Home Investment Partnerships (HOME) and National Housing Trust Fund (NHTF) Combined Program Guide

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Regulations

Program specific federal statutes and rules referenced in this guide can be found at the links below:

- HOME Investment Partnerships Program
- National Housing Trust Fund Program
- Minnesota Statutes and Rules - Office of the Revisor of Statutes

Federal Cross-cutting Requirements

HOME and NHTF are federal funds that require compliance with various cross-cutting requirements, which impact the entire project. The Initiation of Negotiations (ION) for the cross-cutting requirements is triggered differently for each of the funding sources and type.

- NHTF Operating Cost Assistance
  - Completing the NHTF Funding Application Certification and submitting an application as part of Minnesota Housing's Consolidated Request for Proposals (RFP) triggers the ION for all applicable cross-cutting requirements.
- The pool of deferred funds (HOME and NHTF)
  - The signing of the NHTF and/or HOME Funding Acceptance Agreement triggers the ION for all applicable cross-cutting requirements. The certification form is signed after the project has been selected for funding.

The owner/developer is required to comply with all applicable cross-cutting requirements. No choice limiting actions can be taken after the ION has been triggered for these specific funds. In order to be compliant, an owner/developer is prohibited from expending funds or taking any action that would preclude the selection of alternative choices until the environmental review process is complete.

The following chart helps identify some, but not all, of the major federal cross-cutting requirements, their trigger points and the term of compliance with the requirement. More detailed explanations of these requirements can be found throughout relevant guides required as part of Minnesota Housing's Consolidated RFP and in the Code of Federal Regulations (CFR). Violating the choice limiting actions prohibition could cause the federal funds to be withdrawn from the project. If you have questions about choice limiting actions, please contact the Federal Programs Manager.

Requirement	Trigger Point	Term of Requirement
Environmental Reviews regarding choice limiting actions; refer to 24 CFR Part 93.301	ION (Initiation of Negotiations)	ION – clearance or release of funds
Uniform Relocation Act (URA)	ION	ION – project construction closeout
Section 3	ION	ION – project construction closeout
Black, Indigenous and people of color-owned Business Enterprise/Women-owned Business Enterprise[1]	ION	ION – project construction closeout
Davis Bacon and Related Acts – HOME	ION	ION – project construction closeout
Davis Bacon and Related Acts – NHTF	None	None
Lead-based Paint	ION (pre-1978 construction date)	ION – ongoing
Fair Housing-Accessibility	ION	ION – ongoing
Fair Housing-Marketing	ION	ION – ongoing
EEO-included in contracts	ION	ION – project construction closeout
Debarment/Suspension	ION	ION – project construction closeout
Physical Condition Standards	ION	ION – term of the loan

[1] Minnesota Housing has adopted Black, Indigenous, and people of color-owned Business Enterprise and Women-owned Business Enterprise, which is also known as Minority-owned and Women-owned Business Enterprise (MBE/WBE) when in reference to certain state and federal programs as well as statutory language.

Chapter 1 – Introduction

1.01 Background

Minnesota Housing has administered the HOME Investment Partnerships Program (HOME) since 1992. The National Housing Trust Fund Program (NHTF) funds first became available in Minnesota Housing's 2016 Consolidated RFP. HOME and NHTF are federal programs and are dependent on the continued availability of federal funds.

1.02 HOME and NHTF Program Purpose and Descriptions

The information presented in this guide is not intended to be a complete description of the owner/developer's responsibilities under the U.S. Department of Housing and Urban Development's (HUD) HOME and NHTF programs.

Unless a provision is noted as "HOME Only" or "NHTF Only," all provisions of this guide apply to both programs. Noncompliance by the owner/developer with certain HOME and NHTF Program requirements may have serious financial consequences.

HOME

The HOME Program can either preserve or increase the supply of decent, safe and sanitary affordable housing for low-income individuals and families. For preservation projects, Minnesota Housing gives priority in its Consolidated RFP to projects faced with risk of opt-out from federal subsidy programs (e.g., Section 8). The HOME Program provides financing for any of the following activity types:

- New construction
- Acquisition with rehabilitation
- Rehabilitation without acquisition

NHTF

The NHTF Program provides opportunities to increase or preserve the supply of multifamily rental housing for extremely low- and very low-income families, including homeless families. This program provides funding to add a supply of affordable housing to markets where there is strong evidence of an inadequate supply. The primary benefit of the NHTF Program will be the reduction of the number of homeless families and individuals as well as a reduction in the number of families paying a disproportionate share of their income for housing. The NHTF Program provides financing for any of the following activity types:

- New construction
- Acquisition with rehabilitation
- Rehabilitation without acquisition
- Operating Cost Assistance with one of the above activity types

1.03 Highlights of the HOME Final Rule

The 2013 HOME Final Rule contains many provisions that impact how Minnesota Housing administers HOME activities. It also codifies existing policy guidance that has been previously issued by HUD and addresses a number of technical and non-substantive "housekeeping" items within the HOME regulation. This guide specifies areas where Minnesota Housing has implemented more restrictive requirements.

The provisions of the HOME Final Rule listed below are of particular importance as they relate to changes in how the HOME Program is administered. Details can be found in subsequent chapters specific to the change.

- Revised commitment and completion deadlines
- Occupancy deadlines
- Regulatory guidance to strengthen performance in the production and preservation of HOME assisted projects
- Long-term financial viability of the HOME project over its affordability period
- HOME projects are required to maintain property conditions throughout the affordability period
- Capital needs will be evaluated during underwriting to plan for major systems repairs
- Reserves deposits must be sufficient to ensure the useful life of essential building components throughout the period of affordability
- Community Housing Development Organization (CHDO) qualification and capacity requirements increased

1.04 Highlights of the NHTF Interim Rule

In January 2015, HUD published an Interim Rule ([FR-5246-I-03](FR-5246-I-03)) that provides guidelines for states to implement the NHTF. The provisions of the NHTF Interim Rule listed below are of particular importance as they relate to how NHTF will be administered. Details can be found in subsequent chapters specific to the change.

As HUD releases additional guidance for NHTF, Minnesota Housing will continue to update program policies and protocols to align with the NHTF Interim Rule. Where possible, the NHTF Program will align with the HOME Program.

Unique components of NHTF:

- Labor standards – not required
- Operating Cost Assistance and Operating Cost Assistance Reserves (OCAR)
- All NHTF assisted rental housing must meet a minimum affordability period of 30 years

1.05 Program Comparison Chart

Categories	NHTF Program	HOME Program
Statutory Authority	Title I of the Housing and Economic Recovery Act of 2008	Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended
Regulatory Authority	24 CFR Part 93	24 CFR Part 92
Purpose	• Production or preservation, primarily of rental housing, affordable and available to extremely low-income households State determines: • Priority housing need throughout the state	• Preserve the supply of decent, safe, and sanitary affordable housing for low-income individuals and families • Meet identified priority housing needs, through development or rehabilitation of rental housing State determines: • Priority housing need throughout the state
Allocation	Formula	Formula
Formula Factors	Shortage of standard housing: • Overcrowding, having incomplete kitchen facilities, having incomplete plumbing, or a high rent to income ratio • Affordable to very low- and extremely low-income (below 50% of AMI and 30% of AMI) households; weighted toward extremely low-income households • High rent to income ratio ≥ 50% of income for rent • Cost of producing housing relative to national average	Shortage of standard housing: • Overcrowding, having incomplete kitchen facilities, having incomplete plumbing, or a high rent to income ratio Rental households in poverty: • Poverty relative to national average • Inadequate housing – low vacancy, poor renters • Pre-1950 housing stock occupied by poor households • Fiscal incapacity • Cost of producing housing relative to national average

Categories	NHTF Program	HOME Program
Minimum Income Targeting	When total NHTF funds available nationally are less than $1 billion: • 100% of NHTF assisted units must be occupied by extremely low-income households (≤ 30% of AMI) or families with incomes at or below the poverty line (whichever is greater)) When NHTF funds are greater than $1 billion nationally: At least 75% of NHTF assisted units must be occupied by extremely low- income households (≤30% of AMI) or families with incomes at or below the poverty line (whichever is greater)) • Up to 25% for very low-income households (≤ 50% of AMI)	Regardless of the amount of the award to Minnesota Housing: • 100% for low-income households (≤ 80% of AMI) • 90% (of HOME rental units) for households at ≤ 60% of AMI • 20% of HOME assisted units in projects with five or more HOME units for households at ≤ 50% of AMI
Eligible Activities	• New construction • Acquisition and rehabilitation • Operating Cost Assistance (up to one third of annual grant)	• New construction • Acquisition • Acquisition and rehabilitation
Limits on Eligible Activities	Minnesota Housing will be using NHTF for rental properties	Minnesota Housing will be using HOME for rental properties
Rents	Rents plus utilities in units for extremely low-income households are capped at 30% of the income of a household whose income is 30% of AMI	• High HOME rents (including utilities) are capped at the lesser of the Fair Market Rent (FMR) for the area or 30% of the income of a household whose income is 65% of AMI. • Low HOME rents (including utilities) are capped at 30% of the income of a household whose income is 50% of AMI, or, if there is federal or state project-based rental assistance, 30% of the tenant's adjusted gross income

Categories	NHTF Program	HOME Program
Maximum Per-Unit Subsidy Limits	Limits are set by Minnesota Housing: • Currently using 240% of the Section 234 basic mortgage limit, for elevator-type projects	Interim Policy – CPD-15-003 Section 234- Condominium Housing, elevator-type. Section 234 basic mortgage limits will be used in place of the Section 221(d)(3) limits until further HUD guidance. • Cannot exceed 240 percent of the Section 234 basic mortgage limit
Affordability Periods	Rental Projects – New Construction, Rehabilitation, Rehabilitation and Acquisition: • 30 years	Rental Projects – Rehabilitation, Rehabilitation and Acquisition: • 5, 10, 15 years depending upon the amount of the HOME investment Rental Projects – New Construction: • 20 years
Funding Commitment Deadline	24 months from date of grant agreement execution	Currently suspended
Project Completion Deadline	For (4) years from commitment date (execution of Written Agreement)	Four (4) years from commitment date (execution of Written Agreement)

Chapter 2 – Eligible Uses and Eligibility Criteria

2.01 Eligible Projects

- HOME and NHTF programs allow for the funding of new construction, rehabilitation and acquisition.
- A property may contain one or more buildings on a single site. Properties may also be located on more than one site if it meets all of the following:
  - The properties are under common ownership
  - The properties are under common management and financing
  - The housing units are being rehabilitated in each building as part of a single undertaking
- A property must also meet all of the following:
  - Conform to all applicable zoning ordinances
  - Possess all appropriate use permits
  - Be used primarily for residential purposes (51 percent or more of the gross floor area of each structure must be residential space)
  - Provide permanent housing (e.g., no emergency shelters or other facilities such as nursing homes, convalescent homes, hospitals, residential treatment facilities, correctional facilities, halfway houses, housing for students, dormitories [including farmworker dormitories])

2.02 Ineligible Projects

- A property under the Emergency Low-Income Housing Preservation (ELIHPA) Act of 1987
- A property under the Low-Income Housing Preservation and Resident Homeownership (LIHPRA) Act of 1990
- Minnesota Housing-financed projects actively participating in its Redefined Equity program
- Public housing property, unless otherwise specified by HUD
- A property owned by a trust
- A property owned by a borrower who previously received funds from Minnesota Housing and who did not maintain compliance with affordability, property standards or otherwise defaulted under its loan
- A property where there are encumbrances, judgments or outstanding liens that are not acceptable to Minnesota Housing
- A property with a history of negative cash flow that will not be corrected during the acquisition and rehabilitation of the property

- **NHTF:** Prohibits the use of NHTF funds in conjunction with property taken by eminent domain unless eminent domain is employed only for a public use.
- **HOME:** A property previously funded under the HOME Program (by Minnesota Housing or any other Participating Jurisdiction) that is still within its effective period unless a waiver has been granted by Minnesota Housing and HUD.

