

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

LCB File No. R057-97

Effective January 15, 1998

EXPLANATION--Matter in italics is new; matter in brackets [] is material to be omitted.

AUTHORITY: §§2-37, NRS 319.145.

Section 1. Chapter 319 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 37, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 37, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 11, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Applicant” means any person who applies for tax credits pursuant to the provisions of sections 2 to 37, inclusive, of this regulation.*

Sec. 4. *“Code” means the Internal Revenue Code of 1986, as amended, including any regulations, circulars, letter rulings and policies adopted by the Internal Revenue Service pursuant to the code.*

Sec. 5. *“Compliance period” means the period during which an applicant agrees to operate a project as a low-income housing project pursuant to a declaration of restrictive covenants and conditions.*

Sec. 6. *“Day” means a calendar day.*

Sec. 7. *“Declaration of restrictive covenants and conditions” means an agreement between the division and an applicant that sets forth the applicable restrictions concerning rent for a project and any other conditions upon which tax credits are awarded to the applicant by the division pursuant to the provisions of sections 2 to 37, inclusive, of this regulation.*

Sec. 8. *“Project sponsor” includes an applicant who receives tax credits and any other person who acquires an ownership interest in a project for which tax credits are awarded by the division.*

Sec. 9. *“Qualified allocation plan” means the plan established by the division for allocating tax credits each year, including:*

- 1. The provisions of sections 2 to 37, inclusive, of this regulation;*
- 2. The annual plan and the application with instructions as adopted for the plan year by the division pursuant to section 14 of this regulation; and*
- 3. The compliance manual prepared by the division pursuant to section 35 of this regulation.*

Sec. 10. *“State ceiling” means the per capita limit on the amount of tax credits awarded to this state for each year pursuant to the provisions of the code.*

Sec. 11. *“Tax credit” means a credit or reduction in federal tax liability each year for a period of 10 years that is awarded to an owner of rental housing or his assigns pursuant to section 42 of the code.*

Sec. 12. *1. Each applicant and project sponsor shall comply with the provisions of the qualified allocation plan. If a provision in the qualified allocation plan conflicts with a provision of the code, the applicant or project sponsor shall comply with the provision of the code. Such a conflict occurs if the application or enforcement of a provision in the qualified allocation plan or*

compliance manual renders a project ineligible for tax credits or disqualifies the qualified allocation plan pursuant to the code.

2. An action or statement made by the division, including any financial analysis, issuance of reservation letters and final award of tax credits, must not be interpreted or relied on as an implied or express representation or warranty by the division that the project sponsor or project is financially feasible or is in compliance with any provision of the code or any other statute, regulation or rule concerning the project. A determination of financial feasibility and compliance is the sole responsibility of each applicant and project sponsor.

Sec. 13. *A declaration of restrictive covenants and conditions constitutes a covenant running with the land of a project for the compliance period and must be recorded by the applicant or project sponsor in the county in which the project is located.*

Sec. 14. *1. Each calendar year constitutes a plan year for the purposes of the provisions of sections 2 to 37, inclusive, of this regulation. The division will publish an annual plan for each plan year. The annual plan will include:*

(a) Any findings by the administrator relating to any applicable requirements for low-income housing and the priorities, policies and criteria for use during the plan year;

(b) Dates for submitting applications and any other deadlines and procedural policies for use during the plan year;

(c) The amount of the state ceiling and the total amount of tax credits available for reservation and award for the plan year and the manner in which those amounts will be apportioned among the reservation accounts specified in sections 2 to 37, inclusive, of this regulation;

(d) The criteria for selection, including minimum requirements, set-aside provisions, preference points and rules for breaking ties, for establishing the priorities and requirements for the plan year; and

(e) Any other information or policies relied upon by the division during the plan year that are in addition to or in lieu of the provisions of sections 2 to 37, inclusive, of this regulation.

2. The division will prepare a form for the application for tax credits and instructions for the application for each plan year. The instructions will include a list of documents that must be submitted with the application.

