

# Nevada Housing Division

## Low Income Housing Tax Credit Compliance Manual

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Revised - August 2017

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## LIST OF ABBREVIATIONS and TERMS

ADA	Americans with Disabilities Act
AMGI Limit	Area Median Gross Income Limit
AOD	Application Oriented Designs, Inc.
BIN	Building Identification Number
CFR	Code of Federal Regulations
CO	Certificate of Occupancy
COL	Division's Certificate On-Line system
CPI	Consumer Price Index
Declaration	Declaration of Restrictive Covenants and Conditions
Division	Nevada Housing Division
DOMA	Defense of Marriage Act
FEMA	Federal Emergency Management Agency
HOME Program	HOME Investment Partnerships Program
HUD	U.S. Department of Housing and Urban Development
IRC	Internal Revenue Code
IRS	Internal Revenue Service
LBP	Lead-based Paint
LIHTC Program	Low Income Housing Tax Credit Program
Manual	LIHTC Compliance Manual
MOU	Memorandum of Understanding
MSA	Metropolitan Statistical Area
NAC	Nevada Administrative Code
NCSHA	National Council of State Housing Agencies
NHD	Nevada Housing Division
NRS	Nevada Revised Statutes
QAP	Qualified Application Plan
SRO	Single Use Occupancy
TANF	Temporary Assistance for Needy Families
TIC	Tenant Income Certification
UA	Utility Allowance
UPCS	Uniform Physical Condition Standards
USDA	U.S. Department of Agriculture
VAWA	Violence Against Women ACT

# Chapter 1 - Introduction

## A. Background

The Low Income Housing Tax Credit Program (LIHTC Program) was enacted as part of the Tax Reform Act of 1986 to encourage investments in the construction and rehabilitation of low-income housing.

The Internal Revenue Service (IRS) administers the Tax Credit program pursuant to regulations published under Section 42 of the Internal Revenue Code (IRC).

The Omnibus Budget Reconciliation Act of 1990 amended the IRC, requiring designated housing credit agencies to establish a procedure for monitoring housing developments for compliance with the federal Tax Credit program regulations. Following that amendment, the IRS adopted final regulations setting mandatory requirements and procedures for designated housing credit agencies to monitor compliance.

Under the Nevada Revised Statutes (NRS), the Nevada Housing Division (Division) was designated the administrator of the LIHTC Program in Nevada. The Division administers the LIHTC Program in Nevada pursuant to federal law and regulation, the *Nevada Administrative Code (NAC)*, Nevada's annual *Qualified Allocation Plan*, and the *Compliance Policies and Procedures Manual* for the LIHTC Program.

## B. Purpose of the Manual

The LIHTC Compliance Policies and Procedures Manual (Manual) is a reference guide for administering the LIHTC Program. The Manual provides guidance for achieving compliance pursuant to the IRC and the NAC.

In preparing the Manual, the Division has made a concerted effort to include the best available information and guidance relevant to the LIHTC Program. In particular, the Manual incorporates many of the recommended practices and forms of the National Council of State Housing Agencies (NCSHA) and the IRS's recommended guidance for addressing and reporting noncompliance.

This Manual delineates requirements for *Project Owners/Management Companies* from the beginning of the lease up period through the end of the compliance period. The Manual addresses issues concerning occupancy regulations and regulatory considerations when leasing vacant units, tenant eligibility and income evaluations, rent determinations, reporting and record keeping, and mandatory certification and re-certification requirements.

For the purposes of this Manual, the term “Project Owner” includes an applicant/owner who receives Tax Credits and any other person who acquires an ownership interest in the project receiving Tax Credit benefits. On-site Managers include all on-site personnel responsible for implementing the LIHTC Program requirements correctly. ***Any management company who is authorized to lease units to tenants should be thoroughly familiar with all federal and state laws, rules and regulations governing certification and leasing procedures.***

This Manual also describes the policies and procedures used by the Nevada Housing Division to carry out its responsibilities under Federal and State law. The Manual sets out the Division’s process for monitoring compliance, procedures for reviewing tenant and project records and conducting physical inspections, standards for evaluating and determining noncompliance, and the steps the Division will follow to resolve and report compliance findings.

### **C. Disclaimer**

The information contained in this Manual has been prepared for informational purposes only. It is subject to change without notice and is presented without any representation or warranty regarding the accuracy, completeness or currency of the information. In no event shall the Division be liable for any loss or damage caused by or resulting from the use of or inability to use such information.

An action or statement by the Division, including any financial analysis, issuance of reservation letters, and final award of Tax Credits, must not be interpreted or relied on as an implied or express representation or warranty by the Division that the Project Owner or project is financially feasible or is in compliance with any provision of the NAC or any other statute, regulation or rule concerning the project.

This Manual ***does not*** replace or modify the requirements under the IRC, other Treasury regulations and federal laws governing the LIHTC Program, or the NAC. At all times, Project Owners/Management Companies shall comply with applicable State and Federal laws, regulations, and program requirements. ***Specific interpretations regarding the LIHTC Program should be referred to your tax advisor or legal counsel.***

***Project Owners are responsible for being aware of all applicable Federal and State rules and regulations that govern their Projects. A determination of financial feasibility and compliance is the sole responsibility of each Project Owner.***

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## Chapter 2 - Overview of LIHTC Process

The LIHTC Program provides incentives for investment of equity capital in the development of affordable single family or multifamily rental housing. The credit is a dollar-for-dollar reduction in tax liability to investors in exchange for equity participation in the construction or acquisition and rehabilitation of rental housing units that will remain income and rent restricted for an extended period of time.

The amount of Tax Credits given to each state is based on population at a current statutory rate of over \$2.00 per person (subject to change) plus the Consumer Price Index (CPI). The State of Nevada receives approximately \$4 million per year under this formula. Nevada may also have Tax Credits from previously unallocated or returned Tax Credits or by using the Tax Credits originally allocated to other states that failed to use them.

This section provides an overview of the four primary stages of the LIHTC Program and several core compliance issues including the process for calculating Tax Credit allocations, rules governing Tax Credit allocation and compliance periods, and the application of federal regulations.

### A. The Compliance Stage

The compliance stage encompasses the day-to-day management and maintenance of the project. In order for Projects to qualify initially for the LIHTC Program and to continue to receive the credit without risk of recapture, the Project Owner/Management Company must follow all Tax Credit Program regulations throughout the applicable Compliance Period, which is a minimum of 15 years.

From a management perspective, a thorough understanding of the tax regulations governing this program is imperative. Project management and operations must comply with federal regulations published by the IRS for the LIHTC Program.

The Division monitors LIHTC projects within Nevada for compliance with LIHTC program rules and regulations. The Division will undertake an *Initial Monitoring Review* to be scheduled prior to issuance of Form 8609. This review will include an inspection of all buildings and 100 percent of the initial qualifying tenant records inclusive of income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units.

Thereafter, the Division will perform *Annual Monitoring Reviews*. Annual reviews will at a minimum include the inspection of 33 percent of the project's buildings, 20 percent of the units, and 20 percent of the project tenant files annually.

Physical inspections of buildings and units are based on the *Uniform Physical Condition Standards* (UPCS) published by the Department of Housing and Urban Development.

Corrective measures must be taken by the Project Owner when a project is found in noncompliance with the program. The Division provides Project Owners an opportunity to bring the project into compliance. Thereafter, pursuant to regulation, the Division reports any noncompliance finding to the IRS by filing **IRS Form 8823**. The finding will be reported as corrected if corrective measures resolve the noncompliance, or as non-corrected if the project remains in noncompliance.

Project Owners/Management Companies should be aware of the potential consequences of not correcting noncompliance findings. Significant noncompliance may result in the IRS recapturing the Tax Credits and imposing heavy penalties and fines upon the Project Owner.

## **B. Tax Credit Allocation Period and Initial Credit Period**

Once an LIHTC allocation has been finalized for a project, the Tax Credits can be claimed annually on a building-by-building basis over a 10-year period. This 10-year period begins during either the taxable year in which the building is Placed-In-Service or at the election of the taxpayer (owner) the succeeding taxable year. The Project Owner elects the Initial Credit Period on each building's IRS Form 8609. ***Once made, the election is irrevocable.***

It is important for Management Companies to know when the credits were or will be claimed for the first time because the compliance period starts the first year credits are claimed. No credits are given if the building does not comply with IRS regulations for meeting initial compliance.

## **C. Tax Credit Compliance Period**

Section 42 regulations require 15 years of continuous compliance.

Beginning with 1990, the Division initiated a process to extend low-income housing commitment periods. Project Owners are required to extend the low-income commitment period by an additional 15-years beyond the initial 15-year compliance period. The only exceptions to the *extended low-income housing commitment period* are special needs, assisted-living, and tenant ownership housing projects.

Section 42 also provides that each State has the power to impose additional requirements over and above the federal standards to better address local housing needs, including extension of the period for which the Tax Credit project is kept as affordable housing. The Division currently gives preference to projects that extend the periods of affordability above the required Federal and State minimums. In these cases, Project Owners that commit to an additional period of affordability up to 50 years receive additional points during the application scoring stage.

The extended low-income housing commitment for a project and other commitments made by Project Owners is a part of the Declaration of Restrictive Covenants and Conditions recorded in local land records. These commitments bind Project Owners and any successors to maintain specific occupancy and affordability requirements for the project.

It is important for management to understand that such projects are committed to a longer period of compliance than the Tax Credit eligibility requirements.

An additional factor complicating management of Tax Credit projects is these projects are often coupled with subsidy programs (both project-based and tenant-based) that have other government housing regulations. There are times when conflicts between programs arise. ***Care must be exercised to ensure that the most restrictive of these competing program requirements are met.***

## D. Lease-Up Period

Prior to the time a Tax Credit project is Placed-in-Service, the Division recommends that Project Owners/Management Companies develop a *Lease-Up Plan* describing how they will reach the Tax Credit project's low-income occupancy target.

Finding eligible tenants and qualifying enough Tax Credit units can be very time-consuming, particularly in projects that have 100 percent low-income occupancy targets. Without a careful plan, Project Owners may not obtain the number of Tax Credit units needed to meet their target low-income occupancy.

A useful Lease-Up Plan should:

- Identify the total number of Tax Credit units needed to reach the low-income occupancy target
- Present a strategy for marketing vacant units to eligible tenants
- Describe a method of surveying in-place tenants to assess their eligibility
- Establish procedures for ensuring that ineligible existing tenants are not improperly terminated
- Include a system for tracking progress in qualifying Tax Credit units.

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# Chapter 3 - Compliance Requirements

Project Owners must keep Tax Credit projects in *continuous compliance* with Federal and State LIHTC regulations throughout the compliance period to claim the full amount of Tax Credits allocated to the project.

This chapter reviews general compliance issues, mandatory LIHTC Compliance Certification Provisions, and other relevant Tax Credit provisions.

## A. General Compliance Issues

### (1) What is a Qualified Low-Income Housing Tax Credit Unit?

A low-income unit qualifies for the Tax Credit when the following conditions are met:

- The tenant's income may not exceed applicable Tax Credit income limits. Project Owners/Management Companies must verify the household's income and have the tenant certify its accuracy on a Tenant Income Certification (TIC) form (see Chapter 7).
- The rent paid by the tenant plus an allowance for tenant-paid utilities may not exceed the maximum allowable Tax Credit housing expense for that unit (see Chapter 8).
- The rental unit must be suitable for occupancy in compliance with HUD's Uniform Physical Conditions Standards; local health, safety, and building codes; or other habitability standards
- The rental unit must be available to the public on a non-discriminatory basis
- Project Owners/Management Companies must execute a lease with the tenant that complies with non-transient residency requirements
- Project Owners/Management Companies must list the unit as a Tax Credit unit on reports submitted to the Nevada Housing Division
- Project Owners/Management Companies must certify the tenant's income eligibility at move-in and maintain the rents at or below applicable Tax Credit maximum rent.

### (2) Income and Rent Restrictions

The LIHTC Program has two fundamental components of compliance:

- Tax Credit units must be rented to households that are income-eligible.
- Rents for Tax Credit units must be restricted according to the maximum limits imposed by using the appropriate formula and income limits.

A LIHTC project may have both Tax Credit units (low-income units) and Market (unrestricted rent) units, or it may have 100 percent Tax Credit units. The income eligibility and restricted rent requirements apply only to the Tax Credit units.

**Income Limits.** The IRS requires Project Owners to use income limits published by the Department of Housing and Urban Development (HUD), adjusted for family size, to determine tenant eligibility and maximum gross rent levels for Tax Credit units.

HUD annually publishes area median gross income limits for all states. HUD's updated income limits are available on the Housing Division Website <http://www.nvhousing.state.nv.us/> or may be obtained directly from HUD at [www.hud.gov](http://www.hud.gov).

When HUD publishes new income limits, Project Owners are required to implement the new income limits either by the effective date or no later than 45 days whichever is later. *Managers should also be aware that changes to HUD's income limits have a corresponding impact on maximum gross rent amounts.*

**Rent Requirements.** The IRS requires Project Owners to restrict rents for qualified Tax Credit units. Project Owners are required to implement the new rent limits when issued by the Division. However, Project Owners may not increase the rent payable by a tenant unless it serves the tenant with a written notice, advising them of the increase, forty-five days in advance of the first rental payment to be increased or, in the case of any periodic tenancy of less than one month, fifteen days in advance of the first rental payment to be increased, advising tenant of the increase (NRS 118A.300).

In addition, in the event utility allowances increase, rental amounts do not have to be changed unless the new utility allowance and rent combined exceeds the maximum rent limit. Rents are limited to the *Maximum Allowable Rent*, which is described in more detail in Chapter 8 of this Manual. Project Owners must adhere to the following rules in setting rent levels.

- Pre-1990 LIHTC Projects - For Projects that received allocations of Tax Credits prior to 1990, the maximum allowable gross rent for a low-income unit was determined on the basis of the actual number of individuals occupying the unit. Accordingly, the maximum allowable rent for a low-income unit varied in accordance with the number of individuals occupying the unit.
- Post-1990 LIHTC Projects – For Projects receiving allocations of tax credits after January 1, 1990, the maximum gross rent is based on unit size, not the number of people in the household. *The rent formula uses an imputed family size of 1.5 persons per bedroom* to determine the applicable income limit upon which to base rent calculations. For efficiency or studio units, which do not have separate bedrooms, the 1 person income limit is used.
- Utility Payments - Generally, if the cost of any utilities (other than telephone) is paid directly by the resident, the gross rent for that unit includes the applicable utility allowance. *See Treasury Regulation 1.42-10 for guidance on the applicable utility allowance to be included in gross rent.*
- Rent Assistance Payments - Gross rent does not include any payment under Section 8 of the United States Housing Act of 1937 or any comparable rental assistance program made with respect to such unit or resident. Gross rent also does not include fees for supportive services paid to the Project Owner of the unit by any governmental program or qualified non-profit organization if the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive service. Additionally, gross rent does not include any rental payment to the Project Owner of a unit to the extent such Owner pays an equivalent amount to the Farmer's Home Administration under Section 515 of the Housing Act of 1949.

### **(3) Placed-In-Service Date**

A building's Placed-In-Service date determines when a Project Owner can formally qualify Tax Credit units and initiate the start of compliance monitoring for that building.

