

CIP Policy Guidelines: Low-Income Programming in Multifamily Buildings with 5+ Units

OVERVIEW

The purpose of this guidance is to provide clarification to the existing Conservation Improvement Program (CIP) statute regarding what qualifies as low-income (LI) for the purpose of CIP programming and spending. Minnesota Statutes 214B.241, subdivision 7 require that utilities must spend at least 0.2 percent of their gross operating revenue from residential customers in the state on LI programs. However, the statutes and the rules do not provide an explicit definition of LI.

Subd. 7. Low-income programs. (a) The commissioner shall ensure that each utility and association provides low-income programs. When approving spending and energy-savings goals for low-income programs, the commissioner shall consider historic spending and participation levels, energy savings for low-income programs, and the number of low-income persons residing in the utility's service territory. A utility that furnishes gas service must spend at least 0.2 percent of its gross operating revenue from residential customers in the state on low-income programs. A utility or association that furnishes electric service must spend at least 0.1 percent of its gross operating revenue from residential customers in the state on low-income programs. For a generation and transmission cooperative association, this requirement shall apply to each association's members' aggregate gross operating revenue from sale of electricity to residential customers in the state. Beginning in 2010, a utility or association that furnishes electric service must spend 0.2 percent of its gross operating revenue from residential customers in the state on low-income programs.

During the Minnesota Environmental Initiative 1.5 Percent Energy Efficiency Solution Project¹ process, one of the issues for the Low-Income Technical Work Group (LI TWG) to address was to develop strategies to increase conservation investment in rental housing. This issue was deferred to a work group convened by Minnesota Community Action Partnership (MinnCAP), the Rental Housing Energy Efficiency workgroup (RHEEWG). In January 2011, the RHEEWG completed a white paper² containing many policy recommendations for achieving energy efficiency investment in rental housing. The efforts of participants in local meetings convened by the National Housing Trust as part of their "Unleashing

¹ The final report of the 1.5 Percent Energy Efficiency Solution Project is available at <http://environmental-initiative.org/projects/past-projects>.

² The RHEE W G white paper is available at <http://minncap.org/Documents/News/RHEEWG%20Working%20Document.pdf>. The RHEE W G included representatives from utility companies, affordable housing owners and advocates, renter advocates, a landlord association, energy efficiency advocates, and state agencies (Minnesota Department of Commerce and Minnesota Housing).

Utility Resources to Energy Retrofit America's Affordable Housing Stock" project³ was also important in providing insights and ideas to enhance this guidance. This guidance reflects an initial collaboration by energy and affordable housing policy stakeholders intended to facilitate energy efficiency investments in housing occupied by LI citizens. As such, it will surely be a working document that will be refined over time as utilities, energy efficiency program administrators, and regulators gain experience with the tools and resources available to demonstrate LI status.

POLICY GUIDELINES

Historically, utilities have partnered with U.S Department of Energy (DOE) Weatherization Assistance Program (WAP) providers in the state. The benefit of this practice has been that CIP funds can leverage WAP funds, thus resulting in the installation of more energy efficiency measures at a property by providing more funds than would otherwise be available. However, there are often opportunities, especially in multifamily rental properties, to install energy efficiency measures independently of the WAP.

There are several standards for establishing LI status that are used by different programs. This guidance does not choose one definition or create a new definition of LI but makes use of several existing standards that DER finds reasonable. This guidance demonstrates how utilities should use resources associated with existing LI programs, specifically WAP and affordable housing programs, to verify that LI households occupy a reasonable threshold of the units in a multifamily building. The mechanisms strive to demonstrate LI occupancy while not requiring utilities or CIP program administrators to handle any tenant personal and financial information. Because the existing affordable housing programs listed in this guidance document by their nature ensure long-term affordability of a property, utilities may require that asset investments and improvements in these buildings stay with the building regardless of resident turnover or change in property management or ownership.