Sec. 15. *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.*

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 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. 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. 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 portion of the state. Each training session will include a discussion of the annual plan, the application and its instructions and the provisions of sections 2 to 37, inclusive, of this regulation. 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. 16. *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 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 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 of tax credits from that account in accordance with the provisions of sections 30 and 31 of this regulation, 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 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) He 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 his 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 section 30 of this regulation. 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 section 31 of this regulation. 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 have 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. 17. *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.

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 sections 2 to 37, inclusive, of this regulation, 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 section 33 of this regulation; 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 section 25 of this regulation.

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 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. 18. *1. The division will:*

(a) Review each application and any supporting documents to determine whether the requirements for eligibility for a reservation or award of tax credits are met and the amount of preference points that may be awarded, regardless of whether an application qualifies for a reservation or award of tax credits that are set aside for projects involving nonprofit organizations; and

(b) Determine the amount of tax credits for which the project may be eligible.

2. The division will notify each applicant in writing of the results of its review. An applicant may, after receiving a notice pursuant to this subsection, request a review of the application with the division. The division may change the results of its review.

3. A request for a review submitted pursuant to subsection 2 must be made in writing and received by the division within 5 days after the notice is sent pursuant to that subsection. An

applicant may not, after he submits a request for review, contact the administrator concerning his application until the division notifies the applicant that the review is complete.

4. An application and any supporting documents will not be changed during a review conducted by the division unless the change is necessary to clarify or document the status of the project sponsor or project as the sponsor or project existed at the time the application was filed.

5. If the division reviews an application pursuant to this section, an applicant may not request a review of his application by the administrator pursuant to section 25 of this regulation until the division gives notice of the proposed reservations of tax credits.

Sec. 19. *1. Upon completion of the review of an application for tax credits, the division will:*

(a) Make any appropriate changes to the application;

(b) Tentatively rank the application; and

(c) Establish proposed reservations of tax credits for projects from the apportionment accounts.

2. The division will notify each applicant of the proposed reservations of tax credits. An applicant may request a review by the administrator of the proposed reservation of tax credits for his project pursuant to section 25 of this regulation. An applicant may discuss the proposed reservation with a member of the staff of the division who may extend the date for requesting a review. Such an extension must be in writing.

3. An applicant may not rely on a proposed reservation of tax credits as creating an obligation by the division to reserve or award the amount of tax credits specified in the notice provided to the applicant pursuant to subsection 2. The division may change any proposed reservation of tax credits or reject an application at any time.

Sec. 20. *1. Upon completion of the review of an application conducted pursuant to section 25 of this regulation, the administrator will make a final determination concerning the reservation of tax credits. After making the final determination, the administrator will notify each applicant, in writing, of the amount of tax credits, if any, that have been reserved for his project.*

2. A reservation of tax credits becomes final after each applicant is notified pursuant to subsection 1. Any fees charged to the applicant by the division for reserving tax credits are due upon receipt of the notice. No further review or appeals concerning the reservation of tax credits will be conducted by the administrator.

3. A reservation of tax credits is a commitment to hold the reserved tax credits available for final award to a project until the reservation is terminated or a final award of tax credits is made. A reservation of tax credits is applicable only to the project for which those credits are reserved and may not be transferred to any other project.

4. Any change in the status of the applicant or project sponsor must be reviewed and approved by the division. Such a change includes, but is not limited to:

(a) A change in any proprietor, joint venturer, general partner, member or any shareholder who owns more than 25 percent of the outstanding stock of the applicant or project sponsor; and

(b) Any dissolution, winding up of affairs, sale of assets, merger or business combination of any applicant or project sponsor.

5. Any change in the specifications or finances of a project must be approved by the division.

6. If any change specified in subsection 4 or 5 occurs, the division may require the applicant to submit a new application with the appropriate application fee.

7. *An officer, employee or agent of the division is not personally liable concerning any reservation or allocation of tax credits made pursuant to the provisions of sections 2 to 37, inclusive, of this regulation.*

Sec. 21. *Each project sponsor shall submit a progress report to the division every 90 days beginning on the date he is notified by the division of a reservation of tax credits. The failure of a project sponsor to submit a progress report within that period may result in the forfeiture of the reservation of tax credits for the project.*

Sec. 22. 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 sections 2 to 37, inclusive, of this regulation.*

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 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. 23. *1. Except as otherwise provided in this section, each project that receives a reservation of tax credits must be closed within 270 days after the date the division provides written notification to the applicant of the reservation. If a project is not closed within that period, the division will terminate the reservation of tax credits. Before the expiration of the period, the applicant must demonstrate to the division that he has closed the project within that period by providing proof satisfactory to the division that he has:*

(a) Purchased and holds title in fee simple to the project site in his name.

