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The State of Vermont's Low Income Housing Tax Credit Allocation Plan for 1992 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:
Howard Dean, M.D., Governor

Effective Date: 2/7/92

1992 ALLOCATION PLAN

FEDERAL LOW INCOME HOUSING TAX CREDIT PROGRAM

STATE OF VERMONT

JANUARY 13, 1992

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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 a share of the $708,750 in federal tax credits available in 1992. 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 on 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 or his or her designee, the Executive Director of the VHFA or his or her designee, the Executive Director of the State Housing Authority or his or her designee, 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 ten 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, extended again for one year by the 1990 Budget Reconciliation Act, and extended until June 30, 1992 by Congress in December 1991. The 1992 LIHTC authorization may be allocated between January 1 and June 30, 1992. In the event that the program is not extended beyond June 30, any of the allocation remaining as of that date may not be allocated in the second six months of the year, but it may be carried forward and allocated in 1993. It is hoped that the program will be extended by June 30 or that a later extension would be made retroactive to that date, thereby allowing states to use their allocation during the second six months of 1992. 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 includes:

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.

4. Monitoring of compliance with the provisions of Section 42 and notifying the Internal Revenue Service of any noncompliance of which the Agency becomes aware.

APPLICATION PROCESS

Application forms should be obtained from the Vermont Housing Finance Agency and may be submitted anytime during the first six months of 1992. There will be two eligibility cut-off dates for receipt of completed applications due to the limited timeframe with the program authority sunsetting on June 30, 1992. 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	March 1, 1992	40%
2	May 15, 1992	60%

After the second cycle, credit allocations of reservations of the remaining amounts will be made on an "as needed" basis. 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.

1992 ALLOCATION PLAN

1. THRESHOLD CRITERIA

VHFA is required by the 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 and approval 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 degree of certainty of 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.

c. There will be no particular priority locations within Vermont, however, applicants will be asked to justify the market demand for the proposed LIHTC units. This policy decision is based on the attached LIHTC Needs Assessment, compiled by VHFA in 1990 to comply with the requirements of the law. VHFA will consider the quantity of publicly supported housing already present in the area, and give priority to those areas which have a higher need for subsidized rental units.

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:

a. 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.: Elements to be considered include:

- marketability
- length of contract
- prepayment potential
- current ownership
- nature of financing
- condition of project

b. Any project that incorporates special needs populations, including, single room occupancy housing (SRO's), the mentally handicapped, the physically challenged or families currently on public housing (State or local) waiting lists.

c. New construction, or acquisition and rehabilitation projects by nonprofit housing 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 NO LATER THAN year 31 at a purchase price that assures continued affordability by the existing tenants.

d. Any project that includes a mechanism for affordability beyond year 31, the qualifying period.

e. Any project that effectively combines federal, state, and local housing resources.

f. New construction, or acquisition and rehabilitation projects by for-profit developers, including individuals, partnerships and corporations.

Developments are encouraged that include a socio-economic mix. 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. CARRYOVER AND VHFA REVISION OR REVOCATION OF RESERVATION CERTIFICATES

VHFA is authorized to issue official carryover allocations to certain projects which will not be placed in service by the end of 1992, 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, 1992. However, in the case of projects financed with tax-exempt bonds, which don't require a tax credit allocation, the rules for projects in progress coincide with the six month extension. Therefore, if a tax-exempt, bond-financed project isn't placed in service before July 1, 1992, it can receive the tax credit only if bonds are issued before July 1, 1992, the builder's basis in the project as of June 30, 1992, is at least 10% of the anticipated basis, and the building is placed in service before July 1, 1994.

With regard to Allocation Reservation Certificates, VHFA shall retain authority to revise or retract the Certificate at any time if it is judged infeasible for the developer to meet any of the conditions set forth in the Certificate, 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.

6. RECAPTURE OF 1991 CREDIT

VHFA has the ability to recapture (in 1992) 1991 tax credit from projects that are unable to utilize the credit. In the case of this occurrence, VHFA may then reissue the credit to an eligible applicant in 1992 under 1992 under the 1992 Allocation Plan.

7. 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.

a. VHFA is required to monitor compliance with the provisions of section 42 and to notify the Internal Revenue Service of noncompliance and will charge fees to cover costs related to this monitoring.

b. Recordkeeping and Record Retention

The owner of a tax credit eligible development must keep records for each qualified tax credit eligible building in the project showing:

1. The total number of residential rental units in the building;

2. The percentage of residential rental units in the building that are tax credit eligible units;

3. The rent charged on each residential rental unit in the building;

4. The tax credit eligible unit vacancies in the building and the occupancy of the next available units;

5. The income certification of each tax credit eligible tenant;

6. Documentation to support each tax credit eligible tenant's income certification (for example, a copy of the tenant's federal income tax return, Forms W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation); and

7. The character and use of the nonresidential portion of the building included in the building's eligible basis under section 42(d) [*e.g.*, tenant facilities that are available on a comparable basis to all tenants and for

which no separate fee is charged for use of the facilities, or facilities reasonably required by the project].