While there are several definitions of multifamily depending on the context, this guidance pertains to multifamily properties that contain five or more housing units. This guidance is based on demonstrating that a threshold of units in a single building is occupied by low-income households. For the purpose of CIP LI spending, buildings with five or more units must have at least 66 percent of the units occupied by LI households. If a building meets this threshold of occupancy by LI citizens, 100 percent of the building can be considered LI for the purpose of CIP programs.

One of the goals of CIP is to achieve energy savings through actions that have direct, measureable energy savings. For practical purposes, utilities will need to be able to track energy savings to a specific utility meter or account. However, in affordable housing regulation, housing "properties" or "projects" may consist of multiple adjacent or scattered buildings⁴. Utilities will need to be aware of this factor when

³ <http://www.slideshare.net/NHCandCenter/ssc2011michael-bodaken-ppt>. The NHT housed meetings in St. Paul on September 13, 2011 and January 9, 2012. Participants included representatives from utility companies, affordable housing owners, energy efficiency advocates, and state agencies (Minnesota Department of Commerce, Public Utilities Commission, and Minnesota Housing).

⁴ For the purpose of this guidance, the word building is used for readability. Building generally means a single structure. However, there are situations where multiple structures share the same heating, ventilation and air conditioning (HVAC) system; where a single HVAC system serves only a portion of a structure; or where a single HVAC system serves multiple structures. Utilities and CIP program administrators are familiar with appropriate methodologies for designing and documenting energy savings at sites with a variety of metering arrangements. Utilities and CIP program administrators can also work with DER when questions regarding such methodologies arise. It is not within the scope of this guidance document to define different metering/building arrangements. The

determining program eligibility. As utilities and CIP program administrators encounter nuances on this arrangement, they are advised to document and report them to the DER CIP unit in order to improve future versions of this guidance.

Utilities have a responsibility to use CIP funds cost-effectively, to meet all CIP statutory obligations, and to offer a broad enough portfolio of CIP programs so that all customer classes have access to CIP programming. This guidance is not intended to imply that a property owner is automatically entitled to CIP funding if LI households occupy 66 percent of the units in their property. Utilities may set reasonable program eligibility guidelines to balance all the priorities listed above. DER is interested in efforts to increase the cost-effectiveness of LI CIP programming in general and is committed to working with utilities and CIP program administrators toward this goal.

Utilities may work with property owners and DER to use one or a combination of the following conditions to demonstrate that LI households occupy the appropriate threshold of units within a building in order to qualify the entire building for LI spending.

1. **Weatherization Assistance Program Lists:**

Guidance: The U.S. Department of Energy (DOE) publishes lists⁵ of multifamily rental properties that are prequalified for the WAP based on tenant income data collected annually by the federal government. U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Agriculture (USDA) identify eligible multi-family properties to be included on these lists. Any building on the current DOE list is eligible for CIP LI spending.

Documentation: Utilities may retain a printed or electronic copy of the WAP list with the listed property to demonstrate that the building qualifies for LI spending.

2. **Low Income Renter Certification:**

Guidance: Minnesota statutes allow rental properties subsidized under a federal or state government program or meeting certain rent and income restrictions to be taxed at a lower rate. Property owners apply to the Minnesota Housing Finance Agency (MN Housing) for Low Income Rental Classification (LIRC)⁶ and MN Housing provides certification to local assessors that a property qualifies. MN Housing compiles a LIRC Assessor Report annually, in May, of all properties that have LIRC status. The LIRC Assessor Report indicates the portion of low-income units in a property.

Documentation: Utilities may retain a copy of the LIRC Assessor Report with the listed property to demonstrate that the building qualifies for LI spending.

- a. Some properties listed on the LIRC Assessor Report are composed of multiple buildings. CIP program administrators will need to work with property owners and DER in such cases to determine methods for documenting the threshold of LI households in an individual building.

intent of the guidance is to communicate that utilities and CIP administrators need to adequately document the proportion of LI citizens residing within a defined area for which energy consumption and savings can be calculated by generally accepted engineering methodologies.

