MINNESOTA HOUSING

Housing Tax Credit Program

Compliance Guide

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Values Statement

Our vision is that all Minnesotans live and thrive in a stable, safe and accessible home they can afford in a community of their choice.

To achieve this vision, we will reorient how we work and expand who has a voice at the table and who participates in and benefits from our programs and the housing economy.

We acknowledge and understand the intentional harms of the past, how they came to be and persist today, and our responsibility to correct them and remove barriers.

We will:

- Center the people and places most impacted by housing instability at the heart of our decision making,
- Listen and share the power we have,
- Honor, respect and strengthen communities, and
- Be inclusive, equitable, just and antiracist in our actions.

Introduction

This guide establishes Minnesota Housing's compliance monitoring procedures for the HTCs allocated or awarded by Minnesota Housing in accordance with U.S. Code title 26, section 42 and other applicable federal and state law. This guide does not apply to the State Housing Tax Credit Program and Contribution Fund (SHTC Contribution Fund). To learn more about that program, visit Minnesota Housing's State Housing Tax Credit Program and Contribution Fund webpage.

Minnesota Statute 462A.223 designates the Minnesota Housing Finance Agency (Minnesota Housing) as the primary federal low-income housing tax credit (HTC) allocating agency in Minnesota. Minn. Stat. 462A.222, subdivision 1 directs Minnesota Housing to reserve a portion of the state's annual credit ceiling for HTC suballocators, which includes the cities of Duluth, Rochester, St. Cloud, St. Paul, and Minneapolis, and Washington County and Dakota County.

Foreword

Minnesota Housing shall be under no obligation to undertake an investigation of the accuracy of the information submitted for compliance monitoring. Minnesota Housing's review shall not constitute a warranty of the accuracy of the information, nor of the quality or marketability of the housing to be purchased, constructed, or rehabilitated pursuant to the HTC Program. Developers, potential investors, and interested parties should undertake their own independent evaluation of the feasibility, suitability, and risk of the project. If any information submitted by building owners to Minnesota Housing is later found to be incorrect in any material respect, it is the responsibility of the building owners to inform Minnesota Housing and to request a reexamination of the information. Interested parties should consult with a knowledgeable tax professional prior to entering into any commitment concerning the use and claim of HTCs.

The Internal Revenue Service (IRS) released its Guide for Completing Form 8823, the Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition Audit Technique Guide (8823 Guide) in January 2007, revised it in September 2009 and January 2011, and reformatted the 8823 Guide in 2024. The 8823 Guide was not intended to change any Section 42 rules or policies, but to clarify what the IRS considers "in compliance" and for consistency in reporting "out of compliance," and "back in compliance," on IRS Form 8823.

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

This guide has not been reviewed or approved by the IRS and should not be relied on for interpretation of federal income tax law or regulations.

Background and Overview

Section 42(m)(1)(B)(iii) of the Internal Revenue Code (Section 42) requires allocating agencies to include in their Qualified Allocation Plan (QAP) a procedure to monitor all HTC projects for compliance with the requirements of Section 42 and notify the IRS of any noncompliance of which it becomes aware whether it is corrected or not. Refer to Code of Federal Regulations, title 26, section 1.42-5, as amended, for more information.

Minnesota Housing's QAP establishes this guide as the source of these procedures. The compliance monitoring requirements are subject to modification by the IRS, and income determination requirements are subject to modification by the U.S. Department of Housing and Urban Development (HUD). Minnesota Housing will revise this guide annually.

Owners should be aware that Treasury Regulations 1.42-5 explicitly provides that the credit agency monitoring procedures only address the requirements for allocating agency monitoring and do not address forms and other records that may be required by the IRS on examination or audit.

Some HTC projects receive HTCs from both Minnesota Housing and a suballocator. HTC compliance monitoring for those projects will be done by the entity that first allocated HTCs to the project unless the allocators make other arrangements regarding the project.

Tax-exempt bond developments must comply with the same IRS requirements and HTC compliance monitoring procedures as non-tax-exempt bond developments.

On September 30, 2025, the IRS amended Treas. Reg. 1.42-19, which provides guidance on the Average Income Test (AIT), including how the minimum set-aside is met, the timing for when units must be designated for income and rent limits, unit redesignations, unit transfer and available unit rules, and correction of noncompliance.

Chapter 1 – Program Summary

The following is a summary of the requirements of the HTC Program. It is not intended to be detailed or comprehensive.

1.01 Minimum Set-Aside Election

Three options are available for the minimum set-aside requirement:

1. **20/50 test:** No less than 20% of the housing units in a project must be set aside for tenants whose incomes are 50% or less of the Multifamily Tax Subsidy Project income limits (MTSP).
2. **40/60 test:** No less than 40% of the housing units in a project must be set aside for tenants whose incomes are 60% or less of MTSP.
3. **Average Income Test (AIT):** No less than 40% of the housing units in a project must be set aside for tenants whose income does not exceed the imputed income limitation designated by the owner with respect to the specific unit. The designated imputed income limitation for each unit shall be 20%, 30%, 40%, 50%, 60%, 70%, or 80% of MTSP, and the average of the imputed income limitations for the project shall be 60% or less of MTSP.

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

Property managers should confirm the set-aside that was established by the building owner on IRS Form 8609 for the first year of the credit period to ensure continued compliance. Once selected, the election *cannot* be changed. Note that this is only the *minimum* set-aside. All low-income units must comply with the corresponding income and rent limits. For example, for a 20/50 minimum set-aside, if a building's applicable fraction is 100%, all units must have an income and rent restriction of 50% of MTSP.

Owners may elect additional state-established set-aside requirements (such as additional rent restrictions, serving certain populations, etc.) as a condition of obtaining HTCs. These will be reflected in the allocation documents, which include the Carryover Agreement and Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits (LURA). If such additional set-asides are elected, they must be maintained throughout the compliance period and extended use period and will be monitored at the same time as, and in a manner similar to, Section 42 requirements.

If a property is financed using Native American Housing Assistance and Self-Determination Act (NAHASDA) or HOME Investment Partnerships (HOME) Program funds that 1) have not been subtracted from the basis calculation or 2) have an interest rate below the Applicable Federal Rate, and the owner receives HTCs at the 70% present value rate (that is, 9% HTC), then the owner must rent 40% of the units *in each building* to households whose income is 50% of MTSP or less.[1] There is not a corresponding rent restriction with this HOME income limit set-aside. Rent limits are set according to the elected HTC set-aside and/or any additional rent restrictions under which the allocation was made.

1.02 Rent and Income Requirements

The income necessary to be eligible to rent a unit is based on the household income limits adjusted for family size for the area in which the project is located. Income determination is consistent with Section 8 as described in 24 C.F.R. 5.609.

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

1.03 Rent and Income Figures

HUD annually publishes MTSP figures for all Minnesota counties. Minnesota Housing uses these figures to calculate the maximum allowable rents and tenant incomes for rental units receiving the HTCs. Minnesota Housing publishes MTSP income and rent limits for HTC projects on its Multifamily Rent and Income Limits webpage and notifies owners and managers of the updated limits as they become available.

Due to the Housing and Economic Recovery Act of 2008 (HERA), income limits for projects funded with HTCs are held harmless from decreases; therefore, they are calculated and presented separately from the Section 8 income limits.

Be sure to use the correct limits table for each property. To avoid confusion, Minnesota Housing produces different tables (for example, Table A, B, C, etc.) for income and rent limits. According to HERA, the placed in service (PIS) date for a project determines which table to use, although owners may make a rent floor election (referenced in last bullet, below). Refer to the MTSP income and rent limit tables on Minnesota Housing's Multifamily Rent and Income Limits webpage.

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

[1] Buildings placed in service after July 30, 2008, are not subject to this provision.

- The earliest PIS date for a building governs. For example, if a building has acquisition HTCs with a PIS date prior to January 1, 2009, it uses Table A even if the rehabilitation HTC PIS date is after January 1, 2009.
- Under Section 42, each building is considered a separate project unless the owner elects to treat buildings as a multiple-building project. The multiple-building election is made by the owner on line 8b in Part II of IRS Form 8609. However, since IRS Form 8609 is typically issued well after the PIS date, owners of properties with buildings placed in service both before and after the publication of new limits must determine what this election will be and which buildings are part of the project. The owner must document this determination in the property's records and, when completing Part II of IRS Form 8609, the election must be consistent.
- The earliest PIS date for any building that is part of a multiple-building project (line 8b on IRS Form 8609 is or will be checked yes and the owner has identified the buildings that are part of the multiple-building project) determines which table will be used by all of the buildings that are part of that multiple-building project.
- If buildings are not part of a multiple-building project (line 8b is or will be checked no and therefore each building will be treated as a separate project), then each building may use a different table depending on their respective PIS dates.
- Under IRS Revenue Procedure 94-57, the owner may establish a different table for rent limits than the table used for income limits if the owner made a proper Statement of Election of Gross Rent Floor to use the carryover/preliminary determination date to set the rent floor and income and rent limits decrease prior to the PIS date. If the owner makes no election, the rent floor defaults to the carryover or preliminary determination date.

1.04 Building Regulations

The HTC amount allocated to each building in a project is partially calculated based on the eligible basis and applicable fraction.

Eligible Basis

In general, the eligible basis of a building is equal to the building's adjusted basis for acquisition, rehabilitation, or construction costs for the entire building, subject to certain conditions and modifications set forth in Section 42(d). As a general rule, the adjusted basis rules of section 1016 apply, with the exception that no adjustments are made for depreciation. Some of the special provisions for determining eligible basis under Section 42(d) are:

- Buildings located in areas designated as a "qualified census tract" or "difficult development area" may qualify for an increase in eligible basis.
- Units intended for eligible HTC tenants must be comparable in size, location, and quality to those rented to other tenants. If units rented to non-qualifying households are above the

average quality standards of the units rented to HTC households, then the eligible basis of the project which is used to determine the amount of tax credits must be reduced by the portion which is attributable to the excess costs of the above-standard units. This reduction in eligible basis need not occur if an election is made to exclude such excess costs pursuant to Section 42(d)(3) of the Code.

- The cost of depreciable property used in common areas or provided as comparable amenities to all residential units (for example, carpeting and appliances) is included in determining eligible basis. The cost of tenant facilities (for example, parking, garages, and swimming pools) may be included in the eligible basis if there is no separate charge for use of the facilities and they are made available on a comparable basis to all tenants in the project.
- Eligible basis is reduced by federal grants, any historic rehabilitation credits, and nonresidential rental property.
- Eligible basis, as of the end of the first year of the credit period, is reported to the IRS on Part II of IRS Form 8609, and it does not change from year to year, unless a space that originally qualified as residential rental property changes character or a space that was designated for use by qualified tenants is no longer available to them.

Applicable Fraction

The applicable fraction is the lesser of:

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

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

- Units that have never been occupied or are occupied by a non-qualified household cannot be included in the numerator but must be included in the denominator.
- Vacant units that were last occupied by a non-qualified household cannot be included in the numerator but must be included in the denominator.
- Units not suitable for occupancy, including HTC units being rehabilitated in the first year of the credit period, cannot be included in the numerator but must be included in the denominator.
- Common space units (units for full-time manager, full-time maintenance, or security) are not included in either the numerator or denominator. Refer to section 1.05 of this guide for more information.
- For projects that elected the AIT minimum set-aside, only units that are part of a qualified group of units (as defined in Treas. Reg. 1.42-19(b)(2)) may be included in the numerator of a building's applicable fraction. Unless a building is a separate project, units included in the

numerator of a building's applicable fraction do not need to be a qualified group of units on their own. See Treas. Reg. 1.42-19(e)(4).

1.05 Full-Time Resident Manager's Unit

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

- For buildings that have been placed in service after September 9, 1992, the full-time manager's unit must be treated as common space (that is, it would not be included in either the numerator or denominator of the applicable fraction).
- For buildings that were placed in service prior to September 9, 1992, the full-time manager's unit may be treated as follows:
    - The full-time manager's unit is considered a qualified low-income unit (the rent is restricted to a qualifying amount and the resident manager is a certified low-income tenant); or
    - The full-time manager's unit is considered common space. As common space, the unit would not be included in either the numerator or the denominator of the applicable fraction.

Example: A building contains 24 units and the applicable fraction is 100%. HTCs were allocated based on 23 units. This means that the manager's unit was treated as common space when the HTC was allocated. The applicable fraction would be 23/23 or 100%.

A full-time manager or maintenance person must occupy a resident manager's unit. The number of hours worked does not define full-time; rather, it is defined by the fact that the manager's presence on site is reasonably required for the development. Some things to consider are what is warranted by the type, size and/or location of the development, as well as what is needed in terms of the resident population. Some developments may not need to employ a resident manager for what is normally considered full-time, and other developments may need to employ more than one on-site manager or maintenance person. Full-time is considered to be whatever is reasonably required to make operations run smoothly at the development. As a general guide, a manager who performs management functions such as leasing units, preparing certification paperwork, cleaning, general maintenance, preparing turnovers, collecting rent, etc., and who is available to the site on an on-call basis to respond to emergencies may be considered a full-time manager under this ruling. According to IRS Revenue Ruling 2004-82, dated August 30, 2004, a unit may also be occupied by a full-time security officer and be treated as common space, if reasonably required.

As noted in a Chief Counsel Advice Memorandum dated June 2, 2014, whether an owner charges rents, utilities, or both for common space units is not relevant in the treatment of the units as facilities that are reasonably required for the project. As such, the fact that the owner of a qualified low-income

building charges rents, utilities, or both for units for resident managers or maintenance personnel is not relevant in the treatment of such units as facilities reasonably required for the project. The character and size of the project are, among other things, relevant in determining whether any property, including an employee-occupied unit, is functionally related and subordinate to the project.

Owners of all developments, including those that have not yet received IRS Form 8609, must notify Minnesota Housing of the status of common space unit(s). Prior to issuance of IRS Form 8609, submit a Request for On-Site/Employee Unit and Treatment of Common Space Unit Pursuant to Revenue Ruling 92-61 to the assigned underwriter. After issuance of IRS Form 8609, submit a Request for Action Form along with a Request for On-Site/Employee Unit and Treatment of Common Space Unit Pursuant to Revenue Ruling 92-61 for any unit or change in status to a unit utilized as a site office or occupied by a full-time resident manager, a full-time maintenance person, or a full-time security person as defined in the 8823 Guide and IRS Revenue Ruling 92-61. The following conditions require submission of these forms at the time any change is anticipated:

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

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

A unit occupied by a part-time manager, caretaker, or maintenance person must either be treated as a qualified low-income unit or as a market rate unit. If the unit is treated as a qualified low-income unit, then the household must meet all HTC eligibility criteria. Note that any reduction in rent in exchange for services must be considered as income.

1.06 Calculating the First Year Applicable Fraction

To determine the applicable fraction for the first year, find the low-income portion[2] as of the end of each full month that the building was in service during the year. Add these percentages together and divide by 12 (per instructions on IRS Forms 8609 and 8609-A). Note that the applicable fraction must be calculated for both the unit and floor space fraction.

[2] For projects that elected the AIT minimum set-aside, only units that are part of a qualified group of units (as defined in Treas. Reg. 1.42-19(b)(2)) may be included in the numerator of a building's applicable fraction. See section 2.04 of this guide for more information.

Assume that a low-income building was placed in service on January 15 and has the following lease-up schedule during the first year of the credit period.

Table 1: Sample First Year Applicable Fraction

Month	Low-Income Units	Total Units	Monthly Unit Fraction	Low-Income Square Feet	Total Square Feet	Monthly Square Foot Fraction
January	1	10	0%	1,000	12,000	0.00%[3]
February	2	10	20%	2,000	12,000	16%
March	4	10	40%	3,800	12,000	31.66%
April	6	10	60%	5,400	12,000	45%
May	7	10	70%	6,300	12,000	52.5%
June	7	10	70%	6,300	12,000	52.5%
July	7	10	70%	6,300	12,000	52.5%
August	8	10	80%	7,200	12,000	60%
September	9	10	90%	8,400	12,000	70%
October	10	10	100%	12,000	12,000	100%
November	10	10	100%	12,000	12,000	100%
December	10	10	100%	12,000	12,000	100%
N/A	**Sum of monthly unit fraction/12**		**66.66%**	**Sum of monthly square foot fraction/12**		**56.68%**

1.07 Qualified Basis

Qualified basis is the portion of the eligible basis applicable to HTC units in a building. Qualified basis is the product of a project's eligible basis multiplied by the applicable fraction. The original qualified basis is determined as of the last day of the first year of the credit period and is reported to the IRS on Part II of IRS Form 8609.

1.08 Claiming Credits

The HTCs are based on a percentage of the qualified costs of the building and may be claimed annually for 10 taxable years beginning in the year the project is placed in service or, at the owner's election, the year following placed in service. Minnesota Housing will issue IRS Form 8609 for each building with

[3] The owner may *not* count the unit occupied in January toward the first-year applicable fraction since the building was not placed in service the full month. For all other months, even if a resident moved into a unit on the last day of the month, that unit is considered occupied at the end of the month. The first-year applicable fraction for this building would be 56.68% based on this lease-up schedule.

Part I completed. The owner completes Part II and files the IRS Form(s) 8609 with the IRS at the Philadelphia Service Center, with an original signature in Part II, for the first taxable year in which the HTC was claimed. Refer to IRS Form 8609 and 8609-A for detailed instructions.

1.09 Compliance Period and Extended Use Period

All developments receiving HTCs must comply with eligibility requirements for a period of 15 years beginning with the first taxable year of a building's credit period. This is typically referred to as the compliance period. All developments receiving HTC allocations after December 31, 1989, must execute and record a LURA prior to the end of the first year of the credit period. The LURA requires developments to comply with eligibility requirements for a minimum additional 15 years beyond the 15-year compliance period for a total of 30 years or more. This is typically referred to as the extended use period. The LURA is a covenant that runs with the land. Refer to Chapter 9, "(Compliance and Monitoring After Year 15) of this guide for details on requirements after the 15-year compliance period has expired.

1.10 Outline of Minnesota Housing Monitoring Process

During the 15-year compliance period, Minnesota Housing's monitoring generally follows this summarized outline:

1. All HTC projects subject to monitoring by Minnesota Housing must submit a completed owner certification and annual occupancy report to Minnesota Housing by February 15 or the next business day of each calendar year (refer to Chapter 4 of this guide for further details).
2. Minnesota Housing will conduct a compliance inspection of each development at least once every three years and will perform a file review and physical inspection on 20% of the low-income units in each project. For new projects, Minnesota Housing will conduct a monitoring inspection no later than the end of the second year of the credit period.
3. If changes in equity ownership are planned, the owner must submit a Request for Action and other requested documentation (refer to Chapter 7 of this guide for additional information).
4. If Minnesota Housing 1) does not receive certification or documentation, 2) is not permitted to inspect tenant files or perform other inspections, or 3) upon inspection, review or otherwise, becomes aware of an aspect of the project that is not in compliance:
    a. Minnesota Housing will send a notice of noncompliance to the owner with a report that describes the noncompliance. The notice will identify the date by which the noncompliance must be corrected.
    b. Minnesota Housing must file IRS Form 8823 (Report of Noncompliance) no later than 45 days after the end of the correction period regardless of whether the noncompliance has been corrected. Refer to Chapter 8 of this document for more details.

c. Minnesota Housing may take other legal or administrative actions to enforce the terms of the LURA. Failure to take any such action does not release an owner from its obligation to comply.

1.11 Owner's Responsibility

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

Prior to issuance of a final HTC allocation, the owner must certify to the total project costs. The owner must also certify that all program requirements have been met. Any violation of the requirements of the program could result in the loss or recapture of HTCs to the owner.

The owner is responsible for compliance with Section 42 and the LURA. The owner must take any lawful action to comply fully with Section 42 and with all applicable rules, rulings, policies, procedures, regulations, or other official statements promulgated or proposed by the U.S. Department of the Treasury, the IRS, or HUD from time to time pertaining to the owner's obligations under Section 42. Any financial consequences to the owner as a result of noncompliance, whether identified by Minnesota Housing or the IRS, will be the responsibility of the owner.

Successful operation of an HTC development is management intensive; the owner is responsible for ensuring that the project is properly administered. Thorough understanding of HTC requirements and compliance monitoring procedures requires training of owners and managers. This training should occur before a development is constructed, purchased, or rehabilitated, and should be provided to the on-site property management staff. At a minimum, such training should cover key compliance terms, qualified basis rules, determination of rents, tenant eligibility, file documentation, available unit procedures and unit vacancy rules, agency reporting and records retention, site visits, and fair housing and equal opportunity. Continuing education each year, or at a minimum every other year, is strongly recommended to keep current with regulatory and procedural changes.

1.12 Noncompliance

If the management agent or the owner determines that a building or entire project is not in compliance with program requirements, they must notify Minnesota Housing immediately. The management agent and the owner must formulate a plan to bring the project back into compliance and advise Minnesota Housing in writing of such a plan.

Chapter 2 – Internal Revenue Service Reporting Requirements

The IRS and Minnesota Housing require owners to file specific forms for compliance and reporting purposes. Failure to submit required forms as outlined in this guide to either the IRS or Minnesota Housing as appropriate will constitute noncompliance and may make the owner subject to disallowance or recapture of HTCs.

2.01 Low Income Housing Allocation Certification (IRS Form 8609)

IRS Form 8609 will be issued by Minnesota Housing for each building within a project. If allocations were issued in multiple years, a separate IRS Form 8609 will be issued for each year's allocation. If rehabilitation and acquisition HTCs are issued on the same building, the acquisition HTC and rehabilitation HTC will receive separate IRS Forms 8609.

