

CIP Policy Guidelines:

Low-Income Programming in Multifamily Buildings with 5+ Units

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OVERVIEW

Minnesota Statutes set minimum spending requirements on low-income programs for all utilities that are required to deliver Conservation Improvement Program (CIP) programs. The minimum spending requirements are summarized as follows:

Low-Income Spending Program Requirements
(% of most recent 3-year average gross operating revenue from residential customers in MN)

	IOUs		COUs	
	Electric	Gas	Electric	Gas
Beginning 2022	0.4%	1.0%	0.2%	0.2%
Beginning 2024	0.6%	1.0%	0.2%	0.2%
Citation	MN Stats § 216B.241 subd. 7		MN Stats § 216B.2403 subd. 5	

Minnesota Statutes § 216B.2402 subdivision 19 defines a “multifamily building” as “a residential building containing five or more dwelling units.” Section 216B.2403, subdivision 5(e) requires that the Commissioner of the Department of Commerce develop and establish guidelines for determining the eligibility of multifamily buildings to participate in energy conservation programs provided to low-income households. Section 216B.2403 subdivision 5(e) also provides that “[n]otwithstanding the definition of low-income household in section 216B.2402, a . . . utility or association may apply the most recent guidelines published by the department for purposes of determining the eligibility of multifamily buildings to participate in low-income programs.” Meaning, the eligibility guidelines for multifamily buildings can differ from the definition of low-income household in section 216B.2402.

Section 216B.2403, subdivision 5(e) also requires that the commissioner convene a stakeholder group to review and update these guidelines by August 1, 2021, and at least once every five years thereafter. The stakeholder group must include but is not limited to representatives of public utilities; municipal electric or gas utilities; electric cooperative associations; multifamily housing owners and developers; and low-income advocates.

The Department of Commerce (Department) convened a stakeholder meeting on July 29, 2021 and held two subsequent meetings on August 31, 2021 and January 20, 2022 for the purpose of getting informal feedback on updates to the previous version of this guidance document published on August 3, 2012. Notice of the initial stakeholder meeting was delivered to all of the Department’s CIP utility contacts and to subscribers to the Department’s CIP electronic newsletter. Invitations to the subsequent two meetings went to those that attended the first meeting and individuals that contacted the Department independently requesting to receive notice of subsequent meetings. The Department published a formal proposed guidance document on its public docket system on <date TBD> and received comments through <date TBD>. As of <date TBD>, this document is the current guidance document. The Department will convene a stakeholder group to update this guidance document by August 1, 2026, notwithstanding subsequent legislation or actions that supersede the requirement to do so in § 216B.2403, subdivision 5(e).

BACKGROUND

ADMINISTRATIVE EFFICIENCY AND SHARED BENEFITS

The purpose of this guidance is to support the administrative efficiency of utility CIP programs. This guidance describes several methods that utilities and CIP program administrators can use to verify that a reasonable threshold of units in a building is occupied by low-income households without the need to handle tenant personal and financial information. A multifamily building that is considered low-income according to any of the eligible methods, may be considered low-income within the context of a utility's CIP portfolio and associated CIP energy savings, spending, and participation achievements.

MN Statutes § 216B.2402 subdivisions 16 and 17 express an intent for low-income customers and low-income renter households to share in the benefits of energy efficiency measures. Low-income programs are defined as “energy conservation improvement and efficient fuel-switching programs that directly serve the needs of low-income households, including low-income renters.”¹ In the multifamily market sector, substantial energy efficiency investments, by their nature, need to involve the property owner(s) and/or manager(s). In many cases energy efficiency measures require that these parties coordinate access to buildings and individual units, authorize work on whole-building mechanical systems, and contribute to the cost of measures. Therefore, many multifamily CIP programs are directed at this audience and offer rebates to the property owner. To ensure that low-income households will share in the benefits of these investments, the methods outlined in the guidance document leverage existing affordable housing or other income eligible programs that by their nature include a commitment on the part of the property owner to long-term affordability of a property. Even if the specific households that are occupying the property at the time that the energy efficiency measures are installed do not enjoy the full lifetime of the measures, future low-income households will. Also, for this reason, utilities and property owners may require that energy efficiency investments and improvements made through CIP programs stay with the building regardless of resident turnover. It is also often the case that building occupants may not pay the utility bill associated with the energy efficiency measures that are installed. While building occupants may not experience direct utility bill savings, they will benefit from the improved comfort and durability that often accompany energy efficiency measures. Therefore, the Department believes that a property owner's commitment to long-term affordability of a property demonstrates an intention to share the benefits of energy efficiency investments with building residents.