Each building has only one Placed-In-Service date. It is possible to have the same or different dates for different buildings in a LIHTC project.

New Construction - For new construction, the Placed-In-Service date corresponds with the date of the CO. The occupancy date is “the date on which the building is ready and available for its specifically assigned function, i.e., the date on which the first unit in the building is certified as being suitable for occupancy in accordance with state or local law.” This is the date when the first unit in a building *could* be occupied, not when it *was* occupied.

Rehabilitation - For acquisition and rehabilitation project, the Project Owner selects a Placed-In-Service date, which may be any date within a 24-month period corresponding with the period between the date the building was acquired and the date the rehabilitation work is completed.

All projects must be Placed-In-Service by the end of the second calendar year from the date of the allocation of Tax Credits.

The Placed-In-Service date is recorded on IRS Form 8609 for each building. Project Owners must have documentation of the Placed-In-Service date for every building in the project.

## **B. Compliance Certification Provisions**

This section reviews the compliance certification provisions set forth under federal statute and regulations, and the NAC.

Project Owners of a LIHTC project must annually certify under penalty of perjury that the LIHTC project was in compliance with certification provisions set forth under federal statute and regulations, and the NAC for the preceding 12-month period. These provisions are listed below.

The failure of the Project Owner to comply with those provisions may result in a revocation of the allocated Tax Credits by the IRS.

### **(1) Minimum Set-Aside Test**

The Minimum Set-Aside requirement is the most critical compliance issue for a low-income housing Tax Credit project. A project must have a *minimum* number of qualified Tax Credit units for a Project Owner to claim Tax Credits.

The IRS requires that the Project Owner must select and adhere to one of the two statutory Minimum Set-Asides. A residential rental project providing low-income housing qualifies for the credit only if:

*20/50 Set-Aside* - 20 percent or more of the aggregate residential rental units in the project are occupied by individuals with incomes of 50 percent or less of the area median gross income, as adjusted for family size, or

*40/60 Set-Aside* - 40 percent or more of the aggregate residential rental units in the project are occupied by individuals with incomes of 60 percent or less of the area median gross income, as adjusted for family size.

The Minimum Set-Aside determines both the minimum percentage of Tax Credit units at the project and the income limit used to determine tenant eligibility. The Minimum Set-Aside must be maintained for the entire compliance period or recapture of the credit for all units will result.

The Project Owner specifies the Minimum Set-Aside when applying for a Tax Credit allocation and elects the Minimum Set-Aside on IRS Form 8609. This election is irrevocable and sets the applicable income limit for *all* LIHTC units in the project.

If the project is identified as a *Multiple Building Project* on Line 8b of IRS Form 8609, the Minimum Set-Aside may be met across the project. If the project is not identified as such, the Minimum Set-Aside must be met *Building-By-Building*. The example below describes how the Minimum Set-Aside is calculated under each approach. **Management must be aware of the distinction between project-wide and per building Minimum Set-Aside.**

Projects planned and successfully developed as 100 percent low-income projects will more than meet their Minimum Set-Aside because all units in the project will be Tax Credit units.

<b>Example of Multiple Building and Building-by-Building Approach</b>	
<b><i>Multiple Building Project Approach</i></b>	The Project Owner of a 10-building, 100-unit Tax Credit project has elected the 40/60 minimum set-aside to be met as a “ <i>Multiple-Building</i> ” project, meaning that 40 percent of 100, or 40 units project-wide, must be rented by the end of the Initial Credit Period to tenants who are eligible at the 60 percent area median gross income limit or no Tax Credits are available.
<b><i>Building-by-Building Approach</i></b>	<p>The Project Owner of the same 10-building, 100-unit Tax Credit project has elected the 40/60 MSA to be met on a <i>Building-By-Building</i> basis. If the project has 6 buildings with 12 units each and 4 buildings with 7 units each, the Minimum Set-Aside is calculated as follows:</p> <ul style="list-style-type: none"> <li>▪ 40 percent of a 12-unit building = 4.8 or 5 units; (6 buildings x 5) = 30 units</li> <li>▪ 40 percent of a 7-unit building = 2.8 or 3 units; (4 buildings x 3) = 12 units</li> <li>▪ The Minimum Set-Aside = 42 units.</li> </ul> <p>If the Project Owner claims the credits for all the buildings in the project at the same time, there need to be enough Tax Credit units among all the buildings to satisfy the minimum set-aside. Each individual building does not need to meet the set-aside. If not, the Minimum Set-Aside must be achieved for each building.</p>

The Minimum Set-Aside must be met within the Initial Credit Period or the project will not be eligible for Tax Credits. Depending on the year of allocation, different requirements regarding the Minimum Set-Aside apply.

- For 1987-1990 projects, the Minimum Set-Aside had to be met within 12 months of the Placed-in-Service date.
- For 1991 and later years, the Minimum Set-Aside must be met no later than the close of the first year of the credit period for such building. Additionally, the Minimum Set-Aside must be met prior to any credits being claimed.

If more than one building in a project is used to meet the Minimum Set-Aside, the credit and compliance periods are determined by using the date on which the last of the buildings in the project was Placed-in-Service.

## **(2) Tenant Income Certification**

Under IRS Rules, the Project Owner must certify that annual income certifications and supporting income and asset documentation has been received from each low-income tenant or, if the tenant receives Section 8 rental assistance payments, that a statement was received from the local public housing authority that the tenants income did not exceed the applicable income limits. Guidelines for documenting and certifying tenant eligibility are provided in Chapter 7 of this Manual.

## **(3) Rent Restrictions**

Under IRS Rules, a qualified low-income unit must be rent restricted. A residential unit is considered rent-restricted if the gross rent for the unit does not exceed 30 percent of the imputed income limitation applicable to that unit. Guidelines for determining maximum gross rents are provided in Chapter 8 of this Manual.

## **(4) Access and Use by General Public**

Under IRS rules, all residential rental units in the project must be available for use by the general public. *The “available to the general public” rule applies to all residential rental units within a LIHTC project.*

Residential rental units that are housing provided only for members of particular social organizations or provided by an employer for its employees are not eligible for Tax Credits.

LIHTC projects are subject to Title VIII of the Civil Rights Act of 1968, also known as the Fair Housing Act, which prohibits discrimination in the sale, rental, and financing of dwellings based on race, color, religion, sex, national origin, familial status, and disability. The Fair Housing Act also mandates specific design and construction requirements for multifamily housing built after March 13, 1991, to provide accessible housing for individuals with disabilities. Project Owners are expected to be familiar with accessibility requirements applicable to their projects. The Division encourages Project Owners to develop **Affirmative Fair Housing Marketing Plans** to assure non-discrimination.

The IRS 8823 Report of Noncompliance form states: *“The failure of low-income housing credit projects to comply with the requirements of the Fair Housing Act will result in the denial of the low-income housing Tax Credit on a per-unit basis.”*

The Division will report any Fair Housing complaint it receives to the Department of Housing and Urban Development in San Francisco and/or Nevada’s Equal Rights Commission.

## **(5) Suitability of Unit for Occupancy**

Under IRS rules, a unit shall not be treated as a low-income unit unless it is suitable for occupancy.

Each building in a Tax Credit project must be suitable for occupancy, in accordance with state and local health, safety, and building codes state for credits to be claimed. The Project Owner/Management Company is responsible for correcting the violations if state or local officials have cited the building for health, safety, and/or building code violations. Uncorrected violations may render the building or low-income units unsuitable for occupancy. If the low-income unit is not habitable, no Tax Credits can be claimed. Such violations may be considered noncompliance. In cases where a unit is destroyed by fire, flood, or any other disaster, no credits can be claimed while the unit is being replaced. However, the IRS has ruled that if a unit is restored within a reasonable time, credits can again be claimed and no recapture would occur.



Project Owners/Management Companies should be aware that compliance with the Americans with Disabilities Act (ADA) and federal Lead-Based Paint requirements (applicable to acquisition/rehabilitation projects) is an important consideration in determining the project's suitability of occupancy.

### **(6) Tenant Facilities**

Under IRS rules, all tenant facilities included in the Eligible Basis for any building in a LIHTC project must be available on a comparable basis, without charge, to all tenants in the building. Tenant facilities include swimming pools, recreational facilities, and parking areas.

### **(7) Vacant Unit Rule**

Under IRS rules, Project Owners/Management Companies **cannot** count a vacant unit as a Tax Credit unit if the unit did not qualify as a Tax Credit unit prior to being vacated. To be considered as a Tax Credit unit, an eligible tenant must occupy the unit on the last day of the month. A vacant unit **cannot** be counted as a Tax Credit unit simply because it is being held for a qualified tenant.

If a low-income unit becomes vacant during the year the unit remains eligible for the Tax Credit for purposes of the Minimum Set-Aside requirement and determining the Qualified Basis of the project so long as *reasonable attempts* are made to rent the unit or the next available comparable or smaller size unit to an eligible household and no other comparable or smaller size units in the project are rented to non-qualifying individuals.

*Reasonable Attempts* means that efforts toward marketing and renting a unit that is suitable for occupancy must be made. Concurrently, if a Project Owner/Management Company of three vacant units violates this rule by renting to a non-eligible applicant, credit on all three vacant units will be lost and the units cannot be counted toward the Minimum Set-Aside. **Caution: Under no circumstances can credit be claimed on the unit if this rule is violated.**

Units that have never been occupied are referred to as “empty” units rather than vacant units. Empty units cannot be counted as low-income units. However, they must be included in the building's total unit count for purposes of counting the Applicable Fraction.

Project Owners are required to keep records for each qualified low-income building in the project showing for each year of the compliance period the low-income unit vacancies and data for when, and to whom, the next available units were rented.

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## **(8) Next Available Unit/140 Percent Rule**

Under IRS rules, when the household income in a qualified Tax Credit unit increases to more than 140 percent of the applicable income limit, the unit is considered an “**Over-Income Unit.**” An Over-Income Unit may continue to be counted as a low-income unit for Tax Credit purposes as long as two conditions are met:

- The unit must continue to be rent-restricted
- The next comparable size unit in the building must be rented to an eligible low-income tenant.

The Project Owner/Management Company of a low-income building must rent to qualified residents *all* comparable units that are available or that subsequently become available in the same building until the Applicable Fraction (excluding the Over-Income units) is restored to the percentage on which the Tax Credit is based. If the next comparably sized unit is leased to an *ineligible* tenant, any Tax Credit unit occupied by an Over-Income tenant ceases to count as a Tax Credit unit.

The *Next Available Unit Rule* applies separately to each building in a project containing more than one low-income building and is administered differently depending on whether the project has market rate units.

*For Project With 100 Percent Tax Credit Units:* Practically speaking, the Next Available Unit rule does not apply to 100 percent Tax Credit Projects since all of the units in the Project must be rented to income-eligible tenants. Furthermore, unit rents may never exceed the maximum allowable rent for low-income units in buildings with 100 percent low-income units, even if tenant incomes increase. Tenants who are over-income at the time of re-certification do not need to be removed to maintain the project’s low-income occupancy and must not be evicted without proper cause

*For Projects With Market and Tax Credit Units:* Under this rule, a current tenant whose income exceeds the applicable limitation may move to a different unit within the same building without changing the Tax Credit status of the project. In effect, IRS permits the Project Owner to transfer the qualified Tax Credit unit status of the former unit to the newly occupied unit even though the household income exceeds the 140 percent limit. Moreover, because the status of the unit does not change as a result of the move under these limited circumstances, the move does not cause any other over-income low-income units in the same building to lose its status as qualified low-income units. This rule is violated if the unit vacated by the over-income household is rented to a non-qualified tenant. If this occurs, all over-income low-income units within the same building lose their status as low-income units. ***Caution: Violating this rule means losing the credits on all 140 percent units. These units would no longer count toward the Minimum Set-Aside.***

## **(9) Extended Low-Income Housing Commitment**

Under IRS rules, Project Owners must make a commitment to extend the low-income use of a project for an additional 15 years or other period specified by the Division.

In Nevada, the Extended Low-Income Housing Commitment is recorded in a Declaration recorded in the office of the County Recorder in the county in which the project is located. The Declaration records the commitments and obligations of the Project Owner concerning the specific occupancy and affordability requirements for the project. From a compliance perspective, special attention is given to all of the provisions of the Declaration.

A failure to make the extended use commitment and execute and record the Declaration will result in a loss of Tax Credits.

### **(10) Non-transient Occupancy**

Under IRS rules, a qualified low-income Tax Credit unit must be rented or used on a non-transient basis.

Under IRS rules, if the initial lease term is six months or greater the unit is considered to be used on a non-transient basis. Accordingly, the Division requires a minimum six-month lease term at initial occupancy of low-income units. For existing tenants, if the Tax Credit unit is occupied at the time the project is Placed-In-Service and the in-place tenant does not have six months remaining on the existing lease, a six-month lease addendum must be signed when the building is Placed-in-Service.

- *Single Room Occupancy* (SRO) housing and transitional housing for the homeless are exempted from this requirement.

SRO units are intended as transitional housing that is operated by a governmental or nonprofit entity and provides certain supportive services.

## **C. Additional Tax Credit Rules and Provisions**

### **(1) Declaration of Restrictive Covenants for Low-Income Housing Credits**

Projects receiving an allocation of tax credits after January 1, 1990, must execute a Declaration of Restrictive Covenants for Low-Income Housing Credits and comply with the terms of the Declaration. The Declaration must be recorded in the office of the County Recorder in the county in which the project is located. Failure to execute and record the Declaration will result in loss of tax credits.

As previously mentioned, from a compliance perspective special attention must be given to the provisions of the Declaration. Project Owners make additional commitments to receive preference points during the Tax Credit application and allocation process. Project Owners and any successors must satisfy these commitments for the entire extended use period.

The Division monitors all of the provisions of the Declaration for compliance. Prior to issuing IRS Form 8609, the Division will visit the site to ensure that the Project Owner is meeting all pledged commitments.

Management Companies should be familiar with the commitments and obligations contained in the Declaration.

## (2) Eligibility of Full-Time Students

Under IRS rules, a household comprised entirely of *full-time* students is not eligible under the LIHTC Program unless the household meets one of the five exceptions provided under IRC Section 42(i)(3)(D).

*Full-time* student households may be eligible if:

- One or more members of the household receive assistance under Title IV of the Social Security Act, or
- One or more members of the household are enrolled in a job training program receiving assistance under the Job Training Partnership Act (superseded by the Work Force Investment Act) or other similar federal, state, or local laws, or
- The students in the household are married and file a joint tax return, or
- The student(s) are single parents and their children are not dependents of another person other than a parent of such children.
- Previously part of a foster care program.

IRC § 151 (c)(4) A full-time student is a person who is carrying a subject load considered full-time at an educational institution (for a minimum of five months per year), or will be a full-time student at an educational organization described in IRC § 170(b)(1)(A)(ii), within the next twelve (12) months. Treasury Reg. § 1.151-3(b) further provides that the 5 calendar months need not be consecutive. The term “school” includes elementary schools, junior and senior high schools, home school, colleges, universities, and technical, trade, and mechanical schools. It does not include on-the-job training courses, correspondence schools, and night schools. However, full-time attendance at a school can include some attendance at night as part of a full-time course of study.

