

**PROPOSED REGULATION OF  
THE HOUSING DIVISION OF THE  
DEPARTMENT OF BUSINESS AND INDUSTRY**

**LCB File No. R107-12**

November 12, 2012

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1 and 2, NRS 319.140; §3, NRS 319.140 and 319.520; §§4-12, NRS 319.140 and 319.145.

A REGULATION relating to affordable housing; revising provisions concerning financing for certain residential housing projects; revising provisions concerning the allocation and distribution of money from the Account for Low-Income Housing; making various changes concerning the allocation and distribution of federal tax credits for low-income housing; and providing other matters properly relating thereto.

**Section 1.** NAC 319.718 is hereby amended to read as follows:

319.718 The projected ratio for debt service coverage for each project must be a minimum of 115:100 on projects for new construction and ~~[125:100]~~ on projects for acquisition and rehabilitation of existing facilities, at:

1. The completion of the construction phase; and
2. After a reasonable rent-up period following completion of the project as determined by

the Division.

**Sec. 2.** NAC 319.722 is hereby amended to read as follows:

319.722 1. The maximum amount of pro forma profit and overhead for a developer on a project is 15 percent of the ~~[appraised value]~~ *eligible basis* of the project. ~~[The profit must be paid as follows:~~

- ~~—(a) Ten percent paid on the basis of percentage of completion of the improvements;~~
- ~~—(b) Ten percent paid on the date the construction loan converts to a permanent loan; and~~
- ~~—(c) Eighty percent paid from cash flows after payment of debt service for senior projects and funded repair and replacement reserves.]~~

2. The maximum interest rate on a deferred note is limited to the amount needed to maintain the present value of the amount of the developer's fee that remains unpaid.

**Sec. 3.** NAC 319.910 is hereby amended to read as follows:

319.910 1. Except as otherwise provided in this section, in each round of funding, the total amount of money available for distribution will be allocated according to the local share available to each participating jurisdiction.

2. A participating jurisdiction shall determine whether to accept or reject the local share available to the participating jurisdiction. If the participating jurisdiction rejects the local share, the Division will administer the local share for that participating jurisdiction and consider any proposal for a project in that participating jurisdiction.

3. The Division will set aside 10 percent of the money allocated to the Account each year to accept any proposal for a project located in any participating jurisdiction that it deems appropriate. A proposal for a project may be submitted to the Division throughout the year.

4. In addition to the money from the Account that will be set aside pursuant to subsection 3, the Administrator may set aside money from the Account to:

(a) If the proposal for a project is an eligible project pursuant to NRS 319.510 and all local participating jurisdictions agree, ensure that money in the Account will be available to match federal money offered for such a proposal for a project that requires the State to match such federal money as a condition of receiving the federal money; and

(b) Provide for certain proposals for projects, not to exceed \$750,000 per year without the approval from all participating jurisdictions , ~~to set aside an amount exceeding \$750,000 per year,~~ that the Administrator deems appropriate to carry out the provisions of this chapter. *This money may be in addition to any money that is provided to a project pursuant to subsection 3.*

**Sec. 4.** NAC 319.962 is hereby amended to read as follows:

319.962 “Qualified allocation plan” means the *annual or biennial* plan established by the Division for allocating tax credits each year, including:

1. The provisions of NAC 319.951 to 319.999, inclusive;
2. The annual plan and the application with instructions as adopted ~~for the plan year~~ by the Division pursuant to NAC 319.970 ~~;~~ *for each plan year subject to the qualified allocation plan;* and
3. The compliance manual prepared by the Division pursuant to NAC 319.995.

**Sec. 5.** NAC 319.971 is hereby amended to read as follows:

319.971 1. Before adopting an annual plan and preparing the application for tax credits, the Administrator will hold at least one public hearing in Clark County, one public hearing in Washoe County and one public hearing in a county other than Clark County or Washoe County designated by the Administrator. The Administrator may hold additional hearings. *The public hearings may be held concurrently by means of video conferencing or other equivalent means.*

2. At least one of the hearings specified in subsection 1 will be scheduled as a part of a meeting of the Advisory Committee on Housing created ~~pursuant to~~ *by* NRS 319.173.

3. The hearings will be conducted in accordance with the provisions of chapter 241 of NRS. The Division will maintain a list of persons whom the Division will notify for each hearing. The Division will include on the list the name of each person who applied for tax credits during the

year immediately preceding the year in which the hearing is held. Any other person may submit a request to the Division to be included on the list. The Division will include the name of such a person on the list for 2 years after the date the request is submitted to the Division.

4. ~~{The Division will include in its notice for a public hearing held pursuant to this section a statement that persons may submit written comments. If the Administrator receives a written comment not less than 2 days before a scheduled hearing, the comment will be discussed at the hearing.~~

~~—5.}~~ The Division will prepare a draft of the annual plan at least 30 days before the first hearing and provide a copy of the plan to each person whose name is included on the list specified in subsection 3.