LOW-INCOME OCCUPANCY THRESHOLD OF 66 PERCENT OF UNITS IN A BUILDING

While there are several definitions of multifamily depending on the context, this guidance applies to multifamily properties that contain five or more housing units.² This guidance is based on demonstrating that a threshold of units in a single building is occupied by low-income households. For CIP low-income spending, buildings with five or more units must have at least 66 percent of the units occupied by low-income households. For buildings still under construction, 66 percent of units must be intended for occupancy by low-income households. If a building meets this threshold of occupancy by low-income households, 100 percent of the building can be considered low-income within the context of a utility's CIP portfolio and within a utility's associated CIP energy savings, spending, and participation achievements.

¹ Minnesota Statutes § 216B.2402 subd. 17

² Utilities may have more specific program eligibility requirements. For example, some utilities may require that multifamily buildings have a common corridor in order to target a program to a specific type of building (e.g., apartment style buildings versus townhomes).

INCOME LIMITS

Income eligibility within this guidance can differ from the definition of low-income household in MN Statutes § 216B.2402 (i.e. 60 percent of state median income). There are several standards for establishing income eligibility that are used by different programs. This guidance does not choose one definition or create a new definition of low-income. Many income eligibility guidelines are based on state median income (SMI), area median income (AMI), and federal poverty guidelines, and are adjusted for family size so that larger families have higher income limits. The Department accepts the following commonly used income eligibility guidelines used by the United States Department of Housing and Urban Development (HUD) as reasonable:

- low-income family: incomes do not exceed 80 percent of AMI
- very low-income family: incomes do not exceed 50 percent of AMI
- extremely low-income family: income does not exceed the higher of federal poverty guidelines as determined by the Department of Health and Human Services or 30 percent of AMI

The Department also finds these additional income eligibility guidelines reasonable:

- 60 percent of SMI used for Energy Assistance Program (EAP) eligibility
- 200 percent of federal poverty guidelines used for WAP eligibility
- 300 percent of federal poverty guidelines, which utilities have used for program eligibility in a few cases

If utilities find cases of income guidelines not listed above or based on a different methodology, they should communicate with the Department to identify potential additions and to improve future versions of this guidance.

BUILDINGS VERSUS PROPERTIES

One of the goals of CIP is to achieve energy savings through actions that have direct, measurable 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 buildings³. Utilities will need to be aware of this factor when determining program eligibility to ensure that 66 percent of a building is occupied by low-income households. As utilities and CIP program administrators encounter nuances related to meter arrangements and properties consisting of multiple buildings, they are advised to work with the Department to determine what portion of CIP activities can reasonably be considered low-income and to improve future versions of this guidance.

COST-EFFECTIVENESS AND PROGRAM ELIGIBILITY

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 low-income households occupy 66 percent of the units in their property. Utilities may set reasonable program eligibility

³ 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 the Department when questions regarding such methodologies arise. It is not within the scope of this guidance document to define different metering/building arrangements. The intent of the guidance is to communicate that utilities and CIP administrators need to adequately document the proportion of low-income occupants within a defined area for which energy consumption and savings can be calculated by generally accepted engineering methodologies.

guidelines to balance all the priorities listed above. The Department is committed to working with utilities and CIP program administrators toward achieving these goals.

