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APPENDIX A - HUD Handbook 4350.3 – rev. 1 (Chapter 5)

APPENDIX B - Internal Revenue Code Section 42

APPENDIX C - Compliance Monitoring Regulations — Treasury Regulations § 1.42-5

APPENDIX D – Selected Internal Revenue Service Publications

- Federal Register / Vol. 62, No. 187, Available Unit Rule
- Federal Register / Vol. 71, No. 68, Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937 Supplement
- Federal Register / Vol. 70, No. 250, Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937
- Federal Register / Vol. 64, No. 63, Implementation of the Housing for Older Person Act of 1995
- Federal Register / Vol. 73, No. 146, Section 42 Utility Allowance Regulation Update
- Federal Register / Vol. 79, No. 97, Updated List of Federally Mandated Exclusions From Income
- Federal Register / Vol. 81, No. 221, Violence Against Women Act of 2013: Implementation in HUD Housing Programs
- IRS Notice 88-80, Determination of Income
- IRS Notice 88-91, Additional Compliance Requirements, Building Identification Numbers
- IRS Notice 88-166, Placed-In-Service Date
- IRS Notice 89-6, Utility Allowance Requirements, Determination of General Public Use, and Provision of Services
- IRS Notice 2005-69, Relief from Certain Low-Income Housing Credit Requirements Due to Hurricane Katrina
- IRS Notice 2006-11, Relief from Certain Low-Income Housing Credit Requirements Due to Hurricane Rita
- IRS Revenue Ruling 90-60, Recapture Bonds
- IRS Revenue Ruling 90-89, Minimum Set-Aside Requirements
- IRS Revenue Ruling 91-38, Answers to Frequently-Asked LIHTC Questions
- IRS Revenue Ruling 92-61, Managers Unit as Common Area

- IRS Revenue Ruling 92-79, Extended-Use Commitments
- IRS Revenue Ruling 94-57, Changes in Area Median Gross Income; Tenant Qualification; Available Unit Rule
- IRS Revenue Ruling 95-49, Extended-Use Commitments and Right of First Refusal to Tenants
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- IRS Revenue Ruling 2004-82, Questions and Answers
- IRS Revenue Procedure 94-9, Number-of-Bedrooms Rent Method Election
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- Student Financial Aid Verification
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- IRS Form 8586, Low-Income Housing Credit
  - IRS Form 8609, Low-Income Housing Credit Allocation and Certification
  - IRS Form 8609-A, Annual Statement for Low-Income Housing Credit
  - IRS Form 8611, Recapture of Low-Income Housing Credit
  - IRS Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition

#### APPENDIX F – Certification Online (COL) Manual



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Visit NIFA's website at [www.nifa.org](http://www.nifa.org)

## FOREWORD

This manual (this “Manual”) is a reference guide for the compliance monitoring of the Low Income Housing Tax Credit (“LIHTC”) Program (the “LIHTC Program”). It is designed to provide guidance for compliance with § 42 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder (the “Code”) and with the Land Use Restriction Agreement (“LURA”) and, generally, to help answer questions regarding the procedures, rules and regulations that govern the LIHTC Program. This Manual should be used as an additional resource for owners, developers, management companies, and on-site management personnel.

### Disclaimer

The publication of this Manual is for convenience only and is to be used only as a supplement to existing laws and rules. This Manual is not intended to be a comprehensive guide to the LIHTC Program and all of its requirements. This Manual was designed to assist owners and managers of LIHTC developments in Nebraska to better ensure that the developments remain in compliance with § 42 of the Code. Your use or reliance upon any of the provisions contained in this Manual does not, expressly or impliedly, directly or indirectly, suggest, represent or warrant that the user will be in compliance with the requirements of § 42 of the Code. The Nebraska Investment Finance Authority (“NIFA”) hereby disclaims any and all responsibility of liability which may be asserted or claimed arising from reliance upon the procedures and information in this Manual. Owners and managers are urged to consult with attorneys and/or accountants that specialize in the LIHTC Program in the administration of their LIHTC developments.

### Background of the LIHTC Program

Congress created the LIHTC Program under the Tax Reform Act of 1986. The Treasury Department is responsible for the administration of the LIHTC Program. The LIHTC Program is governed by § 42 of the Code. Pursuant to § 42 of the Code, each state is required to designate a “housing credit agency” to allocate the LIHTC and administer the LIHTC Program. NIFA is the designated agency for the State of Nebraska.

The Omnibus Reconciliation Act of 1990 amended § 42 of the Code to require state LIHTC allocating agencies to provide procedures for monitoring developments for noncompliance with the requirements of the LIHTC Program and for notifying the Internal Revenue Service (“IRS”) of such noncompliance.

The LIHTC is a dollar-for-dollar reduction in the federal income tax liability of the owner of a qualified LIHTC development relating to the acquisition, rehabilitation, or construction of low-income rental housing units. The amount of LIHTC allocated to a development is directly related to the number of qualified low-income units that meet the rent and income targeting requirements of § 42 of the Code.

The LIHTC Program fosters the development of affordable rental housing units by establishing a mechanism through which investors provide equity and, in exchange, income limits and rent restrictions are imposed on certain housing units in the LIHTC development. The equity funds are used to pay for a portion of the development costs of a development. Equity funds are contributed by investors as capital contributions to the legal entity that owns the development. The ownership entity is typically a limited partnership or a limited liability company, structures which allow the

benefit of the LIHTCs to flow through to the investors. Investors, in turn, may use the LIHTCs to offset their federal income tax liability.

LIHTCs may be claimed on an annual basis for 10 years; however, equity funds are typically contributed during the construction through initial lease-up of the development. The price paid for the LIHTC is determined, in part, by the timing of the capital contributions as agreed upon by the investor. The balance of the development costs are typically paid with conventional mortgage financing, private contributions, or other government sources, such as bond financing, HOME funds, and Rural Housing Service (RHS) loans. In exchange for receiving LIHTCs, the owner of the LIHTC development must agree that the rental housing units to which LIHTCs are allocated will be restricted to low-income households for a specific period of time and that the rents for these units will not exceed certain limits established in § 42 of the Code and the LURA.



## Chapter 1. Key Terms

**Adult Tenant** - a tenant 18 years of age or older, or an emancipated minor. (Please note: in Nebraska, a person must be 18 years of age or older to sign a binding agreement, such as a lease.)

**Applicable Fraction** - the fraction that represents the portion (percentage) of the building for which LIHTCs will be claimed. It is the lesser of (1) the unit fraction (number of low income units divided by the total number of units) or (2) the floor space fraction (square footage of low income units divided by the square footage of total units). *The applicable fraction must be met on a building-by-building basis.* Developments with both low-income household units and market-rate units are termed “mixed income” developments, and their applicable fraction will be less than 100%.

**Building Identification Number (“BIN”)** - the number assigned by NIFA to each building in a LIHTC development. The BIN identifies the allocating state (NE) and [two-digit] year of LIHTC allocation on the right-hand side of the IRS Form 8609: “NE-XX-XXXXX”. If a building has been allocated tax credits from a prior year, your previous BIN number will remain the same.

**Compliance Period** - begins with the first taxable year in which the owner claims low income housing tax credits for the development of which the building is a part of and lasts for 15 consecutive taxable years.

**Correction Period** - the period of time given by NIFA to a LIHTC development to cure items of noncompliance. NIFA allows 60 days in which to cure items of noncompliance. In extraordinary circumstances, and with good cause as determined by NIFA, the time to correct noncompliance may be extended up to a total of six months.

**Credit Period** - the 10-year period over which LIHTCs can be claimed annually, beginning with the first taxable year in which the owner claims LIHTC.

**Educational Organization** – is an organization that generally maintains a regular faculty and curriculum, and generally has an enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term “educational organization” includes elementary schools, junior and senior high schools, colleges, universities and technical, or trade and mechanical schools. It does not include on-the-job training courses.

**Eligible Basis** - the depreciable basis of a building and associated improvements, including common areas such as laundry facilities, offices, etc. The cost of land is excluded from eligible basis. Additionally, eligible basis does not include any commercial space of a development.

**Empty Unit** - a unit that has never been rented.

**Extended Use Period** - the period beginning the day after the compliance period ends, which extends the low-income occupancy requirement and rent restrictions for 15 or more years beyond the end of the compliance period.

**Form 8609 (LIHTC Allocation)** - the IRS form issued by NIFA for each building in a development for which LIHTCs are allocated. Form 8609 identifies; the BIN, the amount of LIHTCs allocated to each building in the development, the qualified basis, the placed-in-service date, and specific information about the ownership entity.

**Form 8823 (LIHTC Agencies Report of Noncompliance or Building Disposition)** - the IRS form required to be filed by NIFA upon an event (or events) of noncompliance with respect to the LIHTC development. Form 8823 is required to be filed with the IRS whether or not the noncompliance has been corrected; however, corrected noncompliance items are noted thereon.

**Land Use Restriction Agreement (“LURA”)** - the agreement among NIFA, the LIHTC development owner and any lenders to the development, which includes restrictive covenants that bind the owner and any successors to maintain certain established occupancy and affordability requirements for a specified period of time, as well as the owner’s obligations to NIFA. The LURA is recorded with the county in which the LIHTC development is located.

**Low-Income Household** - a household whose tenant(s) meet the requirements of the LIHTC Program (income level, rent level, student status, etc.), thus qualifying the unit for LIHTCs.

**Market-Rate Household** - a household whose tenant(s) are not required to meet the income, student status or rent level requirements of the LIHTC Program.

**Minimum Set-Aside** - the minimum number of low-income units a development must maintain to receive LIHTCs. The development owner must elect one of the following:

- 20% of the residential units must be rented to individuals whose income is 50% or less of the area median gross income (“AMGI”); or
- 40% of the residential units must be rented to individuals whose income is 60% or less of the AMGI.

Other aspects of the Minimum Set-Aside:

- A minimum set-aside election, once made by the owner, is irrevocable.
- The minimum set-aside must be met on a development-wide basis. (See Form 8609, Line 8b, regarding the building-by-building exception.)
- LIHTCs cannot be claimed until the minimum set-aside has been met.
- If the development fails to meet the minimum set-aside by the end of the first year of the credit period, the development will not qualify as a LIHTC development and LIHTCs cannot be claimed. If the development falls below the minimum set-aside during the credit period, LIHTC’s cannot be claimed for that year.

**Mixed Income Property** – developments that have both Low Income and Market or Moderate Rate households.

**Mixed Use Property** – developments that have both residential and commercial space.

**Moderate Income Households** – a household whose tenant(s) annual gross income as defined by the LIHTC program does not exceed 150% of the median income for the county.

**NIFA Project Number** - the number assigned to a LIHTC development by NIFA. The number should be noted on all correspondence to NIFA regarding the development. The project number is in the format of “7-0XXX” for 9% LIHTC developments and “67XXX” for 4% LIHTC with tax exempt bond developments.

**Occupied Unit** - a unit occupied by a household.

**Placed-In-Service (PIS) Date** - for a new building, the date that units are available for occupancy by tenants (i.e., generally the date of the certificate of occupancy). For a building with substantial rehabilitation, a building may be placed in service at any time during a 24-month period over which the expenditures are aggregated as designated by the owner, provided the minimum rehabilitation expenditure has been met and there is proof of occupancy of units by LIHTC qualified individuals.