~~{6.}~~ *The copy of the plan may be provided electronically or by other means approved by the Administrator.*

5. After conducting the hearings, the Administrator will adopt a final annual plan and the application for tax credits, including instructions for completing the application.

~~{7.}~~ 6. After adopting an annual plan and the application and its instructions pursuant to this section, the Division will hold at least one training session in ~~{the northern portion of the State and one training session in the southern}~~ *each* portion of the State ~~{}~~ *in which the Division determines that there is a need for such training.* Each training session will include a discussion of the annual plan, the application and its instructions and the provisions of NAC 319.951 to 319.999, inclusive. In addition to the training sessions, the Division will conduct periodic training sessions to ensure compliance with those sections. The Division may impose a fee for attending a training session to defray the cost of:

- (a) Materials used at a training session;

- (b) Speakers, if the speakers are not employees of the Division; or
- (c) Renting or leasing a facility used for a training session.

**Sec. 6.** NAC 319.972 is hereby amended to read as follows:

319.972 1. In each annual plan, the Division will add any tax credits carried over by the Division from a previous year and any tax credits awarded to the State from the national pool of unused tax credits to determine the total amount of tax credits available for allocation for the plan year. The Division will, pursuant to the annual plan, make an initial apportionment of the total allocation of tax credits in the following order:

- (a) An allocation to a set-aside account specified in this section.
- (b) An allocation to a geographic account or subaccount specified in this section.
- (c) An allocation to the general pool account specified in this section.

2. In accordance with the provisions of the Code, the Division will set aside 10 percent of the state ceiling for projects relating to nonprofit organizations as specified in the qualified allocation plan and the Code. The Division will identify those tax credits in the annual plan as minimum tax credits for nonprofit organizations. Pursuant to the annual plan, the Division may set aside additional amounts of tax credits for projects relating to nonprofit organizations and will identify those amounts in the annual plan as additional tax credits for nonprofit organizations. The Division will place any tax credits set aside pursuant to this subsection into a set-aside account. Any reservations and final awards of tax credits from that account will first be charged against the minimum tax credits set aside for nonprofit organizations and then charged against any additional tax credits that are set aside for nonprofit organizations. If the total amount of the minimum tax credits that are set aside for nonprofit organizations is not reserved during the first reservation round, the Division will carry over any unreserved portion of that amount

into subsequent rounds as a minimum tax credit to be set aside for nonprofit organizations. Any unreserved minimum amount will not be apportioned to other accounts and will not be carried over into the next plan year. Any unreserved or unused additional tax credits may be reapportioned to other accounts or may be carried over into the next plan year by the Division.

3. The Division may, pursuant to the annual plan, establish set-aside accounts other than those specified in subsection 2 into which the Division will place tax credits after the minimum and additional tax credits specified in that subsection have been set aside by the Division. The Division will reserve tax credits from the accounts specified in this subsection in accordance with the annual plan. Unless otherwise provided in the annual plan, any unreserved amounts of tax credits remaining in each of those accounts after all eligible applications for a reservation of tax credits from those accounts have been considered during the first reservation round will be transferred to a set-aside account and identified as additional tax credits for nonprofit organizations. The Division may transfer those tax credits before the end of the first reservation round to maximize reservations during that round.

4. After each apportionment has been made to a set-aside account pursuant to subsections 2 and 3, the Division will:

(a) Place an amount of tax credits specified in the annual plan into a geographic distribution account; and

(b) Apportion those credits among geographic subaccounts for counties as provided in the annual plan.

5. The Division will make reservations of tax credits from the geographic subaccounts specified in subsection 4 based on the location of the project. If, during the first reservation round, the Division does not reserve all of the tax credits placed into the subaccount for:

(a) Clark County, the Division will transfer any surplus tax credits remaining in that subaccount to the subaccount for Washoe County.

(b) Washoe County, the Division will transfer any surplus tax credits remaining in that subaccount to a subaccount for all of the counties other than Clark County and Washoe County.

~~[→ If, at the end of the first round, the Division does not reserve any tax credits from a subaccount described in this subsection, the Division will transfer the tax credits to a general pool account to be carried over or allocated by the Division during a second round.]~~

6. If the Division does not apportion any tax credits to an account or subaccount pursuant to this section, the Division will place those tax credits into a general pool account. Except as otherwise provided in this section, if the Division does not reserve any tax credits that remain in an account or subaccount after the Division considers all eligible applicants during the first round, the Division will transfer those tax credits to the general pool account and may reserve those tax credits from that account during the first round. Upon completion of the first round, the Division will transfer any unreserved tax credits other than minimum tax credits set aside for nonprofit organizations to the general pool account. The Division will make all subsequent reservations *or forward commitments* of tax credits from that account in accordance with the provisions of NAC 319.989 and 319.990, regardless of the amount of any tax credits that are set aside for or the geographic location of the project of an applicant.