ELIGIBLE METHODS

Utilities may work with property owners and the Department to use one or a combination of the following conditions to demonstrate that low-income households occupy at least 66 percent of units within a building to qualify the entire building as low-income within CIP programs.

WEATHERIZATION ASSISTANCE PROGRAM (WAP) DOCUMENTATION

Guidance: The Weatherization Assistance Program (WAP) has a rigorous process for determining WAP eligibility. For multifamily properties with 5+ units to qualify for building-wide weatherization assistance, WAP requires that a minimum of 66 percent of the residents in the building meet DOE's income requirements of no more than 200 percent of federal poverty guidelines.

Documentation: Utilities may retain a copy of the WAP eligibility confirmation for the property to demonstrate that the building qualifies for low-income spending.⁴ The confirmation should not be older than 2 years.

LOW INCOME RENTAL CLASSIFICATION (LIRC)

Guidance: MN Statutes § 273.128 provides that qualifying low income rental properties are eligible for a class rate reduction in property taxes. Property owners apply to the Minnesota Housing for Low Income Rental Classification (LIRC)⁵ and MN Housing provides certification of qualified properties to local assessors. MN Housing compiles a LIRC Assessor Report annually of all properties that have LIRC status.⁶ 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 low-income spending.

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

USE RESTRICTION DECLARATION

Guidance: Some affordable housing programs require, as a condition of receiving funding, that the property owner sign a declaration stating that a portion of the units will be rented to tenants that meet income eligibility guidelines. These income eligibility guidelines may be one or a mix of different amounts. Common income eligibility guidelines are based on the state median income (SMI), the area median income (AMI), and the federal poverty rate. This method is likely to be a good option for properties that are still under construction or

⁴ If utilities encounter a case where a property had recently received WAP services, and therefore met the eligibility requirements, but does not have a multifamily weatherization income determination letter, they should contact Department CIP staff.

⁵ <https://www.mnhousing.gov/wcs/Satellite?cid=1364120490987&pagename=External%2FPage%2FEXTStandardLayout>

⁶ Some municipalities have local initiatives for rental properties that include a commitment to affordability and result in these buildings being included on the LIRC Assessor Report. When utilities encounter properties participating in these programs, they should use the LIRC list to document low-income eligibility. Some example programs are City of Minneapolis' 4d Affordable Housing Incentive Program and City of Saint Paul's 4d Affordable Housing Incentive Program: <https://www2.minneapolismn.gov/government/programs-initiatives/housing-development-assistance/rental-property/4d/>, <https://www.stpaul.gov/housing/housing-trust-fund/4d-affordable-housing-incentive-program>.

are not yet occupied. This method is also likely a good option for affordable buildings that do not pay property taxes and thus are not included on the LIRC Assessor Report.

Documentation: Utilities may use copies of a use restriction declaration that lists the income restrictions on a property to demonstrate that a building qualifies for low-income spending. The documentation needs to show the income limits, the number of income-limited units, and the total number of units in the building to demonstrate that at least 66 percent of units are income-limited. If the declaration does not show the total number of units, then the utility needs to collect an additional document (e.g. construction plans, building permit, rental license) that describes the number of units in the building.

There are many documents that might fulfill this eligibility method. A non-exhaustive list of documents generated by Minnesota Housing and other affordable housing financiers include:

- BOND Regulatory Agreement
- CDBG Declaration
- HOME Declaration
- HTC Declaration of Land Use Restrictive Covenant (LURA)⁷
- Livable Communities Grants Affordability Agreement
- Regulatory Agreement on a Mortgage
- Rent and Income declaration
- Repayment Agreement on a Mortgage
- Rural Development – Restrictive Use Covenant
- TIF Declaration
- Greater Minnesota Housing Fund’s NOAH Impact Fund⁸

PUBLIC HOUSING AND PUBLICLY OWNED PROPERTIES

Guidance: Public housing, affordable housing owned by a government agency, generally does not pay property tax and therefore these properties are not included on the LIRC list. HUD administers federal aid to local housing agencies (HAs) that manage the housing for low-income residents at rents they can afford. Utilities are encouraged to locate the HAs⁹ in their service territories.¹⁰ HousingLink’s Streams¹¹ resource is a searchable database of publicly-funded rental housing in Minnesota.