Part I of the IRS Form 8609 will be completed by Minnesota Housing and sent to the owner after the project is placed in service and all documentation required by Minnesota Housing is reviewed and approved. Each year Minnesota Housing files IRS Form 8610 with the IRS, which includes the original IRS Forms 8609 issued that year. This allows the IRS to compare IRS Forms 8609 issued by the allocating agency with IRS Forms 8609 submitted with the taxpayer's return.

Minnesota Housing must complete Part I of IRS Forms 8609. Filing an IRS Form 8609 with the IRS in advance of the owner's receipt of the Minnesota Housing signed version of the approved IRS Form 8609, or filing an IRS Form 8609 that does not accurately reflect the information contained on the IRS Minnesota Housing signed version of the approved IRS Form 8609, is an unacceptable practice. Refer to the applicable QAP for more information on unacceptable practices and resulting penalties.

The owner completes Part II and files the IRS Form 8609 with the IRS at the Philadelphia Service Center, with an original signature in Part II, for the first taxable year in which the HTC was claimed. Refer to IRS Form 8609 and 8609-A for detailed instructions.

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

2.02 Low Income Housing Credit (IRS Form 8586)

One Low-Income Housing Credit (IRS Form 8586) Form must be completed to claim HTCs for the first taxable year in which HTCs are taken and every year thereafter in the compliance period.

2.03 Declaration of Land Use Restrictive Covenants

The building owner must fill out, execute and record an approved Declaration of Land Use Restrictive Covenants (LURA) using the LURA form on Minnesota Housing's website that applies to that project's allocation year, and in accordance with the selection criteria attached to the Preliminary

Determination Letter (also known as 42M Letter) or Carryover Agreement. The executed and recorded LURA must be in effect on or before the end of the first taxable year HTCs are claimed (Section 42(h)(6)(A)). A copy of the executed and recorded LURA must be submitted to Minnesota Housing by the deadline provided by Minnesota Housing and no later than the owner's submission of the 8609 application. Failure to timely and properly record this LURA and submit a copy to Minnesota Housing is an event of noncompliance and will be reported to the IRS. During 8609 review, Minnesota Housing will work with the owner to draft, execute, and record an Amended and Restated LURA, if necessary, to reflect changes to the project or financing.

Owners must comply with any occupancy restrictions required by Section 42 and the LURA throughout the compliance period and extended use period. Some LURAs contain relief provisions that allow an owner to petition Minnesota Housing for certain modifications to those requirements. Owners should refer to the LURA for the specific project to determine if relief provisions apply.

Single Room Occupancy Threshold Relief Provision

If the project selected the single room occupancy (SRO) housing threshold requirement and the LURA requires the owner to comply with that threshold, Minnesota Housing recognizes that under some circumstances it may be appropriate for an owner to seek relief from the SRO housing threshold requirement.

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

If Minnesota Housing shall at any time thereafter, at its sole discretion, determine that an SRO unit subsidy may be available for the remainder of the tax credit compliance and extended use periods, this would not adversely affect the full availability of the HTC allocation, and this would permit the SRO

unit(s) to again serve 30% income households, then at Minnesota Housing's request the owner shall promptly apply for such SRO unit subsidy for the SRO unit(s), upon terms reasonably acceptable to such owner. If such SRO unit subsidy is obtained, the owner shall again set aside such SRO unit(s), when and to the extent then available, to income qualifying individuals.

To request approval to exercise this SRO relief or any other occupancy requirement with a relief provision in the LURA, the owner must submit a Request for Action. During the review and approval process, Minnesota Housing will advise the owner of documentation that must be submitted.

2.04 Recapture of Low-Income Housing Credit (IRS Form 8611)

IRS Form 8611 is used by taxpayers who must recapture tax credits claimed in previous years. A copy of IRS Form 8611 must be filed with the IRS upon completion by the owner.

Chapter 3 – Recordkeeping and Records Retention Requirements

3.01 Recordkeeping

Under the recordkeeping provision of Treas. Reg. 1.42-5, the owner must keep records for each building in the project for each year in the compliance period showing:

- The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit)
- The number of occupants in each HTC unit and the household's student status
- The number and percentage of residential rental units in the building that are HTC units, offices, and management units
- The rent charged on each residential rental unit in the building (including utility allowance) as well as any additional charges to tenants; documentation must include tenant ledgers, leases, and utility allowances as required by the IRS
- The HTC unit vacancies in the building, marketing information, and information that shows when and to whom each of the next available units was rented
- The Tenant Income Certification (TIC), annual income recertifications (where applicable), and annual student certification of each HTC household
- Documentation to support each TIC, including an application disclosing household composition, income and assets, and all applicable verifications
- The character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d) (for example, tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities or facilities reasonably required by the project)
- The eligible basis and qualified basis of the building at the end of the first year of the credit period
- Records demonstrating that any state-established set-aside elected by the owner has been complied with for each year of the compliance period
- For properties electing the AIT, both (1) the qualified group of units that satisfy the AIT minimum set-aside and (2) the qualified group of units to be used in determining the applicable fractions for the building(s) in the project must be identified and recorded annually in the owner's books and records; see Treas. Reg. 1.42-19(b)(3)(iii).

3.02 Records Retention

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

Refer to Q&A 11 in IRS Revenue Ruling 2004-82, published August 30, 2004, which clarifies that owners may comply with the records retention provisions under Treas. Reg. 1.42-5(b) by using an electronic storage system instead of maintaining hardcopy (paper) books and records, provided that the electronic storage system satisfies the requirements of IRS Revenue Procedure 97-22.

Owners 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, such as burn, pulverize, shred, etc.

Chapter 4 – Monitoring: Certification and Review

4.01 Annual Certification

To comply with the certification and review provisions of Treas. Reg. 1.42-5, paragraph (c)(1), the owner must certify to Minnesota Housing, under penalty of perjury, at least annually for each year of the 15-year compliance period, on the Owner's Certification of Continuing Program Compliance, or other forms designated the following for the preceding 12-month period:

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

hookups, and appliances were provided on a comparable basis without charge to all tenants in the buildings.

- If a low-income unit in the project has been vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units were or will be rented to tenants not having a qualifying income.
- If the income of tenants of a low-income unit in the project increased above the limit allowed in Section 42(g)(2)(D)(ii) or Section 42(g)(2)(D)(iii), the next available unit of comparable or smaller size was or will be rented to residents having a qualifying income.
- An extended low-income housing commitment as described in Section 42(h)(6) was in effect, including the requirement under Section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f. The owner has not refused to lease a unit to an applicant based solely on their status as a holder of a Section 8 Voucher and the project otherwise meets the provisions, including any special provisions, as outlined in the extended low-income housing commitment.
- If the owner received its HTC allocation from the portion of the state ceiling set-aside for a project involving qualified nonprofit organizations under Section 42(h)(5), that its nonprofit entity materially participated in the operation of the development within the meaning of section 469(h) of the Internal Revenue Code.
- There has been no change in the ownership or management of the project that has not been reported to Minnesota Housing.

4.02 Annual Submission Requirements

The annual owner's certification must be submitted to Minnesota Housing by February 15 or, if not a business day, the next business day to certify compliance for the prior 12-month calendar year. The first certification is required for the year following execution of a carryover allocation of HTCs or for the year of issuance of a preliminary determination letter in the case of tax-exempt bond HTC awards (even if the project has not yet been placed in service). Once the owner has established the first credit year, the certification is supported by a report of unit events starting when each respective building was placed in service.

The annual owner certification and occupancy reporting are completed in Minnesota Housing's Property Online Reporting Tool (PORT). Detailed instructions are provided with the December annual reminder notice and in the PORT User Guide. The December reminder notice that Minnesota Housing sends is considered notification of an upcoming compliance review. Unless otherwise clarified, Minnesota Housing may report on Form 8823 compliance violations that are uncorrected when the December reminder notice is sent.

Also submit IRS Form 8609 for each building, with Part II completed as filed with the IRS. *Submit IRS Forms 8609 for the first year of the credit period only.* Send a copy to your assigned compliance officer at the time they are filed with the IRS.

Annual monitoring fees are also due with the owner's certification, beginning with the first credit year. Refer to section 5.07 of this guide for details regarding monitoring fees.

Note that the owner's certification provides that all months within each 12-month period are subject to certification, and all certification items must be completed.

Unit event data entered in PORT must be complete and must report gross income at move-in and certification dates, student status, rent amounts and utility allowance information, gross income at annual recertification (or report if a unit is not subject to income recertification) and recertification dates (where applicable), move-out and transfer information, etc.

Note that Minnesota Housing uses this information for monitoring but must also supply information on occupants of HTC units to HUD annually to satisfy its obligations under HERA.

Failure to timely submit a complete and accurate annual owner certification, with all required occupancy information and other documentation, including IRS Form 8609 with Part II completed, is noncompliance.

Owners who received selection points for serving households who meet Minnesota Housing's definition of Long-Term Homeless or High Priority Homeless (LTH/HPH), have the following additional requirements:

(1) Annually, owners must supply operating data in a form and manner determined by Minnesota Housing.
(2) Annually, owners must complete and return a supportive housing assessment survey in a form and manner determined by Minnesota Housing.
(3) Owners must verify if a household meets the definition of LTH/HPH and obtain eligibility documentation from the Homeless Management Information System (HMIS), the coordinated entry provider, or complete the LTH verification or HPH verification for households not in HMIS. The documentation must be maintained in the resident file and provided to Minnesota Housing upon request.
(4) Owners must cooperate in good faith with the Institute for Community Alliances, an Iowa nonprofit corporation (Administrator), and any successors and/or assigns of Administrator's rights and responsibilities regarding the Minnesota HMIS computerized database to (a) participate in and receive any training which Administrator may require from time to time in order for owner to be a licensed user of HMIS and (b) satisfy other reasonable requirements which may be imposed by Administrator and Minnesota Housing in connection with HMIS.
(5) Owners must (a) request certain information from the individuals it serves through the HTC Program, pursuant to Owner's agreement with Administrator, (b) input such information into

HMIS in a timely manner, and (c) run reports and test data for accuracy, as directed by the Administrator and Minnesota Housing.

(6) Owners must obtain any and all necessary disclosures, releases, and consents to permit Minnesota Housing to access information and receive periodic reports from Administrator. additional information is available on the HMIS website. Owners must permit Minnesota Housing to access any and all such information.

4.03 Compliance Monitoring Review Requirements

Under Minnesota Housing's review process, owners must maintain ongoing tenant records on Minnesota Housing approved forms for each unit in the project. The forms provide a historical record of tenant compliance for each unit. Minnesota Housing reserves the right to conduct a review of *any* building after serving appropriate notice and to examine all records pertaining to rental of tax credit units.

Minnesota Housing must inspect each development at least once every three years during the compliance period. Minnesota Housing may adjust the inspection schedule for any reason. Minnesota Housing shall inspect the TIC(s), the documentation to support the TIC(s), and the rent record for each tenant in at least 20% of the low-income units in each project, based on the owner's IRS Form 8609, line 8b election to treat buildings as a single- or multiple-building project and at least 20% of the low-income units in each project. For larger projects, Revenue Procedure 2016-15 established a schedule of the minimum number of units to inspect based on the number of low-income units in the project.

Table 2: Inspection Sampling for Larger Projects

Number of Low-Income Units in the Low-Income Housing Project	Number of Low-Income Units Selected for Inspection or Low-Income Certification Review (Minimum Unit Sample Size)
82-101	21
102-130	22
131-175	23
176-257	24
258-449	25
450-1,461	26
1,462-9,999	27

Minnesota Housing may inspect up to and including 100% of the HTC units in any project for any reason. The first inspection for new projects will occur no later than the end of the second calendar year following the year the last building in the project is placed in service in accordance with Treas. Reg. 1.42-5(c)(2)(A).

The HTC units to be inspected or reviewed must be chosen in a manner that will not give advance notice that certain records will or will not be inspected. Minnesota Housing may give an owner reasonable notice of inspection, not to exceed 28 calendar days, so that the owner may assemble records. In accordance with IRS requirements, Minnesota Housing will not notify the owner which units will be inspected until the day of inspection. Notice of more than 28 calendar days, however, may be reasonable when extraordinary circumstances beyond Minnesota Housing's control exist, such as disasters and severe weather or illness or family emergency of the inspector or site representative, but only if reasonable efforts to find another inspector or site representative are unsuccessful. In addition, Minnesota Housing will inspect at least one vacant unit in each project, if applicable. Vacant units may be substituted for selected units or inspected in addition to selected units, at the inspector's discretion.

Noncompliance that is identified and corrected by the owner prior to notification of an upcoming compliance review or inspection need not be reported to the IRS. According to the Guide for Completing Form 8823, Publication 5913 (1-2024), the IRS considers the date of the notification letter a bright line date.

4.04 Procedure for Compliance Inspection

The compliance inspection includes, but is not limited to, a review of: (1) at least 20% of the low-income tenant files in each project (or the number of units identified in Rev. Proc. 2016-15, whichever is less), including a full inspection and calculation of income eligibility and student status, (2) utility allowance information and other property administrative records, and (3) an inspection of the general physical condition of the property, including 20% of the low-income units in each project (or the number of units identified in Rev. Proc. 2016-15, whichever is less). In addition, all buildings must be inspected, and the unit sampling must include vacant units.

In the year a compliance inspection is due, Minnesota Housing will notify the owner and manager by email. The owner or manager will be required to complete and submit a Pre-Inspection Form as part of the inspection. This form is used to answer questions regarding property characteristics and to identify and submit the applicable administrative records for review, such as utility allowance and source documentation, tenant selection plan, AFHMP, fire, boiler and elevator certificates, etc. Once the date and time of the inspection has been agreed to, Minnesota Housing will send a confirmation email. The confirmation email is considered Minnesota Housing's notification of an upcoming compliance review. Unless otherwise clarified, compliance violations that are uncorrected as of the date of the confirmation email may be reported on IRS Form 8823. If the file review and physical inspection will be conducted separately, separate confirmation emails may be sent. At least 24 hours prior to the inspection date, the owner must notify all occupants of restricted units that their unit may be inspected. A site representative must accompany the compliance officer during the inspection.

In accordance with IRS requirements, Minnesota Housing will not notify the owner which units will be inspected until the day of inspection. Owners must *notify occupants of all program-restricted units that*

their unit may be inspected at least 24 hours prior to the inspection date. Alternate units will be selected at random if there are unattended children under age 18 or if an occupant is sleeping or bathing/showering. The compliance officer will request a list of vacant units at the time of inspection and may substitute one or more vacant units for units selected or may inspect one or more vacant units in addition to units selected. If the inspector finds systemic noncompliance, up to 100% of the units may be inspected.

A re-inspection fee will be charged if the compliance officer is unable to complete the inspection due to owner/agent's failure to notify residents or owner/agent's failure to appear for the inspection. The re-inspection fee will be added to the next compliance monitoring fee. Refer to the Multifamily Loan Programs and Housing Tax Credit Program Fee Schedule for more information.

The Treasury Regulations require allocating agencies to conduct physical inspections consistent with standards governed by HUD's National Standards for the Physical Inspection of Real Estate (NSPIRE) which focuses on inside the building, outside the building, and within the units to ensure that they are "functionally adequate, operable, and free of health and safety hazards." HTC properties are not subject to NSPIRE's scoring protocol. However, noncompliance with any of the NSPIRE inspection standards is considered HTC noncompliance subject to reporting to IRS.

As described in NSPIRE standards, defect severity levels include the following characteristics:

- **Life-Threatening (LT):** Deficiencies that, if evident in the home or on the property, present a high risk of death to a resident. NSPIRE correction period is 24 hours.
- **Severe:** Deficiencies that, if evident in the home or on the property, present a high risk of permanent disability or serious injury or illness to a resident, or the physical security or safety of a resident or their property would be seriously compromised. NSPIRE correction period is 24 hours.
- **Moderate:** Deficiencies that, if evident in the home or on the property, present a moderate risk of an adverse medical event requiring a healthcare visit, cause temporary harm, or, if left untreated, cause or worsen a chronic condition that may have long-lasting adverse health effects, or the physical security or safety of a resident or their property could be compromised. NSPIRE correction period is 30 days.
- **Low:** Deficiencies critical to habitability but not presenting a substantive health or safety risk to resident. NSPIRE correction period is 60 days.

In addition, NSPIRE requires the following minimum Affirmative Habitability Requirements:

- Hot and cold running water in both bathroom and kitchen, including adequate source of safe drinking water in the bathroom and kitchen
- Bathroom or sanitary facility that is in proper operating condition and usable in privacy that contains a sink, a bathtub or shower, and flushable toilet
- At least one battery-operated or hard-wired smoke detector

    - Inside each sleeping room (for example, bedroom)
    - Outside each sleeping room
    - Within 21’ of all bedroom doors
    - On every level of a dwelling unit
- Living room and kitchen area with a sink, cooking appliance, refrigerator, food preparation area, and food storage area
- For units with Housing Choice Vouchers or Project-Based Vouchers, at least one bedroom or living/sleeping room for each two persons in the household
- Must meet carbon monoxide detection standards established through Federal Register notice
- Two working outlets or one working outlet and a permanent light within all habitable rooms
- Outlets within 6’ of a water source must be GFCI protected
- Must contain a permanently installed heating source; units may not contain unvented space heaters that burn gas, oil, or kerosene
- Must have a guardrail when there is an elevated walking surface drop off of 30” or more measured vertically
- Permanently mounted light fixture in the kitchen and each bath

As of December 29, 2024, all smoke detectors which are solely battery-operated must have sealed, tamper-proof batteries.

The following are NSPIRE’s specifications as to the location of each smoke alarm on a wall or ceiling:

- If mounted on the ceiling, it must be more than 4” from the wall.
- It cannot be closer than 4” or more than 12” from the ceiling if mounted on the wall.
- Smoke alarms should not be installed within 36” of windows, exterior doors, or ducts where drafts might interfere with their operation.
- Smoke alarms should not be painted or have stickers or other decorations present.

As of June 11,2024, these two smoke detector deficiencies were changed to recommendations:

- Not installed within 10’ of a cooking appliance
- Not installed within 3’ of ceiling fans, air ducts, exterior doors, or windows

The compliance officer will identify any NSPIRE deficiencies during the inspection so owners may begin making repairs immediately.

Notwithstanding the above inspection requirements, an HTC project must continue to satisfy local health, safety and building codes.

REAC Inspections: As permitted by Treas. Reg. 1.42-5, Minnesota Housing may accept a physical inspection conducted by HUD’s Real Estate Assessment Center (REAC) in the same year that Minnesota Housing’s inspection is due.

Minnesota Housing may conduct a review of *any* building after serving appropriate notice and to examine all records pertaining to rental of HTC units.

4.05 Compliance Forms

Minnesota Housing offers various sample forms to verify and certify income. These sample forms can be found under the Occupancy Forms section on our Documents, Forms and Resources webpage.

Minnesota Housing's sample forms are strongly recommended. Each form has a version date located in the lower right-hand corner. *Replace old forms with any that have been newly revised.* If using alternate or customized forms, they must, at a minimum, contain the information in the sample forms.

Minnesota Housing's form of TIC may only be generated from the Property Online Reporting Tool. Minnesota Housing will accept a TIC generated from property management software if it contains, at minimum, the same information as Minnesota Housing's TIC form.

In addition to the TIC and supporting documentation, the following completed forms must be in all tenant files:

- Minnesota Housing's Government Data Practices Act Disclosure Statement(other funder data practices forms will not be accepted)
- Annual Student Certification
- Resident Notification Letter and Low Income Housing Tax Credit Lease Rider (not required for Section 8 units using the HUD model lease)
- VAWA Lease Addendum and Minnesota Housing Attachment to VAWA Lease Addendum (the Minnesota Housing Attachment is not required for Section 8 units using the HUD model lease)

In addition, the Head of Household and Household Member Demographic Information Form is used to collect data for households approved for occupancy to satisfy the HERA requirement for monitoring agencies to submit tenant data to HUD. Collecting and reporting the data to Minnesota Housing is required; however, a tenant file will not be found out of compliance if the tenant refuses to supply the information or if a completed form is not on file.

4.06 Corrections to Documents

When a change is needed on a document for the HTC Program, the person making the correction must draw a line through the incorrect information, write or type the correct wording or number, and have *all parties initial and date the change.* A document that has been altered with correction fluid or "white-out" will not be accepted by Minnesota Housing.

If changes are made to a TIC, owner must update the respective certification event in PORT.

4.07 Annual Monitoring Fees

Minnesota Housing charges annual monitoring fees to cover the costs of conducting compliance monitoring. The annual fee must be submitted when the owner's certification is due, beginning with the first year of the credit period. Refer to the Multifamily Loan Programs and Housing Tax Credit Program Fee Schedule for more information.

Minnesota Housing may adjust fees in its sole discretion to cover increasing monitoring costs.

4.08 Minnesota Housing Records Retention

Minnesota Housing will retain records of noncompliance or failure to certify for six years beyond the filing date of the respective IRS Form 8823. In all other cases, Minnesota Housing will retain the certifications and records described in Treas. Reg. 1.42-5(c) for three years from the end of the calendar year the agency receives the certifications and records.

4.09 Liability

Compliance with the requirements of Section 42 is the responsibility of the owner of the building. Minnesota Housing's obligation to monitor for compliance with the requirements of Section 42 does not make the agency liable for an owner's noncompliance (Treas. Reg. 1.42-5(g)).

Chapter 5 – Project Rental Requirements

5.01 Allowable Fees and Charges

Section 42 allows owners of HTC developments to claim HTCs based on units that are rent-restricted, occupied by eligible tenants, and suitable for occupancy. To qualify as rent-restricted, the gross rent for a unit must not exceed the applicable rent limit.