7. In addition to any tax credits placed into the general pool account pursuant to subsection 1, the Division will place into that account:

- (a) Any tax credits received by the Division from the national pool of unused tax credits; and
- (b) Any other credits returned to or received by the Division after the date the Division publishes the annual plan.

8. Except as otherwise provided in this subsection, if an applicant is eligible for tax credits that have been set aside, the Division will first consider his or her application for a reservation of tax credits against the set-aside accounts specified in this section. If the applicant does not receive a reservation of tax credits from a set-aside account, the Division will include the application with all other applications and consider the application for a reservation of tax credits against any appropriate geographic account or subaccount. If an applicant does not receive tax credits from a geographic account or subaccount, the Division will consider reserving tax credits for the applicant from the general pool account. If an applicant qualifies for tax credits that have been set aside and:

(a) Is the only qualifying applicant for a reservation from a set-aside account or a geographic account or subaccount, the Division may reserve tax credits for that applicant in any manner that maximizes the use of the tax credits that have been set aside and the tax credits in the geographic accounts or subaccounts.

(b) The amount of tax credits requested in the application exceeds the amount of tax credits available for reservation from a set-aside account, the Division may, based on the number of preference points awarded to the applicant, reserve tax credits for that applicant from any other set-aside account or geographic account or subaccount. Any tax credits reserved pursuant to this paragraph will be an amount that is equal to the amount of tax credits by which the tax credits requested by the applicant exceeds the amount of tax credits available for reservation from the set-aside account.

9. The Division will award to each applicant a total number of preference points in accordance with the provisions of NAC 319.989. The application of any applicant who is eligible for a reservation of tax credits against an account or subaccount specified in this section will be

ranked in order of priority according to the number of preference points awarded to the applicant pursuant to that section. If an application cannot be ranked because the applicant has been awarded a number of preference points that is equal to the number of preference points awarded to another eligible applicant, the Division will rank the application in accordance with the provisions of NAC 319.990. Tax credits will be reserved in accordance with the ranking established pursuant to that section until the account or subaccount is exhausted or the application that is ranked next in order of priority exceeds the balance in the account. Except as otherwise provided in subsection 10, to maximize any reservations against an account or subaccount specified in this section, if the Division makes a reservation of tax credits until an applicant whose application that is ranked next in order of priority requests an amount of tax credits that exceeds the amount available in the account or subaccount and there is a difference of 5 percent or less between the amount requested by the applicant and the amount of tax credits available for reservation, the Division may:

(a) Offer a reduced amount of tax credits to the applicant, if the amount requested by the applicant may be reduced by 5 percent or less without impairing the financial feasibility of the project; or

(b) Transfer not more than 5 percent of the amount requested by the applicant from the general pool account and reserve the tax credits accordingly, if a sufficient amount of tax credits has been placed into the general pool account.

10. If the Division makes a reservation of tax credits until an applicant whose application is ranked next in order of priority requests an amount of tax credits that exceeds the amount available in an account, the Division may award tax credits to an applicant:

(a) Whose application is ranked next in order of priority to that application; and

(b) Who requests an amount of tax credits that is equal to or less than the remaining balance in the account.

↪ If an application is not considered for a reservation of tax credits pursuant to this subsection, the Division will consider the application for a reservation of tax credits against another account based on the number of preference points awarded to the applicant.

11. If all tax credits are not awarded in a reservation round, the Division may:

(a) Carry over the unused tax credits to the next plan year or place any unused tax credits, other than minimum tax credits set aside for nonprofit organizations, into the general pool account; and

(b) Initiate a new reservation round.

**Sec. 7.** NAC 319.974 is hereby amended to read as follows:

319.974 1. An application for tax credits, an additional copy of the application and the appropriate fees established in the annual plan must be received by the Division before 5 p.m. on the date specified in the annual plan for the submission of applications. The application must be:

(a) Completed by the applicant;

(b) Signed in all places where signatures are required; and

(c) Accompanied by any documents required in the application and instructions for the application.

↪ ***The Division will not accept an incomplete application.*** Except as otherwise provided in subsection 3, the Division will not accept an application, document or fee if the application, document or fee is received by the Division after the date specified in the annual plan for the receipt thereof. If a fee for an application is paid by check on or before the date the fee is

required to be paid and the check is dishonored, the Division will reject the application for which the fee was submitted.

2. If the United States Department of Housing and Urban Development conducts a review of a project to determine the amount of subsidies the applicant or project sponsor is receiving for the project from sources other than tax credits awarded pursuant to the Code and NAC 319.951 to 319.999, inclusive, the applicant shall provide a copy of the review with the application. If a copy of the review is not included with the application, the Division will reject the application.

3. If any required information or documents are not included in an application or if further documentation or clarification is required by the Division to complete a review of an application, the Division will notify the applicant. The information or documentation requested by the Division in the notice must be submitted within 5 days after the date of the notice. Except as otherwise provided in this subsection, if the information or documentation is not received within that period, the Division will reject the application. If the requested documentation relates to preference points, the preference points will not be awarded.

