CITY OF ROCHESTER

2021 SECTION 42 HOUSING TAX CREDIT PROGRAM COMPLIANCE MANUAL FOR THE CITY OF ROCHESTER

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Introduction

The Minnesota Housing Finance Agency (Minnesota Housing) has been designated by the Minnesota Legislature as the primary apportionment agency of housing tax credits in Minnesota. Qualified local cities and counties have also been designated by the Legislature as Suballocators of the tax credit: the cities of Duluth, Rochester, Saint Cloud, Saint Paul and Minneapolis, and the counties of Washington and Dakota.

Affordable Housing Connections, Inc. (AHC) has been designated as the agent to perform certain compliance monitoring functions by the City of Minneapolis Community Planning & Economic Development, Rochester, Saint Cloud, Saint Paul HRA and Washington County CDA. The Compliance Manual, policies and procedures established by Suballocators for use by AHC in the performance of its functions have been developed in substantial conformance with those of Minnesota Housing to ensure consistency among projects located in local jurisdictions. Section 42(m) of the Code requires allocators of tax credits, such as the Suballocator, to develop and adopt a Qualified Allocation Plan (QAP) that sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions and that gives certain priorities and preferences as a condition to allocating housing tax credits for rental housing projects. This Compliance Manual is considered an attachment to the Procedural Manual, which is considered part of the Qualified Allocation Plan, and is incorporated by reference to the Qualified Allocation Plan.

The Suballocators strongly suggest that all parties refer to the applicable Qualified Allocation Plan, Procedural Manual and the project's application for credits to determine what restrictions and selection criteria points apply to a specific project.

The Suballocators and Affordable Housing Connections, Inc. (AHC) shall be under no obligation to undertake an investigation of the accuracy of the information submitted for compliance monitoring. AHC's review shall 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 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 building owners/agents to AHC is later found to be incorrect in any material respect, it is the responsibility of the building owners/agents to inform AHC and to request a reexamination of the information. **Interested parties should consult with a knowledgeable tax professional prior to entering into any commitment concerning the use and claim of housing tax credits.**

In January 2007 the Internal Revenue Service (IRS) released its *Guide for Completing Form 8823, Low Income Housing Credit Agencies Report of Noncompliance or Building Disposition* (8823 Guide), updated it in October 2009, and again in January 2011. The 8823 Guide was not intended to change any Section 42 rules or policies, but to provide definitions of what IRS considers "in compliance" and for consistency in reporting "out of compliance," and "back in compliance," on IRS Form 8823.

Minnesota Housing's and Suballocator's compliance, monitoring and reporting policies and procedures are reflective of instructions in the 8823 Guide.

Please visit Affordable Housing Connections' website at **https://www.ahcinc.net** for ongoing updates and guidance on the implementation of procedures outlined in the 8823 Guide. The AHC website also provides links to key Revenue Rulings and other IRS publications related to LIHTC regulations.

Background and Overview

Section 42(m)(i)(B)(iii) of the Internal Revenue Code (the Code) requires housing credit agencies to include in their Qualified Allocation Plan a procedure to monitor all tax credit projects for compliance with the requirements of the Section 42 Housing Tax Credit Program (LIHTC), throughout the compliance period.

An allocating credit agency must have procedures for monitoring compliance with the provisions of the Code and notifying the Internal Revenue Service (IRS) of any noncompliance of which it becomes aware, whether it is corrected or not. The monitoring requirements became effective on January 1, 1992, were amended on January 14, 2000, February 26, 2019 and July 7, 2020 and apply to all LIHTC projects, even if the project received an allocation prior to 1992. Minnesota Housing, as the state allocating agency, and Suballocators (through and in addition to its compliance monitoring agency), are authorized by the Code to charge a reasonable fee to cover the costs of compliance monitoring.

On February 25, 2016, the IRS published Final and Temporary Regulations 1.42-5T which updated the requirements for compliance monitoring. Owners/agents should be aware that Final and Temporary Regulations 1.42-5 explicitly provides that monitoring procedures only address the requirements for housing credit agency monitoring and do not address forms and other records that may be required by the IRS on examination or audit. IRS made these Final and Temporary Regulations Final as of the February 26, 2019 Federal Register publication date. These regulations require that Suballocator must amend its Qualified Allocation Plan (QAP) no later than December 31, 2020. Pending QAP amendment, Suballocator has not yet implemented all provisions of the Final Regulations.

The purpose of this Manual is to set forth the procedures to be followed by the Suballocator, AHC, and the owners/agents of LIHTC properties in order to comply with the requirements of Section 42. The compliance monitoring requirements are subject to modification by the IRS and income determination requirements are subject to modification by HUD. The Suballocator will revise this Manual annually.

Projects with Allocations from Multiple Allocators

Some tax credit projects receive tax credits from both Minnesota Housing and a Suballocator. Tax credit compliance monitoring for those projects will be done by the entity that first allocated credits to the project, unless the credit allocators make other arrangements regarding the project.

Tax Exempt Bond and TCAP and/or Section 1602 Projects

Some tax credit properties receive their allocation of credits using tax exempt bonds, TCAP and the Section 1602 Program funds. Minnesota Housing will monitor developments that received an allocation through the issuance of tax exempt bonds, except where the bonds were issued in a Suballocator jurisdiction. In those Suballocator cases, AHC will be responsible for compliance monitoring unless other arrangements are made. Tax exempt bond developments and projects funded under the Tax Credit

Assistance Program (TCAP) and/or Section 1602 Program funds administered by HUD must comply with the same IRS requirements and tax credit compliance monitoring procedures as non-tax-exempt bond, TCAP and Section 1602 developments.

This Manual has *not* been reviewed or approved by the IRS and should not be relied upon for interpretation of federal income tax legislation or regulations.

1. PROGRAM SUMMARY

The following is a brief summary of the requirements of the Low Income Housing Tax Credit (LIHTC) program. It is not intended to be detailed or comprehensive.

1.01 Minimum Set Aside Election and Multiple Building Project Election

Qualifying projects must meet rental and income targeting requirements for a minimum 15 year compliance period and an additional 15 year Extended Use Period (EUP).

Three options are available for the minimum set aside requirement:

1. 20/50: **No less than 20%** of the housing units must be set aside for tenants whose incomes are 50% or less of the area median income (AMI).
2. 40/60: **No less than 40%** of the housing units must be set aside for tenants whose incomes are 60% or less of the area median income.
3. **Average Income: No less than 40%** of the housing units in a project must be set aside for tenants whose income does not exceed the imputed income limitation designated by the owner. The designated imputed income limitation shall be 20%, 30%, 40%, 50%, 60%, 70% or 80% of MTSP and the average of the imputed income limitations for the project shall be 60% or less of MTSP.

Each building is considered a separate project under IRC Section 42(g)(3)(D), and the **minimum set aside applies separately to each building** unless the owner elects to treat buildings as a multiple building project (MBP), in which case the minimum set aside and other project rules apply to the identified project. Owners identify the building(s) in a multiple building project by attaching a statement to the owner's first year tax return. See instructions for Form 8609, line 8b for details. **This election also determines to which buildings unit transfers may be made and the number of units that the agency must inspect during an onsite review.**

To ensure continued compliance, rental agents or managers must confirm the set aside and multiple building project election that was established by the building owner on Form 8609. Once selected, the option ***cannot*** be changed. Note that this is only the *minimum* set aside. All low income units must comply with the respective minimum set aside income and rent election. For example, for 20/50 minimum set aside, if a building's applicable fraction is 100%, ***all*** units must have an income and rent restriction of 50% Area Median Income (AMI).

Credits cannot be claimed until the minimum set aside is met. If the project fails to meet the minimum set aside by the end of the ***first year*** of the credit period, the project will not qualify as a LIHTC project and credits cannot be claimed. If the project falls below the minimum set aside during any year of the 10-year credit period, credits cannot be claimed for that year.

Owners may elect additional State or Suballocator established set aside requirements such as additional rent restrictions or serving certain targeted populations as a condition of obtaining credits. These additional restrictions will be reflected in the allocation documents, which include the Carryover Agreement and Declaration of Land Use Restrictive Covenants (LURA). If such additional set asides are

elected, they must be maintained throughout the compliance period and Extended Use Period, and will be monitored at the same time as, and similar to, the Section 42 requirements.

If a property is financed using Native American Housing Assistance and Self Determination Act (NAHASDA) or HOME funds which 1) have not been subtracted from the basis calculation or 2) have an interest rate below the Applicable Federal Rate, and the owner receives tax credits at the seventy percent (70%) present value rate (9% credits), then the owner/agent must rent forty percent (40%) of the units **in each building** to households whose income is 50% or less of AMI*. Rent limits are set according to the elected tax credit set aside and/or any additional rent restrictions under which the allocation was made.

***** Buildings placed in service after 7/30/2008 are not subject to this provision.

1.02 Rent and Income Requirements

The income necessary to be eligible to rent a unit is based on the household income limits adjusted for family size for the area in which the project is located. Income determination is similar to Section 8 income qualifications as described in 24 Code of Federal Regulations (CFR) 813.106.

The formula for computing maximum gross rent for any given unit size is based on 1.5 persons per bedroom not to exceed 30% of the corresponding income election.

1.03 Rent and Income Limits

The U.S. Department of Housing and Urban Development annually publishes median income amounts for all Minnesota counties. Minnesota Housing uses these amounts to calculate the maximum allowable rents and tenant incomes for rental units assisted with tax credits. Minnesota Housing publishes the LIHTC income and rent limits on its website and notifies owners/agents of the updated limits as they become available. AHC also notifies owners/agents of updated income and rent limits on behalf of the Suballocator as soon as they have been published by Minnesota Housing. Current and historical limits are available on AHC's website.

Due to the Housing and Economic Recovery Act of 2008 (HERA), income limits for projects funded with tax credits and/or financed with tax exempt housing bonds are now calculated and presented separately from the Section 8 income limits. Beginning with the publication of FY2009 Median Family Income estimates and income limits, the Section 8 income limits **CANNOT** be used for tax credit or tax-exempt bond properties.

According to HERA, the Placed In Service (PIS) date for a project determines which income and rent limits apply. Minnesota Housing provides different tables (Table A, B, C, etc.) of income and rent limits based on PIS dates and updates these tables annually. To avoid noncompliance, be sure you are using the correct limits table. See the LIHTC Income and Rent Limit tables and instructions, located on Minnesota Housing's website, to determine which table applies to which range of PIS dates.

When determining which table to use for properties with PIS dates **both before and after the income limit effective dates**, consider the following:

- There are multiple income/rent tables (Table A, B, C, etc.). Select the applicable table based on the building's PIS date. Some projects may need to use more than one table, if there is more than one PIS date. Tables are found on Minnesota Housing's website: **http://www.mnhousing.gov/sites/multifamily/limits**
    - The earliest PIS date for a building governs. If a building has acquisition credits with a PIS date prior to 1/1/2009, it uses Table A even if the rehab PIS is after 1/1/2009.
- Under Section 42 **each building is considered a separate project** unless the owner elects to treat buildings as a multiple building project. The multiple building election is made by the owner on line 8b in Part II of Form 8609. However, since Form 8609 is typically issued well after the PIS date, owners/agents of properties with buildings having PIS dates both before and after the publication of new limits must determine what this election will be and which buildings are part of the project. Owners must document this determination in the property's records and when completing Part II of Form 8609, the election must be consistent.
    - The earliest PIS date for any building that is part of a multiple building project (line 8b on Form 8609 is or will be checked "yes" and owner has identified the buildings that are part of the multiple building project) determines which table will be used by all of the buildings that are part of that multiple building project.
    - If buildings are not part of a multiple building project (line 8b is or will be checked "no" and therefore each building will be treated as a separate project), then each building might use a different table depending on the respective PIS dates.
- Gross Rent Floor: Under IRS Revenue Procedure 94-57 the owner may establish a different rent limit. If rent limits decrease between the date of the Carryover/Preliminary Determination letter and the PIS date, the owner can use the Carryover/Preliminary Determination date to set the rent floor *as long as the owner completed a Statement and Election of Gross Rent Floor form*. This form must be completed and submitted no later than the PIS date. The income limit is always based on the PIS date.
- Income Averaging rent limits: As of August 2019, a separate set of income limits are available for projects that elect the Income Averaging set aside. IRS guidance on how to calculate income and rent limits can be extrapolated from Revenue Ruling 89-24. There is no indication that the 20%, 30%, 70% and 80% limits will be calculated differently.

1.04 Building Regulations

The credit amount allocated to each building in a project is partially calculated on the following factors:

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:

- Buildings located in areas designated as a "qualified census tract" or "difficult development area" or that meet the Suballocator's Credit Enhancement Criteria may be eligible for an increase in allowable basis.
- If non-LIHTC units are of a quality standard greater than that of LIHTC units in the building, the costs of non-LIHTC units generally are not included in eligible basis.
- The cost of depreciable property used in common areas or provided as comparable amenities to all residential units (carpeting and appliances) is included in determining eligible basis.
- The cost of tenant facilities (parking, garages, 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.

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

The Eligible Basis, as of the end of the first year of the credit period, is reported to the IRS on Part II of the Form 8609 and does not change from year to year.

Applicable Fraction: The applicable fraction is ***the lesser of***:

- The unit fraction, which is the number of LIHTC units in a building divided by the total number of residential rental units; or
- The floor space fraction, which is the total floor space of the LIHTC units in the building divided by the total floor space of the residential rental units in the building.

When determining which units to include in the numerator (low income units), and in the denominator (total units) of the applicable fraction, please note:

- Units that have never been occupied or are occupied by a nonqualified household cannot be included in the numerator but must be included in the denominator.
- Vacant units that were last occupied by a nonqualified household cannot be included in the numerator but must be included in the denominator.
- Units not suitable for occupancy, including LIHTC units being rehabilitated in the first year of the credit period, cannot be included in the numerator, but must be included in the denominator.

Common space units (units for full time manager, full time maintenance or security) are not included in either the numerator or denominator.

100% Tax Credit Projects: When the allocation is based on all units in the project but not all households are initially certified and qualified, the Applicable Fraction must not be reported as 100% and annual

income recertifications are required for all households. The Declaration of Land Use Restrictive Agreement (LURA) must accurately report the Applicable Fraction.

For further information, see IRC Section 42(f)(2) and IRS 8823 Guide: Chapter 4, pages 28-30.

1.05 Full Time Resident Manager's Unit

The full time resident or on site manager's unit may or may not be included in determining the Applicable Fraction depending on the circumstances. According to IRS Revenue Ruling 92-61, the ways in which the onsite manager's unit may be considered are:

For buildings that were placed in service after September 9, 1992, the full time manager's unit must be treated as common space, it would not be included in either the numerator or denominator of the applicable fraction.

For buildings that were placed in service prior to September 9, 1992, the full time manager's unit may be treated as follows:

- The full time manager's unit is considered a qualified low income unit (the rent is restricted and the resident manager is a certified low income tenant with any rent reduction treated as income); or
- The full time manager's unit is considered common space. As common space, the unit would not be included in either the numerator or the denominator of the applicable fraction.

Example: *A project contains 24 units and the Applicable Fraction is 100%. Credits were allocated on 23 units. This means that the manager's unit was treated as common space when the credit was allocated. The Applicable Fraction would be 23/23 or 100%.*

A full time manager or maintenance person must occupy a resident manager’s unit. The number of hours worked does not define full time. For tax credit purposes, full time is not defined in terms of hours, but rather as whether the manager’s presence on site is reasonably required for the development. Some things to consider are:

- What is warranted by the type, size and/or location of the development?
- What is needed in terms of the resident population?

Some developments may not need to employ a resident manager for what is normally considered full time and other developments may need to employ more than one on site manager or maintenance person. Full time is whatever is reasonably required to make operations run smoothly at the development. As a general guide, a manager who performs management functions such as leasing units, preparing certification paperwork, cleaning, general maintenance, preparing turnovers, collecting rent and is available to the site on an on call basis to respond to emergencies may be considered a full time manager under this ruling. According to Revenue Ruling 2004-82, dated August 30, 2004, a unit may also be occupied by a full time security officer and be treated as common space, if reasonably required.

As noted in a Chief Counsel Advice Memorandum dated 6/2/2014, whether or not an owner/agent charges rents, utilities, or both for common space units is not relevant in the treatment of the units as facilities that are reasonably required for the project. As such, the fact that the owner/agent of a LIHTC building charges rents, utilities, or both for units for resident managers or maintenance personnel is not relevant in the treatment of such units as facilities reasonably required for the project. The character and size of the project are, among other things, relevant in determining whether any property, including an employee occupied unit, is functionally related and subordinate to the project.

All developments, especially those that are new allocations, need to notify the Suballocator and AHC of the status of the full time resident manager's unit and which method is being used. Owners/agents must submit the form *Treatment of Common Space Unit Pursuant to Revenue Ruling 92-61* for any unit or change in status to a unit utilized as a site office, or occupied by a full time resident manager, a full time maintenance person or a full time security person as defined in Chapter 8, page 5 of the 8823 Guide and Revenue Ruling 92-61. The following conditions require submission of this form at the time any change is anticipated:

- Initial request for a common space unit
- Change to a different unit
- Common space unit no longer required

The Treatment of Common Space form can be found on AHC's website at:
https://www.ahcinc.net/files/AHC_Docs/Treatment_of_Common_Space_Unit.pdf

The Suballocator, via AHC, will issue an acknowledgement of the common space unit or the reason for denial. For the most part, the Suballocator will rely on the owner's/agent's determination of whether a common space unit is reasonably required by the development. However, if the Suballocator or AHC becomes aware that a full time manager, maintenance, or security personnel, as represented by the owner/agent, does not occupy the unit, it may become a noncompliance issue.

A unit occupied by a part time manager, caretaker, or maintenance person must either be treated as a qualified low income unit or as a market rate unit. If the unit is treated as a qualified LIHTC unit, then the household must meet all tax credit eligibility criteria. Please note that any reduction in rent or waiver of otherwise required fees in exchange for services must be considered as income.

1.06 Calculating the First Year Applicable Fraction

To determine the applicable fraction for the first year, calculate the low income portion as of the end of each full month that the building was in service during the year. Add these percentages together and divide by 12 (see instructions on IRS Form 8609 and 8609-A). Note that the applicable fraction must be calculated for both the unit fraction and floor space fraction.

For example, a LIHTC building was placed in service on January 15 and has the following lease up schedule during the first year of the credit period:

Month	A. HTC Units	B. Total Units	C. Monthly Unit Fraction A/B=C	D. HTC units Sq Feet	E. Total Square Feet	F. Monthly Square Foot Fraction D/E=F
January	1	10	0%	1000	12000	0.00%*
February	2	10	20%	2000	12000	16%
March	4	10	40%	3800	12000	31.66%
April	6	10	60%	5400	12000	45%
May	7	10	70%	6300	12000	52.50%
June	7	10	70%	6300	12000	52.50%
July	7	10	70%	6300	12000	52.50%
August	8	10	80%	7200	12000	60%
September	9	10	90%	8400	12000	70%
October	10	10	100%	12000	12000	100%
November	10	10	100%	12000	12000	100%
December	10	10	100%	12000	12000	100%
	Sum of Monthly Unit Fraction/12		66.66%	Sum of Monthly Sq Ft Fraction/12		56.68%

*The owner/agent **cannot** count the unit occupied in January toward the first year applicable fraction since the building was not placed in service for a full month. For all other months, even if a resident moved into a unit on the last day of the month, that unit is considered occupied at the end of the month. **The first year applicable fraction for this building is 56.68% based on this lease up schedule (56.68% < 66.66%)**.

1.07 Qualified Basis

A project's Qualified Basis is the product of the project's Eligible Basis multiplied by the project's applicable fraction. The original Qualified Basis is determined as of the last day of the first year of the credit period and is reported to the IRS on Part II of Form 8609.

Eligible Basis x Applicable Fraction = Qualified Basis

1.08 Claiming Credits

Tax credits are taken annually for 10 years beginning in the year the project is placed in service or, at the owner's election, the year following the project's PIS date.

The credits are based on a percentage of the qualified costs of the building. For an existing building to qualify for credits in connection with substantial rehabilitation, there must be a period of at least 10 years between the date of acquisition and the date the building was last placed in service.

1.09 Compliance Period and Extended Use Period

All developments receiving a credit allocation must comply with eligibility requirements for a period of 15 years beginning with the first taxable year of a building's credit period. This is typically referred to as the "Compliance Period." All developments receiving a credit allocation after December 31, 1989 must execute and record a Declaration of Land Use Restrictive Agreement (LURA) for housing tax credits prior to the end of the first year of the credit period. The Declaration of Land Use Restrictive Agreement is a recorded document that runs with the land and requires developments to comply with eligibility requirements for a minimum of an additional 15 years beyond the 15-year compliance period for a minimum of 30 years (or more). This additional compliance period typically is referred to as the "Extended Use Period" (EUP). See Section 9, Compliance and Monitoring After Year 15 for details on requirements in the Extended Use Period.

1.10 Outline of Suballocator Compliance Process

Owners of LIHTC properties that claim tax credits in the Suballocator's jurisdiction must submit a complete owner's certification and annual report by February 15 or the date indicated by AHC, as the monitoring agent for the Suballocator. See Chapter 4 for further details.

AHC, as the monitoring agent for the Suballocator, will conduct a compliance inspection of each development at least once every three years and will perform a file review and physical inspection on 20% of the LIHTC units in each project. AHC reserves the right to adjust any given project's annual inspection schedule for any reason.

For projects that report first year tax credits taken as of January 1, 2009 and thereafter, AHC will conduct a monitoring inspection no later than the end of the second year of the credit period.

Inspection of first year mixed income projects will include a UPCS inspection of 20% of the LIHTC units and review of 20% of the LIHTC tenant files.

Inspection of first year 100% tax credit projects will include a UPCS inspection of 20% of the LIHTC units and review of 50% of the tenant files. AHC reserves the right to select additional tenant files for review if the initial review of 50% of the files results in significant findings or a pattern of deficient documentation.

Projects that receive a 100% allocation of Section 42 tax credits must have ALL identified noncompliance corrected before ceasing annual income recertifications. AHC as the monitoring agent

for the Suballocator will determine whether or not a 100% tax credit project is eligible for exemption of future tenant income recertifications and will notify the owner/agent.

If changes in equity ownership are planned, owner/agent must submit a Notice of Intent to Transfer Ownership or Change Owner Name or Status (HTC27) and other requested documentation prior to such ownership change**.** See Section 7 of this Manual for additional information.

In the event that AHC (i) does not receive the annual owner's certification and/or annual report, or (ii) is not permitted to inspect tenant files, or (iii) upon inspection or review, the Suballocator or AHC becomes aware of an aspect of the project which is not in compliance:

- Written notice will be provided to the owner/agent of the lack of certification, reporting, inspection, or other noncompliance.
- The owner/agent will be given a reasonable time period, not to exceed 90 days, to correct the noncompliance.

The Suballocator will file IRS Form 8823 "Report of Noncompliance" no later than 45 days after the end of the correction period whether the noncompliance has been corrected. See Chapter 8 for reporting procedures under the IRS 8823 Guide.

1.11 Owner's Responsibility

Each owner has chosen to utilize the Section 42 Program to take advantage of the tax benefits provided. In exchange for these tax benefits, certain requirements must be met.

Prior to issuance of a final tax credit allocation, the owner must certify to the total project costs. The owner must also certify that all program requirements have been met, and that a LURA has been recorded. Any violation of the requirements of the program could result in the loss of tax credits to the owner.

The owner is responsible for compliance with the Code. Owner/agent must take any lawful action to comply fully with the Code and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury, the IRS, or the Department of Housing and Urban Development from time to time pertaining to owner's/agent's obligations under IRC Section 42 of the Code. The Suballocator is assigned the responsibility for monitoring compliance and has contracted with AHC as its monitoring agent. Any and all financial consequences to the owner/agent as a result of noncompliance, whether identified by the Suballocator or the IRS, will be the responsibility of the owner/agent.

Successful operation of a tax credit development is management intensive. The owner/agent is responsible for ensuring that the project is properly administered. Thorough understanding of the LIHTC requirements and compliance monitoring procedures requires training of owners/agents.