For purposes of clarification and qualifying, households containing students that live in or are applying to Tax Credit projects, the following guidelines also apply:

- The Temporary Assistance for Need Families (TANF) program meets the exception for assistance under Title IV of the Social Security Act for the purpose of determining tenant eligibility
- Full-time programs receiving funding under the Workforce Investment Act (WIA) meet the exception for job training programs receiving assistance under federal, state, or local laws for the purpose of determining tenant eligibility
- A household of full time students *and* at least one child who is not a full time student is considered an eligible household under the LIHTC project
- A household of full-time students *and* at least one part-time student is considered an eligible household under the LIHTC project

Unless the *full-time* student household meets one or more of the conditions and exceptions referenced above, the household is not eligible under the LIHTC Program. Furthermore, since all monitoring of student status must be on a tax-year basis, an applicant that had been a full-time student for 5 months of the tax year would not be eligible until the next tax year, even if he or she had graduated prior to applying for an LIHTC unit.

## The Veterans Retraining Assistance Program

The “VOW to Hire Heroes Act of 2011” created the Veterans Retraining Assistance Program which provides 12 months of financial assistance and tuition for veterans that qualify. They must attend either a Community College or Vocational/Trade school, it must be full-time and the program must lead to an Associate’s Degree or Certificate.

Veterans participating in this program are considered eligible for our properties under exception 2 d) on the Student Status Certification form (NV-3).

The income they receive including the living assistance is also exempt when calculating their household annual income.

You must obtain third party verification that they are enrolled in this program in order for them to qualify for this exception.

For more information on this program you can find it at:

<http://www.benefits.va.gov/VOW/>

Project Owners/Management Companies should adjust tenant certification procedures to consider student status according to this interpretation.

The NHD form - Student Status Certification Exhibit NV-3 must be executed when the household is comprised entirely of students. Project Owners/Management Companies are required to re-verify resident student status at each semester and at annual certifications to confirm continuing eligibility of the household. Failure to comply with this requirement will result in noncompliance.

### **(3) Employee units**

Under IRS rules, Project Owners may count a unit occupied by a *full-time* staff member as either a qualified low-income Tax Credit unit or part of a project’s “common area.”

*Counted As A Low-Income Unit:* If the staff unit is considered a rental unit and is included in the building’s Qualified Basis, then the staff member must be income-eligible, certified, and sign a lease the same as any low-income tenant. In this case, if the staff member receives free rent or a rental discount, the imputed value of the rent or discount must be included as income.

*Counted As Common Area:* Under IRS rules, a unit for a *full-time* staff member may be considered part of a project’s “common area.” The ruling provides that such units are not classified as residential rental units. If the unit is not a residential rental unit and is used as common area by full-time staff, then the staff does not have to be income-eligible, certified, leased, or considered a tenant. Furthermore, the unit is not counted in the calculation of the Applicable Fraction for purposes of determining the building’s qualified basis.

The IRS revenue ruling on employee units, does apply to any building Placed-In-Service prior to September 9, 1992, or to any building receiving an allocation of credit prior to that date unless the Project Owner filed a tax return that is consistent with this ruling. The Project Owners application and the allocation documents must state how many employee units there are in the LIHTC project. The size of employee unit must reflect the average unit size in the building. Employee units must be fixed, not floating.

If at any time *after* the buildings have been placed in service and 8609's have been issued, the owner chooses to change a qualified LIHTC unit to an employee's unit they must do the following:

Request the change in writing;

Provide the Division with the Building Identification Number that the unit is located in;

Provide the Unit number;

Provide the square footage of the unit;

The Division may request further information before the request is granted.

#### **(4) Relocating Existing Tenants (Initial Lease-up)**

During the Initial Credit Period, existing tenants *cannot* be relocated for purposes of qualifying more than one LIHTC unit to count toward the Minimum Set-Aside or Applicable Fraction. ***Under no circumstances can one household be used to initially qualify more than one Tax Credit unit in the project.***

If for any reason a transfer occurs within the same building, the units swap status. The newly occupied unit adopts the status of the vacated unit and the vacated unit adopts the status of the newly occupied unit. However, when an existing tenant(s) moves to a different low-income unit in separate building, the move is treated as a *move-out* from the former unit and a *move-in* to the new unit.

Under IRS rules, a new lease and certification must be executed and be effective on the move-in date to the new unit. The required application, certification, and verification procedures must be completed for the relocating tenant(s), including obtaining new income and asset verifications to determine eligibility, the same as for any new move-in. *As a reminder, transfers occurring during the initial qualifying period are treated as follows; if, for any reason, a tenant(s) moves from a qualified unit to an unqualified unit, the unit swaps status. The unit they moved from is considered an unqualified unit and the unit they moved into becomes a qualified unit. Eligible residents in acquisition rehabilitation projects do not need to re-certify when they move into a newly rehabbed unit whether it is in the same building or a different building. Eligible residents need only re-certify on the anniversary of the initial certification.*

#### **(5) Evictions/Non-renewal of Leases Without Cause/VAWA**

IRS Rev. Rul. 2004-82, Q&A 5 (2004). The IRS requires good cause for **all** terminations of tenancy. The good cause eviction requirement applies to all terminations of tenancy in the LIHTC program, whether during the term of the lease or at the end of the term.

On March 7, 2013, President Obama signed into law the Violence Against Women Reauthorization Act of 2013 (VAWA 2013). The law continues many of the housing protections that had been provided by the Violence Against Women Act of 2005 (VAWA 2005) and further expands these safeguards in several crucial ways. These changes include covering more federal housing programs; (including LIHTC properties) extending protections to survivors of sexual assault; allowing survivors who remain in the unit to establish eligibility or find new housing when a lease is

bifurcated; providing survivors with emergency transfers; and notifying applicants and tenants of VAWA housing rights.

For LIHTC properties it means applicants may not be rejected due to an eviction if the eviction was due to domestic violence and the applicant was the victim, if a resident must terminate a lease in order to relocate for safety reasons they may do so without penalties and if there is an incident of domestic violence the victim may remain in the unit without fear of eviction and property may seek the removal of only the perpetrator of the violence.

For more information regarding VAWA follow this link:

[http://www.lsn.net/housing/vawa\\_outline\\_advocates.pdf](http://www.lsn.net/housing/vawa_outline_advocates.pdf)

## **(6) Transfers to Another Low-Income Unit**

- **In the same building:** When a household moves to a different unit within the building, the newly occupied unit adopts the status of the vacated unit. Thus, if a current household, whose income exceeds the applicable income limitations moves from an over-income unit to a vacant unit in the same building, the newly occupied unit is treated as an over-income unit. The vacated unit assumes the status the newly occupied unit had immediately before it was occupied by the current resident.
- **In a different building:** A household may re-locate to another building within the project as long as, upon re-location, the household meets the current income limit per household size. The household is treated as a new move-in and the unit they have moved from is treated as a move-out. However, in special circumstances such as uninhabitable units due to fire, flood, or a resident is not able to climb stairs anymore, etc., the Division may allow re-location even if the household was initially eligible, but now exceeds the current income limit.

## **(7) Section 8 Certificates and Vouchers**

Under IRS rules, LIHTC Project Owners may not discriminate in selecting applicants and must accept applications from persons with Section 8 certificates or vouchers. Section 8 certificate and voucher holders cannot be denied housing simply on the basis of their Section 8 status. This requirement must also be included in the Extended Low-Income Housing Commitment and recorded in a Declaration.

Annually, Project Owners must certify that:

- The Project Owner has not refused to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937; and,
- No findings of discrimination under the Fair Housing Act, U.S.C. 3601-3619, occurred for the project. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development, 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C 3616(a)(1), or an adverse judgment from a federal court.

Applicants with Section 8 Vouchers or Certificates must still meet all of the project's screening and eligibility criteria permissible under federal, state, or local laws.

Project Owners/Management Companies denying tenancy to a household holding a Section 8 Certificate or Voucher must document the reason that occupancy was denied. **Caution: Failure to document that Section 8 Certificate or Voucher holders applying for Tax Credit units were rejected for acceptable reasons can result in a finding of noncompliance against the project.**

**(8) Lead-Based Paint Provisions**

Under the Uniform Physical Inspection Standards, housing projects must comply with Lead Safe Housing Rules. These requirements apply to *buildings and units built before 1978*. Subparts J and M of this rule set forth the requirements for project rehabilitation controls and ongoing maintenance controls that are applicable to Nevada’s LIHTC projects. *If the project is lead-based-paint-free, it is exempt from the Lead Safe Housing Rule.*

**a) Compliance Requirements for Rehabilitation Project With Lead-Based Paint**

Project Owners undertaking rehabilitation projects for pre-1978 buildings must:

Per Unit Cost	Required Actions
Under \$5,000	Test paint for lead (or presume that the paint is lead-based paint) Use lead safe work practices in controlling lead-based paint hazards Pass clearance testing of work area prior to re-occupancy Inform occupants of evaluation and hazard-control activities and results Provide occupants the HUD/EPA Lead Hazard information disclosure pamphlet
\$5,000 - \$25,000	Test paint for lead (or presume that the paint is lead-based paint) Perform a <i>Risk Assessment</i> of building and project Do <i>Interim Control</i> of lead-based paint hazards using lead safe work practices Pass clearance testing of work area prior to re-occupancy Inform occupants of evaluation and hazard control activities and results Provide occupants the HUD/EPA Lead Hazard information disclosure pamphlet
Over \$25,000	Test paint for lead (or presume that the paint is lead-based paint) Perform a Risk Assessment of building and project <i>Abate</i> lead-based paint hazards using lead safe work practices Pass clearance testing of work area prior to re-occupancy Inform occupants of evaluation and hazard control activities and results Provide occupants the HUD/EPA Lead Hazard information disclosure pamphlet

*Interim Controls Measures* are intended to reduce human exposure to lead on a temporary basis. Measures may include repairs, painting, temporary containment, specialized cleaning, and ongoing maintenance.

*Abatement Measures* are intended to permanently eliminate lead-based-paint hazards. Abatement measures may include on-site paint removal; off-site paint removal; or component replacement, enclosure, or encapsulation.

**b) Training and Certification Requirements for Performing Lead-Based Paint Compliance Activities**

Project Owners must ensure that staff or contractors performing the required visual assessment and project maintenance and rehabilitation have completed HUD’s Visual Assessment and/or Lead Safe Work Practice course.



Persons performing Lead-Based Paint Inspections must have completed HUD's Lead-Based Paint Inspection course and receive certification from the EPA.

Persons performing lead-based-paint risk assessments must have completed HUD's Lead-Based Paint Risk Assessors course and received certification from the EPA.

A list of certified Lead-Based Paint Inspectors and Risk Assessors can be obtained from the Department of Housing and Urban Development.

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# Chapter 4 - Records and Reporting

This chapter reviews mandatory record-keeping, retention and reporting requirements for the LIHTC Program.

## A. LIHTC Record Keeping Requirements

The IRS requires Project Owners to keep records for each low-income building throughout the Compliance Period. Each LIHTC building receives a separate IRS Form 8609 and is assigned its own BIN (Building Identification Number). Records must be kept by building and by unit number (not by project or tenant name). Record-keeping responsibilities include three types of project records:

- Tenant Files
- Monthly Unit/Rent Occupancy Tracking Data
- Project Records inclusive of records on the use of facilities included in the project's eligible basis, and original health, safety or building code reports and notices.

### (1) Minimum Data Requirements

The records collected by the Project Owner must document the following:

LIHTC Record Requirements
i. Total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit)
ii. Percentage of residential rental units in the building that are low-income units
iii. Rent charged on each residential rental unit (including any utility allowances)
iv. Number of occupants in each unit (if rent determined by the number of occupants)
v. Vacancies of qualified units and information on when, and to whom, the next available unit were rented
vi. Annual Tenant Income Certification of each low-income tenant per unit
vii. Supporting documentation for Tenant Income Certification
viii. Eligible and Qualified Basis of building at the end of the first year of the credit period
ix. Character and use of the nonresidential portion of the building included in eligible basis
x. Date each resident initially occupies a unit

## **(2) Project Records**

The Division requires the Project Owner to maintain the following Project records:

- i. Utility allowance data supporting the utility allowance option used for the LIHTC project.
- ii. Fair Housing compliance records including project waiting lists, Affirmative Fair Housing Marketing Plans, and documentation that the Project Owner is using appropriate Fair Housing declarations on materials and information provided to tenants and prospective tenants. The Fair Housing logo and/or language must appear on all advertising, brochures, resident applications, etc. Project Owners must also maintain records of Fair Housing claims or violations made by tenants or prospective tenants.
- iii. Tenant selection criteria and procedures including written procedures for reviewing tenant applications and incomes, performing background checks, and notifying tenants regarding non-selection.
- iv. Project maintenance information including requests received from tenants for repairs or maintenance, maintenance performed following move-outs and prior to move-in, project maintenance plans, and copies of violations of local building and health and safety codes during the review period.
- v. Project security information including building evacuation procedures, documentation of building break-ins, vandalism and public safety concerns, police reports, and project plans for addressing security issues.

Under IRS rules, the Project Owner of a low-income housing project is required to retain the original local health, safety, or building code violation reports or notices issued by the state or local government unit for the Division's inspection.

For LIHTC projects that also receive HUD Section 8 project-based rental assistance, the Division requires Project Owners to maintain copies of the most recent compliance audit performed by HUD or HUD's authorized representatives.

## **(3) Record Retention Period**

The Project Owners must retain the initial qualified tenant records for the first year of the Tax Credit period for at least 6 years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance and extended compliance periods of the building. In other words, ***initial qualified tenant LIHTC records must be retained for 21 years.***

Tax Credit records for subsequent tax years must be retained for at least 6 years beyond the due date (with extensions) for filing the federal income tax return for that year.

Original health, safety, or building code violation reports or notices must be retained until the Division reviews the violation reports or notices and completes its inspection or the violation is corrected, whichever date is later.

Records should be stored in a fireproof cabinet. Duplicate records should be kept in a separate location.

#### **(4) Format for Tenant Record Retention**

The Division recommends that tenant records be retained in a 6-part folder in the following format:

##### **Part I**

- Lease and Lease Addendums

##### **Part II**

- Tenant Income Certifications
- Verification of Income
- Supporting Documentation

##### **Part III**

- Application

##### **Part IV**

- Section 8 Documents

##### **Part V**

- Miscellaneous Documents

### **B. Project Owner Certification and Reporting Requirements**

The Division requires Project Owners to submit an Annual Certification of Continuing Program Compliance pursuant to federal statute and regulation and the NAC. The Division also requires Project Owners to submit a LIHTC Program Annual Report. The annual certification and report must be prepared by BIN.

Each of the certifications and reports listed in this section is a mandatory program requirement. Failure by the Project Owner to provide certifications and reports pursuant to the Division reporting requirements is regarded as noncompliance.

#### **(1) Annual Certification of Continuing Program Compliance**

Under the certification provision, the Project Owner is required to annually certify under penalty of perjury that “for the preceding 12-month period,” the project met the provisions of the LIHTC Program. The specific provisions subject to the annual certification requirements are referenced in Chapter 3 of the Manual - Compliance Certification Requirements (1-12).

