

**QUALIFIED ALLOCATION PLAN**

IRC SECTION 42 HOUSING CREDIT PROGRAM

32 VSA 5930u VERMONT AFFORDABLE HOUSING TAX CREDIT PROGRAM

STATE OF VERMONT

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## **INTRODUCTION AND SUMMARY OF PROGRAM GUIDANCE**

### **INTRODUCTION**

The purpose of this Qualified Allocation Plan is to set forth the process and criteria under which specific housing developments will be selected to receive federal Low Income Housing Credits (LIHTC), known in Vermont as Housing Credits, and Vermont Affordable Housing Tax Credits for rental and homeownership that have been made available from the Federal and State governments, returned from allocations or that otherwise may become available. In accordance with the requirements of Section 42 of the Internal Revenue Code, 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 Joint Committee on Tax Credits (Joint Committee, JCTC) and the Vermont Housing Finance Agency (“VHFA”) Board of Commissioners.

The federal 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 housing must be available for General Public Use. 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.

VHFA has managed federal Housing Credit allocation process since the inception of the program. An advisory Joint Committee on Tax Credits has been established to review and adopt allocation policies for use when the VHFA Board of Commissioners allocate housing credits. The Joint Committee is comprised of the Commissioner of Housing and Community Development (“DHCD”) or his or her designee, the Executive Director of VHFA or his or her designee, the Executive Director of the Vermont State Housing Authority (“VSHA”) or his or her designee, the Executive Director of the Vermont Housing and Conservation Board (“VHCB”) or his or her designee, and one additional member representing housing interests appointed by the Governor or his/her designee.

The Vermont tax credit for affordable housing is governed by 32 VSA § 5930u (<http://legislature.vermont.gov/statutes/section/32/151/05930u>) and requirements outlined in this plan. Allocations of credits for rental housing are intended to supplement eligible federal low income housing tax credit rental projects as described in this Allocation Plan. Allocation of these credits and those to facilitate homeownership are described at the end of this plan.

The appendices at the end of this Allocation Plan, along with the application materials, together list the various policies that will guide the Housing Credit sponsor/applicants.

### **SUMMARY OF PROGRAM GUIDANCE AND PRIORITIES**

The requirements of the federal Low Income Housing Credit program, include the requirement to create a "qualified allocation plan" (QAP) that reflects a number of federal priorities. These include community revitalization; serving tenants with special housing needs, those on public housing waiting lists and individuals with children; and projects intended for eventual tenant ownership. The QAP must consider the project need, location, historic nature, energy efficiency, and the sponsor and project characteristics.

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 are required to set-aside and use 10% of their annual Ceiling Credits for developments that come from a Nonprofit Sponsor, and to meet this requirement there must be Nonprofit Material Participation in the development. States can include such other criteria as they deem appropriate and set additional priorities for allocation of Housing Credits. There are no requirements as to the relative weight of the various factors.

It is the intent of Vermont's QAP to embrace the best affordable housing practices and allocate scarce resources in as efficient a manner as possible. The QAP aligns with the state's overarching housing policies as outlined in the HUD required Consolidated Plan (ConPlan) and other state policies. The HUD Consolidated Plan which guides the use of Federal housing funds is designed to help states assess their affordable housing and community development needs and market conditions, and to make data-driven, place-based investment decisions. In Vermont, the current and recent ConPlans have prioritized affordable housing over some aspects of economic and community development as a result of public input and documented unmet housing needs. The ConPlan recognizes housing development as a catalyst for positive impacts on the communities served. The Vermont ConPlan highlights three guiding principles:

- The first principle is achieving the perpetual affordability of housing resources and investments.
- The second principle is promoting development in State designated downtowns, village centers, neighborhood development areas and other areas that are consistent with the state's historic settlement pattern and 'Smart Growth.'
- The third principle is linking the State's homeless assistance activities with permanent housing through systems, practices and initiatives that are informed by data and proven approaches.

As such, Vermont's QAP sets threshold criteria requiring perpetual affordability for all projects receiving Ceiling Credits. It also sets building in areas of historic settlement patterns as a threshold requirement and gives highest priority to projects that go beyond that and develop in state designated growth areas, particularly in historic downtowns and village centers.

To address the ConPlan's priority to provide homeless assistance activities through permanent housing, the state has developed a Plan to End Homelessness. Additionally the state has supported the national goal of Ending Child and Family Homelessness by 2020 and has a plan to do so. Both documents include goals of constructing and rehabilitating more rental housing that is affordable to households with extremely low incomes, and making more units accessible to families and individuals who have experienced homelessness. In 2015 Vermont's governor issued an Executive Order that establishes the goal of making at least 15% of the permanent rental units that are publicly funded available to Vermonters experiencing homelessness. The QAP does not set a threshold around serving the homeless, but provides a high rating priority and an incentive Basis Boost for housing developments targeting homeless households.