4. The Division may reject an application if:

(a) It determines that the project for which the application is submitted does not comply with the requirements for an award of tax credits;

(b) The amount of tax credits requested or required for the project exceeds the maximum amount of tax credits established pursuant to NAC 319.992; or

(c) The applicant or any person who controls the applicant, including a general partner, shareholder or member who controls or owns an interest in the applicant of 25 percent or more, controlled a person of a previous applicant or project sponsor who:

(1) Failed to complete a project in accordance with the application approved by the Division;

(2) Within the 2 years immediately preceding the year in which the application is submitted, made a material misrepresentation to the Division concerning tax credits; or

(3) Has, as determined by the Division, knowingly and materially failed to comply with the Code or a declaration of restrictive covenants and conditions concerning a project.

5. If an application is rejected, the applicant may request a review of the application by the Administrator pursuant to the provisions of NAC 319.984.

6. The Division will retain all rejected applications. Completed applications, supporting documents and any communication with the Division concerning those applications and documents, other than the financial statements of a natural person, are public records and will be made available by the Division for inspection and copying in accordance with the provisions of chapter 239 of NRS.

7. If all tax credits are not reserved during a reservation round and the Division initiates subsequent rounds, the Division will notify each applicant who did not receive tax credits during the previous round and allow him or her to resubmit an application. If an application was rejected in a previous round or must be changed upon resubmission, the application must be accompanied by a resubmission fee as provided in the annual plan. If time allows, the Division may accept new applications for a subsequent round. If any tax credits are subject to forfeiture or any other loss if not reserved during the plan year, the Division may reduce the period for submission of applications and the period for analysis and review of the applications to ensure that those tax credits are awarded not later than the end of the plan year.

**Sec. 8.** NAC 319.980 is hereby amended to read as follows:

319.980 1. If a final award of tax credits is not made by the end of a calendar year, any reserved amount of those credits may be carried over to the next year in accordance with the provisions of the Code and NAC 319.951 to 319.999, inclusive.

2. If an applicant wishes to carry over any reserved tax credits, the Division must receive, not later than the date set forth in the written notification of a reservation of tax credits provided to the applicant by the Division:

(a) A written statement from the applicant requesting that the tax credits be carried over with the appropriate fees; and

(b) The report specified in subsection 3.

↪ The Division will not grant an extension of time for the submission of the statement.

3. A project sponsor must submit a report by a certified public accountant on a form approved by the Division. The accountant must attest in the report that the tax credits carried over comply with the provisions of section 42(h)(1)(D), (E) and (F) of the Code.

4. Unless otherwise provided in the annual plan:

(a) A declaration of restrictive covenants and conditions will be prepared for the project and recorded at the time the tax credits are carried over.

(b) The Division will not carry over any tax credits pursuant to this section unless the property for the proposed project is zoned ~~[for multifamily units and]~~ for projects that are the *type and* size of the proposed project. If a special use permit is required for the proposed project, the Division may carry over the tax credits regardless of whether the applicant obtains a special use permit.

**Sec. 9.** NAC 319.985 is hereby amended to read as follows:

319.985 Except as otherwise provided in NRS 238.100:

1. For the purposes of NAC 319.951 to 319.999, inclusive, an application, supporting document or any other document submitted pursuant to the provisions of those sections shall be deemed received when it is placed in the physical possession of an officer or employee of the Division.

2. A notice provided pursuant to the provisions of NAC 319.951 to 319.999, inclusive, unless otherwise provided in the notice, shall be deemed given and received as follows:

(a) If the notice is provided by telephone or an oral communication, on the date that the conversation occurs between an officer or employee of the Division and the applicant or an employee of the applicant.

(b) If the notice is provided by a facsimile machine, on the date the sender sends the facsimile and receives confirmation of a completed transmission or, if the confirmation is not received, on the date the facsimile is received by the recipient.

(c) If the notice is provided by first-class mail, on the date the mail is postmarked.

(d) If the notice is provided by certified mail, on the date the mail is received as indicated on the return receipt.

(e) If the notice is provided by overnight delivery service, on the date the notice is received by the carrier.

(f) If the notice is provided in person, on the date the notice is personally delivered in the office of the recipient to a person employed by the recipient.

*(g) If the notice is provided by electronic mail, on the date the electronic mail is received in the office of the recipient by a person employed by the recipient.*

3. For the purposes of NAC 319.951 to 319.999, inclusive, if a period for the submission or receipt of any application, notice or other document is stated in a number of days, the period

begins on the day after the date that notice is provided. The period ends at midnight on the last day of the period, unless the last day is a holiday or a Saturday or Sunday. If the last day is a holiday or a Saturday or Sunday, the period is extended until the next business day the office of the Division is open.

