

LOW INCOME HOUSING TAX CREDIT (LIHTC) PROGRAM COMPLIANCE MANUAL

1. Responsibilities

1.1 The Nevada Housing Division

The Division allocates tax credits for: construction, rehabilitation and acquisition with or without substantial rehabilitation of low income housing units within the State of Nevada. Once a final allocation is awarded to a Project, the Division will:

- A. Conduct two compliance training sessions annually;
- B. Review Quarterly and Annual Credit Compliance Reports;
- C. Examine Tenant Income Certifications; and
- D. Perform annual reviews of tenant files and on-site inspections of the project.

1.2 Project Sponsor

Each project sponsor has chosen to use the LIHTC Program to take advantage of the tax benefits provided. In exchange for these tax credit benefits, certain requirements must be met that will benefit low-income residents. These responsibilities include:

A. Credit Requirements

Project sponsors have or will provide, comprehensive information showing the overall economic feasibility of the project. Prior to the Division issuing a final allocation of tax credit, the project sponsor and his certified public accountant must certify the total project costs. The Division also requires the project sponsor to certify that all of the requirements of the LIHTC Program have been met. Any violation of the requirements of the LIHTC Program may result in the loss or recapture of the tax credits issued to the project sponsor.

B. Proper Administration

The project sponsor is responsible to the Division for insuring that the LIHTC Program is properly administered. The project sponsor must make certain that the on-site management team complies with all appropriate statutes, rules, regulations and policies that govern the project. The project sponsor is responsible to provide a copy of the Declaration of Restrictive Covenants to the management company and make certain that the on-site management receives and utilizes all new revisions and updates to this manual in a timely manner.

C. On-going Administration and Notification

It is the responsibility of the project sponsor to inform the Division of any major changes that are made to the project throughout all phases of construction, rent-up and operation as well as the placed in service date.

1.3 Management Company and On-Site Personnel

The management company and all on-site personnel are 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. It is also important the management company provide information, as needed, to the Division; and submits all of the required reports and documentation in a timely manner.

If the management company determines the project is not in compliance with the LIHTC Program requirements, the Division must be notified immediately.

2. Federal Laws

Provisions of NAC 319.995 will govern compliance monitoring of affordable housing projects within this state.

2.1 Income Limit Set-Aside Requirements

The project sponsor must make an election as to one of the following set-aside requirements during the credit application process:

- A. Twenty percent (20%) or more of the units in the project are to be occupied by individuals or families whose income is fifty percent (50%) or less of area median gross income, adjusted for family size.
- B. Forty percent (40%) or more of the units in the project are to be occupied by individuals or families whose income is sixty percent (60%) or less of area median gross income, adjusted for family size.

The adjustments to area median gross income for family size is based on the adjustments used under the U. S. Department of Housing and Urban Development ("HUD") Section 8 Program. The following represents the percentage factors used to determine HUD's maximum income levels for one-to-four person households. HUD makes adjustments in maximum income levels for various household sizes at both the fifty percent (50%) and eighty percent (80%) of median income levels. The LIHTC Program requires household size adjustments at fifty percent (50%) and sixty percent (60%) of area median income levels. The household size adjustments used by HUD at fifty percent (50%) of area median income are the basis for the household size adjustments in the LIHTC Program at both the fifty percent (50%) and sixty percent (60%) of median income levels.

HUD publishes median income information for each individual county or metropolitan statistical area ("MSA") in Nevada on a periodic basis. Upon receipt of this information from HUD, the Division will provide new income limits for LIHTC projects receiving an allocation of tax credits from the Division (See Exhibit A).

Upon request, the Division shall provide income limits for project sponsors who select a median income percentage, which is lower than the required minimum set-aside.

For mixed use projects generally, if the income of the tenant of a set-aside unit increases above 140 percent (140%) of the applicable income limitation and the tenant initially met the qualifying income requirements; the unit may continue to be counted as a low income unit as long as the next available market rate unit of comparable or smaller size in that building is rented by a qualified low income tenant (not applicable to 100% LIHTC projects).

2.2 Rent Requirements

In addition to meeting the income limit set-aside requirements described in Section 2.1; the units must be rent restricted (limited to maximum allowable rents) for a project to be qualified as a low-income housing project.

- A. For projects, which 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.
- B. For projects receiving allocations of tax credits after January 1, 1990, the maximum gross rent for a low-income unit cannot exceed thirty percent (30%) of imputed income limitation applicable to the unit. The imputed income limitation applicable to a particular unit is the income limitation that would apply if the number of individuals occupying the unit were as follows: (i) for a unit that does not have a separate bedroom, 1 individual and (ii) for a unit that has 1 or more separate bedrooms, 1.5 individuals for each separate bedroom. This method is known as the number of bedrooms method.
- C. Generally, if the cost of any utilities (other than telephone) is paid directly by the tenant, 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.
- D. Gross rent does not include any payment under Section 8 of the United States Housing Act of 1937 or any comparable rental assistance program with respect to such unit or tenants thereof. Gross rent also does not include fees for supportive services paid to the project sponsor of the unit by any governmental program or assistance by an organization described in Section 501(c)(3) and exempt from tax under Section 501 of the Code if such program or organization provides assistance for rent and 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 sponsor of a unit to the extent such sponsor pays an equivalent amount to the Farmer's Home Administration under Section 515 of the Housing Act of 1949.

