agreements executed or any applications made for rental assistance grants for the project.
6. A 15-year proforma signed by the lending institution signifying that they are aware of the figures presented on the LIHC application;
7. Information on the ownership entity, including an executed copy of the partnership agreement or articles of incorporation, and a copy of the certificate of registration from the Secretary of State in the State of Minnesota; and
8. The Carryover Fee (see Article VIII), based on the annual tax credit amount.
9. A comprehensive market review, conducted by a third party approved by CPED or HRA staff, of the housing needs of low-income individuals in the area served by the project.
10. Owner must provide its tax identification number as part of the Carryover application.

**D. Placed in Service:**

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

*The placed-in-service date for Low Income Housing 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 generally. The placed-in-service date must occur for all buildings within a project within two years after the award of the tax credit.*

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

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

1. Evidence all buildings have been Placed-in-Service. A Copy of Certificate of Occupancy provided by local governmental authority having jurisdiction for each building. If not available from local government, a Certificate of Substantial Completion prepared by the architect will be accepted.

2. A current utility allowance schedule.
3. Cost certification by C.P.A. (MHFA Form LIHC-9).
4. Updated application (MHFA Form LIHC-1) signed by at least one general partner involved in this project. Include the revised pages of changes from carryover application, highlight all changes, and re-date and initial the pages. NOTE: Applicant must also submit LIHC-1 in its original electronic XLS format.
5. Final attorney's opinion letter in the form of Exhibit Y.
6. Documentation of the amount and disposition of Reserves, Contingencies, and any cash savings. If the above revert back to developer/owner, general partner or any ownership interest, CPED or HRA and the Board will consider these as deferred developer fees.
7. A copy of Board Declaration of Land Use Restrictive Covenants for Low Income Housing Credits (Extended Use Commitment). The Extended Use Commitment 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 credit.
8. Copies of any waivers required by Section 42 obtained from I.R.S.
9. Documentation of the final amount of tax credit proceeds or receipts generated, copy of the final Syndication, Private Placement, or Individual Investment Agreements disclosing the terms and conditions.
10. Original Owner Certification (MHFA Form LIHC-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.
  - 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. A 15-year after-tax cash flow proforma (for five or more units) signed by the lending institution signifying that they are aware of the figures presented on the LIHC application.
12. Copies of final loan or grant documents of all sources of funds (mortgage or note) which support the amount, terms, and conditions stated on MHFA Form LIHC-1.
13. Such documents and instruments as are necessary and as may be required by CPED, HRA or the Board.

14. If ownership entity has changed, copy of assignment and updated resumes of project team.
15. Original photographs of completed building(s).
16. Fees required at the time of issuance of an 8609 as provided in Section VIII below.
17. Evidence that the project is current in the payment of compliance monitoring fees, if applicable.
18. Current rent-roll.
19. Election of Applicable Rent Floor (MHFA Form LIHC-26 Exhibit W).

## **VIII. FEES**

### **A. Application Fee:**

An application fee must be submitted with the application. The fee is non-refundable and is the greater of \$700 or \$30 times the total units, with a maximum of \$2,000 for for-profit development entities. Non-profits will be charged an application fee of \$700 that is also non-refundable. For multi-building projects, CPED or HRA, on behalf of the Board, will require only one application and a single fee

### **B. Allocation Special Counsel Fee:**

A Special Counsel Fee of \$3,500 made payable to Briggs and Morgan shall be due upon allocation of tax credits. This fee is non-refundable.

### **C. Reservation Deposit:**

Upon allocation of tax credits, a non-refundable reservation deposit of 1.5% of the tax credit allocation amount must be paid to CPED for projects in Minneapolis, or the HRA for projects in Saint Paul prior to issuance of a reservation letter.

### **D. Carryover Fee and Charges:**

At the time the building is issued a carryover allocation, a non-refundable reservation deposit in the amount equal to 1.5% of the tax credit allocation amount must be paid to CPED for projects in Minneapolis, or to the HRA for projects in Saint Paul.