**Sec. 10.** NAC 319.989 is hereby amended to read as follows:

319.989 1. The Division will include in each annual plan the following criteria for awarding preference points:

- (a) The location of the project;
- (b) Housing needs;
- (c) The characteristics of the project and project sponsor;
- (d) Participation in the project by local tax-exempt organizations;
- (e) Populations of tenants who require special housing;
- (f) Waiting lists for public housing; ~~and~~
- (g) Projects that serve tenants with the lowest incomes and that are required pursuant to the Code to serve qualified tenants for the longest period ~~and~~; *and*
- (h) Any other criteria that the Division determines are necessary to meet the needs of the State for affordable housing.*

2. The Division will, in each annual plan, include provisions to assess housing characteristics and requirements and establish specific criteria intended to satisfy the goals of the Administrator for the year for which the plan is adopted. The Administrator will consider the criteria specified in subsection 1 and may use any other criteria he or she establishes to carry out those goals. The criteria may be used to establish the requirements for a reservation or award of tax credits, requirements for setting aside tax credits and preference points or other systems of

allocation. The provisions of this section provide guidelines and requirements for specific criteria if those criteria are used for awarding preference points in the annual plan. If a conflict occurs between a provision in the annual plan and any provision of NAC 319.951 to 319.999, inclusive, the provision in the annual plan must be applied for the plan year.

3. The Division may award preference points for a project that is located in any area identified in the annual plan.

4. The Division may award preference points for a project that is located in an area where rents are substantially higher than the proposed rents for the project as stated in the annual plan. To qualify for preference points pursuant to this subsection, an applicant must provide market surveys or any other reports satisfactory to the Division.

5. The Division may award preference points to a project if the rent for not less than 20 percent of the units in the project is restricted and those units are occupied by tenants whose incomes are 50 percent or less than the median income of the area in which the project is located in accordance with section 42(g)(1) of the Code.

6. The Division may award preference points to a project if the applicant chooses to rent units to persons whose incomes are lower than the requirements of paragraph (b) of subsection 1 of NAC 319.986. The declaration of restrictive covenants and conditions signed by an applicant who requests preference points pursuant to this subsection must state that the units in the project are restricted to lower levels of rent during the compliance period. There must be a pro rata mix of types of units.

7. The Division may award preference points based on the percentage of units in the project for which rent is restricted as provided in the declaration of restrictive covenants and conditions recorded for the project.

8. The Division may award preference points based on the number of units in the project with three or four bedrooms that are suitable for large families.

9. The Division may, as provided in the annual plan, award preference points for amenities provided for a project.

10. The Division may award preference points for projects for older persons. To qualify as a project for older persons, the project must comply with the requirements for housing older persons set forth in the Fair Housing Act of 1968, 42 U.S.C. §§ 3601 et seq., as amended, and any regulations adopted by the United States Department of Housing and Urban Development pursuant to that Act.

11. The Division may award preference points to an applicant if:

(a) The applicant, at the time he or she is considered for the award, signs an agreement on a form provided by the Division agreeing that:

(1) The construction of the project will begin not later than 270 days after the date of any reservation of tax credits; and

(2) If the construction does not begin during that period, any tax credits awarded to the applicant will be forfeited and the applicant may not apply for tax credits for the project during the allocation round, including any tax credits the project sponsor has forfeited; or

(b) The title to the property for the project is vested in the name of the applicant at the time he or she submits the application and is free from any conditions, liens or encumbrances other than:

(1) A condition that the property is used for low-income housing or that tax credits must be awarded for the project;

(2) A monetary lien, including a judgment lien, deed of trust, mechanic's lien or similar lien whose payment is specified in any document submitted pro forma for the project; or

(3) Any other condition, lien or encumbrance approved by the Division.

12. The Division may award preference points if the appropriate zoning authority submits a letter to the Division describing the project and indicating that the property for the project is zoned for the size and type of project described in the application.

13. The Division may award preference points if a project sponsor agrees to extend the compliance period for more than 30 years and a letter is included in the application indicating the number of years that the sponsor agrees to extend the compliance period.

14. The Division may award preference points to an applicant who is based in this State. An applicant shall be deemed to be based in this State if he or she:

(a) Is a sole proprietor and is a resident of this State.

(b) Is a business entity and:

(1) Is organized as a corporation, partnership, limited-liability company or other similar entity pursuant to the laws of this State; and

(2) Maintains an office in this State:

(I) From which a general partner, managing member or principal officer of the applicant, including a president or chief financial or operating officer, conducts regular business; and

(II) That is sufficiently identified and staffed to ensure that a member of the general public may visit the office to discuss matters relating to the project.

15. The Division may award preference points to a corporation, partnership or limited-liability company whose general partner, managing member or principal officer, including a

president or chief financial or operating officer, has not less than 5 years of experience in the construction of housing in this State. To qualify for preference points pursuant to this subsection, the application:

(a) Must include documents that establish that the applicant has engaged in business in this State for at least 5 years within the previous 10 years;

(b) May include documents that indicate any housing projects constructed by the applicant and supporting documents, including loan agreements, construction agreements, parcel or subdivision maps, certificates of occupancy, building permits or other similar documents; and

(c) May include audited financial statements if the statements specify any income the applicant received for the construction of housing in this State.