The Suballocator strongly recommends that training of onsite property management staff occur before a

development is purchased, rehabilitated and/or constructed. At a minimum, such training will cover key compliance terms, qualified basis rules, determination of rents, tenant eligibility, file documentation, available unit and vacant unit rules, agency reporting, record retention requirements and site visits. On behalf of, and as required by Suballocator, AHC provides continuing education each year to update owners/agents of the Suballocator's compliance monitoring requirements. Owners are required to send at least one authorized representative each year to this update training in order to keep up with regulatory and procedural changes, unless granted written exemption by the Suballocator.

AHC may charge reasonable fees to cover the cost of training presentation, space and materials. Continuing education each year or at a minimum every other year is strongly recommended in order to keep up with regulatory and procedural changes. The Suballocator via AHC will maintain records of training obtained by management company staff.

1.12 Noncompliance

If the owner/agent determines that a building or entire project is not in compliance with program requirements, the Suballocator and AHC must be notified immediately. The owner and/or agent must formulate a plan to bring the project back into compliance and advise the Suballocator and AHC in writing of such a plan.

2. IRS REPORTING REQUIREMENTS

The IRS and the Suballocator require owners to file specific forms for compliance and reporting purposes. Failure to submit required forms as outlined in this Manual to either the IRS or the Suballocator as appropriate will constitute noncompliance and may make the owner subject to recapture or ineligible for credit.

2.01 Low Income Housing Allocation Certification (IRS Form 8609)

The Suballocator will issue IRS Form 8609, Low Income Housing Allocation Certification ("8609"), for each building within a project.

If allocations are issued in multiple years, a separate 8609 will be issued for each year's allocation. If acquisition and rehabilitation credits are issued on the same building, the acquisition and rehabilitation credits will receive separate IRS 8609 Forms.

Part I of Form 8609 is prepared by the Suballocator only and sent to the owner after the project is placed in service and all documentation required by the Suballocator is reviewed and approved, including an approved Extended Use Agreement. If the Suballocator becomes aware that an owner/agent filed a self-prepared 8609 with the IRS, it reserves the right to determine that all parties involved will not be eligible for future participation in Suballocator's LIHTC program for a period of ten (10) years.

The Suballocator files the original 8609 with the IRS for their records to compare with the taxpayer's tax return.

The owner completes Part II and files the 8609(s) with the IRS at the Philadelphia Service Center, with an original signature in Part II, for the first taxable year in which the credit was claimed. See the instructions on IRS Form 8609 and 8609-A for details.

Owners should consult with their legal and/or tax advisors for advice on completing and filing the IRS tax forms. The Suballocator or AHC cannot give legal opinions or tax advice on the filing or completion of tax forms.

Owners are required to submit a copy of the completed and signed 8609(s) along with completed 8609-A(s) and all related attachments to AHC and the Suballocator for the first year of the reporting period that includes all tax credits. If the owner elected to treat a project as a Multiple Building Project (MBP) the list of included buildings as submitted to IRS must also be submitted to AHC.

2.02 Low Income Housing Credit (IRS Form 8586)

One Low Income Housing Credit (IRS Form 8586) form must be completed to claim credits for the first taxable year in which credit is taken and every year thereafter during the compliance period. If the owner is claiming credits on IRS Form 8586 from a flow through entity, such as a partnership, S corporation, estate or trust, the individual investor must complete only Part I of Form 8586. Attach this to the entity's income tax return along with Form 8609 and 8609-A when filing.

Owner is required to submit a copy of Form 8586 as filed for the first year credits (only) to AHC.

2.03 Declaration of Land Use Restrictive Covenants (LURA)

Prior to claiming the tax credits, the building owner must record a Declaration of Land Use Restrictive Covenants for Low Income Housing Tax Credits (extended use commitment, typically referred to as the "LURA"), approved by the Suballocator, which must be in effect as of the end of the first taxable year credits are claimed 42(h)(6)(A). Failure to timely and properly record this instrument is an event of noncompliance and will be reported to the Internal Revenue Service on form 8823. Credits may not be allowable, although they may be claimed for past taxable years if a LURA is executed and recorded within one year of the notification of noncompliance. Owners are encouraged to consult with their accountant and/or attorney to confirm issues related to the claiming of credits.

The owner is required to submit a copy of the recorded LURA to the Suballocator and AHC.

Other restrictions may be set forth in the LURA, including but not limited to age related restrictions or preferences, preserving and continuing rental assistance, operating subsidy, serving long term homeless households, maintaining a smoke free project, providing special services, agreement to utilize the local PHA's waiting list, providing internet, bedroom sizes, and Equal Employment Opportunity policy. Refer to the applicable Qualified Allocation Plan, Procedural Manual and the project's application for credits for applicable restrictions. If set forth in the LURA, the restrictions are applicable for the duration of the compliance period and extended use period.

Noncompliance with any additional conditions set forth in the LURA could result in a permanent ban on

future allocations of credits for all parties involved.

SRO Threshold Relief Provision
If, for a particular unit held to Single Room Occupancy (SRO) housing threshold requirements that require units (SRO Unit(s)) to be affordable by households whose income does not exceed 30% of MTSP, the necessary rental assistance or operating support (collectively SRO Unit subsidy) is (i) withdrawn or terminated due to reasons not attributable to the actions or inactions of the owner; (ii) such withdrawal or termination materially adversely impacts the financial feasibility of the project; (iii) alternative funding is unavailable; and (iv) the project is otherwise in full compliance with all the terms of the funding for the project, the owner may petition the Suballocator to eliminate its requirements for the affected SRO Unit(s). Such petition must contain all material facts and supporting documentation substantiating the owner's request including, but not limited to, items (i), (ii) and (iii) above. Upon confirmation of such facts, which such confirmation shall not be unreasonably withheld or delayed, owner shall no longer be required to treat such SRO Unit(s) as SRO Unit(s) but must convert the rents of those units to the 50 percent tax credit rent limit; provided that more restrictive thresholds and/or selection priority or funding requirements, if any, do not apply. If such conversion occurs, in order to retain the tax credit allocation, the above described 50 percent tax credit rent limit and the IRC Section 42 minimum set-aside elected for the project by the owner must be maintained for the remainder of the tax credit compliance and extended use periods.

If the Suballocator shall, at any time thereafter, in its sole discretion, determine that an SRO Unit subsidy may be available for the remainder of the tax credit compliance and extended use periods, and this would not adversely affect the full availability of the tax credit allocation, and this would permit the SRO Unit(s) to again serve 30 percent income households, then at the Suballocator's request, the owner shall promptly apply for such SRO Unit subsidy for the SRO Unit(s), upon terms reasonably acceptable to such owner, and if such SRO Unit subsidy is obtained, shall again set aside such SRO Unit(s), when and to the extent then available, to income qualifying individuals.

2.04 Recapture of Low Income Housing Credit Form 8611

Taxpayers who must recapture tax credits claimed in previous years must complete and file IRS Form 8611 with the IRS.

3. RECORD KEEPING AND RECORD RETENTION REQUIREMENTS

3.01 Record Keeping

Under the record keeping provision of Treasury Regulation Section 1.42-5, the owner/agent must keep records for each building in the project for each year in the compliance period showing:

- The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit).
- The number of occupants in each LIHTC unit and the household's student status.
- The number and percentage of residential rental units in the building that are LIHTC units, offices and management units.

- The rent charged on each residential rental unit in the building (including utility allowance) as well as any additional charges to tenants. Documentation must include rent rolls, tenant ledgers, leases and utility allowances as required by the Internal Revenue Service.
- The LIHTC unit vacancies in the building, marketing information and information that shows when and to whom each of the next available units was rented.
- The annual income certification and annual student certification of each LIHTC household.
- Documentation to support each LIHTC Tenant Income Certification (CHART TIC) including the Household Questionnaire and verifications. Anticipated income of all persons expecting to occupy the LIHTC unit must be verified and included on a CHART TIC **prior** to occupancy and, for mixed income projects, recertified **annually** for continued eligibility.

  Reminder: Projects that receive a 100% allocation of Section 42 tax credits must have ALL identified noncompliance corrected before ceasing annual income recertifications. AHC as the monitoring agent for the Suballocator will determine whether or not a 100% tax credit project is eligible for exemption of future tenant income recertifications and will notify the owner/agent.

- The character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d) (tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project).
- The eligible basis and qualified basis of the building at the end of the first year of the credit period.
- Records demonstrating that any state or Suballocator established set aside elected by the owner has been complied with for each year of the compliance period.

3.02 Record Retention

The owner/agent must retain the records described above for at least six years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

See IRS Revenue Ruling 2004-82, published August 30, 2004, which clarifies that owners/agents may comply with the record retention provisions under Treasury Regulation Section 1.42-5(b) by using an electronic storage system instead of maintaining hardcopy (paper) books and records, provided that the electronic storage system satisfies the requirements of IRS Revenue Procedure 97-22.

Owners/agents must maintain applicant and tenant information in a way to ensure confidentiality. Any applicant or tenant affected by negligent disclosure or improper use of information may bring civil action for damages and seek other relief, as appropriate. Owners/agents must dispose of records in a manner that will prevent any unauthorized access to personal information such as burn, pulverize, shred, etc.

4. MONITORING: OWNER CERTIFICATION AND REVIEW

4.01 Annual Certification

The owner must certify to the Suballocator, under penalty of perjury, at least annually for each year of the 15-year compliance period on Minnesota Housing Form HTC12 Owner's Certification of Continuing Program Compliance, or other equivalent forms designated by the Suballocator, that the project is in compliance with the requirements of Treasury Regulations Section 1.42-5 paragraph (c)(1), certification and review provisions. The owner's certification requires the owner to certify that the project meets the following for the preceding 12 month period and if not, an explanation of the circumstances for noncompliance and of the owner's planned return to compliance is required.

1. The project met the minimum requirements of the 20/50 test under Section 42(g)(1)(A) of the Code, the 40/60 test under Section 42(g)(1)(B) of the Code, the Average Income Test under Section 42(g)(1)(C), or the 15/40 test for "deep rent skewed" projects under Section 42(g)(4) and 142(d)(4)(B) of the Code, whichever applies to the project.
2. There has been no change in the applicable fraction (as defined in Section 42(c)(1)(B) of the Code) for any building in the project.
3. At initial occupancy the owner received a Tenant Income Certification with supporting documentation and an Annual Student Certification from each low income household. At annual recertification, owner received an Annual Student Certification and, where applicable, a Tenant Income Certification with supporting documentation from each low income household.
4. Each LIHTC unit in the project was rent restricted under Section 42(g)(2) of the Code.
5. No tenants in LIHTC units were evicted or had their tenancies terminated other than for good cause and no tenants had an increase in the gross rent with respect to a LIHTC unit not otherwise permitted under Section 42. (See Chapter 26 of 8823 Guide and HUD Occupancy Handbook 4350.3 Rev-1, 8-12.)
6. All units in the project are and have been for use by the general public and used on a non-transient basis, except for transitional housing for the homeless provided under Section 42(i)(3)(B)(iii) of the Code.
7. No finding of discrimination under the Fair Housing Act, 42 U.S.C 3601-3619, has occurred for this project. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C 3616a(a)(1), or an adverse judgment from a federal court.
8. Each building in the project is and has been suitable for occupancy, taking into account local health, safety and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or LIHTC unit in the project.
9. There has been no change in the eligible basis (as defined in Section 42(d) of the Code) of any building in the project since last certification submission.
10. All tenant facilities included in the eligible basis under Section 42(d) of the Code of any building in the project, such as swimming pools, other recreational facilities, parking areas,

washer/dryer hookups and/or appliances were provided on a comparable basis without charge to all tenants in the buildings.

11. If a LIHTC unit in the project was vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units were or will be rented to tenants not having a qualifying income.
12. If the income of tenants of a LIHTC unit in the project increased above the limit allowed in Section 42(g)(2)(D)(ii) of the Code, the next available unit of comparable or smaller size was or will be rented to residents having a qualifying income.
13. An extended low income housing commitment as described in section 42(h)(6) was in effect, including the requirement under section 42(h)(6)(B)(iv) that an owner/agent cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f. Owner/agent has not refused to lease a unit to an applicant based solely on their status as a holder of a Section 8 voucher and the project otherwise meets the provisions, including any special provisions, as outlined in the LURA (not applicable to buildings with tax credits from years 1987-1989). ***Note:*** *The Owner's Certification must be accurate related to whether this commitment ("LURA") was in effect. If the LURA was not executed and recorded at the time the owner's certification is completed, noncompliance will be reported to the Internal Revenue Service on Form 8823. Credits may not be allowable, although they may be claimed for past taxable years if a LURA is executed and recorded within one year of the notification of noncompliance. Owners are encouraged to consult with their accountant and/or attorney to confirm issues related to the claiming of credits.*
14. The owner received its credit allocation from the portion of the state ceiling set aside for a project involving "qualified nonprofit organizations" under Section 42(h)(5) of the Code and its nonprofit entity materially participated in the operation of the development within the meaning of Section 469(h) of the Code.
15. There has been no change in the ownership or management of the project.
16. The property is in compliance with VAWA.
17. The owner/agent has not evicted any resident or refused to renew any lease except for good cause.
18. The owner/agent continues to comply with all it agreed to in its application for credits, including all federal and state level requirements and any commitments for which it received points or other preferential treatment in its application.
19. The property has not suffered a casualty loss resulting in the displacement of residents.
20. The owner/agent has not refused to lease a unit to an applicant based solely on their status as a holder of a Section 8 voucher.

4.02 Annual Submission Requirements

The annual owner's certification must be submitted to AHC by February 15, or the next business day, or as otherwise specified by AHC, of each calendar year. The Owner's Certification of Continuing Program Compliance (form HTC12) must be submitted to AHC by the owner/agent of any and all projects, including those that have received a carryover allocation of tax credits or a preliminary

determination letter in the case of tax exempt bond allocations, (42m letter) even if the project has not yet been placed in service. The HTC12 must be scanned and uploaded to the project's secure folder. In response to HUD Notice H 20-04, Suballocators will accept the use of electronic signatures for owner signed documents.

Owners/agents may NOT submit the HTC12 manually. The Suballocator and AHC will ONLY accept an HTC12 that is uploaded to the secure folder. The original must be available for review or submission upon request.

A corrected or clarified HTC12 submitted as a result of compliance monitoring must be signed by the owner representative, dated with a current date and must include a statement that the certification is correct as of December 31 of the previous calendar year.

If the project is not yet in the first year of the credit period, submit:

- A signed and dated Owner's Certification of Continuing Program Compliance with appropriate designation of "Not Yet Placed in Service" or "Placed in Service but elect to begin credit period in the year following Placed in Service".

If the project is in the first year of the credit period and later, submit:

- A fully completed, signed and dated Owner's Certification of Continuing Program Compliance (HTC12). Only the person authorized to sign for the respective property's ownership entity may sign the HTC12. AHC may ask for signatory authorization if not on file. After uploading the owner certification, keep the original for owner's/agent's records and upload supporting documentation explaining the circumstances for noncompliance (if any) and of the owner's/agent's planned return to compliance. Note that the Owner's Certification of Continuing Program Compliance provides that all months within each twelve month period are subject to certification and all certification items must be checked.
- Certification of Material Participation by a Nonprofit Entity. If the tax credit allocation is subject to nonprofit set aside under Section 42(h)(5) and the project is in the first year of the credit period, include applicable documentation (Partnership Agreement, General Partner Agreement, Management Agreement or Contract). In subsequent years, only the certification is required unless there has been a change, in which case the applicable documentation must be submitted.
- A completed Consolidated Housing Annual Reporting Tool ("CHART"). The CHART is to be uploaded to the project's secure folder. All tabs of the CHART must be completed, as applicable.
- Documentation on how utility allowances were determined, including source document(s) and the effective date of the determination. Documentation must cover the entire calendar year for the reporting period. More than one source document will be required if the utility allowance changed during the compliance year or the owner/agent changed the method by which the utility allowance was determined.
- Required compliance monitoring fees.

The following forms are required ONLY for the first year of the credit period and must be submitted to AHC at the time they are filed with the IRS.

- All IRS Forms 8609 (including Supplemental, Carryover, etc.) for each BIN, with Part II completed as filed with the IRS.
- Completed IRS Form 8609-A for each building.
- IRS Form 8586 as filed with the IRS. There is only one form 8586 per project, regardless of Multiple Building Election.

Failure to submit these forms and/or complete these forms accurately by the due date is considered noncompliance.

The CHART Data tab must be completed and must reflect activity and each unit's status for the entire calendar year (including previous year's household information if vacant on January 1 of the reporting year). The Summary must document gross income at move in and, for mixed income properties, at recertification. Student status, rent amounts, utility allowances, move out and transfer information, additional income and rent restrictions required by the LURA, must all be reported on the Summary. **At mixed income properties, if tenant income exceeds 140% of the maximum income limit at recertification, the User Notes in the Summary must document owner's/agent's compliance with the Available Unit Rule** (Section 42 (g)(2)(D)). An attachment explaining owner's/agent's compliance with the Available Unit Rule may be necessary.

AHC will accept only CHARTs for the current program year submitted electronically using the most recent CHART template provided to the owner/agent. CHARTs cannot be submitted manually, they **must** be uploaded to the project's secure folder.

Suballocator and AHC use CHART for monitoring compliance and also to supply project and tenant information for LIHTC projects to the Department of Housing and Urban Development (HUD) annually.

Failure to supply legible and complete owner certifications, occupancy information, utility allowance documentation, reports and other required documentation, as well as IRS Forms 8609, 8609-A and Form 8586, when they are due will be considered noncompliance.

4.03 Compliance Monitoring Review Requirements

Under the Suballocator review process, owner/agents must maintain ongoing tenant records on approved forms for each LIHTC unit in the project. The forms provide a historical record of tenant compliance for each LIHTC unit. Minnesota Housing's forms must be used unless equivalent Suballocator forms are specified, such as the Suballocator Data Practices Act form.

AHC must conduct a site visit of each project at least once every three years. The site visit consists of review of tenant files and a UPCS inspection of the project and units. AHC reserves the right to adjust a project's site visit schedule for any reason. During a site visit, the CHART TIC, annual student

certification(s), the documentation to support the certification(s) and the rent record for each tenant in at least 20% of the HTC units in each project, based on owner's IRS Form 8609, line 8b election to treat buildings as a single or multiple building project, will be reviewed. In addition, AHC will review any marketing and leasing materials that were updated since AHC's last site visit. AHC will also conduct a UPCS inspection of at least 20% of the HTC units in each project, based on owner's IRS Form 8609, line 8b election to treat buildings as a single or multiple building project.

Revenue Procedure 2016-15 established a schedule of the minimum number of units to inspect based on the number of LIHTC units in the project. The Suballocator has elected to continue to inspect 20% of the LIHTC units in each project to ensure adequate ongoing compliance with all UPCS and local building standards but reserves the right to change this percentage in the future.

For very large Section 42 projects (those in excess of 500 units), especially those with multiple buildings, AHC may enter into a negotiated site visit schedule with property owner/agents to ensure adequate ongoing compliance with all UPCS and local building standards.

AHC reserves the right to review/inspect up to and including 100% of the LIHTC units in any project for any reason. The first inspection for new projects will occur no later than the end of the second year of the credit period.

Special Conditions

Mixed Income Projects: The site visit of first year mixed income projects will include a UPCS inspection of 20% of the HTC units and review of 20% of the HTC tenant files.

100% HTC Projects: The site visit of first year 100% HTC projects will include a UPCS inspection of 20% of the units and review of 50% of the tenant files. The Suballocator may require AHC to select additional tenant files for review if the initial review of 50% of the files results in significant findings or a pattern of deficient documentation.

The unit inspection fee is charged for all units inspected in addition to a per unit fee charged for all tenant files reviewed for a first year project, subject to the minimum fee. If a tenant file is reviewed and determined to be noncompliant and a complete new file review is required to determine corrected noncompliance (reportable on Form 8823 as Out and Back in compliance) or clarified noncompliance (not reportable on form 8823), the tenant file will be treated as a new unit file review subject to a new tenant file inspection fee. Tenant files noted as Sufficient But Imperfect will not be subject to re review. AHC reserves the right to adjust fees due to changing circumstances.

The LIHTC units to be inspected or reviewed must be chosen in a manner that will not give owners/agents of LIHTC projects advance notice that certain records will or will not be reviewed. AHC may give an owner/agent reasonable notice, not to exceed 15 days, that a project will be inspected and/or tenant files reviewed and that the owner/agent will be notified of the selected LIHTC units only on the day of inspection.

If, due to extraordinary circumstances, an inspection must be rescheduled, new units will be selected if the rescheduled date means the owner/agent has been in possession of a unit list for more than 15 calendar days. In addition, AHC must inspect at least one vacant unit in each project, if applicable. Vacant units may be substituted for selected units or inspected in addition to selected units at the inspector's discretion.

Noncompliance that is identified and corrected by the owner/agent *prior to notification* of an upcoming compliance review or inspection need not be reported to the IRS. The IRS considers the date of the notification letter a "bright line" date.

AHC reserves the right to conduct a review of any building after serving appropriate notice and to examine all records pertaining to rental of LIHTC units. AHC may perform a review at least through the end of the Extended Use Period of the buildings in the project.

4.04 Procedure for Site Visit

In the year a site visit is due, AHC will contact owner/agents of LIHTC properties and request *dates to avoid* for site visits to which some or all of their LIHTC properties may be subject. AHC will do its best to schedule site visits around the dates indicated. If known, AHC will attempt to coordinate inspections but cannot guarantee that inspections can be coordinated.

Not more than fifteen (15) days prior to the start of a site visit, AHC will issue a Bright Line Date (BLD) notice, via upload to the project's secure folder, informing the owner/agent of the upcoming site visit.

The BLD notice will include several AHC forms for owner/agent to complete and return to AHC. Below is a list of each AHC form:

- Site Information Form
- Terms & Conditions concerning the UPCS Inspection
- Compliance Review Information Form
- Administrative Documents Checklist
- Percentage and number of units selected for file review and UPCS inspection

The BLD notice will provide the start and end dates of the site visit. It is possible that the UPCS inspection and file review components of the site visit will have different start and end dates.

If extraordinary circumstances that are beyond AHC's control prevent AHC from carrying out the site visit within the 15-day notice period, AHC will select units on the actual day of the site visit. Extraordinary circumstances include, but are not limited to, natural disasters and severe weather conditions.

At least 24 hours prior to the inspection date, owner/agent must notify occupants of ***all*** LIHTC units that their unit may be inspected. A site representative must accompany AHC inspectors at all times during the inspection.

Alternate units will be selected at random if there are unattended minors in the unit or if an occupant is sleeping, bathing or showering. If the inspector finds systemic noncompliance, up to 100% of the LIHTC units may be inspected. A new inspection fee may be charged if the AHC inspector is unable to complete the inspection due to owner's/agent's failure to notify residents or owner's/agent's failure to appear for the inspection. The inspection fee will be charged, with payment due within 30 days of invoice.

The site visit includes, but is not limited to, a review of:

- At least 20% (50% for first year 100% tax credit projects) of the LIHTC tenant files in each project, including a full inspection and calculation of move in income eligibility, student status and a review of annual recertifications.
- The Consolidated Housing Annual Reporting Tool (CHART) including the CHART Data tab.
- Utility allowance information and other property administrative records.
- A UPCS inspection of the general physical condition of the property including 20% of the LIHTC units in each project.
- Marketing and leasing materials, and in some cases, tenant interviews.

All buildings must be inspected, and the unit sampling must include vacant units, if any. AHC will request a list of vacant units at the time of inspection and may substitute one or more vacant units for units selected or may inspect one or more vacant units in addition to units selected.

Unless otherwise clarified, compliance violations that are uncorrected as of the date of the BLD notice may be reported on Form 8823. Other information, resident selection plans, house rules, rent roll, tenant ledgers, HAP amounts, etc. and supporting documentation that cover the full compliance period under review through the inspection date must be submitted to AHC as requested in the BLD notice.

Compliance monitoring regulations published January 14, 2000, require housing credit agencies to conduct UPCS inspections consistent with standards governed by the Department of Housing and Urban Development's Uniform Physical Conditions Standard (UPCS) or local standards. The standard selected by the Suballocator to be used for Section 42 inspections is the HUD UPCS (also see the applicable QAP). These standards require properties to be in "decent, safe and sanitary condition and in good repair" and require agencies to inspect the following five major areas:

- **Site** – The site includes components such as fencing and retaining walls, grounds, lighting, mailboxes, signs (such as those identifying the development or areas of the development), parking lots/driveways, play areas and equipment, refuse disposal, roads, storm drainage and walkways. The site must be free of health and safety hazards and be in good repair.
- **Building exterior** – Each building on the site must be structurally sound, secure, habitable, and in good repair. The building's exterior components such as doors, fire escapes, foundations, lighting, roofs, walls and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.
- **Building system**s – The building's systems include components such as domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system. Each building's

systems must be free of health and safety hazards, functionally adequate, operable, and in good repair.