NOTE: The terms affordability period, effective period, and compliance period all mean the length of time that the property has to be in compliance with the program requirements.

2.03 Eligible Costs and Activities

Hard Costs

- Eligible hard costs include the actual cost of constructing or rehabilitating housing, including the activities in 24 CFR Part 93.201(a) for NHTF and 24 CFR Part 92.206(a) for HOME. Minnesota Housing can help determine what types of costs can be included in a specific project.
- Permanent improvements that bring the property into compliance with applicable state and local codes, zoning ordinances and lead-safe housing as stated in HOME regulations under Part 92.251 and NHTF regulations under Part 93.301, Minnesota Housing Rental Housing Design/Construction Standards, and Uniform Physical Condition Standards (UPCS) specified in 24 CFR Part 5.705
- Acquisition costs, for properties to be rehabilitated.

NOTE: HOME and NHTF funds are restricted in their use for public housing units. Applications for public housing units must meet the eligibility requirements of 24 CFR Part 92.213 for HOME or 24 CFR Part 93.203 for NHTF.

Soft Costs

- Architectural, engineering or related professional services required to prepare plans, drawings, specifications or work write-ups if they are incurred no more than 24 months prior to the execution of the HOME or NHTF Written Agreement that commits the funds to the property or during the construction phase
- Costs for environmental testing (Phase 1), Lead-based Paint (LBP) assessment, radon, asbestos- containing materials (ACM) assessment
- Developer fees up to five percent of the loan
- Finance-related costs
- Affirmative marketing and fair housing information to prospective tenants or owners of an assisted project
- Temporary relocation costs
- Other soft costs eligible under 24 CFR Part 92 for HOME, and 24 CFR Part 93 for NHTF and

are approved by Minnesota Housing in advance of incurring the soft costs

Eligible Operating Costs (NHTF)
The NHTF Program allows grantees to set aside up to one third of their grant for operating cost assistance for NHTF assisted units for which project-based rental assistance is not available. Minnesota Housing will make available operating cost assistance in the form of a grant to provide operating reserves to eligible projects.

Owners that accept OCAR as a component of the funding for their project will be required to enter into a Written Agreement as well as an Operating Cost Assistance Written Agreement with Minnesota Housing. These documents will identify the obligations of the owner in regard to holding and drawing the reserve funds.

Ongoing monitoring of the reserves will occur as part of asset management oversight and will be integrated into the underwriting of the project. On an annual basis, reserve amounts may be reconciled with the amount originally committed and projected with actual costs incurred. Adjustments to the reserves would be made as directed by HUD. HUD guidance on this specific requirement is still pending. Minnesota Housing reserves the right to modify any portion of this guide to respond to federal guidance.

2.04 Ineligible Costs and Activities

Additional detail for ineligible activities and fees can be found under 24 CFR Part 92.214 for HOME and Part 93.204 for NHTF. Owners are encouraged to review this section of the regulation (refer to Section 1.05 above for links).

NOTE: Ineligible improvements and expenses may be completed at the expense of the owner.

Ineligible Improvements and Expenses

- Recreational or luxury improvements
- Installation of fireplaces or wood burning stoves
- Materials purchased prior to the commitment of federal funds
- Acquisition that is not in conjunction with rehabilitation of the project
- Improvements that started prior to loan closing
- Equipment and furnishings not considered part of the real estate
- Materials, fixtures or landscaping of a type or quality exceeding those customarily used in similar neighborhood properties
- Improvements not included in the scope of work and the loan amount

Ineligible Soft Costs

Ineligible soft costs can include items such as:

- (HOME) Operating or replacement reserves
- (HOME and NHTF)
  - Application fees
  - Management agent fees
  - Monitoring fees
  - Displacement of tenants
  - Other soft costs incurred prior to loan closing that have not been approved by Minnesota Housing

2.05 Eligible Owners, Sponsors, Developers and Capacity

Eligible Entities for HOME and NHTF must be either:

- A for-profit entity
- A 501(c)(3) nonprofit entity
- A government unit (excluding the federal government)
- A religious organization

NOTE: For a project funded with HOME to be eligible to receive Community Housing Development Organization (CHDO) set-aside funds, the owner must be certified by Minnesota Housing as a CHDO.

The owner must provide evidence of a qualifying interest in the property. Such interest must be recorded and appear in the county records. The minimum qualifying interest is 100 percent fee simple interest that may also be subject to a mortgage.

Owner and Development Team Debarment Review

Minnesota Housing will confirm that no members of the project team, including the owner, are debarred or excluded from receiving federal assistance prior to selection or entering into a Written Agreement or closing the loan.

- If the owner(s) are listed on HUD's Limited Denial of Participation (LDP) list or they are in the System for Award Management (SAM), they will not be eligible to receive HOME or NHTF funds.
- If anyone on the owner's development team is listed on either HUD's LDP or the SAM debarment list, they must be replaced by someone who does not appear on HUD's debarment lists.

Contractor Debarment

Before issuing a contract to a general contractor, the owner must verify with Minnesota Housing that the general contractor is not debarred or excluded from working on federally assisted projects.

- If the general contractor is listed on HUD's LDP list or in the SAM, they are not eligible to work on the project and will have to be replaced by another contractor who does not appear on HUD's debarment lists.
- It is the general contractor's responsibility to provide documentation to Minnesota Housing that verifies all subcontractors working on the project are not on the LDP list or in the SAM.

Developer Capacity

Developer's capacity, including but not limited to prior experience and financial capabilities, will be assessed prior to selection for funding.

Community Housing Development Organization (CHDO) Capacity (HOME Program)

- To receive the HOME CHDO set-aside funds, the developer must complete and submit a CHDO Qualification Form and supporting documentation to Minnesota Housing for review and approval.
- CHDO certification must be completed for every project.
- If CHDO set-aside funds are awarded to a project, the CHDO must recertify every year throughout the term of affordability.
- If a project is receiving CHDO set-aside funding, the CHDO can only be replaced as the general partner for just cause, and the CHDO must be replaced with another certified CHDO.
- A nonprofit must have paid staff whose experience qualifies them to undertake CHDO set-aside activities.

2.06 Design and Property Standards

HOME and NHTF Property Standards

- Properties served with HOME and NHTF funds must comply with all applicable state and local codes, standards, and ordinances by project completion. In cases where standards differ, the most restrictive standard will apply. In the absence of a state or local building code, the International Residential Code or International Building Code of the International Code Council will apply.
- Properties must meet local housing habitability or quality standards throughout the effective period. If no such standards exist, HUD's Uniform Physical Conditions Standards (UPCS), as set forth in 24 CFR Part 5.705, will apply.
- It is the owner's responsibility to determine if there is a local housing habitability code required for their property and to provide to Minnesota Housing with either a copy of the code or an internet URL to the code.

Minnesota Housing Rental Housing Design/Construction Standards

- All projects funded through the HOME and NHTF programs must follow Minnesota

Housing's Rental Housing Design/Construction Standards. These guidelines are available on Minnesota Housing's website at www.mnhousing.gov: Rental Housing Design/Construction Standards.

- All rehabilitation projects with 26 or more units are required to have the useful remaining life of the major systems determined. Major systems include structural support; roofing; cladding and weatherproofing (e.g., windows, doors, siding, gutters); plumbing; electrical; and heating, ventilation, and air conditioning.
- For rehabilitation projects, if the useful remaining life of one or more major system(s) is less than the applicable effective period, the system(s) must be either included in the scope of work or a replacement reserve must be established and monthly deposits made to the reserve account to adequately repair or replace the systems as needed.

2.07 Environmental Reviews

HOME and NHTF both require an environmental review prior to execution of the Written Agreement.

HOME Program

The environmental review requirements for HOME are found under 24 CFR Part 92.352. This section's regulations align with the environmental review requirements found under 24 CFR Part 58. After the ION, no choice limiting actions can be taken until the environmental review has been completed. It is important for developers to consult with the underwriter to review the noted regulations to ensure the relevant protocols are followed. Written Agreements will not be entered into until an environmental review is completed.

NHTF Program

The environmental review requirements for NHTF are found under 24 CFR Part 93.301(f). It is important for developers to consult with the underwriter to review the noted regulations to ensure the relevant protocols are followed. Written Agreements will not be entered into until an environmental review is completed.

2.08 Lead Hazard Evaluation and Reduction

All projects funded through the HOME or NHTF Program must follow HUD 24 CFR Part 35 subparts A, B, J, K, M and R, Minnesota Housing's Rental Housing Design/Construction Standards and Minnesota Housing's Lead-based Paint policy. Owners are required to follow disclosure requirements for Lead- based Paint (LBP), including:

- Complete Minnesota Housing's Lead-based Paint Pre-Construction Certification form and submit the original to Minnesota Housing in conjunction with signing the HOME and/or NHTF Funding Acceptance Agreement.
- Provide the EPA-approved lead hazard pamphlet "Protect Your Family from Lead in Your Home" to all tenant households in a property built prior to 1978. The pamphlet must be given upon execution of the HOME and/or NHTF Funding Acceptance Agreement to existing tenants and new tenants at move-in.

- Distribute to all tenants residing at the property during rehabilitation the "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools" pamphlet. This must be distributed no less than seven days and no more than 60 days prior to commencement of rehabilitation.
- Retain on file a Lead-based Paint Acknowledgment of Disclosure form signed by the tenant. The signed Lead-based Paint Acknowledgement of Disclosure must be retained for three years from the beginning date of the leasing period.
- Post an assessment or notice of lead-based paint hazards present, whether determined by a risk assessment or presumption of lead. The owner must post the notice in a conspicuous location or deliver a copy of the assessment to each household within 15 days.

2.09 Obtaining Bids

All projects must be awarded to a single general contractor except if the project includes asbestos work. If asbestos work is included, it is acceptable to have a general contractor for the asbestos work and a general contractor for the remaining scope of work. The selected single prime general contractor will be responsible for their scope of work.

The contractor selection process can be through competitive or negotiated bids. If the bid for a general contractor is negotiated, all subcontractors must be competitively solicited. Refer to Section 2.05 for important information on eligible contractors and subcontractors and Minnesota Housing's Contractor Guide for more information on soliciting bids.

2.10 Funds for Final Draw

Minnesota Housing will withhold a minimum of $50,000 or five percent of the HOME or NHTF loan proceeds, whichever is greater, until the final draw, in addition to any construction retainage, pending satisfactory evidence that all HOME or NHTF program and compliance responsibilities have been met and that all associated documentation needed for the project closeout is complete.

For projects using HOME/NHTF for new construction, Minnesota Housing will withhold the final draw until all federally assisted units are occupied by income-eligible tenants and all federal due diligence has been reviewed and approved.

2.11 Construction Process Monitoring

The owner's contracts with the architect and general contractor must include language that requires the architect and general contractor to provide regular construction administration and site observations pursuant to Minnesota Housing's Architect's Guide and Contractor's Guide.

2.12 Construction Draws

Minnesota Housing reviews and approves all monthly draws for HOME and NHTF prior to disbursement of any funds. Minnesota Housing cannot approve a draw or disburse HOME or

NHTF funds if a property is out of compliance with program obligations during the construction period. This may include, but is not limited to, failure to provide labor information and reports, Uniform Relocation Act (URA) reports and Section 3 documentation.

Draws may be withheld until compliance with program obligations, loan terms and the Written Agreement is met, and in cases where compliance cannot be achieved, Minnesota Housing may pursue all available remedies as outlined in the loan documents.

2.13 Change Orders

All change orders and other contract modifications will be in accordance with Minnesota Housing's Architect's Guide and Contractor's Guide.