(b) Entered into a written agreement with a contractor who is licensed in this state to begin construction before the expiration of the period.

(c) Obtained adequate financing for the construction of the project. The applicant must provide written commitments or contracts from third parties.

(d) Executed a written commitment for a loan for permanent financing for the construction of the project in an amount that ensures the financial feasibility of the project. The commitment may be subject to the condition that the construction is completed and the project is appraised for an amount sufficient to justify the loan in accordance with the requirements of the lender for credit. If the project is a rural development project that receives loans or grants from the United States Department of Agriculture, the applicant must provide a form approved by the division that indicates that money has been obligated for the construction of the project before the

expiration of the period. An advance of that money is not required before the expiration of the period.

2. A project that is not closed within the period and in the manner specified in subsection 1 will lose its reservation of tax credits unless the division receives from the applicant a written request for an extension of 45 days and the fee as provided in the annual plan. The request must be accompanied by proof satisfactory to the division indicating that:

(a) The requirements for financing the project have been substantially completed;

(b) The delay in closing was the result of circumstances that could not have been anticipated by and were outside the control of the applicant at the time the application was filed by the applicant; and

(c) The project will be closed within the 45-day period.

Only one extension may be granted pursuant to this subsection. If the project is not closed before the expiration of the extension period, the reservation of tax credits will terminate.

3. The division may terminate a reservation of tax credits at any time if, as determined by the division:

(a) The applicant fails to pay the fee for the reservation of tax credits within 30 days after he receives the notice of the reservation from the division;

(b) The applicant or project sponsor fails to pursue diligently the construction and completion of the project;

(c) Any event or other circumstance occurs or is discovered by the division that is likely to cause the project to fail to comply with any of the requirements for the project or is likely to cause the project to fail to qualify for any tax credits that have been set aside, preference point award or rule for breaking ties for which the tax credits were reserved;

(d) Any statement or representation made to the division by the applicant or project sponsor was inaccurate or misleading at the time it was made and that statement or representation is material to any determination by the division to make or continue the reservation of tax credits;

(e) The applicant fails to provide any required reports or otherwise comply during the reservation period with the provisions of the code or any regulations adopted pursuant to the code, the annual plan or sections 2 to 37, inclusive, of this regulation; or

(f) Any other event, circumstance or condition occurs for which a reservation of tax credits may be terminated as provided in the annual plan.

4. If the division terminates a reservation of tax credits:

(a) No fees paid by the applicant will be returned to him by the division.

(b) The applicant may submit a new application for tax credits during any subsequent allocation round conducted during the plan year if the division accepts new applications for that round. The application must be accompanied by a new application fee. If the applicant receives a reservation of tax credits, the applicant must pay an additional reservation fee in an amount specified in the annual plan.

Sec. 24. *1. Upon the completion of a project, the project sponsor shall submit a final application for tax credits to the division on a form provided by the division. The final application must be accompanied by a report from a certified public accountant attesting:*

(a) To the amount of the actual costs of construction of the project; and

(b) That those costs may be included in the eligible basis of the project pursuant to the provisions of section 42 of the code.

The report must be submitted on a form approved by the division.

2. *The division will complete a review of the project sponsor and project. If at the time the review is conducted:*

(a) The project complies with the requirements upon which tax credits were reserved pursuant to sections 2 to 37, inclusive, of this regulation; and

(b) The appropriate declaration of restrictive covenants and restrictions has been recorded, the division will determine the appropriate amount of tax credits for that project and prepare an Internal Revenue Service Form 8609 or other appropriate form. The amount of tax credits determined pursuant to this subsection may not exceed the amount of those tax credits reserved for the applicant pursuant to the provisions of sections 2 to 37, inclusive, of this regulation.