- **Dwelling units**:
    - Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit (for example the unit's bathroom, call for aid, ceiling, doors, electrical systems, floors, hot water heater, HVAC (where individual units are provided), kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls and windows) must be free of health and safety hazards, functionally adequate, operable, and in good repair.
    - Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water.
    - If the dwelling unit includes its own sanitary facility, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste.
    - The dwelling unit must include at least one battery operated or hard wired smoke detector, in proper working condition, on each level of the unit.
- **Common areas** – The common areas must be structurally sound, secure and functionally adequate for the purposes intended. The common areas include components such as basement/garage/carport, restrooms, closets, utility, mechanical, community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable. The common areas must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair.

All areas and components of the housing must be free of health and safety hazards. Health and safety hazards include, but are not limited to: air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead based paint. For example, buildings must have fire exits that are not blocked, have handrails that are undamaged and have no other observable deficiencies. The housing must have no evidence of infestation by rats, mice, or other vermin, or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor (propane, natural gas, methane gas) or other observable deficiencies. The housing must comply with all regulations and requirements related to the ownership of pets, the evaluation and reduction of lead based paint hazards and have available proper certifications of such.

All dangerous and/or life threatening hazards are considered exigent health and safety violations and will require correction within 72 hours. The AHC inspector will provide written notice to the owner/agent of any exigent health and safety violations on the day of inspection. The complete inspection results will be sent to the owner/agent with the compliance review letter.

Notwithstanding the above inspection requirements, a LIHTC project under Section 42 must continue to satisfy local health, safety, and building codes. AHC may rely on local code inspections rather than

performing a separate physical inspection of the property. When due for a site visit, AHC will contact the owner/agent to determine whether there has been a physical inspection that meets the local inspection requirements.

As permitted by Treasury Regulations Section 1.42-5, as amended, AHC may accept an inspection conducted by HUD's Real Estate Assessment Center (REAC).

In accordance with HUD's Industry Standards Notice issued July 11, 2016, all repairs to address UPCS deficiencies in preparation for an inspection or when correcting noncompliance must be made in a good and workmanlike manner with materials that are suitable for the purpose and free from defects. The phrase "good and workmanlike manner" means:

- Ensuring that the component, as repaired, performs its intended function/purpose; and
- Finishing the repair in a manner reasonably compatible with design and quality of the original and adjoining decorative materials.

Each repair must be made in accordance with the industry standard for the particular inspectable item. For example, a hole in the drywall is repaired using the same or equivalent materials, materials have the same texture, minimal deviation from and/or have an indistinguishable difference from the original esthetics/appearance. A violation will be recorded for each substandard repair made to avoid or disguise an observed deficiency based on the size of the area affected and/or the item inspected.

The following is a partial list of typical items that are often incorrectly repaired:

- **Cracks in brick wall** – Tuck pointed using mortar is the correct means of repair. Caulking is not appropriate.
- **Drywall repair** – Sheetrock with mud and/or tape is the correct means of repair. Simply covering a hole or damaged drywall with plywood/laminate is not correct.
- **Wooden door repair** – Wood or wood veneer is the correct material for repair. Sheetrock mud or plywood is not correct.
- **Downspouts** – Same materials, shape and design are correct. Plastic or PVC piping is not correct.
- **Erosion** – Correcting the root cause of the erosion is the correct means of repair, for example, correct or repair the drainage or add fill soil. Simply hiding or covering the erosion with mulch or straw is not correct.
- **Electrical panels** – Installing a correct panel cover or using manufactured blanks is the correct means of repair. Using caulking or expandable spray foam to fill gaps is not correct.
- **Refrigerator gasket** – Replacing the gasket is the correct means of repair. Using white electrical tape, fingernail polish, white out, etc., is not correct.
- **Using an object to secure or hold up a window** – Repairing or replacing the original lock is the correct means of repair. Placing a stick in the window as the primary means of securing a window or sliding door is not correct.

For further information on how the Suballocator will determine and report noncompliance, see the 8823

Guide: Chapter 6, Category 11c – Violations of the UPCS or Local Inspection Standards.

4.05 Compliance Forms

The following forms are required by the Suballocator. They are based on forms approved as "recommended practices" by the National Council of State Housing Agencies (NCSHA):

- Owner's Certification of Continuing Program Compliance (HTC12 or HTC12(Y15)), or other equivalent forms designated by the Suballocator as found in CHART
- Tenant Income Certification, or other equivalent forms designated by the Suballocator as found in CHART (CHART TIC)
- Student Status Verification and Financial Aid Verification (MHFA's HTC15), when applicable
- Under $5,000 Asset Certification (MHFA's HTC24), when applicable
- Zero Income Certification, when applicable
- Verification of earned and/or unearned income
- For Income Average projects only – Housing Tax Credit Election/Certification with the Income Average Minimum Set aside (CHART Certification form)

The forms with "HTC" and a number (i.e. HTC24) and the CHART Owner's Certifications and CHART TIC are *required* forms. **No other forms will be considered acceptable.** Other forms published by Minnesota Housing are strongly recommended. Each form has a version date located in the lower right hand corner. Please discard all old forms and replace them with those that have been newly revised.

In addition, the following are required:

- Consolidated Housing Annual Reporting Tool (CHART) with all tabs completed.
- Suballocator Minnesota Government Data Practices Act Disclosure Statement as amended.
    - NOTE: If a project also has financing or other funding from Minnesota Housing, the Minnesota Housing Minnesota Government Data Practices Act Disclosure Statement also is required to be in each tenant file.
- Utility allowance documentation to support CHART.
- Annual Student Certification (HTC35).
- Resident Notification Letter and Lease Rider (not required for Section 8 units using the HUD Model Lease).

The Housing and Economic Recovery Act requires monitoring agencies to submit tenant data to HUD. Collecting and reporting the data to AHC is required. Demographic data are collected and reported to AHC on CHART TIC, which populates the CHART Data and Tenant Data tabs. A tenant file will not be found noncompliant if a separate completed household demographic collection form is not on file. AHC will not review a tenant file for inclusion of such a collection form but will inspect the information reported on the CHART Data tab and Tenant Data tab to ensure reasonable household demographic data collection and reporting efforts have been undertaken.

4.06 Corrections to Documents

Sometimes it is necessary to make corrections or changes to documents. A document that has been altered with correction fluid or "white out" ***will not be accepted***. When a change is needed on a document for the LIHTC program, the person making the correction must draw a line through the incorrect information, write or type the correct wording or number, and have all parties initial and date the change. When applicable, add “true and correct as of” language.

4.07 Annual Monitoring Fees

AHC will charge annual monitoring fees to cover the costs of conducting compliance monitoring. The annual fee(s) must be submitted by the due date shown on the billing invoice.

Fees are charged on all units within each project. The following fees will apply to projects monitored for Program Years 2019, 2020 and 2021 (monitoring completed in Calendar Years 2020, 2021 and 2022). Thereafter, AHC reserves the right to adjust fees due to changing circumstances.

The fee for annual compliance monitoring (“desk audit”) during the 15-year compliance period is $65.00/unit based on the total number of residential Market and HTC units in the project. The minimum fee is $600. During the Extended Use Period (year 16 and beyond), the annual compliance monitoring fee is $45.00/unit, based on the total number of units in the project. The minimum fee is $350.

A unit inspection fee of $65 is charged for all units inspected and/or tenant files reviewed for a first year project, subject to the minimum fee of $975.

These fees are for an initial compliance review and a review of any required owner/agent response. Incomplete responses resulting in subsequent follow up reviews may result in a re-review fee. Re-review fees for subsequent reviews for a desk audit is $35.50/unit (based on the total number of residential market and LIHTC units in the project. The minimum re-review fee is $300.

The re-review fee for a completely new file review to determine corrected noncompliance or file clarification is considered a new unit file review subject to the regular fee of $65.00 for each tenant file requiring review.

Failure to promptly submit annual monitoring fees is a reportable event of noncompliance.

4.08 Suballocator Records Retention

The Suballocator and AHC will retain records of noncompliance or failure to certify for six years beyond the filing date of the respective Form 8823. In all other cases, the Suballocator and AHC will retain the certifications and records described in Treasury Regulations Section 1.42-5(c) for three years from the end of the calendar year after receiving the certifications and records.

4.09 Liability

Compliance with the requirements of the LIHTC Program is the responsibility of the owner/agent of the building for which the credit is allowable. The Suballocator's obligation to monitor for compliance with

the requirements of the LIHTC Program does not make it or AHC liable for an owner's/agent's noncompliance (Treasury Regulations Section 1.42-5(g))

5. PROJECT RENTAL REQUIREMENTS

5.01 Allowable Fees and Charges

Application fees may be charged to cover the actual cost of checking a prospective tenant's income, credit history and landlord references. The fee is limited to recovery of the actual out-of-pocket costs. No amount may be charged in excess of the average expected out-of-pocket costs of checking tenant qualifications at the project. Customary fees that are normally charged, such as damage deposits, cleaning deposits, pet deposits and/or credit checks are permissible. However, an eligible tenant cannot be charged a fee for the work involved in completing the additional forms or documentation required, such as the CHART TIC.

Note: *If tenant facilities (parking, garages, swimming pools, community rooms, laundry facilities, storage lockers, etc.) were included in the eligible basis, they must be made available to all tenants on a comparable basis and a separate fee must not be charged for their use.*

Gross rents for the LIHTC Program are the rents paid by tenants (excluding federal or state rent assistance such as Section 8 or other state/local rent assistance programs – see AHC's website for examples) plus an allowance for utility costs paid directly by tenants (except telephone, cable and internet) and any other mandatory charges.

Charges for non-optional services such as a washer and/or dryer hookup fee and built in/on storage sheds or lockers (paid month to month or in a single payment), excess utility charges, and/or renter's insurance must always be included when calculating gross rent. Non-optional means required as a condition of occupancy.

The total gross rent cannot exceed the applicable Multifamily Tax Subsidy Project (MTSP) rent limits for the project. In addition, IRS has clarified that month to month lease fees, mandatory renter's insurance, transaction fees or charges associated with Walk In Payment Systems (WIPS) or other online rent payment systems if the tenant does not have another option to pay rent that does not require a fee to be paid, and payments for utilities under a Ratio Utility Billing System (RUBS – a formula that allocates a property's utility bill among its units based on the units' relative floor space, number of occupants, or some other quantitative measure, but not based on actual consumption) are considered rent. These fees are allowable, but the gross rent must include these amounts and must be below the applicable LIHTC rent limit. When completing the CHART TIC, include these amount in the Other Non-Optional Rent section and in CHART, include these amounts in the Other Non-Optional Charges column on the CHART Data tab and provide a description of any non-optional charges in the User Notes column.

It is permissible to charge eligible tenants the first and last months' rent if the same is charged to other tenants. It is also permissible to charge tenants convenience fees and reasonable administrative costs when accepting rent payments via credit or debit cards if the tenants still have other reasonable options

for paying rent, such as with personal checks, money orders or electronic fund transfer.

Decorating fees or fees for preparing a unit for occupancy must not be charged. Owners/agents are responsible for physically maintaining units in a manner suitable for occupancy. This includes unit transfer fees and similar fees, unless owner/agent can clearly document what these fees cover and that they are not used for preparing a unit for occupancy.

For further information on how the Suballocator will determine and report noncompliance, see the 8823 Guide: Chapter 11, Category 11g – Gross Rent(s) Exceed Tax Credit Limits.

5.02 Rent Increases

Beginning on January 1, 2020, rent increases for occupied LIHTC units are limited to once annually. This limit applies to the rent charged for the unit and not the portion of tenant paid rent for residents assisted with Section 8 or other rental assistance, which may increase or decrease based on changes in income. However, for units assisted with state or local project-based rental assistance, owners may increase contract rents in accordance with the respective project-based rental assistance contract. Owners may increase rents for units assisted with Housing Support when DHS adjusts the room and board rate, but only if it does not affect the tenant payment. This limit also applies regardless of the term of the lease or any language in the lease that would allow rents to increase more than once annually. Rents must always comply with limits imposed by the program(s) that financed the development and/or respective unit. This includes Minnesota Housing funding sources as well as funding sources outside of the agency.

- **Example 1**: The last rent increase for an occupied unit on a month to month lease occurred on October 1, 2019. The owner may not increase the rent for that household until October 1, 2020. If the same household continues to occupy the unit, a subsequent rent increase may not occur until October 1, 2021.
- **Example 2**: An initial six-month lease was signed on July 1, 2020. If the same household continues to occupy the unit, the owner may not increase the rent for that unit until July 1, 2021 and a subsequent rent increase for that household may not occur until July 1, 2022.
- **Example 3:** An initial lease begins on June 16, 2020. If the same household continues to occupy the unit, the owner may increase the rent (with proper notice) with a lease renewal effective June 1, 2021 and a subsequent rent increase may not occur until June 1, 2022.

If after occupying a LIHTC unit, the LIHTC household cannot pay the rent or is otherwise in violation of the lease provisions, the owner/agent has the same legal rights in dealing with the LIHTC household as with any other household. Note, however, that during the compliance period, Extended Use Period, and for three years after the expiration of the LURA, LIHTC tenants in qualified LIHTC units may not be given a gross rent increase that is not otherwise permitted under the LIHTC program and may not be evicted, or have their tenancy terminated, for other than good cause.

5.03 Section 8 Rents

Subsidy payments to an owner/agent under various HUD Section 8 programs or any other comparable federal or state/local rental assistance program are excluded and not considered in determining gross

rent. Only the tenant's portion of the rent payment plus the applicable utility allowance and any non-optional charges are considered in determining if the rent exceeds the LIHTC rent limit.

The portion of the rent paid by tenants receiving Section 8 or any other comparable federal or state/local rental assistance program can exceed the LIHTC rent limit as long as the owner/agent receives a Section 8 or government rent assistance payment (including assistance from Housing Support, formerly Group Residential Housing) on behalf of the resident. If no subsidy is provided, the tenant may not pay more than the maximum allowable LIHTC rent.

When considering rent to income ratios for screening, managers must compare income only to the tenant paid portion of the rent, not the subsidy payment.

Note: the MFIP Housing Assistance Grant (coded MF-HG) is not considered a program comparable to Section 8 and must be included as income.

With the passage of the Omnibus Budget Reconciliation Act of 1993, owners/agents are prohibited from refusing to lease to a prospective tenant based solely on the fact that the applicant holds a Section 8 rental voucher.

5.04 Minimum Lease Requirements & Good Cause Termination

All tenants occupying LIHTC units are required to be certified and to execute an initial six month lease. Exceptions for shorter leases for housing for the homeless and single room occupancy are listed below. The six month requirement may include free rental periods of one month or less. Succeeding leases are not subject to a minimum lease period. During the term of a tenant lease, the rental rate may be altered downward, but not upward, due to annual changes in the maximum income and rent limits set for tax credit projects by the Suballocator on behalf of HRA or due to changes in the utility allowances which are governed by HUD.

The lease must reflect the correct date of move in, or the date the tenant takes possession of the LIHTC unit.

At a minimum, the lease must include:

- The legal name of parties to the agreement and all other occupants
- A description of the unit to be rented
- The date the lease becomes effective
- The term of the lease
- The amount of rent
- The use of the premises
- The rights and obligations of the parties, including the obligation of the household to annually recertify its income (when applicable) and student status
- The signatures of all household members 18 years of age or older and/or persons under the age of 18 who are the head of household, co-head or spouse

Single room occupancy (SRO) housing must have a minimum lease term of one month. Tenants in SRO housing may share bathrooms, cooking facilities and dining areas.

Federal rules allow for month by month leases for the following types of SRO housing for homeless individuals:

- SRO units in projects receiving McKinney Act and Section 8 Moderate Rehabilitation assistance.
- SRO units intended as permanent housing and not receiving McKinney Act assistance.
- SRO units intended as transitional housing that are operated by a governmental or nonprofit entity and providing certain supportive services.

While not a compliance requirement of the LIHTC Program, the Violence Against Women Reauthorization Act of 2013 (VAWA 2013) was extended to include the LIHTC Program.

Owners/agents must comply with the lease requirements found in Section 601 of VAWA 2013. The Suballocator highly encourages owners/agents to use the VAWA Lease Addendum, form HUD-91067 or its successor VAWA Lease Addendum form. In general, owners/agents may not construe an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking as a serious or repeated violation of a lease term by the victim or threatened victim, or as good cause for terminating tenancy. However, in accordance with VAWA 2013, owners/agents may bifurcate a lease to terminate the tenancy of an individual who is a tenant or lawful occupant and engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against another lawful occupant living in the unit or other affiliated individual as defined in the VAWA 2013.

Owner/agent shall include a copy of HUD form 50066* or its successor form with each tenancy termination or eviction notice to allow an individual to certify that he or she is a victim of domestic violence, dating violence, sexual assault or stalking. The form is to be completed and submitted to owner/agent within 14 business days or an agreed upon extension date, in order for the individual to receive protection under the VAWA. See section 5.14 for more information about VAWA.

*Section 8 and other HUD Multifamily properties must continue to use the 91066, or its successor form.

Good Cause Termination

During the compliance period, the EUP and for three years after the expiration of the LURA, households in qualified LIHTC units may not be evicted or have their tenancy terminated (including not renewing a lease) for other than good cause. The Suballocator considers good cause to be a serious and/or repeated violation(s) of the material terms and conditions of the lease. The owner/agent must state the good cause in any eviction, non-renewal of a lease or termination of tenancy notice. If a household contests the eviction, lease non-renewal or termination of tenancy notice, the owner/agent must file a court action.

To ensure that households understand their rights, a Resident Notification Letter must be provided at each lease signing and a Lease Rider must be executed and attached to the lease. The required Resident

Notification Letter and Lease Rider can be found on **Minnesota Housing's website**. All LIHTC qualified households must be provided a Resident Notification Letter and execute a Lease Rider by 12/31/2020. The Resident Notification Letter and Lease Rider are not required for units occupied by households assisted with Project Based Section 8 using the HUD Model Lease.

For further information on how the Suballocator will determine and report noncompliance, see Chapter 26 of the 8823 Guide and HUD Occupancy Handbook 4350.3 Rev-1, 8-12.

5.05 Household Size

The number of household members is needed to determine the maximum allowable income.

Minimum and Maximum Household Size

While IRS regulations do not specifically address occupancy requirements, the Suballocator encourages maximum utilization of space. Therefore, the Suballocator recommends that written occupancy policies be established that reflect maximum utilization (at least 1 person per bedroom is recommended as a minimum) and set maximum standards of no fewer than two persons per bedroom. In situations where there is more than one qualified applicant for a unit, the Suballocator recommends giving preference to the household that is most suitable to the unit size. Owners/agents must comply with state and local laws, regulations and financing requirements.

Factors that Affect Household Size for Income Limits

When determining household size for income limits, the owner/agent must include the following individuals who are not living in the unit:

- Children temporarily absent due to placement in a foster home.
- Children in joint custody arrangements who are present in the household 50% or more of the time (if disputed, determine which parent claimed the children as dependents for purposes of filing a federal income tax return).
- Children who are away at school but who live with the family during school recesses.
- Unborn children of pregnant women. When a pregnant woman is an applicant, the unborn child is included in the size of the household and may be included for purposes of determining the maximum allowable income. The rental application or Household Questionnaire should ask the following question: "Will there be any changes in household composition within the next 12-month period?" If an applicant answers that a child is expected, the owner/agent should explain to the tenant that in order to count the child as an additional household member and use the corresponding income limit, a self-certification of pregnancy must be provided.
- Children who are in the process of being adopted.
- Temporarily absent family members who are still considered family members. For example, the owner/agent must consider a family member who is working in another state on assignment to be temporarily absent.
    - Persons on active military duty are considered temporarily absent (except if the person is not the head, co-head or spouse or has no dependents living in the unit). If the person on active military duty is the head, co-head, or spouse, or if the spouse or dependents of the

person on active military duty resides in the unit, that person's income must be counted in full.
    - Family members in the hospital or rehabilitation facility for periods of limited or fixed duration. These persons are temporarily absent as defined above.
    - For persons permanently confined to a hospital or nursing home, the family decides if such person(s) is/are included when determining family size for income limits. If such persons are included, they must be listed on the Household Questionnaire and CHART TIC as "other adult family member". This is true even when the confined person is the spouse of the person who is or will become the head. If the family chooses to include the permanently confined person as a member of the household, the owner/agent must include income received by said persons in calculating family income.

When determining family size for establishing income eligibility, the owner/agent must include all persons living in the unit **except** the following:

- A live in aide/attendant is a person who resides with one or more elderly persons, near-elderly persons, or persons with disabilities, and who:
    - Is determined to be essential to the care and well being of the person(s),
    - Is not obligated for the support of the person(s) and
    - Would not be living in the unit except to provide the necessary supportive services.

Change 4 to HUD Handbook 4350.3, published in 2013, removed foster adults and foster children from this section. Foster adults and foster children must be counted as household members for both income and occupancy purposes.

While a relative may be considered a live in aide/attendant, they must meet the above requirements, especially the last. The live in aide qualifies for occupancy only if the individual needing supportive services requires the aide's services and remains a tenant. The live in aide may not qualify for continued occupancy as a remaining family member. Owner/agent must obtain verification of the need for a live in care attendant and must ***not*** add the attendant to the lease or the CHART TIC.

Deployment of Military Personnel to Active Duty

Owners/agents are encouraged to accommodate the unique circumstances of households where a member is called to active duty in the Armed Forces. Specific actions that owners/agents can take and remain in compliance include, but are not limited to:

- Allow a guardian to move into the LIHTC unit on a temporary basis to provide care for any dependents the military person leaves in the unit. The guardian's income is not included in the household's income.
- Allow a tenant living in a LIHTC unit to provide care for any dependents of persons called to active duty in the Armed Forces on a temporary basis as long as the head and/or co-head of the household continues to serve in active duty. Income of the dependent (SSI benefits, military benefits) is not included in the LIHTC household's income.
- Allow leases to remain in effect for a reasonable period of time without recertification (if

required) depending on the length of deployment beyond that required by the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. §§501-591, even though the adult members of the military family are temporarily absent from the unit.

5.06 Utility Allowance

The IRS requires that utility allowances be set according to Treasury Regulations Section 1.42-10 effective May 2, 1994, and amended July 29, 2008, as well as the Final and Temporary Utility Allowance Regulations 1.42-10T issued March 3, 2016. Please read these regulations carefully.

Failure to maintain or provide the utility allowance and supporting documentation annually is considered noncompliance. Without proof of the amount of the allowance, there is no way to correctly compute the rent. In addition, an incorrect utility allowance calculation may result in noncompliance for rents that exceed the LIHTC rent limits.

It is the owner's/agent's responsibility to contact the appropriate organization to request current utility allowance information. Unless otherwise provided for above, any costs incurred in obtaining a utility allowance are the responsibility of the owner/agent.

If a utility (other than telephone, cable television or internet) is paid directly by the tenant(s), and not by or through the owner/agent of the building, the calculation of the gross rent includes a utility allowance. If all utilities are paid by or through the owner/agent, the utility allowance is zero.

Utility allowances are applied individually to each building in the development. Therefore, depending on the development, buildings in the same development may use different utility allowances.

Utility allowances must be reviewed and updated at least annually. Regulations require that new utility allowances be used to compute rents that are due 90 days after the effective date of the new allowances. For new buildings, owners/agents are not required to review or implement new utility allowances until a building has achieved 90 percent occupancy for a period of 90 consecutive days or the end of the first year of the credit period, whichever is earlier.

