



**State of Minnesota  
Housing Tax Credit  
2021 Qualified Allocation Plan (QAP)**

**Revised 10/2019**



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## **Article 1 – Preparation of the Qualified Allocation Plan**

Minnesota Housing was established by the Minnesota Legislature as the designated Low Income Housing Tax Credit (HTC) Allocating Agency for the State of Minnesota, with certain other cities and counties also designated as suballocators<sup>1</sup>.

Federal law requires that Allocating Agencies adopt a Qualified Allocation Plan (QAP), and Minnesota Housing’s QAP is developed in accordance with federal law and all applicable federal regulations are hereby incorporated by reference<sup>2</sup>. The QAP sets forth selection criteria that are appropriate to local conditions and priorities for allocating HTCs to housing projects. The selection criteria include project location, housing needs characteristics, project characteristics, including whether the project includes the use of existing housing as part of a community revitalization plan, sponsor characteristics, tenant populations with special housing needs, public housing waiting lists, tenant populations of individuals with children, projects intended for eventual tenant ownership, the energy efficiency of the project, and the historic nature of the project.

The QAP gives preference as required by federal law to:

- a. Projects serving the lowest income tenants;
- b. Projects obligated to serve qualified tenants for the longest periods;
- c. Projects in Qualified Census Tracts that are part of a concerted community revitalization plan.

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<sup>1</sup> Minn. Stat §§ 462A.221 to 462A.225

<sup>2</sup> Section 42(m)

## Article 2 – Definitions

- 2.0 **Metropolitan Area:** As set out in Minn. Stat. 473.121, subd. 2, Metropolitan Area means the area over which the Metropolitan Council has jurisdiction, including the counties of Anoka, Carver, Dakota (excluding the cities of Northfield and Cannon Falls), Hennepin (excluding the cities of Hanover and Rockford), Ramsey, Scott (excluding the city of New Prague) and Washington.
- 2.1 **Substantial Rehabilitation:** Rehabilitation of at least \$5,000 per unit, as defined in Minn. Stat. § 462A.221, Subdivision 5.
- 2.2 **Federally Assisted Building:** The term “Federally Assisted Building” as defined by Section 42 of the Internal Revenue Code means any building which is substantially assisted, financed or operated under Section 8 of the United States Housing Act of 1937, Section 221(d)(3), 221(d)(4), or 236 of the National Housing Act, Section 515 of the Housing Act of 1949, or any other housing program administered by the Department of Housing and Urban Development (HUD) or by the Rural Housing Service of the Department of Agriculture.
- 2.3 **Internal Revenue Code (IRC):** Title 26 of the United States Code.
- 2.4 **Section 42 (Internal Revenue Code Section 42):** Low-Income Housing Tax Credit (26 USC § 42) as amended.
- 2.5 **Housing Tax Credit Agency (Allocating Agency):** Any entity authorized by the state of Minnesota and Section 42 to allocate HTCs in Minnesota.
- 2.6 **Qualified Allocation Plan (QAP):** As defined in Section 42 (m)(1)(B) and including the Self-Scoring Worksheet(s), this document, and the HTC Program Procedural Manual (Manual).

## Article 3 – Geographic Distribution

- 3.0 The state of Minnesota is divided into two general geographic pools: (1) the Metropolitan Pool, as defined in Section 2.0; and (2) the Greater Minnesota Pool, which consists of the balance of the state. Distribution of HTC's between the two general pools is based on the share of the state's public assistance recipients residing in each area, pursuant to Minnesota Statutes § 462A.222, subd. 1a.
- 3.1 Under Minnesota Statutes § 462A.222, certain cities and counties have been designated as suballocators to allocate and monitor HTC's to eligible projects in their cities or counties. Some suballocators have entered into a Joint Powers Agreement with Minnesota Housing under which Minnesota Housing will perform the HTC allocation and compliance monitoring.
- 3.2 Except for the nonprofit set-aside, Minnesota Housing will not accept applications for developments located within the jurisdiction of suballocators in Round 1 unless the suballocator has entered into a Joint Powers Agreement with Minnesota Housing or has returned all of their HTC's to Minnesota Housing. Minnesota Housing will administer the HTC's for all areas outside the jurisdiction of suballocators.
- For a thorough discussion of nonprofit set-aside procedures, refer to Article 4.  
For suballocator procedures, refer to Article 12.
- 3.3 The distribution of HTC's for Greater Minnesota will be based on the housing needs assessment prepared by Minnesota Housing staff and comments from the Greater Minnesota Allocation and Need Analysis Task Force, as amended for the 2021 QAP to incorporate updated demographic data.<sup>3</sup>
- 3.4 The distribution of HTC's for the Metropolitan Area will be developed by the Metropolitan Council, in consultation with Minnesota Housing and representatives of local government and housing and redevelopment authorities, as amended for the 2021 QAP to incorporate updated demographic data<sup>4</sup>.
- 3.5 As of January 2019, the distribution between the two pools is 38% in the Greater Minnesota Pool and 62% in the Metropolitan Pool. Minnesota Housing will update the distribution for the 2021 QAP based upon updated demographic data in early 2020 and the applicable distribution will be posted on Minnesota Housing's website.