3. *Before a form specified in subsection 2 is submitted by the division to the project sponsor, the project sponsor must submit a written statement to at least one housing authority as defined in NRS 315.021 or any other public agency that administers public housing projects in this state. The statement must:*

(a) Provide information to the housing authority or public agency concerning the proposed project, including the location of the project, the number of units in the project, any restrictions on rent for the units in the project and the anticipated date of completion of construction of the project; and

(b) Indicate that the applicant has requested the housing authority or public agency to refer persons who are on waiting lists for public housing to apply for units in the project.

Upon submitting a statement to a housing authority or public agency pursuant to this subsection, the project sponsor shall submit a copy of the statement to the division.

4. *The project sponsor must submit to the division:*

(a) A copy of his completed Internal Revenue Service Form 8609 or other appropriate form before the end of the first year the tax credits are taken; and

(b) A copy of Internal Revenue Service Form 8586 before the end of each year of the credit period as defined in section 42(f)(1) of the code.

Sec. 25. *1. The following determinations or actions by the division are, upon the request of an applicant, subject to review by the administrator:*

(a) The rejection of an application;

(b) The refusal to accept a document or other information from the applicant;

(c) A tentative award or the denial of a reservation of tax credits and any determination or action upon which the tentative award or denial of the reservation was based;

(d) A termination of a reservation of tax credits;

(e) A decision to deny an award of tax credits or the determination of the final award of tax credits;

(f) A determination or action taken during the compliance period; and

(g) Any other determination or action for which review by the administrator is provided for in the annual plan or approved by the administrator.

2. To request a review pursuant to this section, the applicant must submit a written request to the administrator within 7 days after the applicant receives notice of the determination or action for which the review is requested. The request must indicate the nature of the determination or action to be reviewed. The request may specify the reason why the applicant believes the determination or action by the division was improper. The division may submit a written response to the administrator concerning the request.

3. *The administrator will schedule a hearing on the matter. Before the hearing is conducted, the applicant may inspect any document or other information included in the file of the applicant maintained by the division regarding the determination or action of the division, other than confidential communications between an attorney and his client. The applicant and his attorney, if any, may interview any officer or employee of the division who participated in the determination or action. The attorney for the division may be present at the interview.*

4. *At the hearing, the members of the staff of the division may discuss the reasons for the determination or action and present documents or other information relating to the determination or action. After the discussion, the applicant may present his arguments and any evidence supporting those arguments. After the applicant has presented his arguments and evidence, the members of the staff of the division may respond to the arguments of the applicant. The administrator may allow closing comments, ask questions at any time during the hearing or require written briefs for the hearing.*

5. *Each document in the file of the applicant maintained by the division shall be deemed admitted in any review conducted pursuant to this section and may be reviewed by the administrator regardless of whether those documents are marked as exhibits. To create a record of the hearing, a document or any other information that is not included in the file of the applicant maintained by the division may be submitted at the hearing and considered by the administrator. Before the document or other information is included in the file, the administrator must specifically state in his written decision that the document or other information is included in the file. If the administrator does not make such a statement, the division will not include the document or other information in the file of the applicant maintained by the division.*

6. *The administrator will record on audiotape any hearing conducted pursuant to this section. The applicant may, at the expense of the division, request a copy of the audiotape. If requested by the applicant, the division will, at the expense of the applicant, provide a transcript of the audiotape to him.*

7. *The applicant may be represented by an attorney who is licensed to practice law in this state. A deputy attorney general who represents the division may, at the request of the administrator, be present at any hearing conducted pursuant to this section and may comment on the presentations by the division and the applicant. If the deputy attorney general was involved in the determination or action that is the subject of the review, he shall disclose that fact, but is not required to disclose any confidential communications he had with an officer or employee of the division or the administrator. The administrator may exclude any other person from the hearing. If a person testifies on behalf of a party at the hearing, the opposing party may cross-examine that person. A review conducted pursuant to this section is not subject to the rules of evidence provided for civil actions. The administrator will make all procedural and evidentiary decisions.*

8. *After a review is conducted pursuant to this section, the administrator may conduct further proceedings and investigations if any information or arguments presented at the hearing were insufficient. The administrator may communicate ex parte with the applicant or his attorney, the staff of the division and any deputy attorney general representing the division. If the administrator:*

(a) Communicates ex parte with a deputy attorney general representing the division, the communication is confidential.