2.3 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 is required to 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.

Special attention must be given to the provisions of the Declaration of Restrictive Covenants. If the project sponsor agrees in the application process to target income levels lower than the maximum allowable, the maximum income and rent limits will be specified in the Declaration of Restrictive Covenants. The Division will monitor the provisions of the Declaration for compliance.

3. Compliance Procedures

This section outlines the Division's procedures for IRS reviewing and auditing each project for compliance under the provisions of Section 42 of the Code. Monitoring each project is an ongoing activity that extends throughout the compliance period.

3.1 The Training Session

The Division will conduct two training sessions annually. One session will be held in Las Vegas and one session will be held in Reno. The project sponsor and management company will be notified of the date, time and location.

The Division recommends that all personnel who are directly involved in the management of the project attend this session. Additionally, it is recommended that each person attending should bring a copy of the Division's LIHTC compliance manual (including all exhibits). 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

- * Quarterly Status Reports
- * Annual Reports
- * General appearance of project
- * Health and safety issues
- * Project sponsor's responsibilities, including but not limited to, notifying the Division of any change in management; and notifying the Division of any change in ownership of the project.

The Division also recommends that all personnel who are directly involved in the management of the project be familiar with the Equal Housing Opportunity Law and the Fair Housing Act, as amended.

3.2 Record Keeping and Record Retention Requirements

Each project sponsor shall maintain records for each qualified low income building which is part of the project for at least six years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least six years beyond the due date (along with extensions) for filing the federal income tax return for the last year of the compliance period of the building or extended compliance period. Records, which must be maintained for each qualified low-income building, shall include the following:

- A. The total number of residential units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);
- B. The percentage of residential rental units in the building that are low-income units (i.e., units subject to income limitations and rent restricted);
- C. The rent charged on each residential rental unit in the building (including any utilities that are paid by the resident and/or the project sponsor). These records should reflect all applicable utility allowances as well;
- D. The number of occupants in each low-income unit, but only if rent is determined by the number of occupants in each unit of Section 42(g)(2) of the code (as in effect before the amendments made by the Revenue Reconciliation Act of 1989);
- E. The low-income unit vacancies in the building and information that shows when, and to whom, the next available units were rented;
- F. The annual income certification of each low income tenant per unit;
- G. Documentation to support each low-income tenant's income certification. See section 5.4 of this manual for methods used to verify income;

- H. The eligible basis and qualified basis of the building at the end of the first year of the credit period; and
- I. The character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d) of the Code (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project).

3.3 Quarterly Status Reports

Beginning with the first calendar quarter following the receipt of a final credit allocation, the project sponsor or its authorized representative must prepare and submit to the Division the Quarterly Status Report (Exhibit D.1). Each quarterly report shall denote those units for which certification was completed as follows:

- A. Tenant income certifications (Exhibit J.1) for each tenant who moves into a low-income unit during the calendar quarter. The Division may request a copy of the tenant income certification, as well as the documentation the project owner has received to support such certification.
- B. Tenant income certifications (Exhibit J.1) for each tenant whose income must be recertified during the calendar quarter. The Division may request a copy of the tenant income certification for each tenant whose income must be recertified during the calendar quarter, as well as the documentation the project sponsor has received to support such certification.

The quarterly status report must be submitted to the Division no later than April 15th, July 15th, October 15th and January 15th of each year during the compliance period. If the quarterly compliance report is not received within 30 days of due date, IRS Form 8823 notice of non-compliance will be submitted to the Internal Revenue Service.

3.4 Project Sponsor Certification and/or Reports

Throughout the compliance period, the project sponsor is responsible to submit the following annual reports to the Division:

- A. A copy of the completed IRS Form 8609 for the first year only, indicating the year the project first claimed credits;
- B. All project sponsors shall submit the Certification of Annual Material Participation by the Qualified Nonprofit Organization (Exhibit N.1) by January 31st of each year;
- C. The Annual Report (Exhibit E.1) due by January 31st of each year; and
- D. The Annual Certification of Project Compliance (Exhibit F) as required by the Internal Revenue Service, due by January 31st of each year.

Pursuant to the requirements of Treasury Regulation Section 1.42-5(c)(1), the project sponsor must certify to the Division at least annually that, for the preceding twelve-month period:

1. The project met the low-income occupancy requirement;
2. Each low-income unit was rent-restricted;
3. Either there was no change in the low-income percentage of any building in the project, or there was a change, in which case a description of the change must be provided;
4. A tenant income certification and documentation have been received from each low-income tenant;
5. All units were for use by the general public and, except for transitional housing for the homeless, were used on a non-transient basis;
6. Each building was suitable for occupancy, taking into account local health, safety, and building codes;
7. Either there was no change in the eligible basis of any building in the project, or there was a change, with information on the nature of the change;
8. All tenant facilities included in eligible basis were provided on a comparable basis without charge to all tenants;
9. For mixed use projects, any low-income unit that became vacant, reasonable efforts were or are being made to rent that unit or the next available unit of comparable or smaller size in that building to qualified low-income tenants before any units in the project were or will be rented to unqualified tenants (not applicable to 100% LIHTC projects);
10. If the income of a low-income tenant increased above the 140 percent limit, the next available unit was or will be rented to a qualifying tenant; and
11. Where applicable, an extended low-income commitment agreement is in effect.

