



STATE OF VERMONT

AGENCY OF DEVELOPMENT AND COMMUNITY AFFAIRS

MONTPELIER, VERMONT 05602

OFFICE OF THE SECRETARY (802) 828-3211

JEFFREY FRANCIS, SECRETARY

DEPARTMENTS OF:

Economic Development 828-3221  
Housing & Community Affairs 828-3217

DIVISIONS OF:

Administration 828-3231  
Historic Preservation 828-3226  
Vermont Travel Division 828-3236  
Film Bureau 828-3236  
Vermont Life Magazine 828-3241

MEMORANDUM

TO: Madeleine M. Kunin, Governor  
THROUGH: Jeffrey Francis, Secretary  
FROM: Stephen Hollands, Commissioner  
DATE: January 4, 1991  
SUBJECT: Governor's Approval of the 1991 DCA Allocation  
Plan for Federal Low Income Housing Tax Credits

RECEIVED

JAN 7 1991

VHFA

Under federal requirements of the Low Income Housing Tax Credit Program, states are required to adopt an Allocation Plan. I am seeking your approval and signature on the enclosed document within the next week.

This plan is very similar to the 1990 plan approved by you on June 22, 1990. It is expected that a total of \$850,000 in tax credits will be authorized for housing development projects during the calendar year.

The document has been developed by staff from Development and Community Affairs (DCA), and the Vermont Housing Finance Agency (VHFA). A public hearing was conducted on December 20, 1990. The enclosed reflects all suggested revisions.

Thank you.