Gross rents for the HTC Program are the rents paid by tenants (excluding federal or state rental assistance such as Section 8) plus an allowance for utility costs (except telephone, cable, or internet) paid either directly by tenants or pursuant to an actual consumption submetering arrangement and any other mandatory charges. Charges for non-optional facilities or services such as a washer and/or dryer hookup fee and built in/on storage sheds or lockers (paid month-to-month or in a single payment), utility costs paid by tenants to or through the owner, etc. must always be included in gross rent. The total gross rent cannot exceed the applicable MTSP rent limits for the project.

Permissible Fees

Treasury regulations permit owners to charge a fee for providing services other than housing. If the services are optional, the fee can be excluded from the gross rent computation. If the services are not optional, the fee must be included in the gross rent computation. A service is optional if payment for the service is not a required condition of occupancy.

The regulations also provide that an owner may not charge a separate fee for access to or use of tenant facilities (for example, parking, garage, storage, and other amenities) if the cost of such facilities was included in the eligible basis. Refundable deposits for use of tenant facilities that were included in the eligible basis (for example, a refundable deposit for use of a community room) are permissible and are not included in the gross rent computation.

At their discretion, owners may charge fees that are customary in the local rental housing market, provided that such fees are reasonable and that the amounts of any fees are clearly disclosed in the tenant's lease. Examples of such customary fees may include refundable damage/security and refundable pet deposits. Owners may collect pre-lease deposits as permitted by state law, provided that such deposits are applied to either security deposit or first month's rent upon move-in, and returned if a lease is not entered for any reason.

Fees related to the core functions of operating HTC properties are not permissible. As an example, application fees may be charged to cover the actual out of pocket cost of checking a prospective tenant's income, credit history, and landlord references. Out of pocket costs are amounts paid to a third party, not salaries of the owner or management company staff. Application fees that exceed out of pocket costs, or that otherwise pass onto the tenant the costs of staff time for processing applications, are impermissible.

Permissible fees may also include:

- Month-to-month lease
- Pet rent
- Renter's insurance
- Meal service
- Transaction fees or other charges associated with online rent payment systems

Any additional fee charged for a month-to-month lease must always be included in the gross rent calculation, even when tenants have the option to enter into either a month-to-month lease or a longer lease term. Pet rent, renters insurance, and meal services are rent when they are required as a condition of occupancy. Where applicable, the owner must include the actual amounts paid to the owner or its agent or third party in the lease. Transaction fees or charges associated with Walk-In Payment Systems (WIPS) or other online rent payment systems must be included in the gross rent calculation if the owner does not have another option for residents to pay rent that does not require a fee.

The following types of fees are also permissible provided that, unless otherwise stated below, the amount of the fee is limited to the average cost incurred by the owner or such lower amount as limited by law:

- Late rent fees
- Late utility payment fees
    - As required by Minn. Stat. 504B.216, subd. 9 late payment fees for all utilities billed must not exceed $5 per month and must not be compounded.
- Repairs or extra cleaning costs for tenant caused damage beyond normal wear and tear are limited to actual and reasonable cost
- Maintenance related to furnishings or tenant property completed by owners but normally required to be completed by households (for example, changing light bulbs, moving furniture) may be charged if such rates are stated in the lease/lease addendum.
- Returned check/insufficient funds (NSF) only on and after the second occurrence and only to the extent that the fee does not exceed the cost charged to the owner by the bank for processing the returned check
- Lockouts
- Key replacement/extra key
- Failure to return a key upon move-out
- Failure to put utilities in tenant's name when billed by a utility company (not through a submetering arrangement)
- Court filing, attorney, and sheriff fees are permissible only from tenants who wish to avoid or settle an eviction suit and only to the extent that such fees are permitted under state and local laws, appear reasonable, and do not exceed the actual costs incurred

- Extermination fees are permissible only if tenant is uncooperative
- Early lease termination fees may not exceed two months' rent and must release tenants from any further liability; such fees are prohibited when a lease termination is due to a VAWA, Minn. Stat. 504B.206, 504B.266, or reasonable accommodation request.
- Payments for utilities under a Ratio Utility Billing System (also known as RUBS), are permissible but are always considered rent (not a utility allowance)
    - RUBS is a formula that allocates a property's utility bill among its units based on the units' relative floor space, number of occupants, or some other quantitative measure, but not based on actual consumption. Because monthly utility bills fluctuate, Minnesota Housing recommends owners establish a RUBS payment cap in the lease to avoid rent noncompliance.
- Treasury Regulations also permit owners who provide certain utilities to tenants through actual consumption, submetering arrangements to charge an administrative fee; refer to section 6.05 of this guide for more information on utilities and administrative fees

Records demonstrating the owner's costs in relation to fees charged to tenants may be requested as part of a monitoring review.

Impermissible Fees

The following fees are not permissible and, if charged to a resident, will be treated as rent and must be refunded to the resident:

- Fees for the work involved in completing forms and documentation required to certify income
- A move-in fee that is not a refundable security deposit (this includes nonrefundable alternatives to security deposits such as security bonds or lease guarantees)
- An application fee that exceeds an owner's average expected out of pocket expense
- Decorating fees or fees for preparing a unit for occupancy; owners are responsible for physically maintaining units in a manner suitable for occupancy
- Mandatory professional carpet cleaning by departing residents
- Unit transfer fees unless the owner can clearly document that the fees cover owner's actual out-of-pocket costs and are not used for preparing a unit for occupancy
- Fees or charges for maintenance of common areas or exterior property (snow removal, lawnmowing, yardwork, exterior window washing, etc.) or for other landlord responsibilities under Minn. Stat. 504B.161
- Lease violation fines or other fees for unacceptable resident or guest behavior
- Fees associated with utility submetering systems that are not part of the allowable administrative fee
- Fees for tenant services or amenities that were included in eligible basis

Fees that exceed the limits described in the Permissible Fees section above are not permissible and will be treated as rent.

An owner may not charge a damage/security deposit, additional rent, or fees associated with a service or therapy animal associated with a person with disabilities. If charged to a resident, such amounts must be immediately refunded or Minnesota Housing may report the owner/agent to HUD's Fair Housing and Equal Opportunity Enforcement division.

Refer to the 8823 Guide: Category 11g – Gross Rent(s) Exceed Tax Credit Limits for more information.

Rent Increases Limited to Once Annually

Beginning on January 1, 2020, rent increases for occupied units are limited to once annually. Rents may not be increased until the anniversary of the initial lease or the last rent increase, whichever is later.

This limit applies to the rent charged for the unit and not the portion of tenant-paid rent for residents assisted with Section 8 or other rental assistance, which may increase or decrease based on changes in income; however, for units assisted with state or local project-based rental assistance, owners may increase contract rents in accordance with the respective project-based rental assistance contract. Owners may increase rents for units assisted with Housing Support (formerly Group Residential Housing) when the Minnesota Department of Human Services (DHS) adjusts the room and board rate, but only if it does not affect the tenant payment. Assisted living properties that utilize the DHS Room and Board Rate for the Housing Support Program to determine client obligation of rent and services may increase rent during a resident's first lease period to align future rent adjustments with the July 1 annual update to the DHS Room and Board Rate.[4] This is limited to units occupied by households receiving the benefit of Housing Support from the Department of Human Services, from the Elderly Waiver or CADI Waiver programs, or households who are taking the required spend-down steps to qualify for such programs. This limit also applies regardless of the term of the lease or any language in the lease that would allow rents to increase more than once annually. Rents must always comply with limits imposed by the program(s) that financed the development and/or respective unit. This includes Minnesota Housing funding sources as well as funding sources outside of the agency.

- **Example 1:** The last rent increase for an occupied unit on a month-to-month lease occurred on October 1, 2019. The owner may not increase the rent for that household until October 1, 2020, and if the same household continues to occupy the unit, a subsequent rent increase may not occur until October 1, 2021.

[4] An assisted living property for purposes of this section is property that is marketed or held out as an assisted living facility and provides assisted living services. Refer to Minn. Stat. 144G.08, subd. 10 for more information.

- **Example 2:** An initial six-month lease was signed on July 1, 2020. If the same household continues to occupy the unit, the owner may not increase the rent for that unit until July 1, 2021; a subsequent rent increase for that household may not occur until July 1, 2022.
- **Example 3:** Mid-month move-in will be treated as a full month. An initial lease began May 17, 2020, when the tenant moved in and rent for the month of May was pro-rated. The owner may increase rent starting May 1, 2021.

If after occupying a unit an eligible resident cannot pay the rent or is otherwise in violation of the lease provisions, the owner has the same legal rights in dealing with the eligible resident as with any other resident. Refer to Good Cause Termination language in section 6.03 of this guide for more information.

120-Day Notice for Rent Increases Exceeding 5%

The purpose of the HTC Program is to keep units affordable and provide stable, quality housing. Minnesota Housing encourages owners to increase rents no more than what is needed to keep pace with rising costs. To promote housing stability, incremental increases are easier for residents to absorb than sudden significant increases.

Beginning November 1, 2025, a rent increase greater than 5% is not effective unless and until the owner provides 120-days' notice in writing to tenants. If the owner fails to provide proper notice, the owner must return or credit, at tenants' election, any amounts collected in connection with the ineffective rent increase. This requirement does not apply to residents benefitting from rental assistance or Housing Support unless such increase affects the tenant's portion of the rent.

Examples below assume current lease rent is $1,000 with no rental assistance, that the increase complies with the once-annual requirement, that the increase is otherwise allowed under the terms of the lease, and that the increase does not cause the gross rent to exceed the applicable rent limit:

- In compliance: On July 1, 2025, owner provides notice of a rent increase to $1,051, effective November 1, 2025. While the increase is more than 5%, owner has provided more than the minimum 120-day notice.
- In compliance: Owner provides its standard 60-day notice of a rent increase to $1,030. Thirty dollars is 3% of $1,000, so the 120-day notice is not required.
- In compliance: Owner provides its standard 60-day notice of a rent increase to $1,050. Fifty dollars is 5% of $1,000 so the 120-day notice is not required.
- Out of compliance: Owner provides its standard 60-day notice of a rent increase to $1,051. The increase is more than 5%, but owner has not provided 120-day notice. To bring the unit into compliance, owner must decrease rent to $1,050, provide the minimum 120-day notice to the resident, refund or credit the resident $1 for all months that were overcharged until the minimum 120-day notice period has been fulfilled. At that time, owner may begin charging the resident $1,051 for rent.

5.02 Section 8 Rents

The portion of the rent paid by households receiving rental assistance under Section 8 or other comparable federal or state rental assistance programs can exceed the HTC rent ceiling as long as the owner receives a Section 8 or other government rental assistance payment (this includes assistance from Housing Support) on behalf of the resident. If no subsidy is provided, the tenant-paid rent plus utility allowance plus non-optional charges cannot exceed the maximum allowable HTC rent for the unit.

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

With the passage of the Omnibus Budget Reconciliation Act of 1993, owners are prohibited from refusing to lease to a prospective tenant based solely on the fact that the applicant holds a Section 8 Rental Voucher or Certificate.

5.03 Minimum Lease Requirements/Good Cause Termination

All tenants occupying HTC units are required to execute at least an initial six-month lease. Succeeding leases are not subject to a minimum lease period. Exceptions for housing for the homeless and single room occupancy (SRO) are listed below (tenants in SRO housing may share bathrooms, cooking facilities, and/or dining areas).

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

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

The lease must reflect the correct date of move-in, which is the date the tenant has the right to occupy the unit.

At a minimum, the lease must include:

- The legal name of parties to the agreement and all other occupants
- A description of the unit to be rented
- The date the lease becomes effective
- The term of the lease
- The amount of rent and all mandatory fees or charges
- Responsibilities of the parties regarding payment of utilities
- The use of the premises

- The rights and obligations of the parties, including the requirement of the household to annually recertify its student status and, where applicable, income
- The signatures of all household members 18 years of age or older and/or persons under the age of 18 who are the head of household, co-head, or spouse

VAWA Lease Addendum and Minnesota Housing Attachment to VAWA Lease Addendum

To comply with the statutory provisions of the Violence Against Women Act (VAWA), owners must attach to the lease the VAWA Lease Addendum Form HUD-91067 or its successor form. Refer to section 5.14 of this guide for more information about VAWA. In addition, beginning July 1, 2025, all new leases and all amended/renewed leases effective on or after July 1, 2025, must include the Minnesota Housing Attachment to VAWA Lease Addendum (not required for units with Project-Based Section 8 or a Project Rent Assistance Contract that use one of the HUD model leases 90105-A, B, C or D).

Resident Notification Letter and Lease Rider

To help residents understand their rights, a Resident Notification Letter must be provided at each lease signing, and an HTC Lease Rider must be executed and attached to the lease (existing HTC qualified households were to be provided a Resident Notification Letter and execute an HTC Lease Rider by December 31, 2020). The required Resident Notification Letter and HTC Lease Rider can be found under the Forms for Housing Tax Credit Assisted Units section on Minnesota Housing's Occupancy Forms webpage. The Resident Notification Letter and HTC Lease Rider are not required for units occupied by households assisted with Project-Based Section 8 or a Project Rent Assistance Contract that use one of the HUD model leases 90105-A, B, C or D.

Good Cause Termination

During the compliance period, extended use period, and for three years after expiration of the extended use period, households in qualified HTC units may not be evicted or have their tenancy terminated (including lease non-renewal or refusal to enter into a new lease on substantially the same terms) for other than good cause. Minnesota Housing defines good cause as serious or repeated violation(s) of the material terms and conditions of the lease. Any incidents described in the VAWA Lease Addendum Form HUD-91067 or its successor form do not constitute good cause for eviction of a survivor if the survivor is or is part of an otherwise eligible household. The owner must state the good cause in any eviction, lease non-renewal, or termination of tenancy notice. The tenant has the right to contest the eviction, lease non-renewal, or termination of tenancy in court.

5.04 Household Size

While IRS regulations do not specifically address occupancy requirements, Minnesota Housing encourages maximum utilization of space. Therefore, Minnesota Housing recommends that written occupancy policies be established that reflect maximum utilization. At least one person per bedroom is recommended as a minimum and *not less than* two persons per bedroom is recommended for a maximum. In situations where there is more than one qualified applicant for a unit, Minnesota Housing recommends giving preference to the household that is most suitable to the unit size. Owners should comply with federal, state, and local laws, regulations, and financing requirements (for example, if RHS, use RHS regulations).

5.05 Utility Allowance

The IRS requires that utility allowances be set according to Treas. Reg. 1.42-10 effective May 2, 1994, and amended July 29, 2008, as well as the Final Utility Allowance Treasury Regulations issued March 4, 2019. Please read these regulations carefully.

If a utility (other than telephone, cable television, or internet) is paid directly by the tenant, and not by or through the owner of the building, the gross rent includes a utility allowance (UA). If the costs of a particular utility are paid pursuant to an actual consumption submetering arrangement within the meaning of Treas. Reg. 1.42-10(e)(1), then that cost is treated as paid directly by the tenant and not by or through the owner. If all utilities are paid by the owner, the UA is zero.

UAs are applied individually to each building in the development. Therefore, depending on the development, an owner could have buildings in the same development using different UAs.

Annual Review

A building owner must review at least once during each calendar year the basis on which UAs have been established and must update the applicable UA. The review must take into account any changes to the building such as any energy conservation measures that affect energy consumption and changes in utility rates. It is the owner's responsibility to contact the appropriate organization to request current UA information. Minnesota Housing does not collect or maintain the various UAs. All costs incurred in obtaining a UA are the responsibility of the owner.

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

For all updated UAs, the new UA figures must be used to compute gross rents of the units due 90 days after the change. For example, if rent must be lowered because a local utility company estimate is

obtained that shows a higher utility cost than the otherwise applicable public housing authority (PHA) UA, the lower rent must be in effect for rent due at the end of the 90-day period.

For new buildings, owners are not required to review or implement new UAs until a building has achieved 90% occupancy for a period of 90 consecutive days or the end of the first credit year, whichever is earlier.

Regardless of the UA source, if a property has a submetering system, supporting documentation must include an Owner's Certification of Compliance with Utility Submetering Billing, a copy of a bill from each main meter, and a copy of a resident bill along with the formula used to convert main meter charges to individual tenant charges. Minnesota Housing will use this information to confirm the property has a qualified submetering system as required by Treas. Reg. 1.42-10. Refer to section 5.06 of this guide for more information.

Utility Allowance Sources

Treas. Reg. 1.42-10 lists the different sources of UAs for HTC developments:

- **USDA RHS financed projects:** If building receives assistance from the Rural Housing Service (RHS-assisted building), the applicable UA for all rent-restricted units in the building is the UA determined under the method prescribed by the RHS, whether or not the building or its tenants also receive other state or federal assistance.
- **Buildings with Rural Housing Service assisted tenants:** If any tenant in a building receives RHS rental assistance payments (RHS tenant assistance), the applicable UA for all rent-restricted units in the building (including any units occupied by tenants receiving rental assistance payments from HUD) is the applicable RHS UA.
- **Buildings regulated by HUD:** If neither a building nor any tenant in the building receives RHS housing assistance, and the rents and UAs of the building are regulated by HUD (HUD-regulated buildings), the applicable UA for all rent-restricted units in the building is the applicable HUD UA. Minnesota Housing considers HUD-regulated buildings to be those with Project-Based Section 8 contracts only.
- **Other buildings:** If a building is neither an RHS-assisted nor a HUD-regulated building, and no tenant in the building receives RHS tenant assistance, the applicable UA for rent-restricted units in the building may be determined under any of the following methods:
    - A PHA UA from the local housing authority administering Section 8 Vouchers for the area in which the property is located.
    - A utility company estimate. Any interested party (including a low-income tenant, a building owner, or an agency) may request the utility company estimation of utility consumption in the building's geographic area. The estimate is obtained when the interested party receives, in writing, information from a local utility company providing the estimated cost of that utility for a unit of similar size and construction for that

geographic area. Costs incurred in obtaining the estimate are borne by the initiating party. The party that obtains the local utility company estimate must retain the original of the utility company estimate and must furnish a copy to the owner and the monitoring agency. The owner of the building must make copies available to all tenants in the building. In the case of deregulated utility services, the interested party is required to obtain an estimate only from one utility company even if multiple companies can provide the same utility service to a unit. However, the utility company must offer utility services to the building in order for that company's rates to be used. The estimate should include all component deregulated charges for providing the utility service.

- An Average of Actual Consumption using the methodology described in the HUD published Multifamily Notice H-2015-4. This Notice provides instructions to owners and management agents of Section 8 and other HUD assisted properties for completing the required utility analysis. This analysis is also used for the USDA RHS program and allowed for HTC projects per Treas. Reg. 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.
- A HUD Utility Schedule Model (HUSM). This model can be found on HUD's Utility Analysis webpage. Utility rates using the HUD utility model must be no older than the rates in place 60 days prior to the beginning of the 90-day period before UAs can be used in determining the gross rent.
- An Energy Consumption Model (ECM) using an energy and water and sewage consumption and analysis model. The model must, at a minimum, take into account specific factors including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, characteristics of the building location, and available historical data. The utility consumption estimates must be calculated by a mechanical engineer properly licensed in the state of Minnesota or a Residential Energy Services Network (RESNET) certified Home Energy Rating System (HERS) rater. The engineer or HERS rater and building owner must not be related within the meaning of Internal Revenue Code, sections 267(b) or 707(b), to which the engineer or HERS rater and building owner must certify. The owner and engineer or HERS rater must also certify that the model complies with the minimum requirements described above. Use of an ECM is limited to a building's consumption data and local rates for the 12-month period ending no earlier than 60 days prior to the beginning of the 90-day period before UAs can be used in determining the gross rent. In the case of new buildings with less than 12 months of consumption data, 12 months of data can be used for units of similar size and construction in the geographic area.

- **Tenants receiving HUD rental assistance:** The applicable UA for any rent-restricted units occupied by tenants receiving HUD rental assistance payments (HUD tenant assistance) is the applicable PHA UA established for the Section 8 Existing Housing Program.

A completed Utility Allowance Information Form stating the proposed UA figures for each unit size must be completed for all UA types. Minnesota Housing will accept a copy of the UA as approved by the Section 8 Contract Administrator in lieu of completing the grid section of the UA Information Form.

For projects eligible to use the ECM, HUSM, or Average of Actual Consumption, a request must be submitted to Minnesota Housing at the beginning of the 90-day period before these UAs can be used in determining the gross rent. Owners may only change methodology once in a 12-month period. The request must include the following:

- Review fee. Refer to Multifamily Loan Programs and Housing Tax Credit Program Fee Schedule. Also refer to section 5.06 of this document for additional information on submeters.
- Completed and signed Utility Allowance Certification Form.
- Completed Utility Allowance Information Form stating the proposed UA figures for each unit size.
- Copy of owner's notice to residents and description of how residents were notified (for example, copy sent to each unit, posted in common areas and office). If the property is not yet occupied at the time the request is made, indicate when the property is expected to be occupied in the cover letter or email.
- Rate information from applicable utility companies using currently published rates no older than 60 days from notice to residents and Minnesota Housing. Highlight all applicable rates, riders, franchise fees, and other charges used to determine the UA.
- Completed HUSM Excel file or report generated from HUD's online HUSM tool; or
- ECM calculation methodology and workbook or report generated from the engineer's ECM modeling system demonstrating how the applicable rates, tariffs, and taxes were applied within the modeling; or
- Printout of applicable state and local tax rates from Department of Revenue's Sales Tax Calculator.
- For individually metered utilities where the resident pays the utility supplier directly (or as a pass-through to the owner who then pays the utility supplier), a copy of a recent resident utility bill showing all rates and charges from each source. Owners may need to require utility release authorization forms to obtain a copy of utility bills. For new construction where there is no bill, evidence of who the utility supplier(s) will be and, if electric is part of the UA, evidence of whether electric lines are overhead or underground.
    - For any submetered utilities either billed by the owner or the owner's third-party billing company, a signed Owner's Certification of Compliance with Utility Submetering Form, along with a copy of a recent utility bill from the utility supplier for each building's primary meter(s), a copy of a bill from the billing company to a resident for the same billing period, and a detailed description of how the charges on the resident's bill were calculated. Also refer to Section 6.06 of this document.