⁵ Lists are available at: http://www1.eere.energy.gov/wip/multifamily_guidance.html

⁶ <http://www.mnhousing.gov/housing/developers/lirc/index.aspx>

3. **Use Restriction:**

Guidance: Some affordable housing programs require, as a condition of receiving funding, the property owner site a declaration against the property requiring that a portion of the units will be rented to tenants with an annual income of less than or equal to 60 percent of area median income.

Documentation: Utilities may use copies of a use restriction that is declared against the property listing the income restrictions on the property to demonstrate that a building qualifies for LI spending.

SAMPLE DOCUMENTATION

The following pages contain samples of the following forms of documentation that have been listed above:

- WAP list of multifamily properties eligible for weatherization assistance
- LIRC Assessor Report
- Mortgage covenant that is included with the mortgage listing the income and/or rent restrictions

WAP List

The screenshot shows an Excel spreadsheet titled 'hud_list-1_07-01-11.xls [Read-Only] [Compatibility Mode] - Microsoft Excel'. The 'Data' tab is active, and a filter is applied to the 'Years' column, showing 'Contract Expiration More than 3'. The spreadsheet contains the following data:

Property ID	Property Name	City	State	Years
1907	800010847 COMMUNITY PLAZA	Saint Paul	MN	Yes
1916	800010879 ELDERS LODGE	Saint Paul	MN	Yes
1934	800010944 GRAND PRE BY THE PARK	Saint Paul	MN	Yes
1941	800010970 HERITAGE HOUSE	Saint Paul	MN	Yes
1968	800011054 LEWIS PARK	Saint Paul	MN	Yes
1979	800011093 MEAR PARK PLACE	Saint Paul	MN	Yes
2015	800011208 REDEEMERS ARMS	Saint Paul	MN	Yes
2016	800011209 RICE MARION APTS PHS I aka Como Place	Saint Paul	MN	Yes
2017	800011210 Rivertown Commons Apartments	Saint Paul	MN	Yes
2038	800011282 NHHI-St. Paul Barrier Free Hsg aka LaFayette Plaza	Saint Paul	MN	Yes
2063	800011374 S.E. HALL-WHITNEY YOUNG PLAZA	Saint Paul	MN	Yes
2064	800011381 WILDER 202 APTS aka 516 Humboldt Apts	Saint Paul	MN	Yes
2068	800011399 WINSLOW COMMONS	Saint Paul	MN	Yes
4466	800024097 CENTRAL TOWERS	Saint Paul	MN	Yes
4737	800222949 WEINBERG APTS aka SHOLOM	Saint Paul	MN	Yes
4763				
4764				

The WAP lists contain properties composed of multiple buildings where 100 percent of units are affordable, and single building properties where at least 66 percent of the units are affordable. Public housing properties, which are typically 100 percent affordable, are included on these lists.

- Lewis Park is on the WAP list of qualified MF properties from July 1, 2011.

LIRC Assessor Report

CERTIFICATION OF MN LOW-INCOME RENTAL CLASSIFICATION (LIRC) for Assessment Year: 2011
05/25/2011