SJH/PLP/ADS

Enclosures

cc: George Hamilton

✓ Allan Hunt

03/10/20

03/10/20

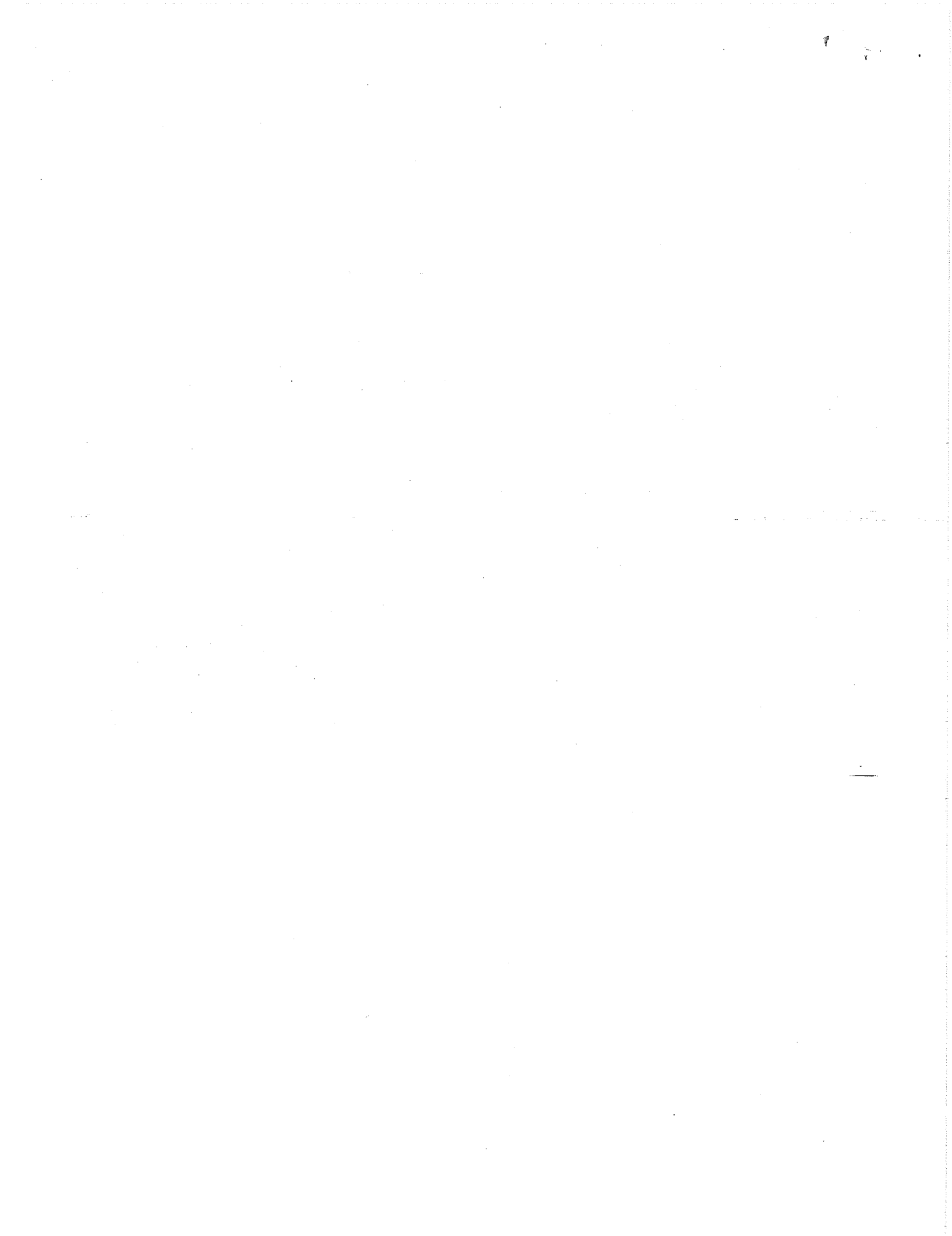
03/10/20

*mark*

The State of Vermont's Low Income Housing Tax Credit Allocation Plan for 1991 has been developed by the Agency of Development and Community Affairs in accordance with the federal Internal Revenue Code (IRC of 1986 Section 42, as amended) and rules adopted by the State of Vermont on May 16, 1990. This Allocation Plan shall remain in effect until amended by the Governor of the State of Vermont as may be necessitated by changes in federal law or changes in the State's housing market.

Approved by: *Madeleine M. Kunin*  
Madeleine M. Kunin, Governor

Effective Date: *January 4, 1991*  
January 4, 1991



1991 ALLOCATION PLAN

FEDERAL LOW INCOME HOUSING TAX CREDIT PROGRAM

STATE OF VERMONT

JANUARY, 1991

Joint Committee on Tax Credits

Stephen J. Holmes, Chair  
Commissioner  
Department of Housing & Community Affairs

Richard M. Williams  
Executive Director  
Vermont State Housing Authority

Allan S. Hunt  
Executive Director  
Vermont Housing Finance Agency

Arthur G. Woolf  
State Economist  
Office of Policy Research and Coordination

For Further Information Contact

Allocation Plan and Policies:

Patricia L. Peterson  
Department of Housing and Community Affairs  
802-828-3217 or 1-800-622-4553

Applications and Program Administration:

Meg Pond  
Vermont Housing Finance Agency  
802-864-5743 or 1-800-222-8432

**TABLE OF CONTENTS**

	<b>Page</b>
<b>Introduction</b>	<b>1</b>
<b>History</b>	<b>2</b>
<b>New Law</b>	<b>2</b>
<b>Application Process (VHFA)</b>	<b>3</b>
<b>Allocation Plan (DCA)</b>	<b>4</b>
<b>Compliance</b>	<b>6</b>
<b>Clarifications</b>	<b>7</b>



## FEDERAL LOW INCOME HOUSING TAX CREDIT PROGRAM

### INTRODUCTION

The purpose of this Allocation Plan is to identify the criteria under which specific housing developments will be selected to receive approximately \$850,000 in federal tax credits authorized in 1991. In accordance with the requirements of the Omnibus Budget Reconciliation Act of 1989 this Allocation Plan ensures that the selected developments will produce housing that helps to reduce the most pressing housing needs of the state. The housing needs of Vermont have been assessed and are highlighted in the attached Housing Needs Statement.