The Division requires the Project Owner to submit a LIHTC Annual Certification of Project Compliance to the Division by **January 31** of each year. The Annual Certification form is included in the NHD Forms of the Manual - Exhibit C.

The Project Owner is out of compliance if the Annual Certification is not received by the due date for annual certifications (January 31).

#### **(2) Contact Information Form**

The Division requires Project Owners to submit updated project information. The Contact Information Form is included in the NHD Forms of the Manual - Exhibit C.1.

The Contact Information Form is due by *January 31* of each year throughout the compliance period beginning on the January 31 immediately following receipt of a final credit allocation by the Division. However, an interim contact information form must be submitted to the Division if changes occur regarding ownership and/or the management company.

### **(3) Project Owner Compliance On-Line Reporting Requirements**

Effective July 1, 2004, all Project Owners/Management Companies are required to use the Division's Certificate On-Line (COL) system. COL is an internet-based reporting system that enables Project Owners/Management Companies to generate the Project Owners Annual Certification of Continuing Program Compliance and Tenant Income Certifications and Re-certifications submitted to the to the Division.

The COL system automates and replaces the annual and quarterly reporting requirements, with the exception of the Contact Information Form – Exhibit C.1. A completed Contact Information Form must be received by the Division by January 31 of each year.

Project Owners/Management Companies using the COL system to generate a Tenant Income Certification must still complete all of the required backup documentation for determining tenant eligibility and verifying tenant income referenced in Chapter 7 of this Manual.

Project Owners/Management Companies not capable of using the COL system must notify the Division and request approval to submit annual *and* quarterly certifications and reports manually.

#### **COL Data Inputs**

Project Owners/Management Companies are required to input unit occupancy and tenant information for each Tax Credit unit into the COL system. Project Owners/Management Companies are responsible for ensuring the accuracy of information input into COL.

#### **COL Data Outputs**

Project Owners/Management Companies are responsible for the electronic submission of the Project Owners Annual Certification of Continuing Program Compliance and Tenant Certification Information no later than January 31 of each year for the prior calendar year (January 1 through December 31).

Project Owners/Management Companies are responsible for ensuring the accuracy of information on COL-generated Tenant Income Certifications and Project Owner Annual Certifications of Continuing Program Compliance.

COL also enables Project Owners/Management Companies to track tenant incomes and assets, set and manage gross rents, track unit *move-outs* and *transfers*, and generate Tenant Income Certifications and Re-certifications for use in resident qualification and re-certification.

Instructions for using the COL system are available on the Division Web site and will be provided as part of mandatory COL training (*see Chapter 9 the Manual*).

The Division is not responsible for computer input discrepancies. The Project Owner/Management Company should review all computer-generated forms for completeness and accuracy prior to executing them.

## **C. Project Owner Certification of Tax Credit Allocation**

### **(1) Form 8609 Low-Income Housing Credit Allocation Certification**

The Project Owner must provide the Division with a signed copy of the 8609, as filed for each building for the first year, showing the Project Owners Minimum Set-Aside designation and verifying the year and the amount of Tax Credits claimed.

If the tax payer does not make the above certification by the due date of the tax return for the first year of the credit period, no low-income housing credit is allowed for any taxable year before the certification is made.

The IRC also states that the Secretary may require tax payers to annually submit information returns and incorporates a penalty under IRC section 6652(j) for failure to comply.

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## Chapter 5 - Compliance Review Process

The Division is required by the IRS to monitor each LIHTC project throughout the project's compliance period. This chapter covers the monitoring review policies and procedures of the Nevada Housing Division.

The monitoring reviews described in this chapter are mandatory and must be conducted at least once per calendar year of the compliance period. The Division is not limited to the inspections listed in this section and may perform additional inspections of LIHTC project during the compliance period, as necessary.

To the extent practical, the Division will coordinate LIHTC compliance reviews with similar program and management reviews required for other subsidy programs, such as HOME.

Compliance with LIHTC Program requirements is the sole responsibility of the Project Owner. Project Owners must be actively involved in ensuring that the project satisfies all requirements and should not rely exclusively on the Division's compliance reviews or findings in directing or overseeing project management operations.

Furthermore, Project Owners should not rely solely on the actions of outside management organizations or agencies involved in the management or operations of any building receiving Tax Credits. **Any error made is the responsibility of the Project Owner.**

### A. Compliance Monitoring Fees

The Division has established a monitoring fee schedule to recover the costs of performing compliance and project monitoring activities.

The annual monitoring fee is \$40.00 (subject to change) for each low-income unit in the Project. The first annual Compliance Monitoring Fee is due and payable when the project is Placed-in-Service. Thereafter, annual Compliance Monitoring Fees must be paid on or before January 31 of each year for the remaining compliance period, including any extended use.

The Division's AOD system will generate an invoice for each project. The Division reserves the right to change monitoring fees on a program or project basis to cover the cost of monitoring compliance. The Division shall provide written notification to Project Owners of any change in the compliance monitoring fee schedule.

If the project receives an audit in which the project is substantially out of compliance (less than 75 percent of the project is in compliance or does not meet the Minimum Set-Aside) and the project requires a second audit, there will be an additional fee (based on the 20% selection) equal to the per unit monitoring fee.

## **B. NHD Review of Project Owner Certifications and Reports**

After July 1, 2004, the annual certification submission and review process was automated through the COL System. As mentioned in Chapter 4, this system permits Project Owners/Management Companies to submit Annual Certifications and Tenant Income Certifications and Re-certifications via the Internet.

The Project Owner is out of compliance if the Annual Certification of Continuing Program Compliance is not received by the due date for annual certifications (January 31).

To the extent that inadequate documentation from the Project Owner prevents the Division from determining whether a project is in compliance with federal requirements, the Division may consider the project as out of compliance.

## **C. NHD Notification of On-Site Compliance Reviews**

The Division will notify the Project Owner and Management Company of an upcoming on-site review. The Division will send a Notification of Compliance Review letter confirming the date, time, and requirements for the compliance review. The notice will not specify the records that will be examined.

Project Owners/Management Companies are required to ensure that all units are accessible for physical inspection and accordingly must notify all residents of possible unit inspections a minimum of 24 hours prior to the scheduled inspection date pursuant to state requirements.

## **D. NHD Compliance Monitoring Reviews**

To insure that projects are in compliance with the provisions set forth under federal statute and regulations, the NAC, and agreements recorded in the Declaration, the Division will conduct the following reviews.

### **(1) Pre-8609/Initial Monitoring Review**

Prior to the IRS Form 8609 being issued, the Division will perform a Pre-8609 inspection to determine whether the project conforms to the application and the requirements in the QAP.

The pre-review will:

- Verify the unit mix for the project and inspect a minimum of two units for each unit type and configuration. For acquisition/rehabilitation projects, the Division will also inspect a minimum of one unit per building.\*
- Verify that all of the amenities pledged in the application are in place.
- Verify that construction is complete and conduct a general inspection of the physical condition of the project.
- Review 100 percent of the initial qualifying tenant records, inclusive of income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units.
- Conduct an energy audit to determine compliance with the Division's energy conservation and efficiency standards, including a sample of at least 15 percent of the units if the project



is subject to the Division's energy conservation requirements contained in the QAP or Bond Regulatory Agreement.

- Confirm project restrictions such as income and rent limits, pursuant to the Declaration.
- Review of the required project records.

*\* The Division may inspect as many units as necessary during the pre-review to determine compliance with LIHTC requirements.*

## **(2) Annual Monitoring Reviews**

Each LIHTC project shall be subject to an annual review conducted by the Division. The first Annual Monitoring Review shall be conducted within two years from the date the last building was Placed-in-Service.

The Division may request a management company representative be present at compliance reviews.

The annual review shall, at a minimum, include:

- Inspection of at least 33 percent of the buildings and grounds of the project
- Inspection of at least 20 percent of individual units
- Inspection of corresponding tenant records inclusive of income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units
- Review of the required project records
- Review of local health, safety, and/or building code violation reports or notices issued by the State or unit of local government
- The Division requires and will review a Site Administration Manual which includes but is not limited to: records and documentation as appropriate to determine compliance with extended low-income compliance requirements specified in the Declaration, including but not limited to: income and rent restrictions, housing type, affordability period, reserve levels, amenities, and supportive services.

Where necessary, the Division may expand the number of units inspected and/or tenant records reviewed or re-schedule the review at NHD staff discretion. Circumstances warranting the expansion of the sample of units/records reviewed include:

- Poor internal controls
- Significant number of nonqualified units
- Significant number of households not income qualified
- Multiple occurrence of significant compliance violations
- Information from reliable sources on matters affecting compliance
- Re-schedule the compliance review

The Division will prepare summary reports documenting the findings of physical inspections and tenant record audits.

## E. Steps in Annual Compliance Monitoring Process

### (1) Request for Project Records

This section identifies the types of Project records requested and reviewed by the Division as part of annual compliance monitoring reviews.

**a) Occupancy Status Report.** The Division requires Project Owners to submit updated rent/occupancy tracking data to highlight changes to occupancy and rent information since the Project Owners last LIHTC Program report. The data will cover the period from January 1<sup>st</sup> to the date of the compliance review. The data will be downloaded from the COL system.

**b) Utility Allowance Data.** The Division requires Project Owners to submit information supporting the utility allowance option used for the LIHTC project during the review period.

Owners must clearly indicate the option chosen for each utility and be able to prove that the proper methodology associated with this option was used to arrive at the estimate. If different options were used for different utilities or different options were used from year to year, Owners must notify the Division and get approval. If the change resulted in a significantly lowered utility allowance estimates than previously used, the difference must be clarified. The Division will request additional information during the 90-day period if warranted. In addition, the Division requires evidence of the 90-day notice to tenants

Regulations state the cost associated with this entire process, no matter which method is chosen, is the responsibility of the owner.

The Division will file 8823's for each property that fails to follow the above procedure.

**c) Fair Housing Compliance.** The Division requires Project Owners to provide information regarding compliance with federal and state fair housing laws and regulations. The requested information will include data on project waiting lists, Affirmative Fair Housing Marketing Plans, and documentation that the Project Owner is using appropriate Fair Housing declarations on materials and information provided to tenants and prospective tenants. The Fair Housing logo and/or language must appear on all advertising, brochures, resident applications, etc. Project Owners are also required to report any Fair Housing claims or violations made by tenants or prospective tenants at the site during the review period.

**d) Tenant Selection Criteria.** The Division requires Project Owners to provide information on formal tenant selection procedures. The information will include written procedures for reviewing tenant applications and incomes, performing background checks, and notifying tenants regarding non-selection. The Division recommends that Project Owners/Management Companies include a section in the project's management plan that sets forth the procedures for processing applications and reasons under which an application may be denied.

**e) Maintenance Schedule.** The Division requires Project Owners to provide information on building maintenance during the review period. The requested information will include requests received from tenants for repairs or maintenance, maintenance performed following move-outs and

prior to move-in, project maintenance plans, and copies of violations of local building and health and safety codes during the review period.

**f) Security Procedures.** The Division requires Project Owners to provide information on security-related issues. The requested information including building evacuation procedures, documentation of building break-ins, vandalism and public safety concerns, police reports, and project plans for addressing security issues.

**g) Project Compliance Audits.** The Division requires Projects Owners to provide a copy of the most recent compliance audits conducted by or on behalf of HUD in cases where the LIHTC project also receives federal Section 8 project-based rental assistance.

## **2) Procedures For Reviewing Tenant Records**

The Division will undertake either an on-site review or a desk audit to inspect tenant records. The Division may give a Project Owner reasonable notice that a file inspection will occur to permit the Project Owner to assemble such records. In each case, the Division will review:

- Tenant Rental Application
- Tenant Lease and Addendums
- Tenant Income and Asset Certifications
- Tenant Income Certifications/Re-certification
- Documentation and verification of employment and income
- Documentation and verification of assets \$5,000 or more \*
- Other documentation supporting tenant eligibility
- Rent records for each qualified tenant
- Current Year Utility Allowance data.

*\* All assets must be verified for the HOME program*

To conduct a desk audit, the Division will require Project Owners to submit the required tenant record to the Division.

The Division will determine what tenant's records are to be inspected or submitted by the Project Owner for review. The records will be chosen in a manner that will not give the Project Owner advance notice that the records will or will not be inspected.

Noncompliance occurs if the compliance review determines that:

- Project Owners failed to submit year-end documentation on time or failed to respond to requests for additional information
- Project Owners failed to comply with record keeping requirements
- Residents are not qualified under LIHTC Program
- Qualified low-income residents are charged improper or unrestricted rents
- Project Owners failed to maintain properly executed certifications or failed to re-certify tenants by the certification anniversary date
- Project Owners or Management Companies failed to document tenant income eligibility and

- identify full-time students
- Tenant records (e.g. applications, tenant eligibility verifications, income certification, and leases) are insufficient or inaccurate
- Unit lease is inconsistent with unit lease requirements or is not properly executed.

### 3) Procedures For Physical Inspections

Project issues are a primary concern to the IRS and, in the event of noncompliance, have the potential for the recapture of Tax Credits. The Project Owner is responsible for ensuring that the project is structurally sound, functionally adequate, in good repair and free of health and safety hazards, and maintained in accordance with the Declaration.

The Division requires a project representative to accompany Division personnel on all physical inspections. If the Division is unable to gain access to a unit or any part of the unit during a physical inspection, the unit may be deemed out of compliance and a Form 8823 will be issued.

Under IRS rules, the Division must review any local health, safety, or building code violation reports or notices and must perform physical inspections of the LIHTC projects using a formal **Inspection Standard**. The Inspection Standard used by the Division must be either: (1) local health, safety and building codes or (2) the Department of Housing and Urban Development’s (HUD) Uniform Physical Condition Standard. *A combination of the two inspection standards cannot be used.*

## F. Uniform Physical Condition Standards

The Division uses the Uniform Physical Condition Standards to determine whether the LIHTC projects remains suitable for occupancy. *HUD’s Uniform Physical Condition Standards (24 CFR 5.703) can be accessed at [www.hudclips.org](http://www.hudclips.org).* These standards require Projects to be in “decent, safe and sanitary condition and in good repair”. Recently there have been changes to the UPCS Standards including adding Health & Safety as a separate inspectable item within properties.

- (1) **Site** – The site includes components such as fencing and retaining walls, grounds, lighting, mailboxes, signs, market appeal, parking lots/driveways/roads, play areas and equipment, refuse disposal, storm drainage and walkways.
- (2) **Building exterior** – Each building on the site must be structurally sound, secure, habitable, and in good repair. The building’s exterior components, such as doors, entry doors must meet FHEO requirements (32” wide), fire escapes, foundations, lighting, roofs, walls and windows, and for FHEO an unobstructed accessibility route.
- (3) **Building systems** – The building’s systems include components such as domestic water, electrical system, elevators, emergency power, fire protection, HVAC, roof exhaust system and sanitary system. Each building’s systems must be functionally adequate, operable, and in good repair.
- (4) **Dwelling units** – (1) Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit (for example, the unit’s bathroom, call-for-aid, ceiling, doors, electrical systems, floors, hot water heater, HVAC (where provided in individual units), kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls and windows must be free of health and

safety hazards, functionally adequate, operable, and in good repair. (2) Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water. (3) If the dwelling unit includes its own sanitary facility, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste. (4) The dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit.