**Qualified Basis** - the eligible basis of a development multiplied by its applicable fraction. Qualified basis is used to determine the amount of LIHTCs allocated to each building in the development. The original qualified basis is determined as of the last day of the first year of the credit period.

**Tenant Certification** - the process of verifying certain LIHTC Program requirements, including the income, assets, and student status of members of a household in order to qualify a unit for LIHTCs.

**Tenant Income Certification (“TIC”)** - the document signed and dated by both a development’s owner/management agent and adult (18 and over) tenant(s), attesting to the tenant’s representations regarding income, assets, student status, etc.

**Tenant Recertification** - the annual (based on the anniversary of the move-in date) process after the initial move-in certification of the tenant by which, among other things, a low-income household’s income, assets, and student status are re-verified in order to determine continuing compliance by the development with the LIHTC Program.

Annual recertification of tenant income is not required on 100% qualified unit developments; however, annual (anniversary of move-in) certification of student status documentation, rent and rental assistance (if applicable) needs to be submitted.

**Two-Thirds (2/3) Rule** - the LIHTC Program requirement which provides that LIHTCs may not be claimed on an empty unit for the first year of the credit period if such LIHTC unit has not been occupied by the end of the first year of the credit period. Should the unit become occupied after the end of the first year of the credit period, two-thirds of the LIHTC can be claimed each year for the remainder of the credit period. In other words, 14 years of 2/3 of the LIHTC amount allocated for that unit may be claimed; 1/3 of each year’s LIHTC will be permanently lost.

**Vacant Unit** - a unit which has been previously rented, but is currently unoccupied.

## **Chapter 2. Owner Record Keeping and Record Retention Requirements**

### **Record Keeping**

Owners are required to retain records for each qualified LIHTC building in the development evidencing the following:

- The total number of residential rental units in each building, including the number of bedrooms and the size, in square feet, of each residential rental unit. (**Note:** this information is necessary to calculate the applicable fraction for any year, and is also crucial for applying the next available unit rule).
- The percentage of residential rental units in each building that are occupied or designated for occupancy by low-income households.
- The rent charged on each residential rental unit in each building (which includes utility allowances if utilities are paid by the tenant).
- The amount of the utility allowance for each unit, together with supporting documentation.
- The number of occupants in each unit occupied by a low-income household.
- The vacancies in each building of units designated for occupancy by low-income households and information that indicates when and to whom the next-available units were rented.
- The annual income certification of each tenant in a low-income household.
- Documentation supporting the income certification of the members of each low-income household.
- The eligible basis and the qualified basis of each building at the end of the first year of the credit period, as well as any change thereafter.
- The character and use of any non-residential portion of a building included in the building's eligible basis under § 42(d) of the Code (i.e., resident facilities that are available on a comparable basis to all tenants and for which no separate fee is charged to the tenants for use of the facilities, or facilities reasonably required by the development).

### **Record Retention**

Owners are required to retain all records for each building for a minimum of six years after the due date (with extensions) for filing the federal income tax return for a particular year. The records for the first year of the credit period must be retained for a minimum of six years after the due date

(with extensions) for filing the federal income tax return for the last year of the compliance period of the building (i.e., **first year records must be kept for at least 21 years**).

### Chapter 3. Income Limits, Rent Limits, Gross Rent and Utility Allowances

PLEASE NOTE: Income limits correlate to the number of residents and the rent limits correlate to the number of bedrooms as shown on the Maximum Gross Income and Rent Limits table.

#### Income Limits

The U.S. Department of Housing and Urban Development (“HUD”) annually publishes Area Median Gross Income (AMGI) figures for all Nebraska counties and metropolitan statistical area(s) (MSA). Upon receipt of this information, NIFA calculates and makes available (via NIFA’s website in a form which may be downloaded) to owners and managers the new annual income limits and corresponding rent limits. **Please note, it is the development owner’s responsibility to obtain the new limits each year, and to implement the new limits within 45 days of their effective date.**

As a result of the Housing and Economic Recovery Act of 2008 (HERA) and beginning with the release of the AMGI tables for 2009, HUD is providing a separate table for the rent and income limits for LIHTC developments, which HUD now collectively refers to as “Multifamily Tax Subsidy Projects” (MTSP).

HERA defined “HUD Hold Harmless Impacted Project(s)” for various counties, which created separate income and rent limits for developments that were placed in service prior to January 1, 2009. Therefore, if your development is located in a HUD Hold Harmless Impacted county and was placed in service and leasing units prior to January 1, 2009, the HERA income and rent limits should be used.

Maximum income limits for qualifying tenants depend on the minimum set-aside elected by the owner. Qualifying tenants in LIHTC developments with respect to which the “20/50” election has been elected may **not** have incomes which exceed 50% of the AMGI, as adjusted for family size. Qualifying tenants in LIHTC developments with respect to which the “40/60” election has been elected may **not** have incomes which exceed 60% of AMGI, as adjusted for family size.

To qualify as a low-income household eligible for a low-income unit in a LIHTC development, a Tenant Income Certification must be completed by the prospective tenants, such income verified and then a determination made as to whether the income exceeds the applicable county income determined pursuant to the minimum set-aside elected by the owner.

#### Rent Limits

Generally, a low-income household’s rent (including all tenant-paid utilities) may not exceed 30% of the maximum allowable income limit as adjusted for family size. Unlike the methods used for HUD-assisted (Section 8) or Rural Housing Service (RHS) -assisted developments (which are based on *actual* income at move-in or recertification), maximum allowable rent is based on 30% of the *maximum allowable* income.

## **Gross Rent Floor Election**

As the AMGI of an area changes, the maximum allowable rent for a particular unit will change. The maximum gross rent that can be charged may fluctuate (either up or down) if the AMGI fluctuates. If the AMGI increases, the maximum allowable gross rent will increase. If the AMGI decreases, a reduction in the gross rent may be required. However, IRS Revenue Procedure 94-57 allows the owner to establish the effective date of initial maximum rents that serve as a floor against subsequent reductions in rent that can result from a decrease in county AMGI. Revenue Procedure 94-57 allows an owner to fix the date of the gross rent floor as either the maximum rent levels in effect at the time of the PIS date, or the levels in effect at the time of the LIHTC carryover allocation.

## **Gross Rent Defined**

Gross rent, for LIHTC purposes, is the tenant out-of-pocket rent + tenant-paid utilities (excluding telephone and cable, assuming these are optional) + any other non-optional charges. *Gross rent does not include any rental assistance payments under Section 8 of the United States Housing Act of 1937 or any comparable rental assistance program, or any fees for supportive services which are paid to an owner by any governmental program of assistance.* (For more information regarding supportive services and exceptions to this rule, see IRS Notice 89-6 and IRS Revenue Ruling 91-38 in Appendix D to this Manual.)

Fees in addition to gross rent for facilities or services may be charged to tenants only if:

- the cost of the facilities is not included in eligible basis;
- the facilities or services are truly optional to the tenant; and
- a reasonable alternative is provided to the tenant.

## **Special Rent Restrictions (“Overall” AMGI %)**

**An exception to the rule** using the allowable income limit to calculate rent limits occurs if, as part of its LIHTC application, the owner agrees to restrict rents in a development to a level below the elected minimum set-aside. Such agreement will be reflected on the Summary Page of the LURA. For example, if a development’s overall rent targeting is to be 45% of AMGI, it is acceptable that some units have rents above 45% of AMGI as long as they are counterbalanced by units with rents below 45% of AMGI to achieve an overall AMGI rent targeting not exceeding 45%. In any event, rents in the development may not exceed the elected minimum set-aside (either 50% or 60% of AMGI) on any unit.

## **Utility Allowances Defined**

Utilities include items such as electricity, water, sewer, oil, gas, and trash, where applicable. Utilities do not include telephone or cable television. If the owner is paying for tenant utilities the utility allowance amount will be \$0.

When utilities are paid directly by the tenant, a utility allowance must be used to determine maximum eligible unit rent.

## Applying Utility Allowances

Utility allowance regulations are applied, individually, to each building in a development.

*NIFA requires development owners to review and update utility allowances at least annually, and prior to one year elapsing from when the previously-obtained allowances became effective.* In some cases the utility allowance amounts may not change. If, though, the utility allowance documentation submitted to NIFA is dated prior to the compliance year for which the annual documentation is being submitted, a letter or other official correspondence from the source providing the utility allowances must be included, indicating that the utility allowance used were in effect during such compliance period. In addition, if utility allowance amounts change during a compliance year the utility allowance documentation submitted must cover the entire compliance year. **New utility allowances should be used to compute rents that are due within 90 days after the effective date of the new allowances.** Rents may need to be adjusted more than once in a given year because of the timing differences between the release of HUD AMGI figures and the obtaining of updated utility allowances.

## Sources of Utility Allowances

Treasury Regulation Section 1.42-10, IRS Notice 89-6 and Federal Register Vol. 73, No. 146 Section 42 Utility Allowance Regulations Update set forth the IRS required procedures for determining utility allowances. (See Appendix D.) Following is a summary of the required procedures:

- RHS-assisted buildings – If a building receives assistance from Rural Housing Service (RHS) (formally the Farmers Home Administration (FmHA)), the applicable utility allowance for all rent-restricted units in the building is the utility allowance determined under the method prescribed by RHS for the building (whether or not the building or its tenants also receive other state or federal assistance).
- Buildings with RHS – Rental Assistance – If *any* tenant in a building receives RHS rental assistance payments, all tax credit units are governed by the RHS utility allowance. This includes HUD-assisted units.
- HUD-regulated buildings – If a building is regulated by HUD, the HUD-required utility allowances must be used for all rent-restricted units in the building.
- Tenants receiving HUD rental assistance – If a tenant receives HUD rental assistance in a building that is neither RHS-assisted nor HUD-regulated, the PHA utility allowance established for the Section 8 Existing Housing Program must be used for that household.
- Buildings without RHS or HUD assistance – If a building is neither RHS-assisted nor a HUD-regulated building, and no tenant in the building receives RHS tenant assistance, building owners may use one of the following options:

- 1) PHA Utility Allowance



- 2) Agency Estimate – A building owner may obtain a utility estimate for each unit in the building from NIFA provided that NIFA agrees to provide the estimate (cost estimate is calculated using the HUD Utility Schedule Model). The cost incurred in obtaining the estimate is borne by the building owner.
- 3) Utility Company Estimate – A local utility company estimate may be obtained, providing the estimated cost is for a unit of similar size and construction for the geographic area in which the building containing the unit is located. The utility company must offer utility services to the building in order for that utility company’s rate to be used in calculating utility allowances.
- 4) HUD Utility Schedule Model – A building owner may calculate a utility estimate using the “HUD Utility Schedule Model” that can be found on the Utility Allowances page at: <https://www.huduser.gov/portal/resources/utilallowance.html>. Utility rates used for the HUD Utility Schedule Model must be no older than the rates in place 60 days prior to the beginning of 90 days after the change (90 day period). Utility rates used must be submitted to NIFA with the utility allowance documentation.
- 5) Energy Consumption Model – A building owner may calculate utility estimates using an energy and water and sewage consumption and analysis model. The utility consumption estimates must be calculated by either a properly licensed engineer or a qualified professional approved by NIFA, and the qualified professional and the building owner must not be related within the meaning of section 267(b) or 707(b).