Treasury Regulations Section 1.42-10 lists the different sources of utility allowances for tax credit developments. The following is a summary of the sources of utility allowances, in order of required consideration:

- USDA Rural Housing Service (RHS) financed projects, or units with tenants receiving RHS assistance, must use the RHS utility allowance for all HTC units *(not applicable for projects awarded Suballocator tax credits.)*
- Buildings regulated by HUD, where the utility allowances are reviewed annually by HUD or its contract administrator, must use the HUD approved utility allowance for all LIHTC units.
- Any individual apartments occupied by households who receive HUD assistance (Section 8), must use the HUD utility allowance from the Public Housing Authority (PHA) administering the assistance. As of May 2, 1994, the PHA utility allowance only needs to be used for the specific

apartment the PHA household occupies. Check to find out who administers the local Section 8 Existing Housing Program; it may be the city or county HRA/PHA.

For Section 42 buildings without RHS or HUD assistance, the following options may be used:

- A PHA utility allowance from the local housing authority administering Section 8 vouchers. This must be from the PHA or HRA serving the area in which the development is located.
- A Utility Company Estimate (UCE). Any interested party (including a LIHTC household, a building owner/agent or an agency) may request the utility company estimation of utility consumption in the building's geographic area. The estimate is obtained when the interested party receives, in writing, information from a local utility company providing the estimated cost of that utility for a unit of similar size and construction for that geographic area. Costs incurred in obtaining the estimate are borne by the initiating party. The party that obtains the local utility company estimate must retain the original of the utility company estimate and must furnish a copy to the owner/agent and the monitoring agency. The owner/agent must make copies available to all households in the building. In the case of deregulated utility services, the interested party is required to obtain an estimate only from one utility company even if multiple companies can provide the same utility service to a unit. However, the utility company must offer utility services to the building for that company's rates to be used. The estimate must include all component deregulated charges for providing the utility service.
- An Average of Actual Consumption (AOAC) using the methodology described in the HUD published Multifamily Notice H-2015-4. This Notice provides instructions to owners/agents of Section 8 and other HUD assisted properties for completing the required utility analysis. This analysis is also used for the USDA Rural Housing Service program and allowed for LIHTC projects per IRS Regulations at 26 CFR 1.42-10(b)(3). Owners/agents may use the methodology from the notice, including the required baseline utility analysis, the optional factor based utility analysis and the utility analysis sample size.
- A HUD Utility Schedule Model (HUSM). This model can be found on HUD's website at **https://www.huduser.gov/portal/resources/utilallowance.html** or successor URL. Utility rates using the HUSM must be no older than the rates in place 60 days prior to the beginning of the 90 day period before utility allowances can be used in determining the gross rent.
- An Energy Consumption Model (ECM) using an energy and water and sewage consumption and analysis model. The model must at a minimum take into account specific factors including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, characteristics of the building location and available historical data. The utility consumption estimates must be calculated by a mechanical engineer properly licensed in the State of Minnesota or a Residential Energy Services Network (RESNET) certified HOME Energy Rating System (HERS) rater. The engineer or HERS rater and building owner/agent must not be related within the meaning of IRC Section 267(b) or 707(b), to which the engineer or HERS rater and building owner/agent must certify. The owner/agent and engineer or HERS rater must also certify that the model complies with the minimum requirements described above. Use of the ECM is limited to a building's consumption data and local rates for the 12 month period ending no earlier than 60 days prior to the beginning of the 90 day period before utility allowances can

be used in determining the gross rent. In the case of new buildings with less than 12 months of consumption data, 12 months of data can be used for units of similar size and construction in the geographic area.

If an owner/agent wishes to change methodology to the **UCE, AOAC,** HUSM or ECM, (AOAC not allowed for HUD or RD assisted properties), a request must be submitted to AHC, at the beginning of the 90 day period before utility allowances can be used in determining the gross rent. Owners may only change methodology once in a 12-month period. Each request for a change in utility allowance methodology must include all of the following:

- Fee for review (currently $500).
- Cover letter with the current utility allowance and proposed utility methodology.
- Copy of owner's/agent's notice to residents and description of how residents were notified (copy sent to each unit, posted in common areas and office, etc.). If property is not yet occupied at the time the request is made, indicate when property is expected to be occupied in the cover letter.
- Completed utility allowance Information (CHART UAHTC – UAHOME tab).
- Current utility allowance source documentation (e.g. local PHA Payment Standard) with the project's tenant paid utilities identified.
- Completed and signed Utility Allowance Certification form.
- Methodology supporting documentation as required (see **AHC Review Process: UA Method Change Requests** for methodology requirements).

AHC will review and base its decision for approval or non-approval of the methodology and allowance figures on the completeness, quality and accuracy of information provided. Approval of the utility allowance does not constitute a guarantee that the utility allowance is correct. If at any time it is determined that a utility allowance has been understated and, therefore, some or all LIHTC units exceed the LIHTC rent restricted under Section 42(g)(2), then the Suballocator must report the noncompliance to the IRS on Form 8823.

Once the initial utility allowance has been approved, owner/agent must update the allowance annually and submit annually to AHC.

The owner/agent must also notify tenants of updated UCE, AOAC, HUSM or ECM utility allowances and make the data upon which the utility allowance is calculated available for inspection by the tenants at the beginning of the 90 day period before the effective date. Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling unit of the tenant at the convenience of both the owner/agent and tenant. This is required for any change in UA methodology and UA methodology changes are to be limited to only once per calendar year.

With the exception of HUD and RD regulated properties, owners/agents may combine any methodology for each utility service type (electric, water gas etc.) For example, if residents are responsible for electricity and water, an owner/agent may use the appropriate PHA allowance to determine the water

portion of the allowance and use the project's Average of Actual Consumption to determine the electric portion of the allowance. Be advised, however, that the effective date of the PHA allowance will likely be different than the Average of Actual Consumption resulting in adjustments to utility allowances and, potentially, rents multiple times during the year.

Rents may need to be adjusted more than once in a year because the release of income limits and utility estimates may occur at different times. PHA utility allowances may change more than once per year or may change sooner than one year after the most recent change. Any increase in the utility allowance may cause gross rent to exceed the LIHTC rent limit. For example, assume the gross rent of an LIHTC unit is at the maximum LIHTC rent. If the $50 utility allowance increases to $60, the rent paid by the tenant must be lowered by $10 in order to remain below the LIHTC rent limit. The new utility allowance must be implemented within 90 days of the effective date. Any change to resident paid rent must be in conformance with respective resident leases.

For all updated utility allowances, changes must be implemented no later than 90 days after the effective date. Any adjustment to rent must be in accordance with the respective lease agreement.

Note: Pursuant to Treasury Regulation Section 1.42-10, units occupied by households with a Section 8 Housing Choice Voucher or other state or local government rental assistance must use the utility allowance required by the applicable rental assistance program.

5.07 Submetering and Renewable Energy

IRS Notice 2009-44 clarified that effective July 29, 2008, under Treasury Regulations Section 1.42-10 utility costs paid by a tenant based on actual consumption in a sub-metered LIHTC unit are treated as paid directly by the tenant. Sub-metering measures tenants' actual utility consumption, and tenants pay for the utilities they use. A sub-metering system typically includes a master meter, which is owned or controlled by the utility company supplying the electricity, gas, or water, with overall utility consumption billed to the building owner/agent.

In a sub-metered system, building owners/agents use unit based meters to measure utility consumption and prepare a bill for each residential unit based on consumption. The building owner/agent retains records of resident utility consumption, and tenants receive documentation of utility costs as specified in the lease.

- The utility rates charged to tenants in each sub-metered LIHTC unit must be limited to the utility company rates incurred by the building owner/agent.
- If owners/agents charge tenants a reasonable fee for the administrative costs of sub-metering, the fee will not be considered in the gross rent under Section 42(g)(2) of the Code. The fee must not exceed an aggregate amount per unit of the greater of
    - Five dollars per month;
    - An amount (if any) designated by publication in the Internal Revenue Bulletin (IRB); or
    - The lesser of the amount (if any) specifically prescribed under state or local law or a maximum amount (if any) designated by publication in the IRB; and

- If the costs for sewerage are based on the tenants' actual water consumption determined with a sub-metering system and the sewerage costs are on a combined water and sewerage bill, then the tenants' sewerage costs are treated as paid directly by the tenants for purposes of the utility allowances regulations.

Treasury Regulations Section 1.42-10T provides that if an owner/agent provides utilities through a renewable energy source the rate charged to the tenant for the renewable energy cannot exceed the rate at which the local utility company would have charged for the utility if that entity had provided it to them. A utility is produced from a renewable source if

- It is produced from energy property described in section 48,
- It is energy produced from property that is part of a facility described in section 45(d)(1) through (4), (6), (9), or (11), or
- Is a utility described in guidance published for this purpose in the IRB.

For further information on how the Suballocator will determine and report noncompliance, see Chapter 18 of the 8823 Guide.

5.08 Physical Requirements of Qualified Units, Suitable for Occupancy

Qualified LIHTC units rented to, or reserved for, LIHTC households:

- Must have substantially the same equipment and amenities (excluding luxury amenities such as a fireplace) as other units in the project;
- Must be substantially the same size as other units in the project; and
- Cannot be geographically segregated from other units in the project.
- LIHTC units must be suitable for occupancy under Uniform Physical Conditions Standards (UPCS) and local health, safety and building codes. LIHTC units that are not suitable for occupancy, including previously qualified LIHTC units being rehabilitated in the first year of the credit period, are considered out of compliance. The noncompliance is corrected when the LIHTC unit is again suitable for occupancy, and the unit's designation will be determined based on the household that occupied the unit immediately preceding the rehabilitation.

The UPCS do not supersede or preempt local health, safety and building codes. A LIHTC project under Section 42 also must satisfy the local standards.

Units intended for eligible LIHTC households must be comparable in size, location, and quality to those rented to other households. In the event that units rented to non-qualifying households are above the average quality standards of the units rented to LIHTC households, then the basis in the project which is used to determine the amount of tax credits must be reduced by the portion which is attributable to the excess costs of the above standard units. This reduction in eligible basis need not occur if an election is made to exclude such excess costs pursuant to Section 42(d)(3) of the Code.

5.09 Fair Housing Policy, Affirmative Marketing, and General Public Use

It is the policy of the Suballocator to ensure fair housing opportunity in all programs and to administer its

housing programs affirmatively, so that all residents of similar income levels have equal access to programs regardless of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, familial status, gender identity or sexual orientation.

Participants in the LIHTC Program will be required to use affirmative fair housing marketing practices in soliciting renters, determining eligibility and concluding all transactions as addressed in Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendment Act of 1988, as well as the fair housing protections provided by the Minnesota Human Rights Act, which adds creed, marital status, status with regard to public housing and sexual orientation, and any applicable City Civil Rights ordinances. In part, regarding rental housing issues, Title VIII, the Human Rights Act and applicable City Civil Rights ordinances make it unlawful to:

- Discriminate in the selection/acceptance of applicants in the rental of housing units.
- Discriminate in terms, conditions or privileges of the rental of a dwelling unit.
- Engage in any conduct relating to the provision of housing that otherwise make unavailable or denies the rental of a dwelling unit.
- Make, print or publish (or have anyone else make, print or publish) advertisements that indicate preferences or limitations based protected class status.
- Represent a unit is not available when it is in fact available.
- Deny access to, or membership or participation in, associations or other services organizations or facilities relating to the business of renting a dwelling or discriminate in the terms or conditions of membership or participation.
- Engage in harassment or quid pro quo negotiations related to the rental of a dwelling unit.

Owners/agents will be required to affirmatively market the availability of units in any project that receives LIHTC credits. Owners/agents shall develop and submit with their application an Affirmative Marketing Plan that includes:

- Specific steps to reach out to all groups protected by the Civil Rights Act of 1968, as amended in 1988, and those protected by the Minnesota Human Rights Act and applicable City Civil Rights ordinances, particularly protected groups that likely would not otherwise be aware of housing opportunities in the project.
- An analysis to ensure that all steps in the rental process are non-discriminatory.
- A commitment that upon request, the owner/agent will submit additional marketing plans, reports and documents that confirm the owner's/agent's fair housing efforts.

Failure to comply with the foregoing requirements will prompt Suballocator staff to prepare a full report which could result in appropriate action, including expulsion from programs.

LIHTC properties are subject to Title VIII of the Civil Rights Act of 1968, also known as the Fair Housing Act. The Fair Housing Act prohibits discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex, national origin, familial status, and disability. See 42 U.S.C. sections 3601 through 3619. Minnesota law additionally prohibits discrimination based on marital status, disability,

public assistance status, family status, creed and sexual orientation.

The Fair Housing Act also mandates specific design and construction requirements for multifamily housing built for first occupancy after March 13, 1991, in order to provide accessible housing for individuals with disabilities. The failure of LIHTC properties to comply with the requirements of the Fair Housing Act will result in the denial of the LIHTC on a per unit basis. Anyone with questions regarding accessibility requirements should visit **HUD's Fair Housing Accessibility First website.**

Effective March 5, 2012, HUD implemented "Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity," which prohibits discrimination based on sexual orientation, gender identity or marital status.

The Department of Housing and Urban Development (HUD) enforces the Fair Housing Act and the Minnesota Department of Human Rights (MDHR) enforces state specific protections. The Suballocator will refer complainants to HUD (or HUD designee) or MDHR for follow up and/or investigation. Any finding of discrimination, adverse final decision by HUD, adverse final decision by a substantially equivalent state or local fair housing agency, or an adverse judgment from a federal court is a violation that the Suballocator must report to the Internal Revenue Service.

On April 4, 2016, HUD's Office of General Counsel issued **guidance on criminal background screening**, focusing attention on the ways in which even well intentioned tenant selection policies can act as tools of exclusion. This guidance applies to all housing providers, including owners/agents of LIHTC properties. In response, Minnesota Housing prepared a **document** that provides information on tenant selection plans that owners/agents may find useful. The document contains a summary of the HUD guidance on criminal background screening and reflects Minnesota Housing's consideration of best practices, along with special factors affecting supportive housing programs. While this is intended to be helpful, various funding sources and jurisdictions may impose specific tenant selection plan requirements. Owners/agents should consult with an attorney to ensure tenant selection plans comply with program requirements, the Fair Housing Act and the Minnesota Human Rights Act.

Owners/agents must adhere to Equal Opportunity, Affirmative Marketing and Fair Housing practices in all marketing efforts, eligibility determinations and other transactions. The Equal Housing Opportunity logo or statement *(We do business in accordance with the Federal Fair Housing Law. It is illegal to discriminate against any person because of race, color, religion, sex, handicap, familial status, or national origin.)* must be used in all advertising of vacant units. **Download the logo**.

Owners/agents must develop and implement an Affirmative Fair Housing Marketing Plan in accordance with HUD and Suballocator requirements. Owners/agents must regularly review and update the AFHMP and use affirmative fair housing marketing practices in soliciting renters, determining eligibility and concluding all transactions. Affirmative marketing includes actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status (persons with children under 18 years of age, including pregnant women), or disability. A file must be maintained with all marketing efforts related to the

property including newspaper ads, social service contacts, photos of signs posted, etc. Records will be reviewed during onsite monitoring to ensure that all efforts are in compliance with federal requirements and are being adequately documented.

Owners/agents are required to affirmatively market the availability of units in any project that receives LIHTC. Owners/agents shall develop and submit with their Application an Affirmative Marketing Plan that includes:

- Specific steps to reach out to all groups protected by the Civil Rights Act of 1968, as amended in 1988, and those protected by the Minnesota Human Rights Act and applicable City Civil Rights ordinances, particularly protected groups that likely would not otherwise be aware of housing opportunities in the project.
- Affirmative marketing strategies that reach protected groups.
- An analysis to ensure that all steps in the rental process are non-discriminatory.
- A commitment that upon request by CPED staff or HRA staff respectively, the owner/agent will submit additional marketing plans, reports and documents that confirm the owner's/agent's fair housing efforts.

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

In accordance with the Violence Against Women Reauthorization Act of 2013 (VAWA), tenant selection criteria cannot deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault or stalking. Owners/agents should provide to each applicant/tenant HUD Form 50066* or its successor form to allow the applicant/tenant to provide information regarding his or her status as a victim of domestic violence, dating violence or stalking. See section 5.14 for more information about VAWA.

*Section 8 and other HUD Multifamily properties must continue to use the 91066, or its successor form.

Minnesota Housing's Fair Housing web page has more information, including an online **Affirmative Marketing Toolkit** to assist in creating the AFHMP, as does **Minneapolis CPED's Fair Housing web page.** Anyone with questions regarding the accessibility requirements can obtain the Fair Housing Act Design Manual from HUD by calling (800) 343-3442.

IRS also requires LIHTC projects be otherwise available to the general public. Under Treasury Regulations Section 1.42-9(b) if a residential unit is provided only for a member of a social organization or provided by an employer for its employees, the unit is not for use by the general public and is not eligible for credit under Section 42. Residential rental units either designated for a single occupational group, or through a preference for an occupational group, also violate the general public use requirements. See Chapter 12, category 11(h) of 8823 Guide for more information.

Note that the General Public Use Rule was clarified on July 30, 2008, to allow occupancy restrictions or

preferences that favor tenants

1) With special needs,
2) Who are members of a specified group under a federal or state program or policy that supports housing for such specified group, or
3) Who are involved in artistic or literary activities.

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

5.10 Vacant Units

If a low income unit in a property becomes vacant, reasonable attempts must be made to rent that unit or the next available unit of comparable or smaller size to a qualifying household before any units can be rented to non-qualified households. The owner/agent must be able to document reasonable attempts to rent the vacant units to eligible tenants.

Only units that have been previously occupied by an eligible LIHTC household and are suitable for occupancy may be included as a qualifying LIHTC unit for compliance purposes. If a unit has never been occupied by an eligible LIHTC household or was vacated by a market rate household, that unit is not counted as a qualifying LIHTC unit.

The Vacant Unit Rule is the subject of **IRS Revenue Ruling 2004-82, Answering 12 Questions About Low Income Housing Credit Under IRC Section 42** (see questions #8, #9 and #10), published August 30, 2004. The IRS Revenue Ruling clarifies that:

- An owner/agent may not move a household from building to building to qualify more than one unit in a property (question #8);
- "Reasonable attempts" are customary methods of advertising vacancies in the area of the property for identifying prospective tenants and may include, but are not limited to:
    - Displaying a banner and for rent signs at the entrance to the property,
    - Placing classified advertisements in local newspapers,
    - Contacting prospective LIHTC tenants on a waiting list for the property and on a Section 8 and public housing waiting list with the local public housing authority (question #9); and
- That a unit is not an available vacant unit if the unit is no longer available for rent due to contractual arrangements that are binding under local law, such as a reservation entered into between the owner/agent and a prospective tenant (question #10).

5.11 Other Stipulations

An owner or a person related to the owner may reside in a building if it contains five or more units. If a building contains four or fewer units, an owner, or a person related to the owner, occupying a unit in the building would cause the building to be in noncompliance, *unless* the building is acquired and

rehabilitated pursuant to a development plan sponsored by the state or local government or qualified nonprofit organization.

5.12 Student Eligibility

Under Section 42, most households where all members are full time students are not LIHTC eligible and units occupied by these households may not be counted as LIHTC units. IRS Code Section 151(c)(4) defines a "student" as an individual, who during each of five calendar months during the calendar year in which the taxable year of the taxpayer begins, is a full time student at an educational organization described in IRC Sec 170(b)(1)(A)(ii). Treasury Regulations Section 1.51-3(b) further provides that the five calendar months need not be consecutive.

The determination of student status as full or part time must be based on the criteria used by the educational institution the student is or was attending.

An educational organization, as defined by IRC Sec. 170(b)(1)(A)(ii) is one that normally maintains a regular faculty and curriculum, and normally has an enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term "educational organization" includes elementary schools, junior and senior high schools, colleges, universities, and technical, trade and mechanical schools. It does not include on the job training courses.

There are five exceptions to the limitation on households where all members are full time students. Full time student households that are income eligible and satisfy one or more of the following conditions are considered eligible:

- Students are married and entitled to file a joint tax return. A married couple that is entitled to file a joint tax return, but has not filed one, still satisfies the exception.
- The household consists of a single parent with child(ren) and the parent is not a dependent of someone else, and the child(ren) is/are not dependent(s) of someone other than a parent.
- At least one member of the household receives assistance under Title IV of the Social Security Act, formerly Aid to Families with Dependent Children (AFDC). Now known as Temporary Assistance for Needy Families (TANF), or in Minnesota, the Minnesota Family Investment Program (MFIP).
- At least one member of the household participates in a program receiving assistance under the Job Training Partnership Act (JTPA) or other similar federal, state, or local laws.
    - The JTPA program was repealed in 1998 and replaced with the Workforce Investment Act (WIA). WIA, and JTPA when it existed, funds programs such as adult literacy, English as a second language, General Education Diploma (GED) courses, vocational services for the blind, employment and training programs for Native Americans and migrant and seasonal farm workers, job corps, veterans employment programs, summer youth employment and training, employment and training for dislocated workers and displaced homemakers, etc. Students in those programs are eligible for the JTPA exemption provided the school or community education department verifies that the applicant/resident is a participant in a program similar to those funded under JTPA or WIA. For more information about JTPA, WIA and training programs under the Minnesota Department of Employment and

Economic Development (DEED), visit:
https://en.wikipedia.org/wiki/Job_Training_Partnership_Act_of_1982
https://mn.gov/deed/

- At least one member of the household was previously in foster care.
    - "Foster care" means substitute care for children placed away from parents or guardians and for whom the state agency has placement and care responsibility. This includes, but is not limited to, placement in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions and pre-adoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the state or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is a Federal matching of any payments that are made.

In order to properly document student eligibility, all households must complete an Annual Student Certification (HTC35) as part of the initial certification and annually thereafter. **Note: This is a required form. Properties that are 100% tax credit qualified and not required to recertify income are *NOT EXEMPT* from this annual requirement.**

Verification also must be obtained, when applicable, to support the full or part time student status (use form HTC15, Student Status and Financial Aid Verification). See Chapter 6 for income information regarding student financial aid and the applicable exemptions.

Part time students are not "students" for this section and their eligibility is not subject to special restrictions. However, verification of part time status is required for households comprised entirely of students that do not meet one of the exemptions.

For further information on how the Suballocator will determine and report noncompliance, see the 8823 Guide: Chapter 17, Category 11 (L) – Low Income Units Occupied by Nonqualified Full Time Students.

5.13 Loss of Eligibility Upon Becoming a Full Time Student

If a previously qualified LIHTC household becomes a full time student household and intends to continue living in a LIHTC unit, the household **must** meet at least one of the above exemptions and be able to prove such status. Under current legal interpretations of federal LIHTC regulations and requirements, the "available unit rule" that applies to LIHTC units with households that are no longer income eligible does not apply to student households that qualify under one of the exceptions above and later ceases to qualify. Unlike changes in income, it appears that a unit occupied by a student household that does not meet or no longer meets one of the above exceptions immediately ceases to count as a LIHTC unit.

5.14 Unit Transfers

The IRS considers each building in a property to be a separate project unless owner elects to treat certain buildings as part of a multiple building project. Owners make the election for multiple building projects on Part II, line 8b of IRS Form 8609. Until the Suballocator becomes aware of an owner's election, the Suballocator will treat the property as if all buildings are separate projects.

According to the IRS, there is no such thing as a "transfer" between buildings that *are not part of the same multiple building project.* If a household moves to another project within the same property, it must be reported as a move out for the vacated unit. In order to treat the newly occupied unit as a qualified LIHTC unit the household must be certified and meet initial eligibility requirements. The newly occupied unit must be reported as a new move in.

Owners/agents of properties containing buildings treated as separate projects must obtain copies of the owner's filed 8609s and use caution when determining if a transfer or move out/move in applies.

Transfer within the same building
When a current LIHTC household moves to a different unit within the same building, the newly occupied unit adopts the status of the vacated unit. Thus, if a current household whose income exceeds the applicable income limit moves from an over income unit to a vacant unit within the same building, the newly occupied unit is treated as an over income unit. The vacated unit assumes the status the newly occupied unit had immediately before it was occupied by the current resident.

Transfer to different building/same project
When a LIHTC household whose income is no greater than 140% of the income limit moves to a LIHTC unit in a different building **within the same project** during any year of the 15 year compliance period, the vacated unit assumes the status the newly occupied unit had immediately before it was occupied by the current resident. If a household whose income exceeds 140% of the applicable income limit wishes to move to a different building **in the same project,** the newly occupied unit will be treated as a non-qualifying unit. Mixed income properties can rely on the most recent income certification. Properties that are exempt from income recertification requirements may allow transfers between buildings **within the same project** even though the household's current income is not known.