If requesting the Average of Actual Consumption, submit items 1-4 above and the required items as stated in Multifamily Notice H-2015-4.

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

Once the initial UA has been approved, the owner must update the UA at least once during each calendar year based on updated rate information, but submission to Minnesota Housing is not required. UA and source documentation will be reviewed as part of the inspection of administrative records.

The owner must also notify tenants of updated ECM, HUSM, or Average of Actual Consumption UAs and make the data upon which the UA is calculated available for inspection by the tenants at the beginning of the 90-day period before the effective date. Records must be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling unit of the tenant, at the convenience of both the apartment owner and tenant. This is required for an initial change to these three methods and for all annual updates.

Any correction to the UA figures that results in a decrease to the UA after the resident notice is issued requires a new notice and will re-start the 90-day period. If utility rates have changed since the original notice was issued the new rates must be used.

With the exception of HUD and RD-regulated properties, owners may combine any methodology for each utility service type (electric, water gas etc.). For example, if residents are responsible for electricity and water, an owner may use the appropriate PHA allowance to determine the water portion of the allowance and use the Average of Actual Consumption to determine the electric portion of the allowance. Be advised, however, that the effective date of the PHA allowance will likely be different than the Average of Actual Consumption resulting in adjustments to UAs and potential reduction in rents multiple times during the year.

5.06 Submetering and Renewable Energy

IRS Notice 2009-44 clarified that effective July 29, 2008, under Treas. Reg. 1.42-10, utility costs paid by a tenant based on actual consumption in a submetered, rent-restricted unit are treated as paid directly by the tenant. Submetering measures tenants' actual utility consumption, and tenants pay for the utilities they use. A submetering system typically includes a main meter for the building, which is owned or controlled by the utility supplying the electricity, gas, or water, with overall utility consumption billed to the building owner. In a submetered system, building owners (or their agents)

use unit-based submeters to measure utility consumption and prepare a bill for each residential unit based on consumption. The building owners (or their agents) retain records of resident utility consumption, and tenants receive documentation of utility costs as specified in the lease.

An actual-consumption, submetering arrangement for a utility in a residential unit must meet the definition as stated in Treas. Reg. 1.42-10 (e), including:

- The tenants in the unit are billed for and pay the owner (or its agent) for the unit's consumption of the utility.
- The billed amount reflects the unit's actual consumption of the utility. In the case of sewerage charges, however, if the unit's sewerage charges are combined on the bill with water charges and the sewerage charges are determined based on the actual water consumption of the unit, then the bill is treated as reflecting the actual sewerage consumption of the unit.
- The utility rates charged to tenants in each submetered, rent-restricted unit must be limited to the utility company rates incurred by the building owners (or their agents). If building owners (or their agents) charge tenants a reasonable fee for the administrative costs of submetering, then the fee will not be considered gross rent under Section 42(g)(2). The fee must not exceed an aggregate amount per unit of the greater of (i) five dollars per month; (ii) an amount (if any) designated by publication in the Internal Revenue Bulletin (IRB); or (iii) the lesser of the amount (if any) specifically prescribed under state or local law or a maximum amount (if any) designated by publication in the IRB.

Treas. Reg. 1.42-10 provides that if an owner provides utilities through a renewable energy source, the rate charged to the tenant for the renewable energy cannot exceed the rate at which the local utility company would have charged for the utility if that entity had provided it to them. A utility is produced from a renewable source if (1) it is produced from energy property described in section 48, (2) it is energy produced from property that is part of a facility described in section 45(d)(1) through (4), (6), (9), or (11), or (3) is a utility described in guidance published for this purpose in the IRB. In addition, Minnesota Housing requires owners to comply with the certification statements listed in the Owner's Certification of Compliance with Submetering Billing.

5.07 Physical Requirements of Qualified Units Suitable for Occupancy

Qualified units rented to, or reserved for, eligible tenants:

- Must have substantially the same equipment and amenities (excluding luxury amenities such as a fireplace) as other units in the project;
- Must be substantially the same size as other units in the project;
- Cannot be geographically segregated from other units in the project; and
- Must be suitable for occupancy under HUD's National Standards for Physical Inspection of Real Estate (NSPIRE) and local health, safety, and building codes.

Units that are not suitable for occupancy, including previously qualified low-income units being rehabilitated in the first year of the credit period, are considered out of compliance. The noncompliance is corrected when the unit is again suitable for occupancy, and the unit's character will be determined based on the household that occupied the unit immediately preceding the rehabilitation.

NSPIRE does not supersede or preempt local health, safety, and building codes. An HTC development must also satisfy the local standards.

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

Refer to section 1.09 of the Legal Addendum and the QAP for Minnesota Housing's Fair Housing Policy and requirements of the Fair Housing Act and Minnesota Human Rights Act.

The Fair Housing Act also mandates specific design and construction requirements for multifamily housing built for first occupancy after March 13, 1991, to provide accessible housing for individuals with disabilities. Anyone with questions regarding accessibility requirements should review HUD's Fair Housing Act Design Manual.

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

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 applied to all housing providers, including owners and managers of HTC properties. In response, Minnesota Housing prepared Tenant Selection Plan (TSP) guidelines that identify best practices forTSPs. The TSP guidance is recommended for all HTC properties but is required for all HTC projects selected after March 31, 2021. The guidelines contain 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. Note that various funding sources and jurisdictions may impose other tenant selection plan requirements. Owners and managers should consult with an attorney to ensure your TSP complies with program requirements, the Fair Housing Act, and the Minnesota Human Rights Act.

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 should be used in all advertising of vacant units:

"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."

Owners must develop and implement an Affirmative Fair Housing Marketing Plan (AFHMP) in accordance with HUD and Minnesota Housing requirements. Owners must regularly review and update the AFHMP and use affirmative fair housing marketing practices in soliciting renters, determining eligibility, and concluding all transactions. Affirmative marketing includes actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status (persons with children under 18 years of age, including pregnant women), or disability. A file must be maintained with all marketing efforts related to the property including newspaper ads, social service contacts, photos of signs posted, etc. Records will be reviewed during on-site monitoring to determine adequate documentation of compliance with federal requirements.

In accordance with the Violence Against Women Reauthorization Act of 2013 (VAWA), tenant selection criteria cannot deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking. Refer to section 5.14 of this guide for more information about VAWA.

Review the Affirmative Fair Housing Marketing Plans (AFHMP) section of Minnesota Housing's Documents, Forms and Resources webpage for more information. An online AFHMP Toolkit is available to assist in creating the AFHMP.

For Use by the General Public

Under Treas. Reg. 1.42-9(b), the IRS also requires that HTC properties be otherwise available to the general public. A residential rental unit is for use by the general public if the unit is rented in a manner consistent with housing policy governing non-discrimination, as evidenced by rules or regulations of HUD (24 C.F.R. subtitle A and chapters I through XX).

If a residential unit is provided only for a member of a social organization or provided by an employer for its employees, the unit is not for use by the general public and is not eligible for credit under Section 42. Residential rental units either designated for a single occupational group, or through a preference for an occupational group, also violate the general public use requirements.

Additionally, any residential rental unit that is part of a development that provides continual or frequent medical, psychiatric, or nursing services within the meaning of Treas. Reg. 1.42-11(b)(2) or that is a hospital, nursing home, intermediate-care facility, or a similar facility within the meaning of Treas. Reg. 1.42-9(b) is not for use by the general public and is not eligible for HTCs.

Note that the General Public Use Rule was clarified on July 30, 2008, to allow occupancy restrictions or preferences that favor tenants 1) with special needs, 2) who are members of a specified group under a federal or state program or policy that supports housing for such specified group, or 3) who are involved in artistic or literary activities.

5.09 Vacant Units

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

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

The Vacant Unit Rule is the subject of IRS Revenue Ruling 2004-82, Answering 12 Questions About Low-Income Housing Credit Under IRC Section 42 (refer to questions #8, #9, and #10), published August 30, 2004. The IRS Revenue Ruling clarifies that an owner may not move a household from building to building to qualify more than one unit in a property (question #8); that "reasonable attempts" are customary methods of advertising apartment vacancies in the area of the property for identifying prospective tenants and may include, but are not limited to, displaying a banner and for-rent signs at the entrance to the property, placing classified advertisements in local newspapers, and contacting prospective low-income tenants on a waiting list for the property and on a Section 8 and public housing waiting list with the local PHA (question #9); and that a unit is not an available vacant unit if the unit is no longer available for rent due to contractual arrangements that are binding under local law, such as a reservation entered into between the owner and a prospective tenant (question #10).

5.10 Other Stipulations

An owner or a person related to the owner may reside in a building if it contains five or more units. If a building contains four or fewer units, an owner, or a person related to the owner, occupying a unit in the building would cause the building to be in noncompliance, unless the building is acquired and rehabilitated pursuant to a development plan sponsored by the state or local government or qualified nonprofit organization.

5.11 Student Eligibility

Under Section 42, most households where all members are full-time students are not eligible, and units occupied by these households may not be counted as HTC units. Internal Revenue Code, section 151(c)(4) defines student as an individual who, during each of five calendar months during the calendar

year in which the taxable year of the taxpayer begins, is a full-time student at an educational organization described in Internal Revenue Code, section 170(b)(1)(A)(ii). Treas. Reg. 1.51-3(b) further provides that the five calendar months need not be consecutive.

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

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

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

- Students are married and entitled to file a joint tax return. A married couple that is entitled to file a joint tax return, but has not filed one, still satisfies the exception.
- The household consists of a single parent with child(ren) and the parent is not a dependent of someone else, and the child(ren) is/are not dependent(s) of someone other than a parent.
- At least one member of the household receives assistance under Title IV of the Social Security Act (formerly Aid to Families with Dependent Children (AFDC), now known as Temporary Assistance for Needy Families (TANF) or, in Minnesota, the Minnesota Family Investment Program (MFIP)).
- At least one member of the household participates in a program receiving assistance under the Job Training Partnership Act (JTPA) or other similar federal, state, or local laws.[5]

[5] The JTPA Program was repealed in 1998 and replaced with the Workforce Investment Act (WIA). In 2014, the WIA was replaced with the Workforce Innovation and Opportunity Act (WIOA). WIOA (and JTPA when it existed) funds programs such as adult literacy, English as a second language, General Education Diploma (GED) courses, vocational services for the blind, employment and training programs for Native Americans and migrant and seasonal farmworkers, job corps, veterans employment programs, summer youth employment and training, employment and training for dislocated workers and displaced homemakers, etc. Students in those programs are eligible for the JTPA exemption provided the school or community education department verifies that the applicant/tenant is a participant in a program similar to those funded under JTPA (now WIOA). Visit the U.S. Department of Labor's WIOA Workforce Programs webpage for a list of WIOA programs.

- At least one member of the household was previously in foster care.[6]

To properly document student eligibility, all households must complete an Annual Student Certification (Form HTC 35) as part of the initial certification and annually thereafter. Properties that are 100% tax credit qualified and not required to recertify income are not exempt from this annual requirement. Note this is a required form.

Verification also must be obtained, when applicable, to support the full or part-time student status (use the Student Status and Financial Aid Verification Form) and the applicable exemptions(s) (for example, tax return, marriage certificate, verification of participation in JTPA or similar program, verification of MFIP income, or verification from the state agency of previous participation in foster care). Refer to Chapter 6 of this guide for information regarding student financial assistance as it relates to income.

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

5.12 Loss of Eligibility Upon Becoming a Full-Time Student

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

5.13 Unit Transfers

The IRS considers each building in a property to be a separate project unless the owner elects to treat certain buildings as part of a multiple-building project. Owners make the election for multiple-building projects on Part II, line 8b of IRS Form 8609. Owners must also report their single- or multiple-building

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

election in the BIN pages of PORT. Refer to section 2.02 of the PORT User Guide for more information. Until Minnesota Housing becomes aware of an owner's election, Minnesota Housing will treat the property as if all buildings are separate projects.

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

Managers of properties containing buildings treated as separate projects must obtain copies of the owner-filed IRS Form 8609 and use caution when determining if a transfer or move-out/move-in applies.

Transfer Within Same Building

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

Transfer to Different Building/Same Project

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

Example 1: Transfer to different building/same project. ABC Acres consists of building A and building B. Owner has elected to treat buildings A and B as part of a multiple-building project. If a household moves from building A to building B, it is a unit transfer.

Example 2: Move-out/move-in to different building/different project. XYZ Apts. consists of building 1 and building 2. Owner has not elected to treat buildings 1 and 2 as part of a multiple-building project. Even though the two buildings are both part of XYZ Apts., and are located next door to each other, if a household moves from building 1 to building 2, it is reported as a move-out for building 1 and a new move-in requiring a new initial certification for building 2.

Properties Electing the AIT Minimum Set-Aside

The above guidance regarding unit transfers also applies to properties electing the AIT, but the unit designations also swap status. For example, if a qualified household in a 40% designated unit transfers to a unit designated as a 70% unit, the newly vacated unit becomes a 70% designated unit and the unit the household moves into becomes a 40% designated unit. If a qualified household in a 50% designated unit transfers to a market-rate unit, the newly vacated unit becomes a market rate unit and the unit the household moves into becomes a 50% designated unit. Review the Unit Redesignation for Projects Electing the Average Income Test Minimum Set-Aside subsection in section 6.01 for more information.

Minnesota Housing's Documentation of Unit Transfer Form can be used to assist in documenting when a unit transfer occurs, and the status of the units involved.

5.14 Violence Against Women Act

The Violence Against Women Reauthorization Act of 2022 (VAWA 2022) continues to include the HTC Program as a covered program. The amendments that VAWA 2022 makes to the Housing Rights Chapter of VAWA build on the 2013 and 2016 amendments to strengthen VAWA's housing protections for survivors of domestic violence, dating violence, sexual assault, and stalking (collectively referred to as survivors). Owners have a legal obligation to comply with the statutory requirements found in VAWA.

VAWA 2022 enhances housing protections for survivors applying for and assisted under covered housing programs by authorizing HUD to enforce the law by the same process – and with the same rights and remedies – as the Fair Housing Act. Such rights include filing a discrimination complaint with HUD to investigate the allegations.

An applicant for or tenant of housing assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy. They also have the right to request an emergency transfer for safety reasons related to violence. VAWA 2022 ensures the right to call 9-1-1 without fear of losing housing, and it prohibits retaliation by housing providers for exercising VAWA rights or assisting others in doing so. These protections apply regardless of sex, gender identity, or sexual orientation.

To comply with the core statutory provisions of the law, owners/agents must provide and distribute the following forms to applicants/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
- With any notice of lease non-renewal or termination of tenancy

If existing residents were not already provided HUD Forms 5380 and 5382, owners must provide a copy of each during their next annual recertification, lease renewal, or by other means.

Owners must also develop and implement an Emergency Transfer Plan using HUD's model Forms 5381 and 5383. The emergency transfer plan allows for survivors to move to another safe and available unit if they fear for their safety. Owners should be mindful of unit transfer rules outlined in section 5.13 of this guide when making their plan.

Owners must be familiar with the statutory requirements impacting their developments and consult with their legal counsel as needed. Also refer to HUD Notice H 2017-05 (Violence Against Women Act (VAWA) Reauthorization Act of 2013 – Additional Guidance for Multifamily Owners and Management Agents) for valuable definitions and examples of how to fully implement VAWA protections. Also refer to HUD, Multifamily Housing, Memo Housing Provisions of the Violence Against Women Act Reauthorization Act of 2022 (March 10, 2023).

Find VAWA Forms 5380, 5381, 5382, and 5383 on HUDClips5. Find VAWA lease addendum 91067 on HUDClips9. Should owners/agents customize the forms for use, they must maintain the base information and language. Beginning in 2025 leases must also include the Minnesota Housing Attachment to VAWA Lease Addendum (not required for units with Project-Based Section 8 using the HUD model lease).

Owners may bifurcate leases to evict or terminate tenancy of the perpetrator and continue housing the survivor if the survivor is or is part of an otherwise eligible household.

Chapter 6 – Income Determinations

According to the Trea. Reg. 1.42-5 for the HTC Program, "Tenant income is calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 ("Section 8"), not in accordance with the determination of gross income for federal income tax liability." The Housing Opportunities Through Modernization Act (HOTMA) was signed into law on July 29, 2016 (Public Law 114–201, 130 Stat. 782). The HOTMA statute consists of 14 sections of law that affect the Public Housing and Section 8 rental assistance programs. On September 17, 2019, HUD issued a proposed rule to update its regulations according to HOTMA's statutory mandate. The proposed rule may be found at 84 F.R. 48820 (September 17, 2019). Sections 102 and 104 of HOTMA make sweeping changes to the United States Housing Act of 1937 (1937 Act), particularly those affecting income calculations and reviews. For guidance on HOTMA implementation, refer to HUD Notices 2023-10 and 2024-9, and any successor guidance found on HUD's HOTMA webpage.

For guidance in the determination of tenant income, HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs (HUD Handbook) is used as a reference. HUD Handbook 4350.3 and HUD notices can be obtained by calling 1.800.767.7468 or by visiting HUD's Occupancy Requirements of Subsidized Multifamily Housing Programs webpage. Note that as of the publication of this compliance guide, the HUD Handbook has not been revised to reflect changes resulting from HOTMA.

For purposes of this Chapter 6, the terms family and household use the definition in HUD Notice 2023-10. Some rental agents attempt to establish only that an applicant has sufficient income to support monthly rent payments; however, tax credit projects are both rent restricted and income restricted. Therefore, if a rental agent intends to include an applicant as an HTC eligible tenant, i*ncome from all required sources must be verified and included in the income calculation.*

6.01 Income Certification/Recertification

It is the owner's responsibility to select and rent to qualified households. Minnesota Housing will not qualify or approve applicants for eligibility.

Applicants for rent-restricted units should be advised early in the application process of the maximum income limits that apply. Management should explain to all applicants that the anticipated income of all family members must be disclosed and verified and that full-time student households may be ineligible if they do not meet one of the Section 42 student exemptions.

Initial Eligibility Determination

Before approving a household for occupancy, owners must determine that the household will cause the unit to be a qualifying HTC unit (if a property is already occupied, refer to the Special Instructions

for Newly Placed in Service Properties with Existing Residents subsection below). The qualification process has three phases:

1. **Application and disclosure of household composition, student status, income, and assets:** A detailed application is critical to determining eligibility and is considered supporting documentation to the TIC. Minnesota Housing's Sworn Statement of Income and Assets Form is designed to collect the necessary information. Owners may collect additional information for screening purposes according to their TSP. The Annual Student Certification should be completed during the application process.
2. **Verification:** The owner/agent must verify all sources of income and assets following HUD's order of acceptability. Owners may accept a Self-Certification of Assets in lieu of third-party verifications if combined net family assets do not exceed the applicable HUD-published amount of net assets for which the owner may accept self-certification. HUD adjusts this amount annually based on inflation; refer to HUD's Annual Inflationary Adjustments and Passbook Rate webpage for the current figure. Where applicable, owners must verify any student exemption claimed on the Annual Student Certification.
3. **Certification:** After all verifications are received and any applicable follow-up conducted, the owner must calculate income and income from assets based on information provided on the verification forms and complete the TIC.

Unit Designations for Projects Electing the Average Income Test Minimum Set-Aside

For new projects electing the AIT minimum set-aside, the initial income and rent designation of each unit must be made no later than when a unit is first occupied as a low-income unit. For AIT projects placed in service on or before December 31, 2022, occupied HTC units are considered designated on January 1, 2023, based on the owner's existing designation. For AIT projects placed in service after December 31, 2022, vacant units must be designated before the move-in of a low-income household. For all AIT properties, when leasing units, owners must complete a TIC that is consistent with each unit's respective income and rent limit designation. Minnesota Housing will consider the owner to have designated a unit based on the highest MTSP that is recorded on page 2 of the TIC.

Special Instructions for Newly Placed in Service Properties with Existing Residents

Acquisition/Rehabilitation: For occupied units at the time of acquisition, an initial TIC may be completed up to 120 days after the date of acquisition using the income limits in effect on the day of acquisition. All verifications must be received, and the TIC must be fully completed, signed, and dated within that 120-day period for the effective date of the TIC to be the acquisition placed in service date (PIS date). This is the only exception to the general rule that all verifications must be completed prior to the effective date of the TIC. This exception does not apply if any verifications are received later than 120 days or any part of the TIC is completed or signed after the 120-day period. In that case, the effective date will be the date the last adult member of the household signs the TIC form.

Rehabilitation-Only Properties: the initial certification may be completed any time on or after the rehabilitation PIS date. The move-in date on the TIC may be the actual move-in date or the rehabilitation PIS date. The effective date is the date on which the TIC is fully completed, signed, and dated.

Properties with an Existing Allocation of HTCs that Receive an Additional Allocation: Households determined to be income-qualified for purposes of the HTC Program during the 15-year compliance period *may be* concurrently income-qualified households for purposes of the extended use period. As a result, if all Section 42 requirements are met, including qualified student status, verifying income and assets for annual recertification for mixed-income properties, rules regarding unit transfers, etc., any household determined to be qualified at the time of move-in for purpose of the extended use period is a qualified low-income household for any subsequent allocation of HTCs. If the new allocation is for rehabilitation only, vacant units will continue to be treated as low-income units subject to the vacant unit rule. If the new allocation is for acquisition and rehabilitation, vacant units lose their status as low-income units until they are occupied by qualified households that are properly certified.

