

AFFORDABLE HOUSING TAX CREDIT PROGRAM

COMPLIANCE MANUAL

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APPENDIX B - Internal Revenue Code Section 42

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

APPENDIX D - NIFA and IRS Forms

APPENDIX E – Certification Portal (CP) Manual



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FOREWORD

This manual (“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 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 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 ownership entity that owns the development. The ownership entity is typically a limited partnership or a limited liability company, 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 is 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.

Housing Tax Credit Time Periods

There are distinct time periods (“Periods”) for LIHTC projects – Credit, Compliance and Extended Use, each of which make up the overall Affordability Period. The owner must agree to maintain the income and rent restrictions continuously through the Credit, Compliance and Extended Use Periods – the entire Affordability Period – by executing and recording a Land Use Restriction Agreement (LURA) on the project.

	10 Years	15 Years	30 - 45 Years
Affordability Period			
Credit Period			
Compliance Period			
Extended Use Period			

Please see Chapter 1 for the definitions of each Period listed above.

Chapter 1. Key Terms

Adult Applicant/Tenant - an applicant/tenant 18 years of age or older, or an emancipated minor. (In Nebraska, a person must be 18 years of age or older to sign a binding agreement, such as a Lease.)

Affordability Period - is a minimum 30-year period in which the owner agrees to maintain rent, income, and all restrictions in accordance with the LIHTC program. Some developments may have up to a 45-year affordability period. The Credit, Compliance and Extended Use Periods are component parts of the Affordability Period.

Applicable Fraction - the fraction that represents the portion (percentage) of the building for which LIHTCs will be claimed. It is the lesser of 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 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 LIHTCs for the development of which the building is a part and lasts for 15 consecutive taxable years. An owner must comply with all requirements established by the IRS and NIFA for the 15-year Compliance Period to fully benefit from the anticipated tax credits.

Correction Period - NIFA allows a 60-day correction period in which to correct 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 - is the accelerated period in which actual credits may be taken and extends 10 years from the first day of the first tax year in which credits are claimed. A project’s Credit Period typically starts the year it is placed in service, but the owner has the option of beginning the credit period the year after the building(s) is placed in service (e.g., deferring the credit under the election made on Part II of the IRS Form 8609).

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 for the tenants, 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](#) generated by NIFA (the credit allocating agency) and completed by the owner for each BIN, to certify certain information, such as; 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. NIFA completes and signs Part I of the Form 8609. It is the owner's responsibility to complete and sign Part II and file each completed 8609 with the IRS for the first year of the credit period and submit a copy to NIFA.

Depending on the owner's election on line 8b, the project may be considered either a multiple-building project or a single project. The owner's election on 8b will determine whether tenants moving between multiple buildings will need documentation as a transfer or a complete certification as a move-in/move-out.

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 building noncompliance. 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. NIFA will file a "back in compliance" Form 8823 once a noncompliance is resolved, but only when the resolution is no later than three years after the correction period has ended.

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.
- 40% of the residential units in the project must be both rent restricted and occupied by individuals whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective unit. The average of the imputed income limitations designated must not be more than 60% of AMGI. The designated imputed income limitation of a unit can only be 20%, 30%, 40%, 50%, 60%, 70% or 80% of the AMGI.

Other aspects of the Minimum Set-Aside:

- A minimum set-aside election, once made, on Form 8609, by the owner, is irrevocable. Once the election is made and filed with the IRS, it cannot be changed for the life of the project.
- 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 will result in a permanent loss of credits. Once met, the set-aside must be maintained throughout the entire Affordability Period. 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 area 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-XXXX" 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 newly constructed building, the date that units are available for occupancy by tenants (e.g., 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, 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% LIHTC developments; however, annual (anniversary of move-in) certification of student status documentation, rent, rental assistance (if applicable), and Violence Against Women Act (VAWA) Lease Addendum(s) must 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 and 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.
- Rental Assistance documentation, if applicable.
- The amount of the utility allowance for each unit, together with supporting documentation.
- The number of occupants including any changes to 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 (e.g., 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 (e.g., **first year records must be kept for at least 21 years**).

If the owner decides to keep electronic records, please ensure complete files are preserved and remain uncorrupted over time, and that the hardware/software is maintained so the files can be accessed in the future. The IRS has issued [guidance](#) on maintaining books and records by using electronic storage.

