The State of Vermont's Housing Credit Allocation Plan for 1998 has been developed by the Agency of Commerce and Community Development 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 <u>shall remain in effect until amended</u> 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: H Dean
Howard Dean, M. D., Governor

Effective Date: 1/30/98

1998 ALLOCATION PLAN

FEDERAL HOUSING CREDIT PROGRAM

STATE OF VERMONT

January 1, 1998

Joint Committee on Tax Credits

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FEDERAL HOUSING CREDIT PROGRAM

INTRODUCTION

The purpose of this Allocation Plan is to set forth the process and criteria under which specific housing developments will be selected to receive federal tax credits that have been returned from allocations made in 1996 or 1997, or that otherwise may become available in 1998. In accordance with the requirements of the Omnibus Budget Reconciliation Act of 1989, this Allocation Plan describes the application and allocation decision-making process. Priorities are set by the requirements of the law, and by the rental housing needs of Vermont, as determined by the Agency of Commerce and Community Development (ACCD) and the Joint Committee on Tax Credits (Joint Committee).

ACCD was designated the State Housing Credit Agency by then Governor Kunin in March, 1987. ACCD has sole responsibility and authority for the Housing Credit Program's policies including the development of the State's Allocation Plan, which is approved and signed by the Governor. In furtherance of this responsibility, ACCD has promulgated rules entitled "Federal Tax Credits for Low Income Housing; State Allocation System, Joint Committee on Tax Credits."[1]

ACCD works in partnership with the Vermont Housing Finance Agency (VHFA, or the Agency) and the Joint Committee to administer this program. VHFA is under contract with ACCD to allocate credits to specific projects in accordance with this Allocation Plan.[2] Under the rules cited above, the advisory Joint Committee on Tax Credits was established to review and adopt allocation policies and review VHFA's 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 ACCD.

[1] The original rules were adopted in May 1987, and substantially amended in June 1990.

[2] A Memorandum of Understanding between ACCD and VHFA was signed April 17, 1987.

BACKGROUND

The Housing Credit 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.

SUMMARY OF ALLOCATION PLAN REQUIREMENTS

The 1989 and 1990 laws made numerous changes to the HC program, including the requirement to create a "qualified allocation plan." The State's Allocation Plan must set forth selection criteria that 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 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 HC 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. Agreement to "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 Section Eight, "Compliance"). 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 can be released from this latter 15 year "extended use" period if they first offer the property for sale after the 14th year, to or through the Housing Credit Agency (i.e., ACCD or its assignee) at a price using a formula set forth in the law. In addition, non-profit organizations, government agencies, and tenant groups can arrange in advance, through a right of first refusal, to purchase the project at the end of the initial 15 year compliance period, also at a pre-determined price.

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 can be obtained from VHFA and submitted at any time. Unless a different application schedule is published, applications will be considered if received at least forty-five days prior to a Joint Committee meeting. All completed and still active applications received at least forty-five days prior to a Joint Committee meeting, plus any completed applications deferred by VHFA from a previous cycle, will be considered for the cumulative amount of tax credits to be allocated or reserved by that time period. Applicants are encouraged to submit their HC applications as early in the calendar year as possible.

There is an overall per project limit of 30% of the annual "per capita" tax credits. The Joint Committee on Tax Credits can waive this limit for projects of "statewide significance". A project of statewide significance is defined as: one which if it does not go forward: 1) will result in a loss of considerable federal funding for Vermonters; or, 2) will result in the displacement of a large number of low income households; or, 3) will result in the continued presence of significant health hazards (e.g. extraordinary environmental cleanup is a component of the project and the cost of that cleanup is high).

The allocations will generally be made in two rounds, with two-thirds of the state's ceiling available for the first round. However, if there are compelling proposals that meet the application requirements and the evaluation criteria, staff may reserve more than two-thirds of the credits in the first round. By law, a minimum of 10% of Vermont's annual credit ceiling 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.