3.5 Compliance Review

To insure that projects are in compliance with the provisions of Section 42 of the Code and the Declaration of Restrictive Covenants during the compliance period, the Division will follow the procedures described below:

- A. Each project shall be subject to an annual review conducted by the Division. The annual review shall include, but not necessarily be limited to:

1. Physical inspection of the buildings and grounds which are part of the project;
 2. Physical inspection of at least three (3) individual units;
 3. A review of the records of the project sponsor which are required to be maintained, pursuant to section 3.2 of this manual.
- B. During each calendar year, the Division will follow one of the two procedures described below:
1. On Site Review: The Division will from time to time make physical inspections of LIHTC projects. The inspection will include, but not necessarily be limited to: The inspection of any number of tenant files as the Division feels necessary, the tenant income certifications, the documentation the project sponsor has received to support that certification, the rent records for each low income tenant and inspection of individual units and buildings; or
 2. Desk Review: The Division will from time to time require project sponsors to submit tenant information to the Division. The information shall include, but not necessarily be limited to: Any number of tenant files as the Division feels necessary, the tenant income certification, the documentation the project sponsor has received to support that certification and the rent records for each low income tenant.

Projects are required to have all utility analysis data on file for review.

The Division will determine which tenant's records are to be inspected or submitted by the project sponsor for review. The records will be chosen in a manner that will not give the project sponsor advance notice that the records for a particular year will or will not be inspected. However, the Division may give a project sponsor reasonable notice that an inspection will occur, in order that the project sponsor assemble such records.

3.6 Procedures for Non-compliance of Section 42 of the Code

- A. Notification of Project Sponsor: In the event the project sponsor or his authorized representative fails to timely submit documents or does not permit the Division to inspect the documents (including but not limited to the tenant income certifications or rent records) as required in section 3.3 of this manual; or if the Division discovers during a review of a LIHTC project, or in some other manner that the project is not in compliance with the provisions of Section 42 of the Code, the Division shall immediately notify the project sponsor by written notice of such non-compliance.
- B. Cure Period: The Division will allow the project sponsor a reasonable period of time from the date of notice of non-compliance, within which to furnish the Division any missing documents or to bring the project into compliance, as the case may be; however, in no event, shall the cure period exceed ninety (90) days. The Division may, in its sole discretion, extend the cure period beyond the ninety (90) days to six (6)

months from the date of the notice of non-compliance; but only if the Division determines there is good cause for granting the extension.

- C. Notice to Internal Revenue Service: No later than forty-five (45) days after the expiration of the cure period, the Division shall notify the Internal Revenue Service of the project sponsor's failure to provide documents set forth in Section 3.3 of this manual or failure to comply with the provisions of Section 42 of the Code; regardless as to whether or not the non-compliance or failure to provide documents is corrected.

The Division shall notify the Internal Revenue Service of the failure to provide documents or the failure to comply with the provisions of Section 42 of the Code by filing IRS Form 8823, "Low Income Housing Credit Agency Report of Non-Compliance"; or such other form prescribed by the Internal Revenue Service. The Division shall explain the nature of the non-compliance or failure to supply documents and indicate whether the project sponsor has corrected the non-compliance or failure to produce documents.

4. Management Policies and Guidelines

The following guidelines apply to the processing and occupancy of LIHTC Program units. Management policies and guidelines must meet all Federal Fair Housing Regulations, local and state landlord tenant laws, must be in compliance with the Internal Revenue Code, Section 42 of the Code, and all regulations and guidelines, promulgated in accordance thereto.

4.1 Number of Persons Per Unit

The following guidelines may be helpful when considering the number of persons per unit and maintenance issues.

<u>Unit Size</u>	<u>Maximum Total Occupants</u>
0 bedroom	2
1 bedroom	2
2 bedrooms	4
3 bedrooms	6
4 bedrooms	8

When calculating the number of bedrooms a family may need, it is also helpful to count:

- A. All full-time members of the household;
- B. Children who are away at school, but live with the family during school recesses;
- C. Children who are subject to a joint custody agreement, but live in the unit at least 50% of the time;
- D. An unborn child;
- E. Foster children; and

F. Live-in attendants.

4.2 Maintenance

It is the responsibility of the project sponsor to properly maintain the project as outlined in the Declaration of Restrictive Covenants.

5. Qualifications of Applicants

Applicants for low income, rent-restricted units should be advised early during their initial visit to the project there are maximum income limits which apply to these units. The project sponsor or its authorized representative should explain to the applicants that the anticipated income of all persons expecting to occupy the unit must be verified and included on an income certification prior to occupancy.

5.1 The Application

A fully completed application is critical to an accurate determination of eligibility. The information furnished on this application should be used as a tool to determine all sources of income including total assets and asset income.

It is the project sponsors responsibility to obtain sufficient information for all applicants to completely process the application. The Division recommends roommates complete separate applications.

