The State of Vermont's Housing Credit Allocation Plan for 2001-2002 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 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
Howard Dean, M.D., Governor

Effective Date: 2/20/01

2001-2002 ALLOCATION PLAN
FEDERAL HOUSING CREDIT PROGRAM
STATE OF VERMONT

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TABLE OF CONTENTS

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 1999 or 2000 or that otherwise may become available in 2001 and 2002. 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 as 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 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 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.

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[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 on April 17, 1987.

BACKGROUND

The Housing Credit program was established by Congress as part of the Tax Reform Act of 1986. It offers a ten-year federal income tax credit to owners of rental housing who make 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 allows 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:

1. Project location
2. Housing needs characteristics
3. Project characteristics, including whether the project includes the use of housing as part of a community revitalization plan in a Qualified Census Tract
4. Sponsor characteristics
5. Tenant populations with special housing needs, and
6. Public housing waiting lists
7. Tenant populations of individuals with children
8. Projects intended for eventual tenant ownership.

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, as well as projects in Qualified Census Tracts that contribute to a concerted community revitalization plan.

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 in perpetuity. Nonprofit 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. Even after such a purchase, the property is subject to the perpetual housing subsidy covenant.

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

APPLICATION PROCESS

Parties interested in applying for Housing Credits must first submit a Letter of Intent to apply to VHFA. The form of this letter and the timing for its submission will be published by VHFA to initiate the reservation round. This will be a brief, one-page letter identifying the project by name, location, proposed occupancy, and the proposed sources of funding. Applicants will attach to it evidence of site control. The purpose of this "pre-application" phase will be for VHFA to identify the amount of credits being sought and to identify any apparent issues early on in the process. Applications will be taken only from parties who have submitted this Letter of Intent. Depending on the number of Letters of Intent submitted, VHFA will conclude its review as quickly as possible and notify the applicants of the timing of the full application round.

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 may 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.

The State's Consolidated Plan demonstrates a much greater unmet demand for affordable housing for families than for seniors in Vermont. For calendar year 2001, Housing Credit applications for developments that are intended for exclusive occupancy by seniors (except for those with special needs – see Section 2(I)(f)) will not be considered unless no other eligible applications for family housing are made.

2001-2002 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 submit either a separate application for each building or group of buildings on contiguous sites or 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 bedrooms 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 or below 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 8. "Compliance").

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

A comprehensive market study of the housing needs of low-income individuals in the area to be served by the project must be conducted at the developer's expense by a disinterested party who is approved by the Allocating Agency. The Allocating Agency will also 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 with relatively high vacancy rates in rental units, 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, therefore, 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, the organization 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 prior 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 or require a decrease in the fee.

The total developer's fee shall not exceed 15% of the total development cost (excluding the fee itself and 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 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 be 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 the acquisition comprises a substantial portion of the total development cost, a much lower fee would be expected to 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 overseeing project 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 comply 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 may, at their option, agree to provide a Right of First Refusal to purchase the property to a nonprofit at the end of the 15 year compliance period; all projects receiving allocated ceiling credits must agree to a perpetual 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 a satisfactory form. 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 projects receiving credits "automatically" from the use of tax-exempt bond financing, 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 4. "Carryover and VHFA Revision or Revocation of Reservation Certificates").

Detailed project financial documentation must be submitted at various stages of the Housing 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 Carryover Allocation is approved and at the time the final Housing 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).

Under certain situations, if the purchase price exceeds the outstanding balance of debt on the property plus capital improvements and appropriate closing costs, the project will be ineligible for Housing Credits. (Debt may include amortizing debt, deferred debt, seller financing, and seller contributions. All debt, capital improvements, and closing costs must be normal, well-documented, and in a format acceptable to VHFA.) Those situations are: 1) when an owner forms a partnership or corporation to purchase a property it currently owns; or 2) when a nonprofit, governmental entity, or quasi-governmental entity sells a property it owns to another party that is applying for credits; or 3) when any owner who used state or federal subsidies or subsidized financing to acquire, build, or rehabilitate the property originally is the seller of a property that is applying for credits. An exception to this third instance is specifically made for applications that would preserve existing "deep subsidy" affordable housing, such as Section 8 New Construction / Substantial Rehabilitation projects. In some instances, these projects are located in competitive markets or provide current owners with other incentives to opt out of the assisted/affordable housing stock at the end of the rent assistance contract. Acquisition cost in these cases would be determined by appraised value.

