

# New Multi-Family Housing Policy Program Guide

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## Introduction to the Affordable Multi-Family Housing Program (AHP)

Properties developed using financing from the City of Edina or because of our policy for New Multi-Family Affordable Housing are subject to specific rules designed to ensure that affordability pledges made by owners and developers remain available to low and very low income tenants (30% to 60% of Area Median Income) throughout the required Period of Affordability (the POA). This Guide is designed to assist owners and their agents with planning and maintaining compliance with the local requirements associated with these assisted rental properties. This guide does not pertain to Market Rate units.

It is the responsibility of City of Edina Housing and Redevelopment Authority (hereafter the “HRA”) to monitor the continuing compliance of affordable units in accordance with local policy and governing agreements throughout the POA. The following procedures apply to all rental properties that received funds under the local policy on New Multi-Family Affordable Housing (AHP). Any violation of the AHP requirements could constitute a covenant default of the governing agreement(s) and imposition of all local government rights and remedies.

While successful operation of an affordable property is management intensive, the owner/agent is responsible for ensuring that the governing agreement requirements are properly administered. Thorough understanding of requirements and compliance monitoring procedures requires training of owners/agents. The owner/agent should ensure that it knows and understands the requirements of the affordable housing policy and the compliance requirements since failure to comply may have very serious consequences. The HRA recommends that owners, management agents and site managers (collectively referred to as “owner/agent” throughout this document) receive compliance training before certifying or leasing any affordable units. At a minimum, training should cover key compliance terms, determination of rents, household eligibility, file documentation, procedures for maintaining the required unit mix and reporting. Record retention and property condition standards are also key to maintaining compliance. Attending educational opportunities as offered is strongly recommended to keep up with any procedural changes to the AHP.

Should the AHP assisted property also receive an allocation of Section 42 tax credits (Low Income Housing Tax Credits or LIHTC), and the property is found to be compliant with the tax credit program, then the HRA will consider the property compliant with the AHP.

***Owners/Agents of AHP assisted properties must annually certify to the HRA that the property is compliant with the Low Income Housing Tax Credit program.***

The HRA’s determination to monitor the project for compliance with requirements of the AHP does not make it liable for an owner’s/agent’s noncompliance. This Guide will be made available to the owner/agent at project financial closing and will be posted on the website of the HRA. The HRA, in its sole discretion, may delegate its compliance reporting and monitoring responsibilities to a third party. AHP assisted properties will have a compliance review at initial

lease up and every third (3<sup>rd</sup>) year thereafter. However, the HRA reserves the right to conduct a compliance review annually.

## **Chapter 1 – Overview**

The following is an overview the Affordable Housing Policy. It is not intended to be detailed or comprehensive. The requirements of the AHP apply to market rate residential developments that receive a PUD approval from the City of Edina and/or financial assistance from the HRA. This includes new developments and mixed-used developments that create twenty (20) or more multi-family dwelling units and/or any change in use of all or part of an existing building from a non-residential use to a residential use that includes at least twenty (20) dwelling units.

### **1.01 Period of Affordability (POA)**

Affordable units created under the Affordable Housing Policy (AHP) are rent and income controlled for a minimum of 20 years with a maximum established by the funding source and reflected in the binding agreement. This term is referred to as the Period of Affordability or POA.

Owners/agents should refer to the property's governing agreements to determine the specific terms and conditions that govern the property.

### **1.02 Affordable Dwelling Units (ADUs)**

At least ten percent (10%) to twenty percent (20%) of the total number of dwelling units in a development receiving a PUD and/or assisted with local funds under the AHP will be designated as Affordable Dwelling Units (ADUs). The percentage applied is based on the affordability standard of the development.

### **Affordability Standards – Rental Projects**

If an AHP property is also assisted with Low Income Housing Tax Credits (LIHTC), the AHP Affordability Standard is based on the LIHTC election (20/50 or 40/60).

If an AHP property is NOT assisted with LIHTC, then the HRA together with the owner determine which affordability standard applies.

#### **10% at 50%**

At least ten percent (10%) of total units developed shall be occupied by households at or below fifty percent (50%) of the MTSP (Multifamily Tax Subsidy Income Limits, i.e. tax credit income limits).

#### **20% at 60%**

At least twenty percent (20%) of total units developed shall be occupied by households at or below sixty percent (60%) of the MTSP.

## Affordability Standards – For Sale Projects

At least ten percent (10%) of total units developed shall be affordable for households as follows:

1-2 person household	\$94,300
3+ person household	\$108,400

Adjusted annually by Minnesota Housing as posted on their website.

### 1.03 Student Households

The AHP adopted the Low Income Housing Tax Credit (LIHTC) program restrictions on student households and excludes any household where all members are full time students. A full-time student household may qualify if one of the following exceptions is met:

1. Married and eligible to file joint tax return
2. Single parent with dependent child(ren)
3. Receives assistance (MFIP) under Title IV of Social Security Act
4. Enrolled in a job training program
5. At least one member was previously in foster care

### 1.04 New Multi-Family Affordable Housing Program (AHP) Rent Limits

Every ADU is subject to maximum allowable rents based on bedroom size for the area in which the property is located. These maximum rents are referred to as the AHP rents. These limits represent the maximum that owners/agents can charge for rent, including an allowance for tenant paid utilities, and other non-optional charges (i.e. required renter's insurance).