***Regardless of the utility allowance source used, the development owner must clearly identify by circling or underlining (not highlighting), on the supporting documentation, which utility allowance is being utilized for the development. Also, if multiple utility sources are being used, evidence of each source must be provided to NIFA.***

**Please Note:** Range/Microwave and Refrigerator are only included in the Utility Allowance amount if the tenant supplies or leases the appliances.

## Chapter 4. Qualifying Tenants

### Overview of Tenant Certification Procedures

The eligibility of individuals who reside in a LIHTC unit must be certified. Documentation of household income and composition must be obtained. Potential tenants should be advised early in the process that there are maximum income limits that apply to tenants residing in these units. Managers of LIHTC developments should explain to each potential tenant that anticipated gross income will need to be verified and certified prior to occupancy, and that for continued eligibility, annual recertification may be required. According to the Compliance Monitoring Regulations set forth in Treasury Regulation §1.42-5, “Tenant income must be calculated in a manner consistent with the determination of income under Section 8 of the United States Housing Act of 1937 (**“Section 8”**), not in accordance with the determination of gross income for federal income tax liability.” **HUD Handbook 4350.3 Rev-1, “Occupancy Requirements of Subsidized Multifamily Housing Programs” should be used as a reference guide. A copy of Chapter 5 of this handbook has been included in Appendix A of this Manual.** The HUD handbook, including revisions, and HUD notices can be obtained by calling (800) 767-7468 or visiting the HUD website at [www.hud.gov](http://www.hud.gov).

#### TENANT CERTIFICATION PROCESS SUMMARY:

- Potential tenants must complete a rental application/questionnaire.
- Based on the application and any clarifying discussions with the applicant, verification of income, assets, student status, etc., are obtained from the appropriate third parties or via applicant self-affidavit.
- The third-party/self-affidavit information is compared to the requirements of the LIHTC Program, to determine an applicant’s eligibility.
- If an applicant is found to be eligible under the LIHTC Program rules, a Tenant Income Certification (TIC) is completed *by the management agent*, then signed and dated by the adult tenant(s) (18 years old or older), and then signed and dated by the owner’s representative.
- A lease agreement is executed and the new tenant(s) move(s) in.
- A Violence Against Women Act (VAWA) Lease Addendum is executed at move-in.
- The household is recertified for continued LIHTC Program eligibility annually (within 120 days prior to the anniversary date of the household’s move-in) thereafter. Annual recertification of tenant income would not be required on 100% qualified unit developments; however, annual (anniversary of move-in) certification of student status, documentation of rent and rental assistance (if applicable) for the compliance year needs to be submitted.

**Initial Move-in:** If the tenant takes possession of the unit prior to completion of the income certification documentation, then the unit is out of compliance from the move-in date to the date of income certification documentation. However, if NIFA determines that the income certification documentation was corrected by the owner retroactive to the move-in date and prior to NIFA's annual request for documentation, then the non-compliance is not required to be reported to the IRS. Note: A retroactive correction includes the statement on the Tenant Income Certification (page 1, signed and dated by tenant(s), page 2, signed and dated by owner's representative) and any applicable documentation, "This information was true and correct as of the move-in date (xx/xx/xx)", signed and dated by the appropriate party.

**Late Recertification:** If the recertification was not completed on or within 120 days prior to the anniversary date of the household's move-in, then the unit is out of compliance beginning on the date the recertification was due until the tenant(s) signs and dates the TIC. The recertification may be corrected by the owner retroactive to the anniversary date. Note: A retroactive correction includes the statement on the Tenant Income Certification (page 1, signed and dated by tenant(s), page 2, signed and dated by owner's representative) and any applicable documentation, "This information was true & correct as of the move-in date (xx/xx/xx)", signed and dated by the appropriate party.

**Household Gives Notice of Departure Before Recertification is Due:** When a household gives notice in advance that they will not be occupying the unit in the coming year, a recertification is not necessary and the unit will remain in compliance. A tenant's notice to vacate is sufficient documentation for this event. (Given the notice to vacate is submitted prior to the anniversary of the move-in date and the tenant's actual move-out date is in accordance with the notice-to-vacate.) Should the household later decide to remain in the unit, a late recertification must be completed.

**Eviction Proceedings:** If an owner initiates an eviction proceeding and the household vacates the unit, a recertification is not necessary. A copy of the eviction notice is sufficient documentation for this event. If, for any reason, it is determined that the household will not vacate the unit as anticipated, a recertification will be necessary within 120 days of the determination.

*Each year's TIC must "stand on its own." For example, a pension verification obtained one year may indicate a certain payout amount in perpetuity, but this would need to be submitted with each compliance year's tenant documentation.*

*Please do not submit documents to NIFA that have been completed in a non-English language without an accompanying English translation; NIFA does not have translation capabilities at this time.*

## **Household Annual Income**

Tenant income must be calculated in a manner consistent with the determination of income under Section 8 of the United States Housing Act of 1937. Annual Household Gross Income is defined

as the gross income (with no adjustments or deductions) the household anticipates it will receive by the members of the household in the 12 month period following the effective date of the income certification. Owners and managers should use current circumstances to project income, unless verification forms or other verifiable documentation indicate that an imminent change will occur. LIHTC income limits are based on gross, not adjusted, annual income. Allowances commonly used in some government programs, such as child care allowance, elderly household allowance, dependent allowance, handicapped assistance allowance, etc., are not permitted to be subtracted from a household's gross income to determine income eligibility under the LIHTC Program. Further, deductions such as government taxes, social security tax, etc., that are commonly subtracted from an individual's income to arrive at "net income" are not applicable under the LIHTC Program.

### **Household Size (Unborn Children, Live-In Aides, Foster Children/Adult)**

- (i) Unborn children are included in determining the size of a household and for purposes of determining the maximum allowable income. *A self-certification must be obtained from the pregnant woman as documentation.* A household in the process of adopting a child is treated in the same manner as a household with an unborn child.
- (ii) A live-in aide should be included for the purpose of determining the appropriate unit size for the household, but is *not* included for purposes of determining the maximum allowable income.
- (iii) Foster children/adult should be included for the purpose of determining the appropriate unit size for the household, and are included for purposes of determining the maximum allowable income.

### **The Tenant Application**

A fully completed tenant application is critical to accurately determine tenant eligibility, and should include:

- The name and birth date of each person that will occupy the unit.
- The student status of each applicant for the 12-month compliance year.
- All sources and amounts of current and anticipated annual income expected to be received during the 12-month certification period. Sources may also include income from assets currently owned and from any assets disposed of for more than \$1,000 less than fair market value within the last two years.
- The signature of adult (18 and older) applicant(s) and the date the application was completed. All such information provided to NIFA is considered confidential and will be handled accordingly.

### **Tenant Income Verifications**

All regular sources of income, including income from assets, must be verified. Income verifications must be received prior to the execution of the Tenant Income Certification and actual

move-in. Income verifications must contain complete and detailed information and include, at a minimum, direct written verification from all sources of regular income and income from assets.

See NIFA reporting forms in Appendix E.

### **Effective Term of Verifications**

Third-party income verifications are valid for 120 days prior to move-in by the tenant. After the 120-day period, new income verification(s) must be obtained.

### **Methods of Income Verification**

#### **1. Third-Party Verification**

Reasonable efforts to obtain third-party verification are required. Please use NIFA's forms found in Appendix E to this Manual. Copies of the forms can also be downloaded from NIFA's website ([www.nifa.org](http://www.nifa.org)). These forms are updated as needed, so please check our website on a monthly basis. Other forms of *third party documentation must provide the equivalent information found on the NIFA forms.*

Please note: *All verification forms must be sent directly to the third party by the development owner/managing agent and not by the applicant.*

#### **2. Second-Party Verification and Electronic Verification**

Owners may use documents provided by the applicant or tenant if:

- (a) The required information does not require third-party verification (such as birth certificates, divorce decrees, etc.);
- (b) Third-party verification is impossible or will be unreasonably delayed. Efforts to obtain third-party verifications must be shown (i.e., phone logs, fax receipts, certified mail receipts, etc.) before use of second-party verifications will be permitted; or
- (c) There is a fee associated with receiving third-party verification.

Please note: *If pay stubs are submitted in lieu of third-party documentation, NIFA requires current pay stubs for four to six consecutive pay periods.*

#### **3. Verbal Verification/Clarification**

Verbal verification/clarification is to be used as a last resort, only after several documented efforts have been made to obtain written third-party verification. NIFA will review verbal verifications/clarifications on a case-by-case basis, and will be more inclined to accept verbal verification for non-monetary issues (i.e., dates, unreadable information, etc.). Monetary issues will require a signature from the contact person.

## **Whose Income is Counted?**

See HUD Handbook Section 4350.3 Rev-1, Chapter 5 included in Appendix A.

### **Educational Scholarships or Grants**

The treatment of educational scholarships or grants is dependent on whether the student is receiving Section 8 assistance.

#### Not Receiving Section 8 Assistance

All forms of student financial assistance, no matter how it is used, are excluded from annual income.

#### Receiving Section 8 Assistance

All financial assistance from the following sources in excess of tuition is includable in annual income.

- Under the Higher Education Act of 1965: This includes Pell Grants, Federal Supplement Educational Opportunity Grants, Academic Achievement Incentive Scholarship, State Assistance under the Leveraging Educational Assistance Partnership Program, the Robert G. Byrd Honors Scholarship Program, and the Federal Work Study programs.
- Assistance from private sources: This includes non-governmental sources of assistance, such as assistance that may be provided to a student from a parent, guardian, other family member(s), or other person(s), whether residing within the household or not.
- From an institution of higher education: This requires a reference to a particular institution and the institution's listing of financial assistance.

Exception: The amount of financial assistance above tuition is not included in annual income if:

- The student is 24 years of age or older and has a dependent child; or
- The student lives with their parent(s) who are applying for or are receiving Section 8 assistance.

Financial assistance does not include loan proceeds, therefore, the Perkins, Stafford and Plus loans under the Higher Education Act of 1965 are not considered financial assistance.

Note: NIFA will not require a pro-rated inclusion of income for a 17-year-old that will be turning 18 within the next 12 months as long as they are not the head of household, co-head or spouse of the head or co-head.

## **Items Included in Household Income**

See HUD Handbook Section 4350.3 Rev-1, Chapter 5 included in Appendix A.

Note: Include *gross* income amounts.

## **Asset Income**

See HUD Handbook Section 4350.3 Rev-1, Chapter 5 included in Appendix A.

Asset income is also included in household income:

- (i) When the cash value of the total household assets exceeds \$5,000 the actual expected income from the individual assets must be verified and compared to the total assets figure multiplied by the HUD passbook imputed interest rate. The greater of the two is then added to household gross income.
- (ii) When the cash value of the total aggregated household assets is \$5,000 or less, the household certifies as such on the “Under \$5,000 Asset Certification” form, and the actual income the household expects to receive in the next 12 months from such assets is then added to household gross income. This amount does not have to be independently verified.

Note: It is the *cash value* of assets that must always be determined. This includes subtracting out any costs necessary to convert the asset to cash. For example, someone who owns a house may subtract out brokerage fees and any other settlement costs, as long as back up documentation is submitted to support these amounts.

## **Items Excluded From Household Income**

See HUD Handbook Section 4350.3 Rev-1 included in Appendix A.