2.14 Inspections – Initial and Construction

- All projects funded through HOME and NHTF must have a scope of work and bid specifications prepared by an architect licensed to practice in Minnesota. Initial property inspections performed by the project team must be in accordance with Minnesota Housing's Rental Housing Design/Construction Standards.
- In addition, both programs require an initial property inspection for rehabilitation projects to identify any Uniform Physical Condition Standards (UPCS) deficiencies. This inspection is completed by Minnesota Housing staff or by an entity or person contracted by Minnesota Housing.
- Findings of the initial inspection deemed an emergency will be required to be remedied per UPCS protocol. The remaining UPCS violations and findings, including those categorized as routine maintenance, will then need to be integrated into the scope of work.
- Improvements that are identified as routine maintenance may, at Minnesota Housing's discretion, be included in the scope of work or completed separately by the owner. If the owner chooses to complete the maintenance work separate from the project's scope of work, the maintenance must be completed prior to the final project closeout inspection and must meet all applicable Minnesota Housing Rental Housing Design/Construction Standards.
- Minnesota Housing will attend the draw meetings and perform property inspections during construction.
- A final project closeout inspection must be completed by Minnesota Housing staff or by an entity or person contracted by Minnesota Housing after project construction is complete. All UPCS violations, including those categorized as routine maintenance, from all earlier inspections must be corrected prior to the project closeout inspection.

2.15 Project Completion

Project completion for projects funded with HOME or NHTF is defined to mean that:

- All necessary title transfer requirements and construction work have been performed
- The project complies with the requirements of program regulations, including property standards
- The final drawdown of funds has been disbursed for the project
- The project completion information has been entered into HUD's Integrated Disbursement and Information System (IDIS)

HOME
HOME assisted rental units must be occupied by income-eligible households within 18 months of project completion; for units that remain vacant six months following completion, an enhanced marketing plan and report will be required to be submitted to HUD [24 CFR Part 92.252].

NHTF
The project completion date must ensure timely occupancy of NHTF units.

NOTE: To help ensure that new construction properties fully comply with HUD's HOME and/or NHTF project completion requirements, Minnesota Housing will withhold the final HOME and/or NHTF draw until all federally assisted units are occupied by income-eligible households and all federal project close-out due diligence has been reviewed and approved. Reference 24 CFR Parts 92.251 and 92.502(d) for HOME and 24 CFR Parts 93.2, 93.301, and 93.402(d) for NHTF.

While project completion in the HOME (24 CFR Part 92.2) and NHTF (24 CFR Part 93.2) regulations occurs upon completion of construction and before occupancy, Minnesota Housing requires that all federally assisted units be initially occupied prior to project completion to avoid any issues with the lease-up requirements for HOME and NHTF programs.

Chapter 3 – Underwriting Considerations

All projects funded through the HOME and NHTF programs must follow Minnesota Housing's Multifamily Underwriting Standards. These standards include requirements for debt coverage ratio and loan to value.

Minnesota Housing will provide technical assistance to facilitate commitment of HOME and NHTF funds and will assist owners with understanding their compliance obligations.

3.01 Underwriting for New Construction

Projects undergoing new construction have unique differences that include, but are not limited to, site and neighborhood standards, occupancy and marketing approaches, operating costs, energy efficiency and fair housing and accessibility. These requirements are outlined throughout this guide, the Multifamily Underwriting Standards, the Architect's Guide and the Minnesota Housing Rental Housing Design/Construction Standards.

3.02 Underwriting for Rehabilitation

Projects undergoing acquisition and rehabilitation have unique differences that include, but are not limited to, market demand, occupancy and marketing approaches, operating costs, energy efficiency, relocation and fair housing and accessibility. These requirements are outlined throughout the Multifamily Underwriting Standards, the Architect's Guide, and the Minnesota Housing Rental Housing Design/Construction Standards.

3.03 Written Agreement – Commitment of Funds to a Project

Written Agreements are required for:

- HOME capital funds
- HOME CHDO set-aside funds
- NHTF capital funds
- NHTF OCAR funds

The owner and Minnesota Housing must sign and date the applicable Written Agreement in order to receive federal funds. For capital funds, the Written Agreement must be signed prior to construction activities. The Written Agreement may be signed in advance of, or concurrent with, loan closing as long as all HOME Program and NHTF Program and Written Agreement requirements have been satisfied.

Each Written Agreement outlines the minimum responsibilities and expectations that must be met prior to signing the Written Agreement and throughout the term of the affordability period. Minnesota Housing reserves the right to include additional requirements.

All projects using these federal sources for capital expenses must demonstrate the ability to begin construction within 12 months from the date of the signed Written Agreement.

The commitment deadline for HOME funds is currently suspended. NHTF funds have a commitment deadline of 24 months from the date the grant agreement from HUD is executed.

NOTE: If funds are not committed via execution of the Written Agreement by their commitment deadline, HUD will recapture the federal funds from a project.

Even if the Written Agreement is signed in advance of loan closing, absolutely no site work can begin until after loan closing.

3.04 Loan Terms

HOME and NHTF funding can be provided in the form of a construction loan or an end loan.

- Zero percent interest rate
- Payment is due in full the earlier of 30 years from the date of the signed mortgage or the occurrence of one or more of the following:
  - Failure of the owner to accept a renewal or extension of federal rental assistance
  - Failure of the federal government to offer to renew or extend federal rental assistance due to actions of the owner or condition of the property
  - An event of default occurrence described in the mortgage and related loan documents
- The minimum amount of HOME and NHTF program assistance is $1,000 per unit or $100,000 per project
- The interest rate may be adjusted in order to allow these funds to be utilized with other sources of funding, such as Low-Income Housing Tax Credits
- The loan term may be adjusted based on requirements and conditions of other federal assistance or funding sources
- Loans will generally be full recourse; however, Minnesota Housing may allow non-recourse debt to single asset entities
- Principal and interest, if any, will generally be due and payable at the end of the loan term, which is typically 30 years; however, Minnesota Housing may, at its sole discretion, require provisions necessitating 20 percent of cash flow in excess of $50,000 be repaid annually

3.05 Reserves

If the useful remaining life of one or more major system(s) is less than the applicable effective period, the system(s) must be either included in the scope of work, or a replacement reserve must be established and monthly deposits to the reserve account must be made to adequately repair or replace the systems as needed.

NHTF

Operating Cost Assistance Reserves (OCAR)

- Operating cost assistance reserves may be funded for the amount estimated to be necessary for 15 years from the start of the affordability period.
- Minnesota Housing will determine funding levels and underwrite for these reserves based on the needs of the project and eligible uses.
- The reserve will be held by Minnesota Housing. The owner must annually submit an audit along with the pay request for the eligible expenses incurred during the previous year.
- If the property fails to meet the affordability requirements or is terminated or in default for any reason, all funds must be repaid and any balance in a reserve account will be applied to the balance owed.

3.06 Limit on Governmental Assistance – Subsidy Layering Review

As part of the underwriting process, Minnesota Housing is required to conduct a subsidy layering review to ensure that the sources and uses of funds (including OCAR for NHTF) for the project are reasonable and only the necessary amount of program funds are invested in the housing project.

Minnesota Housing will refer to its underwriting standards as a guide for conducting the subsidy layering review analysis of reasonable project costs.

For the purposes of the subsidy layering review, governmental assistance includes any loan, grants (including a Community Development Block Grant), guarantee, insurance, payment, rebate, subsidy, credit tax benefit, OCAR (NHTF), or any other form of direct or indirect assistance from the federal, state or local government for use in, or in connection with, a specific housing project.

To complete the analysis, Minnesota Housing will review all sources and uses of funds. Minnesota Housing will confirm that all costs are reasonable. The reasonableness of the project's costs is determined by reviewing the project's quality, construction costs, architectural and engineering fees and consulting fees.

Minnesota Housing's staff architect and underwriter review the cost estimates, costs of comparable projects in the same geographic area, qualifications of the cost estimates for various budget line items, comparable costs published by recognized industry cost index services, and the comparable bids obtained.

The reasonableness of the rate of return on the applicant's equity investment is assessed through a review of the pro forma during the underwriting process.

3.07 Market Analysis

The programs require an assessment of market demand. The purpose of the requirement is to ensure that there will be adequate market demand for a project before committing federal funds. To comply with the regulatory obligations, Minnesota Housing requires a developer to follow the protocols outlined in its RFP guide and Underwriting Standards. Because HUD has indicated that additional guidance will be provided in the future, this requirement may be updated to reflect changes.

An assessment must include, at minimum, the current market demand in the neighborhood in which the project will be located, the experience of the owner/developer, the financial capacity of the owner/developer, and firm written financial commitments for the project.

If a project is also receiving tax credits, the market study will be used to assess the market.

3.08 Site and Neighborhood Standards

Minnesota Housing will administer HOME and NHTF in a manner that provides housing that is suitable from the standpoint of facilitating and furthering full compliance of fair housing laws and regulations and promotes greater choice of housing opportunities.

In carrying out the site and neighborhood requirements with respect to new construction of rental housing, Minnesota Housing will review the information to ensure that the proposed site for new construction meets the requirements in 24 CFR Part 983.57(e)(2).

Project records must illustrate that a site and neighborhood standards review was conducted for each project that included new construction of rental housing assisted to determine that the site meets the requirements of 24 CFR Part 92.202 for HOME and 24 CFR Part 93.150 for NHTF.

As with the HOME Program, HUD is not applying specific site and neighborhood standards to rehabilitation projects under NHTF; however, if project-based vouchers are used in an NHTF rehabilitation unit, the site and neighborhood standards for project-based vouchers will apply.

In addition, the requirements of 24 CFR Part 8 (which implements Section 504 of the Rehabilitation Act of 1973) apply to the NHTF Program and specifically address the site selection with respect to accessibility for persons with disabilities.

Both HOME and NHTF require that the property comply with 24 CFR Part 983.57(e)(2) and (e)(3):

(e) New construction site and neighborhood standards. A site for newly constructed housing must meet the following site and neighborhood standards:

(2) The site must not be located in an area of minority concentration, except as permitted under paragraph (e)(3) of this section, and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-

minority residents in the area.

(3) A project may be located in an area of minority concentration only if:

(i) Sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration (refer to paragraph (e)(3)(iii), (iv), and (v) of this section for further guidance on this criterion); or

(ii) The project is necessary to meet overriding housing needs that cannot be met in that housing market area (refer to paragraph (e)(3)(vi) of this section for further guidance on this criterion).

(iii) As used in paragraph (e)(3)(i) of this section, “sufficient” does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year that, over a period of several years, will approach an appropriate balance of housing choices within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for low-income minority families and in relation to the racial mix of the locality's population.

(iv) Units may be considered “comparable opportunities,” as used in paragraph (e)(3)(i) of this section, if they have the same household type (elderly, disabled, family, large family) and tenure type (owner/renter); require approximately the same tenant contribution towards rent; serve the same income group; are located in the same housing market; and are in standard condition.

(v) Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD assisted housing on the availability of housing choices for low-income minority families in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with other factors relevant to housing choice:

(A) A significant number of assisted housing units are available outside areas of minority concentration

(B) There is significant integration of assisted housing projects constructed or rehabilitated in the past 10 years, relative to the racial mix of the eligible population

(C) There are racially integrated neighborhoods in the locality

(D) Programs are operated by the locality to assist minority families that wish to find housing outside areas of minority concentration

(E) Minority families have benefited from local activities (e.g., acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority families outside of areas of minority concentration

(F) A significant proportion of minority households has been successful in finding units in non-minority areas under the tenant-based assistance programs

(G) Comparable housing opportunities have been made available outside areas of minority concentration through other programs

(vi) Application of the “overriding housing needs” criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably improving the economic character of the area (a “revitalizing area”). An “overriding housing need,” however, may not serve as the basis for determining that a site is acceptable, if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, religion, sex, national origin, age, familial status, or disability renders sites outside areas of minority concentration unavailable or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.

3.09 Unit Comparability Analysis and Cost Allocation

The owner is required to perform a unit comparability analysis on all units in the project. Minnesota Housing will use this information and the eligible project costs to determine the maximum amount of HOME or NHTF funds that the project may receive and the required number of federally assisted units.