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

I. State Consolidated Plan Priorities / Other Priorities (**Note: Within tiers, the factors are <u>not</u> in order of priority. However, the top tier factors have twice the weight of lower tier factors**):

Top Tier Priorities:

a. Project provides rehabilitation, including lead-based paint abatement, accessibility modifications, and energy efficiency upgrades; or infill new construction in housing markets with a vacancy rate of 2% or less; or in housing markets where there is insufficient rehabilitatable housing stock or a lack of affordable housing stock.

b. Project provides family housing, unless local or regional need for another type of housing is proven to be greater. Family housing is defined as: the majority of the units in the development are two-bedroom or larger.

c. Project is planned to maintain the historic settlement pattern of compact village and urban centers separated by rural countryside. Characteristics of compact urban, town, and village centers include: higher density than surrounding areas; mixed uses; developments with pedestrian, bike, transit, and auto access; public facilities, services, and spaces; diversity in the types and scale of housing, businesses, and industries; center for community activity; open space, including productive farm and forestland, surrounding the town center; and exemplifying a unique cultural heritage.

d. Project is a 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. Projects that support downtowns by virtue of their location (i.e. that are within a reasonable walking distance from the downtown core) will also qualify for this criterion. **A map outlining the downtown and the location of the project must be included with the application.**

e. Project proposes the removal of blight. "Blight" means a condition that exists when a significant portion of a building is uninhabitable or unusable due to neglect, condemnation, or damage from fire or other natural disaster.

f. Any project that incorporates a majority of special needs populations (as defined in the State's Consolidated Plan) and provides service-enriched housing.

Second Tier Priorities:

a. Mixed income developments;

b. Project that is located in a growth center (as defined in that State's Consolidated Plan) designated in regional plans or in local plans that have been approved by a regional planning commission or that uses housing as part of a community revitalization plan in a Qualified Census Tract (QCT);

c. Housing affordable to households earning less than or equal to 30% the area median gross income (AMGI);

d. Project that serves families currently on public housing (State or local) waiting lists.

e. Projects intended for eventual tenant ownership.

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

a. The lowest income tenants, and

b. Qualified tenants for the longest period.

III. Preference must be given for the acquisition and rehabilitation of existing federally subsidized projects, where the preservation of a project's existing affordability is at risk. The definition of a "Federally Subsidized and At Risk" proposal is: Any development currently occupied by low-income households that faces, within the next five years: 1) a loss of deep rental assistance or other operating subsidy; and 2) faces prepayment of its mortgage or other action by its owner that would terminate federal low income use restrictions. In addition, any project(s) that is slated to receive federal funding specifically for the preservation of the units as affordable housing. Examples include but are not limited to RD 515, Section 8, Section 23, Section 236, and Section 221(d)3.

IV. 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. Projects will be evaluated on both permitting readiness and funding readiness.

V. Geographic targeting: Project is in a market area that has been underserved historically in having its affordable housing needs met. "Market area" is defined as a city or town and all of the surrounding towns. The stock of affordable, assisted housing in the market area will be considered to see if housing of the type proposed is already present in the market area.

In addition to these five evaluation criteria, the application requirements will also 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	$84,390
1 Bedroom	$90,140
2 Bedroom	$95,890
3 Bedroom	$101,637
4 or more Bedroom	$107,390

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 exceeding 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 later of: 1) the end of year in which a reservation is issued, or 2) six months from the date in which the Reservation Certificate was issued, so long as a minimum of 10% of the reasonably expected basis (depreciable basis plus land) has been expended by that time. The owner must certify, in a form acceptable to VHFA, that 10% of costs were 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, VHFA 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 be issued only 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 created by financing be filled by another source by a specified date. This reduction will be used only 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 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:

I. For projects of 10 or fewer units, final cost certifications prepared by the owner (which include back-up documentation of costs) will be accepted.

II. For projects of more than 10 units, the final cost certification must be prepared by an independent CPA. If the CPA certification is not possible prior to the end of the calendar year in which the last building is placed 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 Housing Credits allocated to projects that have not utilized the Housing Credit. Returned Housing Credits will be re-used 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 re-allocate 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:

I. 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;

II. With the return and re-allocation, the Project can be placed in service within the maximum time limits allowed by the Internal Revenue Code under the original allocation;

III. The amount of Housing Credits available to the State is not reduced; and

IV. The VHFA Board of Commissioners approves the return and re-allocation.

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, at 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 discovered.

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 IRS Form 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.

I. VHFA is required to monitor compliance with the provisions of Section 42 and to notify the Internal Revenue Service of non-compliance and will charge fees to cover costs related to this monitoring. The fee structure for 2001 is four dollars per housing credit unit per month.