The Application must include:

- A. The name and date of birth of each person that will occupy the unit (legal name should be given as it will appear on the lease and tenant income certification);
- B. Student status, full or part-time if applicable;
- C. All sources and amounts of current and anticipated annual income expected to be derived during the twelve (12) month certification period (this should include income derived from assets as well as other sources of income); and
- D. The signature of the applicant and the date the application was completed. It may be necessary to explain to the applicant, that all information provided is considered confidential and will be handled accordingly.

5.2 General Income Verification Requirements

All regular sources / forms of income and assets (exceeding \$5,000) must be verified. Income must be verified by authorized representative prior to the execution of the tenant Income certification (Exhibit J.1) and move-in. Verifications are required to include, at a minimum:

- A. Income from all sources for each applicant, including asset income;
- B. Written income verification directly from a third party; and
- C. Retention of all verification documentation for at least six (6) years after the due date for filing the federal tax return for the year.

5.3 Effective Term of Verification

Income verifications are valid for ninety (90) days prior to move-in. The tenant income certification must be executed within ninety (90) days of the date on the income verification. After ninety (90) days, the information may be verbally updated for an additional thirty (30) days. After this time period, new income verifications must be obtained. Any verbal update must be documented as described in the methods of verification section below.

5.4 Methods of Verification

A. Written Income Verification

Written income verification is always preferred. Any request for income verification must:

1. State the reason for the request;
2. Include a release statement signed and dated by the applicant; and
3. Provide a section for the employer or another third-party source to state the applicant's current anticipated gross annual income or rate of pay, the number of hours worked and the frequency of pay. Bonuses, tips and commissions must be included. Note: Even though an employer may not list tips on the verification of employment, anticipated tips must be included in annual income. If an employer does not list tips, alternative forms of documentation must be obtained (contact the source, pay stubs, statement from the applicant indicating the anticipated amount for the next year (NHD exhibit H.2). The fact that an employer does not quantify tips or include them in the verification of employment does not permit management to ignore them when determining eligibility. Management should specifically address tips whenever the profession of the applicant makes tips likely.

B. Income Verification Transmittal

1. Income verification requests must be sent directly to and from the source; not through the applicant. It is suggested that a self-addressed, stamped envelope be included with the request.
2. Income verification requests may be faxed copies received directly from the source only, not through the applicant. The authorized representative must verbally verify that the faxed information is from the source and the income amount is correct. The conversation must be documented in the applicant's file. The name and title of the contact, the name of the authorized representative accepting the information and the

date must be included. Note: Verbal verification of faxed information is not necessary when the fax clearly indicates a third party name and date.

- C. Verbal Verification: When written verification is not possible prior to move-in, direct contact with the source will be acceptable to the Division only as a last resort and must be followed with written income verifications. When verifying income verbally the authorized representative must utilize and complete all information set forth on the verification of employment and wages (Exhibit H). Additionally, the name and title of the contact, the name of the authorized representative accepting the information and the date must be included.
- D. Difference in Reported Income: The authorized representative should give the applicant the opportunity to explain any differences between the amounts reported on the application and amounts reported on third-party verification. 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 employment.

5.5 Acceptable Forms of Verification

Acceptable forms of income verification for specific types of income include the following:

A. Employment Income

1. Verification of Employment and Wages form (Exhibit H) completed and signed by the employer or a statement from the employer on company letterhead reflecting all information as required on Exhibit H.
2. Three (3) current successive check stubs or earnings statements reflecting the employee's gross pay per pay period, gross pay year to date and frequency of pay.
3. Review of documents evidencing income sources (e.g., federal income tax returns), but only when third-party verification is not possible.
4. When third-party verification is not possible, a statement by the applicant certifying the amount of all anticipated income from all sources over the next twelve (12) months. Note: This form of verification is generally not acceptable and must only be used as a last resort in the event items 1, 2, or 3 are not obtainable.

B. Self-employment Income

Verification of Income for Self-employed Persons (Exhibit H.1) must be completed, signed and dated. Attach copies of federal and state income tax returns for the immediately preceding calendar year for which such income tax returns could have been filed (or, if not filed, were not required to be filed) together with a current profit and loss statement.

C. Social Security, Pensions, Supplemental Security Income, 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. Bank statements do not reveal the gross amount of benefit. Therefore, bank statements will not be acceptable forms of verification.

D. Alimony or Child Support Payments

In the event alimony and/or child support is received the following is required:

1. Affidavit of Alimony/Child Support (Exhibit M) completed; and
2. A copy of a separation or settlement agreement or divorce decree stating the amount and type of support payment schedule; or
3. A certified letter from the person paying support; or
4. Verification form completed by the local Court; or
5. A copy of Court record payments to applicant; or
6. A letter from applicants attorney; or
7. A copy of the latest support check so long as documentation of how often the check is received is attached.

E. Recurring Contributions and Gifts

Verification of recurring contributions and gifts will require:

1. A notarized statement or affidavit, giving the purpose, dates and value of gifts; and signed by the person providing assistance; or
2. A verification letter from a bank, attorney or trustee administering contributions; or
3. In the event items 1 or 2 are not obtainable, a certified statement from the applicant giving the same information will be permissible.