⁷ A sample Declaration of Land Use restrictive Covenant for Low-Income Housing Tax Credits for 2021 is available from MN Housing at: https://www.mnhousing.gov/sites/Satellite?blobcol=urldata&blobheadername1=Content-Type&blobheadername2=Content-Disposition&blobheadername3=MDT-Type&blobheadervalue1=application%2Frtf&blobheadervalue2=attachment%3B+filename%3DMHFA_246952.rtf&blobheadervalue3=abinary%3B+charset%3DUTF-8&blobkey=id&blobtable=MungoBlobs&blobwhere=1533152628732&ssbinary=true.

⁸ <https://noahimpactfund.com/>

⁹ Public housing authority (PHA), Housing and Redevelopment authority (HRA), Economic Development Agency (EDA), and Community Development Agency (CDA) are all terms for government agencies granted the responsibility to develop property in their jurisdiction, a portion of which typically includes housing. All three terms many commonly be referred to collectively as PHAs or just housing authorities (HAs).

¹⁰ The U.S. Department of Housing and Urban Development provides a resource to find local PHAs: https://www.hud.gov/program_offices/public_indian_housing/pha/contacts

¹¹ <https://housinglink.org/Streams/>

Documentation: Utilities should work with HAs and the Department to identify appropriate documents to demonstrate that 66 percent of a building is occupied by low-income households. An example of a document that a HA may be able to provide as documentation is a HUD Declaration of Trust¹².

PROJECT-BASED SECTION 8: HOUSING ASSISTANCE PAYMENT (HAP)

Guidance: Project-based Section 8 housing is a form of subsidized housing in buildings owned by private property owners where the subsidy stays with the building. The property owner(s) enters into a Housing Assistance Payment (HAP) contract with HUD. The contract requires that a property owner(s) provide affordable housing to low-income families for a certain period of time. Most tenants in this program are charged rent equal to 30% of their household adjusted gross income and the contract provides a subsidy to cover the difference between HUD-approved rents (contract rent) and the amount the tenant is required to pay each month.

Documentation: Utilities may use copies of a project-based HAP contract¹³ to demonstrate that a building qualifies for low-income spending. The HAP contract should state the number of affordable units and total number of units in the building.

TENANT-BASED SECTION 8: HOUSING CHOICE VOUCHERS

Guidance: Tenant-based Section 8 housing is a government-funded program that helps low-income households pay the rent for private, market-rate rental units. Tenants receive a voucher from a local HA which the tenant can bring to a landlord that accepts housing choice vouchers. Tenants generally pay rent equal to 30% to 40% of their household adjusted gross income. The HA pays the remainder of the rent directly to the property owner. HUD provides funds to allow the HAs to administer this program and to make the rental payments on behalf of the tenant. There is a tenant-based HAP contract¹⁴ between the property owner and the HA for each tenant using a housing choice voucher. A tenant-based HAP contract contains personal information about the tenant and therefore should not be used as documentation.

Because a housing choice voucher stays with the tenant and not with the building, tenants may relocate and their unit may subsequently be rented to a new tenant with a housing choice voucher, or it may be rented at market rate to a tenant without a housing choice voucher. A property owner may also choose to stop accepting housing choice vouchers. Therefore, the proportion of units with subsidized rent in a building can change and there is not a long-term commitment of affordability tied to the building. However, Department Staff think it is reasonable to assume that properties with a high proportion of tenant-based HAP contracts will maintain those levels over time. The Department is interested in understanding this approach better but feels that it is important to monitor how often and where it is used.

Documentation: Utilities can ask the property owner and the HA to provide a letter attesting to the total number of units in the building with tenant-based HAP contracts at the time of the property owner's participation in the CIP program. Utilities also need to document the total number of units in the building. Utilities must communicate with Department Staff before using this method of documentation.