In the event AHP rent limits decrease for an area, or utility allowances increase, an owner/agent may be required to reduce the rent charged but will not be required to lower rents below those in effect at the time of project commitment.

### 1.05 Rental Assistance

**Tenant Based Section 8 Housing Choice Vouchers.** Tenants with Section 8 vouchers, or similar state or federal tenant based rental assistance (TBRA) subsidies tied to a tenant and not a unit, **may** be charged rent that exceeds the applicable AHP rent for the unit to an extent allowed by HUD, Metro HRA, and/or the most restrictive funding source.

Tenants receiving rental assistance, including Section 8 subsidy, must not be refused tenancy in an ADU based solely on the fact that they receive rental assistance.

### 1.06 Allowable Fees and Charges

Fees considered reasonable and customary may be charged, such as application fees and parking fees, if such fees are customary for rental housing in the neighborhood. Fees for services such as bus transportation or meals can only be charged if the services are voluntary and are not a condition of occupancy. An eligible tenant cannot be charged a fee for the work

involved in completing the additional forms or documentation required for the AHP, such as the Tenant Income Certification.

Down payment fees/rent deposit for the ADU should not exceed one month's rent.

### **1.07 Fixed or Floating Affordable Dwelling Units**

ADUs may be “fixed” or “floating” and are designated on a property-by-property basis. The enforcement agreement **must** contain fixed or floating unit designations.

**Fixed Units** – The ADUs are identified by unit number and never change. Units in properties where all units are ADUs are automatically considered fixed.

If units throughout a project are not comparable (as defined by the HRA) or are in several scattered sites, the ADU unit designation must/should be fixed.

**Floating Units** – The ADUs may change over time as long as the total number of ADUs in the property remains constant. If a property's enforcement agreement does not specify floating units, then the units that were initially designated as ADUs at project completion will be used to determine comparable floating units.

See Chapter 2, Maintaining the Unit Mix, for more information.

### **1.08 Rent Increases**

If ADU rents remain below the maximum allowed, an owner/agent may impose a rent increase as allowed by the enforcement agreement no earlier than one year from the date the project was completed and no more frequently than annually thereafter. If an owner/agent wishes to increase rents, the request must be within reasonable limits to cover increases in expenses such as real estate taxes or operating expenses. At no time can proposed rent increases exceed the current MTSP (LIHTC rents) rent limits for that development.

If the owner/agent increases rents as provided above, tenants must be given a written notice in accordance with lease provisions before implementation.

### **1.09 Utility Allowances**

The AHP requires that an allowance for tenant paid utilities be considered as a housing cost to the tenant and be factored in when determining rent for an ADU. The HRA approved the use of Metro HRA's Utility Allowance Schedule (effective 2/1/18 and amended annually) as the document to use to determine an ADU's utility allowance. An alternative estimate for utility payments may be used, as allowed by Section 42 and approved by the City.

Utility allowance schedules are usually updated annually. It is the owner's/agent's responsibility to obtain an updated utility allowance and retain in the property records. Changes in utility allowances must be implemented within 90 days. If an increase in the utility

allowance causes the ADU rent to exceed the applicable AHP rent limit, the unit rent must be adjusted (lowered) to bring the gross rent of the unit into compliance with the AHP rent limits. However, at no time will the ADU rent be adjusted to an amount lower than the ADU rent in place at project commitment.

If the property is regulated by HUD, or another form of project based subsidy, the program approved utility allowance may be used.

### **1.10 Record Retention**

Owners/agents must retain project records for a minimum of five years beyond the property's required POA. Tenant records, including income verifications, development rents, and unit inspections must be retained for the most recent five year period, until five years after the effective period terminates.

Owners/agents must maintain applicant and tenant information in a way to ensure confidentiality. Any applicant or tenant affected by negligent disclosure or improper use of information may bring a civil action for damages against the owner/agent and seek other relief, as appropriate. Owners/agents must dispose of records in a manner that will prevent any unauthorized access to personal information, e.g., burn, pulverize, shred, etc.

### **1.11 Leases**

Each lease must include the legal name(s) of the parties to the agreement and all other occupants, a description of the unit to be rented (address), the term of the lease, the rental amount, the use of the premises, and the rights and obligations of each party. The lease shall also inform the tenant that fraudulent statements and information are grounds for eviction and that the tenant could become subject to penalties available under federal law.

Initial leases for ADUs must be for 12 months unless another term is mutually agreed to by owner/agent and tenant. If tenant agrees to a shorter term, that agreement must be in writing and kept in the tenant's file. At no time can a lease term be for less than 30 days.

ADU leases must contain language that the owner/agent reserves the right to adjust tenant rents in accordance with the AHP rent limits and/or in the event a tenant's income increases above the income limits of the AHP.

The lease must also contain a provision that the owner/agent retains the right to recertify the tenant's income and household composition on an annual basis. The tenant's failure to cooperate with the annual recertification constitutes a violation of the lease.

If the lease used for the ADU unit does not contain any of the required provisions and/or contains any prohibited provisions, an AHP Lease Addendum must be signed by the tenant and kept in the tenant's file. If a new lease is executed, a new AHP Lease Addendum must also be executed. Prohibited lease terms are defined in the AHP Lease Addendum (see Appendix B).