(b) Discovers a document or other information that is not included in the file of the applicant maintained by the division or was not submitted at the hearing, and that document or other information is the basis for an adverse decision by the administrator against the applicant, the applicant may review and comment on the document or other information.

9. The administrator will issue his decision in writing. The decision is a final decision for the purposes of judicial review.

10. If an applicant files a petition for judicial review of a final decision of the administrator pursuant to chapter 233B of NRS, the division will, unless enjoined or otherwise ordered by the court in which the petition is filed:

(a) Reserve and award tax credits for applicants other than the applicant who filed the petition for the plan year in which the petition is filed; and

(b) Consider the applicant for a reservation or final award of tax credits for the plan year immediately after the plan year in which the petition is filed.

Sec. 26. *Except as otherwise provided in NRS 238.100:*

1. For the purposes of sections 2 to 37, inclusive, of this regulation, 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 sections 2 to 37, inclusive, of this regulation, 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.

3. For the purposes of sections 2 to 37, inclusive, of this regulation, 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. 27. *1. The requirements for eligibility for a reservation or award of tax credits pursuant to sections 2 to 37, inclusive, of this regulation are as follows:*

(a) Each applicant and project sponsor must execute a letter of commitment in which the applicant and project sponsor agree to operate the project for not less than 30 years in

accordance with the requirements set forth in those sections. The letter of commitment must be included with the application submitted by the applicant to the division. If the division makes a final award of tax credits for the project, the applicant and project sponsor must execute a declaration of restrictive covenants and conditions and record the declaration in the county in which the project is located.

(b) The rent for the units in the project must be restricted and:

(1) At least 20 percent of the units must be occupied by households with incomes that are 50 percent or less than the median income of the area in which the project is located, adjusted for family size pursuant to the code; or

(2) At least 40 percent of the units must be occupied by households with incomes that are 60 percent or less than the median income of the area in which the project is located, adjusted for family size pursuant to the code.

For the purposes of this subsection, the rent of a unit is restricted if the gross rents paid do not exceed 30 percent of the applicable limitations on income set forth in the code.

(c) The project must be financially feasible at the time the applicant submits his application to the division and at the time the division makes a final award of tax credits.

(d) The reservation or award of tax credits for the project must be consistent with the fostering of decent, safe and sanitary housing for low-income persons as set forth in any applicable statutes and regulations and must comply with the requirements set forth in the code or the qualified allocation plan. The division may conduct an inspection of a project to ensure compliance with any applicable provisions of the Fair Housing Act of 1968, 42 U.S.C. §§ 3601 et seq., or the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq., as amended,

to ensure that any building or facility of the project is accessible to persons with disabilities. The division:

(1) May impose additional conditions on a proposed project to ensure that the project complies with the requirements of those acts; and

(2) Will reject the application for that project if those conditions are not satisfied.

(e) Each applicant must include with his application the report of a study conducted by a person other than the applicant or project sponsor. The report must be submitted on a form approved by the division and:

(1) Describe the project;

(2) Provide evidence of the need for the project in the proposed location of the project;

and

(3) Specify the methods upon which any findings or conclusions included in the study are based.

2. The division may establish in the annual plan any additional requirements for eligibility for a reservation or award of tax credits pursuant to the provisions of sections 2 to 37, inclusive, of this regulation.

Sec. 28. *1. To meet the requirements of financial feasibility of a project for which an application for tax credits is submitted, the applicant must demonstrate to the satisfaction of the division that the project will be financially feasible based on the amount of rent charged for units in the project as stated by the applicant in his application.*

2. In evaluating the financial feasibility of each project, the division will, in addition to any criteria set forth in the annual plan, consider:

(a) The reasonableness of construction costs, using the maximum amount of costs established in the annual plan;

(b) The cost of the project;

(c) The cost per unit of the project;

(d) The projected income, expenses and cash flow for the period specified in the annual plan;

(e) The reasonableness of the projections of income and expenses and the assumptions upon which those projections are based;

(f) The fees for developers or contractors;

(g) The sources and uses of money for the project;

(h) The projected proceeds from the sale of tax credits;

(i) The plan for financing the project;

(j) The percentage of the housing credits used for the cost of the project;

(k) The demonstrated stability of the project sponsor, including an analysis of the financial statements of the project sponsor; and

(l) Any other criteria set forth in the annual plan or required by the code.