F. Scholarships, Grants, and Veteran's Administration Benefits

Verification of scholarships, grants, and veteran's administration benefits will require:

1. A benefactor's written confirmation of the amount of assistance; and the educational institution's written confirmation of the expected cost of the student's tuition, fees, books and equipment for the next 12 months; or
2. Copies of latest benefit checks, if the benefits are paid directly to the student. Copies of the canceled checks or receipts for tuition, fees, books and equipment, if such income and expenses are not expected to change for the next 12 months.

G. Unemployed/Non-Employed Applicants

All unemployed/non-employed applicants/tenants age eighteen and over are required to execute the Unemployed/Non-Employed Applicants Affidavit attached as Exhibit I.

H. Unemployment Compensation

Verification of unemployment compensation will require:

1. A verification form completed by the unemployment compensation agency; or
2. The maximum benefit amount as stated on the "Notice of Monetary Determination", issued by the unemployment compensation agency; or
3. Records from the unemployment office stating payment dates and amounts.

I. Section 8 Tenants:

If the Public Housing Authority submits a statement to the project sponsor declaring that a section 8 tenant's income does not exceed the applicable income limit under Section 42(g) of the Code, the project sponsor will not be required to obtain other documentation to verify that particular tenant's income. Note: The Public Housing Authority form 50058 is acceptable in lieu of the statement.

J. Income from Assets

1. If net family assets are under \$5,000, a signed, sworn statement (see Exhibit P) from the tenant will be acceptable; provided that the statement discloses the amount of the net family assets and the annual income received from such assets. However, if a reasonable person in the project sponsor's position would conclude that the tenants' income is higher than the tenant represents, the project sponsor must obtain additional documentation.
2. If net family assets exceed \$5,000, written verification from the source, disclosing the total assets and the annual income is required. Annual Income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD.

5.6 Annual Income and Assets

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 twelve (12) month period following the effective date of certification of income. Income and asset inclusions and exclusions are defined and attached as Exhibit L (HUD Chapter 3, 4350.3 Chg-27).

5.7 Tenant Income Certification Guidelines

After all income and asset verification have been obtained and computed, the project sponsor or its authorized representative must prepare a Tenant Income Certification form attached as Exhibit J.1. The form is a legal document which, when fully executed, qualifies the applicants to live in the LIHTC units in the project. Instructions for the tenant income certification are attached as Exhibit J. The tenant income certification must be executed along with the lease prior to move-in. The following guidelines apply:

- A. Authorized representatives should instruct the prospective low-income tenants to sign the tenant income certification exactly as their name appears on the form. All occupants of a unit, age 18 and older must sign and date the tenant income certification (including emancipated minors age sixteen through eighteen years of age).
- B. The preference is for the tenant income certification to be executed on the date of move-in along with the lease.
- C. Changes in household size do not result in disqualification in the event the tenant in a set-aside unit later wishes to have an additional person move into the unit. Example; If a man were to apply for residency, qualify, move-in and subsequently marry, the couple would be allowed to remain as tenants through recertification. The couple does not have to reapply and requalify under the original income limits. The recertification process permits a household that qualified initially to make up to 140% of the new maximum allowable income for the current family size. The fact that the family size has changed is not a factor. Moreover, for properties which are 100% tax credit units, the 140% rule is moot and tenants making more than 140% may still be recertified as tenants without loss of credits. The 140% rule is only an issue when a property is mixed-use. For these properties, upon recertification, if the household goes over-income by 140% of the allowable limit, 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 tenant.

Changes in household size is permissible provided they did not reasonably anticipate a change at the time of application and execution of the tenant income certification (exhibit J.1). If the applicant knows or anticipates that the stated family size will change (marriage, roommate, etc.) then the family size and associated incomes must be considered in determining eligibility.

In the event a roommate or family member vacates the unit, the unit will remain in the category as originally certified. However, the rent may need to be adjusted in pre-1990 projects. The tenants file should be documented when any household member vacates the units.

- D. Transfer - Existing tenants may transfer to a new set-aside unit within the same building without requalifying. When tenants transfer within the same building, the Division recommends the new file contain copies of the original documents from previous unit.

On the other hand, should existing tenants wish to transfer to a new set-aside unit in a different building in the project, the tenants must be treated exactly as prospective tenants as in a new move-in. Therefore, all application, income verification, and tenant income certification procedures must be completed for the transferring tenants. The household must now meet the appropriate income limit (not 140 percent of the limit) to maintain the LIHTC status.

- E. Students - The Student Status Certification is attached as Exhibit G. The student status certification must be executed when the household is comprised entirely of students. In general, a unit is not considered a low-income unit if all of the occupants of a unit are full-time students and none of the students are married and filing joint tax returns. However, students in governmentally supported job training programs, defined as the Job Training Partnership Act and similar federal, state or local programs are deemed to be eligible residents for purposes of the Credit. Other exceptions are students receiving TANF (Temporary Aid to Needy Families) and a single parent who is living with his/her minor children with none of the persons being dependents of a third party.

5.7.1 Recertification Guidelines

Project Owners must re-verify the income of all tenants in set-aside units at least annually, and execute a new Tenant Income Certification (Exhibit J.1). Recertification is required by statute.

A. Procedures for Recertification

Additional recertification instructions can be found on page 4 of Exhibit J.