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

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's website is updated for owners and managers to [access](#) the new annual income limits and corresponding rent limits. **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.**

The Housing and Economic Recovery Act of 2008 (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" designation 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" designation has been elected may **not** have incomes which exceed 60% of AMGI, as adjusted for family size. Qualifying tenants in LIHTC developments in which the "Average Income" designation has been elected may not have incomes which exceed an overall average of 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, 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) should 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 + 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](#))

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; and
- 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. Rents in the development may not exceed the elected minimum set-aside (50%, 60% or Average Income 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 all 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 from when the previously obtained allowances became effective. In some cases, the utility allowance amounts may not change. If 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](#), [Federal Register Vol. 73, No. 146 Section 42 Utility Allowance Regulations Update](#), and [Federal Register Vol. 84, No. 42 Section 42 Utility Allowance Submetering](#) set forth the IRS required procedures for determining utility allowances. 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 Public Housing Authority (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 – obtained from the local Public Housing Authority.
 - 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. The estimates must be from the previous 12 months.
 - 4) HUD Utility Schedule Model – A building owner may calculate a utility estimate using the [HUD Utility Schedule Model](#). 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 and must identify which source is being used for which units.

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.

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, when applicable.
- 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 is completed by the management agent, reviewed with the tenants to confirm the accuracy of the information, 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 by all adults in the household.
- 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 noncompliance 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. Please see the [checklist](#) for file submissions on our website.

- Recertification: 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, rental assistance (if applicable), and VAWA Lease Addendum for the compliance year needs to be submitted. Please see the [checklists](#) for file submissions on our website.

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 of the anniversary of move-in date, 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)

- 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.
- 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.
- 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, at a minimum, the following:

- The name and birth date of each person that will occupy the unit.
- The student status of each applicant for the calendar 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/Asset Verifications

All regular sources of income, all assets including income from the assets, must be verified. Income/asset verifications must be received prior to the execution of the TIC and the move-in date. Income/asset verifications must contain complete and detailed information and include, at a minimum, direct written verification from all sources of regular income and assets.

See NIFA reporting forms in Appendix D.

Effective Term of Verifications

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

Methods of Income Verification

- **Third-party Verification**

Reasonable efforts to obtain third-party verification is required. Please use NIFA's forms found in Appendix D to this Manual. Copies of the forms can also be downloaded from NIFA's [website](#). Please ensure the most current forms are used. If other forms of third-party documentation are used, they 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.

- **Second-Party Verification and Electronic Verification**

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

- The required information does not require third-party verification (such as birth certificates, divorce decrees, etc.); or
- Third-party verification is impossible or will be unreasonably delayed. Reasonable efforts to obtain third-party verifications must be documented in the file before use of second-party verifications will be permitted; or
- 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.

If bank statements are submitted in lieu of third-party documentation, NIFA requires a recent bank statement for the following accounts: savings, health savings, money market, or prepaid debit card. For checking accounts NIFA requires 6 consecutive bank statements.

- **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 for non-monetary issues (e.g., dates, unreadable information, etc.). Monetary issues will require a signature from the third-party contact person.

Whose Income is Counted?

See [HUD Handbook Section 4350.3 Rev-1](#), Chapter 5 included in Appendix A.

Household Member(s)	Earned Income	Unearned Income
Head, Spouse, Co-Head, Other Adult Member(s), Foster Adult, Temporarily Absent, Emancipated Minors (Under the age of 18)	Yes	Yes
Dependents:		
• Children and Foster Children (under the age of 18)	No	Yes
• Full-Time Student (18 & Older – Not the head, co-head, or Spouse)	Yes Up to \$480 Annually	Yes
Permanently Confined Members	Household decision	Household decision
Non-Members:		
• Live-In Aide/Attendants	No	No

Items Included in Household Income

The LIHTC program uses the HUD method of determining annual household income, see [HUD Handbook Section 4350.3 Rev-1](#), Chapter 5 included in Appendix A.

Please Note: Gross income amounts are used to determine annual income.

Items Excluded from Household Income

See HUD Handbook Section 4350.3 Rev-1, [Exhibit 5-1 Income inclusions and Exclusions](#) included in Appendix A.

Asset Income

See [HUD Handbook Section 4350.3 Rev-1](#), Chapter 5 included in Appendix A.