1998 ALLOCATION PLAN

1. APPLICATION REQUIREMENTS

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

I. Submission of a complete VHFA Housing Credit Application form, including all required attachments and payment of required fees.

The developer of a scattered site development (in which not all of the units are tax credit restricted) can either submit a separate application for each building or group of buildings on contiguous sites, or can submit one application for the entire scattered site project. If just one application is submitted, in the event any one building in the project drops out the entire reservation/allocation will be returned. For scattered site proposals under common ownership, management and financing, there will be only one application fee charged for the entire development regardless of whether one application or multiple applications are used.

Any significant change in a proposal once it has been ranked and awarded credits will jeopardize the reservation/allocation, and staff, in consultation with the Committee, can at that point require the credits to be returned. A significant change will mean any reduction in the number of bedroom per unit or square footage of units, decrease in number of total units, increase in rents (other than because of the annual increase in the published tax credit rents), increase in overall density, or any change that, had it been in the original proposal, might have resulted in the project receiving a different ranking.

II. Proposal must meet the basic occupancy and rent restrictions.

The Application form has tables with the minimum rent and tenant income restrictions. According to the tax code, at least 20% of the units must be restricted to tenants at 50% of Area Median Gross Income (AMGI), or 40% of the units must be restricted to tenants at 60% of AMGI. The restrictions are enforced with the Housing Subsidy Covenant (see Section Eight, “Compliance”).

III. Applicant has established the need and demand (i.e. market feasibility) for the type and cost of housing that is being proposed.

The proposed development must address a housing need as identified in an independent market study when 20 or more new units are being created unless: 1) the developer can demonstrate that at least 50% of the units have prospective tenants who have expressed an interest in the units and are preliminarily income eligible; or, 2) the Allocating Agency does not have concerns regarding the negative impact of the proposed development on the existing housing stock in the community. In cases where an independent market study is not required, the applicant may be required to submit market data to document need for the proposed housing. The Allocating Agency will consider the State of Vermont Housing Needs Assessment and the quantity of publicly supported housing already present in the area when evaluating the need for the proposed development. The allocating agency will also consider the negative impact that the proposed development will have on the existing stock of rental housing in the area, whether subsidized or unsubsidized, and may, at its sole discretion, reject an application that might have a negative impact on the existing housing stock. For example, if a development for newly constructed housing is proposed in a community that has relatively high vacancy rates in rental units, or has an older housing stock of rental units (in need of rehabilitation), or both, the allocating agency may at its sole discretion determine that constructing new housing may have a negative impact on the existing housing stock (i.e. vacancy rates may rise, physical conditions may deteriorate further), and therefor may not reserve credits for the proposed development on this basis.

IV. Reservations will be based upon the experience and capacity of the project team.

The developer must demonstrate the capacity to undertake the development as proposed, either through its own experience and capacity or through the use of experienced consultants. In the event the developer is proposing multiple projects in any given year, it must have the capacity to oversee all of the developments proposed.

V. Developer's Fee / Consultant Fee in the budget does not exceed the program limits.

Developer's Fee: The amount of the fee shall be agreed upon by the developer and the allocating agency <u>prior</u> to the issuance of the initial tax credit Reservation Certificate. Once this fee has been agreed upon the allocating agency will not recognize any increases in the fee, whether total development costs increase or decrease, in any Carryover Allocation or final allocation of credits, except as described below. In the event of a substantial change in the project, such as an increase or decrease in the total number of units in the project, the allocating agency may permit an increase in the fee or require a decrease.