Authorized representatives should:

1. Notify the tenant in writing approximately sixty (60) or ninety (90) days prior to the anniversary of the effective date of the tenant's most recent tenant income certification date. Inform tenants that recertification is due and schedule an appointment for an interview;
2. Interview tenants 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;
3. Verify the tenants income;
4. Complete the tenant income certification for qualified tenants;
5. All tenants age eighteen (18) and over must sign the tenant income certification (including emancipated minors age sixteen through eighteen years of age);
6. All households must be recertified, at a minimum, on an annual basis. If, during the process of the recertification a tenant is signing the tenant income certification before the expiration date of the prior tenant income certification, and the annual

recertification date is not subject to change, indicate the effective date of the recertification on the appropriate line (bottom of section five page three of J.1); and

7. The project sponsor's representative must complete the project sponsor's section as required.

B. Waiver Of Annual Income Recertification

Projects that have received approval of the waiver of annual income recertification are required to execute the Alternate Certification (Exhibit Q) annually for each tenant.

Sponsor's of LIHTC projects that are one hundred percent (100%) low-income tax credit eligible may request the waiver of annual income recertification under the provisions of IRS Revenue procedure 94-64, attached as Exhibit O. Project sponsors may contact the Division for further instructions.

5.8 Leases and Rent Limits

The Division requires low-income tenants to be income certified and federal regulations require that all tenants be under lease in order to occupy a unit. Leasing guidelines are as follows:

- A. No tenant may occupy a qualified unit prior to the execution of the initial lease.
- B. The lease must include: the legal name of parties to the agreement, all other occupants, a description of the unit to be rented, the term of the lease, the rental amount, the use of the premises and the rights and obligations of the parties. Note: Names listed on the lease must match names listed on the tenant income certification (Exhibit J.1).
- C. The Code requires an initial lease term of six (6) months minimum. Note: Transitional housing may qualify for an initial lease of a shorter term.
- D. Within the body of the lease, it must state an annual recertification will be required of all tenants' income. Special attention should be directed at those tenants whose income may exceed the 140 percent (140%).
- E. It is important for the lease to reflect the correct date of move-in, or the date the tenant takes possession of the unit.

6. Glossary:

ACCEPTED UNITS - (As noted on the Quarterly Status Report) - Units for which Certificates of Occupancy have been issued by the county or appropriate governing body.

ANNUAL INCOME - Total income anticipated to be received by a tenant from all sources including assets for the coming year. *HUD (24 CFR § 813.106)*

ANNUAL INCOME RECERTIFICATION - Document by which the tenant certifies his/her income, for the purpose of determining whether the tenant will be of low income, according to the provisions of the LIHTC Program.

ANNUAL HOUSEHOLD INCOME - Gross Income of all persons who intend to permanently reside in a unit. The Annual Income is defined as, income as of the date of occupancy for the coming year.

ANNUAL MANAGEMENT REVIEW - A review of a project made annually by the Division which includes an examination of records, a review of operating procedures and a visual inspection of the project and units.

APPLICATION - Form completed by a person or family-seeking rental of a unit in a project. The application must solicit sufficient information in order to determine the tenant's eligibility and compliance with federal and Division guidelines.

ASSETS - Items of value, other than necessary personal items, which are considered in determining the eligibility of a household. HUD Definition of Assets and Income (4350.3 Chg - 27). See Exhibit L.

ASSET INCOME - HUD Definition of Assets and Income (4350.3 Chg-27) See Exhibit L.

AWARD OR BENEFIT LETTER - Notification of income that is completed by the agency or company providing benefits to tenants. Such income would include social security, pension, and supplementary security Income (SSI) or disability income.

CERTIFICATION YEAR - The twelve (12) month time period beginning on the date the unit is first occupied and each twelve (12) month period commencing on the same date thereafter.

COMPLETION CERTIFICATE - The project sponsor statement, furnished to the Division, that the acquisition and construction or substantial rehabilitation of the project has been substantially completed.

COMPLETION DATE - The specified date on which a project is completed as set forth in the Completion Certificate.

COMPLIANCE - The act of meeting the requirements and conditions specified under the law and the Low-Income Housing Tax Credit Program requirements.

COMPLIANCE PERIOD – The period during which an applicant agrees to operate as a low-income housing project pursuant to a declaration of restrictive conditions.

COMPLIANCE TRAINING SESSION - A meeting held by the Division, with the project sponsor and/or representative and management company staff; to review federal and state law, Division policies and reporting procedures for the LIHTC Program.

CREDIT PERIOD – Ninety (90) day period.

CURE PERIOD - A reasonable time as determined by the Division for a project sponsor to correct any violation which may have resulted in non-compliance.

CURRENT ANTICIPATED INCOME - Gross anticipated income for the next twelve (12) months as of the date of occupancy that is expected to be received by the tenants.

DECLARATION OF RESTRICTIVE COVENANTS FOR LOW INCOME HOUSING CREDITS - The document between the Division and the project sponsor restricting the use of the project during the term of the credit compliance period.

DEVELOPER - Any individual, association, corporation, joint venture or partnership which is affiliated with a LIHTC Program.