### **Utility Allowance Is Greater Than Tenant’s Portion of Rent**

Under HUD’s Section 8 program, the portion of the rent paid by the household is calculated as a percentage of the household’s monthly income and subtracting a utility allowance if the household pays utilities. In some cases, the utility allowance will be greater than the household’s portion of rent and the household will receive a utility reimbursement to assist in meeting utility costs. The utility reimbursement is not included in income.

Payments, rebates or credits received under the Federal Low-Income Home Energy Assistance Program are excluded from income. Also, exclude any winter differentials given to the elderly.

Special calculations of public assistance income are required for as-paid state, county or local public assistance programs. Consult the HUD Handbook for detailed instructions.

Note: If an income item is not listed in the HUD exclusions, assume it is counted as household income.

## Students

A household comprised entirely of full-time students (“Student Household”) will not qualify as a low-income household. However, if any member of the household is a part-time student, the household will not be considered a student household. If a part-time student is the only reason the household qualifies as a low-income household, documentation of that student’s part-time status must be submitted to NIFA.

NIFA does not require documentation of full-time student status for those applicants/tenants who voluntarily claim to be full-time *unless* the students are 18 years of age or older “and” are dependents and the development will be using the HUD rule that requires only the first \$480 of earned income of a full-time student that is a dependent of the head or co-head of the household, be included in the household income.

Full-time students are defined as individuals who attend an educational organization that normally maintains a regular faculty, an established curriculum, an organized body of attending students, and are determined by the educational organization to be full-time students. In addition, individuals pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of such educational organization, of a state or political subdivision of the state, are also deemed to be full-time students. (See Code § 151(c)(4)).

A student is an individual who has been or will be a student for five calendar months out of the current and/or upcoming calendar year. The 5 calendar months do not need to be consecutive.

There are five exceptions to the limitation on households where all members are full-time students:

- At least one member of the household receives assistance under Title IV of the Social Security Act (formerly Aid to Families with Dependent Children (AFDC)), now known as Temporary Assistance for Needy Families (TANF).
- A student who was previously under the care and placement responsibility of the state agency responsible for administering a plan under part B or part E of title IV of the social security Act (Foster Care).
- At least one member of the household is enrolled in a job training program receiving assistance under the Job Training Partnership Act (JTPA) or under other similar federal, state, or local laws. This includes, but is not limited to, programs operating under the Workforce Investment Act (WIA) and Dislocated Worker Program.
- The student is a single parent (Single Head of Household) and such parent is not a dependents on another individual tax return and their children are not dependents of another individual other then a parent of such children.
- Student member of the household is married and entitled to file a joint tax return. In the case of a married couple who have yet to file a tax return, NIFA will consider them to meet this requirement as long as they certify their intention to file a joint return when next required to file a tax return. The property manager should obtain a copy of such joint return.

Households claiming any of the above exceptions must provide documentation to NIFA.



**Please Note:** For Tax Exempt Bond financed developments, the exceptions are the same for bonds issued after 7/31/08. Bonds issued before 7/31/08 have only one exception: married and entitled to file a joint tax return.

### **Developments for the Elderly**

Developments for which the owner has elected to be designated as an elderly development in the LIHTC Application must follow one of the following designations and comply with the requirements of such designation:

- Housing intended for and solely occupied by tenants who are 62 years of age or older.
- Housing where at least one tenant in the household is 55 years of age or older in at least 80% of the total housing units, and the owner adheres to a policy that demonstrates an intent to house persons who are 55 or older.

### **Tenant Income Certification (TIC)**

After all income, asset, student status, and any other applicable information (i.e., age requirement for a development for elderly persons) has been certified/verified, it is transferred to the Tenant Income Certification form and signed and dated by the adult tenant(s) and the owner's representative. (See Chapter 5 for further discussion on proper TIC completion).

*For developments which receive RHS or project based HUD Section 8 assistance, it is acceptable to use and submit to NIFA the RHS-type or HUD-type tenant certification, provided that supporting documentation meets the requirements of the § 42 LIHTC program. Households that receive Section 8 vouchers may provide a public housing authority letter certification, provided that the student status of tenants and the components of rent are clearly documented. For households that receive Section 8 assistance, documentation of the tenant rent generally means submitting a copy of the Housing Assistance Payment (HAP) contract along with the lease.*

### **Leases**

**A minimum 6-month initial lease term** must be executed on all LIHTC units (except for single room occupancy ("SRO") developments, in which a minimum 30-day lease term is allowed). The initial 6-month lease term requirement may include free rental periods of one month or less. Subsequent leases are not subject to the minimum lease period; however, a lease must be in effect at all times.

Following is a partial list of recommended provisions to be included in the lease with respect to a LIHTC development:

- The household must provide the development owner/management agent with all information required under the LIHTC Program compliance monitoring procedures.
- The lease should give the development owner or manager the right to terminate the lease if a household refuses to provide TIC information or provides information that turns out to be false.

- The lease should require each household to sign a TIC each year (if applicable) that identifies the household, its size, and total income.
- The lease should require annual recertification (if applicable) by the household as to their income and student status, and make continued occupancy contingent upon continued LIHTC program eligibility.
- The lease should clearly list the base monthly rent charged for the LIHTC unit and additional charges for optional amenities and services.
- The lease should prohibit the assignment or sub-letting of the LIHTC unit.

*For new move-ins, the initial lease commencing date is the same as the move-in and TIC effective date. For subsequent compliance years the current rent charged must be reflected on the documentation submitted.*

When submitting copies of tenant leases to NIFA, provide the pages that state the rent amount (including any non-optional charges), the time period covered, the signature of the tenant(s), and the date signed. This documentation is necessary to support the rent amount listed on the TIC *and* Annual Tax Credit Summary Report. (The amount listed on the Summary Report should reflect changes to rent and or utility allowance amounts as of the date they occur.)

#### **Violence Against Women Act (VAWA)**

Please see Federal Register / Vol. 81, No. 221, Violence Against Women Act of 2013: Implementation in HUD Housing Programs. <https://www.gpo.gov/fdsys/pkg/FR-2016-11-16/pdf/2016-25888.pdf>

The Owner will be required to annually self-certify that the property is in compliance with VAWA. Each household is required to complete the VAWA Lease Addendum at move-in.

## **Chapter 5. Ongoing Compliance Monitoring**

### **Annual Reviews**

NIFA will annually review Tenant Income Certifications with supporting documentation, and other information related to a development's compliance under the LIHTC Program. These reviews will either be performed as desk reviews at NIFA or as on-site inspections as required pursuant to § 42 of the Code (which will be conducted in accordance with the HUD Uniform Physical Condition Standards ("UPCS")). On or before the January due date, compliance reporting documents *for the previous calendar year* for each development must be submitted to NIFA, along with the applicable compliance monitoring fee. The compliance monitoring fee is outlined in NIFA's Qualified Allocation Plan and based on the amount of LIHTCs allocated to the development.

The items requested by NIFA may include, but are not limited to the following:

- Owner's Certificate of Continuing Program Compliance
- Annual Tax Credit Summary Report as of 12/31/XXXX (For new projects only)
- Non-Profit documentation
- Certificate of Continuing Program Compliance (BONDS)
- Utility Allowance documentation
- Supportive Service documentation
- Affirmative Fair Housing Marketing Plan (AFHMP)
- Violence Against Women's Act (VAWA) documentation
- Tenant Rental Application
- Tenant Income Certifications and supporting verifications
- Lease Agreement documentation
- Rental Assistance (if any) documentation
- Student Status documentation

### **Summary Of Documentation Requirements**

Please note that the summary of documentation requirements outlined below is intended to provide guidance in the submission of files to NIFA and is not considered all-inclusive. If necessary, please submit any additional supporting documentation used to clearly document the LIHTC certification of the household.

Move-in Documentation (For all LIHTC Projects):

- Rental Application/Questionnaire (signed by each adult household member)
- Verification of Income (Please note, NIFA requires each adult household member to submit one of the following; Employment Verification, Unemployed Affidavit or Certification of Zero Income)
- Verification of Assets
- Tenant Income Certification (TIC) form (signed by each adult household member and management). The TIC may be substituted with a Certification from the Rural Development Administration (Farmers Home) or Public Housing Authority (PHA);

however, must include information that clearly indicates the specific move-in date and must be consistent with the date of the LIHTC Certification.

- Lease Agreement (Please submit only the pages that state the occupants, rent amount (including any non-optional charges), the time period covered, the signature of the tenant and the date signed).
- Documentation of Student Status (if the student status for each household member has been identified and certified by the household on the TIC, the Annual Student Certification form is **not** required at move-in)
- VAWA Lease Addendum

#### Anniversary of Move-in Documentation (For 100% LIHTC Projects):

- Lease Renewal Documentation (If the move-in Lease does not renew annually or there is a change in the rent amount)
- Rental Assistance Documentation effective within 120 days of the effective date
- Annual Student Certification (must be signed by each adult household member) and if applicable, any supporting documentation.

#### Anniversary of Move-in Documentation (For Mixed-Income Projects)

- Recertification Questionnaire (must be completed and signed by each adult household member)
- Verification of Income (Please note, NIFA requires each adult household member to submit one of the following; Employment Verification, Unemployed Affidavit or Certification of Zero Income)
- Verification of Assets
- Tenant Income Certification (TIC) form (signed by each adult household member and management). The TIC may be substituted with a Certification from the Rural Development Administration (Farmers Home) or Public Housing Authority (PHA); however, must include information that clearly indicates the specific move-in date and must be consistent with the date of the LIHTC Certification.
- Lease Agreement (Please submit only the pages that state the occupants, rent amount (including any non-optional charges), the time period covered, the signature of the tenant and the date signed).
- Student Status Verification, and if applicable, any supporting documentation.

## **LIHTC Compliance Reporting Forms**

This section provides an overview of NIFA's compliance reporting forms and instructions for completion of the forms. These forms can be found in Appendix E of this Manual, or downloaded from NIFA's website at [www.nifa.org](http://www.nifa.org). (Please refer to NIFA's Website for current forms) Each form that requires a signature of the applicant/tenant must be individually signed. NIFA will not accept blanket release forms. NIFA requires every adult (18 and older) in a unit to submit an Employment Verification, Unemployed Affidavit, or Certification of Zero Income to NIFA, as is applicable.

