



## **Compliance Guide**

# **Multifamily HOME Programs (HOME Targeted, HOME Rental Rehabilitation, HOME Affordable Rental Preservation) and National Housing Trust Fund Program**

*Revised 12/2018*

## MINNESOTA HOUSING – MULTIFAMILY HOME AND NHTF PROGRAMS



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## Introduction

Minnesota Housing has administered the HOME Investment Partnerships Program since 1992 and the National Housing Trust Fund (NHTF) Program since 2016. Properties that have been developed using these funds are subject to specific rules designed to ensure that they remain affordable throughout the required period of affordability (also referred to herein as the effective period or compliance period). This guide is designed to assist owners and their agents to plan and maintain compliance with the regulatory requirements associated with the utilization of these funds in multifamily properties.

It is the responsibility of the Minnesota Housing Finance Agency (Minnesota Housing) to monitor the continuing compliance of units that have received HOME funds in accordance with HUD regulations contained in 24 CFR Part 92, and for units that have received NHTF funds in accordance with NHTF regulations contained in 24 CFR Part 93. It is also Minnesota Housing's responsibility to ensure that property owners retain the housing units as affordable throughout the period of affordability. The following procedures apply to all rental properties that have received funds under the HOME or NHTF program. Any violation of the requirements could result in acceleration of the repayment of funds. Unless a provision is noted as "HOME Only" or "NHTF Only," all provisions of this guide apply to both programs. Noncompliance by the owner may result in serious financial consequences.

Successful operation of a HOME or NHTF funded property is management intensive; the owner is responsible for ensuring that the property is properly administered. Thorough understanding of program requirements and compliance monitoring procedures requires training of owners and managers. Owners should ensure that they know and understand the requirements of the financing and the compliance requirements, as failure to comply may have very serious consequences. Minnesota Housing recommends owners, management agents and site managers receive compliance training before certifying or leasing any assisted units. At a minimum, training should cover key compliance terms, determination of rents, tenant eligibility, file documentation, procedures for maintaining the required unit mix, reporting and records retention requirements, property condition standards, ongoing lead-based paint maintenance, and site visits. Continuing education each year, or at a minimum every other year, is strongly recommended in order to keep up with regulatory and procedural changes. Minnesota Housing does not provide direct training; however, when available, training opportunities from national or local trainers will be posted on Minnesota Housing's website and distributed via eNews.

Minnesota Housing's obligation to monitor for compliance does not make Minnesota Housing liable for an owner's noncompliance.

This compliance guide has not been reviewed or approved by the Department of Housing and Urban Development (HUD) and should not be cited or relied upon for interpretation of federal regulations. This guide can be accessed on [Minnesota Housing's website](#).

For HOME, this guide should be used in conjunction with, and as a supplement to, 24 CFR Part 92. If Minnesota Housing or HUD determines that any provision of this guide is in conflict with 24 CFR Part 92, 24 CFR Part 92 will govern.

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For NHTF, this guide should be used in conjunction with, and as a supplement to, 24 CFR Part 93. If Minnesota Housing or HUD determines that any provision of this guide is in conflict with 24 CFR Part 93, 24 CFR Part 93 will govern.

This guide may be superseded without notice by changes in income determinations under 24 CFR Part 5 of the Section 8 program and technical revisions in the HOME or NHTF Programs.

For more information, visit [HUD's HOME website](#) or [HUD's NHTF website](#).

This guide provides information related only to HOME and NHTF requirements. Properties may be subject to additional requirements due to other funding streams. Owners are responsible for complying with all applicable requirements.

## Chapter 1 – Compliance Overview

The following is a brief summary of the requirements of the HOME and NHTF programs. It is not intended to be detailed or comprehensive.

### 1.01 Period of Affordability

#### HOME Only

HOME-assisted units are rent and income controlled for varying lengths of time depending upon the average amount of HOME funds invested per HOME-assisted unit. Rent limits and income targeting requirements must be maintained during the period of affordability, which begins at project completion (also sometimes referred to as the affordability period, effective period or compliance period). Owners will be required to keep the property in compliance with HOME guidelines for the minimum number of years specified below.

Rental Housing Activity	Average HOME Assistance per HOME Unit	Minimum Years
Rehabilitation or acquisition and rehabilitation of existing housing per unit amount of HOME funds	Under \$15,000 per unit	5
	\$15,000 to \$40,000 per unit	10
	Over \$40,000 per unit or any amount involving refinancing	15
New construction or acquisition of newly constructed housing	Any amount	20

Owners should refer to the Declaration of Covenants, Conditions and Restrictions (Declaration) to determine the specific terms and conditions that govern their property.

#### NHTF Only

All NHTF-assisted units are subject to a 30-year affordability period, which begins at project completion. Rent and income requirements must be maintained during the entire period of affordability.

### 1.02 Income and Rent Requirements

#### HOME Only

##### Properties with five or more HOME-assisted units.

Initial occupancy at project completion:

- At least 90 percent of all HOME-assisted units must be initially occupied by families with annual gross incomes at or below 60 percent of the area median income with rents at or below the High HOME rent limits.
- At least 20 percent of the HOME-assisted rental units must be initially occupied by families with annual gross incomes at or below 50 percent of the area median income with rents at or below the Low HOME rent limits unless a greater percentage is specified in the Declaration.
- The remainder of the HOME-assisted rental units must be initially occupied by families with annual gross incomes at or below 80 percent of the area median income with rents at or below the High HOME rent limits.

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Subsequent to initial occupancy:

- The minimum percent of the HOME-assisted units designated in the Declaration must continue to be occupied by families with annual gross incomes at or below 50 percent of area median income with rents at or below the Low HOME rent limit. The remaining HOME-assisted units must be occupied by families with annual gross incomes at or below 80 percent of the area median income with rents at or below the High HOME rent limit.

**Properties with fewer than five HOME-assisted units.**

Initial occupancy at project completion:

- All HOME-assisted units must be initially occupied by families with annual gross incomes at or below 60 percent of the area median income with rents at or below the High HOME rent limit.

Subsequent to initial occupancy:

- All HOME-assisted units must continue to be occupied by families with gross annual incomes at or below 80 percent of area median income, with rents at or below the High HOME rent limit.

The below chart illustrates the income targeting requirements by number of HOME-assisted units:

No. of HOME Units		Income Requirements at Initial Certification	Income Requirements After Initial Certification	Rent Requirements
1 – 4		60% area median income (AMI)	80% AMI	Lower of Fair Market Rent (FMR) or 65%* rent limit (High HOME Rent)
5 +	100% of HOME-assisted units are occupied by households with incomes at or below 80% AMI, with these additional requirements:			
	Very low income/Low HOME Rent	At least 20% of the units must be occupied by very low income households, at 50% AMI or lower	At least 20% of the units must be occupied by very low income households, at 50% AMI or lower	At least 20% of the units must pay the lower of FMR, 50% rent limit (Low HOME Rent), or 30% of the family's adjusted income
	Low income/High HOME Rent	*Up to 10% of the units may be occupied by households above 60% AMI (up to 80% AMI)	*The remaining 80% of the units may be occupied by households above 60% AMI (up to 80% AMI)	The remainder of the units may pay the lower of FMR or 65% rent limit (High HOME Rent)

\*Note: You must have at least ten HOME-assisted units to qualify for one unit with a household at 80% AMI.

## **NHTF Only**

### **Income and Rent Requirements**

All NHTF-assisted units must be affordable to extremely low-income (ELI) renter households. ELI renter households mean low-income families whose annual incomes do not exceed 30 percent of the area median family income or the federal poverty line (whichever is greater), with adjustments for smaller and larger families, as determined by HUD.

For tenants who are ELI, their rent plus an allowance for tenant-paid utilities must not exceed the greater of 30 percent of the federal poverty line or 30 percent of the income of a family whose annual income equals 30 percent of AMI for the area, as determined by HUD, with adjustments for the number of bedrooms in the unit.

### **1.03 Student Eligibility Requirements – HOME Only**

Properties where HOME funds were committed on or after August 23, 2013 have additional eligibility requirements for students. The HOME program has adopted the Section 8 Housing Choice Voucher Program restrictions on student participation found at 24 CFR 5.612, which exclude any individual that is enrolled in a higher education institution and is not an “Independent Student” as defined in the Higher Education Act or has parents who, individually or jointly are not eligible on the basis of income.

Refer to Chapter 3, Section 3.01 for more information on student eligibility.

### **1.04 Updating Income and Rent Limits**

Income and rent limits are updated and published by HUD on an annual basis. Minnesota Housing notifies owners and managers by email and posts the new rent limits on its website when they are released. In the event rent limits decrease for an area, or utility allowances increase, an owner may be required to reduce the rent charged but will not be required to lower rents below those in effect at the time of project commitment.

### **1.05 Allowable Fees and Charges**

Owners may not charge fees that are not customarily charged in rental housing (e.g., laundry room, access fees); however, fees considered reasonable and customary may be charged, such as application fees and parking fees if such fees are customary for rental housing in the neighborhood. Fees for services such as bus transportation or meals may also be charged, as long as the services are voluntary and fees are charged only for services provided. An eligible tenant cannot be charged a fee for the work involved in completing the forms or documentation required for certifying eligibility, such as the Tenant Income Certification.

### **1.06 Fixed or Floating Units**

Assisted units may be “fixed” or “floating” and are designated on a property-by-property basis. Fixed or floating units are designed at the time of project commitment in the written agreement, and the actual units must be identified no later than the time of project completion. The Declaration of Covenants, Conditions and Restrictions should contain fixed or floating unit designations.

**Fixed Units.** Designated units are identified by unit number and never change. Units in properties where all units are assisted are automatically considered fixed. Fixed units remain the same throughout the affordability period.