3. Unless otherwise provided in the annual plan or in the instructions included in an application, the division will use the following assumptions and limitations to analyze a pro forma included with each application:

(a) A minimum debt service coverage ratio of 1.15 on all combined debt based upon the mortgage rates at the time the division considers the application. In determining the ratio, the division will not consider any notes that do not require payment until the sale of the property. Developer or deferred notes will be included by the division in the determination at the beginning of the repayment period. If a project receives money or any other assistance from the

Rural Development Program of the United States Department of Agriculture, the ratio of debt service coverage established by that department for that program shall be deemed acceptable to the division. If the applicant demonstrates to the satisfaction of the division that a permanent lender has agreed to provide all of the permanent financing for the project at a ratio of debt service coverage other than 1.15, the division will consider the ratio of that lender. To be considered by the division, the commitment must be:

(1) In writing;

(2) Specifically limited to that project; and

(3) Unconditional unless the commitment is conditioned upon the successful completion of the construction of the project and the award of tax credits for that project.

(b) Tax credits will not be reserved to finance or capitalize any type of reserve account including, but not limited to, operating reserves or replacement reserves.

(c) Annual increases in income and expenses that are less than 3 percent.

(d) A vacancy factor of not more than 7 percent after each unit in the project is rented.

(e) An operating ratio of at least 35 percent but not more than 45 percent.

(f) Replacement reserves must be funded at a level of not less than \$150 per unit per year for projects for older persons that received preference points pursuant to section 30 of this regulation and at a level of not less than \$200 per unit per year for any other project.

4. Except as otherwise provided in section 36 of this regulation, the total amount of a developer's fee for the project, including any profit or overhead of the developer and any fees for consultants or processing agents, must not exceed 15 percent of the eligible basis of the project, excluding the developer's fee.

5. *The division will consider an amount that is more than 14 percent of the construction costs for the total of builder's profit, builder's overhead and general requirements to be excessive. General requirements include the cost to:*

- (a) Install temporary fencing at the site of the project;*
- (b) Provide services of a public utility to the site during the construction of the project; and*
- (c) Provide an office or supervisor at the site of the project.*

6. *Additional criteria, assumptions and limitations may be required in the annual plan and instructions for an application.*

Sec. 29. 1. *Unless otherwise provided in the annual plan, the division will reserve tax credits from amounts that are set aside for nonprofit organizations pursuant to section 16 of this regulation if the nonprofit organization:*

(a) Has received a determination letter from the Internal Revenue Service indicating that the organization qualifies pursuant to section 501(c)(3) or 501(c)(4) of the code and no changes in the organizational or operational characteristics of the organization have occurred after the issuance of the determination letter that affect the validity of the determination;

(b) Owns an interest in the project directly or through liquidation or dissolution rights as stated in the organizational documents of the applicant;

(c) Participates on a regular, continuous and substantial basis in the development and operation of the project as specified in sections 42(h)(5) and 469(h)(c)(7)(C) of the code during the compliance period;

(d) Is not affiliated with or controlled by a for-profit organization as determined by the division in accordance with section 42(h)(5)(c)(ii) of the code;

(e) Has adopted organizational documents, including articles of incorporation, a partnership agreement and other similar documents that include as one of its purposes the fostering of low-income housing; and

(f) Otherwise complies with the provisions of section 42(h)(5) or any other applicable provision of the code.

2. If more than one project is eligible for the tax credits that are set aside for nonprofit organizations, the division will rank the projects in order of priority in accordance with the provisions of sections 30 and 31 of this regulation.

3. If the division makes a final award of tax credits to a nonprofit organization specified in subsection 1, the organization shall:

(a) Continuously and substantially participate in the management and operation of the project during the compliance period; and

(b) Submit annually to the division a certified statement indicating that it is in compliance with the provisions of paragraph (a).