**It is strongly suggested that NIFA's forms are used. If NIFA's forms are not used; the third party documentation must reflect the same information as NIFA's form(s).**

Current Forms

Affirmative Fair Housing Marketing Plan (AFHMP)  
Annual Student Certification  
Annual Tax Credit Summary Report for the Year Ending December 31, XXXX  
Annuity Verification  
Bank Verification  
Certification of Dependent Child(ren)  
Certification of No Child Support  
Certification of Zero Income  
Child Support and/or Alimony Verification (Completed by Clerk of Court or Appropriate Verifying State Agency)  
Child Support and/or Alimony Verification (Completed by Payer)  
Clarification Record  
Disposal of Assets Certification  
Employment Verification  
Foster Care Verification  
Home Owner/Real Estate Certification  
Income and Asset Income Calculation Worksheet  
Life Insurance Verification  
Live-in Care Attendant Affidavit  
Military Pay Verification  
Mutual Funds/Stocks/Bonds Verification  
Owner's Certificate of Continuing Program Compliance  
Pension Income Verification  
Real Estate Verification  
Recertification Questionnaire  
Rental Application  
Retirement Savings Plan Verification (401K, IRA, Keogh and etc.)  
Safe Deposit Box Certification  
Savings Bonds Verification  
Self Certification Form  
Self-Employment Affidavit  
Social Security Verification  
Student Financial Aid Verification  
Tenant Income Certification (TIC)  
Trust Account Verification  
Under \$5,000 Asset Certification  
Unemployed Affidavit  
Verification of Section 8 Housing Assistance  
Verification of Social Services  
Verification of Unemployment Benefits  
Violence Against Women Act (VAWA) Lease Addendum  
Voluntary Race, Ethnicity and Disability Data Reporting Form  
Work Order/Service Request

## Workers Compensation Verification

### Bond Compliance Forms

Certificate of Continuing Program Compliance (Bonds)

Certificate Regarding Qualified Project Period

Following is an overview of the compliance reporting forms:

### **AFFIRMATIVE FAIR HOUSING MARKETING PLAN**

- Please ensure the applicable worksheets are completed.

### **ANNUAL STUDENT CERTIFICATION**

- If an applicant/tenant has been or will be a student for five calendar months out of the current and/or upcoming calendar year (months need not be consecutive) and does not qualify for an exception, they do not qualify for a LIHTC unit.
- If an applicant/tenant is currently or anticipates becoming a part-time student in the next 12 months, evidence from the educational institution must accompany this form when submitted to NIFA.
- Supporting documentation must be submitted as evidence of qualifying under the student exceptions.
- This form is required to be submitted at recertification.

### **ANNUAL TAX CREDIT SUMMARY REPORT FOR THE YEAR ENDING DECEMBER 31, XXXX**

- Do not alter the column titles on this form.
- A separate form must be submitted for each building in the development or “BIN” (Building Identification Number).
- Only activity for the compliance period year being reported should be included on this form. “Activity” means any initial move-in certifications, recertifications, move-outs, or transfers during that year. For example, if this form is being completed for 2012 (“for the year ending December 31, 2012”), the form should not list any of the above-mentioned activities that occurred in 2011 or which subsequently occurred in 2013.
- All activity for each unit should be listed chronologically (oldest activity to most recent) in successive rows.

- The “Effect DT/Last Cert” column should not reflect any future dates for which anticipated recertifications are *due*. Nor should the column reflect any tenant recertifications of past compliance period years. It should only reference dates of recertifications *that have actually occurred* during the compliance period year being reported.
- Any rental subsidy amounts listed on this form should agree with the documentation submitted to NIFA and kept in the tenant’s file and represent the changes during the calendar year.
- Units that have market rate or moderate rate tenants should be clearly identified as such on the form, including any tenant move-in and move-out dates. Tenant income or rent information is not required.
- Transfers must be clearly marked.
- Please include the head of household’s first and last names.
- For developments that are using Compliance On-Line (COL), the LIHTC/HOME Annual Occupancy Report should be submitted instead of the Annual Tax Credit Summary Report for the Year Ending December 31, XXXX.

#### **ANNUITY VERIFICATION**

- Types of Annuity
  1. Fixed – has a fixed interest rate
  2. Variable – interest rate will change
  3. Hybrid – is a combination of fixed and variable interest rates
  4. Immediate – a periodic payment is now being received
  5. Life – a periodic payment will be received for life
  6. Deferred – delays payments of income, installments or a lump sum until the investor elects to receive them.
  7. Other
- Please be advised at any time the way annuities are handled may change.

#### **BANK VERIFICATION**

- The Bank Verification is only to be used for savings accounts, checking accounts, certificates of deposits and money market accounts. If another asset is listed on the Bank Verification, please use the appropriate form to verify the information.
- Please use the current balance for savings accounts and the 6 month average balance for checking accounts.

#### **CERTIFICATION OF DEPENDENT CHILD(REN)**

- This form can be completed in lieu of the tenant/applicant providing a Federal Income Tax Return, demonstrating that they have a dependent child(ren).

### **CERTIFICATION OF NO CHILD SUPPORT**

- This form should only be completed if there is no child support, court ordered or otherwise.

### **CERTIFICATION OF ZERO INCOME**

- If the applicant/tenant has no income and is able to make the representations in the Certification of Zero Income form, NIFA does not require the completion of an Unemployed Affidavit (the second and third options of the Unemployed Affidavit will not apply).
- Completion of this form does not relieve the applicant/tenant of the requirement of either completing an “Under \$5,000 Asset Certification” or submitting asset documentation, whichever is applicable.
- Please be advised that #3 (“I will be using the following sources of funds to pay for rent and other necessities:”) needs a response and if it is left blank, this form will be considered incomplete.

### **CHILD SUPPORT AND/OR ALIMONY VERIFICATION (Completed by Clerk of Court or appropriate verifying State agency)**

- Alimony or child support amounts awarded by the court must be included in household income unless the applicant/tenant provides written certification that such payments are not being made **and** that he or she has taken all reasonable legal actions to collect any amounts due, including filing with the appropriate courts or agencies responsible for enforcing such payments. Obtaining the following types of documentation may provide evidence for including lesser amounts in household income than what is court ordered.
  1. Divorce and Court Ordered Decrees reflecting the amount and the frequency of payments may be submitted in lieu of the Child Support/Alimony Verification.
  2. Printouts from the court or agency responsible for enforcing support payments, provided that such documentation reflects the judgment amount awarded and the frequency of the payments (i.e. Judgement Detail Report).
  3. Reasonable Legal Action.



- a. In Nebraska, if a custodial parent is receiving TANF/AFDC, this, by definition, means that Nebraska Health and Human Services is actively pursuing child support payments. Therefore, a Nebraska Health and Human Services Payment History Report is acceptable as documentation of reasonable legal action.
- b. If a custodial parent is not receiving TANF/AFDC and they apply for services through Nebraska Health and Human Services or a private attorney, such application will be accepted as reasonable legal action provided that a current payment printout from the court or agency responsible for enforcing support payments is also submitted. (NOTE: a support order can be closed at the request of the custodial parent, if the amount in arrears is less than \$500 or if the amount of child support is prepaid. If documentation is received stating that the support enforcement case has been closed or that no current support order is on file, this means that the enforcement agency is no longer pursuing the matter; however, the individual may still be receiving child support.)
- c. If the Nebraska Health and Human Services Payment History Report shows either of the following, then reasonable legal action has been taken.
  - (1) Payee(s) named include(s) the NE Dept of Health & Human Services.
  - (2) A “Yes” appears after the words “Income Withholding”.

#### **CHILD SUPPORT AND/OR ALIMONY VERIFICATION (Completed by payer)**

- If the payer refuses to complete this verification and no court order has granted child support; a SELF CERTIFICATION FORM may be used as evidence of child support income when completed by the applicant/tenant.

#### **CLARIFICATION RECORD**

- A Clarification Record is acceptable only as a last resort after several attempts (which need to be documented as evidence) to process the written verification. Verbal verification must always be followed by written verification from a third party.
- A Clarification Record should be used for non-monetary issues (i.e. dates, unreadable information, etc.).

- For telephone discussions regarding monetary values, NIFA expects to see that the management company either re-fax the Clarification Record for the third party to fill in the missing information, **or** fax the Clarification Record listing the items in question for the third party to address directly on the Clarification Record, then sign and date the form and fax a copy back to the management company.

### **DISPOSAL OF ASSETS CERTIFICATION**

- This form is used when the household has disposed of an asset within the last two years (24 months).
- If money is received and used for vacations, medical bills, personal item(s) etc., it is not considered “disposed of” unless the money or the item(s) purchased with the money was given away.
- Assets disposed of for less than fair market value as a result of foreclosure, bankruptcy, divorce, or separation are *not* counted. Please provide supporting documentation.
- This form must be completed by the tenant.

### **EMPLOYMENT VERIFICATION**

- Please ensure that the employer provides all information requested on this form. If not applicable, the employer should mark “N/A.”
- A comparison between a tenant’s year-to-date earnings and the current wages/salary must be made. Any sizeable discrepancies should be investigated by the owner/manager. The larger of the two numbers should be included in household income.
- If the employer states the applicant/tenant has access to a retirement account, a Retirement Savings Plan Verification needs to be completed.

### **FOSTER CARE VERIFICATION**

- This form should be completed if the household qualifies under the foster care student exception.

### **HOME OWNER/REAL ESTATE CERTIFICATION**

- If the property is for sale, please provide the following: documentation of the current market value, mortgage balance (if applicable) and any closing costs that would be incurred.
- If the property is for rent, please provide the following: documentation of the current market value, mortgage balance (if applicable), current lease agreement

and documentation of any expenses incurred (if applicable), i.e., taxes, insurance, maintenance, etc.

- If the property is under land contract, please provide the following: copy of the land contract, amortization schedule (if applicable), etc.
- If the real estate is not for sale, under land contract or for rent, please provide documentation which provides the current market value of the real estate and any expenses which would be incurred in selling the real estate.
- This form should be used in conjunction with the REAL ESTATE VERIFICATION or a print out from the county assessor (NIFA does not accept estimates from third party Real Estate Sites (i.e. Zillow)).

### **INCOME AND ASSET INCOME CALCULATION WORKSHEET**

- This form allows NIFA to understand how the amounts listed on the Tenant Income Certification have been calculated.

### **LIFE INSURANCE VERIFICATION**

- The Life Insurance Verification form is not required for term life insurance as it does not provide a benefit to the applicant/tenant during their life time and should not be reported on the Tenant Income Certification.
- If an applicant/tenant owns whole or universal life insurance, this form should be used to verify.

### **LIVE-IN CARE ATTENDANT AFFIDAVIT**

- This form must have initials by statements 1, 2 and 3 in order for a person to be considered a live-in care attendant. If this form is submitted and not all the statements are initialed, the person will not be considered a live-in care attendant.
- A verification of need from the applicant's health care professional must also be obtained annually.
- For § 42 purposes the live-in care attendant must be included on the TIC; however, they are not included in household size when calculating maximum allowable income.

### **MILITARY PAY VERIFICATION**

- As set forth in the HUD Handbook 4350.3 – rev. 1, hostile fire pay is the only military pay excluded from income. If excluding other pay entitlements, please provide an explanation.
- Military personnel can obtain their Leave and Earnings Statement (LES) at the following website: <https://mypay.dfas.mil/mypay.aspx>.
- Please provide explanatory detail for any non-obvious acronyms used.

### **MUTUAL FUNDS/STOCKS/BONDS VERIFICATION**

- Reinvested dividends or interest is considered income from assets and need to be reported as such on the Tenant Income Certification. Please be advised that generally, these types of assets generate additional income.

### **OWNER’S CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE**

- This certification applies to the entire development and any noncompliance issues arising from it apply to all buildings from the beginning of the compliance period year.
- When completing this form, “Ownership Entity” means the legal name of the owner(s); the representative/agent of such entity should execute the form.
- This form may not be altered.
- If “No,” “Change,” or “Finding” is answered on questions 1-15, please explain on page 3.
- This certificate is completed during the Compliance Period and the Extended Use Period.

### **PENSION INCOME VERIFICATION**

- This form is required if a tenant is receiving periodic payments and does not have access to any or part of a lump sum amount.
- This form may be used to verify VA pensions/benefits. If a person receives a VA disability for service-connected disability it is exempt from income. Please note, it MUST state that it is for “Service-connected disability”.