**Floating Units.** Designated units may change over time as long as the total number of comparable units in the property remains constant. If a property’s Declaration does not specify comparable floating units, then the units that were initially HOME or NHTF-qualified upon project completion will be used to determine comparable floating units.

Refer to Chapter 2 – Maintaining the Unit Mix, for more information.

### **1.07 Rent Increases**

As long as rents remain below the maximum allowed in each program, an owner may impose up to a 5 percent rent increase no earlier than one year from the date the project was completed and no more frequently than annually thereafter. If an owner wishes to increase rents above 5 percent, the request must be within reasonable limits to cover increases in expenses such as real estate taxes or operating expenses. The owner must submit a written request to Minnesota Housing, including an updated utility cost analysis of tenant paid utilities.

If the owner increases rents as provided above, tenants must be given a written notice in accordance with lease provisions before implementation.

If rents are increased by more than 5 percent without the approval of Minnesota Housing, the owner may be required to reduce the rents and make restitution to affected tenants.

### **1.08 Utility Allowances**

HOME and NHTF statutes and regulations establish rent limits for assisted rental units. These are gross limits that include contract rent plus a utility allowance (UA) for tenant-paid utilities. Owners are required to establish maximum monthly allowances for utilities and services (excluding telephone) and to update the UA annually.

HOME and NHTF rules require owners to use a project-specific UA. Owners are NOT permitted to use the UA established by the local Public Housing Authority (PHA) for HOME-assisted properties if HOME funds were committed on or after August 23, 2013, or for any NHTF-assisted properties. However, if HOME funds were committed before August 23, 2013, owners may continue to use the UA from the PHA that administers Section 8 Housing Choice Vouchers in the local area.

The following methodologies will meet the regulatory requirements for a project-specific UA:

1. **Average of Actual Consumption.** In 2015, HUD published [Multifamily Notice H-2015-4](#) to provide instructions to owners 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 Low-income Housing Tax Credit (LIHTC) projects per IRS regulations at 26 CFR 1.42-10(b)(3). Owners 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.

2. **Utility Company Estimate** (26 CFR 1.42-10(b)(4)(B)). Owners may establish a UA based on estimates obtained from a local utility company for each of the utilities used in the project. The estimate must be obtained in writing and must be based on the estimated cost of that utility for a unit of similar size and construction for the geographic area in which the building containing the unit is located.
3. **Energy Consumption Model (ECM)** (26 CFR 1.42-10(b)(4)(E)). Owners may establish a UA based on 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 and building owner must not be related within the meaning of IRC section 267(b) or 707(b), to which the engineer and building owner must certify. The owner and engineer must also certify that the model complies with the minimum requirements described above. Use of the energy consumption model 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 effective date of the UA. 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.

The initial UA approval will occur prior to loan closing. Once the method and allowances have been approved by Minnesota Housing, the owner must update the allowances annually using the approved method and current rate information. The updated allowances and source documentation must be made available for review during the on-site inspection.

If an owner wishes to change to a different UA methodology, he or she must request approval from Minnesota Housing.

### **1.09 Records Retention**

Owners must retain project records for a minimum of five years beyond the property's required effective period. Tenant records, including income verifications, development rents, and unit inspections must be retained for the most recent five-year period, until five years after the effective period terminates.

Owners must maintain applicant and tenant information in a way to ensure confidentiality. Owners must dispose of records in a manner that will prevent any unauthorized access to personal information (e.g., shred).

### **1.10 Leases**

Each lease must be in writing and include the legal name(s) of the parties to the agreement and all other occupants, a description of the unit to be rented, the term of the lease, the rental amount, the use of the premises, and the rights and obligations of the parties. The lease shall also inform the tenant that fraudulent statements are grounds for eviction and that the tenant could become subject to penalties available under federal law. The lease must be for a period of not less than one year, unless a shorter period is mutually agreed upon between owner and tenant.

### 1.11 Income Certification

The owner must verify and certify tenant income eligibility\* at move-in and recertify at least annually thereafter. Every sixth year of the affordability period, income and income from assets must be verified again. Tenants must certify to their anticipated income, family size and composition. Third party income verifications or other forms of supporting documentation must be obtained by the owner and kept on file. Tenant files will be reviewed as part of the inspection process.

For properties with existing tenants receiving funds for rehabilitation, owners may begin certifying tenant eligibility on or after the date of the written agreement. These initial certifications will precede the start of the affordability period, but as long as the owner complies with requirements for annual recertification and applies the appropriate rules for increases in income at recertification to maintain the unit mix, the units will continue to be eligible at the start of the affordability period.

\*Properties where HOME funds were committed on or after August 23, 2013 must also certify student eligibility at move-in.

### 1.12 Increases in Income

#### HOME Only

The owner must ensure that any household whose recertified income increases above the HOME income eligibility guidelines pays not less than 30 percent of its **adjusted** monthly income for rent, or the owner may charge market rent. Refer to Chapter 2 – Maintaining the Unit Mix, for more information on how to respond to increases in income for both fixed and floating units. The unit must be marketed to eligible tenants when vacated. Those properties with LIHTC need not adjust rent to 30 percent of the household’s income if doing so would put the property out of compliance with the LIHTC program. Under this scenario, the household may only be charged rent equal to or less than the maximum allowable LIHTC rent.

#### NHTF Only

NHTF-assisted units continue to qualify as affordable housing despite temporary noncompliance caused by increases in the incomes of existing tenants if actions satisfactory to HUD are being taken (refer to Chapter 2 – Maintaining the Unit Mix, for more information on how to respond to increases in income for both fixed and floating units).

### 1.13 Property Standards

The owner must keep all units in compliance with [HUD’s Uniform Physical Conditions Standards \(UPCS\)](#) and other pertinent state and local building codes to ensure the units are decent, safe and sanitary at all times.

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, owners must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Tenants must receive a federally approved pamphlet on lead poisoning prevention entitled “[Protect Your Family from Lead in Your Home](#)”. This disclosure must be documented on HOME/NHTF Form 22 Lease Addendum. (Note that the HOME/NHTF Form 22 Lease Addendum is waived for units that receive project-based Section 8 assistance when the HUD Model Lease form is used.)

### **1.14 Fair Housing Policy and Affirmative Marketing**

It is the policy of Minnesota Housing to affirmatively further fair housing in all its programs so that individuals of similar income levels have equal access to Minnesota Housing 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.

Minnesota Housing's fair housing policy incorporates the requirements of the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendment Act of 1988, as well as the Minnesota Human Rights Act. Housing providers are expected to comply with the applicable statutes, regulations, and related policy guidance. Housing providers should ensure that admissions, occupancy, marketing and operating procedures comply with non-discrimination requirements.

In part, the Fair Housing Act and the Minnesota Human Rights Act make it unlawful to, because of protected class status:

- 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 or services or facilities;
- 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 cause to make, print or publish) notices, statements or advertisements that indicate preferences or limitations based on protected class status;
- Represent a dwelling 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; or
- Engage in harassment or quid pro quo negotiations related to the rental of a dwelling unit.

Minnesota Housing has a commitment to affirmatively further fair housing for individuals with disabilities by promoting the accessibility requirements set out in the Fair Housing Act, which establish design and construction mandates for covered multifamily dwellings and requires housing providers to make reasonable accommodations and to allow persons with disabilities to make reasonable modifications.

Housing providers are not permitted to refuse to lease a unit to, or discriminate against, a prospective resident solely because the prospective resident has a Housing Choice Voucher or other form of tenant-based rental assistance.

Owners 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 of rental properties that contain five or more HOME- or NHTF-assisted units, regardless of the specific activity the HOME or NHTF funds financed (e.g., acquisition, rehabilitation, and/or new construction) must develop and implement an Affirmative Fair Housing Marketing Plan in accordance with HUD and Minnesota Housing requirements. Owners must regularly review and update the plan 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 on-site monitoring to ensure that all efforts are in compliance with federal requirements and are being adequately documented.

Visit Minnesota Housing's [Fair Housing webpage](#) for more information, including an online [Affirmative Marketing Toolkit](#) to assist in creating the AFHMP.

### **1.15 Community Housing Development Organizations (CHDOs) – HOME Only**

All HOME program requirements are the same for CHDO projects as for other HOME programs. In addition, CHDOs must ensure that they continue to meet all pertinent guidelines specific to CHDOs, including the ownership requirements in 24 C.F.R. § 92.300. Properties that are owned, developed or sponsored by CHDOs, must have a tenant participation plan to ensure that tenants are involved in the management and decision-making with respect to the property. CHDO properties must also have fair lease and grievance procedures.

Tenant participation in management decisions can be achieved in a number of ways. Two common options are:

- Involvement of a tenant association to act as a formal body to provide input for project management; or
- Tenant election of a representative to act as a liaison with management

### **1.16 CHDO Fair Lease and Grievance Procedure – HOME Only**

CHDOs must adhere to an approved fair lease and grievance procedure and provide a plan for, and follow a program of, tenant participation in management decisions. Fair lease and grievance procedures should be objective. They should clearly state:

- To whom a tenant should direct a complaint;
- Who will investigate and/or respond to the complaint; and
- By when the tenant should expect to receive a response.

### **1.17 Violence Against Women Act**

On November 16, 2016, HUD issued its final rule implementing housing protections authorized in the Violence Against Women Reauthorization Act of 2013 (VAWA). Unique monitoring and implementation dates apply to HOME and NHTF.

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All HOME and NHTF projects, must comply with the core statutory provisions of the law and should distribute the following forms to tenants:

- HUD Form 5380 – Notice of Occupancy Rights under the Violence Against Women Act; and
- 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; and
- With any notice of termination of tenancy.

Existing residents were required to receive a copy of HUD form 5380 and form 5382 by December 15, 2017 during recertification, lease renewals or by other means.

Compliance with VAWA regulatory requirements under the final rule is required for HOME projects with funding commitments on or after December 16, 2016 and for all NHTF projects.