> **Example – Transfer to different building/same project:** ABC Acres consists of building A and building B. Owner elected to treat buildings A and B as part of a multiple building project. If a LIHTC household moves from building A to building B, it is a unit transfer.
>
> **Example – Move out/Move in to a different building/different project:** XYZ Apartments consists of building 1 and building 2. Owner elected to ***not*** treat buildings 1 and 2 as part of a multiple building project. Even though the two buildings are both part of XYZ Apartments and are located next door to each other, if a LIHTC household moves from building 1 to building 2 it is reported as a move out for building 1 and a new move in requiring a new initial certification for building 2. Owners/agents are cautioned, however, that the IRS has indicated its concern about owners/agents moving households between buildings in a development that are not part of a "project" as identified on line 8b of Form 8609, potentially manipulating the rules in order to use one household to qualify more than one unit.

A "Documentation of Unit Transfer" form is required to document when a unit transfer occurs and the status of the units involved.

The following table illustrates transfer requirements effective 1/1/2009.

8609 Part II #8b Election	Transfer Type	Treatment
"NO" EACH BUILDING = "PROJECT"	*Within same building/project:*	**All Projects** Does NOT require a new CHART TIC and is not considered a move out/new move in. Units swap status.
	To different building/project:	**All Projects** Third-party verification, CHART TIC, and minimum six month lease are required to determine eligibility at the current applicable MTSP limit. Treated as a move out and move in to the newly occupied unit. Units do NOT swap status.
"YES" MORE THAN ONE BUILDING = "PROJECT"	*Within same building/project:*	**All Projects** Does NOT require a new CHART TIC and is not considered a move out/new move in. Units swap status.
	To different building, same project:	**Mixed Income Projects** If most recent income certification is under 140% of the applicable MTSP, the move does not require a new CHART TIC and is not considered a move out/new move in. Units swap status. ***If income from most recent recertification exceeds 140% of the applicable MTSP the newly occupied unit will be treated as a non qualifying LIHTC unit. Units do NOT swap status, and the AUR applies to the vacated unit.*** **100% Projects** Does NOT require a new CHART TIC and is not considered a move out/new move in. Units swap status.

Please note the following issues applicable to ALL transfers:

- A change in household composition coinciding with any transfer must contain at least one member from an original qualified LIHTC household. If there are no remaining members from an original qualified LIHTC household, the transfer must be treated as a new move in and the new household must qualify under the current LIHTC income limit as a new move in at time of transfer.
- Units swap status at transfer within a building or within a project, but NOT if the transfer is to a different project. The vacated unit assumes the status the newly occupied unit had immediately before the current resident occupied it.
- Available Unit Rule (AUR) applies on a building basis for ALL projects regardless of owner election on 8609 Part II, #8b.

5.15 Violence Against Women Act

The Violence Against Women Reauthorization Act of 2013 (VAWA 2013) was extended to include the Section 42 program. Owners/agents have a legal obligation to comply with the statutory requirements found in **Section 601 of VAWA 2013.**

An applicant for, or a tenant of, housing assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation or occupancy.

In order comply with the *core statutory provisions* of the law, owners/agents should distribute the following forms to applicants/tenants:

- HUD Form 5380 – Notice of Occupancy Rights under the Violence Against Women Act
- HUD Form 5382 – Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation.

These documents are to be provided:

- With the notice that an application has been denied.
- At the time the household is admitted.
- With any notice of eviction.
- With any notice of lease non-renewal or termination of tenancy.

Existing residents who do not already have HUD Forms 5380 and 5382 should receive a copy of each during their next annual recertification, lease renewal or by other means.

Owners/agents should also develop and implement an Emergency Transfer Plan using HUD's model forms 5381 and 5383. The Emergency Transfer Plan allows for survivors to move to another safe and available unit if they fear for their safety. Owners/agents should be mindful of unit transfer rules in section 5.13 above when making their Emergency Transfer Plan.

Owners/agents must be familiar with the statutory requirements impacting their developments and consult with legal counsel as needed. See also H Notice 2017-05 "Violence Against Women Act (VAWA) Reauthorization Act of 2013 – Additional Guidance for Multifamily Owners and Management Agents" – for valuable definitions and examples of how to fully implement VAWA protections.

Find VAWA forms 5380, 5381, 5382 and 5383 on HUDClips. Owners/agents should customize the forms for use at their properties, but the base information and language must be maintained.

The Suballocator and AHC encourage owners/agents to use the VAWA Lease Addendum form HUD-91067 or its successor form.

6. INCOME DETERMINATIONS

Potential tenants for LIHTC units should be advised early in the application process of the maximum income limits that apply to these units. The owner/agent should explain to potential tenants that the anticipated income of all persons 18 years of age or older, and unearned income of minor children expecting to occupy the unit, must be included, verified and certified to on a CHART TIC ***prior to*** occupancy. It should be further explained that for mixed income properties, the anticipated income must be recertified ***annually*** for continued eligibility.

This section of the Manual explains the procedures for determining income. According to the Compliance Monitoring Regulations contained in Treasury Regulations Section 1.42-5 for the LIHTC Program, "Tenant income is calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 ("Section 8"), not in accordance with the determination of gross income for federal income tax liability."

Owners/agents must use current circumstances to project income, unless verification forms or other verifiable documentation indicate that an imminent change will occur. For guidance in this section and in determination of tenant income, the HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs, is used and is recommended as a reference guide. The HUD Handbook 4350.3 and HUD notices can be obtained by calling 1-800-767-7468 or by visiting HUD's website: **http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/hsgh/4350.3.**

To determine if an applicant/household is income eligible, review the sources of income as stated in 24 CFR 813.106 (the test for HUD Section 8 program, IRS Notice 88-80) of the applicant/household. If the amounts from these sources when aggregated and annualized are equal to or less than the applicable income limit for the county and household size, then the applicant/household is an income qualified LIHTC applicant/household.

Please keep in mind that owners/agents sometimes attempt to establish only that the applicant/household has sufficient income to support monthly rent payments. However, LIHTC projects are both rent restricted and income restricted. Therefore, if an owner/agent intends to include the applicant/household as a LIHTC eligible tenant, **income from all required sources must be verified and included in the income calculation.**

6.01 Income Certification/Recertification

It is the owner's/agent's responsibility to select and rent to qualified tenants. Neither the Suballocator nor AHC will qualify or approve eligible tenants. The CHART TIC is to be completed by the owner/agent and signed and dated by all adult household members including persons under the age of 18 who are treated as adults because they are the head, spouse or co-head of household, and by the owner/agent.

Note for projects with HUD programs using Enterprise Income Verification (EIV): Owners/agents are not allowed to use information obtained through EIV for non-HUD programs, including Section 42. Please

note that if a property has both HUD funding and LIHTC, EIV still cannot be used to verify income for Section 42, and it must not be in the LIHTC portion of a tenant's file.

Initial Eligibility Determination

Initially, tenant eligibility is determined at the time of move in certification (refer to "Special instructions for newly placed in service properties with existing residents" below). Before a household takes occupancy, owners/agents must determine that the household will cause the unit to be a qualifying LIHTC unit. For projects electing the Average Income test, the owner/agent must designate on the CHART TIC the imputed income and rent limit for which the unit will qualify.

Since the LIHTC program uses special definitions for income and households, standard property management application forms may not collect sufficient information to determine tenant eligibility. Owners/agents need to make sure their applications collect all the necessary information. The information furnished on the application is used as a tool to determine all sources of income, including total assets and income from assets. See the Household Questionnaire provided by Minnesota Housing on its website for required information to determine all sources of income.

A Household Questionnaire (or similar), fully completed by the applicant in their own handwriting, unless assistance is requested or required, is critical to an accurate determination of tenant eligibility. The following items need to be included in the Household Questionnaire:

- The full name and birth date of each person that will occupy the unit (legal name must be given just as it will appear on the lease and CHART TIC).
- The student status of each applicant.
- All sources and amounts of current and anticipated annual income expected to be received during the 12-month certification period, including total assets and asset income.
- The name of any person not listed on the Household Questionnaire expected to move into the unit during the next 12 months.
- The signature of all applicants age 18 and older, including persons under the age of 18 who are treated as adults because they are the head, spouse or co-head of household, and the date the Household Questionnaire was completed. It may be necessary to explain to the applicant that all information provided is considered sensitive and will be handled accordingly.

It is correct to first have potential residents disclose their income and assets, family composition and student status on an Eligibility Application or Household Questionnaire (see the Household Questionnaire provided by Minnesota Housing) and complete the top portion of relevant verification forms for release of information. In addition, the Annual Student Status Certification (HTC35) must be completed at the time of Household Questionnaire.

Third-party verification should then take place. Verifications are valid only if they are no older than 120 days from the date received by the owner/agent. The Household Questionnaire also must be no older than 120 days from the effective date of the certification. Any incomplete, inconsistent or missing information on the verifications must be followed up with the verification source and a notation made to the resident file. A Phone Verification/Clarification Record can be used for this purpose.

Once verifications are received and any inconsistent or missing information is clarified or obtained, owner/agent calculates income and income from assets based on information provided on the verification forms and completes the CHART TIC. This process must take place prior to the effective date (the move in date) of the Initial Certification. The CHART TIC must be signed by each adult household member age 18 and older (including persons under the age of 18 who are treated as adults because they are the head, spouse or co-head of household) and by a representative of the owner/agent. The Initial CHART TIC must be signed no earlier than 5 days before the move in date and must be signed no later than the move in date. The effective date of an initial CHART TIC is equal to the move in date. An initial CHART TIC that is done after the move in date is considered late and noncompliant.

If a tenant is unable to sign the forms on time due to extenuating circumstances, the owner/agent must document the reasons for the delay in the tenant file and indicate how and when the tenant will provide the proper signature.

Special instructions for newly placed in service properties with existing residents:

Acquisition/Rehab. For households occupying a unit at the time of acquisition, an initial CHART TIC may be completed up to 120 days before ***or*** after the date of acquisition using the income limits in effect on the day of acquisition. **The effective date and move in date on the CHART TIC is the acquisition PIS date.** This is the only exception to the general rule that all verifications must be completed prior to the effective date of the CHART TIC. When signed after the effective date, signatures must include a notation that all information was true and correct as of the certification date.

If a CHART TIC is completed more than 120 days after the acquisition, the effective date will be the date the last adult member of the household signs the certification. Note that the above referenced exception to the general rule does not apply; all verifications must be no older than 120 days from the date of receipt by the owner/agent and all verifications must be completed prior to the effective date.

> **Example:** A project's acquisition PIS Date is May 1, 2013. The certification process (Household Questionnaire, verifications, etc.) is started on February 15, 2013. The CHART TIC must be completed, including all signatures, by June 14, 2013. The effective date of the CHART TIC in this example is May 1, 2013 (the acquisition PIS Date) and verifications received after May 1st but on or before June 14th (120 days after starting the certification process) are considered compliant.

For rehab-only properties, the initial CHART TIC may be completed any time on or after the rehab PIS date. The move in date on the CHART TIC must be no earlier than the rehab PIS date, but the effective date may be any date the owner/agent chooses on or after the PIS date. Note that verifications must be no older than 120 days from the date of receipt by the owner/agent and all verifications must be complete prior to the effective date.

Note: *In no case may supporting documentation be more than 120 days from when the CHART TIC is*

completed.

For the initial LIHTC certification of project based Section 8 or other HUD subsidized units, the Suballocator will accept an annual certification (but not an interim recertification) effective within 120 days of the PIS date. (Note that except for Rural Development properties, a CHART TIC must be completed and signed.) However, remember that LIHTC properties are not allowed to use information obtained through EIV for non-HUD programs, including Section 42. If a property has both HUD subsidy and LIHTC, EIV cannot be used to verify income for Section 42, nor can it be in the LIHTC portion of a tenant's file.

It is important to note that even if a unit is occupied by a household that appears to be LIHTC qualified, until the CHART TIC is fully and properly completed and signed, the unit is treated an unqualified LIHTC unit and credits are not available.

Properties with an existing allocation of LIHTCs that receive an additional allocation: Households determined to be income qualified for purposes of the Section 42 during the 15 year compliance period may be concurrently income qualified households for purposes of the Extended Use Period. As a result, as long as all Section 42 requirements have continued to be met in the Extended Use Period, including annually certifying student status, third party verifying income and assets for annual recertification at mixed income properties, observing rules regarding unit transfers, etc., any household determined to be income qualified at the time of move in for purpose of the Extended Use Agreement is a qualified LIHTC household for any subsequent allocation of Section 42 credits. If the new allocation is for rehabilitation only, vacant units previously occupied by qualified LIHTC households will continue to be treated as LIHTC units subject to the vacant unit rule. If the new allocation is for acquisition/rehabilitation, vacant units lose their status as LIHTC units until they are occupied by qualified LIHTC households that are properly certified.

Annual Recertification

For all projects, an annual Student Certification (HTC35) must be completed and signed by all adult household members and is due annually no later than the anniversary of the initial certification. Documentation to support part time student status or an exception to the full time student rule must be attached as needed.

For Mixed Income Projects: Owners/agents of mixed income projects are required to recertify annually as to the gross annual income of LIHTC households. Income recertification must be performed in accordance with the verification requirements for an initial certification.

Reminder: Owners/agents are not allowed to use information obtained through EIV for non-HUD programs, including Section 42. If a property has both HUD and LIHTCs, EIV cannot be used to verify income for Section 42, nor can it be in the LIHTC portion of a tenant's file.

The recertification process must begin no more than 120 days prior to the anniversary date of the previous certification. The household must complete a recertification Household Questionnaire (see the

Household Questionnaire provided by Minnesota Housing) to disclose income, assets, family composition and student status and should also complete the top portion of relevant verification forms for release of information. In addition, the annual Student Status Certification (HTC35) must be completed at the time of recertification. Third-party verification then takes place. Any incomplete, inconsistent or missing information on the verifications must be followed up with the verification source and a notation made to the household's file. Finally, calculate income and income from assets based on information provided on the verification forms and complete a CHART TIC. The CHART TIC is to be signed after all verifications are received and the owner/agent has completed the CHART TIC, but it must be effective on or before the anniversary date of the previous certification. It is acceptable to do a recertification effective before the anniversary date, to conform to the annual recertification date for a Section 8 household, for example. Recertifications that are completed or effective after the anniversary date are noncompliant.

However, if an owner/agent sends timely notice informing a household that their annual recertification is due, but the household vacates the unit, the unit will not be considered out of compliance. Owners/agents must document the file and the CHART Data tab regarding attempts to timely obtain the recertification and the date the household moves/moved out of the unit. This must also be disclosed on the HTC12, Owner's Certification of Continuing Program Compliance.

For further information on how the Suballocator will review and report noncompliance, see the 8823 Guide: Chapter 5, page 2, Category 11b – Topic: "Household Vacates Unit."

If the owner/agent initiates an eviction proceeding and the household vacates the unit, no recertification is necessary. If, for any reason, it is determined that the household will not vacate the unit as anticipated (i.e., court does not grant the UD), a recertification will be necessary within 120 days of the determination. This must also be disclosed on the CHART HTC12 and documented in the file and the CHART Data tab.

For further information on how the Suballocator will review and report noncompliance, see the 8823 Guide: Chapter 5, page 3, Category 11b – Topic: "Owner takes Action to Remove Non-Compliant Household."

For 100% LIHTC Projects: Effective January 1, 2009, annual income recertifications are not required for 100% LIHTC projects. A project is 100% LIHTC when the allocation was based on all units in the project and all units are in compliance. *Common space units are not part of the equation.*

It is absolutely essential that each initial certification in a 100% LIHTC project be done very carefully and thoroughly. *If AHC determines that a CHART TIC has insufficient documentation of gross annual household income or it is determined for any reason that one or more households do not qualify, the owner/agent must resume conducting annual recertifications until 100% of the units are back in compliance*.

For Projects Electing the Average Income Test Minimum Set Aside: Owners/agents must establish

written policies and procedures regarding the circumstances under which it will allow units to be redesignated to a different income and rent limit than originally designated. For 100% LIHTC projects, owner/agent must establish policies and procedures regarding when an income recertification will be performed in order to redesignate to a different income and rent limit; for example, at or when a household requests a change due to changes in income, when an income earning adult is added to an existing household, or other such circumstances. A new initial certification will always be required if redesignating to a different income and rent limit. Owners/agents may not make changes to these policies and procedures more than once every two years. Owners/agents must be very careful to maintain the imputed income average of 60% or less for the project.

The Suballocator reserves the right to define "in compliance" for a project with a 100% LIHTC allocation based on the monitoring review of at least 50% of tenant files for first year projects, annual desk audit reviews and triennial on-site monitoring inspections. If monitoring discloses significant findings or lack of due diligence, the Suballocator may require owner/agent to resume conducting annual income recertifications until 100% of the units are back in compliance.

IMPORTANT: *The IRS considers buildings to be separate projects unless owner elects to treat certain buildings as a multiple building project. Owners make the election for multiple building projects on Part II, line 8b of IRS Form 8609. Accordingly, the Suballocator will treat the property as if all buildings are separate projects until owner notifies the Suballocator, via AHC, of a multiple building election. This notification must include copies of IRS Form(s) 8609 with Part II completed and the required attachment listing the BINs to be included in the multiple building project. Owners of properties containing some 100% buildings and some mixed-income buildings must obtain copies of the filed 8609s and use caution when determining if 100% buildings are exempt from recertification. If the 100% buildings are part of a multiple building project that includes mixed income buildings, the 100% buildings* ***do not*** *qualify for the exemption. If the 100% buildings are treated as a separate project or are part of a multiple building project that contains only 100% LIHTC buildings, then they do qualify for the exemption.*

Example 1 – Income recert exemption does not apply:
A property consists of building A (100% LIHTC) and Building B (mixed income). Owner elected to treat buildings A and B as part of a multiple building project. Because building B is mixed income, annual income recertifications must be completed for both building A and building B because the **project** (buildings A and B) are not 100% LIHTC.

Example 2 – Income recert exemption applies but only to certain buildings:
A property consists of building A (100% LIHTC) and building B (mixed income). Owner elected to ***not*** treat buildings A and B as part of a multiple building project. Building A is exempt from recertification because it is a 100% LIHTC project however, because building B is mixed income and a separate project, annual income recertifications must be completed for building B.

Example 3 – Income recert exemption applies but only to certain buildings:
A property consists of building A (100% LIHTC), building B (mixed income), building C (100% LIHTC) and building D (mixed income). Owner elected to treat buildings A and B as part of a

multiple building project, but owner elected to treat buildings C and D as separate projects. Building A is not exempt from recertification because the **project** includes building B, which is not 100%. Building C is exempt from recertification because it is a separate 100% LIHTC project. Because building D is mixed income, and its own project, annual income recertifications must be completed for building D.

Example 4 – Income recert exemption applies:
A property consists of building A (100% LIHTC) and building B (100% LIHTC). Regardless of whether owner elected to treat buildings A and B as separate projects or as part of a multiple building project, both building A and building B are exempt from recertification because they are 100% LIHTC.

The income recertification exemption applies only to the Section 42 Program. Units funded by certain other programs (HOME, Section 8, National Housing Trust Fund, MARIF, etc.) have income recertification requirements that must be met separately.

Safe Harbor During First Year of Credit Period
All owners/agents are advised to read **IRS Revenue Procedure 2003-82**, effective November 24, 2003, which provides safe harbors under which the Internal Revenue Service will treat a residential unit in a building as low income if the household income has been certified as eligible in the year before the first credit year, but their incomes exceed the income limit at the beginning of the first taxable year of the credit period. The Revenue Procedure was issued as a result of questions from taxpayers regarding when individuals must satisfy the applicable income limit when they move into an existing building (or are existing residents) on or after the date a taxpayer acquires a building to be rehabilitated, but before the beginning of the first credit year. Because of those questions, some taxpayers required that the household income not exceed the applicable income limit at the beginning of the first credit year, even though the household income was below the income limit when the household moved into the unit (or was initially certified). This has resulted in some households being evicted, where permissible under local law, from tax credit properties.

Please note that the purpose of this Revenue Procedure is to provide taxpayers protection from challenge by the Internal Revenue Service on this issue. Testing for application of the Available Unit Rule referred to in the Revenue Procedure consists of confirming with the household(s) that the sources and amounts of anticipated income included on the CHART TIC are still current. If additional sources or amounts are identified, the CHART TIC must be updated based on the household's documentation. It is not necessary to complete third-party verifications. The Suballocator and AHC are not required to monitor for compliance with Revenue Procedure 2003-82.

Change in Household Composition within First Six (6) Months of Occupancy:
For all properties, if there is a change in household composition within the first six (6) months of occupancy, owners/agents must certify the household as if it were a new move in. This must include the Student Certification (HTC35). This requirement to certify does not apply in cases of natural changes in household composition such as birth, adoption, or death, or in cases covered under the Violence Against

Women Act (VAWA). The combined household income must be at or below the applicable move in income limit for the new household size. The purpose of this rule is to not allow the addition or removal of household members in order to "manipulate" move in eligibility.

Change in Household Composition after First Six (6) Months of Occupancy:
For mixed income properties, after six (6) months, the addition of a household member to an existing low income household requires the income certification for the new member of the household, including third-party verification. This must include the Student Certification (HTC35). The new tenant's income is added to the income disclosed on the existing household's **most recent** CHART TIC. This new certification is considered an "Other Cert". The effective date of the Other Cert is the date the new household member moves in. The household continues to be considered income qualified however, if the combined income exceeds 140% of the current income limit for the newly formed household size, owners/agents must apply the available unit rule. Note that an Other Cert done in conjunction with adding a household member after the first six months of occupancy does not "reset" the due date for the annual recertification. The annual recertification will be due on its regular anniversary date.

For 100% HTC properties that are exempt from annual income recertification, after six (6) months, the addition of a household member to an existing low income household requires the income certification for the new member of the household, including third-party verification. This must include the Student Certification (HTC35). The new tenant's income is added to the income disclosed on the existing household's original income certification or the most recent recertification, if a recertification is on file because the household occupied the unit for more than a year prior to 1/1/2009 when the exemption became effective.

AHC strongly recommends owners/agents screen subsequent household members in the same manner as any new household (run credit check, landlord reference, etc.) prior to allowing them to occupy a unit and to add them to the lease at the time they move in.

Decreases in family size after the first six (6) months of occupancy do not trigger an immediate income certification. Subsequent annual income recertifications will be based on the income of the remaining members of the household. AHC recommends that owners/agents use the form provided by Minnesota Housing entitled "Documentation of Decrease in Household Composition" to assist in documenting when the change occurs and who is being removed from a unit.

For all properties, a household may continue to add and remove members as long as at least one member of the original LIHTC household continues to live in the unit. **Once all original tenants have moved out of the unit, the remaining tenants must be certified as a new income qualified household unless the remaining tenants were income qualified at the time they moved into the unit.** For this reason, managers must document all decreases in household composition even where an annual income recertification is not required.

If an owner/agent takes action to remove a noncompliant household by initiating an eviction action, the unit will not be considered out of compliance. If the household does not vacate the unit (i.e., court does

not grant the UD), a recertification will be required within 120 days of the determination.

Available Unit Rule
Following initial certification, an eligible household's income can increase to 140% of the maximum income level. A household whose income exceeds the maximum income level by more than 140% (an "over income" household) will remain in compliance as long as the unit continues to be rent restricted and the next available unit or any available unit of comparable or smaller size in the same building is rented to an eligible household at the qualifying rent. (A unit of larger square footage may be considered "comparable"). **The owner/agent must continue to rent any available comparable unit to a qualified household** until the percentage of low income units in a building (excluding the over income units) is equal to the percentage of low income units on which the credit is based. At that point, failure to maintain the over income units as low income units has no immediate significance.

If an owner elects the Average Income Test, a LIHTC unit will be considered over income if the household's income exceeds:

- 140% of 60% MTSP if the unit's designated income limit is 60% MTSP or less
- 140% of the unit's designated income limit if the unit's designated income limit is 70% MTSP or 80% MTSP

Under the Average Income Test, an over income unit ceases to be a qualified LIHTC unit if any unit of a comparable or smaller size in the building is rented to a new household whose income exceeds the designated income limit of that unit (the designated income limit prior to becoming vacant). If the unit was not previously occupied by a LIHTC household (a market rate unit), then the owner designates the income limit such that the project continues to meet the Average Income Test. In other words, if the comparable or smaller vacant unit is a LIHTC unit, rent the unit based on the income designation of the vacant unit. If the comparable or smaller vacant unit is market rate, rent the unit based on the income designation of the over income unit.