During the final year of the POA, new leases for the Affordable Units must be for a term of no less than six months, and such newly leased Affordable Units will be subject to all the Affordable Housing Requirements until the expiration of such new leases.

An AHP Lease Addendum is not required when the HUD model lease for subsidized housing is used.

### **1.12 Income Certification**

The owner/agent must verify and certify tenant income eligibility and student status at move in and recertify at least annually thereafter. At initial move in, or when first being determined eligible for an ADU and in every 3<sup>rd</sup> year of the affordability period (not tenancy), household composition, income and income from assets must be verified via third party verification or other forms of supporting documentation and kept in the tenant's file. In other years, tenants must, at a minimum, self-certify to their anticipated income (including income from assets), family size, and composition.

As part of the monitoring process, tenant files will be reviewed at initial occupancy of the project and every 3<sup>rd</sup> year thereafter.

### **1.13 Increases in Income**

The owner/agent must ensure that any tenant whose income increases above 140% of the AHP income eligibility guidelines pays not less than the market or similar rent as the other non-ADUs in the development. A minimum notice of 60 days is required for increases to tenant rent. The unit must be marketed to eligible tenants when vacated.

For units assisted with both AHP funds and Low Income Housing Tax Credits (LIHTC), a tenant is not considered over income until income exceeds the applicable 140% LIHTC limit. When a tenant's income exceeds the LIHTC limit, the tenant's rent is adjusted to the LIHTC rent limit if the project is 100% LIHTC or, if the project is mixed income, the market rent for similar non-ADUs in the property.

### **1.14 Property Standards**

The owner/agent must keep all units in compliance with local codes and other applicable state and local building codes to ensure the units are decent, safe, and sanitary at all times.

### **1.15 Affirmative Marketing**

Owners/agents must adhere to Equal Opportunity, Affirmative Marketing, and Fair Housing practices in all marketing efforts, eligibility determinations and other transactions. The Equal Housing Opportunity logo or statement (*We do business in accordance with the Federal Fair Housing Law. It is illegal to discriminate against any person because of race, color, religion, sex, handicap, familial status, or national origin.*) must be used in all advertising of vacant units.

In addition to the federal protections mentioned above, the Minnesota Human Rights Act makes it illegal to discriminate against any person with respect to housing and real property, because of race, color, creed, religion, national origin, sex, marital status, disability, status with regard to public assistance, sexual orientation or familial status.

A file must be maintained with all marketing efforts related to the property including newspaper ads, social service contacts, photos of signs posted, etc. Records will be reviewed during on site monitoring to ensure that all efforts follow federal requirements and are being adequately documented.

### **1.16 Fair Lease and Grievance Procedures**

Fair lease and grievance procedures should be objective. They should clearly state:

- To whom a tenant should direct a complaint;
- Who will investigate and/or respond to the complaint; and
- By when the tenant should expect to receive a response.

## Chapter 2 – Maintaining the Unit Mix

### 2.01 Fixed Affordable Dwelling Units

Properties with units that are not comparable in terms of size, amenities and features must have **fixed ADUs**. Fixed ADUs means specific units are designated as the ADUs for the duration of the affordability period. Owner/Agent must maintain these specific units as the ADUs.

Maintaining the required number of ADUs, is called complying with the **unit mix requirements**. At no time will non-ADUs be subject to AHP rent and income requirements when the ADUs are fixed.

When an owner/agent recertifies a tenant's income, he or she may find that the tenant's income has increased. A tenant is considered "**over income**" in the AHP when:

- The tenant occupies an ADU and the tenant income increases to 140% of the current AHP income limit for that family size; or
- For ADUs that are also LIHTC units, a tenant is considered "over income" when its income goes over 140% of the qualifying tax credit election (50% or 60%) for that unit.

When a tenant is over income, the unit that the tenant occupies is considered **temporarily out of compliance** with the AHP's occupancy and unit mix requirements. Temporary noncompliance due to an increase in an existing tenant's income is permissible if the owner/agent takes specific steps to restore the correct unit mix in the property as soon as possible. When the tenant's income exceeds the AHP's income limit (140%), its rent must also be adjusted.

The owner/agent cannot immediately terminate the lease based on the tenant's increase in income to above the AHP income limit. Instead, the owner/agent may extend /renew the lease for up to one year. If the tenant is still over income at the time of the next recertification, a 60-day notice to vacate may be issued to the tenant. If the tenant is determined to be under the AHP income limit at the time of recertification, the unit is considered back in compliance.

### 2.02 Floating Affordable Dwelling Units

Properties with units that are comparable in terms of size, amenities and features can have **floating ADUs**. Properties with floating ADUs must maintain the required number of ADUs throughout the POA, however the initial ADUs do not have to remain as ADUs throughout the POA.

When ADUs float, the specific units that carry the ADU designation may change, or float, among assisted and non-assisted units during the POA. If/when an initial ADU goes out of compliance due to a tenant's income going over the AHP (or LIHTC) income limit, a non-ADU can replace the out of compliance ADU if the tenant income and unit rent of the non-ADU meet the ADU requirements. In other words, the ADU designation "floats" to another unit.

For example, if a property has an over-income tenant in an ADU, when the next non-ADU comparable unit becomes available, it will be designated as an ADU and rented to an income eligible tenant. The unit occupied by the over income tenant is redesignated as a market rate unit.

Maintaining the required number of comparable ADUs is called complying with the **unit mix requirements**.