- (5) **Common areas** – The common areas must be structurally sound, secure, and functionally adequate for the purposes intended. The common areas include components such as basement/garage/carport; restrooms; and closets, utility, mechanical, community rooms; day care; halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable. The common areas must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair.
- (6) **Health and Safety** - *All areas and components of the housing must be free of health and safety hazards including but are not limited to: air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based paint. For example, the buildings must have fire exits that are not blocked and have handrails that are undamaged and have no other observable deficiencies. The housing must have no evidence of infestation by rats, mice, or other vermin, or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor, or other observable deficiencies.*

***Caution: Project Owners and on-site Managers are reminded that pursuant to IRS requirements. LIHTC projects must continue to satisfy local health, safety, and building codes. HUD's physical condition standards DO NOT supersede or preempt local health, safety, and building codes.***

## Physical Inspection Violation Tables

The following tables provide examples of inspection findings that constitute Inspection Violations.

UPCS Violation
▪ Detection of propane, natural, or methane gas *
▪ Inoperative/missing smoke detectors *
▪ Exposed wires or open electrical panels *
▪ Blocked or unusable emergency or fire exits *
▪ Blocked fire escapes or ladders *
▪ Missing or misaligned chimney for gas-fired hot water heater/HVAC *
▪ Expired fire extinguishers *
▪ Water leaks on or near electrical equipment *
▪ Entry or fire emergency doors that are not functioning, or cannot be locked because of damage to the frame, threshold, lintel, or trim
▪ An oven that is not functioning, or two or more burners are not functioning, or the unit is missing
▪ Damaged play area equipment that poses a threat to safety and could cause injury
▪ Large portions of floors substantially saturated or damaged by water, mold, or mildew
▪ Pest Infestations
▪ HVAC2 equipment or piping that does not function because of rust or corrosion
▪ Water leaking from any water system component
▪ At least one screen door or storm door is damaged or is missing screens or glass
▪ Floor covering is fully functional, but small areas of the floor surface are missing (the estimate is that more than 5 percent, but less than 10 percent of the floors are affected)
▪ A window is not functioning, but can be secured
▪ HVAC systems show signs of abnormal vibrations, other noise, or leaks when engaged, but the system still provides enough heating or cooling to maintain a minimum temperature range in the major living areas
▪ Cracks and deteriorated surface material give evidence of settlement/heaving in parking lots, driveways, or roads
▪ Missing equipment in a recreational play area (20 to 50 percent), but poses no safety risk

\* *Life threatening UPCS Violations*

## **G. Compliance Inspections For LIHTC Projects Subject To Lead-Safe Housing Rule**

For LIHTC projects subject to the Lead-Safe Housing Rules, the Division will also undertake the following activities to determine compliance with federal lead-based paint requirements (*see Chapter 3 of Manual*).

- Review Lead-Based Paint inspection reports to determine extent of lead-based paint and lead-based paint hazards.
- Review project maintenance and clearance testing reports of maintenance work performed
- Review applicable staff/contractor training records
- Review occupant notifications of LBP evaluation and hazard control activities
- Undertake a Visual Assessment of project during annual physical inspections to identify potential lead-based paint hazards and ensure that appropriate controls have been implemented

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# Chapter 6 - Compliance Actions

## A. Notification Of Noncompliance To Project Owner

The Division will provide a written notification of noncompliance to the Project Owner in the event:

- The Annual Certification and Annual LIHTC Report or Monitoring Fees have not been received by January 31
- The Division attempted to contact the Project Owner for a compliance review and/or inspection and the Project Owner did not respond or did not permit the Division to inspect required project and tenant records
- The Division finds that Annual Tenant Income Certifications, supporting documentation, or rent records are missing, insufficient, or incorrect
- The Division finds that through physical inspection or record review discrepancies or other evidence that the LIHTC project is out of compliance with the requirements of Section 42 or provisions in NAC 319.951 to 319.998, inclusive.

### (1) Project Owner Notice of File/Physical Inspection Cure Letter

The Division will send the Project Owner a Cure Letter in the event of noncompliance. In this notification the Division will identify the condition causing the noncompliance and specify a reasonable correction or cure period running from the date of notice of non-compliance to correct the noncompliance finding. In no event shall the Cure Period provided in the notice exceed 90 days. The Division may extend the cure period to a maximum of 6 months from the date of the notice of noncompliance if the Division determines there is good cause for granting the extension.

### (2) Summary of Physical Inspection Findings

A **Summary of Physical Inspection Findings** will be provided to the On-Site Manager at the time of the compliance review. The Division will provide the Project Owner with a copy of the Summary of Physical Inspections Findings as an attachment to the Project Owner Notice of File/Physical Inspection Cure Letter.

### (3) Correction of Life-Threatening Violations

The Division requires Project Owners to correct all major physical inspection violations within 24-72 hours of Summary of Physical Inspection Findings. All life-threatening violations must be repaired within 24 hours.



## **B. Notification Of Noncompliance To IRS**

The Division is required to notify the IRS of any noncompliance regardless of whether the noncompliance is corrected by the Project Owner.

Notification to the IRS will be *made no later than 45 days after the expiration of the Correction Period* if (but not limited to):

- The Annual Certification and Annual LIHTC Report have not been received by January 31
- The Project Owners does not provide the documentation required for scheduled compliance inspections or reviews, or if the Project Owner did not respond or did not permit the Division to inspect required project and tenant records
- The Division finds that Annual Tenant Income Certifications, supporting documentation, or rent records are missing, insufficient, or incorrect
- The Division finds that through physical inspection or record review discrepancies or other evidence that the LIHTC project is out of compliance with the requirements of Section 42 or provisions in NAC 319.951 to 319.998, inclusive.

If the Division finds that the Applicable Fraction or Eligible Basis for the LIHTC project has changed and results in a decrease in the Qualified Basis of the project, the Division will immediately report the noncompliance to the IRS. No cure period applies.

IRS Form 8823. The Division shall notify the IRS of the failure to provide documents or the failure to comply with the provisions of Section 42 by filing IRS Form 8823, "Low-Income Housing Credit Agency Report of Noncompliance"; or such other form prescribed by the IRS. The Division shall explain the nature of the noncompliance or failure to supply documents and indicate whether the Project Owner has corrected the non-compliance or failure to produce documents.

## **C. Recapture of Tax Credits**

The most serious action the IRS can take against a Project Owner is the recapture of credits previously claimed. Only the IRS determines this course of action. The Division does not determine the actions taken by the IRS as a result of reported noncompliance. If the Project Owner discovers at any time that credits were claimed in error, miscalculated, or the basis was incorrectly listed, IRS Form 8611 may be submitted to voluntarily recapture credits.

## **D. Liability**

Compliance with the regulatory requirements of Section 42 is the responsibility of the Project Owner of the building for which credit is allowable. The Division's obligation to monitor for compliance and report any issues of noncompliance with Section 42 regulations to the IRS does not make Division liable for a Project Owners noncompliance.

## Chapter 7 - Determining Eligibility

This chapter reviews the requirements for determining and documenting the eligibility of tenants of LIHTC projects. Project Owners/Management Companies must verify the household's income and, if applicable, the student status of all household members. All of the information must be verified by third-party documentation. The tenants and Project Owner/Management Company must certify that the verified information is accurate.

**Tenant's income eligibility** is determined by comparing the household's gross annual anticipated income with HUD Section 8 median income limits, adjusted for household size, applicable to the project.

**Full-time students** residing in a unit do not constitute a household under LIHTC requirements unless one of the exceptions listed in Chapter 3 of the Manual applies.

*(See requirements for Full-Time Student exception - Chapter 3 of Manual)*

### A. Tenant Application Procedure

A *fully completed* housing application is critical to the accurate identification of full-time student status, all assets, and anticipated income sources to be verified in the determination of tenant eligibility for the LIHTC. *The application must be sufficiently detailed with regard to income, assets, and student status to enable the Project Owner to effectively make a determination of eligibility for this program.* The application must include the following:

- Name and date of birth of each household member (including foster adults and children)
- Student status
- Indicate all sources and amounts of current and anticipated income and assets expected during the 12-month certification period
- If employed, document name of employer, start date, wages, hour's works, etc.
- Indicate previous employment within the past two years, start and termination dates, wages, hours worked, etc.
- Signed and dated by applicant(s)

A separate application for each adult member (including married couples) of the household is required. The application procedure *must* include an interview with all adult household members to review the application and documents and clarify any discrepancies or missing information.

Exhibit G should be included with your application to aid in the collection of race, ethnicity, disabled residents and women as heads of households. This form will be available on the NHD website under Programs, Low Income Housing Tax Credit Monitoring and Compliance.

This form will satisfy the requirements for all of Nevada Housing Division's Programs that require collection and reporting of this data. For example: HOME funding, National Stabilization Program funding, Low Income Housing Trust Funds and LIHTC funded properties.

Please read the General Instructions attached to the form. For LIHTC properties you must report for each household member not just adults.

The Division prefers a uniform method for collection of this data however, if you are using an alternative method that reflects everything on Exhibit G (including making it a part of your application instead of a separate form) that would be acceptable to the Division.

Note: This form is not to be completed by staff of participating jurisdictions, sub-recipients or property managers. It should be handed to participants/residents and they will complete the form.

***Caution: Project Owners/Management Companies should be aware that standard project management application forms may not collect sufficient information to determine tenant eligibility under the LIHTC Program, which uses special definitions for income, assets, and household composition.***

## **B. Determining Income Limits and Household Size**

HUD annually sets household income limits applicable to the Section 8 rental assistance program. HUD's annual publication includes three income levels adjusted for household size for each Metropolitan Statistical Area (MSA) and/or county: The three income levels are:

- 30 percent of median
- Very Low Income
- Low Income

The applicable household income limits for restricted LIHTC units are based on the Project Owners Minimum Set-Side election (see Compliance Certification Provisions). The Minimum Set-Aside election establishes whether the 50 percent or 60 percent area median gross income (AMGI) limit applies to the project's Tax Credit units. HUD's *Very Low Income* amounts equal the *50 percent AMGI* limits. The *60 percent AMGI* limit equals 120 percent of the HUD Very Low Income amount. If set-asides at lower income percentages were in place, these limits would also need to be calculated.

To determine the applicable income limitation for each household, Project Owners must count all of the eligible household members of a household. Members of households generally include all *full-time* residents of a unit. A household can consist of one or more persons. Eligible members of a household do not need to be related. The Division recognizes unborn children and children in the process of being adopted as household members in determining income limits pursuant to HUD guidelines. Tenants claiming unborn children are required to provide a self-certification of pregnancy indicating expected delivery date, NHD Exhibit NV-2g.

On May 14, 2010, HUD released the Multifamily Tax Subsidy Project Income Limits (MTSP) and the HUD Program income limits. The MTSP limits are issued in response to changes in the income limit methodology as required under the Housing and Economic Recovery Act of 2008. The MTSP limits include HERA special limits, which are income limits "held harmless", meaning changes in median income are not reflected in these. Non-impacted limits are income limits that are not held

harmless. The MTSP limits are for use by tax credit and multifamily bond projects only. Nevada Housing Division has posted on its web site the MTSP limits, Section 8 limits and the HERA limits.

The applicable income limit for a tax credit or multifamily bond project is based on the year the building is placed in service and the county in which the building is located. For new construction projects, the placed in service date is generally the date on which construction is completed and a certificate of occupancy is issued; the placed in service date for purposes of applying the income limits for acquisition and rehabilitation projects is the date of the acquisition of the building(s). Buildings within projects may have various placed in service dates so owners should use caution when selecting the income limit(s). The appropriate income limit for a building is based on one of the following three criteria:

1. Buildings placed in service prior to 1/1/2009 apply the HERA Special limit, if the county was assigned a HERA limit, or the higher of the 2009 or 2010 MTSP income limit.
2. Buildings placed in service on or after 1/1/2009, but before the issuance of the MTSP limits by HUD on 5/14/2010, apply the higher of the 2009 or 2010 MTSP income limit.

NOTE: projects placed in service on or after 1/1/2009 cannot use the HERA special limits.

3. Buildings placed in service on or after 5/14/2010 apply the appropriate non-impacted income limit.

NOTE: projects placed in service on or after 1/1/2009 cannot use the HERA special limits.

The industry continues to discuss the application of the HERA limits with the IRS and other parties. IRS Low Income Housing Newsletter #35, available at:

[www.novoco.com/low\\_income\\_housing/resource\\_files/irs\\_rulings/irs\\_newsletter/lihc\\_newsletter\\_35.pdf](http://www.novoco.com/low_income_housing/resource_files/irs_rulings/irs_newsletter/lihc_newsletter_35.pdf), includes a discussion regarding when income limits are determined for a tax credit building.

Projects placed in service after 1/1/2009 may use the higher of the non-impacted income limit in effect at the placed in service date or the latest non-impacted income limit. Once an income limit is established at the placed in service date, an owner is not required to decrease the income limit if the non-impacted limit in any subsequent year decreases. Project rents are also calculated based on the higher of the non-impacted income limit in effect at the placed in service date or the latest non-impacted income limit. An owner should still follow the guidance established in IRS Revenue Procedure 94-57, which describes the process for electing a gross rent floor. Revenue Procedure 94-57 is available on the Novogradac website at:

[http://www.novoco.com/low\\_income\\_housing/lihc/compliance.php](http://www.novoco.com/low_income_housing/lihc/compliance.php).

Owners seeking additional guidance regarding the appropriate income and rent limits and gross rent floor may wish to refer to the Novogradac & Company's "Rent and Income Limit Calculator" located at: <http://www.novoco.com/products/rentincome.php>. This is a useful tool and available at no cost to you.

Projects constructed/rehabilitated using HOME or Nevada Housing Division Trust Funds, but not tax credits or multifamily bonds, must use the HOME income and rent limits to be posted on the NHD website. Tax credit projects with either HOME or NHDTF must apply the most restrictive income and rent limits. Please be aware that different income limits may apply for units with Section 8 vouchers. HOME designated units will not apply the “held harmless” rule for income but may apply the “held harmless” rule to rents. Therefore, the rents in HOME units will not decrease even if the income limits do.

The HERA income limits cannot be used by projects financed with HUD programs such as Section 8, or by Rural Development 515 projects.

**Temporarily Absent Household Members.** Temporarily absent household members who *would otherwise* be included in the household size can be counted for the purpose of determining income limits. Temporarily absent members include:

- Children temporarily absent due to placement in a foster home
- Children away at school, but who live with the family during school recesses
- A person confined to a hospital or nursing home per family decision
- A son or daughter on active military duty *only* if this person leaves dependents or a spouse in the unit.

**Persons Not Included As Household Members.** Certain individuals are not considered members of the household for the purpose of determining household income limits on restricted LIHTC units. For the purpose of determining household income limits, Project Owners should not count the following individuals:

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

While a relative may be considered to be a live-in aide/attendant, they must meet the above requirements, especially the last. The live-in aide qualifies for occupancy only as long as 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. Owners are encouraged to use a HUD-approved lease addendum that denies occupancy of the unit to a live-in aide after the tenant, for whatever reason, is no longer living in the unit. The lease addendum should also give the owner the right to evict a live-in aide who violates any of the house rules. Third party verification of the need for a live-in aide is required annually. Projects are encouraged to utilize the NHD Exhibit NV-4 (Live-in Aide Verification Form). Be advised, the Division reserves the right to require NV-4 when the live-in aide verification does not disclose adequate information.