### **REAL ESTATE VERIFICATION**

- This verification should be used in conjunction with the HOME OWNER/REAL ESTATE CERTIFICATION.

- An internet printout from the applicable County Assessor's website is acceptable in lieu of this form: if the printout lists the assessed value of the real estate.

### **RECERTIFICATION QUESTIONNAIRE**

- This form must be completed by the tenant in order to identify income, assets and changes in student status in order to complete the recertification process, **for mixed income developments only.**

### **RENTAL APPLICATION**

- This form must be completed, signed and dated by adult (18 years & older) household member(s).
- This form gathers information pertaining to income, assets, student status and etc.
- This form gives the owner's representative guidance on what information needs to be verified and/or certified.
- The owner's representative may use their own forms for the rental application as long as they provide in substance the same information as NIFA's rental application.

### **RETIREMENT SAVINGS PLAN VERIFICATION**

- Reinvested dividends or interest is considered income from assets and needs to be reported as such on the Tenant Income Certification. Please be advised that mutual funds/stocks/bonds may be a part of the applicant/tenant's retirement savings plan.
- Include in annual income any retirement benefits received through periodic payments, and enter the amount in the "Other Income" column on the TIC.  
\*Do not count any remaining amounts in the account as an asset\*.
- Include retirement benefits as an asset when the applicant/tenant has access to the account, even if the only access is for a financial hardship/loan.

### **SAFE DEPOSIT BOX CERTIFICATION**

- In some instances, assets reported on this form may need to be verified through the third party with another verification form (i.e. Life Insurance Verification, personal property held as an investment, etc.).

## SAVINGS BONDS VERIFICATION

- An internet printout from the savings bond calculator (<http://www.treasurydirect.gov/BC/SBCPrice>) is acceptable in lieu of this form; however, copies of the savings bonds must accompany the internet printout.

## SELF-CERTIFICATION FORM

- This form should be used for any self-certification; it has the appropriate party signing under penalties of perjury (i.e. certification of pregnancy).

## SELF-EMPLOYMENT AFFIDAVIT

- The tenant must indicate on the form how many self-employment federal income tax returns have been filed in the immediate preceding three years. This should match the number of federal income tax returns collected from the applicant/tenant. (If the applicant/tenant has not kept copies of his/her tax returns, copies can be obtained from the IRS.)
- If anticipated income is greater than the average of the federal income tax returns, include the anticipated income in household income.
- If anticipated income is less than the average of the federal income tax returns, anticipated income can still be used if the tenant provides an explanation. If no explanation is provided, include the average of the tax returns in household income.
- For a newly self-employed person (no self-employment federal income tax return has been filed), a written business plan or Profit/Loss Statement supporting the anticipated income must be submitted.
- Note: The *entire* tax return (including all Schedules) of a self-employed person should be obtained to ensure all sources of income have been disclosed.
- If the net income from a business is negative, it must be counted and shown as zero (0) income on the TIC.

## SOCIAL SECURITY VERIFICATION

- Include the *gross* amount of any Social Security benefits, before any deductions for Medicare, etc. This information may be obtained and submitted in a printout form from the verifying agency.
- If a Cost-of-Living Adjustment (COLA) increase is included in the gross monthly amount, documentation of such must be submitted in each household's file.

- Supplemental Security Income (SSI) verification must be dated within 120 days prior to the move-in/anniversary of move-in date.

### **STUDENT FINANCIAL AID VERIFICATION**

- This form must be completed for every student who resides in a household that is applying for or receiving Section 8 (excluding K-12).

### **TENANT INCOME CERTIFICATION (“TIC”)**

- Please note: the TIC contains a specific set of instructions regarding completion. (See Appendix E)
- The Effective Date and Move-In Date will be the same for a new move-in.
- The Effective Date: 1) cannot be earlier than any of the signature dates, 2) must be within 120 days prior to the date of any verification documentation, and 3) must be performed within 120 days prior to the anniversary date of the move-in.
- For a new move-in, the TIC should not be signed by the tenant(s) any earlier than 5 days prior to moving in. The owner’s representative should sign immediately thereafter and never before the tenant(s).
- For a tenant recertification, excluding the 100% LIHTC properties, the TIC should not be signed by the tenant(s) any earlier than 120 days prior to the anniversary date of move-in. The owner’s representative should sign immediately thereafter and never before the tenant(s).

### **TRUST ACCOUNT VERIFICATION**

- A copy of the Trust documents should be submitted along with this form.

### **UNDER \$5,000 ASSET CERTIFICATION**

- This form must be completed if the total amount of tenant(s) assets equals \$5,000 or less.
- Either box #2 or box #3 must be checked when this form is used.
- Box #4 should only be checked if the household has no assets.
- Only one form per household is required.
- If an amount is listed under (A) Cash Value and (B) Interest Rate then (A\*B) Annual Income must be completed.
- Annual income amount must equal the cash value multiplied by the interest rate.

- The total income from all assets must be listed on the blank line in the net family assets statement near the bottom of the form, even if the total amount equals zero. This amount must also be included in total household income on the TIC.
- Please complete every line. If it does not apply please write N/A.

### **UNEMPLOYED AFFIDAVIT**

- If an unemployed applicant/tenant anticipates becoming employed, then the applicable option on this form must be completed. Annualization of such anticipated income is included in household income if such amount is greater than the annualization of any unemployment benefits being received.
- If unemployment benefits are being received and the applicant/tenant remains unemployed, NIFA will require the following:
  1. If the Unemployed Affidavit indicates no expected employment income in the next 12 months (first option), then unemployment benefits should be annualized.
  2. If the Unemployed Affidavit indicates employment income within the next 12 months (as shown on the blank line of the second option), then compare that figure to the annualized unemployment benefits and use the greater of the two.
  3. If the Unemployed Affidavit indicates a known start date of expected employment (third option), calculate a combination of unemployment benefits (up until the employment start date) + employment wages received on and after the start date.
- If an adult household member is not employed, but receives income from another source (i.e. Social Security, Railroad Pension, etc.), this form must be completed.

### **VERIFICATION OF SECTION 8 HOUSING ASSISTANCE**

- If this form is completed in its entirety, it may be substituted for the Tenant Income Certification and supporting documentation as long as a lease agreement and student status documentation are also submitted.

### **VERIFICATION OF SOCIAL SERVICES**

- General Assistance is included in Annual Income.
- Food stamps are not included in Annual Income.
- If the Other known income column is completed, third party verification must be submitted.



## **VERIFICATION OF UNEMPLOYMENT BENEFITS**

- An Unemployed Affidavit must also be completed with this form, unless verification from an employer is provided for anticipated employment.

## **VIOLENCE AGAINST WOMEN ACT (VAWA) LEASE ADDENDUM**

- Every household needs to sign off on this lease addendum at move-in.

## **VOLUNTARY RACE, ETHNICITY AND DISABILITY DATA REPORTING FORM**

- NIFA requests this information in order to comply with Housing and Economic Recovery Act of 2008; which requires annual reporting of certain information to the United States Department of Housing and Urban Development.

## **WORK ORDER/SERVICE REQUEST**

- This form must be signed and dated by the person that completed the work.
- Paid invoices that show the address and unit number, if applicable, the work needed and a description of the work performed are also acceptable in lieu of this form.

## **WORKERS COMPENSATION VERIFICATION**

- If the “ending date” is not completed, annualize the benefit for the next 12 months.

Following is an overview of the compliance reporting forms for developments financed with tax-exempt bonds (“Bonds”):

## **CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE (BONDS)**

- Must be submitted for all tax-exempt bond developments, not required for LIHTC only developments.
- Make sure all questions are answered.
- The signature date must be on or after 12/31 of the compliance year.

## **CERTIFICATE REGARDING QUALIFIED PROJECT PERIOD**

- This form must be completed, recorded and sent to NIFA at the beginning of the Compliance Period.

## **Households Determined to Be Over The Income Limit At Recertification**

In the event that a household's income exceeds the income limit at the time of recertification, NIFA must determine whether the household was income qualified at the time of move-in. The initial tenant income certification must be reviewed. If the household qualified at move-in, no further action is necessary and the unit is in compliance with the annual income recertification requirements. If the household's income is 140% or more of the income limit, compliance with the Available Unit Rule must also be evaluated.

If NIFA identifies an issue of noncompliance on the initial tenant income certification, NIFA will review the intervening tenant income recertifications to determine whether the noncompliance was corrected at some intervening point.

### **Next-Available-Unit Rule (“140% Rule”)**

Special rules apply when a household's income increases above 140% of the current applicable income limit:

*If, upon recertification, the income of the occupants in a qualified LIHTC unit has increased-above 140% of the current AMGI, the unit may continue to be counted as a LIHTC unit only if the next-available unit of comparable or smaller size in the same building is rented to a low-income household.*

All available units must be rented to qualifying households until the building's original applicable fraction (not including the units which have gone over 140%) is restored. In other words, the percentage of LIHTC units (excluding the “140%-units”) must be at least equal to the percentage of LIHTC units on which the LIHTC was based. Once the original applicable fraction of the building has been restored, the 140%-units may remain rent-restricted (low income) or may become market units if the building is a mixed-income building. (For example, if a development already has extra “buffer” LIHTC units above and beyond the required minimum, the next-available unit may be rented to a market rate household depending on how many units may be close to or at the 140% status.) If any comparable unit that is available or subsequently becomes available is rented to a nonqualified household before the original applicable fraction is restored, all 140%-units for which the available unit was a comparable unit within the same building lose their status as LIHTC units.

A unit that is subject to an agreement that is binding under local law is not considered to be an “available unit” for purposes of this rule. For example, a nonqualified household who had a binding agreement on unit B1 prior to the qualified low-income household residing in unit B2 going over 140%, may move into unit B1 after unit B2 goes over 140%, without violating the next-available-unit rule (applicable documentation must be sent to NIFA).

A *comparable unit* is a residential unit that is of comparable-size or smaller than the 140%-unit. For purposes of determining whether a unit is of comparable-size, the unit must be measured by the same method used (floor space fraction or number-of-units fraction) to determine qualified basis for the credit period year in which the comparable unit became available.

## **Vacant Unit Rule**

If a LIHTC unit in a development becomes vacant during the year, reasonable attempts must be made to rent that unit, or the next-available unit of comparable or smaller size, to tenants who have qualifying income before any units in the development are rented to non-qualifying tenants.

A vacant unit that was formerly occupied by low-income individuals may continue to be treated as a LIHTC unit, provided that reasonable attempts are made to rent that unit.

“Reasonable attempts” may vary geographically and financially due to the different advertising media and technologies available; however, the development owner or manager must be able to document those attempts to NIFA. Certain reasonable attempts might include newspaper ads, radio ads, television ads, fliers, signs, etc.

## **Tenant Transfers**

When an existing household transfers to a different unit within the same development, the newly-occupied unit adopts the status of the vacated unit. (The two units exchange status.) The date should reflect the anniversary of the tenant’s original move-in date.

If on the 8609 the owner elected the building as not part of a multiple building project then transfers are only allowed within the building.

*Please make sure that any tenant transfers are clearly indicated on the Annual Summary Report.*

## **Changes in Household Composition**

Changes in the size of an existing household after an initial tenant income certification must be addressed.