Asset income is also included in household income:

- When the cash value of the total, aggregated household assets exceed \$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.
- 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.

Please Note: The cash value of assets should always be determined. This includes deducting any costs necessary to convert the asset to cash. For example, someone who owns a house may deduct brokerage fees and any other settlement costs, as long as the appropriate documentation is submitted to support these amounts.

Students

A household comprised entirely of full-time students (“Student Household”) will not qualify as a low-income household, unless one of the exceptions listed below applies to the household. If the household contains all students and 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, are dependents of the head or co-head of the household and the development will be using the HUD rule that allows only the first \$480 of earned income to 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 § 1.151-3\(b\)](#)).

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). In Nebraska, the TANF is called Aid to Dependent Children (ADC).
- 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, 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 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 the applicable documentation to NIFA.

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.

Please 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.

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.

Please Note: Possible fair housing issues could arise due to how elderly (55+) projects are being advertised. [Please ensure that elderly (55+) projects are advertised in accordance with Fair Housing regulations.]

Tenant Income Certification (TIC)

Once all household composition, income, asset, student status, and any other applicable information has been verified, it is transferred to the Tenant Income Certification form. All adult tenants and the owner's representative/manager must sign and date the TIC. (See Chapter 5 for further discussion on proper TIC completion).

Please Note: 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 six (6) month initial Lease term must be executed on all LIHTC units. Exceptions to the required minimum term include:

- Buildings used for transitional housing for the homeless.
- Single-Room Occupancy (SRO) Units.

For the above-noted exceptions, a minimum term of 30 days is allowed.

The Lease must reflect the move-in date, or the date the tenant takes possession of the unit. After the initial Lease term expires, the Lease can be turned into a month-to-month agreement or renewed for any term. Subsequent Leases are not subject to the minimum Lease period; however, a written Lease must be in effect at all times. Tenants living in tax credit buildings have good cause eviction protection, which means that owners are prohibited from evicting tenants or refusing to renew Leases or rental agreements, other than for good cause; therefore, the Lease cannot contain a clause that permits the owner to terminate for anything other than good cause.

The 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. The Lease should 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 subletting of the LIHTC unit.

Please Note: 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 Lease documentation submitted.

When submitting copies of tenant Leases to NIFA, provide the pages that state the rent amount (including any nonoptional charges), the Lease term, who is responsible for which utilities, the signature of the tenant(s) and owner's representative, and the date signed. This documentation is necessary to support the rent amount listed on the TIC and Certification Portal (CP) entry (The CP entries should reflect all changes to rent and/or utility allowance amounts as of the date they occur throughout the compliance year).

Allowable and Prohibited Fees and Charges

Customary fees that are normally charged to all tenants, such as security deposits, pet deposits/pet rent, application fees and/or credit history are permissible. However, an eligible tenant cannot be charged a fee for the completion of additional forms of documentation such as income/asset verifications.

Refundable fees associated with renting units (e.g., security deposits) and one-time penalty fees (e.g., late payment fees and fees for prematurely breaking a Lease, as long as such fees are clearly defined within the Lease) are allowable fees that are not included in the gross rent calculation.

Condition of Occupancy Rule (Optional Versus Non-Optional Fees)

- Any fee that is charged for a service that is a condition of occupancy (e.g., a fee for a service that is non-optional/mandatory) must be included in the gross rent computation when checking gross rent against the applicable rent limit.
- Optional fees may be charged for elected services or additional amenities that were not included in eligible basis (e.g., pet fees, fees for extra storage units, garages, etc.). These fees would not be included in the gross rent calculation.

Mandatory Renter's Insurance

- If renter's insurance is required as a condition of occupancy, then the amount of renter's insurance must be included in the gross rent calculation.

Month-to-month Tenancy Fees

- Although month-to-month fees may seem optional (e.g., the tenant could choose to renew the Lease for another year), these fees are considered non-optional and are included in gross rent computation.

Violence Against Women Act (VAWA)

Please see Federal Register / [Vol. 81, No. 221](#), Violence Against Women Act of 2013: Implementation in HUD Housing Programs.

- The Owner will be required to annually self-certify that the property is in compliance with VAWA.
- All adult household members are required to complete the VAWA Lease Addendum.