The total developer's fee shall not exceed 15% of the total development cost (excluding the fee itself and excluding cash accounts) when the total development cost is less than or equal to $1.5 million. For projects in which the total development cost exceeds $1.5 million, the total developer's fee shall not exceed 12% of the total development cost (excluding the fee itself and excluding cash accounts), payable by full occupancy. If at least one third of the fee (but not less than $100,000) is deferred, then the developer can take up to a 15% fee. The deferred portion of the fee must paid over a period of not less than five years. The term of repayment of the deferred fee will be based upon the financial strength of the development. Interest on the deferred development fee will not exceed the long term Applicable Federal Rate (AFR) as published monthly by the IRS, in the month the deferred fee note is executed.

When any developer-related party is doing any work at all on the development (except for the construction, which has separate limits), then that work will be considered part of the overall 12% or 15% limit.

For developments in which acquisition comprises a substantial portion of the total development cost, staff would expect a much lower fee be taken than the limits allow, as acquiring a property should involve less risk and take less time of a developer than either new construction or substantial rehabilitation. Proposals of this nature are infrequent, and at this time the fees will continue to be negotiated.

VHFA may consider exceptions to the 15% developer's fee limit on a case-by-case basis for extraordinary circumstances.

Consultant Fees: The Developer's Fee limit also includes any consultant fees ("Consultant Fee(s)") associated with the project. "Consultant Fee(s)" are defined as any fee(s) paid by the developer to a third party for services that a developer generally would be expected to perform, such as preparing applications for financing, obtaining local permits and approvals, and project oversight functions.

Consultant Fees do not include the fees paid to independent third party professionals for specific development-related services, such as architectural, engineering, appraisal, construction supervision, and environmental testing or assessment.

VHFA shall make the final determination of which fees in a specific project shall be considered Consultant Fees.

VI. Builder's Profit / Overhead / General Requirements in the budget complies with Allocation Plan limits.

The following limits shall apply when there is an identity of interest between the developer and the contractor: builder's profit - 6%; builder's overhead - 2%; general requirements - 6%. These limits will also apply for projects where the builder is selected by the developer without competitive bidding. These limits will not apply to projects that are competitively bid, whether through open public bidding or selective bidding; the bid process will determine the amount of builder's profit, builder's overhead, and general requirements. The developer must make best efforts to obtain at least three competitive bids; documentation of the bid process must be provided. For Rural Development (RD) 515 projects, the limits will be the amounts approved for each project under the RD cost containment guidelines.

VII. Applicant must agree to provide either a Right of First Refusal to purchase the property to a nonprofit at the end of the 15 year compliance period or an extended Housing Subsidy Covenant.

The Right of First Refusal price must be the higher of: 1) the same terms and considerations contained in an offer of a third party; 2) the minimum purchase price as described in Section 42(i)(7)(B) of the Internal Revenue Code; or 3) the target return provided in the Borrower's Operating Agreement, or other document provided to the allocating agency in form satisfactory to it. The Right of First Refusal must allow the holder of the Right to make the offer on the property that triggers the Right of First Refusal.

In mixed-income projects (defined as developments in which more than the minimum 20% or 40% of the units are tax credit restricted), where a Right of First Refusal cannot be reasonably provided at the determination of the Allocation Agency, a perpetual Housing Subsidy Covenant will be required. In projects meeting only the minimum set-aside, a 30 year Housing Subsidy Covenant will be required. Both types of Covenants will require that the income and rent restrictions imposed by the Housing Credit Program will remain in effect for the entire term of the Covenant.

VIII. Evidence of at least one public hearing or meeting if required for local approval of the proposed development.

The development must meet this "readiness to proceed" threshold in order to ensure that the proposal is likely to move forward through the approval process and receive a Carryover Allocation by year end (see also Section Five, "Carryover and VHFA Revision or Revocation of Reservation Certificates").

Detailed project financial documentation must be submitted at various stages of the tax credit approval process, in support of VHFA's responsibilities under the law. Certifications regarding projected or actual costs and sources of funds are required at the time the Carry-over Allocation is approved and at the time the final tax credit allocation (IRS Form 8609) is requested.