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<sup>3</sup> in accordance with Minn. Stat. § 462A.222, subdivision 4

<sup>4</sup> in accordance with Minn. Stat. § 462A.222, subdivision 4

## Article 4 – Set-Asides

### Nonprofit Set-Aside of Funds

- 4.0 Ten percent of the total HTCs available in the state’s HTC volume cap are set aside for allocation to nonprofit sponsored developments<sup>5</sup>. This set-aside is administered by Minnesota Housing.

In Round 1, the nonprofit set-aside is divided proportionally between the two Geographic Pools. In Round 2, any remaining nonprofit set-aside will continue to be set aside until it is determined that it is not necessary to meet the IRS requirements. If the set aside is not necessary it will be available statewide. On an annual basis, an additional five percent may be set aside if all suballocators and Minnesota Housing agree to set aside this amount from their respective allocations to the respective Geographic Pool.

In Round 1, nonprofit developers with projects located within the jurisdiction of a suballocator may apply for HTCs from Minnesota Housing, but only in the nonprofit set-aside. Nonprofit developments located in the allocating jurisdiction of a suballocator may apply simultaneously to the suballocator and to the Minnesota Housing nonprofit set-aside. Nonprofit developments not located in the allocating jurisdiction of a suballocator will compete for HTCs in the respective general Geographic Pool once the nonprofit set-aside has been exhausted.

### Rural Development/Small Projects Set-Aside of Funds

- 4.1 Minnesota Housing designates a portion of the state’s HTC volume cap to Rural Development (RD) financed projects, or small projects with a site located in a RD service area consisting of 12 or fewer units, will receive a special set-aside administered by Minnesota Housing until the end of Round 2, or until it is determined that there are no eligible applications for the set-aside.

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<sup>5</sup> As required by Section 42(h)(5). Nonprofit must have a Section 501(c)(3) or (4) status and meet the other requirements in Section 42(h)(5)(C)

## Article 5 – Application Rounds

5.0 Minnesota Housing will hold two funding competitions each year to allocate the state’s HTC volume cap, Round 1 and Round 2.

### Round 1

5.1 **Distribution:** In Round 1, the distribution of HTCs in each Geographic Pool will be as follows:

- a. Greater Minnesota Pool (see definition in Article 3)
  1. RD/small project set-aside (25 percent, not to exceed \$375,000 of Greater Minnesota HTC total)
  2. Three suballocators eligible to administer HTCs within their respective city limits:
    - i. Duluth
    - ii. Rochester
    - iii. St. Cloud
  3. Balance of Greater Minnesota Area and nonprofit set-aside administered by Minnesota Housing
- b. Metropolitan Area Pool (see definition in Article 3)
  1. Four suballocators eligible to administer HTCs within their respective city or county limits:
    - i. Minneapolis
    - ii. Saint Paul
    - iii. Washington County
    - iv. Dakota County
  2. Balance of Metropolitan Area and nonprofit set-aside administered by Minnesota Housing.

5.2 **Suballocator Jurisdiction:** In Round 1, applications for developments located within the jurisdiction of a suballocator are not eligible to apply to Minnesota Housing with the exception of the nonprofit set-aside, or if the suballocator has entered into a Joint Powers Agreement with Minnesota Housing or has returned all of their HTCs to Minnesota Housing (see Article 3).

5.3 **Preservation Ceiling:** In Round 1, Minnesota Housing will establish a preservation allocation ceiling of 2/3 for each Geographic Pool, Metropolitan and Greater Minnesota, but not including the RD/small project set-aside nor the nonprofit set-aside. Minnesota Housing reserves the right to exceed the 2/3 ceiling if qualifying new construction proposals are not available or do not rank competitively.



5.4 **Minimum Threshold Requirements:** For applications submitted in Round 1, all applicants statewide must meet one of the following threshold types. The threshold type the applicant applies under will become part of the HTC Reservation and Commitment. It will be secured by a restrictive use covenant on the land for the term of the compliance period and, as applicable, the extended use period. An Allocating Agency will allocate HTCs only to the following types of projects:

a. In the Metropolitan Area:

1. New construction or Substantial Rehabilitation in which, for the term of the extended use period (term of the Declaration of Land Use Restrictive Covenants (LURA)), at least 75 percent of the total HTC units are single room occupancy, efficiency or one bedroom units with rents affordable to households whose income does not exceed 30 percent of the area median income.
2. New construction or Substantial Rehabilitation family housing projects that are not restricted to persons 55 years old or older in which, for the term of the extended use period (term of the LURA), at least 75 percent of the total HTC units contain two or more bedrooms and at least one-third of the 75 percent contain three or more bedrooms.
3. Substantial Rehabilitation projects in neighborhoods targeted by the city for revitalization.

b. Outside the Metropolitan Area:

Projects that meet a locally identified housing need and that are in short supply in the local housing market, as evidenced by credible data submitted with the application.