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
- Non-Profit documentation
- Certificate of Continuing Program Compliance (BONDS)
- Affirmative Fair Housing Marketing Plan (AFHMP)
- Owner's Self-Certification of compliance with the Violence Against Women's Act (VAWA) documentation
- Supportive Service documentation
- Utility Allowance documentation
- Submission of Certification Portal (CP) data (Annual Owners Cert and Building(s))
- Tenant Rental Application
- Tenant Income/Asset Certifications and supporting verifications
- Lease Agreement documentation
- Rental Assistance documentation (if applicable)
- Student Status documentation
- VAWA Lease Addendum

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 (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, Certification of Zero Income, or Self-Employment Affidavit)
- Verification of assets (third-party or Under \$5,000 Asset Certification Form)
- 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), utilities provided, the time-period covered, the signature of the tenant and the date signed)
- Rental Assistance documentation (if applicable)
- 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 (signed by each adult household member)

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 (if applicable) 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
- VAWA Lease Addendum (signed by each adult household member)

Anniversary of Move-in Documentation (for Mixed-Income Projects)

- Rental Application/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, Certification of Zero Income, or Self-Employment Affidavit)
- Verification of assets (third-party or Under \$5,000 Asset Certification Form)
- 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 Renewal Documentation (if the move-in Lease does not renew annually or there is a change in the rent amount)
- Rental Assistance Documentation (if applicable)
- Student status verification, and if applicable, any supporting documentation
- VAWA Lease Addendum (signed by each adult household member)

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 D of this Manual or downloaded from NIFA's [website](#) (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 verify employment status (e.g., Employment Verification, Unemployed Affidavit, Certification of Zero Income or Self-Employment Affidavit) to NIFA.

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
Annuity Verification
Bank Verification
Certificate of Continuing Program Compliance (Bonds)
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
Homeowner/Real Estate Certification
Income and Asset Income Calculation Worksheet
Life Insurance Verification
Live-in Care Attendant Affidavit
Military Pay Verification
Mutual Fund/Stock/Bond Verification
Non-Profit Set Aside 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, 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 Regular Contributions
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

Following is an overview of the compliance reporting forms:

AFFIRMATIVE FAIR HOUSING MARKETING PLAN (AFHMP)

- Please ensure the applicable worksheets are completed.
- Is in effect for five years from the date completed; however, must be updated sooner if there are any changes.
- For further guidance on completing this form, utilize the [tip sheet](#) and [common mistakes](#) located on our website.

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 the household contains all students but qualifies because one applicant/tenant is a part-time student 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.

ANNUITY VERIFICATION

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

BANK VERIFICATION

- This form 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.

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.

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)

- Divorce and Court Ordered Decrees reflecting the amount and the frequency of payments may be submitted in lieu of the Child Support/Alimony Verification.
- 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 (e.g., Judgement Detail Report).
- 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. The following types of documentation may provide evidence of Reasonable Legal Action:
 - In Nebraska, if a custodial parent is receiving ADC (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.

- If a custodial parent is not receiving ADC (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.)
- If the Nebraska Health and Human Services Payment History Report shows either of the following, then reasonable legal action has been taken.
 - Payee(s) named include(s) the NE Dept of Health & Human Services.
 - 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 (e.g., 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.
- If an employer does not verify tip income; however, tips are being received, the applicant/tenant should verify this on the Self-Certification Form.
- For further guidance on completing this form, utilize the [tip sheet](#) located on our website.

FOSTER CARE VERIFICATION

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

HOMEOWNER/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), (e.g., 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 printout from the county assessor (NIFA does not accept estimates from third-party Real Estate Sites (e.g., 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

- Term Life Insurance needs to be confirmed as a term policy by the third-party; however, it 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 FUND/STOCK/BOND 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.

NON-PROFIT SET ASIDE VERIFICATION

- This form is required to be completed if the property received an allocation from the non-profit set aside.

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.
- If "No," "Change," or "Finding" is answered on questions 1-15, please explain on page 3.
- For further guidance on completing this form, utilize the [tip sheet](#) located on our website.

PENSION INCOME VERIFICATION

- This form is required if an applicant/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.

REAL ESTATE VERIFICATION

- This verification should be used in conjunction with the HOMEOWNER/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. (NIFA does not accept estimates from third-party Real Estate Sites [e.g., Zillow]).