16. The Division may award preference points to an applicant, including a sole proprietor or general partner, managing member, president or chief operating or financial officer of an applicant, who has demonstrated experience in substantially participating in the development or construction of low-income housing projects. To qualify for preference points pursuant to this subsection, the application must:

(a) Include the address of each of those projects; and

(b) Identify each officer or employee of the applicant who substantially participated in the development or construction of the project and the nature and extent of that participation.

17. The Division may award preference points based on the amount of participation in a project by a tax-exempt organization that is a public housing authority organized pursuant to the laws of this State or a nonprofit organization that:

(a) Is organized pursuant to the laws of this State;

(b) Is in good standing in this State; and

(c) Complies with the requirements set forth in NAC 319.988.

18. The Division may award preference points to a project based on the amount of capital invested by a tax-exempt organization specified in subsection 17, regardless of whether any other participant in the project resides or is based in this State.

19. The Division may award preference points to a project for which units are reserved for persons who require special housing as provided in the annual plan. The reservation of those units must be for the compliance period and be described in the declaration of restrictive covenants and conditions recorded for the project.

20. The Division may award preference points to a project for which units are reserved for handicapped persons as defined in the Fair Housing Act of 1968, 42 U.S.C. §§ 3601 et seq., and any regulations adopted pursuant to that Act by the United States Department of Housing and Urban Development. The annual plan will specify the requirements for the units that are so reserved. To qualify for preference points pursuant to this subsection, the applicant must designate the units that are reserved for handicapped persons with physical disabilities and the units that are reserved for handicapped persons with mental disabilities. Before any tax credits may be awarded for the project, if the unit is:

(a) For a person with a physical disability, the unit must be:

(1) Designed to meet the requirements set forth in the annual plan for buildings that provide accessibility for persons with disabilities. As a part of the application, the architect for the project must certify that the designated units meet or exceed those requirements and, before any final award of tax credits, the Division must receive a certificate or other evidence satisfactory to the Division that each of those units complies with those requirements.

(2) Constructed with such additional amenities and equipment as are necessary to ensure that the units are usable for persons with disabilities as specified in the annual plan. The applicant must agree to provide the amenities and equipment as a condition of the application.

(b) For a person with a mental disability, the applicant must enter into an agreement with a licensed public or private mental health organization to provide, on the site of the project, counseling and rehabilitative or other appropriate support services to a tenant in the unit. The agreement must specify the number of units for which those services must be available and the nature of services that may be provided by the organization for the tenants. The agreement must be included in the application and be satisfactory to the Division before preference points may be reserved and awarded.

↳ During the compliance period, the reserved unit may be substituted for another unit if the substituted unit is appropriately equipped to accommodate the tenant and if handicapped persons occupy the total percentage of units that qualified the project to receive preference points pursuant to this subsection.

21. The Division may award preference points to a project for which units are reserved for households with single parents. The units must be specifically identified in the application. During the compliance period, any unit may be substituted for a unit specified in the application if the required percentage of total units are occupied by households with single parents.

22. The Division may establish in each annual plan additional criteria for awarding preference points for the plan year.

**Sec. 11.** NAC 319.991 is hereby amended to read as follows:

319.991 1. Except as otherwise provided in NAC 319.992, the amount of tax credits to be reserved will be:

- (a) The amount of tax credits requested, as calculated pursuant to subsection 2; or
  - (b) The annual amount of tax credits required for the project, as calculated pursuant to subsection 3,
- ↪ whichever is less.

2. To determine the amount of tax credits requested pursuant to paragraph (a) of subsection 1, the Division will:

(a) Calculate the total eligible basis for the project by subtracting the amount of any federal grants used to finance development, nonqualifying nonrecourse financing and the nonqualifying portion of the higher-quality unit costs from an amount that is equal to 70 percent of the total estimated costs of the project;

(b) Calculate the total adjusted eligible basis for the project by multiplying the total eligible basis calculated pursuant to paragraph (a) by the applicable factor specified in the annual plan pursuant to subsection 4, if the project is located in a qualified census tract or an area that is difficult to develop;

(c) Calculate the total qualified basis for the project by multiplying the total eligible basis for the project calculated pursuant to paragraph (b) by the ratio of units in the project for which rent is restricted to all units in the project or the ratio of the square footage of the units in the project for which rent is restricted to the square footage of all units in the project, whichever is less; and

(d) Multiply the total qualified basis calculated pursuant to paragraph (c) by:

- (1) Except as otherwise provided in subparagraphs (2) and (3), 9 percent;
- (2) Except as otherwise provided in subparagraph (3), 4 percent, if the tax credits applied for are in connection with the financing of bonds; or
- (3) An amount specified in the annual plan.