c. Projects that are not restricted to persons of a particular age group and in which, for the term of the extended use period (term of the LURA), a percentage of the units are set aside and rented to persons:

1. With a serious and persistent mental illness as defined in Minnesota Statutes § 245.462, Subdivision 20, paragraph (c);
2. With a developmental disability as defined in Section 6001, paragraph 5 of the IRC;
3. Who have been assessed as drug dependent persons as defined in Minnesota Statutes § 254A.02, Subdivision 5, and are receiving or will receive care and treatment services provided by an approved treatment program as defined in Minnesota Statutes § 254A.02, Subdivision 2;
4. With a brain injury as defined in Minnesota Statutes § 256B.093, Subdivision 4, paragraph (a); or
5. With permanent physical disabilities that substantially limit major life activities, if at least 50 percent of the units in the project are accessible as provided under Minnesota Rules Chapter 1341.

d. Projects, whether or not restricted to persons of a particular age group, which preserve existing subsidized housing, if the use of HTCs is necessary to (1) prevent conversion to market rate use or (2) to remedy physical deterioration of the project, which would result in loss of existing federal subsidies.

e. Projects financed by Rural Development, which meet statewide distribution goals.

## Round 2

- 5.5 **Distribution:** In Round 2, all remaining or returned HTC's will be combined into one unified pool for allocation by Minnesota Housing on a statewide basis, without regard to geographic distribution and with no set-asides<sup>6</sup>. All Round 2 applications are submitted to Minnesota Housing.
- 5.6 **Waiting List:** Minnesota Housing may, at its discretion, establish a waiting list following Round 2 if sufficient HTC's are not available. If a waiting list is established and additional HTC's later become available, Minnesota Housing will evaluate projects on the waiting list in accordance with the Manual. A project on the waiting list that is allocated its HTC request through the subsequent year's Round 1 will no longer be eligible to receive HTC's through the waiting list and will be removed from the list. If the waiting list is exhausted, Minnesota Housing may accept additional applications.
- 5.7 **Supplemental Priority:** Projects that have previously received HTC's from Minnesota Housing or a Suballocator and have an annual HTC shortfall of at least 5 percent, but not more than 33.33 percent of the total qualified annual HTC amount, subject to Minnesota Housing approval, will have priority over other applicants in Round 2 and under the Waiting List. If more than one project qualifies under the supplemental priority, the Agency will evaluate and rank eligible requests according to points claimed in the Self-Scoring Worksheet.

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<sup>6</sup> In the event that the Minnesota RD office has not received a funding allocation in time for RD projects to be included in Round 1, the RD/Small Projects set-aside will be carried forward until the end of Round 2, or until it is determined that there are no eligible applications for the set-aside. In the event that Minnesota Housing has not met the 10% IRS requirement in Round 1, the Non-profit set-aside will also be carried forward until the end of Round 2.

## Article 6 – Application Process for HTC Allocation of State Volume Cap

- 6.0 A complete application containing the submissions described in the Manual must be submitted no later than each of the application due dates in order to be considered for selection, within the applicable competition.
- a. Projects selected and approved by the Minnesota Housing board in each selection competition will be approved as eligible to proceed toward commitment and allocation.
  - b. Projects not selected may, upon notification, choose to compete in subsequent competitions.
- 6.1 Eligible projects will be evaluated for the amount of allocation pursuant to Section 42(m)(2)(B). Such a determination must not be construed to be a representation or warranty as to the feasibility or viability of the project. Minnesota Housing will conduct three evaluations prior to allocating the HTCs:
- a. At the time of initial application/reservation
  - b. At the time of commitment to allocate HTCs/carryover allocation
  - c. At the time the building is placed in service

For each evaluation, the applicant must submit the most recent financial information on the project. Misrepresentations of information will result in failure to award Internal Revenue Service (IRS) Form 8609, debarment from participation in the HTC Program and possible criminal penalties.

Selected applicants failing to place a project in service in the allocation year for which the reservation was issued may receive a carryover allocation by submitting the required carryover application submissions detailed in the Manual.

Minnesota Housing reserves the right not to allocate any HTCs.

## Article 7 – Additional Administrative Procedures

- 7.0 For applicants statewide applying for a portion of the state’s HTC volume cap, the per-developer or general partner HTC limit is the greater of: the amount representing 10 percent of the state’s per capita volume limit in HTCs, or the amount needed to support two developments in the case that two developments selected are being developed by the same developer or general partner. Such projects are subject to a development limit of no more than \$1,300,000 in cumulative HTCs allocated to any one development.

These limitations are subject to review and waiver by the Minnesota Housing board. The applicant must provide justification for exceeding this limit for consideration by Minnesota Housing.