Minnesota Housing has created an external Emergency Transfer Plan, and owners must provide an internal Emergency Transfer Plan model (refer to HUD forms 5381 and 5383). The owner must follow Minnesota Housing's external [Emergency Transfer Plan](#) and adopt an internal Emergency Transfer Plan. The emergency transfer plan allows for survivors to move to another safe and available unit if they fear for their life and safety.

Owners must be familiar with the statutory and regulatory requirements that affect their developments and should consult with legal counsel as needed.

Find VAWA forms 5380, 5381, 5382 and 5383 on HUDClips. Owner should customize the forms for use at their properties, but the modified forms must maintain the base information and language.

## Chapter 2 – Maintaining the Unit Mix

Throughout this guide the terms High HOME Rent unit and High HOME unit; and Low HOME Rent unit and Low HOME unit are used interchangeably.

### 2.01 Fixed Units

#### HOME Only

Properties with **fixed HOME-assisted units** have specific units that are designated as HOME-assisted for the duration of the effective period. Owners must maintain these specific units as the HOME-assisted units. In a property with fixed HOME units, the designation of units as High HOME Rent units and Low HOME Rent units may need to change.

Maintaining the required number of HOME-assisted units, as well as High HOME Rent units and Low HOME Rent units, for properties with five or more HOME-assisted units is called complying with the **unit mix requirements**.

When an owner recertifies a household's income, he or she may find that the tenant's income has increased. A household is considered "**over-income**" in the HOME Program when:

- The household occupies a High or Low HOME Rent unit and the household income increases over the current HOME low-income limit (80 percent income limit) for that family size, or
- The household occupies a Low HOME Rent unit, and the household's income increases above the current very low-income limit, but does not increase above the low-income limit; that is, the household income is above 50 and below 80 percent of area median income.
- In HOME-assisted units that are also LIHTC units, a household is considered "over-income" when its income increases to 140 percent or more of the qualifying tax credit income for that unit.

When a household is over-income, the unit that the household occupies is considered **temporarily out of compliance** with HOME's occupancy and unit mix requirements. Temporary noncompliance due to an increase in an existing household's income is permissible as long as the owner takes specific steps to restore the correct occupancy and unit mix in the property as soon as possible. When the household's income exceeds the low-income limit, its rent must also be adjusted.

When an owner conducts the annual income recertification and finds that a household is over-income, the steps that it takes to restore compliance depend on whether the over-income household occupies a High HOME unit or a Low HOME unit. If the household occupies a Low HOME unit, the steps also depend on whether or not the tenant is low-income.

- **If the over-income household occupies a High HOME Rent unit**, the property is temporarily out of compliance until the unit is vacated and can be rented to another low-income household. The owner must raise the rent as soon as the lease permits, in accordance with the terms of the lease. The rent must be adjusted such that the household pays the lesser of:
  - The rent amount payable under state or local law; or
  - 30 percent of the tenant's monthly adjusted family income

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- If the unit is an LIHTC unit, the rent must be at or below the amount allowed by the tax credit program.

The owner cannot terminate the lease based on the household's increased income.

- If the household occupies a Low HOME Rent unit and its income increases **over the very low-income limit, but not over the low-income limit**, the property is temporarily out of compliance until either: (1) a High HOME unit can be re-designated as a Low HOME unit, or (2) the unit is vacated and can be rented to another very low-income tenant household.

The unit occupied by the over-income household retains its designation as Low HOME until another unit can be re-designated as Low HOME.

When a High HOME unit in the property vacates, regardless of bedroom size, the unit must be re-designated as a Low HOME unit and rented to a very low-income household, at no more than the Low HOME Rent. Once a new Low HOME unit has been designated, the Low HOME unit that is occupied by the over-income household must be re-designated as a High HOME unit. At this time, the owner can increase the tenant's rent up to the High HOME Rent limit, subject to terms of the lease.

- **If the household occupies a Low HOME Rent unit and its income increases above the low-income limit**, the property is temporarily out of compliance and will continue to be out of compliance until the over-income tenant moves out and another income-eligible tenant household moves in.

The owner must adjust the over-income household's rent as soon as the lease permits. The over-income tenant must pay the lesser of:

- The rent amount payable under state or local law; or
- 30 percent of the tenant's monthly adjusted family income.
- If the unit is an LIHTC unit, the rent must be at or below the amount allowed by the tax credit program.

The owner cannot terminate the lease based on the household's income.

When a High HOME unit becomes available, regardless of bedroom size, it must be re-designated as a Low HOME unit. This unit must be rented to a very low-income tenant, at no more than the Low HOME Rent limit. Then, the unit that is occupied by the over-income tenant must be re-designated as a High HOME unit. Even though the unit is re-designated a High HOME unit, the tenant is over the low-income limit, so the property continues to be temporarily out of compliance.

**If there is more than one over-income household in the property** and both a Low HOME unit and High HOME unit are needed to restore unit mix compliance, the owner should restore compliance with the Low HOME unit first.

**NHTF Only**

Properties with **fixed NHTF-assisted units** have specific units that are designated as NHTF-assisted for the duration of the effective period. Owners must maintain these specific units as the NHTF-assisted units. When an owner conducts the annual income recertification and finds that a household is over-income, the unit will continue to qualify until the household vacates, at which time the unit must be rented to a NHTF-qualified household.

**2.02 Floating Units****HOME Only**

Properties with **floating HOME-assisted units** do not have specific units that are designated for the duration of the effective period. Instead, the total number of HOME-assisted and non-assisted units that are designated at the time of project commitment must stay the same throughout the effective period. The specific units that carry the HOME-assisted designations may change, or float, among comparable assisted and non-assisted units during this time. In a property with floating HOME units, unit mix is maintained by changing the unit designations when the next comparable unit becomes available. For example, if a property has an over-income tenant in a HOME-assisted unit, when the next non-assisted comparable unit becomes available, it is designated as HOME-assisted and rented to an income-eligible tenant. The unit occupied by the over-income tenant is re-designated as a non-assisted unit.

Maintaining the required number of comparable HOME-assisted units, as well as High HOME Rent units and Low HOME Rent units, for properties with five or more HOME-assisted units, is called complying with the **unit mix requirements**.

When recertifying a tenant's income, an owner may find that the tenant's income has increased. A tenant is considered "**over-income**" when:

- The tenant occupies a HOME-assisted unit and the household income increases over the current HOME low-income limit for that family size, or
- The tenant occupies a Low HOME Rent unit, and the household's income increases above the current very low-income limit, but is still below the low-income limit.
- In HOME-assisted units that are also LIHTC units, a tenant household is considered "over-income" when its income increases to 140 percent or more of the qualifying tax credit income for that unit.

When a tenant is over-income, the unit that the tenant occupies is considered **temporarily out of compliance** with HOME's occupancy and unit mix requirements. Temporary noncompliance due to an increase in an existing tenant's income is permissible as long as the owner takes specific steps to restore the required unit mix in the property. The rents of the over-income tenants can be adjusted.

When re-designating units in a property with floating HOME-assisted units, owners can choose to substitute a unit that is comparable to or larger than the original HOME-assisted unit, but generally cannot substitute one that is smaller. A smaller unit can be substituted only when doing so preserves the original unit mix. A larger unit is one that might be considered more preferable because of larger size, additional bedrooms or amenities. The goal is to maintain the same number and type of HOME-assisted units as were originally designated; therefore, if an owner substitutes a larger unit it can later substitute an available unit that is smaller, when applicable, in order to restore the original unit mix.

**If an over-income household occupies a floating High HOME unit**, the owner must adjust the rent of the over-income household so that it pays 30 percent of its monthly adjusted income as rent. The rent

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adjustment must be made as soon as the lease permits and in accordance with the terms of the lease. Note that, unlike the rule for properties with fixed HOME-assisted units, in a property with floating HOME units, a household is not required to pay more than the market rent for a comparable, unassisted unit in the neighborhood.

The next vacant, comparable, non-assisted unit must be designated as a High HOME unit. A comparable unit is one that is equal or greater in terms of size, number of bedrooms, and amenities. The owner may not replace the unit with one that is smaller, unless doing so preserves the original unit mix. The newly designated High HOME unit must be rented to a household whose income does not exceed the low-income limit, at a rent that does not exceed the High HOME Rent limit.

Once a comparable non-assisted unit is designated the new High HOME Rent unit, the unit with the over-income household is re-designated as a non-assisted unit. At this point, the owner may adjust the household's rent without regard to the HOME rent requirements (although requirements from other funding sources may still apply). Rent increases are subject to the terms of the lease.

**If a tenant is low-income, but is not very low-income, and occupies a floating Low HOME unit**, the unit occupied by the over-income household keeps its designation as a Low HOME unit until a comparable unit can be substituted. The rent of the over-income household must not exceed the Low HOME rent limit while the unit is a Low HOME unit.

When the next High HOME unit in the property is vacated, it must be re-designated as a Low HOME unit and rented to a household whose income does not exceed the very low-income limit, at a rent that does not exceed the Low HOME Rent limit.

Once the new Low HOME unit is designated, the unit with the over-income household is re-designated as a High HOME unit. The household's rent may be adjusted to no more than the High HOME Rent limit, subject to the terms of the lease.

**If household's income is above the low-income limit and it occupies a Low HOME unit**, the next vacant, comparable, non-assisted unit must be designated as a Low HOME unit and rented to a household whose income does not exceed the very low-income limit, at a rent that does not exceed the Low HOME Rent limit.

Until a comparable Low HOME unit is designated, the unit that is occupied by the over-income household is considered a Low HOME unit that is temporarily out of compliance.

The rent of the over-income household in the original Low HOME unit must be adjusted as soon as the lease permits, and in accordance with the terms of the lease.