The Vermont Consolidated Plan's priorities also says that "the state will support affirmatively furthering fair housing by supporting fair housing education and anti-discrimination activities, and encouraging affordable housing projects which are located in areas of opportunity, with low concentrations of racial or ethnic minorities and low concentrations of poverty, or if not located in such areas, by contributing to the revitalization of a disinvested community, or helping prevent displacement of residents living in neighborhoods on the verge of or already undergoing gentrification." Vermont's QAP attempts to support this by requiring that all projects abide by fair housing, visitability and accessibility requirements as well

as setting a threshold of necessary universal design features all projects must include. Additionally, the QAP prioritizes geographic targeting towards communities with no affordable housing.

In addition to the three guiding principles, the ConPlan calls out the three specific housing-related goals which are imbedded in the QAP:

- Increase the supply and quality of affordable housing.
- Decrease the number of people experiencing homelessness.
- Strengthen communities and improve the quality of life of Vermonters.

The intention of this QAP and Housing Credit awards is to meet all three ConPlan goals through setting high threshold requirements of all Housing Credit applications and a stringent prioritization process. In addition to this prioritization process, the VHFA Board of Commissioners can take into account other qualitative factors such as: overall housing and community development impacts; serving the greatest public good; project cost; and Sponsor conformance with E.O. 3-73 (Appendix 3j) in making its final decision for the award of Housing Credits.

### **ADDITIONAL PROGRAM GUIDANCE ON QAP PRIORITIES**

**Delayed Project Set-Aside:** In addition to the Code requirement that 10% of the Housing Credit ceiling be set-aside for nonprofit use, states are allowed to create other set-asides. In Vermont there is one additional set-aside of Housing Credit ceiling in the amount of \$900,000 to be used for projects meeting the definition of “Delayed Project Set-Aside”.

**Basis Boost:** The tax credit program allows the state to provide a specific incentive called the “Basis Boost” for projects it deems of high priority and that otherwise might not be feasible. For projects using Ceiling Credits, the Basis Boost is available for two types of projects. The first are projects in one or more buildings of 49 units or less which dedicates at least 10% of its units 1) as Supportive or Service-Enriched Housing; or 2) to be occupied by clients of a Human Service Agency as evidenced through a memorandum of understanding or master lease to provide Supportive Housing or Service-Enriched Housing as defined herein. (Boost is up to 130% based on staff determination of credit amount needed for financial feasibility.) A Sponsor can satisfy this requirement as to Supportive Housing by having the owner/Sponsor provide Supportive Housing services directly or by entering into a new memorandum of understanding or master lease with respect to other units already in its portfolio that are not already dedicated to Supportive Housing equal to 10% of the total units in the proposed project. Planned new developments which “come on-line” in the same year which provide Supportive Housing also can be used to satisfy this requirement. The second type are projects that are mixed-use (i.e., a combination of multifamily rental units and a more-than-*de minimis* amount of commercial space, such as a ground floor of commercial space with apartments above) that are located in Downtowns or Village Centers, and use the Historic Rehabilitation Tax Credit as described in the Internal Revenue Code Section 47(a)(2). The Basis Boost for this type of project will be limited to one (1) project per year. Additionally, certain high priority projects designated by VHFA as requiring an increase in the credit amount to be financially feasible may be eligible for the Basis Boost. The Basis Boost will not be automatically applied to projects using Ceiling Credits for buildings within a Qualified Census Tract or Difficult to Develop Area for Ceiling Credits, as in the past, but is available to any project meeting the 10% Supportive Housing test. Projects using Bond Credits are eligible for Basis Boost if within a QCT or DDA.

**Senior Housing and Ceiling Credits:** The most recent statewide Housing Needs Assessment<sup>1</sup> and data such as the Directory of Affordable Rental Housing<sup>2</sup>, annual Point In Time<sup>3</sup> counts of people who are homeless, and analysis of current Tax Credit residents continue to show a much greater unmet need for

smaller general occupancy affordable housing than for independent age-restricted housing. This Allocation Plan's current highest priority will be to alleviate the current shortage of affordable general occupancy housing, serve individuals with children, and to reduce and eventually eliminate homelessness.

However, recognizing that the senior population is fast growing, 25% of the annual housing tax credit ceiling will be considered for new senior (age-restricted) housing that provides Service-Enriched Housing directly to residents to allow them to age in place and avoid nursing home care or other institutional utilization\*. Senior housing will also be considered for funding when it leverages new rental assistance or significant other subsidies\*\* for the lowest income seniors.

VHFA will evaluate all applications for Ceiling Credits together and will report on the extent to which all applications meet the evaluation criteria. General occupancy and senior occupancy projects will not be separately evaluated. Those projects that meet the most evaluation criteria in the QAP will in general be recommended for credits, except to the extent that there are multiple such applications for senior occupancy that cumulatively have applied for more than 25% of the Ceiling Credits. In that instance staff will generally recommend senior occupancy projects that collectively utilize up to +/- 25% of the credit ceiling, and will recommend the balance of the credit ceiling for general occupancy projects.