The Agency of Development and Community Affairs was designated the State Housing Credit Agency by Governor Madeleine M. Kunin in March, 1987. DCA has sole responsibility and authority for the Low Income Housing Tax Credit Program's policies including the establishment of the state's Allocation Plan as approved and signed by the Governor. In furtherance of this responsibility, DCA has promulgated rules entitled "Federal Tax Credits for Low Income Housing; State Allocation System, Joint Committee or Tax Credits."

DCA works in partnership with the Vermont Housing Finance Agency and the Joint Committee on Tax Credits to administer this program. The VHFA is under contract with DCA to issue credits to specific projects in accordance with DCA's Allocation Plan. In addition, DCA established a Joint Committee on Tax Credits, which is advisory to DCA. Its functions are to draft policies, recommend procedures, recommend target percentages for tax credit allocation, serve as a resource on specific projects, and conduct periodic review of the local issuer's (VHFA) performance.

The Joint Committee is comprised of the Commissioner of Housing and Community Affairs, the Executive Director of the VHFA, the Executive Director of the State Housing Authority, the Director of Planning, Office of Policy Research and Coordination, and one additional member representing housing interests appointed by the Secretary of DCA.

**HISTORY**

The original LIHTC program was established by Congress as part of the Tax Reform Act of 1986. It offered a 10 year federal income tax credit to owners of rental housing who made certain percentages of their rental housing available for occupancy by low-income residents for at least 15 years. This incentive for the development, acquisition and rehabilitation of low-income housing allowed owners, developers, and/or investors to reduce their federal tax liability in exchange for the provision of eligible low-income rental housing.

**NEW LAW**

The LIHTC program was originally set to expire on December 31, 1989, but was extended for one year by Congress as part of the Omnibus Budget Reconciliation Act of 1989, and extended again for one year by the 1990 Budget Reconciliation Act. The 1989 and 1990 laws made numerous changes to the LIHTC program, including the requirement to create a "qualified allocation plan." Some of these changes are discussed in the VHFA LIHTC Application Form. Knowledge of and compliance with the LIHTC program is ultimately the responsibility of the applicant/taxpayer. The State's Allocation Plan must set forth selection criteria that must include:

- a. project location
- b. housing needs characteristics
- c. project characteristics
- d. sponsor characteristics
- e. participation of local tax-exempt organizations
- f. tenant populations with special housing needs, and
- g. public housing waiting lists.

In addition, the states must give preference among selected projects to those serving the lowest income tenants and to those serving qualified tenants (those persons at or below the maximum income limits set by law) for the longest period.

States may include such other criteria as they deem appropriate, and, except for the specified preference items, there are no requirements as to the relative weight of the various factors. As part of the review for each selected project, the chief executive officer of the particular local jurisdiction within which the project is located is to be provided "a reasonable opportunity" to comment on the proposed allocation.

Additional new VHFA LIHTC responsibilities mandated by Congress include:

- 1) Assurance that the amount of tax credits allocated does not exceed the amount "necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period."

- 2) Evaluation of all projects for consistency with the Allocation Plan and for credit need, including situations when the project is financed using tax exempt bonds.
- 3) Negotiation of "an extended low-income housing commitment" for every project. This agreement must be recorded as a restrictive covenant binding all successor owners, and must allow low-income individuals the right to enforce the commitment in state court (See Compliance section). The commitment must require continued low-income occupancy for all tax credit units for at least an additional 15 years beyond the initial 15-year compliance period. However, the law provides owners an alternative to the 30-year compliance period by offering the property for sale to or through the Housing Credit Agency (i.e., DCA or its assignee) at a below-market price using a formula set forth in the law after the 14th year.