Special Counsel Fee of \$3,500 made payable to Briggs and Morgan shall be charged to each developer requesting a carryover and must be submitted with the other items required to be submitted at the time of carryover. Such fee is not refundable.

### **E. Final Allocation Charges:**

Special Counsel Fee of \$3,500 made payable to Briggs and Morgan shall be charged to each applicant requesting an issuance of one or more 8609s and must be submitted with the other items required to be submitted at the time of the request. Such fee is not refundable.

**F. Monitoring Fee:**

The Board or its designee will charge an initial set-up fee of \$1.50 per unit and an annual monitoring fee of \$55 per unit, based on the total number of units, with a minimum of \$500. This fee may be increased depending upon the requirements of the U.S. Treasury, IRS, or increased costs of the Board. The fee will be due in a manner and time as prescribed by the Agency. Failure to pay the fee will result in the Board notifying the IRS that the project is out of compliance. Additional regulations require periodic physical inspections of LIHC units – there is a \$100 project cost and \$50 physical inspection fee per tax credit unit with a minimum fee of \$750 due for every three years.

**G. Transfer of Ownership Fee:**

Upon approval from CPED or HRA, a transfer of Ownership fee of \$2,500 must be submitted to CPED or HRA, along with updated materials of the current owner/management team.

**H. Check Cashing Procedure:**

Applicants' payments for fees (in the form of checks) will be held pending verification of the accuracy of the amount tendered and submitted materials. Applicants' payments for fees (in the form of Checks) will be deposited the day the application is received. Applicant will be notified of any adjustment or refund of fees after the accuracy of the amount tendered and submitted materials are verified.

**I. Late Fee**

The developer shall be responsible for meeting the deadlines related to her/his project and for payment of any related late fees to the Board. Late fees will not be considered an eligible project expense.

**J. Qualified Contract Fee**

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

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

**EXHIBITS**

Exhibit A	Board Allocation Plan
Exhibit B	Opinion of Counsel - Application
Exhibit C	Qualified Census Tracts/Saint Paul Impacted Areas
Exhibit D	Form of Opinion of Counsel Regarding Carryover
Exhibit E	Self Scoring Worksheet
Exhibit F	IRS Notice 88-80 Determination of Income
Exhibit G	IRS Regulations § 1.142-6 Carryover and 1.42-10 Utility Allowance
Exhibit H	Section 42 Internal Revenue Code
Exhibit I	Determination of Tax Credit (MHFA LIHC-1 & LIHC-8)
Exhibit J	Agreement to Utilize Public Housing Waiting List (MHFA LIHC-11)
Exhibit K	Zoning Letter
Exhibit L	Previous Participation (MHFA LIHC-17)
Exhibit M	Project Team Resume (MHFA LIHC-19)
Exhibit N	Transfer of Interest Form (MHFA LIHC-27)
Exhibit O	Rent and Income Limits
Exhibit P	Guidelines for Determining Section 501(C)(3) Status
Exhibit Q	Compliance Monitoring Manual See Affordable Housing Connect <a href="http://www.ahcinc.net/files/AHC_Docs/Manuals/MCPED_2016_Compliance_Manual.pdf">http://www.ahcinc.net/files/AHC_Docs/Manuals/MCPED_2016_Compliance_Manual.pdf</a> <a href="http://www.ahcinc.net/files/AHC_Docs/Manuals/SPPED_2016_Compliance_Manual.pdf">http://www.ahcinc.net/files/AHC_Docs/Manuals/SPPED_2016_Compliance_Manual.pdf</a>
Exhibit R	Declaration of Restrictive Land Use Covenant
Exhibit S	Worksheet for Qualified Basis (MHFA LIHC-28)
Exhibit T	Final Cost Certification (MHFA LIHC-9)
Exhibit U	Certification by Owner/Applicant for Issuance of IRS 8609 (MHFA LIHC-3)
Exhibit V	Non-concentrated Areas of Race and Poverty
Exhibit W	Rent Floor Election/Certification (MHFA LIHC-26)
Exhibit X	Maintenance and Operating Expense Review and Underwriting Certification (HTC-29)

Exhibit Y      Opinion of Counsel - Placed in Service