Assessor Report



Page: 5

		County: Ramsey				
PARCEL ID	PARCEL ADDRESS	ZIPCODE	QUALIFYING %	TOTAL UNITS	LIRC ACCOUNT#	PROJECT NAME
City: Saint Paul (continued)						
24 29 23 42 0085	360 Cottage Ave W	55117	75	270	501245	Lablanche Apartments
24 29 23 42 0086	1366 Western Ave N	55117				
24 29 23 42 0087	1360 Western Ave N	55117				
24 29 23 42 0088	1340 Western Ave N	55117				
11 29 22 33 0054	2163 Van Dyke St N	55109	100	13	501248	Emma's Place
02 28 23 11 0329	700 Selby Ave	55104	100	38	501263	Delancey Selby Stone Apartments
32 29 22 33 0042	281 E 5 St	55101	100	70	501272	Crane Ordway
31 29 22 41 0180	510 Sibley St	55101	100	60	501277	Lyons Court
31 29 22 41 0181	510 Sibley St	55101				
33 29 22 42 0161	1145 Hudson RD	55106	99	160	501289	Parkway Gardens
29 29 22 43 0139	635 Phalen BLVD	55101	100	73	501296	Phalen Senior Lofts
11 28 23 34 0179	1360 N 7 St	55102	100	12	501312	Seventh Landing
08 28 22 21 0118	465 Clinton	55107	100	69	501316	Capitol Townhomes
19 29 22 23 0063	92 Hoyt Ave W	55117				
32 29 22 21 0192	497 Tedesco	55103				
35 29 23 34 0170	925 Carroll	55104				
36 29 23 42 0126	446 Farrington	55103				
36 29 23 42 0127	429 Galiter St	55103				
34 29 23 41 0068	Fuller Avenue	55104				
35 29 23 43 0035	754 Concordia Ave	55104	98	50	501342	Carty Heights
26 29 23 34 0017	750 N Milton St	55104	73	56	501591	St. Phillip's Garden
36 29 23 31 0104	383 St Anthony Ave	55103	40	136	501593	Wilder Square Highrise
35 29 23 44 0028	313 N Dale St	55103	74	77	501622	Lonnie Adkins Courts
35 29 23 44 0029	620 Concordia Ave	55103	54	151	501624	Redeemers Arms
35 29 23 44 0030	315 N Dale St	55103				
35 29 23 44 0031	315 N Dale St	55103				
22 28 23 22 0035	2259 Rockwood Ave	55116	65	168	501628	Rockwood Place Apartments
26 29 23 12 0066	901 E Como BLVD	55103	58	99	501632	Como by the Lake
35 29 23 14 0219	649 Aurora Ave W	55104	81	98	501712	University Dale Apartments
35 29 23 41 0221	626 University Ave	55104				
35 29 23 41 0223	626 University Ave	55104				
35 29 23 41 0224	649 Aurora Ave W	55104				
31 29 22 44 0513	484 Temperance St	55101	42	122	501713	Sibley Court
31 29 22 44 0451	211 E 7 St	55101	44	114	501716	Sibley Park
31 29 22 44 0074	350 Sibley St	55101	69	49	501717	Straus Lofts
35 29 23 34 0152	932 Concordia Ave	55104	97	39	501718	Jeremiah Program-St. Paul
29 29 23 33 0061	808 Berry St	55114	25	267	501719	808 Berry Place

> new app + change to % (no notation signifies no change)

The LIRC Assessor Report does not include public housing properties.

- Capitol Townhomes has 100 percent LI qualified units. This building qualifies for CIP LI spending.
- University Dale Apartments consists of four buildings. The information in the top address listed for this project (649 Aurora Ave W) pertains to the resident composition among all four buildings: 81 percent of the units, greater than 66 percent, are LI qualified units. However, if a CIP project will only be implementing conservation measures in one of those buildings, Utilities will need to work with the property owner and DER to document that LI residents occupy at least 66 percent of units in that one building.

Use Restriction

Pages indicating the parties, number of units, and execution of the documents are shown.

FOR USE BY FILING OFFICER ONLY

Minnesota Housing Finance Agency
Ending Long-Term Homelessness Initiative Fund Program or Housing Trust Fund Long-Term Homelessness Program
DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION is made on the date set forth herein by _____,
a _____, with its offices located at _____ ("Declarant").