When recertifying a tenant's income, an owner/agent may find that the tenant's income has increased. A tenant is considered "**over income**" when:

- The tenant occupies an ADU and the tenant income increases over the current AHP income limit (140% AMI) for that family size; or
- In ADUs that are also LIHTC units, a tenant is considered "over income" when its income increases to 140% or more of the qualifying tax credit election (50% or 60%) for that unit.

When a tenant is over income, the unit that the tenant occupies is considered **temporarily out of compliance** with the AHP's unit mix requirements. Temporary noncompliance due to an increase in an existing tenant's income is permissible if the owner/agent takes specific steps to restore the required unit mix in the property. The rents of the over income tenants can be adjusted.

When redesignating units in a property with floating ADUs, owner/agent can choose to substitute a unit that is equal or "greater" than the original ADU, but generally they cannot substitute one that is "lesser". A lesser unit can be substituted only when doing so preserves the original unit mix. A greater unit is one that might be considered preferable because of larger size or additional bedrooms. The goal is to maintain the same number and type of ADUs as were originally designated. Therefore, if an owner/agent makes a substitution that is "greater," it can later substitute an available unit that is "lesser" to restore the original unit mix.

Once a comparable non-ADU unit is designated as the new ADU, the unit with the over income tenant is redesignated as a non-ADU or market rate unit. At this point, the owner/agent may adjust the tenant's rent without regard to the AHP rent requirements (although requirements from other funding sources may still apply). Rent increases are subject to the terms of the lease.

Note, a tenant in a floating ADU whose income exceeds AHP income limit is not required to pay more than the market rent for a comparable, unassisted unit in the property.

The owner/agent cannot terminate the lease based on the tenant's increase in income.

## Chapter 3 – General Occupancy Guidelines

### 3.01 Qualification of Applicants

Applicants for ADUs shall be advised early in their initial visit to the property that there are maximum income limits that apply to these units. They will also be made aware that the anticipated income of all persons expecting to occupy the unit must be verified and included on a Tenant Income Certification form prior to occupancy, and that tenant income and student status will be reviewed annually.

A tenant may not occupy an ADU in a property receiving AHP assistance if that tenant is considered a “full-time student household”. If at least one occupant of the household living in an ADU is a part-time student, the household is not considered a full-time student household and is exempt from the student rule.

If every member of a household that occupies an ADU is, was, and/or will be a full-time student during any part of any 5 calendar months (spanning previous, current and/or upcoming year), and no exceptions apply, then the household is not eligible to occupy an ADU.

The Student Rule exceptions are:

- 1) Married and eligible to file a joint federal tax return
- 2) Single parent(s) with dependent child(ren)
- 3) Receive assistance under Title IV of Social Security Act
- 4) Enrolled in job training program
- 5) At least one member of the HH was previously in foster care

Verification of student eligibility must be maintained in the tenant file along with the income certification (if mixed income property) and must be recertified annually.

### 3.02 Eligibility Determination

A fully completed Household Questionnaire is critical to an accurate determination of eligibility. The information furnished on the application should be used as a tool to determine all sources of anticipated income and assets.

After the tenant completes the Household Questionnaire, the owner/agent must have all income verified by obtaining source documentation (award letters, offers of employment, W-2's, check stubs (not paycheck), bank statements, investment records, etc.) or by a third party (public agency, employer, financial institution). If total cash value of assets is less than \$5000, assets can be self-certified using the HTC24 Under \$5000 Certification. Assets exceeding \$5000 must be third party verified. The application, income and asset verifications, and lease are to be executed prior to move in. All occupants in an ADU must be certified and have a valid lease on file. All household members age 18 and over must sign all required documents.

### **3.03 Change in Household Composition**

If a tenant in an ADU (no LIHTC) wishes to have an additional person move into the unit within the first 6 months of occupancy the following steps must be taken:

1. The prospective tenant must complete a Household Questionnaire and allow time for verification of income and assets as required of the initial tenant; and
2. The prospective tenant's income must be added to the current tenant's certification and a determination made as to whether the new household is still within the AHP income guidelines. If the new household income exceeds the guidelines, then once proper notice is given, the tenant must pay the market rate. If the ADU is floating, the ADU designation must be floated to another eligible unit. The new rent of the now over income household cannot exceed market rent for a comparable unassisted unit.

The tenant file shall also be documented when any household member vacates the unit.

### **3.04 Minimum Lease Requirements**

Initial tenant leases, including a signed and dated AHP lease addendum (if applicable) must be on file and must specify a term of at least 6 months. Subsequent lease terms may be of shorter duration. Leases must not contain any of the prohibited lease terms. Any non-renewal or termination of leases must be in accordance with the lease and/or AHP lease addendum.

The owner/agent must comply with AHP requirements on evictions as well as state law regarding eviction procedures. There must be a written notice that gives a tenant at least 30 days to vacate its unit, regardless of whether tenant has violated the law or lease terms.

Under the AHP, tenancy may be terminated only for:

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

Owners/agents must comply with the lease requirements found in Section 601 of the Violence Against Women Reauthorization Act (VAWA) of 2013. HRA highly encourages owners/agents to use the VAWA Lease Addendum, form HUD-91067 or its successor VAWA Lease Addendum form. In general, owner/agent may not construe an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking as a serious or repeated violation of a lease term by the victim, or threatened victim, as good cause for terminating tenancy. However, in accordance with VAWA 2013, owner/agent may bifurcate a lease to terminate the tenancy of an individual who is a tenant or lawful occupant and engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against another lawful occupant living in the unit or other affiliated individual as defined in the VAWA 2013.