Annual Recertification

Each year, owners must recertify HTC households to maintain continuing compliance. Annual recertification may or may not involve recertifying income:

- **All Projects:** The Annual Student Certification (MHFA HTC 35) and any applicable supporting documentation for exemptions is required annually, no later than the anniversary of the initial certification.
- **Mixed-Income Projects:** Owners of mixed-income projects are required to recertify income annually to determine whether the available unit rule has been triggered (see section 6.02 of this guide for more information). Income recertification must be performed in accordance with the verification requirements for an initial certification. The recertification process should begin 120 days prior to the anniversary date of the previous certification.
- **100% HTC Projects:** Effective January 1, 2009, annual income recertifications are not required for 100% low-income projects. A project is 100% low-income when the allocation was based on all units in the project (common space units are not part of the equation) and all units are occupied by qualified households. It is essential that each initial certification in a 100% low-income project be done very carefully and thoroughly. If a TIC has insufficient documentation of gross annual household income or it is determined for any reason that one or more households do not qualify, the owner must resume conducting annual income recertifications until 100% of the units are back in compliance.

Important Reminder: The IRS considers buildings to be separate projects unless the owner elects to treat certain buildings as a multiple-building project. Owners make the election for multiple-building projects on Part II, line 8b of IRS Form 8609. Minnesota Housing will treat the property as if all

buildings are separate projects until the owner notifies Minnesota Housing of a multiple-building election. Managers of properties containing some 100% buildings and some mixed-income buildings must obtain copies of the filed IRS Forms 8609 and use caution when determining if 100% buildings are exempt from recertification. If 100% buildings are part of a multiple-building project that includes mixed-income buildings, the 100% buildings do not qualify for the exemption. If the 100% buildings are treated as a separate project or are part of a multiple-building project that contains only 100% HTC buildings, then they do qualify for the exemption.

Example 1: Recertification exemption does not apply. A property consists of building A (100% HTC) and building B (mixed-income). Owner has elected to treat buildings A and B as part of a multiple-building project. Building A is not exempt from recertification because the project is not 100% HTC.

Example 2: Recertification exemption applies but only to certain buildings. A property consists of building A (100% HTC) and building B (mixed-income). Owner has not elected to treat buildings A and B as part of a multiple-building project. Building A is exempt from recertification because it is a 100% project. Because building B is mixed-income, annual income recertifications must be completed for building B.

Example 3: Recertification exemption applies but only to certain buildings. A property consists of building A (100% HTC), building B (mixed-income), building C (100% HTC) and building D (mixed-income). Owner has elected to treat buildings A and B as part of a multiple-building project. Owner has elected to treat buildings C and D as separate projects. Building A is not exempt from recertification because the project is not 100%. Building C is exempt from recertification because it is a separate 100% project. Because building D is mixed-income, annual income recertifications must be completed for building D.

Example 4: Recertification exemption applies. A property consists of building A (100% HTC) and building B (100% HTC). Regardless of whether the owner elected to treat buildings A and B as separate projects or as part of a multiple-building project, both building A and building B are exempt from annual income recertification.

The recertification exemption applies only to the HTC Program. Units funded by certain other programs (for example, tax-exempt bonds, HOME, National Housing Trust Fund, Section 8, MARIF) have income recertification requirements that must be met separately.

All owners are advised to read IRS Revenue Procedure 2003-82, which became effective November 24, 2003. This revenue procedure provides safe harbors under which the IRS will treat a residential unit in a building as low income if the household income has been certified as eligible in the year before the first credit year, but household income exceeds the income limit at the beginning of the first taxable year of the credit period. Revenue Procedure 2003-82 was issued as a result of questions from taxpayers regarding when individuals must satisfy the applicable income limit when they move into an existing building (or are existing residents) on or after the date a taxpayer acquires a building to be

rehabilitated, but before the beginning of the first credit year. Because of those questions, some taxpayers required that the household income not exceed the applicable income limit at the beginning of the first credit year, even though the household income was below the income limit when the household moved into the unit (or was initially certified). This has resulted in some households being evicted, where permissible under local law, from HTC properties.

Note that the purpose of Revenue Procedure 2003-82 is to provide taxpayers protection from challenges by the IRS on this issue. Testing for application of the available unit rule referred to in the Revenue Procedure consists of confirming with the household(s) that the sources and amounts of anticipated income included on the TIC are still current. If additional sources or amounts are identified, the TIC must be updated based on the household's documentation. It is not necessary to complete third-party verifications. Minnesota Housing is not required to monitor for compliance with Revenue Procedure 2003-82.

Addressing Noncompliance due to Late Certification or Insufficient Documentation in Tenant Files

The IRS and Minnesota Housing expect that owners will conduct timely and proper certifications as discussed above. An initial TIC that is not fully completed on or before the date a household moves into a unit causes the unit to be out of compliance. This includes supporting documentation in the form of the household's income and asset disclosure, all required verifications, signed and dated TIC, and Annual Student Certification. The unit is out of compliance for over income and/or ineligible full-time student from the move-in date to the last signature on the TIC and/or student certification. However, if an applicant is unable to sign the TIC timely due to extenuating circumstances beyond their control, the owner must document the attempts to obtain signature, the reason for the delay, and the plan for how and when the proper signature will be provided in the tenant file. If the tenant file contains such documentation, a "true and correct as of" statement is unnecessary when the tenant does sign. Failure to follow up with the tenant to obtain the signature when indicated in the documentation may result in noncompliance.

If an initial certification or annual recertification was not properly or timely documented, the noncompliance can be addressed as follows:

1. Owner can perform a new (re)certification using current income and asset sources, student status, and current income limits. Assuming the household is eligible, the unit would be out of compliance on the date of move in or when the recertification was due and back in compliance on the date the new TIC and student certification are signed by all parties; or
2. Owner can perform a retroactive (re)certification which completely and clearly documents the sources of income and assets (and/or student status) that were in place at the time the (re)certification should have been effective and applies income and rent limits that were in effect on that date. All supporting documents, including the Sworn Statement of Income and

Assets and verifications as well as any clarification records must contain information reflective of the intended effective date. Calculating gross annual household income based on income, asset, or other data that occurred after the intended effective date will render the certification late or unacceptable, not retroactive, regardless of any "true and correct as of" statement. When requesting income or asset verification directly from the source, make it very clear that the information requested must be information that was known and in effect for the intended effective date. It may help to contact third parties directly to explain what is needed from them before sending verification forms. Any documents signed by residents that are intended to apply retroactively must be signed and dated using the current date (no back-dating). The head of household must add their initials and the current date next to a statement such as, "This certification is true and correct as of (inserting the intended effective date)," below the signatures on the TIC form and HTC35 Annual Student Certification. While retroactive (re)certifications are allowed, they must not be done routinely. Owners may be subject to serious risks if a household is determined to not be income eligible after they have been allowed to occupy a unit or if the owner has unknowingly violated the available unit rule.

If an owner sends timely notice that an annual recertification is due, but the household does not cooperate with the recertification process because they gave notice to vacate the unit (or vacated without notice), the unit will not be considered out of compliance. Owners must document the file regarding attempts to timely obtain the recertification and the date the household moves out of the unit. This must also be disclosed on the Owner's Certification of Continuing Program Compliance. For further information on how Minnesota Housing will review and report noncompliance, refer to the 8823 Guide. Search for "Household Vacates Unit."

If an owner takes timely action to enforce annual recertification or student status requirements of its lease for a noncompliant household, the unit will not be considered out of compliance. If the household does not vacate the unit (that is, court does not grant the unlawful detainer), a recertification will be required within 120 days of the determination.

Unit Redesignation for Projects Electing the Average Income Test Minimum Set-Aside

Treas. Reg. 1.42-19 allows owners to change a unit's income and rent designation in the following circumstances, provided that the owner designates the new limit in the same taxable year that the change occurs and otherwise follows the rules of 1.42-19:

- **Federally permitted changes:** If permission for the change is contained in IRS forms, instructions, or guidance published in the Internal Revenue Bulletin.
- **As the housing credit agency permits:** In accordance with Treas. Reg. 19(d)(ii), Minnesota Housing permits changes in circumstances other than those listed in Treas. Reg. 19(d)(i) and 19(d)(iii)-(v) as follows:

    - Owners may establish a written policy and procedure regarding the circumstances under which it would redesignate an occupied unit to a different income and rent limit than currently designated. Redesignations in compliance with that policy and procedure are permitted. Owners may redesignate an occupied unit to a lower income and rent limit designation for any reason if the household is qualified for the lower income limit.
- **As appropriate to other laws:** A change in designation is permissible when the change is required or appropriate to enhance protections contained in the following, as amended:
    - The Americans with Disabilities Act of 1990 (ADA)
    - The Fair Housing Amendments Act of 1988 (FHA)
    - The Violence Against Women Act of 1994 (VAWA)
    - The Rehabilitation Act of 1973 (section 504)
    - Any other state, federal, or local law or program that protects tenants and that is identified by the IRS or Minnesota Housing.
- **As households transfer:** If a current income-qualified resident moves to a different unit in the same building or project. Refer to section 5.13 of this guide for additional information on unit transfers.
- **To address noncompliance with AIT minimum set-aside or project average:** When an event occurs that causes a previously qualifying group of units identified for either the minimum set-aside or the applicable fraction to no longer be described in Treas. Reg. 1.41-19(b)(2)(ii), redesignation may be allowed. This is limited to units that are vacant or are occupied by a household that would satisfy the new lower imputed income limitation. However, if an issue is not discovered and corrected within the taxable year that the problem occurs, owners may not retroactively redesignate units for the closed tax year. Note that rent may need to be lowered to avoid noncompliance with rent limits. Such correction may also include adding or removing units to the qualified group of units to achieve an average of imputed income limitations at or below 60% MTSP.
    - Any correction or retroactive correction to designations must be made within 180 days of discovery by the owner or Minnesota Housing. If discovered by the owner, the issue and owner's intended corrective action must be promptly reported to Minnesota Housing's assigned compliance officer to benefit from this discretionary correction period. On a case-by-case basis, and only if waived within 180 days of discovery, Minnesota Housing has the discretion to waive in writing a failure to comply with the requirements of Treas. Reg. 1.42-19(c)(1) or (2) or (c)(3)(iv), subject to any restrictions under Treas. Reg. 1.42-19 or subsequent IRS published regulations or guidance. Minnesota Housing does not have authority to waive the prohibition of retroactive designation for a prior taxable year, nor to allow a change to a unit's imputed income limitation except as permitted in Treas. Reg. 1.42-19(d).

When redesignating an occupied unit, a new initial certification must be completed if the household's income on the original initial certification would not qualify the household for the new designation. For

mixed-income properties, use the household income from the most recent annual recertification to make this determination. A new certification is not necessary for unit transfers within a building or within the same multiple-building project when unit designations swap status.

6.02 Available Unit Rule

Following initial certification, an eligible household whose income exceeds the maximum income level by more than 140% (an over-income household) will remain in compliance if the unit continues to be rent restricted and the next available unit or any available unit of comparable or smaller size in the same building is rented to an eligible household at the qualifying rent. The owner must continue to rent any available comparable unit to a qualified household until the percentage of low-income units in a building (excluding the over-income units) is equal to the percentage of low-income units on which the credit is based. At that point, failure to maintain the over-income units as low-income units has no immediate significance.

If an owner elects the AIT, a low-income unit will be considered over-income if the household's income exceeds:

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

Under the AIT, an over-income unit ceases to be a qualified low-income unit if any unit of a comparable or smaller size in the building is rented to a new household whose income exceeds the applicable imputed income limit. The applicable imputed income limitation depends on whether the unit being occupied was a low-income unit before becoming vacant. If the unit being occupied was previously considered a low-income unit prior to becoming vacant, then the applicable imputed income limitation is the limitation designated prior to the unit becoming vacant. If the unit was not previously occupied by a low-income household (a market-rate unit), then the owner designates the income limit such that the project continues to meet the Average Income Test. In other words, if the comparable or smaller vacant unit is an HTC unit, rent the unit based on the existing income designation of the vacant unit. If the comparable or smaller vacant unit is market rate, rent the unit based on the income designation of the over-income unit. If multiple units with different income designations trigger the available unit rule, owners are not required to rent available units in any specific order. See Treas. Reg. 1.42-15(c)(2)(ii).

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

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

6.03 Changes in Household Composition

For all properties, prior to a change in household composition within the first six months of occupancy, owners or managers must certify the household, including any new member, as if it were a new move-in. This requirement to certify does not apply in cases of natural changes such as birth, adoption, or death, or in cases covered under the Violence Against Women Reauthorization Act of 2013 (VAWA). If the family does not qualify, the owner should deny the change until at least six months of occupancy has been achieved. The purpose of this rule is to avoid intended manipulation of move-in eligibility. Anticipated changes to household composition should be disclosed at the time of move-in and accounted for in the original TIC.

After six months of occupancy, the addition of a person to a low-income unit requires the income certification for the new member, including income and asset verification and Annual Student Certification, prior to occupancy. The new member's income is added to the income disclosed on the most recent TIC (this may be the initial TIC for 100% low-income properties not subject to annual income recertification). This new certification is an "Other Cert." The effective date of the Other Cert is the date the new member moves in. The household continues to be considered income-qualified; however, if the combined income exceeds 140% of the applicable income limit, owners must apply the available unit rule. Note that an Other Cert done in conjunction with adding a member does not reset the due date for the annual recertification. The annual recertification will be due on its regular anniversary date.

Minnesota Housing strongly recommends owners apply the same screening criteria as any new move-in (for example, credit check, landlord reference) prior to allowing a new member to occupy a unit and to add them to the lease at the time they move in.

Decreases in family size after the first six months of occupancy do not trigger an immediate income certification. Subsequent annual income recertifications will be based on the income of the remaining members of the household. A Documentation of Decrease in Family Size form can be found on Minnesota Housing's website to assist in documenting when the change occurs and who is being removed from a unit.

A household may continue to add and remove members as long as at least one member of the original low-income household continues to live in the unit. Once all original members have moved out of the unit, the remaining occupants must be income-qualified unless the remaining occupants were part of an income-qualified household at the time they moved into the unit. For this reason, managers must

document all decreases in household composition even where an annual income recertification is not required.

6.04 Tenant Income Certification Form

The TIC form is used to certify a project's eligible households. The TIC is a legal document that, when fully executed, certifies the tenant is qualified to live in an HTC unit and that the information is complete, true, and correct and that no false or misleading information has been provided. The TIC must be signed and dated by all family members over age 18 and by any members under age 18 who are treated as adults because they are the head of household, co-head, or spouse. The owner representative must also sign and date the TIC to certify that the household is qualified for the low-income unit and the rent complies with the rent limit. For these reasons the effective date cannot be earlier than the last signature date on the TIC form. As noted above, if an applicant is unable to sign the TIC timely due to extenuating circumstances beyond their control, the owner must document the attempts to obtain signature, the reason for the delay, and the plan for how and when the proper signature will be provided in the tenant file. If the tenant file contains such documentation, a "true and correct as of" statement is unnecessary when the tenant does sign. Failure to follow up with the tenant to obtain the signature when indicated in the documentation may result in noncompliance.

Supporting documentation (application/sworn income and asset statement, income verifications, asset verifications, student certification, clarification records etc.) is considered part of the TIC and must be included in each tenant file. An Income and Asset Calculation Worksheet form 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.

6.05 Government Data Practices Act Disclosure Statement Form

Owners will create, collect, receive, store, use, maintain, and/or disseminate tenant data subject to applicable data privacy laws and regulations, including the Minnesota Government Data Practices Act (MGDPA). As the monitoring agency, Minnesota Housing must review such tenant data.

To comply with MGDPA and other applicable law, Minnesota Housing requires that owners collect a signed and dated Government Data Practices Act (DPA) Disclosure Statement from all HTC families. Note that the DPA Disclosure Statement is *not* a release authorization for verification of income and assets and must not be used as such. The property name and each adult family member's name must be printed clearly at the top in the boxes provided. An unsigned and/or undated DPA Disclosure Statement is not valid and will be noted at the time of file inspection.

- The DPA Disclosure Statement may be signed one time and is valid for as long as the family lives at the property. If a family moves from one unit to another, the original signed and dated DPA Disclosure Statement should be moved to the file for the new unit. A copy should be kept in the file for the old unit.

- A valid DPA Disclosure Statement *must* include all relevant attachments. Some properties or units within a property may require two or more attachments for multiple programs. Each attachment contains Part A, which is data that must be disclosed as a condition of occupancy for the program(s) listed on the attachment, and Part B, which is data that is requested but is not a condition of occupancy.
- The head of household, spouse, co-head, and all family members over the age of 18 must sign and date the DPA Disclosure Statement.
- If an adult is added later or a minor reaches age 18, they can add their name, signature, and date to the existing DPA Disclosure Statement or complete a new DPA Disclosure Statement.
- A copy must be made available to the applicant/tenant. It is acceptable to provide an unsigned copy.
- For new applicants, provide the DPA Disclosure Statement with the initial application packet.

6.06 Annual Income

The HTC Program uses HUD's definition of annual income as contained in the U.S. Housing Act of 1937 as amended. HUD's definition of annual income is very specific and is not simply the amount contained on tax returns.

Annual income corresponds to gross income, with no adjustments (deductions) for child-care, medical expenses, dependents, etc. Adjusted income is used in some federal housing programs, such as Section 8 and Rural Development Section 515, to determine the level of benefit provided to a household. However, it is not used in the HTC Program.

For certifications and recertifications effective before HOTMA implementation, refer to HUD Handbook 4350.3 for a complete listing and discussion of earned/unearned income and asset income.

For certifications and recertifications conducted pursuant to HOTMA or when HUD requires HOTMA to be fully implemented, refer to the guidance below and HUD Notice 2023-10. Attachment F to Notice 2023-10 defines annual income to include all amounts received from all sources by each member of the family who is 18 years of age or older, the head of household, or spouse of the head of household, in addition to unearned income received by or on behalf of each dependent who is under 18 years of age. Annual income does not include amounts specifically excluded in paragraph (b) of 24 C.F.R. 5.609.

Factors that Affect Household Size for Income Limits

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

- **Foster adult:** A member of the household who is 18 years or older and meets the definition of foster adult under state law.

- **Foster child:** A member of the household who meets the definition of foster child under state law.
- **Live-in aide/attendant (live-in aide):** A person who resides with one or more elderly persons, near-elderly persons, or persons with disabilities, and who:
    - Is determined to be essential to the care and well-being of the person(s);
    - Is not obligated for the support of the person(s); and
    - Would not be living in the unit except to provide the necessary supportive services.

Change 4 to HUD Handbook 4350.3, published in 2013, required that foster adults and foster children be counted as household members for both income and occupancy purposes. With the implementation of HOTMA, foster adults and foster children are no longer considered in family size for income purposes but must be considered for unit size purposes.

A live-in aide qualifies for occupancy as a non-family member only as long as the individual needing supportive services requires the live-in aide's services and remains a tenant. The live-in aide will 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. While a relative may be a live-in aide they must meet the above requirements, or they must be treated as a family member and their income must be included.

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% or more of the time
    - If disputed, determine which parent claimed the children as dependents for purposes of filing a federal income tax return.
- Children who are away at school but who live with the family during school recesses
- Unborn children of pregnant women
    - When a pregnant woman is an applicant, the unborn child is included in the size of the household and may be included for purposes of determining the maximum allowable income. The rental application should ask, "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 to the tenant that 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 at a rehabilitation facility for periods of limited or fixed duration. These persons are temporarily absent as defined above
- 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 TIC 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.

Deployment of Military Personnel to Active Duty

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

- Allowing a guardian to move into the low-income unit on a temporary basis to provide care for any dependents the military person leaves in the unit. The guardian's income is not included in the household's income.
- Allowing a tenant living in a low-income unit to provide care for any dependents of persons called to active duty in the Armed Forces on a temporary basis as long as the head and/or co-head of the household continues to serve in active duty. Income of the dependent (for example, Supplemental Security Income (SSI) benefits, military benefits) is not included in the household's income.
- Allowing leases to remain in effect for a reasonable period without recertification (if required) depending on the length of deployment beyond that required by the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. 501-591, even though the adult members of the military family are temporarily absent from the unit.

Annual Income

Annual income has two components: Earned/unearned income and asset income.

Earned/Unearned Income + Income from Assets = Annual Income

If a particular type of income is not specifically mentioned as being excluded, then it is included in annual income. The following are examples of income that are included:

- The gross amount (before any payroll deductions) of wages and salaries, overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services of all adults in the household (including persons under the age of 18 who are the head, spouse, or co-head).
- Net income, salaries, and other amounts distributed from a business. This includes salaries received from a family-owned business.
- The gross amount (before any deductions for Medicare, etc.) of periodic Social Security payments. Include payments received by adults on behalf of individuals under the age of 18, or by individuals under the age of 18 for their own support.
- The full amount of periodic amounts received from annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts (for example, Black Lung Sick Benefits, Veterans Disability, Dependent Indemnity Compensation). The withdrawal of cash or assets from an investment received as periodic payments is counted as income.
- Delayed periodic payments received because of delays in processing unemployment, welfare, or other benefits.
- Payments in lieu of earnings, such as unemployment and disability compensation and severance pay.
- Recurring monetary or non-monetary contributions or gifts regularly received from persons not living in the unit. These sources may include rent, utility, other payments paid on behalf of the household, and other cash or non-cash contributions provided on a regular basis.
- All regular pay, special pay, and allowances of a member of the Armed Forces.
    - Note that until January 1, 2012, Basic Pay Allowance for housing is disregarded for properties located in a county that contains a qualified military installation to which the number of members assigned to units based out of the military installation as of June 1, 2008, has increased by 20% or more from December 31, 2005. This applies to the county that contains the military installation and also to adjacent counties. A qualified military installation is a military installation or facility with 1,000 or more members as of June 1, 2008.
- Welfare assistance.
- Alimony and child support. Alimony or child support paid by a member of the household is not deducted from income, even if it is garnished from wages.