If any comparable unit that is available or that subsequently becomes available is rented to a nonqualified household, all over income units for which the available unit was a comparable unit within the same building lose their status as HTC units; thus, comparably sized or larger over income units would lose their status as HTC units.

A comparable unit must be measured by the same method the taxpayer used to determine qualified basis for the credit year in which the comparable unit became available (i.e., floor space fraction or unit fraction). An owner/agent may consider a residential unit with similar square footage and amenities to be a comparable unit. A unit that is no longer available for rent due to a reservation that is binding under local law is not an "available unit" for purposes of this rule.

NOTE: Owners/agents of projects that received a competitive allocation of tax credits and are subject to additional unit restrictions of tenant income or rent based on points awarded in a QAP or contained in a recorded LURA must report details of compliance with those restrictions for each project annually on the

CHART (Consolidated Housing Annual Reporting Tool), as follows:

- Accurate data on the Unit List tab that will populate the Building Plan tab reconciling to the Lowest Unit Income and/or Lowest Unit Rent limits on the CHART Data tab as of December 31 of the reporting year.
- Accurate data that will report income/rent restrictions lower than the owner election on the Project tab and the Tenant Data tab, reconciling to the CHART Data tab.

Owners/agents of mixed income projects must report details of compliance with the Available Unit Rule and maintenance of the applicable fraction for each building annually on the CHART as follows:

- User Notes on the CHART Data tab reporting the unit # and move in date of each replacement unit for each over income household.
- Accurate data on the Unit List tab that will populate the Building Plan tab reconciling to the unit type (Market, HTC, HTC/HOME, Common Space) on the CHART Data tab as of December 31 of the reporting year.
- Accurate data that will report income/rent restrictions lower than the owner election on the CHART Data tab and the Tenant Data tab.
- Accurate completion of Certification of Continuing Program Compliance (CHART HTC12), with particular attention to items 2 (Change in Applicable Fraction) and 12 (Available Unit Rule).

Note: The Building Map form HTC28 approved by the Suballocator with issuance of Form/s 8609 may contain income and/or rent restrictions lower than the owner election that are NOT reportable on CHART. Owner/agent should only report restrictions in the CHART Unit List tab that are included in the recorded LURA. See also separate instructions related to reporting Low HOME assisted LIHTC units in the same project when the HOME program assistance is provided by a Participating Jurisdiction related to the Suballocator where AHC provides monitoring for the HOME Program and the owner election is 40/60.

6.02 Tenant Income Certification (CHART TIC)

The CHART TIC form is used to certify a project's eligible household. The use of this form is required in order to ensure the continuity necessary for accurate monitoring of these projects. The form is a legal document that, when fully executed, qualifies the applicant to live in a LIHTC unit. It is not to be used as a rental application.

After all income and asset information has been verified and computed, owner/agent must prepare the CHART TIC. It must be signed and dated by all household members over age 18 (and by any household members under age 18 who are treated as adults because they are the head of household, co-head or spouse), and by the owner/agent at initial move in and at annual recertification. The effective date of the initial certification is the move in date. **For projects receiving their credit allocation due to acquisition and/or rehabilitation and where there are existing households, the effective date of the first LIHTC certification for those existing households cannot be earlier than the first PIS date (i.e., the acquisition PIS date).** The Suballocator requires that the initial CHART TIC be signed no earlier than 5 days prior to the effective date and must be signed no later than the effective date. Annual recertifications must be effective on or before the anniversary of the effective date of the previous certification.

A CHART TIC that is unsigned, undated, or completed late, either after the date the household occupied the unit, or after the anniversary date of the previous certification, will cause the unit to be considered out of compliance until a proper and complete certification or recertification is performed. To avoid issues of noncompliance, the Suballocator strongly advises owners/agents to certify and recertify on a timely basis.

Note: Supporting documentation (Household Questionnaire, income verifications, asset verifications, student certification, etc.) is considered part of the CHART TIC and must be included in the file.

The owner/agent should instruct the prospective tenant(s) to sign the CHART TIC exactly as the name appears on the form. The tenant's legal name must be given and used just as it will appear on the lease. A unit does not qualify for tax credits unless the household is certified and under lease.

6.03 Suballocator Government Data Practices Act Disclosure Statement

In working with tenants, the owner/agent must warrant compliance with applicable data privacy laws and regulations including the Minnesota Government Data Practices Act which sets policies on the information that can be obtained, stored and/or released in connection with public programs. In order to comply with this regulation, the signed and dated Government Data Practices Act Statement form and all relevant attachments must be kept in each household's permanent file. The name of the property must be printed in the box provided and relevant attachments must be indicated by checking the appropriate boxes. Note that this is **not** a release authorization for verification of income and assets and must not be used as such. Each adult household member's name must be printed clearly at the top in the box provided. Signatures and dates go on page 2. An unsigned and/or undated form is not valid and will be noted at time of file inspection.

The form is to be signed once and is valid as long as the resident lives at the property and participates in the program(s) identified in item #2 on page 1 of the form. If a resident moves from one unit to another, the original signed and dated form should be moved to the file for the new unit. A copy should be kept in the file for the old unit. A valid form **must** include all relevant attachments. Some properties or units within a property may require two or more attachments for multiple programs.

Only one form is needed per unit as long as the head of household, spouse, co-head and all household members over the age of 18 have signed and dated the form.

If an adult is added to the household or when a minor reaches age 18, it is not necessary to complete a new form. Add the individual to the original form and have them sign and date it.
A copy of the form must be made available to the applicant/tenant. It is acceptable to give them an unsigned copy.

For new residents, the form should be completed at the time of initial Household Questionnaire.

6.04 Miscellaneous Forms to Verify Income

The forms listed below are available from Minnesota Housing to assist you in qualifying eligible tenants. The release of information (top of form) must be completed and signed by the person who is the subject of the verification prior to sending the form to an employer or other income source. Completed and returned verifications must be included in the tenant file and support the CHART TIC.

- Asset Verification 401K
- Asset Verification Whole of Universal Life
- Alimony/Child Support Verification (3 versions)
- Annuity/Pension Verification
- Bank Verification
- Certification of Unborn Child/Adoption/Custody
- Disability Status Verification
- Divestiture of Assets Verification
- Employment Verification
- Foster Care Verification
- Live in Aid Verification and Agreement
- Military Pay Verification
- Phone Verification/Clarification form
- Public Assistance Verification
- Real Estate Verification
- Regular Contributions Verification
- Self Employment Verification (2 versions)
- Special Needs Verification
- Stocks/Bonds Verification
- Student Status Verification (HTC35)
- Student Status and Financial Aid Verification (HTC15)
- Unemployment Compensation Verification
- Veteran's Benefits Verification
- Verification of Section 8 Eligibility
- Workers Compensation Verification
- Zero Income Certification

The use of these particular forms is optional as long as a form that contains the same or additional information is used. Use of a calculation worksheet form is strongly encouraged to assist managers in showing the individual calculations of income and asset income. Do not write calculations directly on the verification or certification forms. Failure to show how individual calculations were determined may result in noncompliance findings if the monitoring agent is unable to determine that the tenant income is adequately supported.

6.05 Annualized Income

Income determination is based on the annual gross income a household anticipates receiving for the upcoming 12 month certification period. Verification of all sources of current and anticipated income for all household members age 18 or older, persons under the age of 18 who are treated as adults because they are the head of household, co-head or spouse, and unearned income of all household members including minor children must be obtained in order to establish that the income limits are not exceeded.

Owners/agents must convert all verified incomes to annual amounts.

To annualize full time employment, multiply:

Hourly wages by 2,080 hours
Weekly wages by 52
Bi-weekly wages by 26
Semi-monthly wages by 24
Monthly wages by 12

To annualize income from other than full time employment, multiply:

Hourly wages by the number of hours the individual is expected to work per week by 52. If verification shows a range of hours, use the average number of hours. For example, if a verification shows 30-35 hours per week, use 32.5 hours.

Average weekly amounts by the number of weeks the individual is expected to work.
Average other periodic amounts (monthly, bi-weekly) by the number of periods the individual expects to work.

Use an annual wage without additional calculations. For example, if a teacher is paid $25,000 a year, use $25,000, whether the payment is made in 12 monthly installments, 9 installments or some other payment schedule.

Seasonal or Sporadic Income
If an eligible tenant indicates that income might not be received for the full 12 months, the owner/agent still determines an annual income as described below.

If an eligible tenant is in a seasonal line of work, for example, a job dependent on weather conditions such as roofing, and normally collects unemployment during the "off" months, both incomes are used for the appropriate number of months.

Example: An individual makes $1,200 a month, but only works 9 months per year and collects unemployment in the amount of $600 a month for the remaining 3 months. Income is calculated as follows:

Wages: $1200 x 9 = $10,800 Unemployment: $600 x 3 = $1,800

Total Annual Income: $10,800 + $1,800 = $12,600

Unemployed and Zero Income Applicants
The income of unemployed applicants with regular income from any source, such as Social Security, Pension or recurring gifts must be verified as covered previously.

If an applicant is currently unemployed with no regular verifiable income from any source and claiming zero (0) income, he/she must complete a Certification of Zero Income form. **Note**: the HUD Handbook requires non-monetary contributions (excluding groceries and child care payments made directly to the provider) to be counted as income.

6.06 Annual Income
The LIHTC Program uses HUD's definition of "annual income" as stated in the U.S. Housing Act of 1937 as amended. HUD's definition of annual income is very specific and is not simply the amount included on tax returns.

Annual income is the gross income the household anticipates it will receive from all sources, including income derived from assets, during the 12 month period following the effective date of the income certification or recertification. This includes income received by all adult members of the household (18 years of age and older, including full time students), and unearned income of minor children. Under state law, persons under the age of 18 who have entered into a lease are treated as adults and their annual income is counted. These persons will be either the head, spouse, or co-head of a household. They are sometimes referred to as emancipated minors.

Please note that annual income is not the same as ***adjusted*** income. Annual income generally corresponds to gross income, with no adjustments (deductions) for child care, medical expenses or dependents. Adjusted income is used in some federal housing programs, such as Section 8 and Rural Development Section 515, to determine the level of benefit provided to a household. However, it is not used in the LIHTC Program.

Total Income from all Sources = Annual Income

Earned/Unearned Income **+** Income from assets **=** Annual Income

Annual income has two components: **Earned/Unearned income** and **Asset income**.

Earned/Unearned income includes the following sources:

- Gross wages and salaries including tips and overtime;
- Gross income from social security or welfare; and
- Payments in lieu of earnings (unemployment compensation, workers' compensation).

There are certain mandated inclusions and exclusions that apply when determining earned/unearned income.

Asset income is income generated by bank accounts, retirement accounts, real estate and other investments. Assets are items of value, other than necessary personal items, and are considered along with verified income to determine the eligibility of a household.

Please refer to the HUD Handbook 4350.3 for a complete listing and discussion of earned/unearned income and asset income.

The following are examples of income that are included in Annual Income. Also listed are specific types of income that are excluded from Annual Income. For those types of income with no specific verification instructions see Chapter 6, General Income Verification Requirements. Generally, if a type of income is not specifically mentioned as being excluded, it is included in Annual Income:

- Interest, dividends and other income from net family assets.
- The gross amount (before any payroll deductions) of wages and salaries, overtime pay,

commissions, fees, tips, bonuses and other compensation for personal services of all adults in the household (including foster adults and persons under the age of 18 who are the head, spouse or co-head). This includes salaries of adults received from a family owned business.
- Net income, salaries and other amounts distributed from a business.

Self Employed Income Verification: The following documents show income verification for the previous year. Owners/agents must consult with the applicant/tenant and use this data to estimate income for the next 12 months:

- Copy of individual federal income tax return (1040) including any:
  - Schedule C (Small Business)
  - Schedule E (Rental Property Income)
  - Schedule F (Farm Income)
- Copy of Corporate or Partnership tax return (if applicable);
- Audited or unaudited financial statement(s) of the business (such as a recent profit and loss statement); and
- Applicant's notarized statement or affidavit as to net income realized from the business during previous year.

Note: All tax returns and related documents must be signed and dated if not filed electronically.

If the business is new and the resident has not yet filed a tax return showing income from a business, a Self Employment Verification – New Business must be completed and the resident must self certify to the anticipated net income from the business. Attach any available supporting documents (trip sheets, financial statements, contracts, expenses). Self employment can be annualized for the current year business activity based on the number of full months in business. The formula is:

$$\frac{\text{Net YTD Income x 12 months}}{\text{Number of months in business during the current year}}$$

- The gross amount (before deductions) of periodic social security payments. Include payments received by adults on behalf of individuals under the age of 18 or by individuals under the age of 18, including foster children, or by individuals under the age of 18 for their own support. Do not round payments up or down.

  A copy of **current** award or benefit statement listing the gross monthly benefit is required to verify the amount received. This statement is issued when the benefit commences or when a change in the benefit occurs, such as a cost of living increase. If an eligible tenant does not have a dated benefit statement that lists the gross monthly benefit from Social Security or a statement that is older than 120 days, the applicant/tenant can call the local office of the Social Security Administration or go online at http://www.socialsecurity.gov to request a current benefit statement. To request a Proof of Income Letter from SSA's toll free number, call 1-800-772-1213. The Social Security Administration has stated that benefit statements will arrive in the mail in about 10 days after the request was received. The benefit statement is mailed to the

tenant/applicant, who must then provide a copy to the owner/agent.

- **The full amount of periodic amounts received from annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts** (Black Lung Sick Benefits, Veterans Disability, Dependent Indemnity Compensation (widow of killed in action serviceman)). The withdrawal of cash from an investment and received as periodic payments is counted as income. If benefits are received through periodic payments, do not count the remaining amount in the account as an asset.
- Federal government pension funds paid directly to an applicant's/tenant's former spouse pursuant to the terms of a court decree of divorce, annulment or legal separation are not counted as annual income. The state court has, in the settlement of the parties' marital assets, determined the extent to which each party shares in the ownership of the pension. The portion of the pension that is ordered by the court (and authorized by the Office of Personnel Management (OPM)), to be paid to the applicant/tenant's former spouse is no longer an asset of the applicant/tenant and therefore is not counted as income. However, any pension funds authorized by OPM, pursuant to a court order, to be paid to the former spouse of a Federal government employee are counted as income for a tenant/applicant receiving such funds.
- Other state, local government, social security or private pension funds paid directly to an applicant's/tenant's former spouse pursuant to the terms of a court decree of divorce, annulment or legal separation are also not counted as annual income and handled in the same manner as above. The decree and copies of statements must be obtained in order to verify the amount of the pension that should be applied in order to determine eligibility and calculate rent.
    - In instances where the applicant/tenant is a retired Federal Government/Uniformed Services employee receiving a pension that is determined by a state court in a divorce, annulment of marriage or legal separation proceeding, to be a marital asset and the court provides OPM with the appropriate instructions to authorize OPM to provide payment of a portion of the retiree's pension to a former spouse, that portion to be paid directly to the former spouse is not counted as income for the applicant/tenant. However, where the tenant/applicant is the former spouse of a retired Federal Government/Uniformed Services employee, any amounts received pursuant to a court ordered settlement in connection with a divorce, annulment of marriage or legal separation are reflected on a Form 1099 and are counted as income for the applicant/tenant.
- Other state, local government, social security or private pensions where pensions are reduced due to a court ordered settlement in connection with a divorce, annulment of marriage or legal separation and paid directly to the former spouse are not counted as income for the applicant/tenant and are handled in the same manner as above.
- Delayed periodic payments received because of delays in processing unemployment, welfare or other benefits.
- Payments in lieu of earnings, such as unemployment and disability compensation, workers' compensation and severance pay. Any payments that will begin during the next 12 months must be included. These amounts must be annualized unless there is clear documentation that such payments are limited to a defined time period.

Unemployment compensation may be verified by a verification form completed by the unemployment compensation agency, records from the unemployment office stating payment dates and amount, or a print out of the applicant/tenant's unemployment information from the unemployment office's official web site. Note that such print outs may or may not contain the person's name, only their account number. If the print out does not contain the applicant/tenant's name, have the applicant/tenant sign and date the print out with a short statement that this information accurately represents his or her account information.

Student Financial Assistance
All forms of student financial assistance (grants, scholarships, educational entitlements, work study programs and financial aid packages) are excluded from annual income **except for students receiving Section 8 assistance.** It does not matter whether the assistance is paid to the student or directly to the educational institution.

For students receiving Section 8 assistance, all financial assistance received under the Higher Education Act of 1965, from private sources or from an institution of higher education, that is in excess of amounts received for tuition and required fees, must be included in income except for persons over the age of 23 with dependent children or if the student is living with his/her parents who are receiving Section 8 assistance. See Paragraph 3-13 of HUD Handbook 4350.3 for further information on eligibility of students to receive Section 8 assistance and the Glossary for the definition of Student Financial Assistance. This applies to both part time and full time students.

Welfare assistance
To verify income from welfare or public assistance, a written statement from the welfare agency is required. The statement must address the type and amount of assistance the family is currently receiving and note any changes in assistance expected during the next 12 months. Since some agencies no longer complete verification forms, the preferred second party verification is an online printout or a current award letter. The MFIP Housing Assistance Grant (coded MF_HG) is considered income to the household.

Annual Income for Section 8 Household: The annual income for a household receiving housing assistance payments under Section 8 may be verified by obtaining a statement from the Public Housing Authority (PHA). The owner/agent must submit the Verification of Section 8 Eligibility form to the PHA for completion. If the form shows that the tenant's income does not exceed the applicable income limit, the household is eligible to occupy a LIHTC unit. This form then "replaces" all other verifications of income and assets.

Please note, annual income for the LIHTC Program is the ***gross annual income*** without any adjustments or Section 8 Program allowances. Due to the seriousness of accurate income eligibility, the Suballocator recommends that the owner/agent verify and calculate the household income directly from the source(s) and *not* rely on PHA verification for initial certifications.

Alimony and child support awarded by the court
Owners/agents must count alimony or child support amounts awarded by the court unless the applicant certifies that payments are not being made and that he or she has taken all reasonable legal actions to collect amounts due, including filing with the appropriate courts or agencies responsible for enforcing payment.

If alimony or child support is being received, obtain one of the following:

- Verification form completed by the person paying the support.
- Verification form completed by the support enforcement office as to amounts being paid.
- Copy of a separation or settlement agreement or copy of a divorce decree stating the amount and type of support and payment schedule.
- A copy of the latest check.

When no documentation of child support, divorce or separation is available, either because there was no marriage or for another reason, the owner/agent may accept a certification from the family stating the amount of child support received.

In many cases child support that has been court ordered is not being received in full or at all. If this is the case, verification from the child support enforcement agency will be sufficient. If such verification is unavailable, applicant/tenant may provide a dated and signed statement attesting to the fact that support payments are not being received and/or the likelihood of support payments being received in the future, and indicating that a reasonable effort has been, or is being, made to collect the amounts due.

Alimony or child support paid by a member of the household is not deducted from income, even if it is garnished from wages.

Monetary contributions or gifts regularly received from persons not living in the unit
These sources may include rent, utility and other payments paid on behalf of the household, and other cash or noncash contributions provided on a regular basis.

Groceries and/or contributions paid directly to the child care provider by persons not living in the unit are excluded from annual income.

Temporary, nonrecurring or sporadic income (including gifts) is not counted.

Verification of continuing monetary or non-monetary gifts may be verified in one of two ways:

- A Regular Contributions Verification (notarized statement no longer required) signed by the person providing the assistance, stating the purpose, dates and value of the contributions and/or gifts; or
- A statement or affidavit (notarized statement no longer required) from the tenant stating the purpose, dates and value of the gifts.

Relocation payments made pursuant to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

Actual income distributed from trust funds that are not revocable by or under the control of any member of the tenant family.

All regular pay, special pay and allowances of a member of the Armed Forces, except hostile fire pay. Note that until January 1, 2012, Basic Pay Allowance for housing is disregarded for properties located in a county that contains a qualified military installation to which the number of members assigned to units based out of the military installation as of June 1, 2008, has increased by 20% or more from December 31, 2005. This applies to the county that contains the military installation and to adjacent counties. A qualified military installation is a military installation or facility with 1,000 or more members as of June 1, 2008.

6.07 Annual Income Exclusions

Generally, if a particular type of income is not specifically mentioned as being excluded, it is included in annual income.

- Income from employment of children (including foster children) under the age of 18 years.
- Meals on Wheels or other programs that provide food for the needy.
- Groceries provided by persons not living in the household.
- Amounts received under the School Lunch Act and the Child Nutrition Act of 1966, including reduced lunches and food under the Special Supplemental Food Program for Women, Infants and Children (WIC).
- Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home.
- Grants or other amounts received specifically for medical expenses, including Medicare premiums paid by an outside source, set aside for use under a Plan to Attain Self Sufficiency (PASS) and excluded for purposes of Supplemental Security Income eligibility, out of pocket expenses for participation in publicly assisted programs (such amounts must be made solely to allow participation in these programs. These expenses include special equipment, clothing, transportation, childcare, etc.).
- Earnings from employment in excess of $480 for each full time student 18 years of age or older (*excluding* the head of household, co-head or spouse).
- Adoption assistance payments in excess of $480 per adopted child.
- Loans such as personal loans (see HUD Handbook 4350.3 for business loans that are *not* excluded).
- Temporary, nonrecurring or sporadic income (gifts).
- Amounts received by the household in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit.
- Special pay to a household member serving in the armed forces who is exposed to hostile fire (in the past, special pay included Operation Desert Storm).
- For Section 8 tenants only, any deferred Department of Veterans Affairs (VA) disability benefits

that are received in a lump sum or in prospective monthly amounts are *excluded* from annual income.

- Amounts received under training programs funded by HUD.
- Compensation from state or local employment training programs and training of a household member as resident management staff. Amounts excluded under this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for a limited period as determined in advance under the program by the state or local government.
- A resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by a resident for performing a service for the owner/agent, on a part time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiatives coordination. No resident may receive more than one such stipend during the same period of time.
- Reparation payments made by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era. Examples include payments by the German and Japanese governments for atrocities committed during the Nazi era.
- Deferred, periodic payments of Supplemental Security Income and Social Security benefits that are received in a lump sum payment or in prospective monthly amounts.
- Payments received for the care of foster children or foster adults.
- Amounts received in behalf of someone not living in the unit as long as the amounts are (i) not inter mingled with the family funds, and (ii) used solely to benefit the person not residing with the family. For such amounts to be excluded, the individual must provide the owner/agent with an affidavit stating that the amounts are received on behalf of someone who does not reside with the family and the amounts meet the conditions above.
- Recurring child care payments paid directly to a provider by persons not living in the unit.

6.08 Income Excluded by Federal Statute

The following is an updated list as published in the Federal Register on May 20, 2014 of federally mandated exclusions from income:

- The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017(b)).
- Payments to volunteers under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5044(f)(1), 5058).
- Certain payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c)).
- Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e).
- Payments or allowances made under the Department of Health and Human Services' Low Income Home Energy Assistance Program (42 U.S.C. 8624(f)).
- Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (94, section 6).
- The first $2000 of per capita shares received from judgment funds awarded by the National

Indian Gaming Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, and the first $2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408). This exclusion does not include proceeds of gaming operations regulated by the Commission.