The method the allocating agency will use to demonstrate the internal rate of return that the tax credit as an investment will generate involves discounting all equity "pay-ins" to the same date - the construction closing. The discount rate will be the "long term" Applicable Federal Rate (AFR) as published monthly by the IRS (annual compounding rate). The tax benefits will be "future valued" to the end of the 15 year compliance period using the same long term AFR. The internal rate of return will then be calculated by discounting the "future valued" benefits back to the date of the discounted equity contributions. This method is described in <u>A Developer's Guide to the Low Income Housing Tax Credits</u>, 3rd Edition, by Herb Stevens and Tom Tracy, Chapter 5, Section 5.03(B)(3), p. 124. To equalize comparison of developments with and without Historic Rehabilitation Tax Credits, the benefits stream will be reduced by the amount of the historic credit in the first year, and the first equity contribution(s) will be reduced by .85 times the historic credit amount (an approximation of the equity raised from syndication of the historic credit).

2. EVALUATION CRITERIA (in order of priority from I through IV)

I. Preference must be given among selected projects to proposals serving:

(a) the lowest income tenants, and
(b) qualified tenants for the longest period

II. State Consolidated Plan Priorities / Other Priorities (**<u>not</u> in order of priority**):

(a) Rehabilitation, including lead-based paint abatement, accessibility modifications, and energy efficiency upgrades;
(b) Mixed income developments;
(c) Project is planned to maintain the historic settlement pattern of compact village and urban centers separated by rural countryside or is located in growth centers designated on regional plans or on local plans that have been approved by a regional planning commission. (Within this priority, existing downtowns will have preference over newly proposed growth centers);
(d) Housing affordable to households <=30% AMGI;
(e) Any project that serves special needs populations, including those needing single room occupancy housing (SRO's), the mentally disadvantaged, the physically challenged, or families currently on public housing (State or local) waiting lists; that provides services supported housing (elderly housing with optional services does not in and of itself constitute special needs housing); or that provides for resident involvement in project or sponsor management. Any project that can demonstrate that a majority of the units will be occupied by tenants who are at risk of institutionalization as determined through a state screening process or need assistance with activities of daily living as determined by a qualified health care professional such as a doctor or nurse (i.e., tenants who cannot live independently without supportive services), will qualify as special needs housing.
(f) Acquisition and rehabilitation of existing federally subsidized projects, where the preservation of a project's existing affordability is at risk. Examples include but are not limited to RD 515, Section 8, Section 23, Section 236, and Section 221(d)3. Elements to be considered include:
    - marketability
    - length of subsidy contract
    - prepayment potential
    - current ownership
    - nature of financing
    - condition of project
(g) Project provides family housing, unless local or regional need for another type of housing is proven to be greater.

(h) Project is a blighted structure in a downtown, as defined in the Consolidated Plan and Downtown Bill, H.278:

"Downtown" means the traditional central business district of the community, that has served as the center for socioeconomic interaction in the community characterized by a cohesive core of commercial and mixed use buildings, often interspersed with civic, religious, and residential buildings and public spaces, arranged along a main street and intersecting side streets and served by public infrastructure.

"Blight" means a condition that exists when the majority of a building in uninhabitable or unusable due to neglect, condemnation, or damage from fire or other natural disaster.

A map outlining the downtown and the location of the project must be included with the application.

III. Project can demonstrate "readiness to proceed" with either site plan, preliminary plat, or conditional use approval in hand and can proceed to all final approvals and begin construction within one year of application date.

IV. Geographic targeting: Project is in a community that has been underserved historically in having its affordable housing needs met.

In addition to these four evaluation criteria, the application requirements will continue to be factors in project evaluation. For example, projects that seem to meet the evaluation criteria equally might have the relative need and demand for the proposed housing evaluated to determine which project serves a greater need.