3. To determine the annual amount of tax credits required for the project pursuant to paragraph (b) of subsection 1, the Division will:

(a) Calculate the adjusted costs of the project by subtracting the amount of any fees that exceed the maximum amount set forth in NAC 319.987 from the total amount of money used for the project, including the cost of any land for the project and any other costs that are not included in the eligible basis of the project;

(b) Subtract the total amount of money for the project received from mortgages, grants, investments by project sponsors, developer notes and similar sources of money from the adjusted costs of the project calculated pursuant to paragraph (a);

(c) Divide the amount determined pursuant to paragraph (b) by the amount of the syndicate pricing factor; and

(d) Divide the amount determined pursuant to paragraph (c) by 10.

4. If the project is located in an area that is difficult to develop as specified in the annual plan or in a qualified census tract, *or satisfies criteria established by the Division pursuant to section 42(d)(5)(B)(v) of the Code*, the Division may adjust the eligible basis of the project as provided in the annual plan. ~~For the purposes of this subsection, the following areas are qualified census tracts:~~

<del>Reno .....</del>	<del>Tract 0001.00</del>	<del>_____</del>	<del>Tract 0003.02</del>
<del>_____</del>	<del>Tract 0009.00</del>	<del>_____</del>	<del>Tract 0004.00</del>
<del>_____</del>	<del>Tract 0018.00</del>	<del>_____</del>	<del>Tract 0005.04</del>
<del>Las Vegas .....</del>	<del>Tract 0003.01</del>	<del>_____</del>	<del>Tract 0007.00</del>

~~..... Tract 0008.00~~  
~~..... Tract 0009.00~~  
~~..... Tract 0011.00~~  
~~..... Tract 0022.01~~  
~~Las Vegas (cont.) ..... Tract 0035.00~~  
~~..... Tract 0036.02~~  
~~..... Tract 0038.00~~  
~~..... Tract 0039.98~~  
~~..... Tract 0046.00~~  
~~Elko County ..... Tract 9501.00~~  
~~..... Tract 9505.00~~  
~~..... Tract 9506.00~~  
~~..... Tract 9515.00~~  
~~Humboldt County ..... Tract 9603.00~~  
~~Lyon County ..... Tract 9606.00}~~

5. If increases in the costs of the project occur after the Division makes a reservation of tax credits for the project, an applicant may submit an application during any subsequent allocation round for additional tax credits. The Division will consider an application submitted pursuant to this subsection as a new application. The application will be reviewed as provided in NAC 319.951 to 319.999, inclusive.

**Sec. 12.** NAC 319.995 is hereby amended to read as follows:

319.995 1. Each project sponsor shall, for the compliance period, comply with the provisions of NAC 319.951 to 319.999, inclusive, the declaration of restrictive covenants and conditions and the Code. The failure of the project sponsor to comply with those provisions may result in a revocation of the allocated tax credits by the Internal Revenue Service.

2. The Division will prepare and periodically revise a compliance manual specifying the forms that must be used and any other requirements for project sponsors. The Division will provide a copy of the compliance manual to each applicant when tax credits are allocated pursuant to the provisions of NAC 319.951 to 319.999, inclusive. The Division will ~~send~~ *post on its Internet website* a copy of each revision of the compliance manual. ~~to each project sponsor.~~ A project sponsor may obtain ~~additional~~ copies *of revisions of the compliance manual* from the Division upon the payment of a fee to cover the costs of those copies.

3. Each project sponsor shall maintain records for each building in the project. The records must include the following information for each year of the compliance period:

(a) The total number of units in the building, including the number of bedrooms and the size in square feet of each of those units;

- (b) The percentage of units in the building that are low-income units;
  - (c) The rent charged for each unit in the building, including any allowances for utilities;
  - (d) The number of occupants in each low-income unit, if the rent for those units is determined by the number of occupants in each unit pursuant to the provisions of section 42(g)(2) of the Code that are in effect before the effective date of the amendments to the Code made pursuant to the Revenue Reconciliation Act of 1989, ~~[26 U.S.C. §§ 898, 4471, 4681, 4682, 4978B and 6662 to 6665, inclusive;]~~ *Public Law 101-239, § 7108, 101 Stat. 2301, 2312-13;*
  - (e) The vacancies in the low-income units in the building and any information that indicates the date and each person to whom the next available units were rented;
  - (f) An annual certification of the income of each low-income tenant;
  - (g) Documentation to support the certification of the income of each low-income tenant;
  - (h) The eligible basis and qualified basis of the building at the end of the first year of the credit period as defined in section 42(f)(1) of the Code;
  - (i) The character and use of the nonresidential portion of the building included in the eligible basis of the building pursuant to section 42(d) of the Code; and
  - (j) The date that each resident initially occupies a rental unit.
4. The project sponsor shall maintain:
- (a) The records specified in subsection 3 for at least 6 years after the date for filing the federal income tax return for that year; and
  - (b) The records for the first year of the credit period as defined in section 42(f)(1) of the Code for at least 6 years after the date for filing the federal income tax return for the last year of the compliance period as defined in section 42(i)(1) of the Code relating to a building in the project.