- 7.1 No project may be divided into two or more projects during a single funding round to receive HTCs. Multiple applications, determined by Minnesota Housing to be one project, will be returned to the applicant and all fees forfeited. Minnesota Housing will consider factors such as, but not limited to, ownership entities, general partnerships, sponsor relationships and location of project, if contiguous site, to determine if a multiple application exists.
- 7.2 Minnesota Housing may elect not to give partial HTCs to a higher-ranking application but to give the HTCs to the next ranking application that can use the balance of the HTCs.
- 7.3 Minnesota Housing has no jurisdiction to interpret or administer Section 42, except in those instances where it has specific delegation.
- 7.4 Minnesota Housing may consult with local communities, Public Housing Authorities (PHAs), Housing and Redevelopment Authorities (HRAs), RD and HUD to determine the marketability of projects. If, in the opinion of Minnesota Housing, the issuance of the HTCs to a project could be detrimental to existing rental property, Minnesota Housing will not issue HTCs to the applicant.
- 7.5 Minnesota Housing reserves the right to adjust fees due to changing circumstances in order to cover its costs associated with producing and delivering Minnesota’s HTC Program.

## Article 8 – Application Process for HTC Award for Buildings Financed by Tax-Exempt Volume Limited Bonds

- 8.0 Section 42 establishes a separate set of procedures to obtain HTCs through the issuance of tax exempt volume limited bonds.<sup>7</sup> Although the HTCs are not counted in the HTC volume cap for the state of Minnesota, developers of projects should be aware that:
- a. Section 42 (m)(1)(D) provides that in order for a project to receive an award of HTCs through the issuance of tax exempt volume limited bonds, the project must satisfy the requirements of the QAP applicable to the area in which the project is located. The Minnesota Housing QAP applies to all projects for which Minnesota Housing is the issuer of the bonds and all other projects for which the issuer is not located within the area covered by a suballocator QAP. Some suballocators have entered into a Joint Powers Agreement with Minnesota Housing under which Minnesota Housing will perform the HTC award and compliance monitoring. The project must comply with the QAP that is in effect for the calendar year in which the tax exempt volume limited bonds are issued sufficient, together with any tax exempt volume limited bonds issued in a prior calendar year, to finance at least 50 percent of the aggregate basis of the building and the land it is located on.

For projects to which the Minnesota Housing QAP applies, Minnesota Housing must make a determination that the above requirements are satisfied. After this determination, Minnesota Housing will issue a preliminary determination letter. **Application for this determination must be made to Minnesota Housing at least 30 days prior to the issuance of the tax-exempt volume limited bonds sufficient, together with any tax exempt volume limited bonds issued previously for the same project, to finance at least 50 percent of the aggregate basis of the building(s) and land it is located on.**

In order to qualify under Minnesota Housing’s QAP, a developer must demonstrate that the project is eligible for no less than **40 points**.

The threshold requirements in Article 5 of the QAP do not apply to projects not receiving HTCs counted in the HTC volume cap for the state. The strategic priority policy thresholds in Article 9 do not apply to projects that are not applying for any Minnesota Housing resources other than non-competitive HTCs.<sup>8</sup>

In order to receive the preliminary determination described above, the developer must submit to Minnesota Housing all documents required for an application for HTCs as established by the Minnesota Housing QAP and Manual and any additional information requested by the Allocating Agency. These documents are those required for an application for HTCs under Chapter 6 and Chapter 7 of the Manual and any additional information required by Minnesota Housing. The developer must also submit to Minnesota Housing the required application fees identified in the QAP/Manual.

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<sup>7</sup> Tax exempt volume limited bonds are “residential rental bonds” that are taken into account under the state ceiling on the aggregate face amount of tax exempt private activity bonds pursuant to Section 146 of the IRC. Residential rental bonds are exempt facility bonds issued pursuant to Section 142(d) of the IRC to finance a qualified residential rental project.

<sup>8</sup> As required by Minn. Stat. § 462A.222, subd. (3)(d) residential rental housing projects financed with an allocation of tax-exempt bonds under chapter 474A are the highest strategic priority, and such developments are therefore not required to meet a separate strategic priority threshold.

- b. In addition to complying with the requirements for HTC allocation, Section 42 (m)(2)(D) provides that in order for a project to receive an award of HTCs through the issuance of tax exempt volume limited bonds, the governmental unit that issues the bonds (or on behalf of which the bonds were issued) must make a determination that the HTC amount to be claimed does not exceed the amount necessary for the financial feasibility of the project and its viability as a qualified low income housing project throughout the HTC period.

For projects to which the Minnesota Housing QAP applies, the determination by the issuer must be made in a manner consistent with Minnesota Housing's QAP and Manual. Section 42 requires that the issuer evaluation must consider:

1. The sources and uses of funds and the total financing planned for the project
2. Any proceeds or receipts expected to be generated by reason of tax benefits
3. The percentage of the HTC dollar amount used for project costs other than the cost of intermediaries
4. The reasonableness of the developmental and operational costs of the project, and
5. A comprehensive market study of the housing needs of low-income individuals in the area to be served by the project, conducted before the HTC award is made, and at the developer's expense by a disinterested party approved by Minnesota Housing.

This determination must be made **prior to the issuance of the tax exempt volume limited bonds** in an amount sufficient, together with any tax exempt volume limited bonds issued previously for the same project, to finance at least 50% of the aggregate basis of the building and the land it is located on.