WITNESSETH:

WHEREAS, Declarant, as the owner in fee simple of the property located in the City of _____, County of _____, State of Minnesota, described in Exhibit A attached hereto and made a part hereof (the "Property"), has applied for a loan from the Minnesota Housing Finance Agency ("MHFA"), and MHFA has selected Declarant to receive a loan under MHFA's [Insert Program Name --Ending Long-Term Homelessness Initiative Fund Program or Housing Trust Fund Long-Term Homelessness Program] pursuant to Minnesota Statutes, Chapter 462A.201, and the rules promulgated thereunder, as may be amended, modified, or replaced from time to time (the "Act"), in the original principal sum of \$ _____ (the "Loan") to aid Declarant in the acquisition, construction and/or rehabilitation of and financing on the Property of a housing development pursuant to the Act (as further defined herein, the "Development").

WHEREAS, the Act imposes income, rent and occupancy requirements on the Restricted Units (as defined herein) and requires that these requirements remain in place for a minimum of 15 years; and

Dev. Name, City
LTH Declaration
(Ver. 11/19/10)

1

Dev. #
Date

WHEREAS, Declarant desires to obtain for the Development the benefits of the Loan and to impose on the Property the mutually beneficial covenants, conditions and restrictions set forth herein.

NOW THEREFORE, Declarant, as fee owner of the Property, and in consideration of the benefits to be derived therefrom by Declarant and its successors and assigns, makes the following declaration of the covenants, restrictions, limitations, conditions and uses to which the Property and improvements thereon may be put, specifying that this Declaration shall constitute covenants to run with the land and shall be binding upon Declarant, its successors, heirs or assigns, and all subsequent owners of all or any part of the Property or improvements, together with their grantees, successors, heirs, executors, administrators, devisees or assigns.

ARTICLE I

Definitions

Section 1. "Assisted Units" means _____ units in the Development.

Section 2. "Declarant" means _____, a _____, and any successor or assign that is the owner of the Development from time to time.

Section 3. "Development" means the Property and all improvements now or hereafter located thereon, including a housing development comprising the Assisted Units, of which _____ are Restricted Units, together with all assets of whatsoever nature used in or owned by the business conducted on the Property, identified as MHFA Development No. _____.

Section 4. "Households Experiencing Long-Term Homelessness" means persons, including individuals, unaccompanied youth, and families with children, lacking a permanent place to live continuously for one year or more or at least four times in the past three years. Any period of institutionalization or incarceration shall be excluded when determining the length of time a household has been homeless.

Section 5. "Income Requirements" means the following: (a) the requirement that the Restricted Units be occupied by persons or families whose gross incomes at the time of initial occupancy do not exceed 30% of the median income for the metropolitan area in which the Property is located ("AMI") as determined by the United States Department of Housing and Urban Development ("HUD"), and (b) the requirement that the Unrestricted Units be occupied by persons or families whose gross incomes at the time of initial occupancy do not exceed _____% of the median income for the metropolitan area in which the Property is located as determined by HUD. Income may be adjusted for family size for families with five or more people. A household with Section 8 project-based or tenant-based assistance is deemed to meet the Income Requirements.

Dev. Name, City
LTH Declaration
(Ver. 11/19/10)

2

Dev. #
Date

ARTICLE XII

Notices

Any notice required to be given to MHFA or Declarant hereunder shall be given in writing by first class or certified mail at the address of such parties specified below, or at such other address as may be specified by that party by notice given to the other party:

MHFA: Minnesota Housing Finance Agency
400 Sibley Street, Suite 300
St. Paul, MN 55101-1998
Attention: Assistant Commissioner, Multifamily Programs

Declarant: _____

Attention: _____

ARTICLE XIII

Severability

If any provisions hereof shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this Declaration, or caused it to be executed by its duly authorized officers, partners or members, effective the _____ day of _____, 2010.

DECLARANT:

a _____

By: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Dev. Name, City
LTH Declaration
(Ver. 11/19/10)

Dev. #
Date

NOTE REGARDING HOUSING CHOICE VOUCHER PROGRAM (SECTION 8):

The RHEE WG recommended including Housing Choice Voucher Program (HCV) documentation as a method of demonstrating low-income occupancy. The Housing Choice Voucher Program consists of project-based vouchers and tenant-based vouchers⁷.