RECERTIFICATION QUESTIONNAIRE

- This form must be completed by the tenant 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, 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.
- Annual income should include any retirement benefits received through periodic payments; enter the amount in the "Other Income" column on the TIC.
Do not count any remaining amounts in the account as an asset.
- Retirement benefits should be included 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 by a third-party with another verification form (e.g., 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 (e.g., certification of pregnancy, tip income).

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.
- The entire signed and dated Federal 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).
- This form can be completed to verify full-time or part-time student status.

TENANT INCOME CERTIFICATION (TIC)

- Please note: The TIC contains a specific set of instructions regarding completion. (See Appendix D)
- The Effective Date and Move-In Date will be the same for a new move-in.
- The Effective Date on a tenant recertification: 1) cannot be earlier than any of the signature dates, and 2) must be 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).
- Any corrections should be made by crossing out the incorrect information and adding the correct information and having the applicable party(s) initial the changes. Whiteout should never be used.
- For further guidance on completing this form, utilize the [common mistakes](#) located on our website.

TRUST ACCOUNT VERIFICATION

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

UNDER \$5,000 ASSET CERTIFICATION

- This form may be completed if the total amount of tenant(s) assets equals \$5,000 or less in lieu of third-party verification(s).
- 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, then (B) Interest Rate and (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.
- For further guidance on completing this form, utilize the [tip sheet](#) located on our website.

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:
 - If the Unemployed Affidavit indicates no expected employment income in the next 12 months (first option), then unemployment benefits should be annualized.
 - 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.
 - 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 any adult household member is not employed, whether they are receiving income from another source (e.g., Social Security, Railroad Pension, etc.) or not, this form must be completed.

VERIFICATION OF REGULAR CONTRIBUTIONS

- This form should be completed when someone outside the household is contributing income to the household.

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, VAWA Lease Addendum 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 adult household member needs to sign this Lease addendum at move-in.
- The Lease addendum will also be requested with anniversary of move-in documentation.

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.

- It must contain detailed information regarding the work that needs to be done, where it is located and a description of what was done to correct the issue.
- If paid invoices are used in lieu of a work order, the paid invoice must show the address and unit number (if applicable), the work needed, and a description of the work performed.

WORKERS COMPENSATION VERIFICATION

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

Electronic Signature Policy

An electronic signature (e-signature) is an electronic process that indicates acceptance of and intent to sign an agreement or form. The federal Electronic Signatures in Global and National Commerce Act ([ESIGN](#)) and the Nebraska Uniform Electronic Transaction Act ([UETA](#)) establish requirements for the permissible use of e-signatures. Compliance with ESIGN and UETA is designed to ensure the validity and enforceability of a transaction involving records signed electronically with an e-signature, notwithstanding that the signature is provided in electronic format.

In connection with the LIHTC Tax Credit Compliance Department, the Nebraska Investment Finance Authority (NIFA) will accept e-signatures on all compliance documentation, subject to all requirements set forth by UETA and ESIGN. Owners and property managers are responsible for developing policies and procedures to ensure electronic signatures obtained meet the requirements. All signatures are required to be date and time stamped by the software and the software must produce a tamper proof completion certificate or equivalent record of signature. Typed or stamped signatures are not permitted.

Next-Available-Unit Rule (140% Rule)

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: a) the household was income qualified at the time of initial occupancy; b) the next available unit of comparable or smaller size **in the same building** is rented to a low-income household until the applicable fraction is restored (not including the units which have gone over 140%); and c) the over income unit must remain rent restricted until the applicable fraction and minimum set aside are restored.

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 to, or smaller than, the unit that exceeded 140% of the income limit (unit square footage and bedroom size).

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.

If the Vacant Unit Rule is violated, all vacant units previously occupied by qualified households lose their low-income status and are not considered qualified units.

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.

On a mixed-income project, if a household was over 140% of the federal applicable limit at their most recent recertification, the household cannot transfer to a unit in a different building. This is the case, even if the building is part of a multiple building project.

Please make sure that any tenant transfers are entered into Certification Portal (CP) correctly.

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 adult household member(s) to an existing low-income household requires the income certification for the new adult household member(s), 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 as to the exact date 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.). 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 noncompliance 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.

Non-Profit Set Aside

If a project has a non-profit set aside, the following documentation is required annually:

- The name of the non-profit entity and a description of the non-profit's participation in the daily operations of the development.
- A description of the non-profit's ownership in the development entity (including the non-profit's ownership percentage in the development) for the applicable compliance year.
- Verification of the non-profit's ownership rights with respect to the development and whether ownership remained the same throughout the applicable compliance year.