3. COST GUIDELINES

VHFA encourages development at the lowest reasonable cost and will review development costs for reasonableness. Generally, per unit costs in excess of the following guidelines will be considered excessive:

Unit Cost Limits	
0 Bedroom	$73,380
1 Bedroom	$78,380
2 Bedroom	$83,380
3 Bedroom	$88,380
4 or more Bedrooms	$93,380

Certain costs will be excluded in applying these cost limits. Such exclusions will include: 1) costs of tenant relocation; and 2) capitalization of cash accounts that will remain an asset of the project, such as deficit escrow and operating subsidy accounts.

Project-specific exceptions may be made on a case-by-case basis for projects that do not meet these per unit cost guidelines as a result of extraordinary situations, e.g. community spaces and extraordinary environmental site-cleanup costs. When projects that exceed these per unit limits do receive credits, the allocation will be based upon the limits rather than the actual project cost.

4. CARRYOVER AND VHFA REVISION OR REVOCATION OF RESERVATION CERTIFICATES

VHFA is authorized to issue Carryover Allocations to certain projects that will not be placed in service by the end of year in which a reservation is issued, so long as a minimum of 10% of the reasonably expected basis (depreciable basis plus land) has been expended by the end of that year. The owner must certify, in a form acceptable to VHFA, 10% of costs incurred prior to the issuance of Carryover Allocation. This certification must include back-up documentation of costs.

If a development that has received a reservation appears to be going forward but is encountering severe environmental obstacles or local opposition, *at its sole discretion* staff could issue a binding commitment of credits from the following year's credit ceiling instead of a Carryover Allocation. A binding commitment of the following year's credits will only be issued for this type of development if: 1) substantial environmental problems exist that will take a long time to resolve; or 2) the development has otherwise received approvals but its approval has been locally appealed. An overall limit of 20% of the following year's credit ceiling could be reserved using an advance binding commitment (unless a higher amount is approved by the Joint Committee). In the event that multiple developments are seeking an advance binding commitment of credits, priority will go to developments facing environmental site clean-up delays.

VHFA reserves the right, as permitted by Section 42 of the Internal Revenue Code, to issue less than the maximum credit allocation otherwise supportable by the project's eligible basis. An allocation of credits to a project in an amount less than requested may be permitted, with conditions that the gap that this creates in the financing be filled by another source by a specified date. This reduction will only be used on a very limited basis, with the agreement of the applicant, and not be applied across the board to every applicant on a pro rata basis. **In all cases** any funding gap must be filled in time to meet the absolute year-end Carryover Allocation deadline, or such earlier Carryover Allocation deadline as staff imposes in the Reservation Certificate.

With regard to 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.

5. FINAL TAX CREDIT ALLOCATION COST CERTIFICATION

VHFA requires final cost certifications for all projects prior to issuance of IRS form 8609 based on the following guidelines:

1. For projects of fewer than 25 units, final cost certifications prepared by the owner (which include back-up documentation of costs) will be accepted.

2. For projects of 25 units or more, the final cost certification must be prepared by an independent CPA. If this is not possible prior to the end of the calendar year in which the last building is place in service, VHFA will issue the IRS form 8609 on the basis of an owner's final cost certification and supporting documentation, but requires the CPA cost certification to be submitted as soon thereafter as possible.

CPA prepared cost certifications are recommended for all projects.

6. RETURN OF PREVIOUSLY ALLOCATED TAX CREDITS

VHFA may re-issue tax credits allocated to projects that have not utilized the tax credit. Returned tax credits will be reused in accordance with this Allocation Plan.

In the event that the following four conditions are met, the Issuing Authority may accept a return of Housing Credits from a Project and reallocate an amount of Credits less than or equal to the amount of returned Credits to the same Project without the necessity of holding a competitive round for the Credits:

(a) the Project's viability is threatened by extraordinary circumstances (which generally will not include delays in securing state or local approvals) that become apparent so late in a year that it is not feasible to hold a competitive round;
(b) with the return and reallocation, the Project can be placed in service within the maximum time limits allowed by the Internal Revenue Code under the original allocation;
(c) the amount of Housing Credits available to the State is not reduced; and
(d) the VHFA Board of Commissioners approves the return and reallocation.