Minnesota Housing will work with the owner to determine if the federally assisted units will be designated as fixed or floating. The federal funding must only pay the share of project eligible costs proportionate to the number of federally assisted units. Assisted units must be evenly distributed among the different unit types.

Minnesota Housing will determine the estimated number of federally assisted units as required under the HOME or NHTF programs. The final number and type of units to be assisted will be determined prior to signing the Written Agreement. If there are any changes to loan amounts or eligible costs during construction, the number of federally assisted units and maximum funding will be recalculated. This recalculation may result in revising the number of federally assisted units and/or the affordability period.

Fixed Units

- Comparable Units:
  - When all units in the project (separated by the number of bedrooms), are satisfactorily demonstrated to be comparable (in terms of size, features, configuration, and number of bedrooms), the owner and Minnesota Housing will determine whether or not the federally assisted units should be fixed or floating.
  - When federally assisted units are fixed, the units remain the same during the effective period. Units designated as fixed **must** be occupied by tenants that meet the income and rent restrictions of the specified program for the duration of the effective period.
- Non-comparable Units:
  - When the units are determined to be non-comparable, the federally assisted units must be fixed.
  - The eligible costs must be prorated such that funding is only used for the federally assisted units plus a share of the common area costs.
  - Projects with project-based rental assistance will have HOME/NHTF units fixed on the units with rental assistance whenever possible.

Floating Units

- Comparable Units:
  - To designate the federally assisted units as floating they must be comparable to the non- assisted units.
  - When federally assisted units are floating, the units may change during the effective period so long as both apply:
    - The total number of federally assisted units in the project remains the same, and
    - Any newly designated units must be comparable and maintain the applicable unit mix.

If the project is receiving HOME funds from another participating jurisdiction, the owner must ensure that the other participating jurisdiction's HOME assisted units are separate from the designated Minnesota Housing HOME assisted units.

If a Low-HOME unit receives a federal or state project-based rental subsidy, and the tenant pays as a contribution toward rent not more than 30 percent of the tenant's adjusted income, the maximum rent is the rent allowable under the federal or state project-based rental subsidy program.

In HOME properties, a unit set at a low HOME rent (including a subsidized unit set at the rent allowable under the project-based rental subsidy) must be occupied by a tenant at or below

50% of AMI for the term of the affordability period. If the units are fixed and a tenant's income in a low HOME unit increases above 50% of AMI, the unit no longer qualifies as a low HOME unit. The allowance to use the higher Project-based Rental Assistance (PBRA) rent no longer applies.

If that unit were going to remain a HOME unit, the rent would need to be changed to the high HOME rent. The unit could still receive PBRA, but not in an amount that exceeds the high HOME rent.

If the units are floating and a tenant's income in a low HOME unit increases above 50% of AMI, the unit would be in temporary non-compliance, and the owner could float the HOME designation to another comparable unit.

Refer to Minnesota Housing's Multifamily HOME Programs and National Housing Trust Fund Programs Compliance Guide for more information and compliance requirements during the affordability period, including Chapter 2, Maintaining the Unit Mix.

3.10 Secured Financing

Projects cannot receive federal funds, or have them committed to the project, until proof of due diligence is provided to show all financing for the project has been secured.

3.11 Capital Needs and Major Systems

Minnesota Housing must underwrite all projects to ensure that each project is financially sustainable over its affordability period. Capital needs will be evaluated during underwriting to plan for major systems repairs. The scope of rehabilitation work and replacement reserves deposits must be sufficient to ensure the useful life of essential building components throughout the affordability period [HOME 24 CFR part 92.251(b)(ii) and (viii)] [NHTF 24 CFR part 93.301].

After construction has been completed and as part of the project closeout, the owner must provide an updated capital needs assessment that will document the property's needs for the term of the affordability period. A Minnesota Housing architect reviews and approves the assessment before the project starts its affordability period. Handling of reserves during the affordability period can be found in Chapter 6.

3.12 Black, Indigenous and People of Color-owned Business Enterprises/ Women-owned Business Enterprises

It is the policy of Minnesota Housing that Black, Indigenous, and people of color-owned Business Enterprises and Women-owned Business Enterprises[2] have equal access to business

[2] Minnesota Housing has adopted Black, Indigenous, and people of color-owned Business Enterprise and Women-owned Business Enterprise, which is also known as Minority-owned and Women-owned Business Enterprise (MBE/WBE) when in reference to certain state and federal programs as well as statutory language.

opportunities resulting from Minnesota Housing financed projects, and that the workforces on the projects that

Minnesota Housing finances are demographically representative of the area where the projects are located. When reviewing bid information, Minnesota Housing will examine:

- The owner's and general contractor's certification to determine compliance with laws prohibiting discrimination in employment and that they hire affirmatively
- The extent to which bids from Black, Indigenous, and people of color-owned Business Enterprises and Women Owned Business Enterprises are solicited; such solicitations and results must be documented
- The demographic make-up of the contractor and subcontractor's workforces

State and federal regulations direct that all affirmative steps be taken to ensure that Black, Indigenous, and people of color-owned Business Enterprises and Women Owned Business Enterprises are used when possible. Outreach to Black, Indigenous, and people of color and women must be conducted and documented, and that documentation must be provided to Minnesota Housing for contracts in excess of $25,000.

To demonstrate compliance with Minnesota Housing's affirmative contract compliance requirements, owners must identify contracts bid on by Black, Indigenous, and people of color-owned and women-owned businesses using the Minnesota Housing Contract Compliance Activity Report. This Minnesota Housing report is a data collection tool to be included in bidding documents. All contractors and sub-contractors providing bids must complete and submit this form.

Minnesota Housing reserves the right to require that work is rebid affirmatively if the agency determines there is insufficient solicitation from Black, Indigenous, and people of color and female contractors. Refer to the Multifamily Division Black, Indigenous, and People of Color-owned Business Enterprise and Women-owned Business Enterprise Compliance Guide for more information, including hiring goals for specific geographic areas.

3.13 Section 3 Requirements

Properties that have work completed using federal funds are subject to the requirements of Section 3 of the Housing and Urban Development (HUD) Act of 1968 (12 USC 1701u), as amended. These requirements are described in 24 CFR Part 75. Recipients are evaluated according to how well they meet the HUD defined benchmarks with respect to the percentage of the total number of labor hours worked by Section 3 Workers and by Targeted Section 3 Workers compared to the total number of labor hours worked on a Section 3 project. Minnesota Housing requires certain documentation and tracking information be provided to verify compliance with these benchmarks.

To demonstrate compliance with Section 3 compliance requirements, owners, contractors, and subcontractors must identify and certify all eligible Section 3 Workers and Targeted Section 3 Workers that will work on a Section 3 project. Their labor hours and the total labor hours worked on the Section 3 project must be tracked as well. The owner, contractor, and subcontractors must also report on the qualitative nature of their activities undertaken to target employment and training opportunities to Section 3 Workers and contracting opportunities to Section 3 Business Concerns. Noncompliance with HUD's Section 3 regulations may result in sanctions and debarment or suspension from future Section 3 covered Contracts.

It is the owner's responsibility to ensure that bid packages include all applicable Section 3 information and forms. It is recommended that the owner deem any bid submitted without the required information as incomplete and not valid. The Section 3 Compliance Guide includes all goals that the owner must meet when working on a project that is funded with HOME or NHTF funds. Contact the Federal Programs Manager with questions.

Construction and professional service (i.e., General Contract, architect, environmental remediation, relocation) contracts must include Minnesota Housing's Section 3 Clause along with all applicable labor standards documents. The owner/developer is responsible for ensuring that Minnesota Housing reviews bid packages before they are released.

Refer to the Section 3 Compliance Guide for more information.

3.14 Federal Labor Standards for HOME Funded Projects

Owners agree to abide by and ensure compliance with the federal labor standards laws and regulatory requirements. The three laws that apply to HOME funded projects are:

- Davis-Bacon Act: Requires workers receive not less than the prevailing wages being paid for similar work in the locality. Prevailing wages are computed by the U.S. Department of Labor (DOL) and are issued in the form of federal wage decisions for each classification of work.
- Copeland "Anti-kickback" Act: Workers must be paid at least once a week without any deductions or rebates except permissible deductions, which include taxes, deductions the worker authorized and those required by court processes. The act also requires that contractors maintain payroll records and submit weekly payrolls and statements of compliance to the contracting agency.
- Contract Work Hours and Safety Standards Act: Workers must receive overtime compensation at a rate 1 ½ times their regular wage after they have worked 40 hours in one week.

Refer to the U. S. Department of Housing and Urban Development Office of Labor Relations for additional information about the laws outlined above.

3.15 Davis Bacon Act for HOME Funded Projects

NOTE: This section applies to the HOME Program. The NHTF statute authorizing the program did not make the labor standards of Davis-Bacon and Related Acts applicable to NHTF.

Each HOME assisted project that contains 12 or more HOME assisted units must pay all laborers and mechanics employed in the project an hourly rate not less than the minimum rate specified in the applicable wage decision issued by the DOL for each particular project. When combining HOME assistance with other federal sources, follow the Davis-Bacon standards of the program that applies the standards to the fewest number of units.

Owners must require all of the following:

- All contractors pay employees weekly
- All contractors must, on a weekly basis, enter their certified weekly payroll reports with all applicable documentation into HUD's LCPtracker (Labor Compliance Software; also refer to Section 6.15)

The completion and submission of all documentation for conformance with federal labor standards requirements is a condition for the release of HOME funds.

Minnesota Housing will conduct periodic interviews with persons who are working on site to ensure compliance with Davis Bacon and Related Acts. Errors or discrepancies in labor rates and payrolls will result in possible restitution to the person affected.

3.16 Wage Determination – Home Funded Projects

Each project with 12 or more HOME assisted units must obtain a wage decision from the DOL website. The owner's architect is responsible for obtaining the wage decision and ensuring it is included in all bid documents.

The owner must have a formal construction contract with the selected general contractor, and an owner who is also the licensed general contractor must have formal construction contracts with all individual sub-contractors. All construction contracts must contain Davis-Bacon language binding the contractor to Davis-Bacon requirements (HUD 4010).

The general contractor must ensure that all contracts with subcontractors contain all applicable labor standards and Section 3 documentation.

A Minnesota Housing-approved wage decision must be included in all bid specifications, bid documents and contracts. Failure to include a wage decision or the use of a wrong wage decision in bid specifications, bid documents and contracts will not relieve the contractor or owner from potential enforcement action and may make costs ineligible for payment with HOME funds.

Wage determinations may be modified by the DOL at any time, but most changes occur weekly on Fridays. The contract award date or the date on which a wage decision is considered locked in is as follows:

- For competitively bid contracts, the wage decision is considered locked in when the bids are opened, provided the contract is awarded within 90 days of the bid opening.
- The project that negotiates the general contractor's contract will lock in the wage decision when the contract is signed. **NOTE:** If the general contractor's contract is negotiated, all of the subcontractor's work must be competitively bid.
- For projects that are FHA-insured, the wage decision is locked in on the date that the mortgage is initially endorsed by HUD, provided that construction starts within 90 days.

NOTE: Please work closely with the Federal Programs Manager to determine when your project's wage decision is locked in.

All of the following documents must be included in bid specifications and bid documents:

- Applicable Davis Bacon wage decision
- HUD Form 4010: Federal Labor Standards Provisions
- Minnesota Housing Equal Employment Opportunity Policy Statement Form
- Section 3 Compliance Guide and all applicable attachments
- Multifamily Division Black, Indigenous, and People of Color-owned Business Enterprise and Women-owned Business Enterprise Compliance Guide and all applicable attachments

Minnesota Housing must be given a copy of the bid specifications and bid documents before they are released for bid. The Federal Programs Manager will approve the bid package before it is released for bid with the understanding that the wage decision may have to be updated before the contract is signed.