DER Staff investigated this option and determined that the available documentation for tenant-based vouchers would reveal private data on individuals. DER Staff concluded that copies of the sample documents with tenant names and addresses redacted would leave little information with which to identify a building and could be easily fabricated. Therefore, this option is not included in this version of this guidance. Since the LIRC report combines multiple types of subsidies, project-based HCV units will most likely be reflected in the LIRC report. However, tenant-based HCVs that are not reflected in any of the examples listed in this guidance. This matter can be revisited in the future if energy and affordable housing policy stakeholders find that there is significant untapped potential for delivering energy efficiency due to not including tenant-based HCVs in this guidance.

Sample Documents:

- Project-based Housing Assistance Payment (HAP) contract (page 1)
- Tenant-based Housing Assistance Payment (HAP) contract (page 2)

⁷ http://portal.hud.gov/hudportal/HUD?src=/topics/housing_choice_voucher_program_section_8

Project-based Housing Assistance Payment (HAP) Contract

Exhibit A lists the Section 8 units in the development. There is not a standard form for Exhibit A

<small>OMB Approval No. 2577-0169 (exp. 04/30/2014)</small>
U.S. Department Of Housing and Urban Development Office of Public and Indian Housing
SECTION 8 PROJECT-BASED VOUCHER PROGRAM
PBV HOUSING ASSISTANCE PAYMENTS CONTRACT NEW CONSTRUCTION OR REHABILITATION
PART 1 OF HAP CONTRACT

This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number. Assurances of confidentiality are not provided under this collection.

I. CONTRACT INFORMATION

a. Parties

This housing assistance payments (HAP) contract is entered into between:

_____ (PHA) and

_____ (owner).

b. Contents of contract

The HAP contract consists of Part 1, Part 2 and the contract exhibits listed in paragraph c.

c. Contract exhibits

The HAP contract includes the following exhibits:

EXHIBIT A: TOTAL NUMBER OF UNITS IN PROJECT COVERED BY THIS HAP CONTRACT; INITIAL RENT TO OWNER; AND THE NUMBER AND DESCRIPTION OF THE CONTRACT UNITS. (See 24 CFR 983.203 for required items.) If this is a multi-stage project, this exhibit must include a description of the units in each completed phase.

Previous editions are obsolete

**Project-based Voucher Program
HAP Contract for New Construction or Rehabilitation**

**HUD 52530A Page - 1 -
of Part 1**

Tenant-based Housing Assistance Payment (HAP) Contract

Housing Assistance Payments Contract (HAP Contract) Section 8 Tenant Based Assistance Housing Choice Voucher Program

U.S Department of Housing
and Urban Development
Office of Public and Indian Housing

Part A of the HAP Contract: Contract Information

(To prepare the contract, fill out all contract information in Part A.)

1. Contents of Contract

This HAP contract has three parts:

- Part A: Contract Information
- Part B: Body of Contract
- Part C: Tenancy Addendum

2. Tenant

Jane Doe

3. Contract Unit

750 MILTON ST

#

Saint Paul

MN

55104

4. Household

The following persons may reside in the unit. Other persons may not be added to the household without prior written approval of the owner and the PHA.

Jane Doe

5. Initial Lease Term

The initial lease term begins on (mm/dd/yyyy): 3/15/2012

The initial lease term ends on (mm/dd/yyyy): _____

6. Initial Rent to Owner

The initial rent to owner is: \$ 597.00

During the initial lease term, the owner may not raise the rent to owner.

7. Initial Housing Assistance Payment

The HAP contract term commences on the first day of the initial lease term. At the beginning of the HAP contract term, the amount of the housing assistance payment by the PHA to the owner is \$ 373.00 per month.

The amount of the monthly housing assistance payment by the PHA to the owner is subject to change during the HAP contract term in accordance with HUD requirements.