Student Financial Assistance

Prior to HOTMA, all forms of student financial assistance (grants, scholarships, educational entitlements, work study programs, Bureau of Indian Affairs student assistance programs, and financial aid packages) were excluded from annual income except for students receiving Section 8 assistance.

For students receiving Section 8 assistance, all financial assistance a student received, 1) under the Higher Education Act of 1965, 2) from private sources, or 3) from an institution of higher education that is in excess of amounts received for tuition and any other required fees and charges (refer to HUD Notice H2015-12) was included in annual income except if the student was over the age of 23 with dependent children or living with parents receiving Section 8 assistance.

The primary difference between the Section 8 and HOTMA student assistance approaches are how the Higher Education Act of 1965 (HEA) assistance and money from private sources (such as parents and grandparents) are counted. Under HOTMA, HEA assistance is not counted as income, and money from private sources is gift income, not student financial assistance.

Income from Student Financial Assistance

The treatment of student financial assistance depends on the type of financial assistance received by the student. The student financial assistance rules apply to both full-time and part-time students.

The two types of student financial assistance applicable to HUD and HTC programs are described below:

1. **Amounts received under section 479B of the Higher Education Act (HEA) of 1965, as amended.** Section 479B of the HEA provides that certain types of student financial assistance are to be excluded in determining eligibility for benefits made available through federal, state, or local programs financed with federal funds. The list below of 479B programs was last updated as of July 1, 2024, and may not be exhaustive:
    - Federal Pell Grants
    - Federal TRIO and early outreach/student services programs
    - Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP)
    - Model Program grants (Community Partnership and Counseling Grants)
    - National Student Savings Demonstration grants
    - Federal Supplemental Educational Opportunity Grants (FSEOG)
    - Leveraging Educational Assistance Partnership grants
    - Special programs for migrant/seasonal farmworker families
    - Robert C. Byrd Honors Scholarships
    - Childcare Access Means Parents in School (CAPS) grants
    - TEACH Grants
    - Scholarships for veteran's dependents
    - Federal Family Education Loan (FFEL) programs
    - Federal Work-Study
    - William D. Ford Federal Direct Loans
    - Federal Perkins Loans
    - HEA Relief Opportunities for Students (HEROES Act adjustments)

- Higher Education Tribal Grant (formerly under the Bureau of Indian Affairs)
- Tribally Controlled Colleges or Universities Grant Program
- Workforce Innovation and Opportunity Act (WIOA) section 134 employment/training program (adult/dislocated worker workforce training)

2. **Other student financial assistance** includes grants or scholarships received from the following sources:
    - The Federal government
    - A state (including U.S. territories), Tribe, or local government
    - A private foundation registered as a nonprofit under 26 U.S.C. 501(c)(3)
    - A business entity (such as a corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, or nonprofit entity)
    - An institution of higher education

Other student financial assistance does not include:

- Financial support provided to the student in the form of a fee for services performed (for example, a work study or teaching fellowship that is not excluded under section 479B of the Higher Education Act HEA)
- Gifts, including gifts from family or friends

Other student financial assistance may be paid directly to the student or to the educational institution on the student's behalf. The owner must verify that other student financial assistance is for the student's actual covered costs.

The treatment of the two above-described types of student financial assistance is described below.

All assistance received under 479B of the HEA by students is excluded from income. Other student financial assistance received by the student that, either by itself or in combination with HEA assistance, exceeds the actual covered costs is not excluded from income.

Actual covered costs include tuition, books, supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, and fees required and charged to a student by an institution of higher education (as defined under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1087uu)). For a student who is not the head of household, co-head, or spouse, actual covered costs also include the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

The formula for calculating the amount of other student financial assistance that is excluded from income always begins with deducting the assistance received under 479B of the HEA from the total actual covered costs, because the 479B assistance is intended to pay the student's actual covered costs. This formula is illustrated below (this and other examples are in HUD Notice 2023-10,

Attachment G). Note that the Consolidated Appropriations Act, 2026 (H.R. 7148, Public Law 119-75) removed the exception for certain students receiving Section 8 assistance, so the Section 8 examples in HUD Notice 2023-10 no longer apply.

Example 1: Calculating Student Financial Assistance

Juan is a full-time student, and he received the following grants and scholarships to cover his first year of college: Federal Pell Grant: $25,000; University Scholarship: $15,000; Rotary Club Scholarship: $3,000.

- Total assistance received under 479B of HEA: $25,000 (Federal Pell Grant)
- Total other student financial assistance received: $18,000
- Juan's actual covered costs: $28,000

Step 1: Determine amount of actual covered costs exceeding section 479B assistance.

$28,000 (actual covered costs)
- $25,000 (total assistance received under 479B of HEA)
= $ 3,000

Step 2: Determine amount of student financial assistance to include in income.

$18,000 (other student financial assistance received)
- $ 3,000 (actual covered costs exceeding section 479B assistance)
= $15,000 (if negative, then use $0)

Amount of student financial assistance included in Juan's income: $15,000

Student loans are not considered student assistance and are never counted as income.

Use the Affidavit of Student Financial Assistance to obtain information from the applicant or resident as to their source(s) of financial assistance.

6.07 Exclusions from Annual Income

For certifications and recertifications effective before implementing HOTMA, refer to HUD Handbook 4350.3 for a complete listing and discussion of income exclusions.

Refer to HUD Notice 2023-10 Attachment G for changes in exclusions for certifications conducted under HOTMA or when HUD requires full HOTMA implementation.

Nonrecurring Income

Income that will not be repeated beyond the coming year (that is, the 12 months following the effective date of the certification), based on information provided by the family, is considered nonrecurring income and is excluded from annual income. However, income received as an independent contractor, day laborer, or seasonal worker is not excluded from income under 24 C.F.R. 5.609(b)(24), even if the source, date, or amount of the income varies.

Income that has a discrete end date and will not be repeated beyond the coming year during the family's upcoming annual reexamination period will be excluded from a family's annual income as nonrecurring income. This does not include unemployment income and other types of periodic payments that are received at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that can be extended. For example, an increasing number of cities and states are piloting guaranteed income programs that have discrete beginning and end dates. This income can be excluded as nonrecurring in the final year of the pilot program. For example, for an annual recertification effective July 1, 2025, guaranteed income that will be repeated in the coming year but will end before the next reexamination on July 1, 2026, will be fully excluded from annual income. Income amounts excluded under this category may include, but are not limited to, nonrecurring payments made to the family or to a third party on behalf of the family to assist with utilities, eviction prevention, security deposits to secure housing, payments for participation in research studies depending on the duration, and general one-time payments received by or on behalf of the family.

The following list of exclusions is codified at 24 C.F.R. 5.609(b)(24) as nonrecurring income. Note that the list is not exhaustive:

- Payments from the U.S. Census Bureau for employment lasting no longer than 180 days and not culminating in permanent employment;
- Direct federal or state economic stimulus payments;
- Amounts directly received by the family as a result of state refundable tax credits or state tax refunds at the time they are received;
- Amounts directly received by the family as a result of federal refundable tax credits or federal tax refunds at the time they are received;
- Gifts for holidays, birthdays, or other significant life events or milestones (for example, wedding, baby shower, or anniversary gifts);
- In-kind donations (for example, food, clothing, or toiletries received from a food bank or similar organization); and
- Lump-sum additions to net family assets (for example, lottery winnings, contest winnings, etc.).

Excluded Recurring Income

Below is a list of income that is not counted as part of household income (refer to 24 C.F.R. 5.609(b) for the full list and to Attachment G in HUD Notice 2023-10 for additional detail):

- Earned income of children under age 18.
- Payments received for the care of foster children or foster adults, or State or Tribal kinship or guardianship care payments.
- Insurance payments and settlements for personal or property losses, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation.

Any workers' compensation is always excluded from annual income, regardless of the frequency or length of the payments.

- Amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member.
- Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a member of the family becoming disabled.
- Income of a live-in aide, foster child, or foster adult.
- Income and distributions from any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under section 529 of such Code; and income earned by government contributions to, and distributions from, baby bond accounts created, authorized, or funded by Federal, State, or local government.
- The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.
- 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 (such as 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 not to exceed $200 per month. A resident service stipend is a modest amount received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development.
- Incremental earnings and benefits resulting to any family member from participation in training programs funded by HUD or in qualifying Federal, State, Tribal, or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. 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 unless those amounts are excluded under paragraph (b)(9)(i) of this section.
- 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.
- Earned income of dependent full-time students in excess of the annually adjusted amount of the deduction for a dependent.
- Adoption assistance payments for a child in excess of the annually adjusted amount of the deduction for a dependent.
- Deferred periodic amounts from Supplemental Security Income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred

Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts.

- Payments related to aid and attendance under 38 U.S.C. 1521 to veterans in need of regular aid and attendance. This income exclusion applies only to veterans in need of regular aid and attendance and not to other beneficiaries of the payments, such as a surviving spouse.
- 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.
- Payments made by or authorized by a State Medicaid agency (including through a managed care entity) or other State or Federal agency to a family to enable a family member who has a disability to reside in the family's assisted unit. Authorized payments may include payments to a member of the assisted family through the State Medicaid agency (including through a managed care entity) or other State or Federal agency for caregiving services the family member provides to enable a family member who has a disability to reside in the family's assisted unit. Both the person providing the care and the person who has the disability must be family members (not foster adult, foster child or live-in aides) and must live in the same household. The exclusion does not apply to income earned by the family for other caregiving services provided to individuals outside of the assisted household.
- Loan proceeds (the net amount disbursed by a lender to or on behalf of a borrower, under the terms of a loan agreement) received by the family or a third party (such as proceeds received by the family from a private loan to enable attendance at an educational institution or to finance the purchase of a car).
- Payments received by Tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code or other Federal law. Generally, payments received by tribal members in excess of the first $2,000 of per capita shares are included in a family's annual income for purposes of determining eligibility. However, payments made under the Cobell Settlement, and certain per-capita payments under the recent Tribal Trust Settlements, must be excluded from annual income in programs that adopt the definitions of annual income in 24 C.F.R. 5.609. Note that payment received by a tribal member from the tribe for distribution of Indian gaming profits is not a per-capita payment within the meaning of the Per Capita Distribution Act and does not qualify for income exclusion. If a family member who is a tribal member receives the IRS Form 1099–MISC, Miscellaneous Income, from the tribe for reporting Indian gaming profits, then this payment must be counted toward the family's annual income.
- Amounts that HUD is required by Federal statute to exclude from consideration as income for purposes of determining eligibility or benefits. HUD will publish a notice in the Federal Register to identify the benefits that qualify for this exclusion. Updates will be published when necessary. Examples include:
    - The value of the allotment provided to an eligible household under the Food Stamp Act of 1977.

    - Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (including employment through AmeriCorps, Volunteers in Service to America [VISTA], Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, and senior companions).
    - Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program.
    - The first $2,000 of per capita shares received from judgment funds awarded by the National Indian Gaming Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, and the first $2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands. This exclusion does not include proceeds of gaming operations regulated by the Commission.
    - Payments received from programs funded under Title V of the Older Americans Act of 1985 (such as Green Thumb, Senior Aides, and Older American Community Service Employment Program).
    - Any amount received under the Richard B. Russell School Lunch Act and the Child Nutrition Act of 1966, including reduced-price lunches and food under the Special Supplemental Food Program for Women, Infants, and Children (WIC).
- Replacement housing gap payments made in accordance with 49 C.F.R. 24 that offset increased out-of-pocket costs of displaced persons that move from one federally subsidized housing unit to another Federally subsidized housing unit. Such replacement housing gap payments are not excluded from annual income if the increased cost of rent and utilities is subsequently reduced or eliminated, and the displaced person retains or continues to receive the replacement housing gap payments.
- Nonrecurring income, which is income that will not be repeated in the coming year based on information provided by the family. Income received as an independent contractor, day laborer, or seasonal worker is not excluded from income under this paragraph, even if the source, date, or amount of the income varies. See the Nonrecurring Income section above for more information.
- Civil rights settlements or judgments, including settlements or judgments for back pay.
- Income earned on amounts placed in a family's Family Self Sufficiency Account.

The amount of rental subsidy paid to the owner on behalf of a household by a PHA or other government administrator is also not included in income. Private or philanthropic rental assistance is considered regular contributions by persons not living in the unit and must be included in income.

Excluded Income Per IRS

Under Revenue Procedure 2024-38, all Department of Veterans Affairs (VA) service-connected disability benefits are excluded from annual income, but only for applicants or tenants approved for or receiving a tenant-based or project-based VASH Voucher. This revenue procedure applies to income

determinations effective on or after October 24, 2024. The HUD-VASH program is administered by local PHAs that have partnered with local VA medical facilities or other entities designated by the VA to provide case management and clinical services to assist veterans experiencing homelessness.

Earned Income Disregard

The Earned Income Disregard (EID) will not apply to any family who is not eligible for *and already participating in* the disallowance as of December 31, 2023.

The EID allowed eligible families to have a portion of their earned income excluded from annual income for a maximum period of 24 consecutive months. Although HOTMA eliminates the EID from HUD regulations, families who were receiving the EID benefit as of December 31, 2023, may continue to receive the full benefit until the remaining timeframe for an individual family's EID expires. Because the EID lasts up to 24 consecutive months, no family will still be receiving the EID benefit after December 31, 2025.

6.08 Annualized Income

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

Convert all verified incomes to annual amounts.

To annualize full-time employment, multiply:

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

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

- Hourly wages by the number of hours the individual is expected to work per week by 52; if verification shows a range of hours, use the average number of hours (for example, 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 (for example, monthly, bi-weekly) by the number of periods the individual expects to work

Some HTC professionals use non-conforming methodologies for calculating wages including using the highest of a range of hours provided by the employer or basing income determinations on the higher calculation of income provided by the employer and a calculation of annual income based on year-to-date information. As noted above, Minnesota Housing uses the average of a range of hours given and anticipated wage information supplied by the employer, consistent with Section 8. More conservative methodologies are not prohibited; however, using more conservative methodologies may exclude households that qualify based on Section 8 methodologies. In any event, any approach developed by an owner/agent must be consistently applied to all applicants and tenants to avoid the risk of a fair housing violation.

Seasonal Income

If an applicant 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 $1,800 a month during a nine-month roofing season and collects unemployment in the amount of $800 a month for the remaining three months, income is calculated as follows:

$1,800 x 9 = $16,200

$800 x 3 = $2,400

$16,200 + $2,400 = $18,600 = Total Annualized Income

Zero Income Members

If an adult member of an applicant family has no regular verifiable income or income from assets from any source and claims zero income, a Certification of Zero Income must be completed. Note that the current HUD Handbook requires non-monetary contributions (excluding groceries) to be counted as income. Under HOTMA, non-monetary in-kind donations from a food bank or similar organization cannot be assigned a monetary value (including food, clothing, or toiletries).

6.09 Income from Assets

Assets are items of value, other than necessary personal items, and are considered along with verified income to determine HTC eligibility.

For certifications and recertifications effective before implementing HOTMA, refer to HUD Handbook 4350.3 for a complete listing and discussion of income from assets.

Refer to HUD Notice 2023-10 Attachment F for changes in assets and asset income for certifications conducted under HOTMA or when HUD requires full HOTMA implementation.

Under HOTMA, assets have three categories:

- Necessary Personal Property
- Non-Necessary Personal Property
- Real Property

Assets include the net cash value of all real property and the net cash value of all non-necessary items of personal property.

Necessary Personal Property

Necessary Personal Property (NPP) are items that are essential to the family for maintenance, use, and occupancy of the residence, or necessary for employment, education, or health and wellness. NPP also includes items that assist persons with disabilities, including items for disability-related needs and items required for reasonable accommodation. NPP does not include luxury items.

Owners must determine whether an item is considered necessary or non-necessary to determine whether it should be included as an asset.

This is a highly fact-specific determination. Therefore, owners must collect enough facts to make this determination. If an item is considered necessary personal property, it is not included as an asset.

Examples of NPP (list is not exhaustive):

- Car(s)/vehicle(s) that a family relies on for transportation for personal or business use (for example, bike, motorcycle, skateboard, scooter)
- Furniture, carpets, linens, kitchenware
- Common appliances
- Common electronics (for example, radio, television, DVD player, gaming system)
- Clothing
- Personal effects that are not luxury items (for example, toys, books)
- Wedding and engagement rings
- Jewelry used in religious/cultural celebrations and ceremonies
- Religious and cultural items
- Medical equipment and supplies
- Healthcare-related supplies
- Musical instruments used by the family
- Personal computers, phones, tablets, and related equipment
- Professional tools of trade (for example, professional books)
- Educational materials and equipment, including equipment to accommodate persons with disabilities

- Equipment used for exercising (for example, treadmill, stationary bike, kayak, paddleboard, ski equipment

Non-Necessary Personal Property

If personal property is not deemed necessary, as HUD guidance provides, then it is considered Non-Necessary Personal Property (NNPP) and may need to be included as an asset.

Under HOTMA, the combined value of NNPP up to the amount that HUD allows to be self-certified is excluded from net family assets, but any income earned by these assets is included in gross annual household income. Refer to HUD's Annual Inflationary Adjustments and Passbook Rate webpage for the current amount of assets HUD allows to be self-certified (updated annually, adjusted for inflation).

If the total value of NNPP exceeds the amount HUD allows to be self-certified, owners must verify all asset amounts and any income earned. If an asset does not earn income, owners must use HUD's passbook savings rate to calculate an imputed income. Refer to HUD's Annual Inflationary Adjustments and Passbook Rate webpage for the current passbook savings rate (updated annually, adjusted for inflation).

Examples of NNPP (list is not exhaustive):

- Bank accounts or other financial investments (for example, checking account, savings account, stocks/bonds, money market or mutual funds, certificates of deposit)
- A mortgage or deed of trust held by an applicant or resident (for example, contract for deed or deed of trust); 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
- Cash value of life insurance policies available to the individual before death (for example, the surrender value of a whole life policy or a universal life policy)
- Recreational car/vehicle not needed for day-to-day transportation (for example, campers, motorhomes, travel trailers, all-terrain vehicles (ATVs))
- Recreational boat/watercraft
- Expensive jewelry without religious or cultural value, or which does not hold family significance
- Collectibles (for example, coins/stamps)
- Equipment/machinery that is not used to generate income for a business
- Items such as gems/precious metals, antique cars, artwork, etc.
- Assets disposed of for less than fair market value within two years of the effective date of the certification
    - Assets lost to foreclosure, bankruptcy, and divorce or separation settlements are not counted as disposed of assets. Assets put into an irrevocable trust for another member of the same household are also not counted as disposed. Neither are assets that are simply used to buy goods or services that are not counted as assets.

Bank accounts include amounts in cash apps and digital wallets that hold balances. Examples include Venmo, PayPal, GoFundMe, Cash App, Google Pay, Google Wallet, etc., and cards used to receive government and other cash benefits. Retailers such as Wal-Mart, Target, and Starbucks may also have cash-holding apps.

Apps that merely facilitate transferring funds from one account to another and do not actually hold any money, are not assets (for example, Zelle).

Stocks, bonds, treasury bills, certificates of deposit, money market accounts, mutual funds, interest, or dividends earned are counted as income from assets even when the earnings are reinvested. The value of stocks and other assets vary from one day to another. The value of the asset may go up or down the day before or after income is calculated and multiple times during the year thereafter. The owner may assess the value of these assets at any time after the authorization for the release of information has been received.

Real Property

The value of real property is always counted as an asset.

Equity in rental property or other capital investment. Include the current fair market value less (a) any unpaid balance on any loans secured by the property; and (b) reasonable costs that would be incurred in selling the asset (that is, penalties, broker fees, etc.). If the person's main business is real estate, then count any income as business income. Do not count it as an asset and as business income.