- c. Section 42 provides that in order for a project to be eligible for HTCs, the taxpayer/owner must enter into an extended use agreement (LURA). Section 42(h)(6)(C)(ii) provides that the HTC amount claimed for buildings financed by tax exempt volume limited bonds by the taxpayer/owner under Section 42 (h)(4) may not exceed the amount necessary to support the applicable fraction specified in the use agreement for the buildings.
- d. After the project is placed in service, the development must submit to Minnesota Housing an application and appropriate fees for Form 8609, meeting the requirements of the QAP/Manual. The developer must also submit to Minnesota Housing any other related fees identified in the QAP/Manual.

## Article 9 – Strategic Priority Policy Thresholds

- 9.0 To be eligible for HTC's from the state's HTC volume cap under Minnesota Housing's QAP and non-competitive HTC's, except as set out in Article 8, a developer must demonstrate that the project meets at least one of the following priorities:
- a. **Access to Fixed Transit:** Projects within one-half mile of a planned or existing LRT, BRT or commuter rail station.
  - b. **Greater Minnesota Workforce Housing:** Projects in Greater Minnesota documenting both of the following:
    1. Need: Projects in communities with low vacancy (typically considered 4 percent and below, documented by a market study or other third party data) and:
      - i. That have experienced net job growth of 100 or more jobs,
      - ii. With 15 percent or more of the workforce commuting 30 or more miles to work, or
      - iii. With planned job expansion documented by a local employer
    2. Employer Support in the form of a letter of support from an employer with 20 or more FTE's.
  - c. **Economic Integration:** Projects located in higher income communities (outside of rural/tribal designated areas) with access to low and moderate wage jobs, meeting either First or Second Tier Economic Integration as defined in the Increasing Geographic Choice category on the Self-Scoring Worksheet.
  - d. **Tribal:** Projects sponsored by tribal governments, tribally designated housing entities or tribal corporate entities.
  - e. **Community Development Initiative:** Projects that contribute to active implementation of a Community Development Initiative, as defined in the Community Development Initiative selection criterion, to address locally identified needs and priorities in which local stakeholders are actively engaged.
  - f. **Preservation:** Projects that preserve existing federally assisted housing or other critical affordable projects eligible for points under the Preservation selection criterion on the Self-Scoring Worksheet.
  - g. **Supportive Housing:** Proposals that will serve people with disabilities or High Priority Homeless (HPH) households must be eligible for points under Permanent Supportive Housing for High Priority Homeless selection criterion on the Self-Scoring Worksheet or the People with Disabilities selection criterion under the Self-Scoring Worksheet.
  - h. **Tax-Exempt Bond Allocation:** As required by Minn. Stat. § 462A.222, subd. (3)(d) residential rental housing projects financed with an allocation of tax-exempt bonds under chapter 474A are the highest strategic priority, and such developments are therefore not required to meet a separate strategic priority.
  - i. **Minimum Point Requirement:** A request for Minnesota Housing administered HTC's from the state's HTC volume cap will be deemed to meet a strategic priority if it demonstrates the

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project is eligible for not fewer than 70 points, excluding projects funded through the RD/Small Projects set-aside.



## Article 10 – Project Scoring

- 10.0 **Minimum Points Requirement (Competitive Round HTCs):** To be eligible for HTCs from the state’s volume cap under Minnesota Housing’s QAP, a developer must demonstrate that the project is eligible for no less than **70** points in the Self-Scoring Worksheet. This excludes projects funded through the RD/Small Projects set-aside, which must be eligible for no less than 30 points.

Minnesota Housing reserves the right to reject applications not meeting its project selection requirements, as contained in the Manual, or to revise proposal features and associated scoring to ensure the project meets the requirements.

- 10.1 **Selection Priorities:** Selection Priorities consist of the following:

- a. Large Family Housing
- b. People with Disabilities
- c. Economic Integration
- d. Access to Higher Performing Schools
- e. Rural/Tribal
- f. Workforce Housing
- g. Other Contributions
- h. Financial Readiness to Proceed/Leveraged Funds
- i. Intermediary Costs
- j. Unacceptable Practices
- k. Eventual Tenant Ownership
- l. Planned Community Development
- m. Preservation
- n. Permanent Supportive Housing for High Priority Homeless
- o. Location Efficiency
- p. Universal Design
- q. Smoke free Buildings
- r. Cost Containment
- s. MBE/WBE

- 10.2 **Preference Priorities:** Preference Priorities consist of the following:

- a. Serves Lowest Income Tenants/Rents Reduction
- b. Rental Assistance
- c. QCT/Community Revitalization and Tribal Equivalent Areas
- d. Long Term Affordability

- 10.3 **Tie Breakers:** If two or more proposals have equal number of points, the following will be used to determine selection:

- a. First tie breaker: Priority will be given to the project with the greater number of points in Preference Priority criteria; if a tie still remains;
- b. Second tie breaker: Priority will be given to a project located in a city, township or Tribal Reservation that has not received HTCs in the last two years; if a tie still remains;

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- c. Third tie breaker: Priority will be given to the project with the highest “Percentage of Funds Secured, Awarded or Committed” as measured by the selection criterion of Financial Readiness to Proceed/Leveraged Funds; if a tie still remains;
- d. Fourth tie breaker: Priority will be given to the project with the lowest percentage of intermediary costs, as measured by the Intermediary costs selection criterion; if a tie still remains;
- e. Fifth tie breaker: Priority will be by lot.