Owner/Agent should include a copy of HUD form 91066 or its successor form with each tenancy termination or eviction notice to allow an individual to certify that he or she is a victim of

domestic violence, dating violence, sexual assault or stalking. The form is to be completed and submitted to owner/agent within 14 business days or an agreed upon extension date, for the individual to receive protection under the VAWA.

### **3.05 House Rules**

Developing a set of house rules is a good practice. The decision about whether to develop house rules for a property rests solely with the owner/agent. If house rules are listed in the lease as an attachment, then they must be attached to the lease. By identifying allowable and prohibited activities in housing units and common areas, the owner/agent provides a structure for treating tenants equitably and for making sure tenants treat each other with consideration. House rules are also beneficial in keeping properties safe and clean and making them more appealing and livable for the tenants. They are also extremely beneficial if it becomes necessary to evict a tenant for inappropriate behavior. For more information on House Rules, refer to Chapter 6-9 of the HUD 4350.3 REV 1, Change 4 Handbook.

### **3.06 Number of Persons Per Unit**

There is no federal regulation governing the number of persons allowed to occupy a unit based on size however at initial occupancy ADU's will have a minimum requirement of at least one person per bedroom. It is important, though, to be consistent when accepting or rejecting applications. It is required that the owner/agent determine the minimum and maximum number of people that will be allowed to occupy each size unit and put that formula in writing as part of the **Tenant Selection Plan** and submit to the HRA for approval. The owner/agent may refer to the HUD Handbook 4350.3 REV 1, Change 4, Chapter 3-23, regarding occupancy standards. By following the standards described, owners/agents can ensure that applicants and tenants are housed in appropriately sized units in a fair and consistent manner as prescribed by law.

### **3.07 Tenant Selection Plan**

Owner/Agent must develop a formal written policy that clearly states the procedures and criteria the owner/agent will consistently apply in drawing applicants from the waiting list, screening for suitability for tenancy, and implementing income targeting requirements. The Tenant Selection Plan must state if there is an elderly restriction ("seniors only" building).

In accordance with the VAWA of 2013, the selection criteria cannot deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault or stalking. Owner/Agent should provide to each applicant/tenant HUD form 91066 or its successor form to allow the applicant/tenant to provide information regarding his or her status as a victim of domestic violence, dating violence or stalking.

Owners/agents may refer to the HUD Handbook 4350.3 REV 1, Change 4, Chapter 4, when developing a tenant selection plan. HRA will review the Tenant Selection Plan as part of its monitoring process.

### 3.08 Government Data Practices Act Disclosure Statement Form

In working with applicants and tenants, the owner/agent warrants compliance with applicable data privacy laws and regulations including the Minnesota Government Data Practices Act, which sets policies on the information that can be obtained, stored and/or released in connection with public programs. To comply with this law, the Inclusionary Housing Program Government Data Practices Act Statement form must be kept in each tenant's permanent file. Note that this is **not** a release authorization for verification of income and assets and must not be used as such. Each adult household member's name must be printed clearly at the top in the box provided. An unsigned and/or undated form is not valid and will be noted as insufficient at time of file inspection.

1. The form is to be signed one time and is valid as long as the resident lives at the property and participates in the program(s) identified in item #2 on page 1 of the form. If a resident moves from one unit to another, the original signed and dated form should be moved to the file for the new unit. A copy should be kept in the move out file for the old unit.
2. A valid form **must** include all relevant attachments. Some properties or units within a property may require 2 or more attachments for multiple programs.
3. Only one form is needed per unit as long as the head of household, spouse, co-head, and all household members over the age of 18 have signed and dated the form.
4. If an adult is added to the household or a minor reaches age 18, they must be added to, sign, and date the **original** form. It is not necessary to complete a new form.
5. A copy of the form should be made available to the applicant/tenant. It is acceptable to give them an unsigned copy.
6. For new residents, the form should be completed at the time of initial application.

A Government Data Practices Act Disclosure form that can be used for all ADUs is available on the HRA website.

### 3.09 Income Verification

At initial occupancy, owner/agent must determine whether prospective tenant(s) of ADUs qualify as low income households. Income eligibility is based on anticipated income as defined at 24 CFR 5.609 (Section 8). When collecting income verification documentation, owner/agent must consider any likely changes in income. Owner/Agent must follow appropriate steps in determining whether households are eligible prior to admittance.

Minnesota Housing provides [sample verifications and other forms](#) to assist owners/agents in qualifying eligible tenants. The release of information (at top of form) must be completed and signed by the person who is the subject of the verification prior to sending the form to an employer or other income source. Completed and returned verifications are used to calculate and document income.

An Income and Asset Calculation Worksheet form is also available and can be used to assist in showing the individual calculations of income and asset income. This is **highly recommended**

and will greatly assist an inspector during a file review. This form should be dated and signed by the owner/agent.

### 3.10 Gross Annual Household Income

Gross annual income for households living in ADUs shall be determined in a manner consistent with Section 8 of the U.S. Housing Act of 1937.