The owner of a tax credit eligible development must retain the records specified in this section B for each building in the project for a period of at least 6 years beyond the end of the compliance period for each building.

c. Certification and Review Procedures

The Agency will utilize a certification procedure and one or both of two types of review procedures.

1. Certification Procedure

Under the certification procedures, the owner of a tax credit eligible development is required to certify to the Agency, under penalty of perjury, at least annually, that:

(a) The project meets the requirements of the 20-50 test under section 42(g)(1)(A) or the 40-60 test under section 42(g)(1)(B);

(b) The owner has received an annual income certification from each tax credit eligible tenant and documentation to support that certification;

(c) Each tax credit eligible unit in the project is rent-restricted under section 42(g)(2);

(d) All units in the project are for use by the general public and are used on a non-transient basis;

(e) Each building in the project is suitable for occupancy, taking into account local health, safety and building codes;

(f) There has been no change in the eligible basis (as defined in section 42(d) of any building in the project, or that there has been a change, and the nature of the change;

(g) All tenant facilities included in the eligible basis under section 42(d) of any building in the project, such as swimming pools, other recreational facilities, and parking areas, are provided on a comparable basis without charge to all tenants in the building;

(h) If a tax credit eligible unit in the project becomes vacant during the year, reasonable attempts are made to rent that unit to tenants having a qualifying income and while the unit is vacant, no units of comparable or smaller size are rented to tenants not having a qualifying income; and

(i) If the income of tenants of a tax credit eligible unit in the project increases above the limit allowed in section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project will be rented to tenants having a qualifying income.

2. Review Procedure

Under the review procedure, a monitoring procedure must require:

(a) An owner of a tax credit eligible development to submit to the Agency each year a copy of the annual income certification from each tax credit eligible tenant and a copy of the documentation the owner has received to support that certification, or

(b) The Agency to inspect a reasonable number of tax credit eligible developments each year, and review on-site the tax credit eligible tenant income certifications for that year and the documentation the owner has received to support those certifications.

3. The certification and review procedures outlined above do not apply to the following types of tax credit eligible buildings, which are subject to other monitoring programs, if the owner of the building certifies to the Agency that the building complies with the requirements of the programs in (a) and (b), below, and that the building also meets the minimum set-aside, income, rent, and suitability for occupancy requirements of section 42 and the owner informs the Agency if the owner would be unable to make one or more of the certifications otherwise required under paragraph 1 of this section C:

(a) Buildings financed by the Farmers Home Administration (FmHA) under its section 515 program; and

(b) Buildings of which 50 percent or more of the aggregate basis (taking into account the building and the land) is financed with the proceeds of obligations the interest on which is exempt from tax under section 103 of the Internal Revenue Code.

4. The certifications required under paragraphs 1 and 3 of this section C must be made at least annually through the end of the 15-year compliance period under section 42(i)(1) and be under penalty of perjury.

d. Auditing Procedure

1. The Agency has the right to perform an audit of any tax credit eligible development at least through the end of the compliance period of the buildings in the project. An audit includes an inspection of any building or buildings in the project, as well as a review of the records described in section b. The audit may be performed in addition to any inspection of income certifications and documentation under the review procedure.

e. Notification of Noncompliance

1. If the Agency does not receive the certification described in paragraphs 1 or 3 of this section c or discovers on audit, inspection, or review, or in some other manner, that the project is not in compliance with the provisions of section 42, the Agency will provide prompt written notice to the owner of the project.

2. The Agency will file Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance, with the Internal Revenue Service no later than 45 days after the end of the correction period described in paragraph 3 of this section, whether or not the noncompliance or failure to certify is corrected. The Agency must explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify.

3. The correction period shall be a period of 90 days from the date of the notice to the owner under paragraph 1 of this section and during that period, the owner must supply any missing certifications and bring the

project into compliance with the requirements of section 42. For good cause shown, the Agency may extend the correction period for up to six months.

f. Delegation of Authority

The Agency may retain an agent or other private contractor to perform compliance monitoring. If the Agency delegates its functions to monitor compliance, it will retain the responsibility to notify the Internal Revenue Service under paragraph 2 of section e.

g. Liability

Compliance with the requirements of section 42 is the responsibility of the owner of the building for which the credit is allocated. The Agency's obligation to monitor for compliance does not make the Agency liable for an owner's noncompliance.

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 1992 LIHTC allocation in 1992. VHFA may enter into binding commitments to allocate credits that may become available in 1993 at any time during 1992 as approved by the Joint Tax Credit Committee.