- Amounts of scholarships funded under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070), including awards under federal work study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For section 8 programs only (42 U.S.C. 1437f), any financial assistance in excess of amounts received by an individual for tuition and any other required fees and charges under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall not be considered income to that individual if the individual is over the age of 23 with dependent children (Pub. L. 109-115, section 327) (as amended);
- Payments received from programs funded under title V of the Older Americans Act of 1965 (42 U.S.C. 3056g);
- Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund (101) or any other fund established pursuant to the settlement in In Re Agent Orange Liability Litigation, M.D.L. No. 381 (E.D.N.Y.);
- Payments received under the Maine Indian Claims Settlement Act of 1980 (96, 25 U.S.C. 1728);
- The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);
- Earned income tax credit (EITC) refund payments received on or after January 1, 1991, for programs administered under the United States Housing Act of 1937, title V of the Housing Act of 1949, section 101 of the Housing and Urban Development Act of 1965, and sections 221(d)(3), 235, and 236 of the National Housing Act (26 U.S.C. 32(l));
- Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (95);
- Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d));
- Any allowance paid under the provisions of 38 U.S.C. 1833(c) to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802-05), children of women Vietnam veterans born with certain birth defects (38 U.S.C. 1811-16), and children of certain Korean service veterans born with spina bifida (38 U.S.C. 1821).
- Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602(c));
- Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931(a)(2));
- Any amount received under the Richard B. Russell School Lunch Act (42 U.S.C. 1760(e)) and the Child Nutrition Act of 1966 (42 U.S.C. 1780(b)), including reduced price lunches and food under the Special Supplemental Food Program for Women, Infants, and Children (WIC);
- Payments, funds, or distributions authorized, established, or directed by the Seneca Nation

Settlement Act of 1990 (25 U.S.C. 1774f(b));

- Payments from any deferred U.S. Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts (42 U.S.C. § 1437a(b)(4));
- Compensation received by or on behalf of a veteran for service connected disability, death, dependency, or indemnity compensation as provided by an amendment by the Indian Veterans Housing Opportunity Act of 2010 (Pub. L. 111-269; 25 U.S.C. 4103(9)) to the definition of income applicable to programs authorized under the Native American Housing Assistance and Self-Determination Act (NAHASDA) (25 U.S.C. 4101 et seq.) and administered by the Office of Native American Programs;
- A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled Elouise Cobell et al. v. Ken Salazar et al., 816 F.Supp.2d 10 (Oct. 5, 2011 D.D.C.), for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010 (Pub. L. 111-291);
- Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002 (Pub. L. 107-110, 42 U.S.C. 604(h)(4));
- Per capita payments made from the proceeds of Indian Tribal Trust Cases as described in PIH Notice 2013-30 "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a)); and
- Major disaster and emergency assistance received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (93, as amended) and comparable disaster assistance provided by States, local governments, and disaster assistance organizations (42 U.S.C. 5155(d)).

6.09 Income from Assets

Assets are items of value, other than necessary personal items, and are considered along with verified income to determine the eligibility of a household. Assets of all household members, including minors, foster children, and foster adults must be considered.

Verification of assets is required. The asset information (total value and income to be derived) must be obtained at the time of initial certification or income recertification. The applicant will affirm that this information is correct by executing the CHART TIC.

Third-party verification of assets is required when the combined value of assets exceed $5,000.

Effective October 11, 1994, an owner/agent may satisfy the third-party documentation requirement for a tenant's income from assets if the tenant submits to the owner/agent a signed, sworn statement that the value of the combined assets is less than $5,000. The Suballocator requires use of Minnesota Housing's form entitled "Under $5000 Asset Certification" (HTC24) for this procedure. The form must also be used when an applicant/tenant declares there are no assets such as checking and/or savings accounts.

If a project is required to obtain third-party verifications because of participation in another housing program (Section 8, HOME, RHS), or an owner's/agent's policy is to third party verify assets, then do not

also use the HTC24 unless there are no assets.

Note that neither the Under $5,000 Asset Certification nor third-party verification of assets is required if a Housing Choice Voucher recipient's gross annual household income is verified by the HRA/PHA on a Verification of Section 8 Eligibility form since these amounts already will have been verified and included by the HRA/PHA.

The Suballocator's monitoring procedure and IRS Revenue Procedure 94-65 do not permit an owner/agent to rely on a low income tenant's signed, sworn statement of annual income from assets if a reasonable person in the owner's/agent's position would conclude that the tenant's income is higher than the tenant's represented annual income. In this case, the owner/agent must obtain other documentation of the low income tenant's annual income from assets to satisfy the documentation requirement of third-party asset verification.

The following information is based upon the HUD Section 8 Program. The owner/agent must use the definition of "Net Family Assets" in 24 CFR 813.102, which provides definitions for the HUD Section 8 Program.

Household Assets include:

- Cash held in savings and checking accounts, safe deposit boxes, homes, etc. For savings accounts, use the current balance. For checking accounts, use the average balance for the last six months. Assets held in foreign countries are considered assets. Balances held on re fillable Debit Cards are treated like savings accounts. Required documentation:
    - Verification forms, account statements (must obtain 6 months' worth of statements to determine 6 month average balance for checking accounts), passbooks, certificates of deposit, letters or documents from a financial institution or broker.
    - If an owner/agent accepts an IRS Form 1099 from the financial institution, the owner/agent must adjust the information to project earnings expected for the next 12 months.
    - In the case of real estate that is in the process of being foreclosed, satisfactory documentation would be 1) a copy of the most recent property tax statement showing the current market value of the home, and 2) a copy of the most recent mortgage statement or foreclosure notice showing the balance owed.
- Revocable trusts. Include the cash value of any revocable trust available to the household.
- Equity in rental property or other capital investment**.** Include the current fair market value less (a) any unpaid balance on any loans secured by the property; and (b) reasonable costs that would be incurred in selling the asset (i.e., penalties, broker fees, etc.). **Note**: If the person's main business is real estate, then count any income as business income. Do not count it both as an asset and as business income. Only the interest portion of the monthly payment received by the tenant is included. For interest income from the sale of real property, if said property was sold on an installment sales contract, request:
    - A letter from an accountant, attorney, real estate broker, the buyer, or a financial

institution stating interest due for the next 12 months. (A copy of the check(s) paid by the buyer to the tenant is NOT sufficient since appropriate breakdowns of interest and principal are not included.); or
    - Amortization schedule showing interest for the 12 months following the date the purchaser intends taking occupancy.
    - For rental income from property owned by the tenant, request:
    - IRS Form 1040 with Schedule E (Rental Income).
    - Lease between the tenant and the tenant's renter.
    - Lessee's written statement identifying monthly payments due the tenant and tenant's affidavit as to net income realized.
- Stocks, bonds, treasury bills, certificates of deposit, money market accounts, mutual funds. Interest or dividends earned are counted as income from assets even when the earnings are reinvested. The value of stocks and other assets vary from one day to another. The value of the asset may go up or down the day before or after income is calculated and multiple times during the year thereafter. The owner/agent may assess the value of these assets at any time after the authorization for the release of information has been received. Required documentation:
    - Verification form, broker's quarterly statements showing value of stocks or bonds and any earnings or dividends, or quotes from a stockbroker as to net amount the family or household would receive if they liquidated securities, copy of most recent statement from asset source.
- Individual retirement and Keogh accounts. These are included when the holder has access to the funds, even though a penalty may be assessed. If the individual is making occasional withdrawals from the account, determine the amount of the asset by using the average balance for the previous six months. (Do not count occasional withdrawals as income.) At retirement or withdrawal, regular periodic withdrawals are counted as income, and any remaining amounts in the account are NOT counted as an asset. Lump sum receipts are counted as assets.
- Retirement (such as 401-k, 403-b) and pension funds. While the person is employed include only amounts the family can withdraw without retiring or terminating employment. Count the whole amount less any penalties or transaction costs. At retirement, termination of employment, or withdrawal, periodic receipts from pension and retirement funds are counted as income. Lump sum receipts from pension and retirement funds are counted as assets. Count the amount as an asset or as income as provided below:
    - If benefits will be received in a lump sum, include the lump sum receipt as an asset.
    - If benefits will be received through periodic payments, include the benefits in annual income. Do not count any remaining amounts in the account as an asset.
    - If the individual initially receives a lump sum benefit followed by periodic payments, count the lump sum benefit as an asset and treat the periodic payment as income. In subsequent years, count only the periodic payment as income. Do not count the remaining amount as an asset.
    - In instances where the applicant/tenant is a retired Federal government employee receiving a pension that is determined by a state court in a divorce, annulment of marriage, or legal separation proceeding to be a martial asset and the court provides OPM with the appropriate instructions to authorized OPM to provide payment of a portion of

the retiree's pension to a former spouse, that portion to be paid directly to the former spouse is not counted as income for the applicant/tenant. However, where the tenant/applicant is the former spouse of a retired Federal government employee, any amounts received pursuant to a court ordered settlement in connection with a divorce, annulment, of marriage, or legal separation are reflected on a Form 1099 and are counted as income for the applicant/tenant.

- Cash value of life insurance policies available to the individual before death (i.e., the surrender value of a whole life policy or a universal life policy). It would not include a value for term insurance, which has no cash value to the individual before death.
- Personal property held as an investment. Include gems, jewelry, coin collections, and antique cars held as an investment. An applicant's wedding ring and other personal jewelry are not considered assets.
- Lump sum receipts or one time receipts. These include inheritances, capital gains, one time lottery winnings, victim's restitution; settlements on insurance claims (including health and accident insurance, worker's compensation and personal or property losses); and any other amounts that are not intended as periodic payments.
- A mortgage or deed of trust held by an applicant (e.g., contract for deed). Payments on this type of asset are often received as one combined payment of principal and interest with the interest portion counted as income from the asset. This combined figure needs to be separated into the principal and interest portions of the payment. (This can be done by referring to an amortization schedule that relates to the specific term and interest rate of the mortgage.)

    - To count the actual income for this asset, use the interest portion due, based on the amortization schedule, for the 12 month period following the certification.
    - To count the cash value of this asset, determine the unpaid principal as of the effective date of the certification. Each year this balance will decline as more principal is paid off.

6.10 Household Assets Do Not Include

- Necessary personal property including clothing, furniture, cars, etc.
- Interests in Indian trust land.
- Term life insurance policies.
- Equity in the cooperative unit in which the family lives.
- Assets that are part of an active business (not including rental of properties that are held as investment and not a main occupation).
- Assets that are not effectively owned by the applicant. That is, when assets are held in an individual's name, but the assets and any income they earn accrue to the benefit of someone else who is not a member of the household, and that other person is responsible for income taxes incurred on income generated by the assets.
- Assets that are not accessible to the applicant and provide no income to the applicant (i.e., a battered spouse owns a house with her husband. Because of the domestic situation, she receives no income from the asset and cannot convert the asset to cash). Nonrevocable trusts are not covered under this paragraph.

6.11 Assets Owned Jointly

Assets owned by more than one person are prorated according to the percentage of ownership. If no percentage is specified or provided by state or local law, prorate the assets evenly among all owners.

6.12 Instructions for Valuing Assets

In computing assets, owners/agents must use the cash value of the asset; that is, the amount the family or household would receive if the asset were converted to cash. Cash value is the market value of the asset minus reasonable costs that were or would be incurred in selling or converting the asset to cash. Expenses which may be deducted include:

- Penalties for withdrawing funds before maturity.
- Broker/legal fees assessed to sell or convert the asset to cash.
- Settlement costs for real estate transactions.

For non-liquid assets, enough information must be collected to determine the current cash value or the net amount the family would receive if the asset were converted to cash.

Owners/agents must count assets disposed of for less than fair market value during the two years preceding certification or income recertification. The amount counted as an asset is the difference between the cash value and the amount actually received, if the difference is more than $1,000. If a tenant has sold his/her home (either a private residence or rental) or disposed of other assets within the past two years for less than fair market value, request:

Copies of closing documents (HUD 1, settlement statement) showing the selling price, the distribution of the sales proceeds and the net amount to the tenant.

Divestiture of Assets Verification identifying the disposed of asset, the cash value and amount actually received.

If net family/household assets exceed $5,000 the annual income must include the greater of the actual income from assets OR an imputed income from assets.

Owners must determine estimated asset income by multiplying total net assets by the interest rate specified by HUD. From September 29, 1995 to January 31, 2015 the Passbook rate of 2% was effective. Effective February 1, 2015, the HUD Passbook Savings Rate was changed to 0.06% (.0006) and remains in effect. The interest rate will be updated annually or if the national average differs by at least 2% from the published rate. AHC will notify owners/agents of passbook savings rate changes and also will publish the rates on its website.

6.13 Example of Calculating Income from Assets

Type of Asset	Cash Value of Asset	Actual Income Per Year
Checking Account	$300	$0
Savings Account	$2,000	$115
Certificates of Deposit	$10,000	$986
Rental Property	$15,000	$0
TOTALS	**$27,300**	**$1,101**

Since total assets exceed $5,000 estimated (imputed) income must be calculated:

Calculation through January 31, 2015:
Total Assets x .02 = $27,300 x .02 = $546

Calculation effective February 1, 2015:
Total Assets x .0006 = $27,300 x .0006 = $16.38

Annual income must include the $1,101 actual income because it is greater than the estimated (imputed) income received on the assets.

6.14 General Income Verification Requirements

All income sources, including asset income, must be disclosed on the Household Questionnaire and verified. A good questionnaire must be used as a basis for determining what verifications will be necessary. AHC will review the Household Questionnaire, along with all supporting documentation and the CHART TIC during a tenant file review.

Upon receipt of all verifications, owners/agents will determine if the resident is qualified for participation in the LIHTC Program. All verifications should be reviewed, and calculations made as necessary.

The following describes the types of third party verification in order of acceptability:

Third party verification from source (written)
An original or authentic document generated by a third-party source that is dated within 120 days from the date of receipt by the owner/agent. Such documentation may be in possession of the tenant (or applicant), and commonly referred to as tenant provided documents.
These documents are considered third-party verification because they originated from a third-party source.

Examples of tenant provided documentation that may be used include, but are not limited to: pay stubs, payroll summary report, employer notice/letter of hire/termination, SSA benefit letter, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices.

Verification of income using The Work Number or state government databases such MAXIS used by MN Department of Human Services also is acceptable.

Owners/agents must consider the following when using tenant provided documentation:
Is the document dated and current? Documentation of public assistance may be inaccurate if it is not recent and does not show any changes in the family's benefits or work and training activities.

Is the documentation complete? Owners/agents may not accept pay stubs to document employment income unless the applicant or tenant provides the most recent four to six, consecutive pay stubs to illustrate variations in hours worked. Actual paychecks or copies of paychecks must never be used to document income because deductions are not shown on the paycheck.

Is the document an unaltered original? The greatest shortcoming of tenant provided documents as a verification source is their susceptibility to undetectable change through the use of high quality copying equipment. Documents with original signatures are the most reliable. Photocopied documents generally cannot be assumed to be reliable.

Written documentation sent directly to the third party source by mail or electronically by fax, email or internet.
Verification forms must contain a release authorization signed by the applicant/tenant. Do not use a blanket release authorization as this entitles the owner/agent to obtain information to which it is not entitled or needed for eligibility determination. The Data Practices Act Disclosure Statement is not a verification release. Applicants should be asked to sign two copies of each verification form. The second copy may be used if the first request has not been returned in a timely manner.

Income verification requests must be sent directly to and from the source. They are never given to the tenant to obtain signatures. It is suggested that a self-addressed stamped envelope be included with a mailed request for verification. If the returned verifications do not contain complete information (typical examples include failure to indicate interest rates, dates of anticipated raises, amounts of anticipated raises, etc.), managers must follow up with the source to obtain complete information. All pertinent information must be documented in the file and must also include the name, phone number and title of the contact, the name of the person accepting the information, and the date.

Third party verification from source (verbal).
When verifying information over the telephone, it is important to be certain that the person on the telephone is the party he or she claims to be. Generally, it is best to telephone the verification source rather than to accept verification from a source calling the property management office. Oral verification must be documented in the file. When verifying information by phone, the owner/agent must record and include in the tenant's file the following information:

Third party's name, position, and contact information.
Information reported by the third-party.

Name of the person who conducted the telephone interview.
Date and time of the telephone call.

Family Certification
An owner/agent may accept a tenant's notarized statement or signed affidavit regarding the veracity of information submitted only if the information cannot be verified by another acceptable verification method. In these instances, the owner/agent must document in the file why third party verification was not available. The owner/agent may witness the tenant signature(s) in lieu of a notarized statement or affidavit. The following describes use of electronic information when used as third-party verification.

Electronic Verification
The owner/agent may obtain accurate third party written verification by facsimile, email, or Internet, if adequate effort is made to ensure that the sender is a valid third party source.
Facsimile. Information sent by fax is most reliable if the owner/agent and the verification source agree to use this method in advance during a telephone conversation. The fax must include the company name and fax number of the verification source.

Email. Similar to faxed information, information verified by email is more reliable when preceded by a telephone conversation and/or when the email address includes the name of an appropriate individual and firm.

Internet. Information verified on the Internet is considered third-party verification if the owner/agent is able to view web based information from a reputable source on the computer screen. Use of a printout from the Internet may also be adequate verification in many instances.

Steps used to obtain written verification as described above must be documented to show just cause for using other types of verification. The owner/agent must include the following documents in the tenant file:

- A written note explaining why third party verification is not possible; or
- A copy of the date stamped original request that was sent to the third-party;
- Written notes or documentation indicating follow up efforts to reach the third-party to obtain verification; and
- A written note indicating the request has been outstanding without a response from the third-party.

Note: If a tenant is employed by a business owned by the tenant's family or is employed by the property owner/agent, a copy of a recent pay stub, verifying year to date earnings, also is required. Please note that any reduction in rent or waiver of otherwise required fees (parking fees, pet rent, storage locker fees, etc.) in exchange for services must be considered as income.

Upon receipt of all verifications, owners/agents must determine if the resident is qualified for participation in the HTC Program. All verifications should be reviewed and calculations made as necessary.

Optional streamlined income determination for fixed income source at annual income recertification

Owners/agents may use a streamlined income determination to adjust a family's income according to the percentage of a family's unadjusted income that is from fixed income (see list of fixed income sources below) as follows:

- When 90 percent or more of a family's unadjusted income consists of fixed income, owners/agents must apply a Cost of Living Adjustment (COLA) to the family's fixed income sources, provided that the family certifies both that 90 percent or more of their unadjusted income is fixed income and that their sources of fixed income have not changed from the previous year. Owners/agents may accept a self certification by the tenant to adjust income for non-fixed sources.
- When less than 90 percent of a family's unadjusted income consists of fixed income, owners/agents must apply a COLA to each of the family's sources of fixed income. Owners/agents must verify all non-fixed income sources using regular verification methods.

The following are fixed income sources eligible for the streamlined approach:

- Social Security, Supplemental Security Income, Supplemental Disability Insurance;
- Federal, state, local or private pension plans;
- Annuities or other retirement benefit programs, insurance policies, disability or death benefits, or other similar types of periodic receipts; or
- Any other source of income subject to adjustment by a verifiable COLA or current rate of interest (VA Disability, TANF, federal pensions).

The current COLA or rate of interest specific to the fixed source of income must be used in order to adjust the income amount. Verification of the COLA or rate of interest must be obtained from a public source or through third-party generated documentation provided by the tenant and a copy must be placed in the tenant file. If no such verification is available, this streamlined process cannot be used and regular, third party verification will be required.

This streamlined process can only be used for two years following regularly verified income and only for the sources described above. Every third year, third-party verification must be obtained. Third-party verification must always be obtained for non-fixed income sources and income from all assets.

6.15 Effective Term of Verification

Verifications are valid for 120 days from the date of receipt by the owner/agent, not the effective date of the CHART TIC. If verifications are more than 120 days old from the date of receipt by the owner/agent, new verifications must be obtained.

6.16 Date Stamp

All tenant income, asset and eligibility verifications should be date stamped when received.

6.17 Use of Electronic Signatures

AHC will not fail a tenant file solely because it contains documents signed by electronic means as long as the owner has followed the guidance in HUD Notice H 20-04. Applicants and tenants must still be given the option to use wet signatures on paper, if requested.

As part of the inspection of administrative records, AHC will review the owner's e-signature policy and procedures, if applicable, to determine whether the requirements of HUD Notice H 20-04 are being satisfied for the use of electronic signatures.

7. SALE, TRANSFER OR DISPOSITION AFTER THE PLACED IN SERVICE DATE & CASUALTY LOSS

7.01 Sale, Transfer or Disposition

Owners/agents must notify the Suballocator and AHC in advance of any sale, transfer of ownership interest, foreclosure or abandonment. Where provided in the LURA, the Suballocator must approve the proposed sale or transfer of interest. Failure to notify the Suballocator from the time of selection or preliminary determination letter throughout the term of the Extended Use Period will be considered noncompliance and will have an adverse effect on all individuals/entities from the development and management team on each side of the transfer that submits applications in future rounds. Refer to the applicable Procedural Manual and Qualified Allocation Plan for details.

To begin the notification process the owner/agent must submit a form **HTC27, available on AHC's website**. The Suballocator and/or AHC will advise the owner/agent of documentation that must be submitted for review and, if applicable, Suballocator approval. For property sales, such documents will include but not be limited to copies of purchase agreement and assignments or amendments, MN Secretary of State Certificate of Good Standing and organizational documents of the purchaser, attorney opinion letter for the purchaser opining that the entity is in good standing in the State of Minnesota and that there is no legal action pending or threatened that would affect the owner's/agent's ability to own and operate the property, and copy of warranty deed. If a transfer occurs after the 15 year compliance period an executed Transfer Agreement will also be required, whereby the purchaser must agree to comply with the LIHTC restrictions and compliance monitoring for the full term of the LURA. Any prospective purchaser, member or partner must certify that they have the training and/or experience to successfully operate a LIHTC property. Drafts may be submitted for review prior to closing but final documentation must be submitted within 10 days after the closing date. The Suballocator and AHC will be unable to update their records to recognize an ownership or ownership interest change until all requested documentation has been reviewed. All compliance requirements and any consequences for failing to comply are the responsibility of the owner of record on file with Suballocator and AHC.

Under some QAPs, any sale or transfer of ownership interest from the date of reservation to five years after the PIS date will have an adverse effect on all individuals/entities that wish to submit applications for tax credits in future years. Under more recent QAPs, any unapproved changes from the time of selection or preliminary determination letter throughout the term of the Extended Use Period will have an adverse effect on all individuals/entities from the development and management team on each side

of the transfer that submits applications in future rounds. Please refer to the applicable QAP for specific language regarding penalties.

During the 15 year compliance period, the Suballocator must notify IRS of any sale, foreclosure, abandonment, casualty loss or destruction by filing IRS form 8823. The IRS has suggested in Treasury Regulation Section 1.42-5 that, if a building is sold or otherwise transferred by the owner, the transferee should obtain from the transferor all information related to the first year of the credit period so the transferee can substantiate credits claimed. Under IRC 42(j)(6), revised July 30, 2008, there is no recapture on dispositions as long as

1. It is reasonably expected the building will continue to be operated as a qualified LIHTC building; and
2. The taxpayer elects to be subject to the new longer statute of limitations. Owners are not required to post a Credit Disposition Bond or pledge Treasury Securities to avoid recapture.

Upon approval from the Suballocator (if required by the LURA), a Transfer of Ownership Fee of $2,500 must be submitted to the Suballocator along with updated materials of the current owner and/or management team for each development in which more than 50% of the development team is new since commitment or carryover allocation. See the applicable Procedural Manual for details.

Please note: Under current Suballocator policies, any unauthorized change or transfer of ownership from the date of reservation to five years after the PIS date will have an adverse effect on all individuals/entities that wish to submit applications for tax credits in future years. See the applicable Procedural Manual for details.

7.02 Casualty Loss

The owner/agent must report an event of casualty loss if:

1. The casualty loss is the result of a major event such as flood or fire.
2. The loss results in households being removed from their unit.
3. The occupied unit(s) will not pass a UPCS inspection for more than 72 hours.

It is the responsibility of the owner/agent to report casualty loss to Suballocator and AHC using the **Report of Casualty Loss** form within 10 days of the date the unit is taken off line. Within 30 days of the *Report of Casualty Loss* form submission, the owner/agent must submit a plan for property restoration that includes a detailed timeframe.

For projects experiencing major casualty loss resulting from natural disasters such as tornadoes or flooding, IRS Revenue Rulings 2014-49 (9% credit projects) and 2014-50 (4% credit projects) provide temporary relief from certain requirements of Section 42 of the IRS Code for owners when projects have been impacted by a Presidentially declared disaster.

> ***Definition of Presidentially Declared Disaster:*** *Any disaster for which the President issues a major disaster declaration and thereby authorizes the provision of individual and/or public assistance from the federal government. Cities, counties and other local jurisdictions that are designated as*

part of a major disaster area and are eligible for federal aid as a result of the Presidential declaration are published by notice in the Federal Register by the Federal Emergency Management Agency (FEMA).