## Article 11 – Minnesota Housing Compliance Monitoring

- 11.0 All HTC projects will be monitored by Minnesota Housing in accordance with Section 42(m)(1)(B)(iii) and Treasury Regulations 1.42-5. See [Minnesota Housing's Tax Credit Compliance Guide](#) for additional information on compliance and monitoring.
- 11.1 **Record keeping and record retention provisions:**
- a. Record keeping provision. The owner of a low-income housing project must keep records for each qualified low-income building (in the project) showing each year:
    1. The total number of residential rental units in the building (including the number of bedrooms and the size in square feet).
    2. The number of occupants in each low-income unit and the number of minors. Housing information concerning ethnicity, elderly or family household and student resident status, and type and amount of rental assistance.
    3. The percentage of residential rental units in the building that are low-income units, models, offices and management units.
    4. The rent charged on each residential rental unit in the building (including utility allowance). Documentation including rent rolls, leases and utility allowances per IRS Notice 94-60 issued June 1994.
    5. The low-income unit vacancies in the building and the rentals of the next available units.
    6. The annual income certification of each low-income tenant on a Minnesota Housing Tenant Income Certification.
    7. The annual student certification of each low-income tenant on a Minnesota Housing Annual Student Certification form, HTC 35.
    8. Documentation to support each low-income tenant's income certification. Anticipated income of all adult persons expecting to occupy the unit must be verified and included on a Tenant Income Certification **prior** to occupancy and for mixed-income projects, annually recertified to determine whether the Available Unit Rule must be implemented.
    9. The character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d) (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project).
    10. The eligible basis and qualified basis of the building at the end of the first year of the HTC period.
    11. Any additional records necessary to verify compliance with additional restrictions included in the Carryover Agreement or LURA.
  - b. Record retention provision. The owner of a low-income housing project must retain the records described in 11.1(a) for each building in the project for at least six years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the HTC period, however, must be retained for at least six years beyond

the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

- c. Inspection record retention provision. Under the inspection record retention provision, the owner of a low-income housing project must be required to retain the original local health, safety or building code violation reports or notices that were issued by the state or local government unit (as described in IRC 1.42-5 (c)(1)(vi)) for Minnesota Housing’s inspection. Retention of the original violation reports or notices is not required once Minnesota Housing reviews the violation reports or notices and completes its inspection, unless the violation remains uncorrected.

**11.2 Certification and Review Provisions:**

- a. Certification. The owner of a low-income housing project must certify to Minnesota Housing that the project meets the minimum requirements of:
  1. 20/50 test under Section 42(g)(1)(A) of the IRC; or  
40/60 test under Section 42(g)(1)(B) of the IRC; or  
Average Income test under Section 42(g)(1)(C) of the IRC.
  2. There has been no change in the applicable fraction (as defined in Section 42 (c)(1)(B) of the IRC) for any building in the project.
  3. At initial occupancy the owner has received a Tenant Income Certification with supporting documentation and an Annual Student Certification from each low-income household. At annual recertification owner has received an Annual Student Certification and, where applicable, a Tenant Income Certification with supporting documentation from each low-income household.
  4. Each low-income unit in the project has been rent-restricted under Section 42(g)(2) of the IRC.
  5. No tenants in low-income units were evicted or had their tenancies terminated other than for good cause and no tenants had an increase in the gross rent with respect to a low-income unit not otherwise permitted under Section 42.
  6. All low-income units in the project are and have been for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under Section 42 (l)(3)(B)(iii) of the IRC).
  7. No finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601 -3619, has occurred for this project. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court.
  8. Each building in the project is and has been suitable for occupancy, taking into account local health, safety and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low income unit in the project.
  9. There have been no changes in the eligible basis (as defined in Section 42(d) of the IRC) of any building in the project since the last certification of submission.