The construction contract, architect contract, relocation contract, if applicable, any environmental remediation contracts outside of the construction contract, if applicable, and subcontractor contracts must include all of the following:

- Applicable Davis Bacon wage decision
- HUD Form 4010: Federal Labor Standards Provisions
- Completed and signed Minnesota Housing Equal Employment Opportunity (EEO) Policy Statement
- Signed Black, Indigenous, and People of Color-owned Business Enterprise and Women-owned Business Enterprise Compliance Guide Certification
- Signed Section 3 Compliance Guide Certification
- Section 3 Clause

3.17 Notices for Job Site – HOME Funded Projects

Minnesota Housing will make one or more site visits to determine that the applicable notices are posted at the site related to wage and labor requirements.

Posting at the work site must include a copy of:

- Applicable Davis Bacon wage decision
- HUD Form 4010: Federal Labor Standards Provision
- Employees Rights under the Davis Bacon Act Notice Poster
- Any additional classification information

These documents must be posted at the work site in a location that employees can easily access and must be protected from the weather for the duration of the contract work.

3.18 Required Submittals to Minnesota Housing – HOME Funded Projects

Before the loan closing, the general contractor must submit a complete list of all contractors and subcontractors to be employed. This list must be updated as additional subcontractors are determined.

The general contractor must, at a minimum, report weekly in LCPtracker the following records:

- A list showing all contractors and subcontractors working on the project during the work week and documentation showing that the subcontractors are not on HUD's LDP list or listed in the SAM system. **NOTE:** This documentation only needs to be provided once per project and must be submitted before the subcontractor starts working on the project.
- A contractor and subcontractor profile for every contractor working on the project
- The certified weekly payroll report for each contractor and subcontractor that includes employees working at any time during the week
- Proof of employee approval of all other deductions

These submittals must be made no later than seven days following the reporting period covered. **Incomplete or incorrect payroll reports will delay payment.**

3.19 Subordination to Declaration of Covenants, Conditions and Restrictions

Minnesota Housing requires all lenders in a senior position to agree to subordinate their mortgage to the HOME or NHTF Declaration of Covenants, Conditions and Restrictions. The subordination to the HOME or NHTF Declaration of Covenants, Conditions and Restrictions does not affect lien priority; rather, it ensures that applicable rent, income and occupancy requirements run with the property for the duration of the effective period regardless of any change of ownership, full payment of the loan or event of default.

Borrowers should begin talking to senior lien holders as soon as possible to determine if they are willing to execute the subordination. If a lender is not able to meet this requirement, Minnesota Housing may elect to not fund the loan.

3.20 Monitoring and Reporting Requirements

During Underwriting

Both programs require regular reporting throughout the underwriting period for certain activities. These include:

- Uniform Relocation Act (URA) requirements
- Tenant vacancy status and eligibility
- Section 3: Before the execution of any contracts, Section 3 Workers and Targeted Section 3 Workers must be identified and certified. Qualitative efforts to provide employment and training opportunities to Section 3 Workers and contracts to Section 3 Business Concerns must be documented.
- MBE/WBE: Before closing, the Contractor Compliance Activity Form must be completed and submitted.

During Construction

Both programs require regular reporting throughout the construction period for certain activities. These include:

- Uniform Relocation Act (URA) requirements
- Tenant vacancy status and eligibility
- Section 3: Project labor hours for Section 3 Workers and Targeted Section 3 Workers must be documented either weekly in LCPtracker if Davis Bacon applies to the project, or monthly during draw requests if Davis Bacon does not apply to the project
- MBE/WBE: An updated Contractor Compliance Activity Form must be completed and submitted indicating any new subcontractors awarded a contract during construction.

The HOME Program also requires reporting for labor standards (Davis Bacon) during the period of construction. These requirements are described earlier in this chapter.

During the Affordability Period

- Both HOME and NHTF require regular reporting during the affordability period.
- HOME affordability periods are based on specifics details of the project and can range from five to 20 years.
- NHTF affordability period is 30 years for all projects that receive NHTF funds.
- Annual reporting must include:
    - Household composition and demographic data, annual income, and rent

  - Annual owner certifications
  - Financial records to conduct financial oversight
- Financial: Minnesota Housing's Asset Management staff will annually review the Capital Needs Assessment (CNA)/Physical Needs Assessment (PNA) for the following:
  - Balance of replacement reserves at the beginning of the fiscal year
  - Capital expenditures during the fiscal year
  - Adjust above referenced PNA as needed
  - Ensure reserves balance remains positive through affordability date

During the affordability period, Minnesota Housing must annually examine the financial condition of the project and must take action where feasible to correct problems that threaten a project's financial viability [HOME 24 CFR part 92.504(d)(2)] [NHTF 24 CFR part 93.404].

3.21 Affordability Period

The affordability period marks the time during which the assisted units must remain in compliance with specific program guidelines.

Minnesota Housing reserves the right to require a longer affordability period as a condition of funding. The affordability period begins within 15 days of final disbursement of all project funds to the owner. The final disbursement occurs after project completion and submission of all required documentation. After the final disbursement is completed, an Effective Period Certificate will be executed and filed in the respective county's records.

HOME Acquisition and Rehabilitation Affordability Periods:

- Five-year affordability period for loans less than $15,000 per HOME assisted unit
- Ten-year affordability period for loans between $15,000 and $40,000 per HOME assisted unit
- Fifteen-year affordability period for loans over $40,000 per HOME assisted unit

HOME New Construction Affordability Period:

- Twenty-year affordability period for all new construction

NHTF Affordability Period Term:

- Thirty-year affordability period for all loans regardless of amount or number of units

Chapter 4 – Fees

Certain fees and costs are eligible to be charged and paid for using federal funds.

- Costs to process and settle the financing for a project, such as:
    - Private lender origination fees
    - Credit reports
    - Fees for title evidence
    - Fees for recording and filing of legal documents
    - Building permits, attorneys' fees
    - Private appraisal fees
    - Fees for an independent cost estimate
    - Builders' or developers' fees
- Costs for both new construction and rehabilitation, such as:
    - Architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups. The costs may be paid if they were incurred not more than 24 months before the date that funds are committed to the project and the grantee expressly permits funds to be used to pay the costs in the Written Agreement committing the funds
    - Costs to process and settle the financing for a project, such as private lender origination fees, credit reports, fees for title evidence, fees for recording and filing of legal documents, building permits, attorneys' fees, private appraisal fees and fees for an independent cost estimate and builders' or developers' fees
    - Costs of a project audit, including certification of costs performed by a certified public accountant, that Minnesota Housing may require with respect to the development of the project
    - Costs to provide information services such as affirmative marketing and fair housing information to prospective homeowners and tenants as required by 24 CFR Part 93.350
    - Payment of impact fees that are charged for all projects within a jurisdiction

Chapter 5 – Applying for Funds

Funds are available through Minnesota Housing's Consolidated RFP, dependent on federal appropriations.

Minnesota Housing's Consolidated RFP takes place annually. Notification is posted with resources and requirements for program eligibility at www.mnhousing.gov. Technical assistance and web training are made available prior to the date applications are due.

All program selections must be approved by Minnesota Housing's board. The projects will also be approved by Minnesota Housing's Clearinghouse Committee prior to commitment of funds (signing of the Written Agreement) and by Minnesota Housing's Mortgage Credit Committee prior to loan closing.

- The pro forma should include tax benefits and other assumptions used in calculating the project's cash flow.
- The pro forma should represent, at a minimum, the term of the HOME or NHTF Program affordability requirements (refer to Section 3.20 of this guide).

If Minnesota Housing determines that the total amount of federal funds and other governmental assistance exceeds the amount necessary to make the project feasible (e.g., costs are unreasonable or the projected rate of return is too high), Minnesota Housing will pursue one or more of the following remedies:

- Reduce the amount of federal program funds by reducing the project budget
- Increase the borrower's contribution or non-public funding
- Make other adjustments, such as lowering the rents, increasing the replacement reserves or analyzing expenses
- Deny federal program assistance if the applicant refuses to make reasonable adjustments or refuses to limit the rate of return and/or profit

Chapter 6 – Compliance

All standards contained in this chapter must be met at project completion and throughout the affordability period. Properties will be monitored for compliance with affordability and property standards for the duration of the affordability period.

The federal HOME Program and NHTF Program establish specific compliance responsibilities prior to, during and after project completion for the duration of the affordability period and the term of the loan. For information on compliance using HOME or NHTF funds, please refer to applicable regulations for each program as referenced throughout this guide.

6.01 Financial Reporting and Reserves

HOME

For projects that receive HOME funds, Minnesota Housing may require the owner to establish a replacement cost reserve account any time prior to repayment of the HOME loan. The replacement cost reserve account will be held and maintained by either Minnesota Housing or a depository designated by Minnesota Housing.

If, during the HOME affordability period, the owner has a previously established replacement cost reserve account with a lender other than Minnesota Housing, the owner is required to furnish to Minnesota Housing evidence of the spending activity of the replacement cost reserve account. Evidence must include, but is not limited to, the current balance, deposits and disbursements made from the account, purpose of the disbursements and any other information as Minnesota Housing may request.

If the borrower has established a replacement cost reserve account that is not held by a lender, then during the effective period (as defined herein), the borrower must, within 10 business days, furnish to the lender, as may be requested by the lender from time to time, evidence of the spending activity of the replacement cost reserve account in a form acceptable to the lender. Evidence must include the current balance, deposits and disbursements made from the account, purpose for which disbursements were made and any other information as the lender may request.

NHTF

Properties with 10 or more NHTF assisted units will be required to follow the financial oversight obligations of 24 CFR Part 93 and 24 CFR Part 93.404 and as detailed in this guide.

HOME and NHTF Financial Oversight (as applicable)

Requests from reserves will be reviewed and approved annually by Minnesota Housing upon receipt of audited financial statements. Owners must submit annual operating data, audited financial statements and annual updated PNA data for review by the assigned housing management officer (HMO). If you have questions regarding financial oversight, contact Eric Thiewes, Multifamily Portfolio Manager, at eric.thiewes@state.mn.us or 651.296.6527. The following provides a more detailed description of requirements.

PNA/CNA

The owner must submit a post rehabilitation capital expenditure that includes capital projections through the end of the affordability period. Minnesota Housing architects will review the plan using the completed rehabilitation capital expenditure to ensure appropriate useful remaining life and needed expenditures are included. The Asset Management program supervisor will annually:

- Review the balance of replacement reserves at the beginning of the fiscal year
- Review capital expenditures during the fiscal year
- Adjust the above referenced PNA/CNA as needed
- Ensure reserves balance remains positive through the affordability date
- Financial reporting: Use the annual Federal Reporting Tool to submit annual operating data. This information will be used to assist in evaluating the long-term financial viability of the project. It is similar to the Minnesota Housing reporting tool that owners and agents currently use to report first mortgage oversight operating data except for the following:
    - Only one report needs to be submitted 30 days from the project's fiscal year end.
    - The report will include all reserves balances and loan amounts from outside entities (if not held by Minnesota Housing).
    - This report will be in place of an annual budget and will reflect actual annual financial viability.

6.02 Ongoing Property Inspections and Property Standards

Ongoing property inspections are required during the affordability period as noted in 24 CFR Part 92.251 and 24 CFR Parts 93.301 and 93.404.

Minnesota Housing's inspections schedule for HOME and NHTF can be found in Chapter 5 of Minnesota Housing's Multifamily HOME Programs and National Housing Trust Fund Program Compliance Guide. The first monitoring inspection will be conducted in conjunction with project completion.

6.03 Income and Rent Limits

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

The HOME and NHTF programs require annual review and approval of rents for the assisted units. The Multifamily Home Programs and National Housing Trust Fund Program Compliance Guide describes this process.

HOME Income

Very low-income families (ELI) means low-income families whose annual incomes do not exceed 50 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families.