DISPOSITION OF ASSET AT LESS THAN FAIR MARKET VALUE - If tenant's assets are disposed of within two years of the certification/recertification date, the difference between the fair market value of those assets and the gross amount received must be included in the total family assets; if the computed difference is more than \$1,000.

DIVISION - Nevada Housing Division.

EARNED INCOME TAX CREDIT - Income in the form of a tax credit given to families with both a dependent and annual employment income of less than the amount specified on the Earned Income Credit Table issued by the Internal Revenue Service.

EFFECTIVE TERM OF A VERIFICATION - Not to exceed 120 days. A verification is valid for 90 days and may be updated orally for an additional 30 days. A verification must be within the effective term at time of tenant's income certification.

ELIGIBLE PERSON - One or more persons of a family determined to be low income.

EMANCIPATED MINOR- Any minor who is at least 16 years of age, married or living apart from his/her parents and/or guardian, who is a resident of the County and who has petitioned the juvenile division or family division of the district court of that county for a decree of emancipation which has been granted.

EMPLOYMENT INCOME - Wages, salaries, tips, bonuses, overtime pay or other compensation for personal services from a job.

EXTENDED USE AGREEMENT - The agreement between the Division and the project sponsor restricting the use of the project during the term of the LIHTC compliance period.

EXTENDED USE PERIOD - The time frame which begins the first day of the initial fifteen (15) year compliance period, on which such building is part of a qualified low income housing project and ends fifteen (15) years after the close of the initial compliance period, or date specified by the Agency in the Extended Low Income Housing Credit Commitment, Land Use Agreement (LURA) or Restrictive Covenant.

FAIR MARKET VALUE - An amount, which represents the true value at which property, would be sold on the open market.

FINAL CREDIT ALLOCATION – When buildings are cost certified and 8609's are issued.

FIRST YEAR OF CREDIT PERIOD - This is either the year a building is “placed in service” or, at the sponsor’s option, the following year.

GROSS INCOME - See ANNUAL HOUSEHOLD INCOME.

GROSS RENT - Maximum rent the project sponsor can charge for rent as specified by the original allocation agreement from the Division. Note: The sponsor must be aware of the year in which the tax credit allocation was made and the specific guidelines that refer to the calculations of gross rent for projects receiving an allocation in those years. For allocations received in 1987, 1988 and 1989, tax credit units must base gross rent on the actual number of persons residing in the unit. This calculation is valid for the compliance period, unless the project filed an irrevocable election by February 2, 1994 and served notice to the IRS. Then the rent per person calculation is only applicable with that tenant or family’s occupancy. For those developments receiving a tax credit allocation from 1990 on, gross rent is based on the actual housing unit size, NOT the family size occupying the unit.

HOUSEHOLD - The individual, family, or group of individuals living together as a unit.

HUD - U. S. Department of Housing and Urban Development

IMPUTED INCOME (from Assets) - The estimated earning potential of assets held by a tenant using the potential earning rate established by HUD. See *Exhibit L*.

INCOME CERTIFICATION - Document by which the tenant certifies his/her income, for the purposes of determining whether the tenant will be of low income according to the provisions of the LIHTC Program.

INCOME LIMITS - Maximum incomes as defined by the Division for projects giving the maximum income limits per unit for very low income units. These limits will be adjusted periodically by the Division based on median income figures provided by HUD.

INCOME VERIFICATION - Information from a third party which is collected in order to collaborate the accuracy of information concerning income provided by applicants to a project.

INCOME VERIFICATION REQUEST FORM – Exhibit H; The form used by a LIHTC project authorized representative to request income verifications from the source of the income. The form must state the purpose of the request, include a release statement by the prospective tenant and request the frequency and amount of pay.

INELIGIBLE PERSON – One or more persons of a family who apply for residency in a low income unit and whose combined income exceeds the chosen income limitation (i.e., 50% or 60% of median) or someone living in a low income unit who is not certified or under lease.

LEASE – The legal agreement between the tenant and the project sponsor which defines the terms and conditions of the rental of a unit.

LIHTC PROGRAM – The Low Income Housing Tax Credit Program.

LOW INCOME TENANT/HOUSEHOLD - An individual or household whose income is not more than either 50% or 60% of the median income for the local area adjusted for family size.

LOW INCOME UNIT – Any unit in a building if, such unit is rent restricted as defined in Internal Revenue Code (“IRC”) 42(g)(2), the individuals occupying such unit meet the income limitation applicable under IRC 42(g)(1), and is suitable for occupancy as prescribed by the Secretary of the Treasury taking into account local health, safety and building codes.

MANAGEMENT COMPANY – A firm selected by the project sponsor to oversee the operation and management of the project and who accepts compliance responsibility.

MANAGEMENT PLAN – Strategy which outlines policies under which a project will be managed; such as occupancy standards and maintenance plan.

MAXIMUM ALLOWABLE RENT CALCULATION - The maximum allowable rent calculation includes costs to be paid by the tenant for utilities inclusive of heat, air conditioning in certain locales, lighting, cooking, water heating, water, sewer, trash collection and supplied stove and refrigerator.