Sec. 30. *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.

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 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 sections 2 to 37, inclusive, of this regulation, the provision in 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 section 27 of this regulation. 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 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 submits his 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:

(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 section 29 of this regulation.

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; and

(2) Constructed with such additional amenities and equipment as are necessary to ensure that the units are usable for disabled persons 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. 31. *If two or more projects are eligible for a reservation of tax credits against the same apportionment account and have received the same number of preference points, the division will rank the projects in order of priority based on criteria established in the annual plan. If the projects cannot be so ranked using those criteria, the division will conduct a lottery to rank the projects.*

Sec. 32. *1. Except as otherwise provided in section 33 of this regulation, 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 section 28 of this regulation and subsection 4 of section 36 of this regulation 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, 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:

Reno Tract 0001.00

Tract 0009.00

Tract 0018.00

Las Vegas..... Tract 0003.01

Tract 0003.02

Tract 0004.00

Tract 0005.04

Tract 0007.00

Tract 0008.00

Tract 0009.00

Tract 0011.00

Tract 0022.01

Tract 0035.00

Tract 0036.02

Tract 0038.00

	<i>Tract 0039.98</i>
	<i>Tract 0046.00</i>
<i>Elko County.....</i>	<i>Tract 9501.00</i>
	<i>Tract 9505.00</i>
	<i>Tract 9506.00</i>
	<i>Tract 9515.00</i>
<i>Humboldt County.....</i>	<i>Tract 9603.00</i>
<i>Lyon County.....</i>	<i>Tract 9606.00</i>

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 sections 2 to 37, inclusive, of this regulation.

Sec. 33. *The division will not award any tax credits for a project if:*

1. The amount of tax credits requested as calculated pursuant to subsection 2 of section 32 of this regulation; or

2. The annual amount of tax credits required for the project as calculated pursuant to subsection 3 of that section, exceeds the maximum amount of tax credits that are available as established in the annual plan for the year in which the tax credits are reserved.

Sec. 34. *1. The amount of a final award of tax credits 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 of section 32 of this regulation, 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 nonqualifying portion of higher-quality unit costs from an amount that is equal to 70 percent of the total actual 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 of section 32 of this regulation, if the project is located in a qualified census tract or an area which 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 the applicable percentage of housing credits prescribed by the Secretary of the Treasury pursuant to section 42(b)(2) of the code.

Sec. 35. *1. Each project sponsor shall, for the compliance period, comply with the provisions of sections 2 to 37, inclusive, of this regulation, 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 sections 2 to 37, inclusive, of this regulation. The division will send a copy of each revision of the compliance manual to each project sponsor. A project sponsor may obtain additional copies 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, 4472, 4681, 4682, 4978B and 6662 to 6665, inclusive;

(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 code, 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, 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. The division will review each report submitted pursuant to subsection 6. 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. 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.

9. 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. If the division determines that a project sponsor has not complied with any provision of the code or sections 2 to 37, inclusive, of this regulation, 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. *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.*

Sec. 36. *1. Except as otherwise provided in this section, tax credits awarded to a project that is financed by 50 percent or more of the proceeds of tax-exempt bonds are governed by the provisions of sections 2 to 37, inclusive, of this regulation.*

2. The provisions of sections 16 to 20, inclusive, 22, 23, 29, 31, 32 and 33 of this regulation do not apply to tax credits awarded to a project specified in subsection 1.

3. An application for tax credits for a project specified in subsection 1 must be completed and will be evaluated in connection with the application for the financing of any bonds for that project.

4. For the purposes of subsection 2 of section 28 of this regulation, if the developer's fee for a project specified in subsection 1:

(a) Is collectible within 5 years after the completion of the project, the developer's fee for the project must not exceed 15 percent of the total amount of the costs of the project, excluding the developer's fee; or

(b) Is collectible 5 years or more after the project is completed, the developer's fee for that project must not exceed 20 percent of the total amount of the costs of the project, excluding the developer's fee.

Sec. 37. *The division will establish in the annual plan any fee required to be paid pursuant to sections 2 to 37, inclusive, of this regulation. The fees established by the division pursuant to this section are not refundable.*