Note that the information below only provides a summary. The [Technical Guide for Determining Income and Allowances for the HOME Program](#) is a good resource and can be found on HUD's website. The HUD Handbook 4350.3 is also an excellent resource.

The determination of annual income must include all types of income in the amount **anticipated** to be received by the tenant in the 12 months following certification/recertification. Owner/Agent should use current circumstances to project income, unless verification forms or other verifiable documentation indicate that a change will occur (increase/decrease in rate of pay and/or hours). However, if the owner/agent is unable to determine annual income using current information because the family reports little to no income, or because income fluctuates, the owner/agent may average past actual income received or earned within the last 12 months before the certification date to calculate annual income.

### 3.11 Factors that Affect Household Size

When determining family size for occupancy, the owner/agent must include the following individuals who are not currently living in the unit:

- Children temporarily absent due to placement in a foster home;
- Children in joint custody arrangements who are present in the household 50% or more of the time;
- Children who are away at school but who live with the family during school recesses;
- Unborn children of pregnant women. When a pregnant woman is an applicant, the unborn child is included in the size of the household and is included for purposes of determining the maximum allowable income. The rental application should ask the following question: "Will there be any changes in household composition within the next 12-month period?" If an applicant answers that a child is expected, the owner/agent should explain to the tenant that to count the child as an additional household member and use the corresponding income limit, a self-certification of pregnancy must be provided.
- Children who are in the process of being adopted;
- Temporarily absent family members who are still considered family members. For example, the owner/agent may consider a family member who is working in another state on assignment to be temporarily absent. Persons on active military duty are considered temporarily absent (except if the person is not the head, co-head or spouse or has no dependents living in the unit). If the person on active military duty is the

head, co-head, or spouse, or if the spouse or dependents of the person on active military duty resides in the unit, that person's income must be counted in full;

- Family members in the hospital or rehabilitation facility for periods of limited or fixed duration. These persons are temporarily absent as defined above.

Persons permanently confined to a hospital or nursing home are not considered household members.

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

- Live-in aides
- Children of live-in aides
  - *A live-in aide/attendant is a person who resides with one or more elderly persons, near-elderly persons, or persons with disabilities, and who:*
    - Is determined to be essential to the care and well-being of the person(s);
    - Is not obligated for the support of the person(s); and
    - Would not be living in the unit except to provide the necessary supportive services.

While a relative may be a live-in aide/attendant, they must meet the above requirements, especially the last. The live-in aide qualifies for occupancy only if the individual needing supportive services requires the aide's services and remains a tenant, and may not qualify for continued occupancy as a remaining family member. The owner/agent must obtain verification from the person's physician, psychiatrist or other medical practitioner or health care provider that the live-in aide is needed to provide the necessary supportive services essential to the care and well-being of the person and should not add the attendant to the lease. The owner/agent may not require applicants or tenants to provide access to confidential medical records or to submit to a physical examination.

Some households may include other persons who are considered family members for the purposes of determining household size and income eligibility, including:

- Foster adults
- Foster children

Please see Appendix A for more detail on whose income is counted, what is counted as income and what is not, and how to account for income generated by assets.

### **3.12 General Income Verification Requirements**

All income and asset sources must be disclosed on the eligibility application and verified. A properly completed application must be used as the basis for determining what verifications will be necessary. The application, along with all supporting documentation and the Tenant Income Certification, will be reviewed by HRA staff or its agent during a tenant file review.

The following describes the types of third party verification in order of acceptability:

1. Third party verification from source (written):
  - a. An original or authentic document generated by a third-party source that is dated within six months from the date of receipt by the owner/agent. Such documentation may be in possession of the tenant (or applicant), and commonly referred to as tenant provided documents. These documents are considered third party verification because they originated from a third party source. Examples of tenant provided documentation that may be used include, but are not limited to: pay stubs, payroll summary report, employer notice/letter of hire/termination, SSA benefit letter, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices.

Owner/Agent must consider the following when using tenant provided documentation:

- i. Is the document current? Documentation of public assistance may be inaccurate if it is not recent and does not show any changes in the family's benefits or work and training activities.
  - ii. Is the documentation complete? Owner/Agent may not accept pay stubs to document employment income unless the applicant or tenant provides the most recent two months of consecutive pay stubs to illustrate variations in hours worked. Actual paychecks or copies of paychecks should never be used to document income because deductions are not shown on the paycheck.
  - iii. Is the document an unaltered original? The greatest shortcoming of tenant provided documents as a verification source is their susceptibility to undetectable change through the use of high quality copying equipment. Documents with original signatures are the most reliable. Photocopied documents generally cannot be assumed to be reliable.
2. Written documentation sent directly to the third party source by mail or electronically by fax, email or internet.

Verification forms must contain a release authorization signed by the applicant/tenant. Do not use a blanket release authorization as this entitles the owner/agent to obtain information to which it is not entitled or needed for eligibility determination. The Data Practices Act Disclosure Statement is not a verification release. Applicants should be asked to sign two copies of each verification form. The second copy may be used if the first request has not been returned in a timely manner.

Income verification requests must be sent directly to and from the source. They are never given to the tenant to obtain signatures. It is suggested that a self-addressed stamped envelope be included with a mailed request for verification. If the returned

verifications do not contain complete information (typical examples include failure to indicate interest rates, dates of anticipated raises, amounts of anticipated raises, etc.), owner/agent must follow up with the source to obtain complete information. All pertinent information must be documented in the file and must also include the name, phone number and title of the contact, the name of the person accepting the information, and the date.