- Until a comparable Low HOME unit is substituted, the over-income tenant must pay 30 percent of the household's monthly adjusted income as rent.
- After a comparable Low HOME unit is substituted, the unit with the over-income household is re-designated as a non-assisted unit. The owner may adjust the household's rent without regard to the HOME restrictions. Rent increases are subject to the terms of the lease.

Note, a household in a floating HOME unit whose income exceeds the low-income limit is not required to pay more than the market rent for a comparable, unassisted unit in the neighborhood.

If there is more than one over-income tenant in the property and both a Low HOME unit and High HOME unit are needed to restore unit mix compliance, the owner should restore compliance with the Low HOME unit first.

### **NHTF Only**

Properties with **floating NHTF-assisted units** do not have specific units that are designated for the duration of the effective period. Instead, the total number of NHTF-assisted and non-assisted units that are designated at the time of project commitment must stay the same throughout the effective period. The specific units that carry the NHTF-assisted designations may change, or float, among comparable assisted and non-assisted units during this time. In a property with floating units, unit mix is maintained by changing the unit designations when the next comparable unit becomes available. For example, if the recertified income of an NHTF-assisted household exceeds the allowable NHTF income limit, the unit will continue to qualify until a comparable vacant unit (comparable in size, features and number of bedrooms) is rented to an NHTF-qualified household. Once the unit is replaced, the over income unit is no longer treated as an NHTF unit.

When re-designating units in a property with floating NHTF-assisted units, owners can choose to substitute a unit that is equal to or “greater” than the original NHTF-assisted unit, but generally they cannot substitute one that is “lesser.” A lesser unit can be substituted only when doing so preserves the original unit mix. A greater unit is one that might be considered more preferable because of larger size, additional bedrooms, or amenities. The goal is to maintain the same number and type of assisted units as were originally designated; therefore, if an owner makes a substitution that is “greater,” it can later substitute an available unit that is “lesser” in order to restore the original unit mix.

## **2.03 Rental Assistance**

Rents for units with Section 8 Housing Choice Vouchers, or similar state or federal tenant-based rental assistance subsidies **cannot** exceed the applicable rent limit for the unit. Rents charged must be comparable to units not receiving rental assistance; e.g., if the owner charges less than the maximum HOME or NHTF rent for non-voucher holders, it cannot charge a higher rent to voucher holders.

Families receiving rental assistance, including a Section 8 subsidy, must not be refused tenancy in a HOME- or NHTF-assisted unit based solely on the fact that they receive rental assistance.

### **HOME Only**

If a HOME-assisted unit receives **federal or state project-based rental assistance**, including project-based vouchers and the unit is occupied by a very low-income (at or below 50 percent of area median income) household that pays as a contribution towards rent not more than 30 percent of its adjusted gross income, rents may exceed the HOME rent limit.

### **NHTF Only**

If an NHTF-assisted unit receives **federal or state project-based rental assistance**, and the tenant pays as a contribution toward rent not more than 30 percent of the tenant’s adjusted income, the maximum rent is the rent allowable under the federal or state project-based rental subsidy.

## Chapter 3 – General Occupancy Guidelines

### 3.01 Qualification of Applicants

Applicants for assisted units shall be advised early in their initial visit to the property that there are maximum income limits that apply. They shall also be made aware that the anticipated income\* of all persons expecting to occupy the unit must be verified and included on a Tenant Income Certification form prior to occupancy, and that household income\* will be reviewed annually.

**For HOME-assisted units only**, it shall also be explained that if the household income increases above the income limits, the household may continue to reside in the unit; but once their lease expires, the rent will be equal to the lesser of 30 percent of the household's **adjusted** income, up to the maximum LIHTC rent if the unit is also an LIHTC unit, or the rent amount payable under state or local law. If the unit is floating, the new rent cannot exceed market rent for a comparable, unassisted unit. Households whose income exceeds the 80 percent AMI limit must not be permitted to move to any other HOME-assisted unit.

\*And student status for properties where HOME funds were committed on or after August 23, 2013. The HOME program has adopted the Section 8 Housing Choice Voucher Program restrictions on student participation found at 24 CFR 5.612, which exclude any student that is enrolled in a higher education institution and is not an "Independent Student" as defined in the Higher Education Act or has parents who, individually or jointly are not eligible on the basis of income.

The Higher Education Act defines an Independent Student as follows:

- a. The individual is 24 years of age or older by December 31 of the award year;
- b. The individual is an orphan, in foster care, or a ward of the court or was an orphan, in foster care, or a ward of the court at any time when the individual was 13 years of age or older;
- c. The individual is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual's State of legal residence;
- d. The individual is a veteran of the Armed Forces of the United States (as defined in subsection (c)(1) of HEA) or is currently serving on active duty in the Armed Forces for other than training purposes;
- e. The individual is a graduate or professional student;
- f. The individual is a \*\*married individual;
- g. The individual has legal dependents other than a spouse;
- h. The individual has been verified during the school year in which the application is submitted as either an unaccompanied youth who is a homeless child or youth (as such terms are defined in Section 725 of the McKinney-Vento Homeless Assistance Act) (42 U.S.C. 11431 et seq.), or as unaccompanied, at risk of homelessness, and self-supporting, by—
  - i. A local educational agency homeless liaison, designated pursuant to Section 722(g)(1)(J)(ii) of the McKinney-Vento Homeless Assistance Act;

- ii. The director of a program funded under the Runaway and Homeless Youth Act or a designee of the director;
- iii. The director of a program funded under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act (relating to emergency shelter grants) or a designee of the director; or
- iv. A financial aid administrator; or
- i. The individual is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances.

To document a student's independence from parents to determine that the student's parents' income is not relevant for determining income eligibility:

- Review and verify previous address information to determine evidence of a separate household, or verify the student is an Independent Student; and
- Review student's prior year income tax returns to verify the student is independent or verifying the student meets the U.S. Department of Education's definition of Independent Student; and
- Verify income provided by a parent by requiring a written certification from the individual providing the support. Certification is also required if the parent is providing no support to the student. Financial assistance that is provided by persons not living in the unit is part of annual income, except if the student is a vulnerable youth as described in paragraphs (b), (c) or (h) above.

Verification of student eligibility must be maintained in the tenant file along with the income certification.

\*\*Effective August 1, 2013, same-sex marriages are recognized as marriages for student eligibility purposes.

### **3.02 Eligibility Determination**

A fully completed Household Questionnaire is critical to an accurate determination of eligibility. The information furnished on the application should be used as a tool to determine all sources of anticipated income and assets.\*

After the household completes the Household Questionnaire, the owner must have all income and assets verified by obtaining source documentation (w-2's, check stubs, bank statements, etc.) or by a third party (employer, bank, etc.). The application, income and asset verifications, and lease are to be executed prior to move-in. All occupants in a HOME- or NHTF-assisted unit must be certified and have a valid lease on file. All household members age 18 and over must sign.

\*And student status for properties where HOME funds were committed on or after August 23, 2013.

### **3.03 Change in Household Composition**

If a household in an assisted unit later wishes to have an additional person move into the unit, the following steps must be taken:

1. The prospective tenant must complete a Household Questionnaire and allow for verification of income and assets as required of the initial tenant; and

2. The prospective tenant's income must be added to the current tenant's most recent certification or recertification and a determination must be made as to whether the household is still within the HOME or NHTF income guidelines. In HOME-assisted only units, if the anticipated household income exceeds the guidelines, then once the current lease expires and proper notice is given, the household must pay the lesser of 30 percent of its **adjusted** income for rent up to the maximum LIHTC rent if the unit is also an LIHTC unit, or the rent amount payable under state or local law. If the unit is floating, the new rent cannot exceed market rent for a comparable unassisted unit.
3. For properties with HOME commitments on or after August 23, 2013, the prospective tenant cannot be an ineligible student as described in Chapter 1, section 1.03, above.

The tenant file shall be documented when any household member vacates the unit.

### **3.04 Minimum Lease Requirements**

Tenant leases, including a signed and dated Minnesota Housing HOME/NHTF lease addendum (HOME/NHTF Form 22), must be on file (HOME/NHTF Form 22 is waived for units that receive project-based Section 8 assistance when the HUD Model Lease form is used), and must specify a term of at least one year, unless by mutual consent the owner and the tenant agree to a lesser term. Leases must not contain any of the prohibited lease terms as stated in Section 92.253 of the Final HOME rule or Section 93.303 of the Interim NHTF Rule. Any non-renewal or termination of leases must be in accordance with the lease and/or lease addendum. For HOME projects with a commitment date of December 16, 2016 and later, and for all NHTF projects, the lease must also incorporate the Violence Against Women Act (VAWA) lease term/addendum.

The owner must comply with HOME requirements on evictions as well as state law regarding eviction procedures. There must be a written notice that gives a household 30 days to vacate its unit, regardless of whether the household has violated the law or lease terms. NHTF rules state that owners must serve a written notice upon the tenant specifying the grounds for the action and provide a specific period for vacating that is consistent with state or local law.

Under the HOME and NHTF Programs, tenancy may be terminated only for:

- Serious or repeated violation of the terms and conditions of the lease;
- Violation of applicable federal, state, or local law;
- Completion of the tenancy period for transitional housing (HOME only);
- Other good cause (good cause does not include an increase in the tenant's income).

Owners must comply with the requirements found in Section 601 of VAWA 2013. Minnesota Housing requires use of the VAWA Lease Addendum form [HUD-91067](#) or its successor form and [Minnesota Housing's VAWA attachment](#).

### **3.05 House Rules**

Developing a set of house rules is a good practice. The decision about whether to develop house rules for a property rests solely with the owner, and Minnesota Housing's or HUD's review or approval is not required. If house rules are listed in the lease as an attachment, then they must be attached to the lease. By identifying allowable and prohibited activities in housing units and common areas, owners

provide a structure for treating tenants equitably and for making sure that tenants treat each other with consideration. House rules are also beneficial in keeping properties safe and clean and making them more appealing and livable for tenants. They are also extremely beneficial if it becomes necessary to evict a tenant for inappropriate behavior. For more information on House Rules, refer to Chapter 6-9 of the HUD 4350.3 REV 1, Change 4 Handbook.