- Visitors or Guests

## C. Determining Annual Income

Under IRS rules, tenant income must be calculated in a manner consistent with the determination of *gross annual income* under Section 8 of the United States Housing Act of 1937 (“Section 8”). HUD Handbook 4350.3 should be used to determine what to include or exclude in calculating annual gross household income. ***Caution: The definition of gross annual income under HUD program rules is not the same as the definition on federal tax returns. IRS tax rules are different from HUD program rules.***

*Under the LIHTC Program, total annual income is **gross annual income** not “adjusted” annual income.* Allowances, such as childcare allowance and medical expense allowance, are not deducted from the household’s annual gross income to determine income eligibility for LIHTC units.

The HUD Occupancy Handbook defines *gross annual income* as:

*“Annual income is the anticipated total income from all sources received by the family head and spouse (even if temporarily absent) and by each additional member of the family, including all net income derived from assets for the 12-month period following the effective date of certification of income, exclusive of certain types of income.”*

**Annual Income = Gross Earned/Unearned Income + Net Income From Assets**

### Annual Income under LIHTC Program

Annual Income includes, but is not limited to:

- The full amount, before any payroll deductions of wages and salaries, overtime pay, commissions, fees, tips and bonuses, anticipated pay increases, and other compensation for personal services
- The net income from the operation of a business or profession
- Interest, dividends, and other net income of any kind from real or personal property
- The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, or other similar types of periodic receipts
- Payments in lieu of earnings, such as unemployment and disability compensation, worker’s compensation, and severance pay
- Welfare assistance
- Periodic allowances, such as alimony and child support payments, and regular contributions or gifts from organizations or persons not dwelling in the unit
- Any regular pay, special pay, and allowance of a member of the Armed Forces.

## D. Procedure For Verification Of Income

All anticipated sources of income and assets must be verified directly from a third party. The Project Owner/Management Company must receive verifications prior to the execution of the TIC and lease. Verifications are required to include, at a minimum:

- 1) The anticipated **earned** income of every prospective household member 18 years of age or older including foster adults
- 2) **Unearned** income, assets, and asset income of all household members, including minors and foster children/foster adults

### (1) Effective Term of Verification

Third-party income verifications are valid for 120 days following receipt. After this time period, new income verifications must be obtained. The TIC must be executed within 120 days of the date on the income verification.

### (2) Verification Methods

The Division's standard for verifying tenant income is to obtain third-party verifications. NHD Form – Employment Verification Exhibit NV-2 must be used to verify employment income. *An authorized representative of the employer must complete the verification of income.* Income verification requests to employers must be accompanied by an authorization to release information and must be signed by the applicant/tenant. Project Owners must send the Verification of Employment and Wages form directly to the source and the source must return it directly to the Project Owner/Management Company by mail or FAX.

***Caution: If faxed, the fax banner must include the date, company name, and fax number of the verification source and/or the source should provide a fax cover sheet indicating the date, company name, and fax number. However, if the fax header information cannot be obtained, NHD Form – Fax Header Clarification Form Exhibit NV-2a must be used only as a last resort. On-site Managers must verbally verify the reason the fax header does not supply sufficient information. The content of the conversation, name of contact, date, and signature of the authorized representative accepting the information, must be documented as indicated on the Fax Header Clarification Form.***

The Verification of Employment and Wages form must be *fully* completed, signed and dated by the third party. All sections must be answered and be conclusive. Incomplete forms are not acceptable **(no blanks, varies, slashes)**. **MANAGEMENT MUST NOT WRITE ON THE INCOME SECTION OF THE VERIFICATION FORM.**

The Nevada Housing Division suspended the mandatory five percent income increase when employers do not answer the question on the VOE regarding raises, increases etc. as of September 3, 2010. However, it may be reinstated with written notice, when the Division deems it necessary.

LIHTC properties should reference the new revised HUD guidelines 4350.3. The Division recommends computing annual income using all possible methods to determine actual income. Once these calculations have been completed, the calculation resulting in the highest anticipated income must be used. Additionally, an adding machine tape detailing the calculation must be attached to each verification of income.

Verbal clarification of income verifications are *not* encouraged and should only be used in very limited circumstances. All verbal clarifications must be documented on a separate phone log reflecting content of conversation, name of contact, contact information (phone number) and date and initials of authorized representative accepting the information. The Division has the right to interview any person that was used for verbal clarification to verify the person's identity and to verify that person's ability to substantiate the income determined on the certification.

### **(3) Limited Use of Alternate Methods of Verification**

Although written verification is always required, alternative methods may be necessary when it is not possible to obtain a written Verification of Employment and Wages form from a third-party employer or when the written verification is incomplete. In these cases, the tenant file must reflect the attempts made to obtain third-party verification. The following alternate forms of verification may be acceptable:

- Four to Six current, consecutive pay stubs (see Paragraph 5-13.C.1.b from the HUD 4350.3 manual) or earnings statements reflecting the employee's gross pay per pay period, gross pay year to date, hire date and frequency of pay; or
- A statement from the employer on company letterhead reflecting all information as required on the Verification of Employment and Wages form.

### **(4) Differences in Reported Income**

Significant differences between the income/asset amounts reported on the application and amounts reported from third-party verifications must be explained by the applicant/tenant and documented in the tenant file.

### **(5) Income Verification Transmittal**

Income verification requests may be mailed or faxed directly to and from the source. **Income verifications must not be sent through the applicant. *Caution: If faxed, the fax banner must include the date, company name, and fax number of the verification source and/or the source should provide a fax cover sheet indicating the date, company name, and fax number.*** *If the fax header information cannot be obtained, NHD Form – Fax Header Clarification Form Exhibit NV-2a must be used **only as a last resort.** On-site Managers must verbally verify the reason the fax header does not supply sufficient information. The content of the conversation, name of contact, date, and signature of the authorized representative accepting the information, must be documented as indicated on the Fax Header Clarification Form.*



## **(6) Verification For Unemployed/Non-employed Persons**

All unemployed/non-employed persons age 18 and over (including emancipated minors ages 16 through 18) are required to complete NHD Form - Unemployed/Non-Employed Applicants Affidavit form Exhibit NV-2d.

Unemployed persons are temporarily out of the workforce and expect to return to work. They must report the amount of unemployment income on the Affidavit form.

Non-employed persons are permanently out of the workforce.

Caution: All tenant files must contain either Verification of Employment Form or an Unemployed/Non-Employed Applicants Affidavit form for all members of the household age 18 and over and emancipated minors.

## **(7) Zero Income Certification**

Each adult applicant/resident claiming zero income is required to complete NHD Form Certification of Zero Income Exhibit NV-2e initially and at each re-certification.

## **(8) Verification of Income for Section 8 Tenants**

The Project Owner will not be required to obtain employer or other documentation to verify the income of tenants receiving Section 8 rental assistance *if* the HUD Contract Administrator (e.g., Public Housing Authority) provides a statement or a copy of Public Housing Authority form 50058 or 50059 that confirms that the tenant's gross income (*not adjusted gross income*) does not exceed the applicable income limit under Section 42(g) of the Code.

***Caution: Proof of Tax Credit eligibility must be on file for all Section 8 tenants. Section 8 eligibility does not guarantee Tax Credit eligibility. Student requirements will never be identified or verified by the local PHA. Proof of income eligibility and Tax Credit eligibility is the responsibility of the Project Owner.***

## **E. Verification of Other Income**

### **(1) Self-employment Income**

Applicants with income from self-employment must provide sufficient documentation to verify income as follows:

- a) Complete either the NHD Form Verification of Income for Self-employed Persons Exhibit NV-2c for an existing business or Exhibit NV-2c.1 for new business; and
- b) Provide copies of federal income tax returns (IRS Form 1040 Schedule C for Business Income) for the preceding calendar year; and
- c) Provide a current profit-and-loss statement.

**Applicants whose income cannot be adequately documented are not qualified.**

## (2) Tip Income

Anticipated Tip Income must be included in annual income. Project Owners should specifically examine anticipated Tip Income whenever the profession of the applicant makes tips likely. Project Owners **cannot** ignore Tip Income because an employer does not quantify tips or include them on the Verification of Employment and Wages form.

If an employer does not list tips, verification of anticipated Tip Income must be obtained from alternative methods. Acceptable alternative methods include:

- a) Four to six current, consecutive paycheck stubs reflecting tip income and verification of hire date; or
- b) Complete NHD Form - Certification of Tip Income Exhibit NV-2b statement from the applicant indicating the anticipated amount for the following year. **Caution: *The Certification of Tip Income form must ONLY be used as a last resort. Using the Certification of Tip Income form means that tip income could not be verified using the Employment Verification form, Exhibit NV-2 and/or 4 – 6 paycheck stubs. The tenant file must document all attempts to verify Tip Income from third party sources.***

## (3) Social Security, Pensions, Supplemental Security Income, and Disability Income

Supplemental income such as Social Security, veteran's benefits, insurance policies, annuities, pension funds and other periodic benefits must be verified by a third-party. A Yearly Benefit letter from the respective institution providing the income is acceptable so long as it is current. **Bank statements are not acceptable forms of verification.** Anticipated cost of living increases must be included if the year end amount of increase has been released. Pension income verifications that are not subject to change can be copied forward at re-certification so long as the verification specifically states that the amount will **never** change.

## (4) Recurring Contributions and Gifts

Verification of recurring contributions and gifts requires:

- a) A statement or affidavit by the person providing assistance, certifying the purpose, dates, and value of gifts with appropriate identification attached (a copy of a DL or other form of id or a notarized signature); or
- b) A verification letter from a bank, attorney, or trustee administering contributions; or
- c) Copies of the latest four to six consecutive benefit checks.

**Note: At move in, a self-affidavit from the applicant/resident is not acceptable.**

## (5) Alimony or Child Support Payments

In the event alimony and/or child support is being received or is anticipated in the next twelve months, the applicant must complete NHD Form - Child Support/Alimony Affidavit Exhibit NV-2f and provide either:

- a) A copy of separation or settlement agreement, or divorce decree stating the amount and schedule of support payment; or
- b) A letter from the person paying support with appropriate identification attached (a copy of a DL or other form of id or a notarized signature); or
- c) Verification form completed by the local Court; or
- d) A copy of Court record payments to applicant; or
- e) A letter from the applicant's attorney; or

- f) A copy of the latest support check so long as documentation of how often the check is received is attached.

### **(6) Foster Children and Adults**

Payments received by the family for the care of foster children or foster adults made through the official foster care relationships with local welfare agencies *is not counted*. For foster children, the rules are the same as for a dependent child less than 18 years of age: all types of income except employment income are included in household income. For foster adults, all income is included in the household's income.

### **(7) Scholarships, Grants, and Veteran's Administration Benefits**

All forms of student financial assistance such as grants, scholarships, educational entitlements, work study programs, financial aid packages, etc., are excluded from income (except students receiving Section 8 assistance). This is true whether the assistance is paid to the student or directly to the educational institution. Assistance paid directly to the student must be third party verified to prove source of funds.

For students receiving Section 8 assistance, all financial assistance a student receives, (1) under the Higher Education Act of 1965, (2) from private sources, or (3) from an institution of higher education that is in excess of amounts received for tuition is included in annual income except if the student is over the age of 23 with dependent children or the student is living with his or her parents who are receiving Section 8 assistance.

### **The Veterans Retraining Assistance Program**

The “VOW to Hire Heroes Act of 2011” created the Veterans Retraining Assistance Program which provides 12 months of financial assistance and tuition for veterans that qualify. They must attend either a Community College or Vocational/Trade school, it must be full-time and the program must lead to an Associate’s Degree or Certificate.

Veterans participating in this program are considered eligible for our properties under exception 2 d) on the Student Status Certification form (NV-3).

The income they receive including the living assistance is also exempt when calculating their household annual income.

You must obtain third party verification that they are enrolled in this program in order for them to qualify for this exception.

For more information on is program you can find it at:  
<http://www.benefits.va.gov/VOW/>

### **(8) Verification of Income for Students**

Only the first \$480 of annual earned income is counted for persons who are full-time students over 18 years of age and who are not the head, spouse, or co-head of the household. To claim this limitation, the educational institution must verify the full-time student status of the household member.

## **(9) Unemployment Compensation**

Verification of unemployment compensation requires:

- a) Complete NHD Form - Unemployed/Non-Employed Applicants Affidavit form Exhibit NV-2d.
- b) Verification form completed by the unemployment compensation agency; or
- c) The maximum benefit amount as stated on the “Notice of Monetary Determination”, issued by the unemployment compensation agency; or
- d) Records from the unemployment office stating payment dates and amounts.

Unemployment benefits must be annualized regardless of remaining benefits.

## **F. Verification of Assets**

The net income from assets must be considered when determining the Tax Credit eligibility of a household. Asset information for all household members (including minors) must be obtained at the time of application. Assets must be verified for the initial certification of the household and for re-certification.

Information regarding what net family assets to include/exclude is provided in HUD Occupancy Handbook 4350.3. Typical household assets include but not limited to:

- Checking and savings accounts
- Certificates of Deposits (CDs), Treasury Bills, and Savings Bonds
- Investment and Retirement Accounts
- Trust Funds
- Real Estate
- Cash on Hand
- Direct Debit Express/EBT Cards

**NOTE: The balance on the Direct Debit Express/EBT Card is: a) considered an asset;  
b) to be verified consistent with existing *savings* account verification requirements.  
The balance can be obtained from: An ATM receipt, through the online account service or paper statements**

### **(1) Assets Under \$5,000**

If net family assets are under \$5,000 under IRS rules, Project Owners may use the sworn statement for assets referenced under IRS Revenue Procedure 94-65. The Division will accept a signed NHD Form - Tenant Income Certification Addendum Exhibit NV-1a from the tenant under this procedure provided the statement discloses the amount of net family assets and the annual income received from such assets. ***Caution: If utilizing the procedure 94-65, please be aware that the income from the asset must always be identified and included as income on the certification.***

### **(2) Assets \$5,000 and Over**

If net family assets total \$5,000 or more\*, written verification from the source, disclosing the assets value and/or annual income is required. The asset income to be included in household annual income will be the greater of: (1) the actual asset income or (2) an imputed income from assets,

which is the net family assets multiplied by the passbook rate specified by HUD.

\* *Units designated as HOME units must verify **all** assets by 3<sup>rd</sup> party.*

**The Project Owner must verify the cash value for all assets and asset income by obtaining third-party documentation as specified by HUD and NHD verification procedures.**

To determine the cash value on an asset, the Project Owner/Management Company must determine the market value minus reasonable costs that may be incurred in selling or converting the asset to cash. Typical costs include broker fees, settlement costs, and penalties for early withdrawal.

### **(3) Annuities**

HUD has clarified how annuity payments should be treated. Withdrawals from retirement accounts that are not periodic payments are not counted in annual income. IRA, Keogh and similar retirement savings are counted as assets, even though withdrawal would result in a penalty, unless benefits are being received through periodic payments. See HUD 4350.3 paragraph 5-7.G.4.b.