Upon completion of required repairs, but no later than 2 years from the end of the tax year in which the casualty loss occurred, the owner/agent must report that the property has been restored using the **Report of Property Restoration** form.

The Suballocator must report the casualty loss to the IRS within 90 days. Should the units not be fully restored by this time, the Suballocator will submit an uncorrected 8823, with a copy of the plan and timeline for property restoration attached, to the IRS. Once all units have been restored, the Suballocator will issue a corrected 8823 to report units as back in compliance. Findings will be entered under category 11c "Violation(s) of the UPCS of Local Inspection Standards".

Any projects not completely restored by the end of the second calendar year from when the loss occurred will be reported to the IRS on form 8823 under category 11e "Changes in Eligible Basis".

If owner/agent fails to report casualty loss to the Suballocator and AHC within the 10-day requirement, the Suballocator will report the casualty loss to the IRS on form 8823 immediately after becoming aware of the loss.

8. CONSEQUENCES OF NONCOMPLIANCE

In January 2007, the Internal Revenue Service issued its Guide for Completing Form 8823, Low Income Housing Credit Agencies Report of Noncompliance or Building Disposition (8823 Guide), which provides instructions for monitoring agencies to determine noncompliance, what constitutes correction and how and when noncompliance and property dispositions are to be reported. The Guide has been updated from time to time, most recently in January 2011.

Owners/agents are encouraged to read the guide and refer to it when questions arise as to how noncompliance should be corrected. The 8823 Guide can be found on AHC's website at: http://www.ahcinc.net.

8.01 Notice to Owner

The Suballocator is required to provide prompt written notice to the owner/agent of a LIHTC project if AHC does not receive the certification form HTC12 and other forms, or does not receive or is not permitted to inspect the CHART TICs, supporting documentation and rent records, or discovers by inspection, review or some other manner, that the project is not in compliance with the provisions of Section 42 or its LURA. All compliance violations will be reported as uncorrected, clarified or corrected.

8.02 Correction Period

The correction period will be established by the Suballocator, will be set forth in the notice of noncompliance and generally will be a period not to exceed 90 days from the date of the notice to the

owner/agent described in paragraph (e)(2) of Treasury Regulation Section 1.42-5. The Suballocator is permitted to extend the correction period for up to six months, but only if AHC determines there is good cause for granting the extension and recommends such an extension. Requests for an extension must be in writing and must be received by AHC no later than the last date of the correction period identified on the Notice of Noncompliance. The extension request must include an explanation of the efforts to correct the noncompliance and the reason the extension is needed.

AHC will review the owner's/agent's response and supporting documentation, if any, to determine whether the noncompliance is clarified or corrected and whether noncompliance is reportable, whether it has been corrected or not.

8.03 Notice to Internal Revenue Service

The Suballocator is required to file Form 8823 "Low Income Housing Credit Agencies Report of Noncompliance or Building Disposition" with the IRS no later than 45 days after the end of the correction period (including permitted extensions) and no earlier than the end of the correction period.

The Suballocator must check the appropriate box on Form 8823 indicating the nature of the noncompliance or failure to certify and indicate whether the owner/agent has corrected the noncompliance or failure to certify. If the noncompliance or failure to certify is corrected, the Suballocator will provide a date on which the noncompliance was corrected. If AHC cannot determine that an owner's/agent's actions corrected all noncompliance, no correction date will be provided. However, an attachment to the 8823 will be provided that identifies any noncompliance that is corrected. Any change in either the applicable fraction or eligible basis under paragraph (c)(1)(ii) and (vii) of Treasury Regulation Section 1.42-5, respectively, that results in a decrease in the qualified basis of the project under Section 42(c)(1)(A) is noncompliance that must be reported to the IRS. The Suballocator will send the owner/agent and AHC a copy of the Form 8823 at the time it is filed with the IRS.

If uncorrected noncompliance is reported to IRS, a corrective 8823 cannot be filed until all instances of noncompliance are corrected for that building.

If the Suballocator reports on Form 8823 that a building is entirely out of compliance and will not be in compliance at any time in the future, it is not necessary to file Form 8823 in subsequent years to report that building's noncompliance.

8.04 Recapture of Credit

Generally, during the compliance period a project is out of compliance and recapture applies if there is a decrease in the qualified basis of the building from one year to the next, or the building no longer meets the minimum set aside requirements of Section 42(g)(1), the gross rent requirements of Section 42(g)(2) or other requirements for the LIHTC units which are set aside.

Vacant units that were previously occupied by LIHTC qualified households can continue to be counted for minimum eligibility as long as the owner/agent has made reasonable attempts to rent the unit to a LIHTC eligible household. See **Revenue Ruling 2004-82**, Q9 for guidance on what constitutes reasonable

attempts. Such vacant units must be suitable for occupancy in order to be counted for minimum eligibility.

If the project is out of compliance, a penalty will apply to all units in the project (IRS Form 8611). Penalties may include:

- Recapture of the accelerated portion of the credits for prior years.
- Disallowance of the credit for the entire year in which the noncompliance occurs.
- Assessment of interest for the recapture year and previous years.

If the noncompliance is due to a reduction in qualified basis and the minimum eligibility requirements of 20% or 40% are still met, recapture and disallowance of credit will apply only to units not in compliance.

If there is a minimal reduction in the floor space fraction or number of qualified LIHTC units, no recapture will occur provided the building remains a qualifying LIHTC building. Recapture will also not occur if, within a reasonable time after noncompliance is discovered, the situation is corrected. In the event of a casualty loss, recapture will not occur if the property is restored or replaced within a reasonable period of time.

The above information is being provided for informational purposes in order to give a general understanding of recapture procedures. The IRS bears the responsibility for determining whether a building owner/agent has claimed the correct amount of credit each year and whether a building owner is subject to recapture. Neither the Suballocator nor AHC is responsible for determining whether or not a specific event of noncompliance is a recapture event.

Chapter 1 and Exhibit 1-1 of the 8823 Guide describe the process for inspections and file reviews and the steps leading up to the filing of Form 8823 for reportable noncompliance issues. Owners/agents must not include non-qualified LIHTC units when calculating the credit claimed for any tax year. Additionally, Sections 42(j)(1) and (2) require that prior credits claimed by an owner are subject to recapture to the extent that any accelerated credit is attributable to noncompliant units. If an owner is subject to recapture, Form 8611 Recapture of Low Income Housing Credit must be filed.

If a project is audited, the IRS can use the results to make adjustments to the LIHTC on a unit by unit basis as identified on Form 8823.

9. COMPLIANCE AND MONITORING AFTER YEAR 15

9.01 Background

After expiration of the 15-year compliance period, there may be no tax impact in the event of noncompliance. Therefore, filing IRS Form 8823 to report noncompliance is no longer an effective consequence. By establishing policy that reflects the terms of the LURA rather than all Internal Revenue Code (IRC) Section 42 regulations, by creating reasonable and less frequent inspection criteria and by redefining some of the reporting and eligibility criteria as identified below, it is hoped that it will be

administratively easier and less costly for owners/agents to operate LIHTC properties and maintain compliance at a time when the tax benefit is no longer available. Therefore, after year 15, compliance can be achieved more easily without compromising the spirit of the program so that the housing will continue to serve the people for whom the program was intended.

IRC Section 1.42-5 contains the regulations for credit agencies' compliance monitoring during the compliance period. However, the regulations do not require credit agencies to monitor according to these regulations in the Extended Use Period. IRS officials and other experts have indicated that credit agencies may not report noncompliance to IRS once the compliance period is over. The tax benefit to the owner is exhausted and IRS can no longer recapture or disallow credits. Therefore, the Suballocator must establish policy regarding how properties are to be monitored and consequences for noncompliance during the Extended Use Period.

Further, based on the requirements of the Extended Use Period specified in IRC Section 42 regulations and in the LURA referenced below, the Suballocator has the authority to establish different criteria for LIHTC eligible/ineligible student households, available unit rule, unit transfers and the process for performing annual recertifications during the Extended Use Period, as long as income and rent restrictions, general use requirements (fair housing), Section 8 acceptance, minimum set aside, applicable fraction and initial and annual recertifications are required.

Note, however, that should an owner wish to apply for a new allocation of credits, households determined to be LIHTC income qualified for purposes of the IRC Section 42 credit during the 15-year compliance period are concurrently LIHTC income qualified households for purposes of the Extended Use Period. However, for households to remain qualified for any subsequent allocation, all other Section 42 requirements must continue to be met during the Extended Use Period, including annually certifying student status and not renting to ineligible full time student households, verifying income and assets for annual recertification for mixed income properties, following rules regarding unit transfers between buildings that are not part of the same project as defined by Section 42, etc. Owners/agents should consult with the Suballocator or its monitoring agent before implementing any less restrictive requirements during the Extended Use Period, as noted in this Chapter.

9.02 Compliance Period

Under IRC Section 42(j)(1) the compliance period means, with respect to any building, the period of 15 taxable years that begins with the first taxable year of the credit period.

The first year of the compliance period is the first year in which the owner claimed credits. The first year must be either the year the building(s) are placed in service or, at the owner's election, the year following the PIS date. All requirements of IRC Section 42 including the 1.42-5 monitoring regulations are in effect during the 15-year compliance period.

9.03 Extended Use Period

IRC Section 42(h)(6) establishes that buildings are eligible for the credit only if there is a minimum long term commitment to LIHTC housing. Specifically, in order to receive a credit allocation in 1990 and later,

the owner/agent must record an extended LIHTC housing commitment. The document that evidences this commitment is called the Declaration of Land Use Restrictive Covenants for Housing Tax Credits (LURA). The LURA is recorded with the respective County Recorder and/or Registrar of Titles and "runs with the land" regardless of subsequent changes in ownership.

For purposes of this section, the term "Extended Use Period" means the period:

- Beginning on the last day in the compliance period in which such building is part of a qualified LIHTC project, and
- Ending on the later of:
    - The date specified by the agency in the Declaration, or
    - The date that is 15 years after the close of the compliance period.

IRC Section 42(h)(6)(E) provides exceptions to the Extended Use Period in the case of a legitimate foreclosure or deed in lieu, or for projects that have not waived this right, if the Suballocator is unable to present a qualified contract pursuant to IRC Section 42(h)(6)(F). This Compliance Manual does not contain guidance for the provisions of IRC Section 42(h)(6)(F) regarding the qualified contract referenced in IRC Section 42(h)(6)(E)(i)(II).

Owners of some projects may have waived the right to request a Qualified Contract in exchange for additional points in the application process. Refer to the applicable Procedural Manual for details. Please note, however, that the Suballocator will charge a $5000 non-refundable fee to the owner for processing a request for a qualified contract.

Under IRC Section 42(h)(6)(E)(ii) the termination of an Extended Use Period due to foreclosure or deed in lieu, or for failure to present a qualified contract shall not be construed to permit before the close of the 3 year period following such termination:

- The eviction or the termination of tenancy (other than for good cause) of an existing household of any LIHTC unit, or
- Any increase in the gross rent with respect to such unit not otherwise permitted by the applicable LIHTC rent limits.

Owner/agent must continue to submit compliance reports to reflect compliance through the sale date of the property. This may result in a final report reflecting a partial year of compliance.

See Chapter 26 of the 8823 Guide and HUD Occupancy Handbook 4350.3 Rev-1, 8-12 related to "good cause" terminations.

Under the Suballocator's LURA, the owner/agent agrees to comply with the following for the term of the agreement:

- It will maintain the applicable fraction by leasing units to individuals or families whose income is

50% or 60%, as irrevocably elected by the owner at the time of allocation, or less of the area median gross income (including adjustments for family size) as determined in accordance with IRC Section 42.

- It will maintain the LIHTC rent and income restrictions.
- All LIHTC units will be leased and rented or made available to members of the general public who qualify as LIHTC households, or otherwise qualify for occupancy of the LIHTC units, under the applicable election specified in IRC Section 42(g) (the minimum set aside election).
- The owner/agent agrees to comply fully with the requirements of the Fair Housing Act as it may from time to time be amended.
- The owner/agent will not refuse to lease a unit to the holder of a Section 8 voucher because of the status of the prospective household as such a holder.
- Each LIHTC unit will remain suitable for occupancy.
- The determination of whether a household meets the LIHTC requirement shall be made by the owner/agent at least annually on the basis of the current income of such LIHTC tenant.
- Other restrictions as required under the specific year's QAP and related points the owner received in order to obtain a credit allocation. These restrictions are property specific within the respective LURA and to the extent they are not otherwise time limited, the additional restrictions remain in force and effect during the Extended Use Period.

Note that LURAs have changed from year to year according to the respective QAPs. However, the basic language pertaining to the Extended Use Period required by Section 42 has not materially changed. Declarations that are recorded using Minnesota Housing Finance Agency template format and containing language referencing "Minnesota Finance Agency", "MHFA", "Minnesota Housing" or "Agency" but that were executed by the Suballocator and owner are deemed to be as between the Suballocator and owner.

9.04 Tenant Eligibility Criteria During the Extended Use Period

During the Extended Use Period, the Suballocator requires tenant eligibility and certification of income as follows:

- Tenant Income Certification (CHART TIC). The initial income certification, calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 ("Section 8") and not in accordance with the determination of gross income for federal income tax liability, is required. Annual recertification is as follows:

    - Mixed income LIHTC properties must income recertify annually but owners/agents are not required to verify income and income from assets, unless there is other financing or rental subsidy program that requires such verification. Households must complete a Household Questionnaire or similar form. From information provided by the tenant household, owners/agents must calculate gross annual income, complete the CHART TIC form and report the recertification on the CHART Data tab.

    - 100% tax credit properties have no recertification requirements. However, on the

anniversary date of move in or the last certification effective date, owners/agents must report the unit and household on the CHART Data tab and update all information except current income and student status.

- Any household that experiences a change in composition within the first six (6) months of occupancy (not including birth or death) must meet initial eligibility requirements and a new initial CHART TIC must be performed.

- **Student Status.** Since student status is not one of the defined requirements of the LURA, the student rules under IRC Section 42 are no longer applicable.
- **Unit Transfers.** Unit transfers from building to building are allowed without triggering noncompliance regardless of whether a household's income is over the applicable limit at the time of transfer or the multiple building election.
- **Available Unit Rule.** The available unit rule is revised to provide that if a household's income goes over 140% of the applicable income limit, a currently vacant market unit or the next unit in the same building must be rented to a LIHTC qualified household. The "comparable or smaller" requirement no longer applies, thus the Available Unit Rule becomes a one for one unit replacement.
- **Applicable Fraction.** Only the unit fraction will be examined to determine a building's applicable fraction.
- **Rent Limits.** Rent limits as elected by the owner at the time of allocation continue to be in force during the Extended Use Period. Owners/agents of properties that were awarded selection points for additional rent restrictions should refer to the respective QAP or LURA to determine whether the additional rent restrictions are time limited or if they are in effect for the full term of the Extended Use Period.
- **Utility Allowances.** Utility Allowances must be updated annually. Revised utility allowances must be implemented within 90 days of their published effective date.

Minnesota Housing will continue to update the Section 42 Program income and rent limits based on the Section 8 income limits published by HUD annually and AHC will continue to provide those limits annually to owners/agents.

9.05 Monitoring Compliance During the Extended Use Period

The following is the monitoring procedure the Suballocator and AHC will follow during the Extended Use Period:

- **Annual Certification.** By February 15, or the date specified by AHC, all owners are required to submit an annual certification of compliance to AHC. The Owner's Certification of Compliance During the Extended Use Period, form CHART HTC12(Y15), contains defined certification language pursuant to the terms of the LURA.
- **Annual Reporting.** A complete CHART, including the CHART Data tab and related Applicable Fraction Summary must be submitted to AHC annually along with the CHART HTC12(Y15). However, owners/agents are not required to report on student status.
- **Inspections.** At least every five years, AHC will perform a site visit of the project. The first review

in the Extended Use Period will be no more than five years from the last inspection conducted during the compliance period. A minimum of three low-income units chosen at random or a maximum of 10% of the low income units up to 15 units in any project will be inspected. If the first three units pass inspection, then no additional units need to be inspected. AHC reserves the right to inspect up to 100% of the low income units. Different units may be chosen for the file review than those receiving a UPCS inspection. AHC staff will continue to work with other inspection entities such as local inspection officials and other government agencies to share inspection information. Also, AHC may accept REAC or HRA HQS inspections done in the same year as the file review for the units reviewed. AHC inspections will be conducted pursuant to HUD's Uniform Physical Conditions Standards (UPCS) and local codes. AHC reserves the right to conduct a review of any building after serving appropriate notice and to examine all records pertaining to rental of LIHTC units. AHC may perform a review at least through the end of the Extended Use Period of the buildings in the project.

- **Annual Monitoring Fees.** During the Extended Use Period, annual compliance monitoring fees are a reduced rate. AHC reserves the right to adjust the fee due to changing circumstances. Fees are due at the date specified in the annual invoice.
- **Properties with HUD funding.** No LIHTC inspections or fees will be required for properties with project based Section 8 or other HUD programs since these properties are already subject to inspections for these programs and consequences under these programs are already in place. Owners/agents must submit the Owner's Certification of Continued Monitoring of Federal Program (CHART HTC12(Y15A)), indicating whether or not the property is subject to monitoring for such federal programs and identifying the date of the most recent inspection review. This certification and report are due on February 15 or the date specified by AHC. This section applies only to projects in which all Section 42 units are also subject to the inspections and consequences under project based Section 8 or other HUD programs. This section does not apply to projects with HUD contracts renewable on an annual basis only.
- If a property is no longer subject to monitoring for HUD, then the property must be placed back on the LIHTC monitoring schedule. If the property is placed back on the LIHTC monitoring schedule, AHC will resume all compliance monitoring activities, including charging a fee for monitoring. The timing of the next review will be based on the last inspection conducted by HUD or its Contract Administrator.
- Transfer of Ownership or Ownership Interest. Refer to Chapter 7.
- Expiration or Termination of Extended Use Period. For three years after the Extended Use Period has expired or terminated pursuant to IRC Section 42(h)(6)(E)(ii), owners may not evict or terminate tenancy (including lease non-renewal) for other than good cause and may not increase rents above the allowable Section 42 rent limit. Owners/agents are required to annually submit a completed CHART including the CHART Data tab listing all LIHTC households that occupied a LIHTC unit at the end of the term of the LURA, the respective tenant paid rent, utility allowance and move out date, if applicable, along with a certification that no LIHTC residents have been evicted or displaced for other than good cause. (See Chapter 26 of the 8823 Guide and HUD Occupancy Handbook 4350.3 Rev-1, 8-12 related to "good cause" terminations). This report and certification will be due on February 15 or the date specified by AHC. No monitoring fees will be due during this 3 year period and AHC is not required to perform inspections. Depending on the

expiration or termination date of the LURA, a final report that reflects a partial year of compliance may be required.

The LURA allows for an amendment by written agreement between the Suballocator and the owner. A temporary waiver of restrictions or amendment to the LURA may be negotiated in the event a property suffers from a decline in market conditions that is not expected to improve, and subsequent vacancies compromise the economic viability of the property. Owner/agent must demonstrate that reasonable efforts have been made to meet all compliance requirements. A change in applicable fraction, rent limits or other terms may be negotiated with the Suballocator in order to preserve as many LIHTC units as possible but still protect the economic viability of a property.

9.06 Consequences of Noncompliance During the Extended Use Period

The following are the procedures for and consequence(s) of noncompliance:

- All properties whose compliance period expired and are subject to the requirements of the Extended Use Period will be categorized as in either "Good Standing" or "Not in Good Standing". The Suballocator and/or AHC will list these projects on their website(s).
- If an owner/agent fails to comply with the monitoring requirements and/or terms of the LURA, the Suballocator will issue a Notice of Noncompliance and recommendations for correction similar to what is issued during the compliance period. All owners/agents will be given a period of time not to exceed 90 days with which to clarify or correct noncompliance and report to AHC that all corrections have been made. An extension of an additional 90 days may be granted, with good cause. If a property has one or more compliance violations, but the owner/agent is making a good faith effort to correct within a reasonable time, then the property can be considered in Good Standing. If the violation(s) cannot be corrected within the 90 day correction period (or within the extension if granted), AHC may request that the owner/agent formulate a plan and reasonable timeline to bring the property back into compliance and advise AHC in writing of such a plan. Owner/agent will have demonstrated good faith efforts by carrying out the plan within the referenced timeline and the property will remain in Good Standing.

If an owner/agent repeatedly delays or ignores requests for monitoring reviews, fails to submit annual certifications, reports and compliance monitoring fees, does not correct violations timely or according to the agreed upon plan, where applicable, or otherwise chooses to ignore the compliance and monitoring requirements (serious and/or flagrant noncompliance), the following are consequences:

- The owner/agent are considered to be Not in Good Standing. The Suballocator and/or AHC's website will be updated to reflect the change in status.
- A Report of Development Not in Good Standing, form HTC31, will be issued for such serious and/or flagrant noncompliance. This report will be sent to the owner/agent. The Suballocator reserves the right to reject any future requests for funds for projects involving the owner, its partners and/or proposed developments to be managed by the management company until the property is back in Good Standing. Once good faith efforts are demonstrated to the Suballocator's satisfaction, the property, owner and management company will be placed in

Good Standing status. The Suballocator will notify Minnesota Housing of the change in status.

- The property may be ineligible for a lower property tax rate under the Low Income Rental Classification (LIRC).
- The Suballocator and any interested party have the right to enforce specific performance of the LURA through the court system.

Important: Owners/agents must keep track of when a development, and in some cases certain buildings within a development, transition from the compliance period into the Extended Use Period. Premature implementation of the Extended Use Period compliance and monitoring guidelines may result in noncompliance with IRC Section 42 for which the Suballocator would be required to file IRS Form 8823.

Failure to comply with the Suballocator's compliance policies, procedures, or requirements after repeated notices will be considered an unacceptable practice and result in negative points or ineligibility. Refer to the applicable Procedural Manual for details.

9.07 Eventual Tenant Ownership

If a project received selection points for eventual tenant ownership, a detailed proposal for such ownership must be submitted. The proposal is required to incorporate a financially viable plan to transfer 100% of the LIHTC unit ownership after the 15 year compliance period from the owner of the project to tenant ownership.

The unit purchase price at the time of sale must be affordable to incomes meeting LIHTC eligibility requirements. To be eligible, a buyer must have a LIHTC qualifying income at the time of initial occupancy. The plan requires an ownership exit strategy and the provision of services including home ownership education and training. The LURA contains provisions ensuring compliance with these home ownership program commitments by the owner.

As each tenant ownership plan will be unique, owners who are considering converting LIHTC rental units to ownership should review the **Eventual Tenant Ownership (ETO) Guide** and contact the Suballocator to discuss the steps that will be necessary. The Suballocator reserves the right to modify this Section 42 Low Income Housing Tax Credit Compliance Manual, including, but not limited to, the foregoing policy and procedure for compliance and monitoring during the Extended Use Period, as needed.

10. TAX CREDIT ASSISTANCE PROGRAM (TCAP) AND SECTION 1602 (Tax Credit Exchange) PROGRAM

10.01 Background

The American Recovery and Reinvestment Act of 2009 established two new programs, the Tax Credit Assistance Program (TCAP) and the Section 1602 Exchange Program, to help certain LIHTC financed rental housing projects close financing gaps created by reduced credit pricing and lack of syndicator equity. TCAP is administered by HUD and Section 1602 is administered by the U.S. Department of Treasury. TCAP funds may only be awarded to projects where there is an allocation of LIHTCs. Section

1602 allows state credit agencies and Suballocators to exchange LIHTCs for cash funds may be awarded to projects with or without LIHTCs.

10.02 Compliance and Asset Management

Properties funded with TCAP and/or Section 1602 funds must comply with loan documents and with IRC Section 42 for the full term of the compliance and Extended Use Periods, as evidenced by a LURA. Additionally, during the compliance and Extended Use Period, both programs are subject to asset management oversight by the Suballocator.

10.03 Monitoring and Reporting

The Suballocator will monitor compliance with TCAP and in the same manner as described in this manual for the LIHTC Program. However, Section 1602 will require reporting violations to Treasury in a form and manner required by Treasury, and not to IRS on Form 8823. Asset management includes, but is not limited to, lease up compliance monitoring, operational and financial reporting, and other monitoring pursuant to a Regulatory Agreement with the Suballocator.

Questions regarding asset management activities should be directed to the Suballocator.