Low-income (LI) families means low-income families whose annual incomes do not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families.

NHTF Income

Extremely low-income (ELI) families (NHTF) means low-income families whose annual incomes do not exceed 30 percent of the median family income of a geographic area, as determined by HUD, with adjustments for smaller and larger families.

Very low-income (VLI) renter households means a household whose income is in excess of 30 percent, but not greater than 50 percent of the area median income, with adjustments for smaller and larger families, as determined by HUD.

Very low-income (VLI) families means low-income families whose annual incomes are in excess of 30 percent, but not greater than 50 percent of the median family income of a geographic area, as determined by HUD, with adjustments for smaller and larger families.

Refer to 24 CFR Part 92.2 and 24 CFR Part 93.2 for a more detailed definition for each program.

HOME Rents

Every HOME assisted unit is subject to maximum allowable rents based on bedroom size for the county in which the property is located. These maximum rents are referred to as HOME rents. There are two HOME rents established for properties; high and low HOME rents represent the maximum that owners can charge for rent, including an allowance for tenant-paid utilities. Rent limits and rent increases must be determined and verified in accordance with the requirements of Minnesota Housing's Multifamily [HOME Programs and National Housing Trust Fund Program Compliance Guide].

Assisted units subject to low HOME rents must have gross rents (contract rent plus tenant paid utilities) that do not exceed 30% of the annual income of a family whose income equals 50% of the median income for the area, as determined by HUD.

Assisted units subject to high HOME rents must have gross rents (contract rent plus tenant paid utilities) that are the lesser of the fair market rent for existing housing for comparable units in the area as established by HUD or a rent that does not exceed 30% of the adjusted income of a family whose annual income equals 65% of the median income for the area, as determined by

HUD.

Properties Receiving Project-based Rental Assistance HOME:

- If a HOME assisted unit receives federal project-based rental assistance and the unit is occupied by a very low-income (50% of AMI) household who pays not more than 30 percent of the household's adjusted gross income for rent, the maximum rent (tenant contribution plus the project- based rental subsidy) is the rent allowable under the federal project-based rental subsidy program.
    - Because the rent under the federal rental assistance program will typically be higher than allowable HOME Program rents, this will provide the owner the highest possible rent.
- Adjustments to HOME rents: The rent charged for HOME assisted units must be adjusted to comply with the low HOME rents at a time when/if federal project-based assistance is no longer available.
- Rents also must be adjusted if a household's income at annual recertification exceeds 50% of AMI. Refer to Chapter 2: *Maintaining the Unit Mix*, of Minnesota Housing's Multifamily HOME Programs and National Housing Trust Fund Program Compliance Guide.

NHTF Rents

For tenants who are extremely low-income (ELI), their rent plus utilities must not exceed the greater of 30 percent of the federal poverty line or 30 percent of the income of a family whose annual income equals 30% of AMI for the area, as determined by HUD, with adjustments for the number of bedrooms in the unit. Note that when total NHTF funds available nationally are less than $1 billion, 100 percent of NHTF funded rental units should meet this standard.

When units are approved for tenants who are very-low income (VLI), their rent plus utilities must not exceed 30 percent of the income of a family whose annual income equals 50% of AMI for the area, as determined by HUD, with adjustments for the number of bedrooms in the unit.

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

- Units funded with NHTF Operating Cost Assistance Reserves (OCAR) cannot have any subsidy attached to those units. The OCAR is used to fund operating shortfalls with the tenants paying no more than 30 percent of their income towards rent.
- For NHTF units funded with NHTF capital (and not covered with OCAR), the maximum rent allowable is the rent allowable under the federal or state project-based rental subsidy program.

Housing Support (fka GRH). Properties receiving Housing Support and HOME or NHTF:

- When using current rent limits and taking into consideration the current Housing Support room and board rate, the amount of rent being charged for assisted units that are also subsidized with Housing Support is within applicable rent limits provided that the project is in compliance with 24 CFR Part 92.214(b)(3) and 24 CFR Part 93.204(b)(4).
  - Owners are prohibited from charging fees that are not customarily charged in rental housing.
  - Project owners may charge fees for meals, as long as the services are voluntary.
  - That receipt of board is optional for units with Housing Support in order to remain in compliance with applicable program regulations.

6.04 Rent and Income Eligibility During Occupancy

HOME

All HOME assisted units in a rental housing project must be occupied by households that are eligible as low-income families, with the following additional requirements.

Properties with five or more HOME-assisted units:

Initial occupancy at project completion:

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

Subsequent to initial occupancy:

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

Properties with fewer than five HOME-assisted units:

Initial occupancy at project completion:

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

Subsequent to initial occupancy:

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

The following chart illustrates the income targeting requirements by the number of HOME assisted units. **NOTE:** More restrictive requirements may be required.

Number of HOME Units		**Income Requirements At Initial Certification**	**Income Requirements After Initial Certification**	**Rent Requirements**
5 +	Very Low Income/Low HOME Rent	At least 20% of the units must be occupied by very low-income households at 50% of AMI or less	At least 20% of the units must be occupied by very low-income households at 50% of AMI or less	At least 20% of the units must pay the lower of FMR, 50% rent limit (Low HOME Rent), or 30% of the family's adjusted income
	Low Income/High HOME Rent	*Up to 10% of the units may be occupied by households above 60% AMI (up to 80% AMI)	*The remaining 80% of the units may be occupied by households above 60% AMI (up to 80% AMI)	The remainder of the units may pay the lower of FMR or 65% rent limit (High HOME Rent)
1 – 4		All HOME assisted units must be occupied by households with incomes at or below 60% of AMI	All HOME assisted units must be occupied by households with incomes at or below 80% of AMI	Lower of FMR or 65% rent limit (High HOME Rent)

NOTE: You must have at least 10 HOME assisted units to qualify for one unit with a household at 80 percent of AMI.

NHTF

The income and rent determination provisions provided in this guide are those that HUD uses in its HOME Program rule. The breakdown of occupied units and income and rent requirements for NHTF are different and are specific to serving populations that are extremely low-income (ELI).

6.05 Utility Allowances

The HOME statute and the regulations at 24 CFR Part 92 establish gross rent limits for HOME assisted rental units. Gross rent limits include the contract rent plus a utility allowance (UA) for any tenant-paid utilities. Owners are required to establish maximum monthly allowances for utilities and services (excluding telephone) and update these annually.

The HOME Rule requires all owners to use a project-specific UA. For a list and description of the methodologies that will meet the HOME regulatory requirements for a project-specific utility allowance, please refer to Section 1.08 of the Multifamily HOME Programs and National Housing Trust Fund Program Compliance Guide. The certification and utility grids must be submitted to Minnesota Housing along with supporting documentation prior to closing of the HOME loan. Owners are permitted to switch methodologies only after approval by Minnesota Housing.

For the NHTF program, owners may continue to use the PHA's established utility allowance that is also used for the Section 8 Housing Choice Voucher program for that local area.

6.06 Lease Terms and Tenant Selection Policies

Leases for HOME and NHTF assisted units must be for a period of at least one year, unless a shorter term is agreed upon by the owner and tenant. Per federal regulation, leases must exclude certain provisions (refer below for a listing of prohibited lease provisions). Additionally, owners must adopt written tenant selection policies and criteria and make these available to Minnesota Housing upon request.

Tenant selection policies and other prohibited activities:

- Tenant selection plans must be consistent with the purposes of providing housing for low- and very low-income families, and housing must be limited to income-eligible families.
- Tenant selection plans must provide for selection of tenants from an existing written waiting list in the chronological order of their application, insofar as is practicable.
- Tenant selection plans must allow for prompt written notification to any rejected application of the grounds for rejection.
- Tenant selection plans must be reasonably related to the applicants' ability to perform the obligations of the lease (e.g., to pay the rent, not to damage the housing; not to interfere with the rights and quiet enjoyment of other tenants).
- Owners should comply with the Fair Housing Act, applicable provisions of 24 CFR Part 5, and any applicable HUD guidance.

In addition, projects selected for HOME and/or NHTF funding must follow Minnesota Housing's Tenant Selection Plan (TSP) guidelines as well. Refer to the Minnesota Housing website for more information on these guidelines.

6.07 Mandatory Lease Terms

HOME and NHTF both require written leases. Leases must be for a period of one year unless the tenant and the owner mutually agree to a shorter time.

All leases must contain the following provisions:

- **Tenant Income Certification:**
  - On an annual basis, the tenant must certify the household's income and composition by completing and signing a tenant income certification form that is provided by owner.
  - The owner may terminate the lease or refuse to renew the lease of a household for failure to supply the completed and signed tenant income certification form within 30 days of the request.
- **Third Party Income Verifications:**
  - The tenant must sign consents to third-party income verification as reasonably requested by owner.
  - The owner may terminate the lease or refuse to renew the lease of a household for failure to supply the consent to third party income verification within 30 days of the request.
- **Right of Access:**
  - The tenant must sign an acknowledgement that the owner, or his/her duly authorized agents, employees or representatives, upon reasonable notice to the household, must have the right of access to the dwelling unit for the purpose of examining the condition thereof and for making improvements and repairs, and for the purpose of showing the dwelling unit for re- rental.
- **Lease:**
  - The tenant and owner must sign an acknowledgement that the lease between a tenant and an owner of rental housing assisted with HOME or NHTF funds must be for not less than one year, unless by mutual agreement between the tenant and the owner.
- **Lease Addendum:**
  - Minnesota Housing provides the owner with a lease addendum that must be signed and retained in the tenant's file. This addendum includes the prohibited lease terms.

6.08 Prohibited Lease Terms

HOME and NHTF prohibit the following terms within tenant leases for HOME or NHTF assisted tenants:

- **Agreement to be sued**: The lease cannot contain a tenant agreement to be sued, admit guilt, or accept a judgment in favor of the property owner in a lawsuit brought in connection with the lease

- **Treatment of property**: The lease cannot contain a tenant agreement that the property owner may take, hold or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant regarding disposition of personal property remaining in the housing unit after the tenant has moved out. The property owner may dispose of this personal property in accordance with state law.
- **Excusing the property owner from responsibility**: The lease cannot contain a tenant agreement not to hold the property owner or the property owner's agents legally responsible for actions or failure to act, whether intentional or negligent.
- **Waiver of notice**: The lease cannot contain a tenant agreement that the property owner may institute a lawsuit without notice to the tenant.
- **Waiver of legal proceedings:** The lease cannot contain a tenant agreement that the property owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
- **Waiver of jury trial**: The lease cannot contain a tenant agreement to waive any right to a jury trial.
- **Waiver of right to appeal court decision**: The lease cannot contain a tenant agreement to waive the right to appeal or to otherwise challenge in court a decision in connection with the lease.
- **Tenant chargeable with the cost of legal actions regardless of outcome**: The lease cannot contain a tenant agreement to pay attorney fees or other legal costs even if the tenant wins a court proceeding by the property owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.
- **Mandatory Supportive Services**: In NHTF units, the lease cannot require the tenant, as a condition of occupancy, to participate in or agree to accept supportive services that are offered. In HOME units, the lease cannot require the tenant to accept supportive services that are offered (other than a tenant in transitional housing).

6.09 Termination of Tenancy

The owner must comply with the program requirements on evictions as well as state law regarding eviction procedures. The owner must serve written notice upon the tenant specifying the grounds for the action and providing a specific period for vacating that is consistent with federal, state or local law(s).

Under the HOME Program, tenancy may be terminated for any of the following:

- Serious or repeated violation of the terms and conditions of the lease
- Violation of applicable federal, state or local law(s)

- Completion of the tenancy period for transitional housing
- Other good cause

Under the NHTF Program, tenancy may be terminated for any of the following:

- Serious or repeated violation of the terms and conditions of the lease
- Violation of applicable federal, state or local law(s)
- Other good cause

NOTE: Good cause does not include an increase in tenant income.