Therefore, IRA, Keogh and similar retirement savings accounts are not considered assets if the person is receiving periodic payments.

### **(4) Real Estate**

#### **1. Normal Sale of Real Estate**

Under Section 42, all assets that are disposed of must be accounted for and counted as an asset for two years after their disposal. To determine the asset value of real estate that has been sold at market value- management must calculate both the actual cash value of the property and if the value is over \$5000, the imputed value of the property, and take the higher of the two amounts.

To do this, take the value of the property, subtract the costs of any outstanding mortgages, and subtract the closing costs for the property. The interest on the cash amount received for a home would be zero, unless the proceeds were put into an interest bearing account like a savings or CD.

For example: John Doe just sold his house and is moving into a tax credit property. The House sold for \$200,000. John Doe owed \$100,000 on his mortgage. Closing costs for the property was \$22,500. All of the proceeds for the sale of the home are currently in a CD earning 3.0% interest. The values of the property are:

$\$200,000 - \$100,000 - \$22,500 = \$77,500$

Cash Value:  $\$77,500 \times 3.0\% = \$2325$  would be added to the TIC as an asset.

Imputed Value:  $\$77,500 \times .06\% = \$46.50$

## **2. Real Estate retained as a Rental Property**

For real estate that is used as a rental property, two calculations must be completed and compared. The first calculation is the same as the normal sale of real estate, shown above. The second calculation is the amount of monthly income from the rent, subtracting any mortgage, insurance and maintenance amounts. The final income amount that needs to be listed on the TIC is the higher of the two.

## **3. Foreclosure**

A foreclosure is to be treated as a zero asset, as the tenant will not be receiving any monies from the foreclosure. However, until the final foreclosure documents are provided, the house is resold at auction, or the title transfers ownership to an outside party, a tenant has the option to pay off the remaining balance and re-claim the house. NHD will require copies of the final foreclosure documents to be in the tenant file.

\*\*\*Notices of Foreclosure will not be accepted as valid documentation.

## **4. Short Sale**

A short sale is also to be treated as a zero asset, as the tenant does not generally receive any monies from the short sale. However, if there is a difference in the sale in favor of the tenant it must be 3<sup>rd</sup> party verified if it is over \$5000. The documentation that is required in the file is:

- 1099-C showing the amount and the final debt forgiveness

Or

If the tenant has not received the 1099-C, the following information needs to be 3<sup>rd</sup> party verified and in the file:

- Market Value (as determined by the bank and the tenant agreeing to a transaction)
- Minus, Costs of the Transaction (commission, closing costs, etc.)
- Minus, Loan Balance owed on Property
- Equals, Equity / Cash Proceeds from the Transaction

## **5. Reverse Mortgages**

Income from a reverse mortgage is not counted as “income” for determination of income eligibility to an applicant of a tax credit unit. The income from a reverse mortgage is comparable to that of a loan that has to be paid back. However, the house is still considered an asset. To determine the value of the house, subtract the principal balance due on the reverse mortgage from the home’s market value to determine its cash value.

**Note: A disposition of Real Estate signed and dated by the applicant/resident explaining what they plan on doing with the house while it’s in foreclosure, short sale, etc. should be included in the file.**

## **(5) Disposition of Assets**

At each certification and annual certification, applicants and tenants must declare whether or not an asset has been disposed of for less than fair market value during the two years preceding either the date of application or the effective date of the re-certification.

## **G. Tenant Income Certification**

Once all the income and asset information has been obtained, the Project Owner/Management Company must determine whether the applicant meets the income limitations applicable to the restricted unit. If the total 12-month projected household income is less than or equal to the maximum allowable qualifying income in effect at the time of tenant certification, the household is income-eligible for a Tax Credit unit. If the total household income exceeds the maximum allowable qualifying income, the household cannot be certified eligible for a Tax Credit unit.

When the Project Owner/Management Company determines that all requirements for eligibility are met, the Project Owner/Management Company must complete NHD Forms - Tenant Income Certification and Addendum Exhibit NV-1 and NV-1a. Instructions for completing Exhibits NV-1 and NV-1a are available on the Divisions Website as Exhibit NV-1b.

<http://www.nvhousing.state.nv.us>

The Tenant Income Certification and Addendum are documents that, when fully executed, qualify the applicants to live in the LIHTC units in the project.

The following guidelines must be followed in completing the required Tenant Certification Form:

- Tenant Income Certification and lease must be executed within 120 days of receipt of all income verifications. See section D (1) regarding effective term of verifications.
- Tenant Income Certification must be executed on the day of the move-in and in no event after the execution of the lease.
- Tenant Income Certification and lease must be signed by all occupants age 18 and older, including emancipated minors age 16 through 18, exactly as their name appears on the form.

## **H. Tenant Lease Agreement**

All tenants occupying Tax Credit units must be certified and under lease no later than the date the tenant takes possession of the unit. For the Tax Credit unit to be in compliance, the *lease must be signed by at least one adult to the agreement by the beginning lease term date.*

The Division does not specify a model dwelling lease to be used by Project Owners; however, some leasing guidelines are listed below.

The lease must include, but is not limited to:

- The legal name of all parties to the agreement and all additional occupants
- Identification of the unit to be rented (number, street address, etc.)
- The date the lease becomes effective and term of the lease
- The amount for rent (no greater than the maximum allowable rent for qualified LIHTC units less any utility allowance)
- Any changes in family composition made during the term of the lease must be explained in an addendum or statement and signed by all adult parties
- Disclosure of the rights and obligations of the parties under the LIHTC Program, including the obligation of the tenant to re-certify income annually
- Signature by head of household and spouse or co-head.

The initial lease term must be at least 6 months on all Tax Credit Units, except for transitional housing, which may have a 30-day lease or transitional housing for the homeless, which provides “temporary housing” and has no lease requirement. Succeeding leases are not subject to a minimum lease term.

Additionally, the lease must not contain any clauses that are not in accordance with State laws/regulations or clauses that would allow voluntary termination by the tenant prior to the six-month Tax Credit requirement.

The beginning term of the lease and effective date of the Tenant Income Certification must be concurrent. The lease should be signed on the day of the move-in and in no event after the execution of the Tenant Income Certification.

## **I. Re-certification**

Effective July 30, 2008 under H.R. 3221, the Project Sponsor of a 100% low income project is exempt from the annual income recertification requirements under IRS regulations 1.42-5(b)(1)(vi) and (vii) and 1.42-5(c)(1)(iii). However, Project Sponsors of 100% low income properties are still required by Nevada Housing Division (NHD) to perform a complete income re-certification upon the first anniversary of tenancy but need not be recertified thereafter.

Residents must continue to be income qualified upon initial residency and property files will still need to contain thorough third-party verification of income upon initial occupancy. and the first anniversary recertification. After year two of tenancy Project sponsors are not required to:

- a) Keep records that show a full annual income re-certification for low-income tenants in the building who have previously had their initial and first-anniversary annual income verified, documented, and certified;
- b) Maintain third-party documentation to support that re-certification; or
- c) Certify to the Division that it has received this information.

In lieu of re-certification after year two of tenancy, Project Sponsors must ensure that each qualifying tenant annually complete the NHD Form - Alternate Certification (EXHIBIT NV-1c) or other designated form prescribed by the NHD. This form is available on NHD's web site at [www.nvhousing.state.nv.us](http://www.nvhousing.state.nv.us). The Alternate Certification must be dated and signed by the tenants(s)



and the Project Sponsor's on-site representative, and the Project Sponsor must maintain a current Alternate Certification in each tenant file. The Division will review this documentation during the annual compliance reviews.

Projects that have less than 100% low income units must still perform a complete annual income recertification.

NHD regulations concerning tenant annual income recertification may be updated from time to time with at least 15 days notice from NHD to comply with regulations or facilitate the reporting of data. Additionally, NHD reserves the right to require annual tenant income recertification at properties where gross negligence or non-compliance has been found.

Relaxation of tax credit annual tenant income recertification does not supersede requirement for income recertification under other federal programs such as HOME.

In addition, projects that currently have the recertification waiver are required to comply with the new procedures effective with new move ins as of July 30, 2008.

### **(1) Recertification Process For First Anniversary And Non 100% LIHTC Projects:**

- Notify the resident in writing approximately 60 to 120 days prior to the anniversary of the effective date of the resident's most recent Tenant Income Certification date. Inform residents that the re-certification is due and schedule an appointment for an interview
- Interview residents to obtain current information regarding anticipated income, assets, and family composition for the ensuing certification year, and have the tenants sign the verification form giving permission for release of the information requested
- Verify the household income
- Complete the Tenant Income Certification for the household
- All tenants age 18 and over must sign the Tenant Income Certification (including emancipated minors ages 16 through 18)
- The Project Owner/Management Company must sign and date the project certification section as required.

### **Post Initial Certification:**

In lieu of re-certification after move in, Project Owners of 100% LIHTC properties must ensure that each qualifying household annually complete the NHD Form – Alternate Certification (EXHIBIT NV-1c). This form is available on the Division's Website at [www.nvhousing.state.nv.us](http://www.nvhousing.state.nv.us) under the Low Income Housing Tax Credit Compliance tab and may be updated from time to time.

The Alternate Certification must be completed in its entirety, including student status and be signed and dated by all adult household members and the Project Owner's on-site representative.

The Project Owner must maintain a current Alternate Certification in each household file. The Division will review this documentation during the annual compliance reviews and may request annual reports from the Project Owner based upon the information collected.

While the Alternate Certification, NV-1-C, does not determine income eligibility, it allows the Division to continue monitoring for the 140 percent rule, student status, maximum rent violations, and household composition changes.

Be advised, the Division reserves the right to revoke the exemption of recertification at any time if excessive noncompliance is found.

Under IRS rules the Division must continue to require that a Project Owner satisfy the requirements in § 1.42–5(b) (1) (vi) and (vii) and § 1.42–5(c) (1) (iii) upon a tenant’s initial occupancy of any residential rental unit in the building. The re-certification exemption **will not** prevent a Project Owner from having to produce documentation to verify compliance with § 42. The Project Owner must keep records and documentation that show the income of tenants upon initial occupancy of any residential unit in the building.

In addition, the re-certification exemption *will not* prevent a Project Owner from having to satisfy the Division’s requirements and procedure for monitoring project records and buildings/units for compliance with applicable physical inspection standards.

Any project using the alternate re-certification of tenant incomes *must* continue to undergo annual reviews of tenant and project records and physical inspections as specified in Chapter 5 of this Manual.

## **J. Changes to Income or Household Size**

### **(1) Changes to Income**

The re-certification process permits a household that qualified initially to make up to 140 percent of the new maximum allowable income for the current family size. Moreover, for Projects that are 100 percent Tax Credit Units, the 140 percent rule does not apply as long as all units in the building remain in compliance. Tenants making more than 140 percent may still qualify as tenants without loss of credits.

For mixed-use Projects, if the household income exceeds 140 percent of the allowable limit upon re-certification, that unit may remain a qualified Tax Credit unit provided that the next available market rate unit in the building of the same size or smaller is then rented to a Tax Credit qualified household.

### **(2) Changes to Household Size**

The addition of new member(s) to an existing low-income household requires the income certification for the new member(s) of the household, including third party verification. The new tenant’s income is added to the income disclosed on the existing household’s tenant income certification. The household continues to be income-qualified, and the income of the new member(s) is taken into consideration with the income of the existing household for purposes of the Available Unit Rule under IRC § 42(g) (2) (D).

A household may continue to add members as long as at least one member of the original low-income household continues to live in the unit. Once all the original tenants have moved out of the unit, the remaining tenants must be certified as a new income-qualified household unless the remaining tenants were income qualified at the time they moved into the unit.

***Caution: If an applicant knows or anticipates that the stated family size will change (marriage, roommate, etc.) in the following 12 months, the family size and associated incomes must be considered in determining eligibility. If the Division determines that the tenants manipulated the income limitation requirements, then the unit will not be treated as a low-income unit as of the date the household initially occupied the unit.***

Tenant files should be documented when any household member vacates the unit. Subsequent annual income re-certifications will be based on the income of the remaining members of the household. If the remaining household's income is more than 140 % then the Available Unit Rule is applicable.

## K. Student Status

IRC § 151 (c)(4) A full-time student is a person who is carrying a subject load considered full-time at an educational institution (for a minimum of five months per year), or will be a full-time student at an educational organization described in IRC § 170(b)(1)(A)(ii), within the next twelve (12) months. Treasury Reg. § 1.151-3(b) further provides that the 5 calendar months need not be consecutive.

The term "school" includes elementary schools, junior and senior high schools, Home School, colleges, universities, and technical, trade and mechanical schools. It does not include on-the-job training courses, and correspondence schools. ***Caution: Full-time attendance at a school can include some attendance at night as part of a full-time course of study.***

Under IRS rules, a household comprised entirely of *full-time* students is not eligible under the LIHTC Program unless the household meets one of the five exceptions provided under IRC Section 42(i)(3)(D). *Full-time* student households may be eligible if:

- One or more members of the household receive assistance under Title IV of the Social Security Act, or
- One or more members of the household are enrolled in a job training program receiving assistance under the Job Training Partnership Act (superseded by the Work Force Investment Act) or other similar federal, state, or local laws, or
- The students in the household are married and file a joint tax return, **IRS Revenue Ruling 2013-17 states that the IRS now recognizes individuals married to a person of the same sex if they were lawfully married under state law.** Furthermore, if same-sex couples validly entered into marriage in a state whose laws authorize same-sex marriage then the IRS will recognize the marriage even if the couple is residing in another state whose laws do not authorize it. **For LIHTC, this means that if there is a same sex couple who are both full-time students then they can now qualify for the exception to full-time student eligibility which applies to all household members being married and entitled to file joint tax returns.**
- The student(s) are single parents and their children are not dependents of another person other than a parent of such children.

- Previously part of a foster care program.

For purposes of clarification and qualifying, households containing students that live in or are applying to Tax Credit Projects, the following guidelines also apply:

- The Temporary Assistance for Needy Families (TANF) program meets the exception for assistance under Title IV of the Social Security Act for the purpose of determining tenant eligibility
- Full-time programs receiving funding under the Workforce Investment Act (WIA) meet the exception for job-training programs receiving assistance under federal, state, or local laws for the purpose of determining tenant eligibility
- A household of full time students and at least one child who is not a full time student, is considered an eligible household under the LIHTC project
- A household of full-time students and at least one part-time student is considered an eligible household under the LIHTC project.

Unless the *full-time* student household meets one or more of the conditions and exceptions referenced in this section, the household is not eligible under the LIHTC Program. Furthermore, since all monitoring of student status must be on a tax-year basis, an applicant that had been a full-time student for 5 months of the tax year would not be eligible until the next tax year, even if he or she had graduated prior to applying for an LIHTC unit.

The NHD form - Student Status Certification Exhibit NV-3 must be executed when the household is comprised entirely of students. Project Owners/Management Companies must **re-verify tenant student status on a quarterly basis and at annual certifications** to confirm continuing eligibility of the household. Failure to verify/re-verify student status will result in noncompliance.

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# Chapter 8 - Determining Unit Rents

This chapter reviews the rent restrictions for the LIHTC program. All LIHTC units are subject to a maximum gross rent limitation in which the maximum gross rent may not exceed 30 percent of the applicable qualifying income limit.