Housing Credit developments are very management intensive and require a thorough understanding of the Section 42 regulations. The owner and/or management agent is required to attend compliance training or document that they have received training prior to lease up.

II. Record Keeping and Record Retention

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

a. The total number of residential rental units in the building, including square footage;

b. The percentage of residential rental units in the building that are Housing Credit eligible units (square footage fraction or unit fraction);

c. The rent charged on each residential rental unit in the building, including utility allowance;

d. The Housing Credit eligible unit vacancies in the building and the occupancy of the next available units;

e. The income certification of each Housing Credit eligible tenant;

f. Documentation to support each Housing 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

g. 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 Housing Credit eligible development must retain the records specified in this Section II. for each building in the project for a period of at least 6 years beyond the end of the compliance period for each building.

Annually, the owner must provide a project status report that summarizes the activity of the development. The format of this report is included in the VHFA compliance manual.

III. Certification and Review Procedures

The Agency will utilize a certification procedure as set forth by the IRS under their final monitoring regulations.

a. Certification Procedure

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

i. 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;

ii. There has been no change in the applicable fraction of any building in the project or, when there has been a change, a description of the change; and

iii. The owner has received an annual income certification from each Housing 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);

iv. Each Housing Credit eligible unit in the project is rent-restricted under Section 42(g)(2);

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

vi. No finding of discrimination under the Fair Housing Act, 42 U.S.C 3601-3619, has occurred for this project. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development (HUD), 24 CRF 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C 3616a(a)(1), or an adverse judgement from a federal court;

vii. Each building in the project is suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low income unit in the project;

viii. There has been no change in the eligible basis (as defined in Section 42(d)) of any building in the project or, when there has been a change, a description regarding the nature of the change;

ix. 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;

x. If a Housing 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.

xi. If the income of tenants of a Housing 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.

xxi An extended Low Income Housing Tax Credit commitment (Subsidy Covenant) was in effect , including the requirement under section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437s. Owner has not refused to lease a unit to an applicant based solely on their status as a holder of a Section 8 voucher and the project otherwise meets the provisions, including any special provisions, as outlined in the extended low-income housing commitment (not applicable to buildings with tax credits from years 1987-1989).

xxii The owner received its credit allocation from the portion of the state ceiling set-aside for a project involving "qualified non-profit organizations" under Section 42(h)(5) of the code and its non-profit entity materially participated in the operation of the development within the meaning of Section 469(h) of the Code.

xxiii There has been no change in the ownership of management of the project.

b. Review Procedure

Under the review procedure, the Agency will review at least twenty percent (20%) of tax credit files at least once every three years, starting the first year the credits are claimed.

c. Exception for Certain Buildings

The review procedure outlined above may not apply to the following types of Housing Credit eligible buildings, which are subject to other monitoring programs:

i. Buildings financed by the Rural Development (RD) under its section 515 program; and

ii. Buildings in 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.

d. The certifications required under paragraph a. of this Section III. (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.

IV. Auditing Procedure

The Agency has the right to perform an audit of any eligible Housing Credit development at least through the end of the compliance period of the buildings in the project. An audit includes a physical inspection of any building or buildings in the project, as well as a review of the records described in Section II. The audit may be performed in addition to any inspection of income certifications and documentation under the review procedure. The regulations requires the Agency to conduct an initial physical inspection by the end of the second calendar year following the year the last building in the project is placed in service. The physical inspection is performed every three years.

V. Notification of Non-compliance

a. If the Agency does not receive the certification described in paragraph a. of Section III. or discovers upon audit, inspection, 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.

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

c. The correction period shall be a period of 90 days from the date of the notice to the owner under paragraph a. 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.

VI. 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 b. of Section V. (above).

VII. 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 non-compliance.

9. DISCLAIMERS

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

The Joint Tax Credit Committee (JCTC) may, at its sole discretion, recommend to reserve or allocate credits to a project regardless of its rank or score, provided the JCTC finds that the project serves a positive community development need or the public good. The reasons for such findings will be forwarded to the VHFA Board of Commissioners. A written explanation will be made available to the general public for any allocation of a housing credit dollar amount which is not made in accordance with established priorities and selection criteria of the housing credit agency.

The final decision regarding reservations and allocations of credits lies with the VHFA Board of Commissioners. The VHFA Board will consider recommendations of staff, the recommendations of the JCTC, and its own experience and interpretation of the Plan in making the final reservation or allocation decision.