Only the interest portion of the monthly payment received by the tenant is included as income. For interest income from the sale of real property, if said property was sold on an installment sales contract, request one of the following:

- A letter from an accountant, attorney, real estate broker, the buyer, or a financial institution stating interest due for the next 12 months; a copy of the check(s) paid by the buyer to the tenant is not sufficient since appropriate breakdowns of interest and principal are not included
- Amortization schedule showing interest for the 12 months following the date the purchaser intends taking occupancy

For rental income from property owned by the tenant, request each of the following:

- IRS Form 1040 with Schedule E (Rental Income)
- Lease between the tenant and the tenant’s renter
- Lessee's written statement identifying monthly payments due the tenant and tenant's affidavit as to net income realized

6.10 Household Asset Exclusions

Household assets do not include:

- NPP including clothing, furniture, cars, etc.
- Retirement accounts under IRS-recognized retirement plans (for example, IRA, employer retirement plans, and retirement plans for self-employed individuals)
    - Note that regular distributions or withdrawals from such accounts are treated as income.
- Real property without legal authority to sell
- Legal settlements from civil actions or settlement based on a claim of malpractice, negligence or other breach of duty owed to a family member, for an incident resulting in a disability
- Interests in Indian land trusts
- Coverdell or 529 education savings accounts, ABLE accounts, baby bond accounts
- Term life insurance policies
- Equity in a manufactured home where the family receives assistance under 24 C.F.R. 982 (Housing Choice Voucher)
- Equity in property under the Homeownership Option for which a family receives assistance under 24 C.F.R. 982
- Family Self-Sufficiency Accounts
- Federal tax refunds or refundable tax credits from the 12 months prior to the certification effective date (for example, Earned Income Tax Credits)
    - Note that HUD instructs owners to subtract the value of any tax return that a household has received in the last 12 months from total net assets. This may mean self-certification of assets is allowed if subtracting the refunds or refundable credits puts the total value of net assets below the amount HUD allows to be self-certified.
- Trust funds that are not revocable by, or under the control of, any family member as long as they continue to be held as such
    - When a trust is in the control of a household it is an asset to the household, and income is counted as the trust generates it.
    - Distributions/withdrawals from the trust in the household's control are not counted as income. When a trust is not in the control of a household it is not an asset to the household.
    - Distributions received from the trust are income except for the following two exclusions: 1) distributions from the principle or corpus of the trust and 2) distributions that are made to pay for the health and medical expenses of a minor child.
- Assets that are part of an active business (not including rental of properties that are held as investment and not a main occupation)
- Assets that are not effectively owned by the applicant; that is, when assets are held in an individual's name, but the assets and any income they earn accrue to the benefit of someone

else who is not a member of the household, and that other person is responsible for income taxes incurred on income generated by the assets

- Assets not accessible to the applicant and provide no income to the applicant
    - For example, a battered spouse owns a house with her husband. Because of the domestic situation, she receives no income from the asset and cannot convert the asset to cash.

6.11 Assets Owned Jointly

For assets jointly owned by one or more individuals outside of the family, owners must include the total value of the asset in the calculation of net assets, unless the asset is otherwise excluded, or unless the applicant can demonstrate that the asset is inaccessible to them, or that they cannot dispose of any portion of the asset without the consent of another owner who refuses to comply. If the applicant demonstrates that they can only access a portion of an asset, then only that portion's value shall be included in the calculation of net assets. Likewise, any income from a jointly owned asset must be included in annual income, unless that income is specifically excluded, or unless the applicant demonstrates that they do not have access to the income from that asset, or that they only have access to a portion of the income from that asset.

If an individual is a beneficiary who is entitled to access the account's funds only upon the death of the account's owner, and may not otherwise withdraw funds from an account, then the account is not an asset, and the individual should provide proper documentation demonstrating that they are only a beneficiary on the account.

6.12 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
- 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 received, if the difference is more than $1,000. If a tenant has sold their 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

Actual income from assets is always included in a family's annual income, regardless of the total value of net family assets, unless that income is specifically excluded by 24 C.F.R. 5.609(b).

Income or returns from assets are generally considered to be interest, dividend payments, and other actual income earned on the asset, and not the increase in market value of the asset. The increase in market value is relevant to the cash value of the asset for the purpose of determining total net family assets and imputing income.

When total net assets exceed the amount HUD allows to be self-certified (when HOTMA implementation guidance was released, this amount was $50,000), income from assets is no longer determined based on the greater of actual or imputed income from the assets. Instead, imputed asset income must be calculated for specific assets when three conditions are met:

1. The value of net family assets exceeds the amount HUD allows to be self-certified
2. The specific asset is included in net family assets
3. Actual asset income cannot be calculated for the specific asset

Imputed asset income is calculated by multiplying the net cash value of the asset, after deducting reasonable costs that would be incurred in disposing of the asset, by the current HUD-published passbook rate.

To properly calculate income from assets:

1. Review the list of assets provided by the applicant or resident.
2. Categorize assets as NPP, NNPP, and real property.
3. Exclude any NPP.
4. Determine the total value of NNPP.
    a. If the total value of all NNPP is less than the amount HUD allows to be self-certified, assign a $0 value to each asset, but calculate income, if any.
    b. If the total value of all NNPP exceeds the amount HUD allows to be self-certified, fully verify the assets, assign the net value of the asset and calculate actual or imputed income to each asset.
5. Add NNPP to any real property. If the total value exceeds the amount HUD allows to be self-certified, all assets must be verified. Impute income for any assets that cannot otherwise have income determined.

6. Subtract any federal tax return or refundable tax credit the household received in the past 12 months (if an applicant anticipates a $500 federal tax refund but only receives $250, then only $250 will be excluded from net assets because that is the amount actually received). If the subtraction results in a negative number, then net family assets are considered $0.

Refer to the examples in Attachment F to HUD Notice 2023-10.

Owners should not conflate an asset with an actual return of $0 with an asset for which an actual return cannot be computed, such as could be the case for some non-financial assets. If the asset is a financial asset and there is no income generated (for example, a bank account with a 0% interest rate or a stock that does not issue dividends), then the asset generates zero actual asset income, and imputed income is not calculated. When a stock issues dividends in some years but not others (for example, due to market performance), the dividend is counted as the actual return when it is issued, and when no dividend is issued, the actual return is $0. When the stock never issues dividends, the actual return is consistently $0.

6.13 General Income Verification Requirements

The Sworn Income and Asset Statement (or owner's application containing, at a minimum, the information on the Sworn Income and Asset Statement) must be used as the basis for determining the necessary verifications.

Refer to Table J2 in HUD Notice 2023-10 for Verification Hierarchy and order of acceptability. Note that HUD's EIV system *cannot* be used for the HTC Program.

Owners must follow up on any incomplete, inconsistent, or missing information with the verification source and document such follow-up in the resident file. A Phone Verification/Clarification Record form is recommended for this purpose. Verifications and follow-up records are considered supporting documentation to the TIC.

Owners are not allowed to use information obtained through Enterprise Income Verification (EIV) for non-HUD programs, including the HTC Program. If a property has both HUD and HTC, EIV cannot be used to verify income for Section 42, nor can it be in the HTC portion of a tenant's file.

Acceptable Verification Descriptions and Guidance

Upfront Income Verification (UIV) (Level 6/5)

The verification of income, before or during a family reexamination, through an independent source that systematically and uniformly maintains income information in computerized form for a number of individuals. HUD encourages owners to use tools such as The Work Number (an automated verification system) and state government databases to verify tenant-reported income.

Written, Third-Party Verification (Level 4)

An original or authentic document generated by a third-party source dated within 120 days of the date received by the owner. For fixed-income sources, a statement dated within the appropriate benefit year is acceptable documentation.

Such documentation may be in the possession of the tenant (or applicant) and is commonly referred to as tenant-provided documents. Owners may obtain any tenant-provided documents and follow up directly with the third-party source to obtain necessary verification of information when necessary.

Examples of acceptable tenant-provided documentation (generated by a third-party source) include but are not limited to pay stubs, payroll summary report, employer notice/letter of hire/termination, SSA benefit verification letter, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices.

Owners are required to obtain a minimum of two current and consecutive pay stubs for determining annual income from wages. If a family disagrees with the income calculation, owners may request additional paystubs for a more accurate calculation. For new income sources or when two pay stubs are not available, use the verification hierarchy level 3, then level 2 if necessary, then level 1 if attempts to obtain level 3 and level 2 verifications are not successful (see definitions and documentation requirements below).

Income tax returns with corresponding official tax forms and schedules attached and including third-party receipt of transmission for income tax return filed (that is, tax preparer's transmittal receipt, summary of transmittal from online source, etc.) are an acceptable form of written, third-party verification.

When verification of assets is required, owners are required to obtain a minimum of one statement that reflects the current balance of banking/financial accounts.

Written, Third-Party Verification Form (Level 3)

This type of verification uses forms specifically developed to collect information from a third-party source. Owners send the form directly to the third-party source by mail, fax, or email. The form is completed by the third party by hand (in writing or typeset) and returned to the owner.

Minnesota Housing provides sample verifications and other forms to assist owners with this method. 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 source.

Oral Third-Party Verification (Level 2)

Independent verification of information by contacting the individual income/expense source(s), as identified through the UIV technique, or identified by the family, via telephone or in-person visit.

Owner must document in the tenant file the date and time of the telephone call (or visit to the third party) and the name of the person contacted and their telephone number, along with the confirmed information.

This verification method is commonly used when the independent source does not respond to the owner's faxed, mailed, or emailed request for information in a reasonable time frame (for example, 10 business days).

Non-Third-Party Verification: Self-Certification (Level 1)

The tenant submits a signed statement of reported income and/or expenses to the owner. This verification method should be used as a last resort when obtaining information via all other required verification techniques is not successful and the tenant file must contain documentation of why third-party verification was not available.

The self-certification is not required to be notarized; however, the following language should be included on any self-certification to ensure the certifier understands the consequences of knowingly providing false information:

> *"I/We, the undersigned, certify under penalty of perjury that the information provided here is true and correct, to the best of my knowledge and recollection. WARNING: Anyone who knowingly submits a false claim or knowingly makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and civil and administrative penalties. (18 U.S.C. 287, 1001, 1010, 1012; 31 U.S.C. 3279, 3802)"*

Self-Certification of Assets

Minnesota Housing allows self-certification of assets when the net value does not exceed the amount HUD allows to be self-certified (when HOTMA implementation guidance was released, this amount was $50,000).

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

Optional Streamlined Income Determination for Fixed-Income Source

During the annual income recertification, owners may use a streamlined income determination to adjust a family's income according to the percentage of a family's unadjusted income that is from fixed income (refer to list of fixed income sources below) as follows:

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

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

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

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

This streamlined process can only be used for two years following regularly verified income and only for the sources described above. Every third year, third-party verification must be obtained. Assets are not subject to streamlining and must be verified each year.

6.14 Determination of Income Using Other Means Tested Public Assistance

Owners may determine a family's annual income, including income from assets, using income determinations from the following types of means-tested federal public assistance programs (Safe Harbor):

- The Temporary Assistance for Needy Families block grant (42 U.S.C. 601, et seq.)
- Medicaid (42 U.S.C. 1396 et seq.)
- The Supplemental Nutrition Assistance Program (42 U.S.C. 2011 et seq.)

- The Earned Income Tax Credit (26 U.S.C. 32)
- The Special Supplemental Nutrition Program for Woman, Infants, and Children (42 U.S.C. 1786)
- Supplemental Security Income (42 U.S.C. 1381 et seq.)
- Other programs administered by the Secretary
- Other means-tested forms of federal public assistance for which HUD has established a memorandum of understanding
- Other federal benefit determinations made by other means-tested federal programs that the Secretary determines to have comparable reliability and announces through a Federal Register notice

If owner elects to use the annual income determination from one of the above-listed forms of means-tested federal public assistance, they must obtain the income information by means of a third-party verification. The third-party verification must state the family size, must be for the entire family (that is, the family members listed in the documentation must match the family's composition in the assisted unit, except for household members), and must state the amount of the family's annual income. The annual income need not be broken down by family member or income type. Annual income includes income earned from assets, therefore when using Safe Harbor to verify a family's income, owners will neither further inquire about a family's net family assets, nor about the income earned from those assets. The Safe Harbor verification may be in the form of an award letter from the relevant federal program and must show that the family's income determination was made in the previous 12 months. HUD clarifies that the verification will be considered acceptable if the documentation meets the criteria that the income determination was made within the 12 months prior to the receipt of the verification by the owner. The Safe Harbor documentation will be considered acceptable if any of the following dates fall into the 12-month period prior to the receipt of the documentation by the owner:

- Income determination effective date
- Program administrator's signature date
- Family's signature date
- Report effective date
- Other report-specific dates that verify the income determination date

The only information owners are permitted to use to determine income under this Safe Harbor is the total income determination made by the federal means-test program administrator. Other federal programs may provide additional information about income inclusions and exclusions in their award letters; however, these determinations and any other information must not be considered for purposes of the HOTMA Safe Harbor provision. Owners are not permitted to mix and match Safe Harbor income determinations and other income verifications.

If an owner does not accept Safe Harbor documentation, is unable to obtain Safe Harbor documentation, or if the family disputes the other program's income determination, the owner must calculate the family's annual income using regular verification methods.

If the owner uses a Safe Harbor to determine the family's income, this might mean that a certain source of income was not considered in the family's income, because the other program did not consider the source to be income. For example, if a family begins receiving a new source of income on February 1, 2026, and the owner completed a TIC effective March 1, 2026, using a Safe Harbor income determination, the new source of income would not be included. This aligns with the Section 8 program's Safe Harbor determination which would require the new source of income to be reported and included at the next income reexamination.

Minnesota Housing will also consider the gross income determination for project-based and tenant-based Section 8 and USDA Rural Development to be Safe Harbor income determinations for HTC. A fully completed, signed, and dated TIC for those programs will satisfy all third-party verification requirements.

6.15 Effective Term of Verification

Verifications are valid for 120 days from the date of receipt by the owner, not the effective date of the TIC. If verifications are more than 120 days old from the date of receipt by the owner, the owner must obtain new verifications. For fixed-income sources, a statement dated within the appropriate benefit year is acceptable documentation.

6.16 Date Stamp

All income, asset, and eligibility verifications should be date-stamped as they are received. If verifications are not date stamped, Minnesota Housing may use the date the document was signed by the verification source or generated from the web to determine its age.

6.17 Electronic Signatures

Minnesota Housing will not fail a tenant file solely because it contains documents signed by electronic means as long as the owner has followed the guidance in HUD Notice H 20-10. Applicants and tenants must still be given the option to use wet signatures on paper, if requested.

As part of the inspection of administrative records, compliance staff may review the owner's e-signature policy and procedures, if applicable, to determine whether the requirements of HUD Notice H 20-10 are satisfied for the use of electronic signatures.

Chapter 7 – Sale, Transfer, or Disposition of the Project and Reporting Casualty Losses

During the 15-year compliance period, Minnesota Housing must notify the IRS of any sale, foreclosure, abandonment, casualty loss, or destruction by filing IRS Form 8823. The IRS has suggested in Treas. Reg. 1.42-5 that, if a building is sold or otherwise transferred by the owner, the transferee should obtain from the transferor all information related to the first year of the tax credit period so the transferee can substantiate HTCs claimed. Under section 42(j)(6), revised July 30, 2008, there is no recapture on dispositions as long as 1) it is reasonably expected the building will continue to be operated as a qualified low-income building and 2) the taxpayer elects to be subject to the new longer statute of limitations. Owners are not required to post a Credit Disposition Bond or pledge Treasury Securities to avoid recapture.

All unexpended funds remaining in development reserve accounts must remain for development use during the term of the compliance period and extended use period

7.01 Reporting the Sale, Transfer, or Disposition of a Project

Throughout the term of the LURA, including the 3-year tenant protection period, owners must notify Minnesota Housing in advance of any sale, transfer of ownership interest, foreclosure, or abandonment. Failure to notify Minnesota Housing from the time of selection or preliminary determination letter throughout the term of the extended use period will be considered noncompliance and may have an adverse effect on all individuals/entities from the development team on each side of the transfer that submits applications in future rounds.

Under some HTC Qualified Allocation Plans (QAPs), a sale or transfer of ownership interest from the date of reservation to five years after the PIS date may have an adverse effect on individuals/entities that wish to submit applications for tax credits in future years. Under more recent QAPs, Minnesota Housing's approval is required and unapproved changes from the time of selection or preliminary determination letter throughout the term of the extended use period may have an adverse effect on individuals/entities from the development and management team on each side of the transfer that submits applications in future rounds. Refer to the applicable QAP for specific language regarding penalties.

To begin the notification process, the owner must submit a Request for Action. Minnesota Housing will advise the owner of documentation that must be submitted for review, and, if applicable, Minnesota Housing approval. Documents for property sales may include, but are not limited to:

- Copies of purchase agreements and assignments or amendments
- Minnesota Secretary of State Certificate of Good Standing
- Organizational documents of the purchaser

- A copy of the warranty deed

Any prospective purchaser, member, or partner must certify that they have the training and/or experience to successfully operate a tax credit property. Drafts may be submitted for review prior to closing, but final documentation must be submitted within 10 days after the closing date. Minnesota Housing will update its records to recognize an ownership or ownership interest change after Minnesota Housing staff has reviewed all requested documentation. All compliance requirements and any consequences for failing to comply are the responsibility of the owner of record that Minnesota Housing has listed on file.

7.02 Reporting Casualty Losses

Owners must notify Minnesota Housing within 30 days of any casualty loss and/or destruction of any part of the property that affects habitability. Minnesota Housing must file IRS Form 8823 to notify the IRS of such casualty losses. Under section 42(j)(4)(E), taxpayers are provided relief from the credit recapture provisions in the event of a casualty loss if the loss is restored within a reasonable period established by the Secretary, which has been interpreted by the IRS to be up to two years following the end of the tax year in which the casualty loss occurred. Refer to CCA 200134006; also refer to section 165 of the Internal Revenue Code. This standard applies throughout the extended use period.

Submit a Report of Casualty Loss Form following any casualty loss that includes units out of service for more than one rental period or loss of usability of common areas or other areas of the project.

Chapter 8 – Correction and Consequences of Noncompliance

Minnesota Housing uses the IRS Guide for Completing Form 8823, Low Income Housing Credit Agencies Report of Noncompliance or Building Disposition (8823 Guide), which contains instructions for monitoring agencies to determine noncompliance, what constitutes correction, and how and when noncompliance and property dispositions are to be reported.

Owners and property managers are encouraged to read the 8823 Guide and refer to it when questions arise as to how to correct noncompliance.

8.01 Notice to Owner

Minnesota Housing is required to provide prompt written notice to the owner of an HTC project if Minnesota Housing does not receive the Owner's Certification of Continuing Program Compliance in Extended Use Period and other forms. Minnesota Housing is also required to provide prompt written notice to the owner of an HTC project if it does not receive or is not permitted to inspect the TICs, supporting documentation, and rent records or if it discovers by inspection, review, or in some other manner that the project is not in compliance with the provisions of Section 42 or its LURA. All compliance violations will be recorded in PORT with a status of UC (uncorrected), CL (clarified), or CR (corrected).

8.02 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. In accordance with Treasury Regulations, the correction period will not exceed 90 days from the date of the Notice of Noncompliance and may be a shorter period. At its discretion, Minnesota Housing may extend the correction period 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 each of the following:

- A description of efforts to make corrections within the correction period
- A plan to correct all remaining violations
- A timeline for when corrections are expected to be made

Minnesota Housing will not extend the correction period beyond six months from the date of the Notice of Noncompliance.

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

8.03 Notice to the IRS

Minnesota Housing is required to file IRS Form 8823, "Low Income Housing Credit Agencies Report of Non-Compliance or Building Disposition," with the IRS no later than 45 days after the end of the correction period (permitted extensions).

Minnesota Housing must check the appropriate box on IRS Form 8823 indicating the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. If the noncompliance or failure to certify is corrected, Minnesota Housing will provide a date on which the noncompliance was corrected. If Minnesota Housing cannot determine that an owner's actions have corrected all noncompliance, no correction date will be provided; however, an attachment to Form 8823 will be provided that identifies any noncompliance that has been corrected. Any change in either the applicable fraction or eligible basis, under paragraph (c)(1)(ii) and (vii) of Treas. Reg. 1.42-5 respectively, that results in a decrease in the qualified basis of the project under section 42(c)(1)(A) is noncompliance that must be reported to the IRS. Minnesota Housing will send the owner a copy of IRS Form 8823.

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

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

8.04 Recapture of Credit

Generally, during the compliance period, a project is out of compliance and recapture applies if:

- There is a decrease in the qualified basis of the building from one year to the next; or
- The building no longer meets the minimum set-aside requirements of section 42(g)(1), the gross rent requirements of section 42(g)(2), or the other requirements for the units which are set aside.

Vacant units that were previously occupied by HTC tenants can continue to be counted for minimum eligibility if the owner has made reasonable attempts to rent the unit to an eligible tenant and the unit is suitable for occupancy. Refer to IRS Revenue Ruling 2004-82, Q9 for guidance on what constitutes reasonable attempts.

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

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

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

If there is a minimal reduction in the floor space fraction or number of qualified units, no recapture will occur, provided the building remains a qualifying HTC building.

Recapture will not occur if, within a reasonable time after the noncompliance was discovered, the situation is corrected.

In the event of a casualty loss, recapture will not occur if the property is restored or replaced within a reasonable period of time.

The above information has been provided for informational purposes to give a general understanding of recapture procedures. The IRS bears the responsibility for determining whether a building owner has claimed the correct amount of credit each year and whether a building owner is subject to recapture. Minnesota Housing is not responsible for determining whether a specific event of noncompliance is a recapture event.

Chapter 9 – Compliance and Monitoring After Year 15

Trea. Reg. 1.42-5 requires allocating agencies to perform certain compliance monitoring procedures for each year of the compliance period. However, Treasury regulations do not require allocating agencies to monitor according to Trea. Reg. 1.42-5 for the years after the 15-year compliance period has expired. For years occurring after Year 15, the IRS does not accept non-compliance filings from allocating agencies using Form 8823. Therefore, Minnesota Housing has established policies for monitoring HTC properties during the extended use period and imposing certain consequences for noncompliance during the extended use period.

Based on the requirements of the extended use period specified in Section 42 and in the LURA referenced below, Minnesota Housing has the authority to establish modified monitoring procedures for certain HTC requirements and has established the modified procedures described below.

Before implementing any changes noted in this chapter, management agents should consult with their owners to determine whether the owner intends to apply for a new allocation of HTCs before the extended use period expires. This is known as resyndication. For a resyndication, households determined to be income-qualified for purposes of the original LURA may be concurrently income-qualified households for purposes of the new allocation of HTCs *if all Section 42 requirements are met in the original LURA's extended use period.* This includes, but is not limited to, certifying student status and not renting to ineligible, full-time student households, verifying income and assets for annual recertification for mixed-income properties, following rules regarding unit transfers between buildings that are not part of the same project as defined by Section 42.