The addition of new member(s) to an existing low-income household requires the income certification for the new member of the household, including third party verification. The treatment will depend on whether the building is a mixed-income or a 100% LIHTC building.

### **Mixed-Income Developments**

For mixed-income developments, the new tenant’s income is added to the income disclosed on the existing household’s most recent tenant income certification. The household will continue to be income-qualified, and the income of the new member is taken into consideration with the income of the existing household for purposes of the Available Unit Rule under IRS 42 (g)(2)(d).

### **100% LIHTC Developments**

If the development is a 100% LIHTC development, the new tenant’s income is added to the income disclosed on the existing household’s original tenant income certification.

*Original Household No Longer Occupies Unit*

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:

1. For mixed-income developments, the newly created household was income qualified, or the remaining tenants were independently income qualified at the time they moved into the unit.
2. For 100% LIHTC developments, the remaining tenants were independently income qualified at the time they moved into the unit.

If a determination is made that the tenants manipulated the income limitation requirements, then the unit shall not be treated as a low-income unit as of the date the household initially occupied the unit.

A decrease in the household size does not trigger an immediate income certification of a new household.

Please Note: When adding an additional member to the existing TIC make a notation when the new member moved in.

### **Employee Units**

A development may elect to have a manager, maintenance person, or security guard live on-site. For such units to be treated as eligible basis the manager/maintenance person/security guard must be employed full-time at the development. Full-time is not necessarily defined by number of hours, but rather whether such person's presence is reasonably required, and is warranted by the type, size, tenant population and/or location of the development.

Any owner desiring to have an employee unit or units in a development must make a written request to NIFA, describing the duties and time involved, and the characteristics of the unit(s) that will be converted to such use (unit #, number of bedrooms, square footage, etc.). Generally, NIFA will defer to the development owner's determination that the employee unit(s) is/are reasonably required. An approval letter will be sent by NIFA stating that the conversion of a LIHTC unit to an on-site employee unit will not be treated as an event of LIHTC Program non-compliance as long as the following conditions are met:

- No existing tenant will be evicted to create an employee unit; the unit must be an existing, unoccupied unit.
- If the need for an employee unit ceases to exist, the unit will thereafter be treated as a low-income unit.
- The development owner represents that the designation of an employee unit is a necessity to the development and does not constitute a withdrawal of benefits to the development.

Employee units are treated as common space and removed from both the numerator and denominator of the development's applicable fraction. For example, if one LIHTC unit is

converted to an employee unit, the applicable fraction of a 32-unit 100% LIHTC development would change from 32/32 to 31/31, and thus still remain 100% LIHTC

## **Chapter 6. Noncompliance**

### **Notification to Owner**

NIFA will provide written notice to a development owner if the following required submissions have not been received by the respective due dates; Tenant Income Certifications, supporting documentation, Annual Tax Credit Summary Report, and Owner's Certificate of Continuing Program Compliance. In addition, if the development is found to be out of compliance with the provisions of § 42. NIFA will notify the development owner in writing. *Note: NIFA will provide such notice and all other correspondence related to a LIHTC development to the development owner's designated representative (instead of the owner) if NIFA receives a written request to do so from the development owner.*

Initial written notification will be in the form of an Exhibit A attached to a letter of correspondence. Such notice may be provided with respect to various issues: items of clear noncompliance, and/or informational items where noncompliance may not exist, but practices or procedures being conducted at the development may lead to future noncompliance.

If NIFA finds no items of noncompliance in its review, the owner or owner's representative will receive a letter from NIFA to such effect.

### **Types of Noncompliance**

Each noncompliance item cited by NIFA will be reported under one of the following categories: (See IRS Form 8823, "Low Income Housing Credit Agencies Report of Noncompliance or Building Disposition" in Appendix E)

- Household income above limit upon initial occupancy
- Owner failed to correctly complete or document tenant's annual income recertification
- Violation(s) of the UPCS or local inspection standards
- Owner failed to provide annual certifications or provided incomplete or inaccurate certifications
- Changes in Eligible Basis or the Applicable Percentage
- Project failed to meet Minimum Set-Aside requirement
- Gross rent(s) exceed tax credit limits
- Project not available to the general public
- Violation(s) of the Available Unit Rule under Section 42(g)(2)(D)(ii) of the Code
- Violation(s) of the Vacant Unit Rule under Treas. Reg. §1.42-5(c)(1)(ix)

- Owner failed to execute and record extended-use agreement within time prescribed by Section 42(h)(6)(J) of the Code
- Low-income units occupied by nonqualified full-time students
- Owner did not properly calculate utility allowance
- Owner has failed to respond to NIFA requests for monitoring reviews
- Low-income units used on a transient basis
- Building is no longer in compliance nor participating in the Section 42 Program
- Other noncompliance issues
- Building disposition

### **Correction Period**

The development owner has a 60-day correction period beginning with the date of written notification from NIFA to cure items of noncompliance.

**Note: Development owners must specifically note in any submissions to NIFA that the information/documentation being submitted in one year could potentially correct items of noncompliance from a previous year.**

### **Notification to the IRS**

When a noncompliance item occurs, NIFA is required to file Form 8823 with the IRS no later than 45 days after the end of the correction period. NIFA will mark individual items of noncompliance on Form 8823 as “corrected” or “uncorrected,” before submitting the form to the IRS. All items of noncompliance must be corrected prior to NIFA entering the “Date noncompliance corrected” on the Form 8823.

A copy of the filed Form 8823 will also be sent to the development owner or the owner’s representative.

### **Consequences of Noncompliance**

Possible consequences of noncompliance include:

- Recapture\* of the accelerated portion of the LIHTC claimed for prior years
- Additional fees payable to NIFA
- Disallowance of the LIHTC for the entire year in which the noncompliance event occurs
- Assessment of interest for the year in which recapture occurs as well as for years prior thereto
- Rejection of future LIHTC Applications by NIFA

\*NIFA is not responsible for determining whether or not a specific event of noncompliance will result in a LIHTC recapture event. The IRS will provide the development owner with notice of whether the LIHTCs are subject to recapture.

### **Ineligible Applicant**

A LIHTC Application will not be considered or reviewed by NIFA:

- If the developer or owner is delinquent on Nebraska LIHTC fees or Tax-Exempt Bond fees due and payable for other Nebraska LIHTC developments; or
- If during the previous three (3) calendar years, there are or have been items of noncompliance or violations of the Land Use Restriction Agreement/Tax-Exempt Bond Regulatory Agreement that have not been corrected within the applicable correction period on any other Nebraska LIHTC developments; or
- If the developer or owner is delinquent on any documentation/fees or payment of TCAP loan that are due and payable to NIFA, including but not limited to the following:
  - (a) Conditional Reservation Documentation/42(m) Letter
  - (b) Carryover Documentation
  - (c) 10% Test Documentation
  - (d) Cost Certification Documentation
  - (e) Asset Management Documentation
  - (f) TCAP Loan Repayment Amounts
  - (g) Any other documentation requested by NIFA



## Chapter 7. Common Issues and Corrective Measures

### Documentation Issues

- Issue: Household income is determined to be in excess of the limit at move-in; it is subsequently determined that the household did, in fact, qualify as a low-income household.

Correction: Submit correcting documentation demonstrating household is not over the income limit (i.e. W2s, Federal Tax Return and etc.).

- Issue: Household is in excess of the income limit at move-in.

Correction: Submit documentation for the next qualifying low-income household for the unit.

- Issue: Missing TIC or incomplete documentation.

Correction: If the documentation was overlooked when submitting files to NIFA, submit the documentation. If the documentation was never completed, have the appropriate party(s) complete the documentation, sign (by the appropriate party(s)) with the current date, but include the statement (on the applicable documentation) “This information was true and correct as of xx/xx/xx (effective date).”

- Issue: Documentation signed and dated after the “Effective Date” shown on the TIC.

Correction: Have the appropriate party(s) sign and date the documentation with the current date, but include the statement (on the applicable documentation) “This information was true and correct as of xx/xx/xx (effective date).”

- Issue: TIC documentation not signed or dated.

Correction: Submit documentation signed and dated by the appropriate party(s) with the current date, but include the statement (on the applicable documentation) “This information was true and correct as of xx/xx/xx (effective date).”

- Issue: TIC documentation refers to a subsequent compliance period year documentation as a reference point for recertification information.

Correction: Each compliance period year must “stand on its own,” and documentation must be submitted for each compliance period year. For example, if a Power of Attorney was submitted for a previous year for a tenant and it is still in effect, or a pension amount that does not change, then the same document must be submitted each and every compliance period year.

- Issue: A lease agreement was not submitted for a new move-in.

Correction: Submit a lease agreement. Such agreement should have a commencement date that reflects the move-in date and the effective date on the Tenant Income Certification, a lease term of at least six months, the rent amount, any non-optional charges and the signature page.

- Issue: A lease agreement was not submitted for a recertification.

Correction: Submit the lease agreement. Such agreement should have a starting date reflecting the current compliance period year, or the original lease stating a month-to-month term, or a lease addendum. (Remember, the amount of rent specified in the lease must reflect the information submitted on the TIC. If the rent amount at the time of recertification is different than the amount on the Annual Tax Credit Summary Report or LIHTC/HOME Annual Occupancy Report, please make sure that documentation is provided to support both amounts.)

- Issue: A lease agreement is submitted for a tenant recertification; however, it does not reflect the current compliance period year.

Correction: If the rent has not changed, submit an original lease agreement with the notation of month-to-month. If the rent has changed, submit a new lease agreement or an addendum to the lease reflecting the correct rent amount.

- Issue: Utility allowance documentation has an effective date that does not reflect the current compliance period year.

Correction: Submit updated utility allowance documentation for the appropriate compliance period year or documentation (i.e., a letter or other official correspondence) from the source that provided the utility allowances stating that the allowances submitted to NIFA were the most current ones available for the applicable compliance period year being reviewed.

- Issue: Information used to make calculations for income, cash value of assets or income from assets is not supported by third-party documentation.

Correction: Use only documented information verified by third-party sources in calculations.

- Issue: With respect to a new move-in, the move-in date, effective date on the TIC and the commencing date of the lease are not consistent.

Correction: The commencement date of a lease is the accepted date for the move-in and effective date printed on the TIC.

- Issue: A single copy of a check stub is submitted as verification for employment.

Correction: Copies of recent check stubs (**four to six consecutive stubs**) should only be used as a last resort in verifying information for income certification and should be

accompanied with documentation showing that at **least three attempts** were made to verify employment or wages.

- Issue: Child support payments were not included in tenant income due to nonpayment from payor.

Correction: Documentation must certify that child support payments are not being received or are received at a lesser amount than the judgment amount awarded. Documentation must also show that the tenant/applicant has taken all legal action to collect amounts due, including filing with appropriate courts or agencies responsible for enforcing payment.

- Issue: Clarification record submitted for incomplete verification.

Correction: A **Clarification Record** is acceptable only as a last resort after several attempts (must be evidenced) to obtain written verification. Verbal verification must always be followed by written verification from a third party. Although NIFA will consider accepting the [telephone] “Clarification Record” for non-monetary issues, (i.e., dates, unreadable information, etc.), for telephone discussions regarding monetary information, NIFA will require that the management company either re-fax the “Verification Form” to the third party to fill in the missing information, or, fax the “Clarification Record” listing the items in question for the third party to address directly on the Clarification Record, and then sign and date it before faxing it back to the management company.