Supportive Services

NIFA will allow the property to request a change to its current supportive service(s). At the time of the request, the new supportive service(s) must be selected from the list of services outlined in the current LIHTC Application. In order to make any such change, the owner/property manager will need to send the following:

- A letter or email requesting a change to the supportive service(s) that includes a statement as to why the change is being requested and what services are requested as a substitute.
- Once NIFA has reviewed and approved the request to change the service(s), NIFA will request, and owner/property manager will provide, a copy of the draft agreements for replacement services for review prior to final approval of substitution by NIFA.
- Once the drafts of the agreement(s) are approved, the agreement(s) can be executed, and a copy must be sent to NIFA for the changes to be considered final.
- If there were any outstanding LURA Violations as a result of failure to provide appropriate supportive services, the violation will be considered corrected, upon finalization of the approval and receipt of the new executed agreement(s).

Amenities

NIFA will allow the property to request a change to its current amenity(ies). At the time of a request, the new amenity(ies) must be selected from the list of amenities outlined in the current LIHTC Application. In order to make a change, the owner/property manager must send the following:

- A letter or email requesting a change to the amenity(ies) that includes, the reason a change is being requested and the amenity(ies) that are requested as a substitute.
- Once NIFA reviews a request and approves the change, the project must provide documentation indicating how the change will be implemented, along with a timeline of when the implementation will be complete.
- NIFA will need documentation that demonstrates completion of the change (e.g., paid receipts, third-party certification, etc.).
- If there were any outstanding LURA Violations related to provision of amenities that are being substituted, any such issue will be considered corrected upon receipt of documentation that demonstrates completion of the installation of the new amenity(ies).

8609 8b Election

A project is defined based on the owner's election on the IRS Form 8609, line 8b, "Are you treating this building as part of a multiple building project for purposes of Section 42". If the owner checks "Yes," all buildings in the project are considered one project. If the owner checks "No," each building in the project will be treated as its own project.

Average Income

At a minimum, forty percent (40%) or more of the residential units in the development serve households earning as much as eighty percent (80%) AMI, as long as the development's average income/rent limit is sixty percent (60%) or less of AMI.

Average Income (AI) Affordability Requirements:

- AI is only permitted if all residential units in a development are designated as low-income. Developments selecting AI may not have any unrestricted or market-rate residential units. Manager units are not subject to this restriction and are permitted in AI developments.
- Existing LIHTC developments are not eligible for the AI Election.
- Income and rent levels are restricted to four (4) of the following AMI income brackets: 20% of AMI, 30% of AMI, 40% of AMI, 50% of AMI, 60% of AMI, 70% of AMI, and 80% of AMI.

Multi-Building Election

- If the proposed development contains more than one building, the owner must make the 8b election on Form 8609, indicating that the development will be treated as a multiple building development.

Physical Inspections

The IRS requires that NIFA or its designee inspect all LIHTC buildings, common areas, and a percentage of the units at least once every three (3) years. The Uniform Physical Condition Standards (UPCS) are followed. Tenants should be given at least 24 hours' notice prior to the scheduled inspection date.

NIFA is required to report any noncompliance of which it becomes aware. In addition, NIFA shall report all noncompliance without regard to whether the identified outstanding noncompliance is subsequently corrected.

Chapter 6. Noncompliance

Notification to Owner

NIFA will provide written notice to the owner, or owner's representative, if the following required submissions have not been received by the respective due dates: annual owner documentation and fees, Certification Portal (CP) submissions, tenant file documentation (e.g., move-in documentation or recertification documentation).

Initial written notification will be sent to the owner, or owner's representative, in the form of an Exhibit A. Such notice may be provided with respect to various issues: items of clear noncompliance, LURA Violations, 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 stating such.

Types of Noncompliance

Each noncompliance item cited by NIFA will be reported under one of the following categories: (See [IRS Form 8823](#))

- 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 correct items of noncompliance. If a response is received prior to the due date, NIFA will send a courtesy email of any issues still outstanding. If it is received on or after the due date, no email will be sent.

Please 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 during the compliance period, 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 in a BIN 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.