### **3.06 Number of Persons Per Unit**

There is no federal regulation governing the number of persons allowed to occupy a unit based on size; however, there may be local ordinances regarding unit occupancy. It is important, though, to be consistent when accepting or rejecting applications. It is recommended that the owner determine the minimum and maximum number of people that will be allowed to occupy each size unit and put that formula in writing as part of the **Tenant Selection Plan**. The owner may refer to HUD Handbook 4350.3 REV 1, Change 4, Chapter 3-23, regarding occupancy standards. By following the standards described, owners can ensure that applicants and tenants are housed in appropriately sized units in a fair and consistent manner as prescribed by law.

### **3.07 Tenant Selection Plan**

Owners must develop a formal written policy that clearly states the procedures and criteria the owner will consistently apply in drawing applicants from the waiting list, screening for suitability for tenancy, and implementing income targeting requirements. The Tenant Selection Plan must state whether or not there are any restrictions or preferences in the admission of tenants.

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 and managers of HOME properties. In response, [Minnesota Housing prepared a document](#) that provides information on tenant selection plans that owners and management agents may find useful. The document contains a summary of the HUD guidance on criminal background screening and reflects the agency'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 and managers should consult with an attorney to ensure your tenant selection plan complies with program requirements, the Fair Housing Act, and the Minnesota Human Rights Act.

HUD issued its Final Rule on February 3, 2012 regarding Equal Access to Housing in HUD programs regardless of Sexual Orientation or Gender Identity. Owners may not inquire about the sexual orientation or gender identity of an applicant or occupant of HUD assisted housing for the purpose of determining eligibility or continued occupancy. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity. This prohibition on inquiries does not prohibit lawful inquiries of an applicant or occupant's sex where the housing provided or to be provided to the individual is temporary, emergency shelter that involves the sharing of sleeping areas or bathrooms.

In accordance with the Violence Against Women Reauthorization Act of 2013, the selection criteria cannot deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault or stalking, if the applicant or tenant otherwise qualifies for admission.

Owners may refer to the HUD Handbook 4350.3 REV 1, Change 4, Chapter 4, on developing a tenant selection plan. Minnesota Housing will review the Tenant Selection Plan as part of its inspection procedure.

### **3.08 Government Data Practices Act Disclosure Statement Form**

In working with tenants, the owner warrants 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 law, the Government Data Practices Act Disclosure Statement form must be kept in each household's permanent file. 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. An unsigned and/or undated form is not valid and will be noted at the time of file inspection.

- The form is to be signed one time 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 move-out 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 a minor reaches age 18, they must be added to the original form, and they must sign and date the original form. It is not necessary to complete a new form.
- A copy of the form should 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 application.

### **3.09 Income Verification**

At initial occupancy, owner must determine whether prospective tenants of assisted units are income eligible.\* Income eligibility is based on anticipated income as defined at 24 CFR 5.609. When collecting income verification documentation, owner must consider any anticipated changes in income. Owners must follow appropriate steps in determining whether households are eligible prior to admittance.

Minnesota Housing provides [sample verifications and other forms](#) to assist owners in qualifying eligible households. The release of information (at the top of the 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 attached to the Tenant Income Certification.

An Income and Asset Calculation Worksheet form is also available and can be used to assist in showing the individual calculations of income and asset income. This is **highly recommended** and will greatly assist an inspector during a file review.

\*This includes student eligibility for properties where HOME funds were committed on or after August 23, 2013.

### **3.10 Gross Annual Household Income**

Family income for households living in assisted units must be determined in a manner consistent with Section 8 of the U.S. Housing Act of 1937.

Note that the information below only provides a summary. The HOME Technical Guide for Determining Income and Allowances can be found on [HUD's website](#). Minnesota Housing uses the definition of income found in 24 CFR 5.609.

The determination of annual income must include all types of income in the amount **anticipated** to be received by the household in the 12 months following certification. Owners should use current circumstances to project income, unless verification forms or other verifiable documentation indicate that an imminent change will occur. However, if the owner is unable to determine annual income using current information because the family reports little to no income or because income fluctuates, the owner may average past actual income received or earned within the last 12 months before the certification date to calculate annual income.

### **3.11 Factors that Affect Household Size**

When determining family size for income limits, the owner 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 percent or more of the time;
- 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 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 manager should explain 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 may 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; and

- Persons permanently confined to a hospital or nursing home. The family decides if such persons are included when determining family size for income limits. If such persons are included, they must be listed on the Tenant Income Certification as “other adult family member.” If the family chooses to include the permanently confined person as a member of the household, the owner must include income received by these persons in calculating family income.

When determining family size for establishing income eligibility, the owner must include all persons living in the unit except the following<sup>1</sup>:

- *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.

While a relative may be considered to be a live-in aide/attendant, they must meet the above requirements, especially the last. The live-in aide qualifies for occupancy only as long as the individual needing supportive services requires the aide’s services and remains a tenant, and may not qualify for continued occupancy as a remaining family member. Owners must obtain verification from the person’s physician, psychiatrist or other medical practitioner or health care provider that the live-in aide is needed to provide the necessary supportive services essential to the care and well-being of the person and should not add the attendant to the lease. The owner may not require applicants or tenants to provide access to confidential medical records or to submit to a physical examination.

### 3.12 Whose Income is Counted

- **Adults.** Count the annual income of the head, spouse or co-head, and other adult members of the family. In addition, persons under the age of 18 who have entered into a lease under state law are treated as adults, and their annual income must also be counted. These persons will be either the head, spouse, or co-head of household.

**NOTE:** If a minor is residing with a family as a member other than the head, spouse, or co-head, the individual would be considered a dependent and his or her income handled in accordance with Dependents, below.

- **Dependents.** A dependent is a family member who is under 18 years of age, is disabled, or is a full-time student. The head of the family, spouse, co-head, foster child, or live-in aide are never dependents. Some income received on behalf of family dependents or foster children is counted and some is not.
  - **Earned** income of minors (family members under 18) is not counted.
  - Benefits or other **unearned** income of minors is counted.
  - **Earned** income of a foster child who is not yet 18 years old is not counted.
  - **Earned** income of a foster adult who is at least 18 years old is counted.

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<sup>1</sup> 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.

- Except as noted above, the **unearned** income of a foster child or foster adult including SSI disability payments and income from assets owned by or on behalf of a foster child or foster adult is counted.
- When more than one family shares custody of a child and both families live in assisted housing, only one family at a time can claim the dependent. The family that counts the dependent also counts the unearned income of the child. The other family claims neither the dependent nor the unearned income of the child.
- When full-time students who are 18 years of age or older are dependents, a small amount of their earned income will be counted. Count only earned income up to a maximum of \$480 per year for full-time students, age 18 or older, who are not the head of the family or spouse or co-head. If the income is less than \$480 annually, count all the income. If the annual income exceeds \$480, count \$480 and exclude the amount that exceeds \$480.
- The income of full-time students 18 years of age or older who are members of the household but away at school is counted the same as the income for other full-time students. The income of minors who are members of the household but away at school is counted as the income for other minors.
- All income of a full-time student, 18 years of age or older, is counted if that person is the head of the family, spouse, or co-head.
- Payments received by the family for the care of foster children or of foster adults are *not* counted. This rule applies only to payments made through the official foster care relationships with local welfare agencies.
- Adoption assistance payments in excess of \$480 are not counted.

### **3.13 Income of Temporarily Absent Family Members**

- Owners must count all income of family members approved to reside in the unit, even if some members are temporarily absent.
- If the owner determines that an absent person is no longer a family member, the individual must be removed from the lease and Tenant Income Certification.
- A temporarily absent individual on active military duty must be removed from the family, and his or her income must not be counted unless that person is the head of the family, spouse, or co-head.
  - However, if the spouse or a dependent of the person on active military duty resides in the unit, that person’s income must be counted in full, even if the military member is not the head, or spouse of the head of the family.
  - The income of the head, spouse, or co-head will be counted even if that person is temporarily absent for active military duty.

### **3.14 Annual Income Includes**

- The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
- The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net

income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

- Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in the second bullet above. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;
- The full amount of periodic amounts received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (e.g., Black Lung Sick benefits, Veterans Disability, Dependent Indemnity Compensation, payments to the widow of a serviceman killed in action). See 3.15 Income Exclusions for an exception to this paragraph;
- Payments in lieu of earnings, such as unemployment, disability compensation, worker's compensation, and severance pay, except as provided in bullet 3 under Income Exclusions;
- Welfare Assistance.
  - Welfare assistance received by the family.
  - If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:
    - The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus
    - The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.
- Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling; and
- All regular pay, special pay, and allowances of a member of the Armed Forces, except as provided under Income Exclusions.