- Issue: Assumptions are made about information on the documentation submitted by the Owner’s Representative (raises, effective date of raises, increase in Social Security benefits, etc).

Correction: Resubmit documentation with verified information from the third party.

- Issue: Tenant recertification was not performed within 120 days prior to the anniversary date of the household’s move-in.

Correction: NIFA will consider this unit out of compliance from the date the recertification should have been performed until the tenant(s) signs and dates the TIC. However, if the recertification is corrected by the owner retroactive to the anniversary date, then the noncompliance is not required to be reported to the IRS. If a household moved out and no recertification was performed, this does not relieve the requirement of the recertification process if the move-out occurred after the annual recertification deadline. Submit evidence of the attempts made to ascertain the documentation for the scheduled recertification date. If no attempts were made, submit the next qualifying household’s move-in documentation for that unit.

- Issue: Tenant recertification was not performed due to the household’s refusal to complete the necessary documentation.

Correction: Submit documentation that supports the management company's efforts to obtain this information (i.e., copies of letters sent to the household asking to complete the necessary documentation).

- Issue: The Annual Tax Credit Summary Report or LIHTC/HOME Annual Occupancy Report is missing or incomplete.

Correction: Submit a fully completed Annual Tax Credit Summary Report or LIHTC/HOME Annual Occupancy Report.

- Issue: A household is listed on the Annual Tax Credit Summary Report or LIHTC/HOME Annual Occupancy Report as moving in prior to the compliance period year; however, the prior Summary Report lists the unit as vacant or occupied by a different household.

Correction: Submit the "Move-in" documentation for the household and, if appropriate, supply the move-out date for the prior household.

### **Physical Issues**

- Issue: Physical violations are documented.

Correction: Submit signed and dated documentation that repair work has been completed, outlining the specific work that was done. Signed and dated Work orders and copies of paid invoices that show the address and unit number, if applicable, the work needed and a description of the work performed are acceptable documentation.

### **Owner Certificate Issues**

- Issue: The Owner's Certificate of Continuing Program Compliance was not submitted.

Correction: Submit the Owner's Certificate of Continuing Program Compliance. The certificate should be signed with the current date and include the statement "This information was true and correct for the XXXX compliance year."

- Issue: The Owner's Certificate of Continuing Program Compliance is incomplete.

Correction: Resubmit the Owner's Certificate of Continuing Program Compliance with all fields completed, signed with the current date. Include the statement "This information was true and correct for the XXXX compliance year."

- Issue: The Owner's Certificate of Continuing Program Compliance did not have the correct certification dates.

Correction: Submit a completed Owner's Certificate of Continuing Program Compliance signed with the current date and include the statement "This information was true and correct for the XXXX compliance year."

## **Rent Issues**

- Issue: The gross rent exceeds LIHTC limits.

Correction: The Owner must charge the appropriate amount immediately.

- Issue: The Housing Authority will no longer provide free housing verifications if the housing recertifications do not match up with the anniversary of move-in date.

Correction: Submit the most current Notice of Rent Change and a copy of the direct deposit sheet for each tenant.

## **Student Issues**

- Issue: Third-party documentation indicates that tenant(s) are full-time student(s), and that the household does not qualify under any of the student exceptions.

Correction: Submit documentation for the next low-income qualifying household for this unit.

- Issue: Unit is occupied by students, with at least one of the students claiming to be only part-time.

Correction: Submit third-party documentation from the educational institution showing part-time status for that student.

## **Non-submittal of Documentation and Fee Issue**

- Issue: The annual documentation and/or the compliance fee was not received by NIFA by the January due date.

Correction: Submit the appropriate documentation and/or fee.

## **Utility Allowance Issue**

- Issue: Utility Allowance documentation submitted only covers half of the compliance year being reviewed (i.e. documentation effective 7/1/10).

- Correction: Submit documentation effective for the entire compliance year (i.e. 1/1/10 through 6/30/10).

## **Chapter 8. Post Year-15 Monitoring Procedures**

The Post Year-15 Monitoring Procedures apply to Low Income Housing Tax Credit (LIHTC) developments that have completed the initial 15-year Compliance Period and have an Extended Use Period commitment in the Land Use Restriction Agreement (LURA).

These procedures also apply to LIHTC developments that were financed with tax-exempt bonds provided the bonds are no longer outstanding and the bond Qualified Project Period has expired. These procedures address any changes in the monitoring procedures from the initial 15-year compliance period. Any regulations not addressed in these procedures will remain the same.

These procedures will be reviewed periodically and may be modified to facilitate better administration of the LIHTC Program. Furthermore, NIFA may waive or make adjustments to any items contained within, on a case by case basis, for good cause shown to address unforeseen circumstances.

### **1. Initial Qualifications and Re-certifications:**

#### **Rule – Post Year-15 Extended Use Period**

- a. The initial Tenant Income Certification with third party verifications will be completed only at the time of move-in.
- b. A copy of the tenant lease shall be provided with the initial certification documentation.
- c. Tenant re-certifications with third party verifications are not required for existing households after year-15 of the compliance period for LIHTC developments and bond developments where the bonds are no longer outstanding **and** the development has completed the Qualified Project Period.
- d. A copy of the tenant lease, evidence of occupancy (such as a current rent roll) and rental assistance documentation (if applicable) must be submitted to NIFA annually for tenant recertification requirements.

### **2. Annual Reports:**

#### **Rule – Post Year-15 Extended Use Period**

- a. All developments are required to submit an Annual Summary Report, Utility Allowance Documentation, operating expense information, and Owner's Certificate of Continuing Program Compliance on an annual basis as requested by NIFA.

- b. For previously qualified households, the Annual Summary Report will not need to include recertification information.
- c. Projects financed with both NIFA tax-exempt bonds and LIHTC's may have additional reporting requirements. Owners with bond regulatory agreements that require recertification of bond units must continue to recertify those units and demonstrate compliance with federal bond set-aside requirements, including, but not limited to, compliance with the Next Available Unit rule, until the bonds are no longer outstanding **and** the development has completed the Qualified Project Period.

### **3. Household Transfers & Next Available Unit:**

#### **Rule – Post Year-15 Extended Use Period**

- a. Households may change units, including moving to a unit in a different building within the development, without the submission of a new household income qualification. Owners should indicate all household transfers on the Annual Summary Report.
- b. Developments with bond regulatory agreements must continue to recertify households that transfer from one unit to another if that unit is part of the bond set-aside units and must continue to demonstrate compliance with the Next Available Unit rule until the bonds are no longer outstanding **and** the development has completed the Qualified Project Period.
- c. For developments with both LIHTC's and bonds where the bonds are no longer outstanding **and** the Qualified Project Period is complete, the Next Available Unit rule will be eliminated.

### **4. Student Status:**

#### **Rule – Post Year-15 Extended Use Period**

- a. Student status will be verified only at the time of move-in. The following exceptions to the limitation on households where all members are full-time students will apply:
  - i. The student member of the household is married and files a joint tax return.
  - ii. The student is a single parent (Single Head of Household) and such parent is not a dependent on another individual's tax return and their children are not dependents of another individual other than a parent of such child.

- iii. At least one member of the household receives assistance under Title IV of the Social Security Act (formerly Aid to Families with Dependent Children (AFDC)), now known as Temporary Assistance for Needy Families (TANF).
- iv. At least one member of the household is enrolled in a job training program receiving assistance under the Job Training Partnership Act (JTPA) or under other similar federal, state, or local laws. This includes, but is not limited to, programs operating under the Workforce Investment Act (WIA) and Dislocated Worker Program.
- v. An individual is filing their own federal income tax return and is not a dependent of another individual.
- vi. A student who was previously under the care and placement responsibility of the state agency responsible for administering a plan under part B or part E of title IV of the social security act (Foster Care).

**5. On-Site Inspections:**

**Rule – Post Year-15 Extended Use Period**

- a. A physical inspection of the units and any public areas will be conducted by NIFA or its designee at least once every three (3) years.

**6. Compliance Fees:**

**Rule – Post Year-15 Extended Use Period**

- a. Annual Compliance fees will be reduced to \$20 per LIHTC unit with a minimum of \$150. In addition, the Owner will be billed for and responsible to pay the cost of the physical inspection referred to in Section 5, which will generally be conducted once every three (3) years.
- b. Developments that have paid the annual compliance fees upfront for the initial 15-year Compliance Period will also be required to pay the Annual Compliance fees as outlined above.

**7. Low Income Unit Set-Asides:**

**Rule – Post Year-15 Extended Use Period**

- a. The development will have overall rents affordable at or below the Applicable Income Percentage amount listed on the Summary page of the development's LURA (either 50% or 60% of the Area Median Income). The original income restrictions set forth in the LURA will remain.



- b. The building's applicable fraction will be determined by the unit fraction only.
- c. Developments with 100% LIHTC units that are experiencing sustained vacancy rates greater than 10% average over a 12 month period ending with the most recent reporting period may request relief from the low-income usage requirements as established at initial funding. On a case by case basis, NIFA may grant a waiver to rent vacant units to non-qualified households, provided the owner is in good standing with NIFA.

The waiver would require that one vacant unit be kept available for qualified households at all times during the term of the waiver. When that unit is rented to a qualified LIHTC household, the next vacant unit would then once again need to be held for a qualified household.

The waiver would allow for no more than 50% of the units in the development to be leased to non-qualified households. The maximum rent restrictions outlined in the LURA will apply to the non-qualified households. Preference must always be given to qualified households. Steering of qualified households to less desirable units will not be allowed and will be cause for revocation of the waiver.

The waiver request must be submitted with the annual compliance reports and, if granted, shall continue for the development's remaining extended use period unless rescinded by NIFA for good cause. A monthly rent roll for the last 12 months, denied tenant applications, and any other information as requested by NIFA should be submitted with the waiver request.

Development owners may not be able to apply for this waiver if it would be in conflict with LIHTC program requirements of any other funding sources in the development, such as HOME funds, Rural Development funds, and/or HUD Section 8. NIFA recommends that the owner contact representatives of other funding sources for a determination prior to submitting any waiver request to NIFA.

Any waiver granted by NIFA under these procedures may be subject to the rights of any third party beneficiary of the LURA to seek enforcement of the applicable provisions thereof.

## **8. Noncompliance:**

### **Rule – Post Year-15 Extended Use Period**

- a. The current correction period process of 60 days will be maintained. Uncorrected non-compliance, including physical deficiencies, will result in a "Not-In-Good Standing" designation for the development owner and management company. Once a non-compliance is corrected, this designation will be removed.

- b. As long as a development owner or management company remains “Not-In-Good Standing”, they will be ineligible to participate in the development team for any new LIHTC applications. NIFA also has the right under the LURA to enforce specific performance in a state court of competent jurisdiction.
- c. Uncorrected non-compliance may affect the property tax valuation treatment allowed for under state law for LIHTC and bond projects.

**9. Record Retention:**

**Rule – Post Year-15 Extended Use Period**

- a. Beginning in year sixteen (16), development owners must maintain copies of all initial move-in certification records for all households that occupied units in a building for five (5) years from the date of the move-in. Original records must be maintained for the first three (3) years; electronic or photocopies of records may be maintained for the remaining two (2) years.