9.01 Compliance Period

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

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

9.02 Extended Use Period

Section 42(h)(6) establishes that buildings are eligible for HTCs only if there is a minimum long-term commitment to low-income housing. Specifically, to receive an HTC allocation in 1990 and later, the owner must record an extended low-income housing commitment. The document that evidences this commitment is called the Declaration of Land Use Restrictive Covenants for Low Income Housing Tax Credits and is referred to throughout this guide as the LURA. The LURA is recorded with the respective

county recorder and/or registrar of titles and runs with the land, regardless of subsequent changes in ownership.

For purposes of this section, the term extended use period means the period:

- Beginning on the day after the last day in the compliance period on which such building is part of a qualified low-income housing project, and
- Ending on the later of:
    - The date specified by Minnesota Housing in the LURA, or
    - The date that is 15 years after the close of the compliance period.

Section 42(h)(6)(E) provides exceptions to the extended use period in the case of a legitimate foreclosure or deed in lieu or, for projects that have not waived this right, if Minnesota Housing is unable to present a qualified contract pursuant to section 42(h)(6)(F). This guide does not contain guidance for the provisions of section 42(h)(6)(F) regarding the qualified contract referenced in section 42(h)(6)(E)(i)(II).

Under section 42(h)(6)(E)(ii), the termination of an extended use period due to foreclosure or deed in lieu or for failure to present a qualified contract shall not be construed to permit before the close of the three-year period following such termination:

- The eviction, lease non-renewal, or termination of tenancy of an existing tenant of any low-income unit other than for good cause
- Any increase in the gross rent with respect to such unit not otherwise permitted by the applicable rent limits

Under Minnesota Housing's LURA, the owner agrees to comply for the term of the agreement with requirements that include, but are not limited to, the following:

- The owner will maintain the applicable fraction by leasing units to individuals or families whose income is at or below 50% or 60% of MTSP (or other MTSPs per the AIT), as irrevocably elected by the owner at the time of allocation (including adjustments for family size) and as determined in accordance with Section 42.
- The owner will maintain the Section 42 rent and income restrictions.
- All units subject to the credit shall be leased and rented or made available to members of the general public who qualify as low-income tenants (or otherwise qualify for occupancy of the low-income units) under the applicable election specified in section 42(g).
- The owner agrees to comply fully with the requirements of the Fair Housing Act as may, from time to time, be amended.
- The owner will not refuse to lease a unit to the holder of a Section 8 Voucher or other form of tenant-based rental assistance because of the status of the prospective tenant as such holder

and will not evict or otherwise terminate tenancy (including lease non-renewal) for other than good cause.
- Each low-income unit will remain suitable for occupancy.
- The determination of whether a tenant meets the low-income requirement shall be made by the owner at least annually on the basis of the current income of such low-income tenant.
- The owner will comply with other restrictions as required under the specific year's QAP and related points the owner received to obtain an HTC allocation. These restrictions are property-specific within the respective LURAs, and to the extent they are not otherwise time-limited, the additional restrictions remain in force and effect during the extended use period.

Note that the LURAs have changed from year-to-year according to the respective QAPs; however, the basic language pertaining to the extended use period required by Section 42 has not materially changed.

9.03 Tenant Eligibility Criteria During the Extended Use Period

During the extended use period, Minnesota Housing monitors tenant eligibility and certification of income as follows:

- **TIC:** At initial occupancy, an initial income certification is required (calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 (Section 8), not in accordance with the determination of gross income for federal income tax liability).
- **Annual recertification** is monitored as follows:
    - Mixed-income HTC properties must recertify income annually, but owners are not required to verify income and income from assets unless there is other financing or a rental subsidy program that requires verification. Households must complete a Sworn Statement of Income and Assets or similar form provided by the owner. From information provided by the tenant household, owners must calculate gross annual income, complete and sign the TIC form, and report the recertification in Minnesota Housing's Property Online Reporting Tool (PORT).
    - 100% HTC properties have no recertification requirements; however, on the anniversary date of move-in or the last certification effective date, owners must report the unit and household in PORT and complete all information except current income and student status.
    - Any household that experiences a change in composition within the first six months of occupancy (not including birth or death) must meet initial eligibility requirements and a new initial TIC must be performed.
- **Student Status:** Minnesota Housing does not monitor student status after the expiration of the Compliance Period.

- **Unit Transfers:** Unit transfers from building to building are allowed without triggering noncompliance regardless of the multiple-building election or whether a household's income is over the applicable limit at the time of transfer.
- **Available Unit Rule:** The available unit rule is revised to provide that if a household's income goes over 140% of the applicable income limit, a currently vacant unit or the next unit in the same building must be rented to a qualifying household (the comparable or smaller requirement no longer applies). This is essentially a one-for-one unit replacement.
- **Applicable Fraction:** Only the unit fraction will be examined to determine if a building met its required applicable fraction.
- **Rent Limits:** Rent limits as elected by the owner at the time of allocation continue to be in force during the extended use period. Owners of properties that were awarded selection points for additional rent restrictions should refer to the respective QAP or LURA to determine whether those additional rent restrictions are time-limited or if they are in effect for the full term of the extended use period.
- **Utility Allowances (UAs):** UAs must continue to be updated annually. Revised UAs must be implemented within 90 days of their published effective date.

Minnesota Housing will continue to update the HTC Program income and rent limits that HUD publishes annually.

9.04 Monitoring Compliance During the Extended Use Period

The following is the monitoring procedure Minnesota Housing will follow during the extended use period:

1. **Annual Owner Certification and Occupancy Reporting:** By February 15 of each year or the next business day, Minnesota Housing requires all owners to submit an annual certification of compliance along with reporting occupancy information in PORT. Instructions are provided with the December reminder notice and the PORT User Guide.
2. **Inspections:** At least every five years, Minnesota Housing will perform a physical inspection of the property and review tenant files and other pertinent documentation. The first review in the extended use period will be no more than five years from the last inspection conducted during the compliance period. Ten percent of the low-income units up to 15 units in any development (a minimum of four units) will be chosen at random for inspection. If the first four units pass inspection, the compliance officer may elect to discontinue inspecting the remaining units. Different units may be chosen for the file review as those receiving a physical inspection. Minnesota Housing compliance staff will continue to work with other inspection entities, including other government agencies, to avoid duplicative inspections. Minnesota Housing may accept NSPIRE inspections conducted by REAC or local housing and redevelopment authorities for Project-Based Section 8 Voucher contracts when they are done in the same year as the agency's review. If inspected by Minnesota Housing compliance staff, the inspection will be

pursuant to NSPIRE. In its sole discretion, Minnesota Housing may conduct a review of any building and 100% of the units and examine all records pertaining to rental of HTC units at least through the end of the extended use period of the buildings in the project.

3. **Annual Monitoring Fees:** Monitoring fees are due annually until the last year of the LURA. Refer to the Multifamily Loan Programs and Housing Tax Credit Program Fee Schedule. Fees are due at the same time as the owner's annual certification. Minnesota Housing may adjust the fee in its sole discretion due to increasing costs to monitor.
4. **Transfer of Ownership or Ownership Interest:** Refer to Chapter 7.
5. **Three-Year Tenant Protection Period following Expiration or Termination of Extended Use Period:** Refer to section 9.08.

The LURA allows for amendment by written agreement between Minnesota Housing and the owner. During the Extended Use Period, an owner may request temporary relief to remove or modify Minnesota Housing-imposed restrictions, including income or rent limits, in the event a property suffers from a decline in market conditions that is not expected to improve, and subsequent vacancies compromise the economic viability of the property. The owner must demonstrate that reasonable efforts have been made to meet all compliance requirements. Minnesota Housing will consider granting relief only to the extent that it complies with Section 42 and IRS requirements, preserves as many low-income units as possible, stabilizes the economic viability of a property, and does not result in a lease termination or non-renewal of lease for an occupied unit without good cause. The owner must submit a Request for Action to begin the process.

9.05 Consequences of Noncompliance During the Extended Use Period

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

- Properties whose compliance period has expired and are subject to the requirements of the extended use period will be included in the Tax Credit Properties Monitored by Minnesota Housing List, Properties Not in Good Standing in the Extended Use Period List, and/or Participant Suspension list on Minnesota Housing's website.
- If an owner fails to comply with the monitoring requirements and/or terms of the LURA, Minnesota Housing will issue a Notice of Noncompliance and recommendations for correction similar to what is issued during the compliance period. All owners will be given a correction period not to exceed 90 days with which to clarify or correct noncompliance and report to Minnesota Housing that all corrections have been made. An additional 90 days may be granted with good cause. If a property has one or more compliance violations, but the owner is making a good faith effort to correct the violations within a reasonable time, then the property may be considered in good standing at the sole discretion of Minnesota Housing. If the violation(s) cannot be corrected within the 90-day correction period (or within the 90-day extension, if granted) Minnesota Housing may require the owner and management agent to formulate a plan and reasonable timeline to bring the violation(s) back into compliance and advise

Minnesota Housing in writing of such a plan. Owners will have demonstrated good faith efforts by carrying out the plan within the referenced timeline and the property will remain in good standing.

- If an owner repeatedly delays or ignores requests for monitoring reviews, fails to submit annual certifications, reports, or compliance monitoring fees, does not correct violations in a timely manner or according to the agreed-upon plan, where applicable, or otherwise chooses to ignore the compliance and monitoring requirements (serious and/or flagrant noncompliance) the following are consequences:
    - At its sole discretion, Minnesota Housing may determine that the property and the owner are not in good standing. If a management company is affiliated with, related to, or has common ownership with the owner (as determined at the sole discretion of Minnesota Housing), the management company will also be considered not in good standing. Minnesota Housing's website will reflect the change in status. A Report of Development Not in Good Standing (HTC 31) will be issued to the owner and filed with the Minnesota Housing development team. Until the property is back in good standing, no further Minnesota Housing funds or tax credits will be awarded to:
        - Projects involving the not-in-good-standing owner
        - Projects involving entities or individuals with controlling interests in the not-in-good-standing owner
        - Projects proposed to be managed by the management company (if affiliated with or related to the owner as described above).
    - The property may be ineligible for a lower property tax rate under the Low Income Rental Classification (LIRC).
    - Minnesota Housing or any eligible past, current, or prospective tenants have the right to enforce specific performance of the LURA through the court system.
    - Minnesota Housing may pursue any other remedies available in law or equity.

Once good faith efforts are demonstrated to Minnesota Housing's satisfaction, Minnesota Housing will reinstate the property, owner, management company, and other impacted individuals and entities to good standing status and update the website to reflect the change in status.

Owners and management agents must keep careful track of when a development, and in some cases certain buildings within a development, transitions from the compliance period into the extended use period. Premature implementation of the extended use period compliance and monitoring guidelines may result in noncompliance with Section 42 for which Minnesota Housing would be required to file IRS Form 8823.

9.06 Eventual Tenant Ownership

Owners who are considering converting HTC rental units to homeownership should review the Eventual Tenant Ownership (ETO) Guide. Contact the HTC team at htc.mhfa@state.mn.us with ETO questions or for additional information.

9.07 Three-Year Tenant Protection Period Following Expiration or Termination of Extended Use Period

For three years after the extended use period naturally expires or is terminated pursuant to section 42(h)(6)(E)(ii), owners may not evict or terminate tenancy (including lease non-renewal or refusal to enter into a new lease on substantially the same terms) for other than good cause and may not increase rents above the allowable Section 42 rent limit.

During this three-year period owners must:

- Submit an annual owner certification in PORT's AOC Submission Site certifying that no low-income residents were evicted or tenancy terminated for other than good cause and that rents do not exceed the allowable Section 42 rent limit.
- Report a recertification event in PORT for all low-income households that occupied a unit at the expiration or termination of the extended use period (Protected Households), including the respective rent and UA.
- Report the move-out date for Protected Households, where applicable.

Occupancy data on Protected Households and the owner certification are due on February 15 or the next business day for the preceding calendar year. No monitoring fees will be due. Minnesota Housing is not required to perform inspections.

Owners may request a release of the LURA by submitting a Request for Action after the three-year tenant protection period expires or earlier if no protected households remain in the property.

Chapter 10 – Tax Credit Assistance Program and Section 1602 (Tax Credit Exchange) Program

The American Recovery and Reinvestment Act of 2009 established two temporary programs providing allocating agencies with tools to help certain HTC-financed rental housing projects close financing gaps created by reduced credit pricing and lack of syndicator equity:

1. The Tax Credit Assistance Program (TCAP), administered by HUD
2. The Section 1602 Program, administered by the U.S. Department of Treasury (U.S. Treasury), which authorized allocating agencies to exchange HTCs for cash that the allocating agency could loan or grant to projects in lieu of HTC.

TCAP funds were awarded only to projects where there was an allocation of HTCs. Section 1602 Program funds were awarded to projects with or without HTCs.

10.01 Compliance and Asset Management

Properties funded with TCAP and/or Section 1602 Program funds must comply with Minnesota Housing loan documents and with Section 42 for the full term of the compliance and extended use periods, as evidenced by a LURA. Additionally, during the compliance and extended use period, these programs may be subject to asset management oversight by Minnesota Housing.

10.02 Monitoring and Reporting

Minnesota Housing will monitor compliance with TCAP and the Section 1602 Program in the same manner as the HTC Program as described in this guide; however, Section 1602 will require reporting violations to the U.S. Treasury in a form and manner required by the U.S. Treasury, and not to the IRS on IRS Form 8823. Asset management includes, but is not limited to, lease-up compliance monitoring, operational and financial reporting, and other monitoring pursuant to a Regulatory Agreement with Minnesota Housing.

Questions regarding asset management activities should be directed to mhfa.am@state.mn.us.

Appendix A – Legal Addendum

1.01 Conflict and Control

In the event of any conflict between the terms of this Addendum and the document to which it is attached, the terms of this Addendum will govern and control.

1.02 Fraud

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

Any person or entity (including its employees and affiliates) that enters into a contract 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 communication channels described in section 1.07 of this Addendum.

1.03 Misuse of Funds

A contracting party that receives funding from Minnesota Housing 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 recipient to pay for those activities, goods or services. Regardless of the Minnesota Housing program or funding source, the recipient must use Minnesota Housing funds as agreed, and the recipient 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 recipient; or (2) a recipient cannot provide adequate documentation to establish that Minnesota Housing funds were used in accordance with the terms and conditions of the contract.

Any recipient (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 communication channels described in section 1.07 of this Addendum.

1.04 Conflict of Interest

A conflict of interest – Actual, Potential or Appearance of a Conflict of Interest – 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 Conflict of Interest or Appearance of a Conflict of Interest exists even if no unethical, improper or illegal act results from it.

- **Actual Conflict of Interest:** An Actual Conflict of Interest occurs when a person's decision or action would compromise a duty to a party without taking immediate appropriate action to eliminate the conflict.
- **Potential Conflict of Interest:** A Potential Conflict of Interest may exist if a person has a relationship, affiliation or other interest that could create an inappropriate influence if the person is called on to make a decision or recommendation that would affect one or more of those relationships, affiliations or interests.
- **Appearance of a Conflict of Interest:** An Appearance of a Conflict of Interest means any situation that would cause a reasonable person, with knowledge of the relevant facts, to question whether another person's personal interest, affiliation or relationship inappropriately influenced that person's action, even though there may be no Actual Conflict of Interest.

A conflict of interest includes 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 Partner, Family Member, Relative, Friend, Business or other Outside Interest with which they are involved. Such terms are defined below.

- **Business:** Any company, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual or any other legal entity which engages either in nonprofit or profit-making activities.
- **Family Member:** A person's current and former spouse; children, parents, and siblings; current and former children-in-law, parents-in-law, and siblings-in-law; current and former stepchildren and stepparents; grandchildren and grandparents; and members of the person's household.
- **Friend:** A person with whom the individual has an ongoing personal social relationship. "Friend" does not generally include a person with whom the relationship is primarily professional or primarily based on the person being a current or former colleague. "Friend" does not include mere acquaintances (that is, interactions are coincidental or relatively superficial). Social media friendships, connections, or links, by themselves, do not constitute friendship.
- **Outside Interest:** An Outside Interest may occur when an individual, their Family Member or their Partner has a connection to an organization via employment (current or prospective), has a financial interest or is an active participant.
- **Partner:** A person's romantic and domestic partners and outside Business partners.
- **Relative:** Uncle or aunt; first or second cousin; godparent; godchild; other person related by blood, marriage or legal action with whom the individual has a close personal relationship.

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 a contract with Minnesota Housing must avoid and immediately disclose to Minnesota Housing any and all conflicts of interest through one of the communication channels described in section 1.07 of this Addendum.

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

1.05 Assistance to Employees and Affiliated Parties

Any party entering into a contract with Minnesota Housing for the purpose of receiving an award or benefit in the form of a loan, grant, combination of loan and grant or other funding is restricted in issuing a loan, grant, combination of loan and grant or other funding to a recipient ("Affiliated Assistance") who is also: (1) a director, officer, agent, consultant, employee or Family Member of an employee of the contracting party; (2) an elected or appointed official of the state of Minnesota; or (3) an employee of Minnesota Housing, unless each of the following provisions are met:

- The recipient meets all eligibility criteria for the program;
- The assistance does not result in a violation of the contracting party's internal conflict of interest policy, if applicable;
- The assistance does not result in a conflict of interest as outlined in section 1.04 of this Addendum;
- The assistance is awarded utilizing the same costs, terms and conditions as compared to a similarly situated unaffiliated recipient and the recipient receives no special consideration or access as compared to a similarly situated unaffiliated recipient; and
- The assistance is processed, underwritten and/or approved by staff/managers who are independent of the recipient and independent of any Family Member of the recipient. Family Member is defined in section 1.04 of this Addendum.

A contracting party need not disclose Affiliated Assistance to Minnesota Housing. However, the contracting party must document and certify, prior to the award, that the Affiliated Assistance meets each of the provisions outlined above. This documentation must be included in the Affiliated Assistance file and must be made available to Minnesota Housing upon request. Affiliated Assistance that does not meet each of the provisions outlined above will be considered a violation of Minnesota Housing conflict of interest standards and must be reported by the contracting party through one of the communication channels outlined in section 1.07 of this Addendum.

1.06 Suspension

By entering into any contract 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 contract) has not been suspended from doing business with Minnesota Housing. Please refer to Minnesota Housing's website for a list of suspended individuals and organizations (go to mnhousing.gov, scroll to the bottom of the screen and select Report Wrongdoing, then select Suspensions from the menu).

1.07 Disclosure and Reporting

Minnesota Housing promotes a "speak-up, see something, say something" culture whereby internal staff must immediately report instances of fraud, misuse of funds, conflicts of interest or other concerns without fear of retaliation through one of the communication channels listed below. External business partners (for example, administrators, grantees or borrowers) and the general public are strongly encouraged to report instances of fraud, misuse of funds, conflicts of interest or other concerns without fear of retaliation using these same communication channels.

- Minnesota Housing's Risk and Internal Controls Director at 651.296.7608 or 800.657.3769 or by email at MHFA.ReportWrongdoing@state.mn.us;
- Any member Minnesota Housing's Servant Leadership Team, as denoted on Minnesota Housing's current organizational chart (go to mnhousing.gov, scroll to the bottom of the screen and select About Us, select Servant Leadership Team); or
- Report Wrongdoing or Concerns (go to mnhousing.gov, scroll to the bottom of the screen and select Report Wrongdoing).

1.08 Electronic Signatures

Minnesota Housing will use and accept e-signatures on eligible program documents subject to all requirements set forth by state and federal law and consistent with Minnesota Housing policies and procedures. The use of e-signatures for eligible program documents is voluntary. Questions regarding which documents Minnesota Housing permits to be e-signed should be directed to Minnesota Housing staff.

1.09 Fair Housing Policy

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 Title VI of the Civil Rights Act of 1968; the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendment Act of 1988; and the Minnesota Human Rights Act. Housing providers and other entities involved in real estate related transactions 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. Housing providers and other entities involved in real estate related transactions must comply with all non-discrimination requirements related to the provision of credit, as well as access to services.

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

- Discriminate in the selection/acceptance of applicants in the rental of housing units;
- Discriminate in the making or purchasing of loans for purchasing, constructing or improving a dwelling, or in the terms and conditions of real estate related transactions;
- Discriminate in the brokering or appraisal of residential property;
- Discriminate in terms, conditions or privileges of the rental of a dwelling unit or services or facilities;
- Discriminate in the extension of personal or commercial credit or in the requirements for obtaining credit;
- 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;
- Refuse to grant a reasonable accommodation or a reasonable modification to a person with a disability;
- 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 those in the business of buying and selling dwellings to make reasonable accommodations and to allow persons with disabilities to make reasonable modifications.

Under certain circumstances, applicants will be required to submit an Affirmative Fair Housing Marketing Plan at the time of application, to update the plan regularly and to use affirmative fair housing marketing practices in soliciting renters, determining eligibility and concluding all transactions.

As a condition of funding through Minnesota Housing, 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.

1.10 Minnesota Government Data Practices

Minnesota Housing, and any party entering into a contract with Minnesota Housing, must comply with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, as it applies to all data provided by Minnesota Housing under the contract, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by the contracting party under the contract. The civil remedies of Minnesota Statutes, section 13.08 apply to the release of the data referred to in this section by either the contracting party or Minnesota Housing. If the contracting party receives a request to release the data referred to in this section, the contracting party must notify Minnesota Housing. Minnesota Housing will give the contracting party instructions concerning the release of the data to the requesting party before the data is released. The contracting party's response to the request shall comply with applicable law.