3. Third party verification from source (verbal).

When clarifying information over the telephone, it is important to be certain that the person on the telephone is the party he or she claims to be. Generally, it is best to telephone the verification source rather than to accept verification from a source calling the property management office. Verbal verification must be documented in the file. When verifying information by phone, the owner/agent must record and include in the tenant's file the following information:

- a. Third party's name, position, and contact information;
- b. Information reported by the third party;
- c. Name of the person who conducted the telephone interview; and
- d. Date and time of the telephone call.

4. Self Certification

An owner/agent may accept a tenant's notarized statement or signed affidavit regarding the veracity of information submitted only if the information cannot be verified by another acceptable verification method. In these instances, the owner/agent must document the file why third-party verification was not available. The owner/agent may witness the tenant signature(s) in lieu of a notarized statement or affidavit. The following describes use of electronic information when used as third party verification.

Electronic Verification. The owner/agent may obtain accurate third party written verification by facsimile, email, or Internet, if adequate effort is made to ensure that the sender is a valid third party source.

- a. Facsimile. Information sent by fax is most reliable if the owner/agent and the verification source agree to use this method in advance during a telephone conversation. The fax should include the company name and fax number of the verification source.
- b. Email. Similar to faxed information, information verified by email is more reliable when preceded by a telephone conversation and/or when the email address includes the name of an appropriate individual and firm.
- c. Internet. Information verified on the Internet is considered third party verification if the owner/agent is able to view web-based information from a reputable source on the computer screen. Use of a printout from the Internet may also be adequate verification in many instances.

Steps used to obtain written verification as described in 1, 2 and 3 above must be documented to show just cause for using other types of verification. The owner/agent must include the following documents in the tenant file:

1. A written note explaining why third party verification is not possible.
2. A copy of the date stamped original request that was sent to the third party.
3. Written notes or documentation indicating follow up efforts to reach the third party to obtain verification.
4. A written note indicating the request has been outstanding without a response from the third party.

Note: If a tenant is employed by a business owned by the tenant's family or is employed by the property owner/agent or the management company, a copy of a recent pay stub, verifying year-to-date earnings, is also required.

Upon receipt of all verifications, owner/agent must determine if the resident is qualified for participation in the AHP. All verifications should be reviewed and calculations made as necessary.

### **3.13 Corrections to Documents**

Sometimes it is necessary to make corrections or changes to documents. A document that has been altered with correction fluid or "white out" will not be accepted by HRA. When a change is needed on a document, the person making the correction must draw a line through the incorrect information, write or type the correct wording or number, and have all parties initial and date the change.

### **3.14 Effective Term of Verifications**

Verifications of any kind are valid for 120 days prior to an ADU tenant's move in date or recertification date.

### **3.15 Over Income Households**

When determining eligibility to occupy an ADU, the household's gross income must always be considered. However, if a tenant goes over the income guidelines at recertification, the owner/agent must raise the over income tenant's rent as soon as the lease permits in accordance with the terms of the lease (see Chapter 2). The AHP does not require interim rent adjustments.

### **3.16 Annual Recertification**

All households occupying an ADU must be recertified at least annually from the date of occupancy. Annual recertifications must be effective on or before the occupancy anniversary date of the previous certification. Owner/Agent may align recertification dates with other

program certifications or so that all units in the property are recertified at one time during the year. However, if a period of twelve (12) months passes without a recertification being completed for any ADU, the unit is considered out of compliance. If the requirement to recertify is included in an ADU lease or addendum, tenant refusal to comply can be considered a violation of the lease and is grounds for termination.

Income must be third party verified in every 3rd year of the affordability period, **not** tenancy.

### **3.17 Tenant Files**

Owner/Agent must maintain a tenant file for each ADU. All permanent documents must be kept together so they are accessible at each compliance review (income certification and supporting documentation, lease/AHP addendum, etc.). Annual recertification information, including the tenant questionnaires, release forms, verifications, and annual inspection reports must be grouped together by year, with the most recent year on top for review.

The tenant files must contain the following:

- HRA Government Data Practices Act Statement
- Household Questionnaire
- Acceptable verifications of income and assets
- Verification of student eligibility
- Tenant Income Certification (Initial Certification and Annual Recertifications)
- Signed lease agreement and AHP addendum (if needed)
- Move in inspection report
- Lead based paint acknowledgements (rental rehabilitation only; built pre-1978)

All move out files should also contain the following:

- Written 30-day (or greater) notice to vacate (if not available – document in file)
- Move out inspection report (both parties signed and dated)
- Security deposit refund (check number and date) or letter of intent to withhold security deposit within 14 days of move out
- Itemized list of costs charged to tenant within 45 days

Tenant records, including income verifications, development rents, and unit inspections must be retained for the most recent five year period, until five years after the affordability period terminates.

## **Chapter 4 – Reporting Requirements**

The owner/agent must maintain a report of all tenants residing in each ADU at the time of application through the end of the affordability period and submit annual reports to HRA in a form and manner requested by HRA.

Annual compliance reports are due to HRA by March 1 or as otherwise specified by HRA, of each year during the affordability period. If the due date falls on a weekend or a holiday, reports are due the following business day. Reports and other required documents must be submitted as directed by HRA on an annual basis.