MAXIMUM CHARGEABLE RENT (NET RENT) - Gross rent less the utility allowance paid by the tenant. Note: Charges for Amenities: If the tenant facility is included in the eligible basis under Section 42 (d), it must be provided as a comparable amenity to all residential rental units in the building without charge. (ITC Sec. 42 (d) (4) (B).

MEDIAN INCOME - A determination made through statistical methods establishing a middle point for determining income limits. Median is the amount that divides the distribution into two equal groups; one group above the median and one group having income below the median.

MINIMUM SET-ASIDE - A minimum portion of units in a project must be set-aside as rent-restricted units for tenants in a targeted income group. Many projects are 100% set aside; defined as all of the units in the project are tax credit or targeted for specific income groups.

MIXED-USE PROJECT – Projects that contain market rate units and LIHTC units.

NON-COMPLIANCE LETTER - Letter sent by the Division to the project sponsor and to IRS noting areas of non-compliance.

NON-EMPLOYED PERSONS - Persons that are permanently out of the work force.

PERSONAL PROPERTY CONSIDERED AS ASSETS - Property held as an investment (gems, jewelry, coin collections, and antique cars). Necessary items such as clothing, furniture, cars, etc. are not considered as assets. See *Exhibit L*.

PROJECT - Rental housing development receiving an allocation of tax credits.

PROJECT SPONSOR - The beneficiary of the allocation of tax credits who is ultimately responsible for the development, maintenance and compliance of a project.

QUALIFIED PERSONS - Individuals and families who, at the time such individuals or families first occupy a unit in the development, are of low income; having annual combined incomes not exceeding 50% or 60% of area median gross income, adjusted for family size.

QUALIFIED UNIT - Those units occupied by qualified persons at a qualified rent.

REAL PROPERTY CONSIDERED AS ASSETS - Ownership in buildings or land. See *Exhibit L*.

SECTION 8 OF THE U.S. HOUSING ACT OF 1937, AS AMENDED - Regulations used in defining and determining income as required of section 103(b)(94)(A) of the Internal Revenue Code of 1954, as amended.

STUDENT (for purposes of the tenant income certification) - Any individual who has been, or will be, a full-time student at an educational institution with regular facilities during five months of the year.

TENANT - Occupant(s) of a unit, age 18 and over, to whom the unit is leased.

TENANT FILES - Complete and accurate records pertaining to each dwelling unit, containing the application for each tenant, income verification of each tenant, information as to assets, an tenant income certification and lease. Any authorized representative of the Division, the U. S. Department of Treasury or the Internal Revenue Service may be permitted access to these files.

TRANSITIONAL HOUSING UNIT – Any unit that is used exclusively to facilitate transition of homeless individuals to independent living within 24 months, and in which a governmental entity or qualified nonprofit organization provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

UNEMPLOYED PERSONS - Persons temporarily out of work and expect to return to work within the next 12 months.

UTILITY ALLOWANCE - The amount of utilities, for a particular unit, set aside by a utility allowance schedule, which is published by the local PHA, FmHA or HUD or a letter from the utility company which states the rates. (Ref: IRS Notice 89-6)

140% RULE - If upon recertification, a low income tenant's income is greater than 140% of the applicable income limit adjusted for family size, the unit will continue to be counted toward satisfaction of the required set-aside, providing the unit continues to be rent-restricted and the net available unit of a comparable or smaller size in the project is rented to a qualified low income household. (Note: This is not applicable to 100% rent restricted projects.)

20%/50% TEST - Twenty percent (20%) or more of the residential units in a project must be rented to households with aggregate gross income of fifty percent (50%) or less of the area median gross income adjusted for family size.

40%/60% TEST - Forty percent (40%) or more of the residential units in a project must be rented to households with aggregate gross income of sixty percent (60%) or less of area median gross income adjusted for family size.

EXHIBITS ARE LISTED ON THE FOLLOWING PAGE

7. Exhibits

LIHTC Projects are required to utilize the exhibits listed below when applicable. The following exhibits may not be retyped or reformatted without the approval of the Division.

- A. Income Limits

- B. Rent Limits
- C. Income Tax Regulation (26 CFR SECTION § 1.42-9, § 1.42-10 AND § 1.42-11) Utility Allowance Requirements, General Public Use and Provision of Services
- D. Quarterly Status Report Instructions
 - D.1 Quarterly Status Repot
- E. Annual Report Instructions.
 - E.1 Annual Report
- F. Annual Certification of Project Compliance
- G. Student Status Certification
- H. Verification of Employment and Wages
 - H.1 Verification of Income for Self-Employed Persons
 - H.2 Certification of Tip Income
- I. Unemployed/Non-Employed Applicant's Affidavit
- J. Tenant Income Certification Instructions
 - J.1 Tenant Income Certification
- K. Revenue Procedure 94-9.
- L. HUD Definition of Assets and Income 4350.3 (Chg-27)
- M. Child Support/Alimony Affidavit
- N. Certification of Annual Material Participation by the Qualified Nonprofit Organization Instructions
 - N.1 Certification of Annual Material Participation by the Qualified Nonprofit Organization
- O. IRS Revenue Procedure 94-64 (*Waiver of Annual Income Recertification*)
- P. Asset Declaration
- Q. *Alternate Certification* (*Projects that have received the Waiver of Annual Recertification must utilize this exhibit*)