### **3.15 Income Exclusions**

- Income from employment of children (including foster children) under the age of 18 years;
- Payments received for the care of foster children or foster adults (usually persons with disabilities unrelated to the tenant family, who are unable to live alone);

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- Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker’s compensation), capital gains, and settlement for personal or property losses, except as provided in the fifth bullet under section 3.14, above;
- Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- Income of a live-in aide, as defined in 24 CFR 5.403;
- The full amount of student financial assistance paid directly to the student or to the educational institution;
- The special pay to a family member serving in the Armed Forces who is exposed to hostile fire (e.g., in the past, special pay included Operation Desert Storm);
- Amounts received under training programs funded by HUD (e.g., training received under Section 3);
- Amounts received by a person with a disability that are disregarded for a limited time for purposes of supplemental security income eligibility and benefits because they are set-aside for use under a Plan to Attain Self-Sufficiency (PASS);
- Amounts received by a participant in other publicly assisted programs that are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
- Amounts received under 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, on a part-time basis, that enhances the quality of life in the property. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiative coordination. No resident may receive more than one such stipend during the same period of time;
- Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as a resident management staff person. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;
- Temporary, nonrecurring, or sporadic income (including gifts);
- Reparation payments paid 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);
- Earnings in excess of \$480 for each full-time student 18 years or older (excluding the head of household and spouse);
- Adoption assistance payments in excess of \$480 per adopted child;
- Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump-sum amount or in prospective monthly amounts;

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- 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 by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;
- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or
- Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the *Federal Register* and distributed to housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. The following is a list of income sources that qualify for that exclusion (updated May 12, 2014, and published in the Federal Register, Vol. 79, No. 97 on May 20, 2014):
  - 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 Services Act of 1973 (employment through VISTA, Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions) {42 U.S.C. 5044(f)(1), 5058};
  - Certain payments received under the Alaska Native Claims Settlement Act {43 U.S.C. 1626(c)} received from a Native Corporation;
  - 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 (Pub. L. 94-540 section 6);
  - The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Gaming Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2,000 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

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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) (Green Thumb, Senior Aides, Older American Community Service Employment Program);
- Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund (pub. L. 101-201) or any other fund established pursuant to the settlement in the 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 (Pub. L. 96-420, 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 (I));
- Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433);
- 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. 1933 (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/tenant under the Victims of Crime Act (42 U.S.C. 10602);
- 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 Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts as provided by an amendment to the definition of annual income in the U.S. Housing Act of 1937 (42 U.S.C. 1437 a(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 of 1996 (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.*, United States District Court, District of Columbia, 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 (Pub. . 93-288, as amended) and comparable disaster assistance provided by states, local governments and disaster assistance organizations (42 U.S.C. 5155(d)).
- During the annual income recertification of a family residing in an assisted unit, exclude from annual income certain increases in the income of a disabled family member. These exclusions apply to annual income increases resulting from the following:
    - Employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;
    - Increased earnings by a family member who is a person with disabilities during participation in any economic self-sufficiency or other job training program; or
    - New employment or increased earnings of a family member who is a person with disabilities, during or within six months after receiving assistance, benefits or services under any state program for families funded under Part A of Title IV of the Social Security Act, as determined by the responsible entity in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance--provided that the total amount over a six-month period is at least \$500.

These exclusions from annual income are of limited duration. The full amount of increase to a qualified family's annual income is excluded for the cumulative 12-month period beginning on the date the disabled family member is first employed or the family first experiences an increase in annual income attributable to the employment. During the second 12-month period, 50 percent of any increase in income is excluded. The disallowance of increased income of an individual family member who is a person with disabilities is limited to a lifetime 48-month period.

### **3.16 Income from Assets**

Assets, other than necessary personal items, are considered along with verified income in determining the eligibility of a household. Minnesota Housing recommends third party verifications, regardless of the

amount, to verify all assets claimed by applicants/tenants at initial certification and in the sixth year of the affordability period.

The asset information (total value and income to be derived) should be obtained at the time of application or recertification. The applicant/tenant will affirm that this information is correct by executing the Tenant Income Certification.

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

### **3.17 Net Family 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.
- Revocable trusts. Include the cash value of any revocable trust available to the family. (Do not include irrevocable trusts, e.g., ones that no household or family member can control.)
- Equity in rental property or other capital investments. 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 (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 business income.
- Stocks, bonds, Treasury bills, certificates of deposit, mutual funds and money market accounts. 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 rent is calculated and multiple times during the year thereafter. The owner may assess the value of these assets at any time after the authorization for the release of information has been received.
- Individual retirement, 401K, 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.
- Retirement 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. Follow paragraph 5-7 G.4 of the HUD Handbook 4350.3 on determining the value of assets.
  - 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 in net family assets.
    - 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.

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- 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. **NOTE:** This paragraph assumes that the lump-sum receipt is a one-time receipt and that it does not represent delayed periodic payments; however, in situations in which a lump-sum payment does represent delayed periodic payments, then the amount would be considered as income and not an asset.
- Cash value of life insurance policies available to the individual before death (e.g., 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, or antique cars held as an investment. Personal jewelry is NOT considered an asset.
- 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/tenant.
  - 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 imputed income for this asset, determine the asset value as of the effective date of the certification. Since this amount will continually be reduced by the principal portion paid during the previous year, the owner will have to determine this amount at each annual recertification.
- Assets disposed of within two years before the effective date of certification/recertification:
  - If the cash value of the disposed assets exceeds the actual amount the family received by more than \$1,000, include the whole difference between the cash value and the amounts received. Do not include if the difference is less than \$1,000. **Example:** A couple gave \$2,000 to each of their three grandchildren and deeded a home to their son. The home had a cash value of \$40,000 and the son paid his parents \$12,000 for the home. \$34,000 (\$40,000 less \$12,000 plus \$2,000 x 3) is counted as an asset until such time as the household can certify on an Income Certification form that they did not dispose of any assets during the two years preceding the certification date. The \$12,000 paid by the son may also be counted as an asset, depending on what was done with the payment.
  - Do not consider assets disposed of for less than fair market value as a result of a foreclosure, bankruptcy, or a divorce or separation agreement.
  - Do consider:

- Assets put into trusts,
- Business assets disposed of for less than fair market value. Business assets are excluded from net family assets only while they are part of an active business.

**Regulatory References. NOTE:** These references are current as of the date of publication. Readers should refer to the latest edition of the Code of Federal Regulations. 24 CFR part 5.603 defines net family assets as follows: Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and the equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded. In determining net family assets, owners shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value, including a disposition in trust, but not in a foreclosure or bankruptcy sale, during the two years preceding the date of application for the program or recertification, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

### 3.18 Net Family Assets Do Not Include

**Important:** The owner **does not** compute income from any assets in this paragraph.

- Personal property (clothing, furniture, cars, wedding ring, other jewelry that is not held as an investment, vehicles specially equipped for persons with disabilities).
- Interests in Indian trust land.
- Term life insurance policies (i.e., where there is no cash value).
- Equity in the cooperative unit in which the family lives.
- Assets that are part of an active business. "Business" does NOT include rental of properties that are held as investments unless such properties are the applicant's or tenant's main occupation.
- Assets that are NOT effectively owned by the applicant/tenant. Assets are not effectively owned when they are held in an individual's name, but (a) the assets and any income they earn accrue to the benefit of someone else who is not a member of the family, and (b) that other person is responsible for income taxes incurred on income generated by the assets. **NOTE:** Non-revocable trusts (i.e., irrevocable trusts) are not covered by this paragraph.
- Assets that are not accessible to the applicant/tenant and provide no income to the applicant/tenant. Non-revocable trusts are not covered under this paragraph.

### 3.19 Instructions for Valuing Assets

In computing assets, owners 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; and

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- Settlement costs for real estate transactions.

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

Owners must count assets disposed of for less than fair market value during the two years preceding certification or 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 \$5,000.00, 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. Until February 1, 2015, use a rate of 2 percent (.02). This rate became effective September 29, 1995. Effective February 1, 2015, HUD decreased the rate to .06 percent (.0006), and will publish the amount annually when income limits are published.

### **3.20 Assets Owned Jointly**

Assets owned by more than one person should be 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.

### 3.21 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
<b>TOTAL</b>	<b>\$27,300</b>	<b>\$1,101</b>

Since total assets exceed \$5,000, estimated (imputed) income must be calculated: Total Assets x .02 = \$27,300 x .02 = \$546. For certifications effective February 1, 2015 and later, the calculation would be \$27,300 x .006 = \$16.38. Annual income must include the \$1,101 actual income because it is greater than the estimated (imputed) income received on the assets.

### 3.22 Calculating Gross Annual Household Income

Owners 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 (i.e., 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.
- Other periodic amounts (monthly, bi-weekly, etc.) 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, nine 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 (e.g., unemployment insurance), the owner should still determine an annual income as described below.

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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. For example, if an individual makes \$1,200 a month, typically works nine months per year and collects unemployment in the amount of \$600 a month for the remaining three months, income is calculated as follows:

$$\begin{array}{rcl} \$1,200 \times 9 & = & \$10,800 \\ \$600 \times 3 & = & \underline{\$ 1,800} \\ & & \$12,600 = \text{Total Annualized Income} \end{array}$$

**Unemployed Applicants.** The income of unemployed applicants with regular income from any source, such as social security, pension, recurring gifts, etc., must be verified as covered previously.

If an applicant is currently unemployed with no regular verifiable income from any source and claiming zero income, he/she must execute a Certification of Zero Income. Note that the HUD Handbook requires non-monetary contributions (excluding groceries) to be counted as income.

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, dependents, etc. Refer to section 3.26 for information on when adjusted income may be used.

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 (e.g., unemployment compensation, workers' compensation). There are certain mandated inclusions and exclusions that apply when determining earned/unearned income.

Asset income is the amount generated by savings 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 HUD Handbook 4350.3 for a complete listing and discussion of earned/unearned income and asset income.

### 3.23 General Income Verification Requirements

All income and asset sources must be disclosed on the eligibility application and verified. A good application must be used as the basis for determining what verifications will be necessary. The application, along with all supporting documentation and the Tenant Income Certification, will be reviewed by Minnesota Housing staff during a tenant file review.

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

1. **Third-party verification from source (written).** An original or authentic document generated by a third party source that is dated within six months from the date of receipt by the owner. 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.

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

Examples of tenant-provided documentation that may be used include, but are not limited to, pay stubs (a minimum of two months' worth of paystubs are required per 24CFR 92.203), payroll summary report, employer notice/letter of hire/termination, Social Security Administration (SSA) benefit letter, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices.

Owners must consider the following when using tenant-provided documentation:

- Is the document 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 may not accept pay stubs to document employment income unless the applicant or tenant provides a minimum of two months' worth of recent, consecutive pay stubs to illustrate variations in hours worked. Actual paychecks or copies of paychecks should 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.
2. **Written documentation sent directly to the third-party source by mail or electronically by facsimile (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 or manager 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/tenants 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.