6.10 Violence Against Women Reauthorization Act

On November 16, 2016, HUD issued its final rule implementing housing protections authorized in the Violence Against Women Reauthorization Act of 2013 (VAWA). Unique monitoring and implementation dates apply to HOME and NHTF. Compliance with VAWA regulatory requirements under the final rule is required for all HOME and NHTF projects. Written agreement provisions and lease addendums will be updated to include current regulatory language for these projects. In addition, for these HOME and NHTF projects, Minnesota Housing will create an external emergency transfer plan and provide an internal emergency transfer plan model, along with a Notice of Occupancy Rights and Certification form to owners for distribution to tenants.

One of the key elements of VAWA 2013's housing protections implemented in the rule is the emergency transfer plan, which allows for survivors to move to another safe and available unit if they fear for their life and safety. In addition to emergency transfer plans, the rule includes notification and documentation requirements by owners and a series of new forms. Owners must be familiar with the regulatory requirements impacting their developments, and they should consult with their counsel as needed.

Refer to the Minnesota Housing compliance page at www.mnhousing.gov for more information, including required forms and documentation.

For more information on fair housing, refer to the Minnesota Housing Multifamily HOME Programs and National Housing Trust Fund Program Compliance Guide.

6.11 Affirmative Action

Minnesota Housing works affirmatively to ensure that all persons, regardless of race, color, creed, national origin, sex, religion, marital status, age, status with regard to receipt of public assistance, disability, sexual orientation, or familial status will be treated fairly and equally in employment or program participation.

All programs financed or administered through Minnesota Housing will contain equal opportunity/affirmative action requirements in the contracts or procedural guides or manuals, regardless of whether or not federal funding is involved.

6.12 Equal Economic and Employment Opportunity

Employers with federally assisted construction contracts must not be discriminatory in employment practices. Whenever contracts involving HOME assistance consist of more than $10,000, an equal opportunity clause, as detailed by Executive Order 11246, must be incorporated into all construction contracts. Executive Order 11246 was amended in 2015 to also prohibit discrimination on the basis of sexual orientation and gender identity. Sixteen specific equal employment and affirmative action steps are outlined in Executive Order 11246 to establish a good faith effort (these examples are not, however, the only options available to meet affirmative marketing and action requirements). Refer to Minnesota Housing's Equal Employment Opportunity Policy Statement.

6.13 Disputes Concerning Labor Standards and Payment of Wages for HOME Funded Projects

Disputes arising out of labor standard provisions must be resolved in accordance with the policies and procedures listed below. This includes disputes between the contractor or subcontractor and Minnesota Housing, HUD, the Department of Labor or the employees and their representatives.

The purpose of these procedures is to establish a uniform method of receiving, resolving and documenting, complaints and investigations or disputes where Davis-Bacon labor standards apply.

The following procedures must be followed to reach a resolution to labor standard disputes:

- The Minnesota Housing Construction Compliance Officer (CCO) is responsible for resolving any complaints and conducting all investigations received where Davis-Bacon labor standards apply.
- All complaints received must be referred to the Minnesota Housing CCO for investigation within 10 days of receiving the complaint
- The Minnesota Housing CCO will investigate and review complaints, request additional information if necessary and issue a written notice of findings to all parties within 30 days of receiving all information required to make a decision.

If a contractor or subcontractor disagrees with the findings of the Minnesota Housing CCO concerning the complaint, the contractor or subcontractor can appeal any findings by submitting a written request to the Minnesota Housing CCO. The contractor or subcontractor must provide an explanation (along with supporting documentation) within 30 days of the original notification of findings.

The Minnesota Housing CCO and the Multifamily Assistant Commissioner will review the original findings and the information submitted appealing the findings to determine if the disagreement is justified. The contractor or subcontractor will be notified in writing within 30 days of receiving the written appeal.

If the contractor or subcontractor is not satisfied with Minnesota Housing's determination, they may request that the case be referred to HUD and/or the federal Department of Labor (DOL) for reconsideration. Such disputes must be resolved in accordance with the procedures of DOL set forth in 29 CFR Parts 5, 6, and 7.

Additional classification: A request for DOL reconsideration of a work classification and wage rate must be submitted in writing to DOL within 30 days of the decision and must be accompanied by a full statement and supporting data or information.

The information introduced in this section is not intended as a full or complete description of labor standards, responsibilities, and obligations. It is important to develop a working knowledge of HUD labor standards. If you are not well versed in labor standards issues and compliance, you may want to consider hiring an experienced consultant to ensure full compliance.

6.14 Owner's Letter Certifying Compliance for HOME Funded Projects

Upon completion, the owner must submit a letter to Minnesota Housing certifying compliance with all Davis-Bacon labor standards requirements.

Chapter 7 – Uniform Relocation Act

The purpose of the Uniform Relocation Act (URA) is to provide displaced persons or businesses with fair, equitable treatment and protection from disproportionate injury by projects designed to benefit the public. URA requirements must be adhered to by the owner. If the borrowing entity will be displacing or temporarily relocating residential or nonresidential tenants, an experienced relocation specialist must manage the entire process. This section covers basic URA requirements. For lower income residents displaced as a direct result of demolition and conversions in HOME assisted projects, Section 104(d) of the Housing and Community Development Act of 1974 may also apply. Minnesota Housing has a Residential Antidisplacement and Relocation Assistance Plan (RARAP) that covers procedures under these circumstances. For a complete recital of relocation requirements for HUD funded projects, refer to HUD Handbook 1378: Tenant Assistance, Relocation and Real Property Acquisition.

Minnesota Housing, at its sole discretion, retains the right to request additional compliance measures.

7.01 Displacement, Temporary Relocation, Non-displacement

Displacement occurs when a person or business is displaced as a direct result (as defined under federal regulation) of a federally assisted acquisition, demolition, or rehabilitation project. The term displaced person means any tenant, regardless of income, who is forced to move from the property permanently as a direct result of rehabilitation, demolition, or acquisition of a HOME or NHTF assisted project. This includes, but is not limited to, physical displacement caused by overcrowding, loss of a unit or economic displacement due to an increase in rents.

Temporary relocation occurs when a residential or nonresidential tenant is required to move temporarily, either within the project or to an offsite location, in order to accommodate a federally assisted acquisition, demolition or rehabilitation. Relocation is only considered temporary if the residential or nonresidential tenant's relocation is for 12 months or less. If the relocation exceeds 12 months, it is considered displacement under URA regulations, and relocation benefits must be paid.

Non-displacement occurs when a residential or nonresidential tenant is not moved from their unit as a result of a federally assisted acquisition, demolition or rehabilitation.

Once the ION occurs, the owner/developer will review the scope of work and determine if there will be any displacement, non-displacement, or temporary relocation.

7.02 Tenant Relocation Plan

A residential or nonresidential tenant relocation plan that conforms to all URA requirements is required for all federally assisted projects involving rehabilitation or acquisition. The plan must include an outline of how the residential or nonresidential tenants will be accommodated during construction, an overview of construction activities, a project timeline, an estimated budget, and whether or not the scope of work will require temporary or permanent relocation, including:

- A description of who is developing the plan
- A description of the project and scope of work
- A list of all sources of funds and whether multiple federal fund sources will be used
- If **temporary relocation** is anticipated for anything exceeding 24 hours, describe:
  - How many tenants will be affected
  - How long the temporary relocation will last for an individual tenant
    - How many tenants will need to be out during business hours vs. overnight or extended time periods
  - Estimated schedule of construction and relocation
  - Where temporarily relocated tenants will be housed (e.g., a vacant unit, nearby hotel)
  - Plans for food and entertainment costs if relocation will be during business hours only
  - Transportation considerations
  - Moving companies available
  - Americans with Disabilities Act (ADA) accommodations
  - Budget of estimated costs and source information for the numbers
- If **permanent displacement** is anticipated, describe:
  - How many tenants will be affected
  - Estimated schedule of construction and relocation
  - How the owner/developer plans to find comparable replacement dwellings
  - How tenants who may be hard to house will be assisted
  - Transportation considerations
  - Moving companies available
  - Americans with Disabilities Act (ADA) accommodations
  - Budget of estimated costs and source information for the numbers
- How the owner/developer plans to accommodate any special needs of the tenants and how needs assessment interviews will be conducted
- What other social services may need to be used
- Relocation budget contingency for unexpected issues (e.g., a tenant is allergic to dust so they are not able to return home after business hours as expected). Minnesota Housing requires a minimum of $5,000 for the relocation budget.

NOTE: This list is intended as a guide and is not all inclusive.

7.03 Notices

The URA regulations require several notices to be delivered to all residential or nonresidential tenants and/or potential tenants of the property receiving federal funds. Each notice must be written in plain, understandable language. Persons who are unable to read and understand the notice (e.g., due to lack of literacy, limited English proficiency, disability) must be provided with appropriate translation or interpretation services in accordance with HUD limited English proficiency guidance, alternative formats, and/or counseling. Each notice must indicate the name and telephone number (including the telecommunication device for the deaf (TDD) number, if applicable) of a person who may be contacted for answers to questions or other needed help.

Minnesota Housing provides templates of all notices on its website except for the Ninety-Day Notice, which should be developed by the owner/developer. The templates include instructions on how to tailor the notices to the specific project. Minnesota Housing requires drafts of all notices to be submitted as due diligence for review and approval. Once the drafts are approved, the owner/developer must deliver applicable notices to the tenants. All notices must be delivered (minimally) to all adult leaseholders.

Tenant notices should be delivered in one of the following ways:

- Hand delivery
- Certified return receipt (USPS)

Other forms of delivery must receive prior approval from Minnesota Housing. The owner/developer must be able provide proof of delivery.

HUD Information Brochure: A copy of HUD's brochure must be provided to tenants, homeowners, and businesses who will be permanently displaced. English and Spanish versions can be found on HUD's website.

General Information Notice (GIN): The GIN informs tenants of the receipt of federal funds for acquisition and/or rehab. Tenants residing in the property at the time of the Initiation of Negotiations (ION) must be provided a GIN ***within 30 days****,* or adhere to another timeline that Minnesota Housing, in its sole discretion, agrees upon. It is imperative that the GIN is disbursed in a timely manner. Any tenants who move in or out before the GINs are disbursed will be eligible for URA benefits. There are two versions of the GIN, and the owner/developer should work with the federal programs team at Minnesota Housing to determine which version of the notice (displacement, non-displacement or a combination) should be used.

Notice of Non-displacement: This notice informs tenants who will remain in the project after completion of the assisted activity of their rights and of the terms and conditions for remaining at the property during construction. This is a separate notice and requirement from the GIN;

however, the GIN and the Notice of Non-displacement can be delivered at the same time.

Move-in Notices: Tenants who move into the project after the ION must sign a Move-in Notice prior to signing the lease. This notice informs new tenants that they may be displaced and that they will not be entitled to relocation assistance under URA.

Notice of Eligibility (NOE): The NOE informs tenants who will be permanently displaced of the available relocation assistance, the estimated amount of assistance based on the displaced person's individual circumstances and needs, and the procedures for obtaining assistance. This notice must be specific to the person and their situation so that they will have a clear understanding of the type and amount of payments and/or other assistance they may be entitled to. The NOE must be signed by the tenant(s).

Before an NOE can be provided, a relocation needs assessment interview needs to take place. The development team must also complete form HUD-40061. This form must be retained in the tenant URA file for purposes of monitoring by Minnesota Housing.

Ninety-day Notice: Owners/developers will develop their own vacate notices, which must be provided to tenants who will be displaced, at least 90 days prior to their move out. The notice must not be given before they receive a notice of relocation eligibility (or NOE) for relocation assistance. The date provided in this notice may be different for each person or group of persons in a project based on whether or not the project will be phased, the location of the occupied building(s), or the project schedule.