10. All tenant facilities included in the eligible basis under Section 42(d) of the IRC of any building in the project, such as swimming pools, other recreational facilities, parking areas, washer/dryer hookups and appliances were provided on a comparable basis without charge to all tenants in the buildings.
  11. If a low-income unit in the project has been vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units were or will be rented to tenants not having a qualifying income.
  12. If the income of tenants of a low-income unit in any building increased above the limit allowed in Section 42(g)(2)(D)(ii) of the IRC, the next available unit of comparable or smaller size in the building was or will be rented to residents having a qualifying income.
  13. An extended low-income housing commitment as described in Section 42(h)(6) was in effect, including the requirement under Section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437s. Owner has not refused to lease a unit to an applicant based on their status as a holder of a Section 8 voucher, and the project otherwise meets the provisions, including any special provisions, as outlined in the extended low-income housing commitment (not applicable to buildings with HTCs from years 1987-1989).
  14. The owner received its HTC allocation from the portion of the state ceiling set-aside for a project involving qualified nonprofit organizations under Section 42(h)(5) of the IRC and its nonprofit entity materially participated in the operation of development within the meaning of Section 469(h) of the IRC.
  15. There has been no change in the ownership or management of the project.
- b. Review. Under the review provision, a monitoring procedure must require:
1. An owner of a low-income housing project to submit to Minnesota Housing a completed, Minnesota Housing signed copy of IRS Form 8609 for the first year of the HTC period with Part II completed.
  2. Minnesota Housing will inspect low-income housing projects once every three years and review the tenant income certifications for the number of units required in Treasury Regulations 1.42-5 and the documentation the owner has received to support those certifications. Less frequent inspections may occur after the 15-year compliance period has expired. All projects must have their first compliance inspection no later than the year following the first HTC period.
  3. The low-income housing projects to be inspected must be chosen in a manner that will not give owners of low-income housing projects advance notice that their records for a particular year will or will not be inspected. Minnesota Housing may give an owner reasonable notice, pursuant to Treasury Regulations 1.42-5, that an inspection will occur so that the owner may assemble records.

11.3 **Inspection Provision:** Minnesota Housing has the right to perform an inspection of any low-income housing project at least through the end of the term of the LURA. An inspection includes a physical inspection of any building(s) in the project, as well as a review of the records

described in Article 11.1. The auditing provision of this paragraph is required in addition to any inspection of low-income certification and documentation under Paragraph 11.2(b).

**11.4 Notification of Non-Compliance Provisions:**

- a. In General. Minnesota Housing will give the notice described in IRS Regulation Section 1.42-5(e)(2) to the owner of a low-income housing project and the notice described in Section 1.42-5(e)(3) to the IRS.
- b. Notice to Owner. Minnesota Housing will provide prompt written notice to the owner of a low-income housing project if Minnesota Housing does not receive the certification described in 11.2(a) or 11.3 or discovers in an audit, inspection, or review, or in some other manner, that the project is not in compliance with the provisions of Section 42.
- c. Notice to IRS. When required, Minnesota Housing will file Form 8823, Housing Credit Agencies Report of Non-Compliance, with the IRS no later than 45 days after the end of the correction period (as described in 11.5, including extensions permitted). Minnesota Housing must check the appropriate box on Form 8823 indicating the nature of the noncompliance or failure to certify and indicating whether the owner has corrected the noncompliance or failure to certify. If Minnesota Housing reports on Form 8823 that a building has gone entirely out of compliance and will not be in compliance at any time in the future, Minnesota Housing need not file Form 8823 in subsequent years to report that building's noncompliance.
- d. Project owners must provide to Minnesota Housing any evidence of noncompliance correction and correspondence to or received from the IRS with respect to any reported noncompliance.

**11.5 Correction Period:** The correction period will be that period specified in the notice to the owner during which an owner will have the opportunity to supply any missing certifications and bring the project into compliance with the provisions of Section 42. The correction period will be set by Minnesota Housing and will not exceed 90 days from the date of the notice to the owner described in Paragraph 11.4(b). Minnesota Housing may extend the correction period for up to six months, but only if Minnesota Housing determines there is good cause for granting the extension.

**11.6 Liability:** Compliance with the requirements of Section 42 is the responsibility of the owner of the building for which the HTC is allowable. Minnesota Housing's obligation to monitor for compliance with the requirements of Section 42 does not make Minnesota Housing liable for an owner's noncompliance.