3. **Third-party verification from source (oral).** When clarifying 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 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; and
  - Date and time of the telephone call.
4. **Family certification.** An owner 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 must document in the file why third-party verification was not available. The owner 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 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 and the verification source agree to use this method in advance during a telephone conversation. The fax should 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 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 in 1, 2 and 3 above must be documented to show just cause for using other types of verification. The owner 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 or the management company, a copy of a recent pay stub, verifying year-to-date earnings, is also required.

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

### 3.24 Corrections to Documents

Sometimes it is necessary to make corrections or changes to documents. Minnesota Housing will not accept a document that has been altered with correction fluid or "white-out." When a change is needed on a document, 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 the change.

### 3.25 Effective Term of Verification

Verifications of income are valid for six months prior to the effective date of the certification.

### 3.26 Adjusted Gross Income for Over Income Households – HOME Only

When determining eligibility to occupy a HOME unit, the household's gross income must always be considered. However, if a tenant *goes over the income guidelines after move-in*, the owner must raise the over-income household's rent as soon as the lease permits in accordance with the terms of the lease (refer to Chapter 2 – Maintaining the Unit Mix). In certain circumstances, the rent for an over-income household may need to be adjusted such that the tenant pays 30 percent of the tenant's monthly adjusted family income.

To determine adjusted income, the following allowances may be given.

- **\$480 allowance for each dependent.** A dependent may not be a head of household, co-head, spouse, foster child, foster adult, unborn child, a child who has not yet joined the family, or a live-in attendant. A dependent must be younger than 18, or a person with disabilities, or a full-time student of any age. It is not necessary for a member of the family to have legal custody of a dependent in order to receive the dependent deduction.
- **Allowance for child care expense.** This may not include child support payments or expenses for the care of a handicapped or disabled family member age 13 or older. Child care may only be deducted if the care enables a family member to attend school, work, or seek employment, there is no adult in the household capable of providing the care during these times, the amount deducted is reasonable, not paid to a family member living in the household, or is not reimbursed by any other person or agency.
- **Allowance for handicap assistance expenses.** The allowance is the lesser of:
  - The amount of these expenses which exceeds 3 percent of annual gross income, OR
  - The employment income adult members of the household earn because the handicap assistance is available.
- **Allowance for medical expenses.** This allowance is permitted only for those households whose head or spouse is age 62 or older, handicapped or disabled. If the household has no handicap assistance expenses, the allowance is limited to the total of medical expenses that exceed 3 percent of annual gross income. If the household also has handicap assistance expenses, the amount is limited to the amount by which the total of the two expenses exceeds 3 percent of gross income.
- \$400 allowance per household if the head or spouse is age 62 or older, handicapped or disabled.

### **3.27 Annual Income Recertification**

All households occupying a HOME- or NHTF-assisted unit must be recertified at least annually from the date of occupancy. Annual income recertifications must be effective on or before the anniversary date of the previous certification. Owners may align recertification dates with other program certifications or recertify all households at one time during the year. However, if a period of 12 months passes without a recertification being completed for any HOME- or NHTF-assisted unit, the unit is considered out of compliance.

Income and assets must be re-verified every sixth year of the affordability period. A self-certification of income and income from assets is acceptable in intervening years.

### **3.28 Tenant Files**

Owners must maintain a tenant file for each assisted unit. All permanent documents must be kept together so they are accessible at each compliance review (income certification and supporting documentation, lease/addendum, etc.). Annual recertification information, including the tenant questionnaires, release forms, verifications, and annual inspection reports must be grouped together by year, with the most recent year placed on top of the documents for review.

The tenant files must contain the following:

- Minnesota Government Data Practices Act Statement
- Household Questionnaire or equivalent form
- Acceptable verifications of income and assets
- Verification of student eligibility for properties with HOME commitments on or after August 23, 2013
- Tenant Income Certification (initial certification and annual recertifications)
- Signed lease agreement, HOME/NHTF Form #22, Lease Addendum, HUD VAWA Lease Addendum and Minnesota Housing's VAWA Attachment
- Lead-based paint acknowledgements (properties built pre-1978)

All move-out files must also contain the following:

- Written 30-day (or greater) notice to vacate (if not available – document in file)
- Move-out inspection report (both parties signed and dated)
- Security deposit refund (check number and date) or letter of intent to withhold security deposit within 14 days of move-out
- Itemized list of costs charged to tenant within 45 days

**Tenant records, including income verifications, development rents, and unit inspections must be retained for the most recent five-year period, until five years after the affordability period terminates.**

## Chapter 4 – Owner Reporting Requirements

The owner must maintain a report of all tenants residing in each unit at the time of application through the end of the affordability period and submit annual reports to Minnesota Housing in a form and manner requested by Minnesota Housing.

The following are due to Minnesota Housing by February 15, or if this day falls on a holiday or weekend the next business day, of each year during the affordability period:

### 4.01 Annual Owner Certification

Complete the Deferred Loan Owner Certification of Income, Rent and Property Insurance form online in Minnesota Housing’s Property Online Reporting Tool (PORT) to certify compliance for the preceding calendar year. Follow data entry instructions in Chapter 4 of the [PORT User Manual](#). It is not necessary to submit a signed and dated, hard copy certification form; however, after saving the form in PORT, print a copy for your property records and submit any requested information on the printed form (e.g., copies of inspection reports and evidence of correction). If this information contains private information on tenants, submit via the [Multifamily Secure Upload Tool](#). If this information does not contain private information, you can email it directly to the compliance officer. In either case, be sure to include the D number and property name with your submission.

### 4.02 Compliance Report

The Deferred Loan Owner Certification is supported by a report of unit events for all units in the property. Follow instructions in Chapter 3 of the [PORT User Manual](#). All unit events must be reported annually for the full term of the effective period.

Minnesota Housing will annually monitor program compliance by reviewing annual owner certifications and analyzing compliance information submitted by the owner. Failure to submit the owner certification and/or update the Property Online Reporting Tool (PORT) on all units and their related activity by the due date will constitute noncompliance with the HOME or NHTF Programs and the related loan documents.

## Chapter 5 – Compliance Inspections

In the year a compliance inspection is due, Minnesota Housing will notify the owner and the manager by email. The owner or manager will be required to complete and submit a Compliance Review Information and Request for Administrative Records form prior to scheduling the inspection. This form is used to identify other inspections that are due in the same year so that inspections can be coordinated, if possible, to answer questions regarding property characteristics, and to identify and submit the applicable administrative records such as utility allowance source documentation, tenant selection plans, Affordable Fair Housing Marketing Plans (AFHMP), and fire, boiler and elevator certificates, etc. for review. Once the date and time of inspection has been agreed to, Minnesota Housing will send a confirmation email along with a list of units selected for review no more than 30 days in advance of the inspection.

The compliance inspection includes, but is not limited to, an inspection of at least 20 percent of the assisted units and tenant files (with a minimum of four units), a review of administrative records, and inspection of the physical condition of the property, including all common areas and mechanicals, according to HUD’s [Uniform Physical Conditions Standards \(UPCS\)](#).

Once the date and time of inspection has been agreed to, no more than 30 days in advance of the inspection, Minnesota Housing will send a confirmation email along with a list of units selected for review. If the file review and physical inspection will be conducted separately, separate confirmation emails may be sent and separate unit lists may be used. At least 24 hours prior to the inspection date, the owner must notify all occupants of restricted units that their unit may be inspected, not just those identified on the unit list. A site representative must accompany the compliance officer during the inspection.

The property inspection and tenant file review may be conducted at the same time or may be conducted separately by different staff.

A compliance inspection will be conducted at least once every three years. Inspections may be conducted more frequently if Minnesota Housing determines it to be necessary based on concerns raised during a previous review or other information. The first compliance inspection will be conducted in conjunction with project completion.

### 5.01 Physical Inspections

The goal of the physical inspection is to ensure that the property and units are well maintained and in compliance with HUD’s UPCS (refer above for link to HUD’s UPCS).

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 (as described in 24 CFR Part 5.703):

1. **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.
2. **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.

3. **Building systems.** 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.
4. **Dwelling units.** (i) 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. (ii) Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water. (iii) 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. (iv) 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.
5. **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. These areas 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, the buildings must have fire exits that are not blocked and 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 (e.g., propane, natural gas, methane gas), or other observable deficiencies. The housing must comply with all regulations and requirements related to the ownership of pets, and 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 critical violations and will require correction within 72 hours. The compliance officer will leave a list of these items with the site representative on the day of inspection and send a copy to the owner.

Notwithstanding the above inspection requirements, properties must continue to satisfy local habitability codes.

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:

- a. Ensuring that the component, as repaired, performs its intended function/purpose; and
- b. 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 (e.g., 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.
- Stick to 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.

Owners should conduct routine property inspections and perform any needed maintenance to ensure that the property continually complies with all applicable codes and UPCS.

## **5.02 Review of Tenant Files and Property Records**

As part of the inspection, Minnesota Housing staff will review tenant income certifications, third-party verifications or other forms of income documentation, leases and other management information for selected units.

Minnesota Housing staff will also review the following property information:

- Utility allowances and supporting documentation
- Current written tenant selection plan, occupancy policy and/or house rules

- Current lease and lease addenda (must include HOME/NHTF Form 22, except for units that receive project-based Section 8 assistance when the HUD Model Lease form is used, VAWA Lease Addendum and Minnesota Housing’s attachment)
- Affirmative Fair Housing Marketing Plan
- Marketing and advertising
- Tenant ledgers for all units inspected
- Where applicable, ongoing lead-based paint maintenance records

### **5.03 Review of Ongoing Lead-based Paint Maintenance (24 CFR 35.1355)**

All borrowers with properties built before 1978 that have not been verified as lead free by a lead inspection must institute ongoing maintenance of painted surfaces and safe work practices as part of regular building operations. This includes a visual inspection of lead-based paint annually and at unit turnover, repair of all unstable paint, and repair of encapsulated or enclosed areas that are damaged.