5. The project sponsor shall, at least annually, certify to the Division under penalty of perjury that, during the immediately preceding 12 months:

(a) The project was in compliance with the provisions of the declaration of restrictive covenants and conditions concerning the number of units in the project for which rent is restricted and the amount of rent for those units;

(b) The project sponsor has received an annual certification of the income of each low-income tenant and documentation to support that certification or, if the tenant receives payments for housing assistance pursuant to section 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437f, a statement from a public housing authority;

(c) The rent for each low-income unit in the project was restricted pursuant to section 42(g)(2) of the Code;

(d) Each unit in the project, other than transitional housing for the homeless provided pursuant to section 42(i)(3)(B)(iii) of the Code, was available for occupancy by a member of the public and used on a nontransient basis;

(e) Each building in the project was suitable for occupancy in accordance with local health, safety and building codes;

(f) The eligible basis of any building in the project did not change, or if there was a change, the nature of the change;

(g) The applicable fraction, as defined in section 42(c)(1)(B) of the Code, of any building in the project did not change;

(h) The facilities for tenants included in the eligible basis of any building in the project pursuant to section 42(d) of the Code, including swimming pools, parking areas and any other

recreational facilities, were provided on a comparable basis without charge to each tenant in the building;

(i) If a low-income unit in the project has been vacant during the year, reasonable efforts were made to rent that unit or the next available unit of comparable or smaller size to tenants who had a qualifying income before any units in the project were rented to tenants who did not have a qualifying income;

(j) If the income of tenants of a low-income unit in the project increased above the limit specified in section 42(g)(2)(D)(ii) of the Code, the next available unit of comparable or smaller size in the project was rented to tenants who had a qualifying income; and

(k) The project remained subject to the declaration of restrictive covenants and conditions for low-income housing tax credits.

6. Each project sponsor shall ~~§~~ *collect from its tenants and submit to the Division the information concerning each household residing in the project that the Division determines is necessary for compliance with section 36 of the United States Housing Act of 1937, 42 U.S.C. § 1437z-8, or other state or federal law or regulation. The information may include, without limitation, the race, ethnicity, family composition, age, income, use of rental assistance under section 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437f, or other similar assistance, disability status, and monthly rental payments of the household.*

7. *Each project sponsor shall*, on or before the first day of each calendar quarter, provide a report to the Division on the form provided in the compliance manual. The report must include:

- (a) The number of units occupied by low-income tenants and other tenants;
- (b) The number of certified units;

- (c) The identification number of the building;
- (d) The amount of rent for and the type of each unit; and
- (e) The name, household size, annual household income and annual date for certifying the income of each tenant.

~~[7.]~~ 8. The Division will review each report submitted pursuant to subsection ~~[6.]~~ 7. The Division will periodically conduct reviews of any portion of the records of the low-income units in each project. The Division will notify each project sponsor of those units that are designated by the Division for review. The notice must include a request for copies of documents, including:

- (a) Rental applications submitted by tenants;
- (b) The certification of annual income for each tenant, including the documents to support the certification; and
- (c) The lease agreement for each tenant.

~~[8.]~~ 9. The Division will review the annual certifications and quarterly reports for compliance with the requirements of the Code and compliance manual. Each year, the Division will:

- (a) Review at least 20 percent of the completed projects; and
- (b) Randomly review the documentation of at least 20 percent of the low-income tenants, including a copy of the certification of annual income, the documentation the project sponsor has received to support that certification and the lease and the rental record.

↪ The Division will notify the project sponsor before it conducts the inspection. The notice will not specify the records that will be examined.

~~19.~~ **10.** The Division may perform inspections of any low-income housing project and each unit in the project during the compliance period. The inspection is in addition to any review of certifications of annual income, supporting documents and rental records specified in this section.

~~10.~~ **11.** If the Division determines that a project sponsor has not complied with any provision of the Code or NAC 319.951 to 319.999, inclusive, the Division will notify the project sponsor and the Internal Revenue Service of the noncompliance. The Division will notify the project sponsor in writing if the Division does not receive the annual certification or does not receive or is not allowed to inspect the certifications of annual income of the tenants, supporting documents and rental records as specified in this section or in the compliance manual, or determines that the project is not in compliance with the provisions of the Code. The Division will file Internal Revenue Service Form 8823 with the Internal Revenue Service and indicate on the form the nature of the noncompliance or failure to certify and whether the project sponsor has corrected the noncompliance or failure to certify. Any change in the applicable fraction or eligible basis that results in a decrease in the qualified basis of the project pursuant to section 42(c)(1)(A) of the Code constitutes noncompliance that will be reported to the Internal Revenue Service. The Division will notify the Internal Revenue Service of any noncompliance regardless of whether the noncompliance is corrected by the project sponsor.

~~11.~~ **12.** The Division will charge such fees as are necessary to cover the costs and expenses it incurs for any review conducted pursuant to this section.