#### APPLICATION PROCESS

Application forms should be obtained from the Vermont Housing Finance Agency and may be submitted at any time in 1991. There will be three eligibility cut-off dates for receipt of completed applications. All completed applications received by those dates, plus any completed applications deferred by VHFA from a previous cycle, will be considered for the cumulative amount of tax credits that can be allocated or reserved by that time period. Applicants are encouraged to submit their LIHTC applications as early in the calendar year as possible. The closing dates for applications for each eligibility time period are as follows:

Eligibility Period	Deadline for Receipt of Reservation Applications	Cumulative Maximum Portion of Credits That Can Be Allocated Or Reserved
1	February 1, 1991	50%
2	May 15, 1991	75%
3	August 15, 1991	100%

After the third cycle, credit allocations of reservations of the remaining amounts will be made monthly, if necessary.

The LIHTC program revisions enacted by Congress now permit VHFA to carry-over unused 1990 tax credit allocation authority until December 31, 1991. Under exceptional circumstances, VHFA may issue a preliminary credit reservation to a developer subject to the applicant's meeting additional requirements and/or requests for information.

By law, a minimum of 10% of Vermont's credit cap must be reserved for developments sponsored by nonprofit organizations that own an interest in the project (directly or through a partnership) and materially participate in the development and operation of the project throughout the compliance period.

## 1991 ALLOCATION PLAN

### 1. THRESHOLD CRITERIA

VHFA is required by the new law to assure that each project that receives a tax credit allocation substantiates its viability and its optimal credit need. An application must meet the following basic qualifications:

- a. The development must meet the basic occupancy and rent restrictions of the law;
- b. The applicant must establish the need and demand (i.e. market feasibility) for the type and cost of housing which is being proposed;
- c. Detailed development cost projections and expected sources and terms of financing must be provided;
- d. Detailed income and expense projections must be provided for the full term of the rental commitment (i.e. 30 years).
- e. The VHFA LIHTC Application Form must be complete, including payment of all processing fees.

Please note that project financial statements reflecting actual costs and sources of funds for the completed project, as well as financing commitment letters, will need to be submitted for final review prior to issuance of the actual tax credit allocation (IRS Form 8609).

### 2. PRIMARY EVALUATION CRITERIA

The following two criteria apply to all projects passing the threshold test, and constitute the primary evaluation criteria.

Preference must be given among selected projects to proposals serving (1) the lowest income tenants, and (2) qualified tenants for the longest period.

### 3. SECONDARY EVALUATION CRITERIA

The following items shall constitute the secondary guidelines, the implementation of which must be consistent with the primary guidelines cited above. These secondary guidelines specifically address the selection criteria required by Congress and listed on page one of this Allocation Plan.

- a. Applications will be evaluated on the experience and capability of the project team.
- b. Credits allocated to a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period. In making this determination, the housing credit agency shall consider:
  - i) the sources and uses of funds and the total financing planned for the project;
  - ii) any proceeds or receipts expected to be generated by reason of tax benefits; and
  - iii) the percentage of the housing credit dollar amount used for project costs other than the cost of intermediaries.

There will be no particular priority locations within Vermont, as nearly all areas of the state have need for additional units of affordable housing. This policy decision is based on the attached LIHTC Needs Assessment, compiled by VFHA to comply with the requirements of the new law.

### 4. PRIORITY SCHEDULE

Projects which pass the threshold test and meet the primary and secondary evaluation criteria shall be ranked in the following order of priority:

- 1) Acquisition and rehabilitation of existing federally subsidized projects, where the preservation of affordable housing is at risk. Examples include Farmers Home 515, Section 8, Section 23, Section 236, Section 221(d)3, etc.:
  - marketability
  - length of contract
  - prepayment potential
  - current ownership
  - nature of financing
  - condition of project

- 2) New construction, or acquisition and rehabilitation projects by nonprofit corporations (i.e., tax-exempt organizations). This shall include situations where a nonprofit, or its affiliate, is one partner in a general or limited partnership, so long as long-term ownership shall revert back to a nonprofit by year 31 at the latest at a purchase price that assures continued affordability by the existing tenants.
- 3) Any project that concentrates on special needs populations, including homeless shelters, single room occupancy housing (SRO's), the mentally handicapped, the physically challenged or families currently on public housing (State or local) waiting lists.
- 4) Any project that effectively combines federal, state, and local housing resources.
- 5) New construction, or acquisition and rehabilitation projects by for-profit developers, including individuals, partnerships and corporations.