**Ongoing maintenance records.** Borrowers must keep ongoing maintenance records and records of relevant building operations for use during reevaluations.

Borrowers and their maintenance personnel must be trained in ongoing lead-based paint maintenance, or must contract with a qualified individual or company to perform ongoing maintenance. Ongoing maintenance of lead-based paint must be conducted only by individuals who have completed a HUD-approved course on lead safe work practices, are licensed lead workers or lead supervisors, or are working under the direction of a licensed lead supervisor.

## Chapter 6 – Correction and Consequences of Noncompliance

### 6.01 Notice to Owner

Minnesota Housing will provide prompt notice via email to the owner if Minnesota Housing does not receive the annual owner certification and income and occupancy report by the required due date; or does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records; or discovers by inspection, review, or in some other manner, that the property is not in compliance with the requirements of the respective program, or with the property's loan documents, including the Declaration. All compliance violations will be recorded in PORT with a status of UC (uncorrected), CL (clarified) or CR (corrected).

### 6.02 Correction Period

The owner will be given a correction period to be established by Minnesota Housing and set forth in a Notice of Noncompliance sent via email to the owner with instructions on how to respond to the notice. Minnesota Housing may extend the correction period, but only if Minnesota Housing determines there is good cause for granting the extension. Requests for an extension must be in writing from the owner (email is acceptable), must be received by Minnesota Housing no later than the last day of the correction period identified on the Notice of Noncompliance, and must include an explanation of the efforts to correct the noncompliance, the reason the extension is needed, and the timeline for when the correction(s) will be made.

If the owner fails to respond or fails to supply evidence that all violations have been corrected within the correction period, Minnesota Housing will issue a notice indicating a 10-day grace period. If the owner fails to respond or fails to supply evidence that any remaining violations have been corrected within the 10-day grace period, the owner will be given a notice of failure to comply with a final 10-day correction period. If the owner still fails to respond or fails to supply evidence that all remaining violations have been corrected, Minnesota Housing may consider the loan in default and will consult with the Minnesota Attorney General's Office for legal action. Minnesota Housing reserves the right to modify this process, at its sole discretion.

### 6.03 Owner's Response

Minnesota Housing will review the owner's response to determine whether the noncompliance has been clarified, corrected or whether the owner remains out of compliance and will update the status of the violation in PORT accordingly.

**Clarified noncompliance** is, for example, where income eligibility was not properly documented and the inspector initially could not make a reasonable determination that the unit is in compliance but the owner conducts a retroactive (re)certification that completely and clearly documents the sources of income and assets that were in place at the time the certification should have been effective, and applies income and rent limits that were in effect on that date. If documentation is complete and it supports that the household was eligible as of the effective date, the file is considered clarified.

**Corrected noncompliance** is when a violation is observed, there is a period of time during which the unit is out of compliance, but the unit is brought back into compliance. For example, a late certification or recertification is out of compliance on the certification due date, and back in compliance as of the date the last tenant signs the Tenant Income Certification.

**Uncorrected noncompliance** is a violation that is not corrected or clarified by the end of the correction period.

Failure to correct all noncompliance issues could result in extension of the end of the effective period, acceleration of the loan, or other legal remedies, and failure to correct all noncompliance issues may also affect the owner's eligibility for future financing from Minnesota Housing under any or all of its programs.

Minnesota Housing reserves the right to conduct a follow-up inspection if documentation is not sufficient to confirm that all life-threatening health and safety violations and any other hazardous deficiencies have been corrected.

## Chapter 7 – Loan Modification and Requests for Action

### 7.01 Sale or Transfer, Event of Default

Repayment of the loan will be required upon sale or transfer of the property without the prior consent of Minnesota Housing or in the event of default. Requests for refinance of the existing first mortgage or partial release of mortgage will be considered, and are subject to the terms and conditions of the program as set forth in the loan documents.

The affordability requirements apply for the full period of affordability without regard to the term of any loan or mortgage, repayment of the loan, or the transfer of ownership.

### 7.02 Modifications and Other Servicing Requests

The [Request for Action \(RFA\)](#) process is used for all servicing requests, including ownership/management company changes, subordinations, payoffs and other requests.

1. An [RFA form](#) must be completed for all requests.
2. Upon receipt of your complete RFA form, Minnesota Housing will send you:
  - a. A letter acknowledging your request, to be signed by the owner
  - b. A list of required due diligence items
3. Minnesota Housing’s loan processor and underwriting staff will review your materials and present them to the appropriate committees for approval. The average timeline for a decision is **30-90 business days** from Minnesota Housing’s receipt of all required documentation. This timeline may be extended depending on the nature of the request or the completeness of the documentation.
4. We will notify you in writing of the final decision and provide you with next steps. Your file is then transferred to our legal team, where a timeline for closing will be determined and additional documentation is often required.

The decision of whether or not to partially release or to subordinate a mortgage is at the sole discretion of Minnesota Housing. If Minnesota Housing allows the subordination of its mortgage, the Declaration shall remain in a priority position.

Minnesota Housing will not consider a request for action within the first year after development completion. Exceptions to this may be the death of the owner or an incorrect legal description encumbering unimproved property.

## Chapter 8 – Financial Oversight

Properties with HOME funds committed on or after July 2014 and all NHTF properties are required to have financial oversight by Minnesota Housing. Owners must submit annual operating data, audited financial statements, and annual updated Physical Needs Assessment (PNA) data for review by the assigned housing management officer.

If you have questions regarding financial oversight, contact Earl Erlendsson, Housing Management Officer, at [earl.erlendsson@state.mn.us](mailto:earl.erlendsson@state.mn.us) or 651.296.0754 or Gayle Rusco, Manager of the Asset Management Division, at [gayle.rusco@state.mn.us](mailto:gayle.rusco@state.mn.us) or 651.296.8093.

## **Chapter 9 – Fraud, Misuse of Funds, Conflict of Interest, Suspension, and Disclosure and Reporting**

### **9.01 Fraud**

Fraud is any intentionally deceptive action made for personal gain or to damage another.

Any person or entity (including its employees and affiliates) that enters into an agreement with Minnesota Housing and witnesses, discovers evidence of, receives a report from another source, or has other reasonable basis to suspect that fraud or embezzlement has occurred must immediately make a report through one of the ways described in section 9.05.

### **9.02 Misuse of Funds**

A loan or grant agreement is a legal contract between Minnesota Housing and the borrower or grantee. The borrower or grantee promises to use the funds to engage in certain activities or procure certain goods or services while Minnesota Housing agrees to provide funds to the borrower or grantee to pay for those activities, goods or services. Regardless of the Minnesota Housing program or funding source, the borrower or grantee must use Minnesota Housing funds as agreed, and the borrower or grantee must maintain appropriate documentation to prove that funds were used for the intended purpose(s).

A misuse of funds shall be deemed to have occurred when: (1) Minnesota Housing funds are not used as agreed by a borrower or grantee; or (2) A borrower or grantee cannot provide adequate documentation to establish that Minnesota Housing funds were used in accordance with the terms and conditions of the loan or grant agreement.

Any borrower or grantee (including its employees and affiliates) of Minnesota Housing funds that discovers evidence, receives a report from another source, or has other reasonable basis to suspect that a misuse of funds has occurred must immediately make a report through one of the ways described in section 9.05.

### **9.03 Conflict of Interest**

A conflict of interest, actual, potential, or perceived, occurs when a person has an actual or apparent duty or loyalty to more than one organization and the competing duties or loyalties may result in actions which are adverse to one or both parties. A potential or perceived conflict of interest exists even if no unethical, improper or illegal act results from it.

An individual conflict of interest is any situation in which one's judgment, actions or non-action could be interpreted to be influenced by something that would benefit them directly or through indirect gain to a friend, relative, acquaintance or business or organization with which they are involved.

Organizational conflicts of interest occur when:

- A contracting party is unable or potentially unable to render impartial assistance or advice to Minnesota Housing due to competing duties or loyalties
- A contracting party's objectivity in carrying out the award is or might be otherwise impaired due to competing duties or loyalties

- A contracting party has an unfair competitive advantage through being furnished unauthorized proprietary information or source selection information that is not available to all competitors

Once made aware of a conflict of interest, Minnesota Housing will make a determination before disbursing any further funds or processing an award. Determinations could include:

- Revising the contracting party’s responsibilities to mitigate the conflict
- Allowing the contracting party to create firewalls that mitigate the conflict
- Asking the contracting party to submit an organizational conflict of interest mitigation plan
- Terminating the contracting party’s participation

Any person or entity (including its employees and affiliates) that enters into an agreement with Minnesota Housing must avoid and immediately disclose to Minnesota Housing any and all actual, perceived or potential conflicts of interest through one of the ways described in section 9.05.

A contracting party should review its contract agreement and request for proposals (RFP) material, if applicable, for further requirements.

#### **9.04 Suspension**

By entering into any agreement with Minnesota Housing, a contracting party represents that the contracting party (including its employees or affiliates that will have direct control over the subject of the agreement) has not been suspended from doing business with Minnesota Housing. Refer to Minnesota Housing’s website for a list of [suspended individuals and organizations](#).

#### **9.05 Disclosure and Reporting**

Activities required to be reported under this chapter may be made in any of the following ways:

- Minnesota Housing’s Chief Risk Officer
- Any member of Minnesota Housing’s [Senior Leadership Team](#)
- The Minnesota Housing hotline reporting service vendor, EthicsPoint, by calling toll-free 866.886.1274 to speak with a live operator or by visiting the EthicsPoint reporting [webpage](#)