### **4.01 Annual Owner/Agent Certifications**

Complete the Owner/Agent Certification to certify compliance with AHP requirements for the preceding calendar year. Owner/Agent Certifications must be printed, signed and dated by the authorized Owner/Agent Representative, then scanned and submitted as directed by HRA on an annual basis.

### **4.02 Compliance Reports**

HRA will annually monitor AHP compliance by reviewing annual Owner/Agent Certifications and analyzing compliance information submitted by the owner/agent. Failure to submit the Owner/Agent Certification and/or update the report on **all** units and their related activity by the due date will constitute noncompliance with the AHP and the related loan documents.

### **4.03 Utility Allowance Source Document**

Owners/Agents must submit the utility allowance source documents applicable to the reporting period. Multiple utility allowance source documents may apply to one reporting period.

## Chapter 5 – Compliance Inspections

Compliance inspections (file reviews) will be conducted every 3 years. This coincides with the tax credit monitoring schedule, if applicable. When possible, efforts will be made to combine AHP reviews with tax credit monitoring.

Inspections may be conducted more frequently if HRA determines it to be necessary based on concerns raised during a previous review or other information.

The compliance inspection includes, but is not limited to, an inspection of at least 20%, but up to 50%, of the ADU tenant files (with a minimum of four (4) units). Additionally, owners/agents of these properties must annually certify that each building and all units are suitable for occupancy and in compliance with State and local health, safety, and other applicable codes, ordinances and requirements.

HRA will contact the owner/agent in advance to schedule the tenant file review. The property inspection and tenant file review may be conducted at the same time or may be conducted separately by different HRA staff.

### 5.01 Physical Inspections

The goal of the physical inspection is to ensure that the property and units are being well maintained and in compliance with State and local health, safety, and other applicable codes, ordinances and requirements.

Owners/Agents should conduct routine property inspections and perform any needed maintenance to ensure that the property continually complies with all applicable requirements.

### 5.02 Review of Tenant Files and Property Records

During the tenant file review, HRA staff will review tenant income certifications, third party verifications or other forms of income documentation, leases, lead based paint disclosure forms, and other management information for selected units.

HRA staff will also review the following property information:

- Utility Allowances and supporting documentation
- Current written tenant selection plan, occupancy policy and/or house rules if changes were made since the last review
- Current lease and lease addenda
- Affirmative Fair Housing Marketing Plan (if applicable)
- Advertising
- Equal Housing Opportunity posters, logos
- Correspondence
- Marketing plans
- Tenant ledgers for all units inspected

## Chapter 6 – Correction and Consequences of Non-Compliance

If HRA does not receive the required certifications and/or compliance reports when due, or discovers by audit, inspection, or review, or in some other manner, that the property is not in compliance with the requirements of the AHP, or with the property's loan documents, including the enforcement agreement, the HRA will notify the owner/agent as soon as possible.

### 6.01 Notice to Owner/Agent

HRA will provide prompt written notice to the owner/agent of an AHP assisted property if HRA does not receive the annual Owner/Agent Certification and income and occupancy report by the required due date. HRA will also notify the owner/agent if it does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records, or discovers by inspection, review, or in some other manner, that the property is not in compliance with the requirements of the AHP or with the property's loan documents, including the enforcement agreement.

### 6.02 Correction Period

The correction period will be established by the HRA and set forth in a Notice of Noncompliance to the owner and its agent. HRA may extend the correction period if HRA determines there is good cause for granting the extension. Requests for an extension must be in writing from the owner/agent, must be received by HRA no later than the last day of the correction period identified on the Notice of Noncompliance, and must include an explanation of the efforts to correct the noncompliance and the reason the extension is needed.

### 6.03 Owner's/Agent's Response

HRA will review the owner's/agent's response and supporting documentation, if any, to determine whether the noncompliance has been clarified, corrected or remains out of compliance.

**Clarified noncompliance** is, for example, where income eligibility was not properly documented and the inspector cannot make a reasonable determination that the unit is in compliance but the owner/agent conducts a retroactive (re)certification which completely and clearly documents the sources of income and assets that were in place at the time the certification should have been effective, and applies income and rent limits that were in effect on that date. If documentation is complete and it supports that the tenant was eligible as of the effective date, the file is considered clarified.

**Corrected noncompliance** is when a violation is observed and there is a period of time during which the unit is out of compliance, but the unit is brought back into compliance. For example, a late certification or re-certification is out of compliance on the certification due date, and back in compliance as of the date the last tenant signs the Tenant Income Certification.

**Uncorrected noncompliance** is a violation that is not corrected or clarified by the end of the correction period.

Failure to correct all noncompliance could result in extension of the end of the POA, loss of Tax Increment Financing, or other legal remedies and may also affect the owner's/agent's eligibility for financing from the HRA under any or all its programs.

HRA reserves the right to conduct a follow-up inspection if documentation is not sufficient to confirm that all life threatening health and safety violations and any other hazardous deficiencies have been corrected.

## **Chapter 7 – Requests for Action**

### **7.01 Sale or Transfer**

Any property owner must provide prior written notice to the HRA before and sale or transfer of the property.. The notice will provide that the new owner/agent acknowledges that the terms and conditions of the Inclusionary Housing Program as set forth in the governing documents recorded against the property remain in place.