7. CONTINUANCE OF OWNERSHIP ENTITY

The applicant for Housing Credits must be the entity that will own the development. Historically, in most cases, this has been a limited partnership. The limited partnership need not be legally created when the application is filed, but the identity of all general partners must be disclosed in the application and the application must be submitted by at least one legally existing general partner on behalf of the partnership. VHFA reserves the right throughout the allocation process, up to the issuance of the IRS Form(s) 8609, to approve any changes in the identity of the general partners of the Partnership or such changes to the partnership agreement as VHFA, in its sole discretion, considers material.

8. COMPLIANCE

The Budget Reconciliation Act of 1990 adopted by Congress amended Section 42 of the IRS Code to require that state tax credit agencies provide a procedure for monitoring developments for compliance with the requirements of the law, and for notifying the IRS of any non-compliance it discovers.

In order to implement this responsibility, all HC recipients will be required to execute and record a HC Housing Subsidy Covenant (the Covenant). The Covenant must be approved by VHFA. The Covenant must be signed by the Owner and returned to VHFA for recording prior to VHFA issuing a Carryover Allocation or 8609. 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 HC Housing Subsidy Covenant may be incorporated into such Covenant, and the requirement of a separate HC Housing Subsidy Covenant may be waived by VHFA. In addition Owners are required to provide VHFA with a copy of the IRS Form 8609, with Part II completed by the Owner, for the first year of the credit period.

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. Record Keeping 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:

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

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

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

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

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

   vi. Documentation to support each tax credit eligible tenant's income certification (for example, a copy of the tenant's federal income tax return, W-2 Forms, or verifications of income from third parties such as employers or state agencies paying unemployment compensation; owners should retain the right in their leases to obtain this documentation at any time, even after tenants have moved into the unit); and

vii. 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 the second review option as set forth by the IRS under their final monitoring regulations.

i. 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), according to the election made by the sponsor at the time of the allocation;

(b) The owner has received an annual income certification from each tax credit eligible tenant and documentation to support that certification, or in the case of a tenant receiving Section 8 housing assistance payments, a statement from the appropriate public housing authority declaring that the tenant's income does not exceed the applicable income limit under section 42(g);

(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 became vacant during the year, reasonable attempts were or are being made to rent that unit or another available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income.

(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.

(j) There was no change in the applicable fraction of any building in the project, or, if there was a change, a description of the change; and

(k) An extended low income housing commitment was in effect (for buildings subject to Section 7108(c)(1) of the Revenue Reconciliation Act of 1989).

ii. Review Procedure

Under the review procedure, the Agency will inspect at least twenty percent (20%) 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, and the rent record for each low income tenant in at least 20% of the tax credit eligible units in these projects.

iii. Exception for Certain Buildings

The review procedure outlined above may not apply to the following types of tax credit eligible buildings, which are subject to other monitoring programs.

(a) Buildings financed by the Rural Development (RD) 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.

iv. The certifications required under paragraph 1 of this Section c (Certifications and Review Procedures) 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

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

i. If the Agency does not receive the certification described in paragraph 1 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.

ii. 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.

iii. 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. VHFA will retain the responsibility to notify the Internal Revenue Service under paragraph 2 of section e (above).

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.

9. DISCLAIMERS

VHFA is charged with issuing no more tax credits to any given development than are 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. ACCD 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 HC program.

No member, officer, agent or employee of ACCD, VHFA, or the Joint Committee on Tax Credits shall be personally liable concerning any matters arising out of, or in relation to, the allocation, issuance or compliance monitoring of the HC.

VHFA is under no obligation to necessarily reserve or allocate any part of Vermont's Housing Credit ceiling. VHFA may enter into binding commitments to allocate credits from a future year's Housing Credit ceiling.