Additional Notice Requirements – Tenant Track Down: If an owner/developer fails to provide the GIN notices required and occupants vacate the project before being appropriately advised of their eligibility or ineligibility for URA, the owner/developer must initiate all reasonable procedures to locate all former occupants who should have received proper notice. Efforts to locate former occupants may include: appropriate notice in a local newspaper (for at least 30 days); posting notice in an appropriate project location; checking with the local post office for a forwarding address; checking project records for employment or other contact telephone numbers; checking with local utility companies, school districts, churches, or community organizations; hiring a "finding service" available in the local area or over the internet; and/or other appropriate methods. Each occupant's file must be documented with all attempts to make contact and the results. The owner/developer will need to determine the eligibility or ineligibility for relocation assistance for each former occupant who is located and assist the former occupant to access appropriate advisory services and applicable relocation payments.

7.04 Relocation Needs Assessment Interviews

Providing a written notice or series of notices, along with the HUD information brochure, is not sufficient to ensure that a person who is affected by the project understands his/her rights and responsibilities. As soon as feasible, the owner/developer must contact each person who is affected by the project to discuss his/her needs, preferences, and concerns. Whenever feasible, contact should be in person.

The development team must complete form HUD-40061. This form must be retained in the tenant URA file for purposes of monitoring by Minnesota Housing.

7.05 Claim Forms

HUD provides claim forms on their website to use when calculating benefits.

Each URA file for residential tenants who are **displaced** requires:

- Form HUD-40058 Claim for Rental Assistance or Down Payment Assistance
- Form HUD-40054 Residential Claim for Moving and Related Expenses

Each URA file for residential tenants who are **temporarily relocated** requires:

- Form HUD-40058 Claim for Rental Assistance or Down Payment Assistance
- Form HUD-40030 Claim for Temporary Relocation Expenses (residential moves).

Each URA file for nonresidential tenants who are **displaced or temporarily relocated** requires:

- Form HUD-40055 Claim for Actual Reasonable Moving and Related Expenses – Nonresidential
- Form HUD-40056 Claim for Fixed Payment in Lieu of Payment for Actual Nonresidential Moving and Related Expenses

7.06 Appeals

Tenants have the right to appeal the claim amount they have been provided. The Tenant Relocation Plan must include details of the appeals process consistent with 49 CFR Part 24.10. Owners/developers must track all appeals submitted and the outcome of each decision. Written responses to tenants must include information regarding the tenant's ability to appeal the decision. Refer to HUD Handbook 1378: Tenant Assistance, Relocation and Real Property Acquisition for more information on the appeals process.

7.07 Reporting

The development team will be required to send the month's rent roll(s) and any Move-In Notices to Minnesota Housing by the last business day of the month for Minnesota Housing to review.

Construction draws are contingent on Minnesota Housing having current and accurate URA information.

7.08 Monitoring

Minnesota Housing will monitor URA files at project closeout for both temporary relocation and permanent displacement. The file should, at a minimum, contain the following:

- All applicable notices
- All applicable claim forms
- Copies of all checks and proof tenants received them (e.g., signed check, certified mail signatures)
- Proof the appropriate HUD Information Brochure was delivered
- Any applicable communication
- Any appeals information, if applicable
- For residential tenants who were displaced, the file should contain:
    - Selection of Most Representative Comparable Replacement Dwelling for Computing Replacement Housing Payment
    - Replacement housing rent and utility costs
    - Proof that the replacement dwelling is decent, safe and sanitary. A dwelling occupied in connection with a rental assistance program that is subject to HUD Housing Quality Standards (HQS) (24 CFR part 982.401), must be deemed to be in compliance with URA decent, safe and sanitary standards if it meets the applicable HQS.

7.09 Records Retention

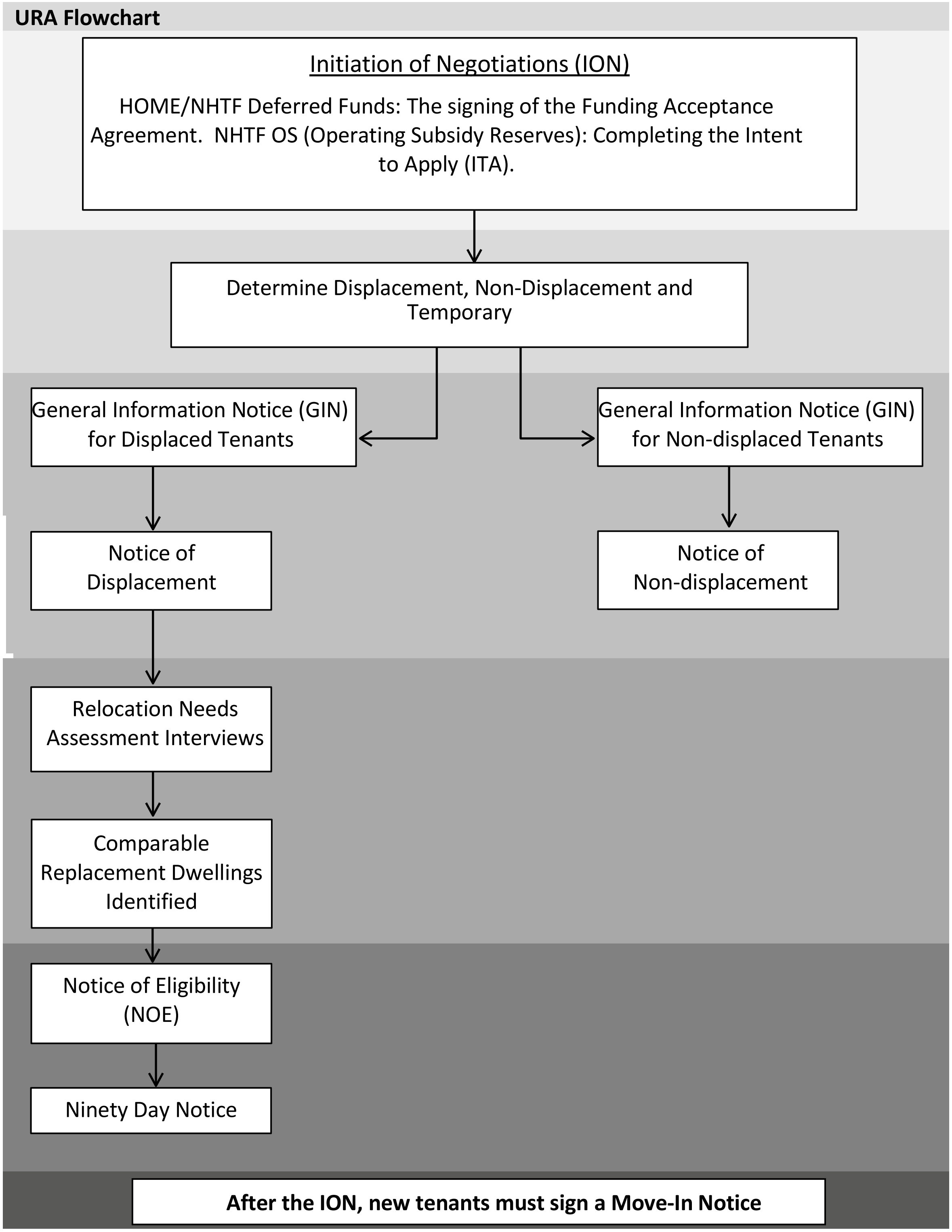
Owners/developers must have a URA file for all tenants. The owner/developer will be responsible for retaining all documentation pertaining to URA including rent rolls, tenant files, notices, claims, etc. All records must be retained for five years after the final claim payment has been made.

7.10 Guiding Statutes, Regulations and Reference Materials

Applicable statutes and regulations pertaining to displacement include:

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 that applies to displacement resulting from acquisition, demolition, or rehabilitation for HUD assisted projects carried out by public agencies, nonprofit organizations, private developers or others and real property acquisition for HUD assisted projects (whether publicly or privately undertaken)
- Section 104(d) of the Housing and Community Development Act of 1974
- HOME Program regulations found in 24 CRF Part 92
- NHTF Program regulations found at 24 CFR Part 93
- HUD Handbook 1378: Tenant Assistance, Relocation and Real Property Acquisition, as updated, consolidates relocation requirements for all HUD programs in one document and provides instructions for compliance.

7.11 URA Flowchart



Chapter 8 – Rural Development and Preservation Activities

8.01 Rural Development Special Considerations

Below are the initial steps you must take when applying for funds to rehabilitate a Rural Development (RD) property:

- Contact the local RD office prior to submitting an application to Minnesota Housing for funding to discuss RD's procedure for applying for federal loans
- Ensure that the RD's construction analyst or architect has inspected the site and assisted with the scope of work

The owner is required to demonstrate that the RD's construction analyst or architect has inspected the site and assisted with the scope of work.

Minnesota Housing will allow a maximum of 80 percent of the units to be financed with HOME assistance when the RD note rate rents exceed the applicable HOME Program rent limits.

Example: If you have 10 units, only a maximum of eight units may receive HOME assistance (10 x 80% = 8).

Units assisted with HOME or NHTF funds must comply with the income and rent restrictions applicable to those programs, which is discussed in depth in other sections of this guide.

8.02 Application and Approval for Commitment

Minnesota Housing requires that all RD properties obtain approval for acquisition prior to submitting the application for funding. If Minnesota Housing receives an application without the necessary RD approvals, the application will be returned. This provision ensures that the maximum funds can be used in the most timely and effective manner.

Prior to closing, Minnesota Housing will send an executed Notice of Default form to the appropriate RD office along with a request for junior lien approval.

NOTE: Minnesota Housing will not issue a loan commitment until it has received written consent from RD for junior lien approval.

Chapter 9 – 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 the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendment Act of 1988, as well as the Minnesota Human Rights Act. Housing providers are expected to comply with the applicable statutes, regulations, and related policy guidance. Housing providers should ensure that admissions, occupancy, marketing and operating procedures comply with non-discrimination requirements.

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

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

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

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.

Chapter 10 – Fraud, Misuse of Funds, Conflict of Interest, Suspension, and Disclosure and Reporting

10.01 Fraud

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

Any person or entity (including its employees and affiliates) that enters into an agreement with Minnesota Housing and witnesses, discovers evidence of, receives a report from another source, or has other reasonable basis to suspect that fraud or embezzlement has occurred must immediately make a report through one of the ways described in section 10.05.

10.02 Misuse of Funds

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

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

Any borrower or grantee (including its employees and affiliates) of Minnesota Housing funds that discovers evidence, receives a report from another source, or has other reasonable basis to suspect that a misuse of funds has occurred must immediately make a report through one of the ways described in section 10.05.

10.03 Conflict of Interest

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

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

Organizational conflicts of interest occur when:

- A contracting party is unable or potentially unable to render impartial assistance or advice to Minnesota Housing due to competing duties or loyalties
- A contracting party's objectivity in carrying out the award is or might be otherwise impaired due to competing duties or loyalties
- A contracting party has an unfair competitive advantage through being furnished unauthorized proprietary information or source selection information that is not available to all competitors

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

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

Any person or entity (including its employees and affiliates) that enters into an agreement with Minnesota Housing must avoid and immediately disclose to Minnesota Housing any and all actual, perceived or potential conflicts of interest through one of the ways described in section 10.05.

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

10.04 Suspension

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

10.05 Disclosure and Reporting

Minnesota Housing promotes a "speak-up, see something, say something" culture whereby internal staff, external business partners (e.g., grantees, borrowers) and the general public are encouraged to report instances of fraud, misuse of funds, conflicts of interest, or other concerns without fear of retaliation. You may report wrongdoing or other concerns by contacting:

- Minnesota Housing's chief risk officer
- Any member of Minnesota Housing's Servant Leadership Team

- EthicsPoint, the Minnesota Housing hotline reporting service vendor

Chapter 11 – Program Contact

For questions, contact Aaron Keniski, Federal Programs Manager, at 651.296.4452 or aaron.keniski@state.mn.us.

You may also contact the housing development officer (HDO) identified in your selection letter.