## Article 12 – Suballocator Procedures

- 12.0 A city or county is eligible to receive a reserved portion of the state ceiling under this subdivision if it submitted a written request to Minnesota Housing within 45 days after June 2, 1987, to act as a designated Housing Credit Agency as provided in Section 42. A city or county may designate its housing and redevelopment authority as a suballocating agent to allocate HTC's on behalf of the city or county. The city of Minneapolis or the city of Saint Paul may designate the Minneapolis/Saint Paul Housing Finance Board to allocate HTC's on behalf of each city. Minnesota Housing will administer the HTC's for areas outside the jurisdiction of the suballocators.
- 12.1 Minnesota Housing, in consultation with the suballocators, will determine application competition deadlines as required by statute. Minnesota Housing will make an effort to align the application deadline for the suballocating agencies in Round 1 with Minnesota Housing's deadline. No Allocating Agency may award HTC's prior to the application closing date for Round 1.
- 12.2 Before the application deadline for Round 2, the suballocators must return all uncommitted and unallocated HTC's to Minnesota Housing, along with copies of the HTC application and allocation or commitment agreements for all selected projects.
- 12.3 If a suballocator determines at any time before Round 2 that a project is no longer eligible for all or a portion of the HTC's committed or allocated to the project, the HTC's must be transferred to Minnesota Housing to be reallocated. If the HTC's for which the project is no longer eligible are from the current year's annual ceiling and the suballocator maintains a waiting list, the suballocator may continue to commit or allocate the HTC's until no later than the date of application for the Round 2. At that time, any uncommitted HTC's must be transferred to Minnesota Housing.
- 12.4 So that all of a project's HTC's are allocated by a single Allocating Agency, Minnesota Housing may apportion additional HTC's to a suballocator for a project that has already received a commitment or allocation of HTC's from the suballocating agency, if all of the suballocator's HTC's have been committed or allocated. These supplemental HTC's must be used only for the selected project and must be allocated to the project by a carryover allocation or IRS Form 8609 before November 15 of the year in which the selection was made. If at any time after the apportionment of the HTC's a suballocator determines the project cannot use or is no longer eligible for all or a portion of the HTC's apportioned to the project, the HTC's must be returned to Minnesota Housing within 10 business days for reallocation.
- 12.5 Suballocators are responsible for the issuance of the IRS Form 8609 for all projects for which they have allocated HTC's. In instances where both a suballocator and Minnesota Housing have allocated HTC's to a project, the Allocating Agency that first allocated HTC's to the project will prepare the IRS Form 8609.
- 12.6 As the primary and lead HTC agency for the state of Minnesota, Minnesota Housing is responsible for collecting and filing the required form with the IRS each year on the last day of February. Minnesota Housing will prepare a comprehensive IRS Form 8610, incorporating all

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carryover and 8609 allocations made in the state of Minnesota for filing with the IRS. The local suballocators have agreed to submit the following information to Minnesota Housing no later than January 31 for all HTC activity that has occurred in the preceding year:

- a. A copy of all Reservation/Binding Agreements, an original of the Carryover Agreement, and copies of all IRS Form 8609s, completed and issued to all (including tax exempt) projects selected since February 28 of the preceding calendar year
  - b. A completed HTC application form (Multifamily Workbook) for each development receiving an allocation or award through a reservation, carryover, or issuance of 8609 for HTCs issued from volume cap and in connection with tax exempt volume limited bonds
  - c. A completed IRS Form 8610 Schedule A for each development receiving a carryover allocation
  - d. A Suballocator Compliance Activity Report containing the results of inspection activity conducted during each monitoring year with copies of any forms 8823 filed with the IRS
  - e. Any other information requested by Minnesota Housing necessary to meet federal and state reporting purposes
- 12.7 Suballocators are responsible for the monitoring of HTC projects for the term of the LURA, in accordance with 42(m)(1)(B)(iii) (see Article 11) to ensure compliance with applicable federal, state and local requirements. Compliance records must be available upon request to Minnesota Housing from the suballocator or its monitoring agent. Projects that receive HTCs from Minnesota Housing that are apportioned to a suballocating agency must incorporate Minnesota Housing restrictions that are a condition of the HTC award (e.g., nonprofit set-aside, homeless households)
- 12.8 Before January 31, suballocators will submit to Minnesota Housing compliance staff a comprehensive updated report listing all HTC projects allocated or awarded HTCs by the suballocator. Include the following items in the report:
- a. Project name
  - b. Address
  - c. Building identification numbers
  - d. Ownership entity and tax identification number
  - e. Total number of residential units
  - f. Number of HTC units
  - g. Year of allocation or award
  - h. Amount of HTCs allocated or awarded
  - i. Other information as needed

In addition, suballocators will submit a list of the projects that have been in noncompliance, the year of noncompliance, inspection date and type of noncompliance, along with copies of the IRS Form 8823 and the report of noncompliance findings sent to the owner. Suballocators will also submit a copy of their monitoring requirements, procedural manual and forms, and, if applicable, a copy of the monitoring contract with an outside vendor.



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- 12.9 A suballocator may elect to enter into a Joint Powers Agreement with Minnesota Housing. Under a Joint Powers Agreement, Minnesota Housing will perform certain functions related to the HTC allocation or award and compliance monitoring. As a condition of the Joint Powers Agreement, the participating suballocator will transfer its entire annual HTC distribution to Minnesota Housing.
- 12.10 Suballocators are responsible for entering into an agreement with HUD to perform Subsidy Layering Reviews.

## **Article 13 – Amendments to the Qualified Allocation Plan**

- 13.0 The QAP is subject to modification or amendment at any time to ensure that the provisions conform to the requirements of the IRC and applicable Minnesota law. Minnesota Housing may also make population and date changes and other non-substantive updates to the QAP.

Written explanation will be made available to the general public for any allocation of HTCs that is not made in accordance with Minnesota Housing’s established priorities and selection criteria.

The QAP may be amended for substantive issues at any time following public notice and public hearing. Public hearings are held at the main offices of Minnesota Housing in Saint Paul, Minnesota. Any substantive amendments will require approval of the Minnesota Housing board and the governor.

**This QAP has been prepared to comply with the regulations set forth in Section 42 of the IRC. The QAP may be subject to amendment in order to conform to the IRC and applicable state statute.**