Violation of LURA Terms

If a project has LURA violation(s) the project will result in a “Not-In-Good Standing” designation with NIFA. While these are not reportable items to the IRS, they do impact an owner/developer’s ability to apply for new projects.

Please Note: These are items that were agreed to in the application and for which the project received points.

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 reviewed, scored or considered by NIFA at any time:

- If the developer, general partner/managing member, or any affiliate thereof is delinquent on Nebraska LIHTC fees, AHTC fees or Tax-Exempt Bond fees due and payable for other Nebraska LIHTC developments; or
- If the general partner/managing member or any affiliate thereof currently has or has had items of noncompliance or violations of a Land Use Restriction Agreement/Tax-Exempt Bond Regulatory Agreement that have not been corrected within the applicable correction period on any other Nebraska LIHTC development; or
- If the developer, general partner/managing member, or any affiliate thereof is delinquent on any documentation or payments that are due and payable to NIFA, including but not limited to the following:
 - Conditional Reservation Documentation/42(m) Letter
 - Carryover Documentation
 - 10% Test Documentation
 - Cost Certification Documentation
 - Asset Management Documentation
 - TCAP Loan Repayment Amounts
 - Any other documentation requested by NIFA

Chapter 7. Common Issues and Corrective Measures

Affirmative Fair Housing Marketing Plan (AFHMP)

- Please see the [common mistakes](#) and [tips sheets](#) for the AFHMP on NIFA's website.

Documentation Issues

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

Correction: Submit correcting documentation demonstrating household is not over the income limit (e.g., W2s, signed and dated Federal Tax Return, etc.) or, if the household is in fact over the income limit, submit the move-in 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, and 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(ies) re-sign and date the documentation with the current date and include the statement (on the applicable documentation) "This information was true and correct as of xx/xx/xx (effective date)."

- Issue: TIC was not signed or dated.

Correction: Submit the TIC signed and dated by the appropriate party(s) with the current date and include the statement "This information was true and correct as of xx/xx/xx (effective date)."

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

Correction: Submit a fully executed Lease agreement.

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

Correction: Submit the Lease documentation (e.g., original Lease stating month-to-month, new Lease agreement, Lease addendum or rent increase letter) that reflects the rent amount in effect as of the recertification date.

- 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 (e.g., 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: 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: Clarify the correct move-in date and, if applicable, correct all necessary documentation, initial any changes, sign and date by the appropriate party(ies) with the current date, and include the statement, "This information was true and correct as of xx/xx/xx (effective date)."

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

Correction: If third-party documentation cannot be obtained, NIFA requires four to six current consecutive paystubs.

- Issue: Child support payments were not included in tenant income due to nonpayment from payor; however, documentation to prove that such payments are not being made was not provided.

Correction: Tenant/applicant must certify that no child support payments are being received **and** 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 information regarding monetary issues and is not signed by the applicable third-party.

Correction: A Clarification Record for monetary issues must be signed and dated by the applicable 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. If a household moved out and no recertification was performed, 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 and the household has moved out.

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

- Issue: A household is listed in Certification Portal as moving in prior to the compliance period year; however, the prior compliance year's Certification Portal entries list 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.

- Issue: A household has moved out and is unable to correct noncompliance items in the file.

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

Non-Profit Set Aside

- Issue: The project has been awarded under the non-profit set aside; however, they mark this incorrectly on the Owner's Certificate of Continuing Program Compliance.

Correction: Make the applicable changes to the Owner's Certificate of Continuing Program Compliance, initial the changes, re-sign with the current date and include the statement, "This information was true and correct for the XXXX compliance year."

- Issue: The project has been awarded under the non-profit set aside; however, the Non-Profit Set Aside Verification was not completed.

Correction: Have the applicable party complete the Non-Profit Set Aside Verification, sign with the current date and submit to NIFA.

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 to avoid 8823's or late fees.

Owner Certificate Issues

- 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 and all changes initialed. The Certificate must be re-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 did not have the correct certification dates.

Correction: Complete the correct certification dates, initial any changes, and re-sign with the current date and include the statement, "This information was true and correct for the XXXX compliance year."

- Issue: A question is answered either "No" or "Change"; however, an explanation is not provided on page 3 or page 3 is not included.

Correction: Submit the completed page 3 with the "No" or "Change" explanation.

- Please see the [tips sheets](#) for the Owner's Certificate on NIFA's website.