## A. Calculation of Maximum Gross Rent

Gross rent equals the tenant portion of rent plus the cost of tenant-paid utilities, except telephone and cable. Whenever utility costs are paid directly by the tenant, gross rent must include an allowance for utilities. If qualified tenants are charged more than the allowable rent, the unit is in noncompliance, and recapture of credits may result. The maximum gross monthly rent is calculated by the formula below.

$$\begin{array}{l} \text{Maximum Monthly} \\ \text{Gross Rent} \\ \text{(Including Utilities)} \end{array} = \frac{\text{Applicable Annual Income Limit} \\ \text{(Adjusted for Family Size)}}{\text{Divided by 12}} \quad \text{Multiplied by 30 percent}$$

### (1) Rent Calculations for 1987-89 LIHTC Projects

For projects with 1987, 1988, or 1989 Tax Credit allocations, the unit rent is calculated using the income limit for the *actual number of people in the household*. Therefore, the maximum rent can increase or decrease based on respective changes in the household composition. \*

### (2) Rent Calculations for 1990 and beyond LIHTC Projects

For 1990 and later allocations, rent is based on unit size, not the number of people in the household. *The rent formula uses an imputed family size of 1.5 persons per bedroom* to determine the applicable income limit upon which to base rent calculations. For efficiency or studio units, which do not have separate bedrooms, the 1-person income limit is used.

Maximum Gross Rent Calculations (Based on 2004 Income Limits)					
Location	Unit Size	Household Size	Applicable Annual Income Limit	Monthly Limit (Divide by 12)	Maximum Gross Rent (Multiply by 30 percent)
Household Size Formula Used For 1987-1989 LIHTC Projects *					
Washoe County	2 Bedroom	4	\$31,600	\$2,633.33	\$790
Bedroom Size Formula Used For 1990 – LIHTC Projects					
Washoe County	2 Bedroom	4 (Imputed=3)	\$28,450	\$2,370.83	\$711.25 (Round Down \$711)

**\* Option to Convert to Bedroom Size Formula for Pre-1990 LIHTC Projects:** Project Owners of pre-1990 projects were given an option to convert to the bedroom size rent formula. If election to the bedroom size formula was made, it could only apply to new move-ins following the date of election.

## B. Tiered Rent Levels

Developers will often elect to have more than one rent level in a project. Refer to the Declaration of Restrictive Covenants which details additional rent restrictions that are required throughout the entire compliance period.

Additionally, a waiting list should be established for existing residents who qualify for a lower rent level. Eligible residents should be given first opportunity to change to a lower rent level when it becomes available.

## C. Rent Subsidies

Gross rent does not include any housing assistance payments made to a Project Owner to subsidize a tenant's rent, such as from Section 8 or any comparable federal or state rental assistance program to a unit or its occupants. Only the actual rent paid by the tenant, including tenant-paid utilities, is counted toward the maximum gross rent allowable.

*Example: if the LIHTC maximum gross rent was \$350 and total tenant payment was \$250 with Rental Assistance paying an additional \$150 subsidy to reach the Basic or Contract Rent of \$400, there is no problem. The rent meets Tax Credit guidelines because the total tenant payment inclusive of utilities does not exceed \$350.*

### (1) Section 8 Rent Limitations

The HUD Section 8 program protects subsidized tenants from ever paying more than 30 percent of their adjusted gross income for rent. For this reason, in 1989 the IRS ruled that if the tenant portion of rent increases, thereby reducing the Section 8 subsidy, the higher rent may be charged as long as the tenant pays no more than the maximum allowable Tax Credit rent less allowable utility allowance.

### (2) Rural Development Overage

In USDA Rural Development 515 projects, overage rents may result when 30 percent of the tenant income minus the utility allowance exceeds the RD program's Basic Rent. If this overage rent exceeds the maximum LIHTC rent, then the overage cannot always be charged. For 1991 and later-year projects, the overage can be charged for amounts that are turned over to Rural Development. In 1987-1990 projects, the overage cannot be charged to the tenant since this provision is not retroactive.

### (3) HOME Program Rent Limitations

The HOME program has more restrictive rent requirements. The subsidy plus the tenant's portion of rent cannot exceed the tax credit rent or the maximum allowable HOME rent. Low HOME rent units are subject to Low HOME rents and tax credit limits, and High HOME rent units are subject to High HOME rents and tax credit limits. If a unit is being counted under both programs, the stricter rent limit applies. ***Caution: It will be necessary to have access to the current rent limits for both programs in order to make a determination of the correct rents to use.***

When tenants receive additional subsidy through rental assistance programs such as Section 8 or U.S.D.A., the rents of a unit may be raised to the rental assistance program limit only if the following HOME requirements are met:

- The tenant is paying no more than 30 percent of their adjusted income
- The subsidy is project-based (affects the entire project, not just a single unit)
- The tenant's income is less than 50 percent of the area median income.

***Caution: The Tax Credit rule of allowing the tenant's rent to be raised to the higher Section 8 rent limit as long as the tenant pays no more than 30 percent of their adjusted monthly income for housing does not apply when a unit is combined with HOME funds. Unless the subsidy is project-based (not tenant-based), the total HOME rent is the maximum amount from all sources that the Project Owner may receive for HOME-assisted units.***

## D. Supportive Service/Amenity Charges

Any *mandatory* supportive service or amenity charge must be counted as part of the gross rent for these units. These charges may include parking fees; a telephone, if required to open the door or project gate as part of a security system; housekeeping; trash removal; meal service; or other required costs. ***Caution: Fees may not be charged for any item that is part of the eligible basis.***

Charges for *optional* services other than housing do not have to be included in gross rent, but such services must truly be optional.

## E. Utility Allowances

The maximum gross rent includes the amount of tenant-paid utilities inclusive of costs for heat, lights, air conditioning, water, sewer, oil, and gas, where applicable. Utilities do not include telephone or cable television.

Whenever the tenant directly pays utility costs, a *utility allowance* must be used to determine the maximum unit rent that may be charged. The utility allowance must be subtracted from the maximum gross rent to calculate the maximum tenant portion of rent.

IRS regulation 1.42-10 was amended on 7/29/08 providing new options for estimating tenant paid utilities. The options are:

- Utility Company estimate. The utility company providing this information must offer utility services to the building in order for its rates to be used in calculating the allowance.
- State agency estimate (Nevada does not provide a state utility allowance)
- HUD Utility Model Estimate. This option allows an owner to calculate utility allowances using the HUD Utility Schedule Model that can be found on the Low-Income Housing Tax Credit page at HUD User's data set page. This specific Website is <http://www.huduser.org/datasets/lihtc.html>
- Energy Consumption Model Estimate. This option allows building owners to retain the services of a qualified professional to calculate the allowance based on an energy consumption model.

Contact the Division for specific requirements and approval for the above options.

Utility allowances must be calculated as follows:

Type of Rental Property	Appropriate Method For Calculating Utility Allowances
Conventional buildings	Use PHA utility allowances <u>or</u> options provided by amended IRS regulation 1.42-10
Conventional buildings with Section 8 subsidy through certificates or vouchers	Use PHA existing utility allowances for those Section 8 units
HUD regulated buildings	Use HUD approved utility allowances
USDA RD regulated buildings	Use RD approved utility allowances

Utility allowances must be updated at least annually and must be implemented within 90 days of release. ***Caution: Project Owners should realize that any changes in utility allowances have a direct impact on the net chargeable rent to the tenant.***

The Nevada Housing Division, in accordance with the Internal Revenue Service Section 42 Utility Allowance Regulation Update is requiring all property owners by October 1st of every year to initiate the 90-day notification period for the utility allowance that will be implemented on January 1st of the following year.

By October 1st owners must submit to the Division for approval and notify the tenants at all properties the option chosen for each utility, regardless if owners are implementing a new utility allowance or are continuing to use their current utility allowance method. This also includes if owners are using the U.S. Department of Housing and Urban Development Combined Utility Allowance for the county where the property is located.

Owners must clearly indicate the option chosen for each utility and be able to prove that the proper methodology associated with this option was used to arrive at the estimate. If different options were used for different utilities or different options were used from year to year, owners must justify the reason the change was made. If the change resulted in a significantly lowered utility allowance estimates than previously used, the difference must be clarified. The Division will request additional information during the 90-day period if warranted. In addition, the Division requires evidence of the 90-day notice to tenants

Regulations state the cost associated with this entire process, no matter which method is chosen, is the responsibility of the owner.

The Division will file 8823's for each property that fails to follow the above procedure.

The utility allowance will not apply to any Section 8 and or local HOME funded units if not allowed by the local funding jurisdiction/HUD.



## **Chapter 9 - Compliance Training**

This chapter describes the compliance training requirements applicable to the LIHTC Program.

### **A. Project Owner Compliance Orientation Training**

The Division requires Project Owners/Management Companies to certify that they have read the compliance Manual prior to leasing tax credit units.

Additionally, the Division requires Project Owners/Management Companies to undergo on-site compliance orientation training for all new tax credit projects. On-site Compliance Orientation Training must be scheduled 90 days prior to leasing Tax Credit units but no later than the receipt of IRS Form 8609.

The Division will determine the scope of the Compliance Orientation Training based upon the particular needs of the project and staff. In setting the scope of the compliance orientation training the Division will consider:

- a) Experience of the Project Owner/Management Company in administering LIHTC projects;
- b) Previous training completed by the Project Owner/Management Company;
- c) Project complexities;
- d) Requirements included in the Declaration.

Documentation of completion of the Compliance Orientation Training should be maintained and incorporated in project records.

### **B. Compliance On-Line System Training**

The Division will provide training to the Project Owner/Management Company on the use and application of the COL system.

COL Training must be completed prior to leasing Tax Credit units. To the extent possible, the Division will include training on the COL systems as part of the Compliance Orientation Training.

Minimally, at least one Management Company representative and one On-Site Manager per project must attend COL training.

## C. Mandatory Annual Compliance Training

The Division will conduct two comprehensive compliance training sessions annually. One session will be held in Las Vegas and one session will be held in Carson City. The date, time, and location will be posted on the Division's Web site [www.nvhousing.state.nv.us](http://www.nvhousing.state.nv.us). The cost of the training is \$100 (subject to change) per person.

The Division requires that one Management Company representative and one On-Site Manager directly involved in the management of the project attend at least one of the Annual Compliance training sessions provided by the Division.

The purpose of the compliance training session is to provide instructions for the following compliance issues:

- Federal laws determining eligibility for low-income tenants
- Division rules and regulations determining eligibility for low-income tenants
- Specific information necessary for continued LIHTC Program compliance
- Income Limits
- Rent Limits
- Income Verifications
- Annual Income and Assets
- Annual Income Certifications
- Annual Reporting

Each person attending should bring a copy of the Division's most recent LIHTC compliance Manual (including all exhibits and program documents).

## D. Training For New Management Companies

The Division requires all new Management Companies hired by a Project Owner to undergo compliance training no later than 90 days after the date that the new Management Company is hired and/or begins management duties at the project.

**It is the Project Owners responsibility to contact the Division to schedule this training.**

## **E. Specialized Compliance Training**

To the extent feasible, the Division will offer specialized compliance sessions on a variety of complex compliance issues that may require more hands-on training. Specialized compliance training topics may include updates on IRS decision letters, real estate asset valuation, and child support documentation.

Advanced notice of specialized compliance training events will be posted on the Division's Website.

Project Owners/Management Companies may request particular topics for specialized compliance sessions or may request specialized compliance training for a project following significant and repeated noncompliance events.

The cost of specialized compliance training will be \$100 (subject to change) per person.

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## Chapter 10 - Compliance On-Line System

The Certification On-Line (COL) System is the required reporting system utilized by the Division for Occupancy Reports and Annual Owner Certifications.

Training will be provided at *least* annually in both the Northern and Southern Nevada areas. Additional training may be requested by management personnel and will be accommodated when staff time allows.

A copy of the COL Manual has been provided on the Division's Website [www.nvhousing.state.nv.us](http://www.nvhousing.state.nv.us). Please insure that all staff members responsible for working in COL have a copy.

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# Chapter 11 - Division Contacts

The Division routinely provides updated information on the LIHTC program at its Website at: <http://www.nvhousing.state.nv.us>

The Division's LIHTC staff may be contacted directed at the addresses and phone numbers below:

## **Carson City Office**

### **Contacts:**

- Denise Cox, Lead Compliance Audit Investigator, 775-687-2233
- Olen McCloud, Compliance Audit Investigator, 775-687-2234

### **Address:**

Carson City Office  
1830 College Parkway  
Suite 200  
Carson City, Nevada 89706  
775-687-2040  
775-687-4040 (FAX)  
Toll Free: 1-800-227-4960

## **Las Vegas Office**

### **Contacts:**

- Scott Hamlin, State and Federal Programs Manager, 702-486-5947
- Mark Licea, LIHTC Administration Officer, 702-486-5980
- Francine Lebrato, Compliance Audit Investigator, 702-486-5949
- Kristoffer Quiazon, Compliance Audit Investigator, 702-486-5982
- Keith Jaquillard, Compliance Audit Investigator, 702-486-5981

### **Address:**

Las Vegas Office  
3300 West Sahara Avenue  
Suite 300  
Las Vegas, NV 89102  
702-486-7220  
702-486-7227 (FAX)

## Chapter 12 - Division Exhibits & Program Documents

**NHD Exhibits and Program documents are required when applicable and must not be re-typed**

Exhibits A & B	Income and Rent Limits
Exhibit C	Owners Certificate of Continuing Program Compliance
Exhibit C.1	Owners Contact Information Form
Exhibit D	LIHTC Projects with HOME/LIHTF Funds
Exhibit E	Building/Unit Set-up Form
Exhibit E.1	Exempt Unit
Exhibit F	Post 15-year LIHTC Compliance and Monitoring Procedure
UPCS Checklist	Uniform Physical Condition Standards
Income Tax Regulation	
Low Income Housing Tax Credit (LIHTC) Program	
Exhibit NV-1	Tenant Income Certification (TIC)
Exhibit NV-1a	TIC Addendum
Exhibit NV-1b	Instructions for Completing Exhibits NV-1 and NV-1a
Exhibit NV-1c	Alternant Certification
Exhibit NV-2	Employment Verification
Exhibit NV-2a	Fax Header Clarification Record
Exhibit NV-2b	Certification of Tip Income
Exhibit NV-2c	Self-Employment Affidavit – Existing Business
Exhibit NV-2c.1	Self-Employment Affidavit – New Business
Exhibit NV-2d	Unemployed/Non-Employed Applicant Affidavit
Exhibit NV-2e	Certification of Zero Income
Exhibit NV-2f	Affidavit of Alimony/Child Support
Exhibit NV-2g	Self Certification of Unborn Child/Adoption/Custody
Exhibit NV-2h	Recurring Gift Verification
Exhibit NV-2i	Under \$5000 Asset Certification
Exhibit NV-2j	Real Property Asset Worksheet
Exhibit NV-3	Student Status Certification
Exhibit NV-4	Live-in Aide Verification
UPCS	Uniform Physical Condition Standards – New as of 12/1/13
AFHMP	Affirmative Fair Housing Marketing Plan