VHFA reserves the right, as permitted by the LIHTC regulations, to issue less than the maximum credit allocation otherwise supportable by the project's eligible basis.

#### 5. CARRY-OVER AND VHFA REVISION OR REVOCATION OF RESERVATION CERTIFICATES

VHFA is authorized to offer carry-over allocations to certain projects which will not be placed in service by the end of 1991, so long as a minimum of 10% of the total development cost (which may include land and other otherwise non-depreciable costs) has been expended by December 31, 1991.

Up to 30% of the total volume of tax credits available to the State in 1991 (including the carry-over of unused 1990 credits) may be reserved in 1990 for 1991 use, where a request is made for good cause to carry the reservation forward into 1991, without a formal surrender and reallocation of the credits. This will prevent a project that is underway from having to be technically without a reservation of tax credits for a period, where representations have been made to investors, sponsors, or lenders about the availability of tax credits.

With regard to Allocation Reservation Certificates, VHFA shall retain authority to revise or retract the Allocation Reservation Certificate at any time if it is judged infeasible for the developer to meet the agreed upon placed-in-service dates, or if financial information provided by the applicant indicates, in the opinion of VHFA, that a lesser or greater amount of tax credit allocation is needed for project feasibility.

**COMPLIANCE**

The new LIHTC amendments give some continuing responsibility to VHFA for monitoring compliance of owners with the tax credit laws. In order to implement this responsibility, all LIHTC recipients will be required to execute and record a LIHTC Housing Subsidy Covenant (the Covenant). The Covenant must be approved by VHFA. The Covenant will, at a minimum, require conditions wherein the developer and the development must continuously comply with Section 42 and other applicable sections of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations issued thereunder and will bind any successors' interest for the specified time period. In the event that a project's funding source requires its own Housing Subsidy Covenant, the provisions of the LIHTC Housing Subsidy Covenant may be incorporated into such Covenant, and the requirement of a separate LIHTC Housing Subsidy Covenant may be waived by VHFA.

For the purposes of determining compliance, VHFA will, at a minimum, require a current (i.e., updated annually) list of all qualified tenants, their monthly rent, utility allowances, gross income, and certification as to their eligibility. The developer's property manager must maintain copies of the latest income certification for each tenant either on site or at a Vermont property management office known to VHFA.

VHFA may perform spot audits at least once annually, but must have access to all books and records relating to an LIHTC project at any reasonable time. The specific requirements will be enumerated in the LIHTC Housing Subsidy Covenant.

VHFA must report any cases of noncompliance to the IRS unless the owner corrects the situation within 60 days of receipt of written notice from VHFA.

**CLARIFICATIONS**

VHFA is charged with issuing no more tax credits to any given development than is required to make that development economically feasible. This decision shall be made solely at the discretion of VHFA, but VHFA in no way represents or warrants to any sponsor, investor, lender or others that the project is in fact feasible or viable, either before or after the final allocation decision.

VHFA's review of documents submitted in connection with this allocation is for its own purposes. DCA and VHFA make no representations to the owner or anyone else as to compliance with the Internal Revenue Code, Treasury regulations, or any other laws or regulations governing the LIHTC program.

No member, officer, agent or employee of DCA or VHFA shall be personally liable concerning any matters arising out of, or in relation to, the allocation and issuance of the LIHTC.

Please note that VHFA is under no obligation to necessarily reserve or allocate any part of Vermont's 1991 LIHTC allocation in 1991. The new law allows VHFA to carry-forward unused 1991 tax credit authority until December 31, 1992.

It is required that the housing credit dollar amount issued to a development shall not exceed the amount the issuing agency determines is necessary. In conjunction with establishing this, it is VHFA's prerogative to determine if a development is likely to be successful, (overall financially feasible) hence serving the population that the tax credits were created to serve. If this determination cannot be made, tax credits shall not be issued to the sponsor.