Physical Issue

- Issue: Paperwork submitted to correct physical issues did not contain information that identifies the issues reported.

Correction: Signed and dated Work Orders or copies of paid invoices that show the address and unit number (if applicable), the work needed, a description of the work performed, and the date completed are acceptable documentation.

Rent Issues

- Issue: The gross rent exceeds LIHTC limits.

Correction: The Owner must charge the appropriate amount immediately and submit the documentation showing the corrected rent amount. NIFA requires the overage rent be refunded to the tenants.

- Issue: The Housing Authority will not complete a housing verification at recertification.

Correction: Submit the most current Notice of Rent Change from the housing authority and a copy of the direct deposit sheet for each tenant reflecting the amounts in effect as of the anniversary of move-in date.

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; however, verification of part-time status was not provided.

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

- Issue: Household is comprised of all full-time students and indicates they meet an exception; however, applicable documentation for the exception was not provided.

Correction: Submit the applicable documentation that demonstrates the household is meeting an exception.

Supportive Services

- Please see [tip sheets](#) for Supportive Services on NIFA's website.

Utility Allowance Issue

- Issue: Utility Allowance documentation submitted does not cover the entire compliance year (e.g., documentation effective 7/1/20).

Correction: Submit documentation effective for the entire compliance year (e.g., 1/1/20 through 6/30/20).

- Issue: The applicable utility amounts are not circled or totaled to identify the amounts being used.

Correction: Submit documentation that has the utility amounts circled and totaled.

Chapter 8. Post Year-15 Extended Use Period 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.

Initial Qualifications and Re-certifications:

Post Year-15 Extended Use Period

- The initial Tenant Income Certification with third-party verifications, Lease documentation, rental assistance (if applicable) and VAWA Lease Addendum will continue to be completed at the time of move-in.
- 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.
- A copy of the tenant Lease, Lease addendum or rent increase letter, rental assistance documentation (if applicable) and VAWA Lease Addendum must be submitted to NIFA annually for tenant recertification requirements.

Annual Reports:

Post Year-15 Extended Use Period

- All developments are required to submit annual documentation that may include, but is not limited to, the following:
 - Owner's Certificate of Continuing Program Compliance
 - Certificate of Continuing Program Compliance (BONDS)
 - Affirmative Fair Housing Marketing Plan (AFHMP)
 - Owner's Self-Certification of compliance with the Violence Against Women's Act (VAWA) documentation
 - Supportive Service documentation
 - Utility Allowance documentation
 - Submission of Certification Portal (CP) data (Annual Owners Cert and Building(s))
 - Tenant Rental Application
 - Lease Agreement documentation
 - Rental Assistance documentation (if applicable)

- Student Status documentation (at move-in only)
- VAWA Lease Addendum
- For previously qualified households, the Certification Portal will need to be updated annually with rent and utility allowance changes.
- 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.

Household Transfers & Next Available Unit Rule:

Post Year-15 Extended Use Period

- 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 enter all household transfers in the Certification Portal.
- 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.
- 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.

Student Status:

Post Year-15 Extended Use Period

- 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:
 - The student member of the household is married and files 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.
 - 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 children.
 - 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). In Nebraska, the TANF is called Aid to Dependent Children (ADC).

- 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.
- An individual is filing their own federal income tax return and is not a dependent of another individual.
- 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).

On-Site Inspections:

Post Year-15 Extended Use Period

- 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.

Compliance Fees:

Post Year-15 Extended Use Period

- 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.
- 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.

Low-Income Unit Set-Asides:

Post Year-15 Extended Use Period

- 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 or the average income designations). The original income restrictions set forth in the LURA will remain.
- The building's applicable fraction will be determined by the unit fraction only.
- 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.

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, specifying the number of units being requested. If granted, the waiver shall continue for the development's remaining extended use period unless rescinded by NIFA for good cause.

Development owners may not be able to apply for this waiver if it would 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.

Noncompliance:

Post Year-15 Extended Use Period

- The current correction period of 60 days will be maintained. Uncorrected noncompliance, including physical deficiencies, will result in a "Not-In-Good Standing" designation for the development owner and management company. Once a noncompliance is corrected, this designation will be removed.
- 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.
- Uncorrected noncompliance may affect the property tax valuation treatment allowed for under state law for LIHTC and bond projects.

Record Retention:

Post Year-15 Extended Use Period

- 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.