¹² A sample of HUD Forms 52190 is available at <https://www.hud.gov/sites/dfiles/OCHCO/documents/52190.docx>.

¹³ Samples of HUD Forms 52522A and 52522B are available at: https://www.hud.gov/sites/documents/52522A_B.PDF. Additional HUD forms are available here: https://www.hud.gov/program_offices/administration/hudclips/forms.

¹⁴ A sample of HUD Forms 52641 is available at <https://www.hud.gov/sites/dfiles/OCHCO/documents/52641.pdf>.

MEDICAL WAIVER PROGRAMS

Guidance: The Minnesota Department of Human Services administers a variety of programs that provide housing options for Medicaid-eligible people. Medicaid home and community-based service (HCBS) waivers afford states the flexibility to develop and implement creative alternatives to placing Medicaid-eligible people in hospitals, nursing facilities or Intermediate Care Facilities for Persons with Developmental Disabilities (ICFs/DD).¹⁵ These multifamily housing properties often provide medical and supportive services and are operated by nonprofit organizations.

Documentation: Utilities should work with the property owners and the Department to identify appropriate documents to demonstrate that 66 percent of a building is occupied by low-income households.

GEOGRAPHICAL PROXY METHODS

Guidance: This method uses Census Tract data as a foundation to identify areas with a high rate of low-income households. Identified Census Tracts may then be expanded or restricted based on additional analysis to target specific populations, such as households with a higher percentage of poverty or renters, and to avoid non-target areas, such as areas with a high concentration of student housing and areas of gentrification. At the time of distributing this guidance document, the Department has approved the use of geographic proxy methods for a few individual utility programs. The approach has the potential to be highly beneficial to utilities because it would not require utilities to locate any income documentation about individual buildings. This is a new approach and the Department is interested in understanding it better but feels that more information is needed to provide guidance on a methodology that can be used consistently across utilities, that will be appropriate in both urban and rural areas of the state, and that will not erroneously target student housing and/or promote displacement in gentrifying areas. The Department is also concerned that this method does not require property owners to make a long term commitment to affordability or ensure that residents share in the benefits of energy efficiency investments.

Documentation: The Department is confident in the methodology used by Minneapolis to develop the Green Zones¹⁶ and by the Metropolitan Council to identify ACP50 areas¹⁷. Utilities should work with the Department on a case by case basis regarding using these or additional geographic methods. This will help the Department learn more about this topic, track the concerns listed above, and prepare for future guidance document updates. A non-exhaustive list of additional potential resources includes:

- Social Vulnerability Index¹⁸
- Census tracts like Opportunity Zones¹⁹
- Qualified Census Tracts²⁰

¹⁵ <https://mn.gov/dhs/people-we-serve/people-with-disabilities/services/home-community/programs-and-services/hcbs-waivers.jsp>

¹⁶ <https://www2.minneapolismn.gov/government/departments/coordinator/sustainability/policies/green-zones-initiative/>

¹⁷ ACP50 areas are defined as areas of concentrated poverty where 50% or more of the residents are people of color and at least 40% of the residents are at or below 185% of the federal poverty threshold.

¹⁸ <https://www.atsdr.cdc.gov/placeandhealth/svi/index.html>

¹⁹ <https://mn.gov/deed/business/financing-business/tax-credits/opp-zones/census-opp-zone-tracts.jsp>

²⁰ https://www.huduser.gov/portal/sadda/sadda_qct.html

NON-ELIGIBLE METHODS

RENT ROLLS

Guidance: The Department investigated this method and appreciates that it would have minimal administrative burden for property owners. However, the Department determined that the available documentation for rent rolls would not be able to leverage an existing rigorous system and could be easily fabricated. The Department is also concerned that this method does not require property owners to make a long term commitment to affordability or ensure that residents share in the benefits of energy efficiency investments. Therefore, this option is not included as an allowable method in this version of 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 it in this guidance.