In evaluating competing age-restricted projects, VHFA will look at regional and local needs, underserved communities, the overall impact of each proposal on the housing market, communities and development sites that will accommodate and welcome both elderly and general occupancy affordable housing. VHFA will seek input from the Agency of Human Services as to which proposal will have the most multiple benefits in terms of serving the most frail or disabled residents, and support AHS's long term care goals.

Universal Design: Recognizing that Vermont communities and housing developments tend to be small, and that in many communities there are few rental opportunities this QAP will strive to make all funded projects physically accessible to all current and future occupants, no matter what stage of life they are in. Tax credit funded housing uses significant public resources and is intended for perpetual occupancy. We want our residents to be able to age or remain in place through any temporary or permanent disability, to be able to be active in their community and to be visited by their friends and neighbors.

Vermont has progressive rules around "adaptable" and "visitable" housing, but many of the rules do not apply to smaller buildings. A home is considered fully visitable when it meets these three basic requirements: one zero-step entrance; doors with 32 inches of clear passage space; one bathroom on the main floor that can be accessed in a wheelchair.

This QAP will require that all projects and units meet the Vermont Access Rules for being "adaptable" and "visitable". This predominantly affects residential buildings with 1-3 units, that otherwise would not be considered a "covered multifamily dwelling unit", and some buildings with historic rehabilitation that may be asking for a waiver from the Vermont Access Rules. Projects that believe they cannot feasibly meet this requirement may ask for a waiver of this threshold. Projects seeking a waiver will be expected to do as much as feasibly possible such as designing entrances in such a way that a unit can be lived in or visited by people who have trouble with steps or who use wheelchairs or walkers.

In addition, all projects shall attempt to provide as many elements of "Universal Design" as possible and shall indicate in the application what they are able to provide as outlined in the attached appendix.

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1 [http://accd.vermont.gov/strong\\_communities/housing/planning/needs\\_assessment](http://accd.vermont.gov/strong_communities/housing/planning/needs_assessment)

2 <http://www.housingdata.org/doarh/>

3 <http://helpingtohousevt.org/point-in-time-counts/>

\* All applicants proposing services must provide a description of the proposed Service-Enriched Housing and complete the VHFA Annual Supportive Services Plan and Budget. Projects relying on endorsement, analysis or financial commitment from the Agency of Human Services (AHS) must also complete AHS's review and evaluation process.

\*\*Other subsidies shall mean funding from capital and rental assistance sources outside the commonly used housing programs that are annually funded – VHCB, HTF, HOME and VCDP funds would not meet this leverage test, but (for example) USDA 515, HUD 202, HUD Special Purpose or AHP funds would.

## APPLICATION PROCESS

The process of applying for and receiving Ceiling Credits involves six benchmarks, each carrying with it submission requirements. These are outlined on the Submission Timing Table (Appendix 2). Some important features of this process are:

- The Sponsor can receive a Letter of Intent to Provide an Allocation of Housing Credits relatively early in the development process so that if the development can be constructed as proposed, this significant piece of the funding sources is assured.
- VHFA staff can, when an approved development has hit certain benchmarks, issue the appropriate documentation of the credit award (including a Binding Rate Agreement, Reservation Certificate, Carryover Allocation, and 8609).
- The VHFA Board of Commissioners is able to make their decision to provide this Letter of Intent all at once, based on features of the development (including design features) that the sponsor represents, rather than having the sponsor resubmit the same (or a very similar) proposal repeatedly in order to get approval during pre-determined funding cycles.
- Any proposal that goes before the VHFA Board and is not approved for a Letter of Intent cannot re-apply for credits for a six-month period.
- In the event that a Sponsor who has received a Letter of Intent from VHFA is unable to move the project forward and receive a Reservation Certificate / Binding Rate Agreement within 18 months of the Letter of Intent date, the Letter of Intent will expire and the Sponsor is “locked-out” from re-applying for credits for that development for a six-month period. This 18-month period can be extended by the VHFA Board if the project’s permits are under appeal in Environmental Court or the Vermont Supreme Court. Applicants will need to affirmatively state their causes for believing that an application can proceed within 18 months from Letter of Intent to Reservation Certificate or Binding Rate Agreement in the Housing Credit application.
- Any project re-applying for credits under the Delayed Project Set-Aside (if the project is substantially the same as the original application, in location, overall size, rent and income targeting, and development team composition) will only need to meet project thresholds as described in “Full Application” herein. It will not need to be re-considered for conformance with the “Evaluation Criteria” section of the Plan, having received that comparative evaluation already.

### 1. PRE-APPLICATION MEETING

VHFA staff and the Sponsor will meet to discuss the proposal. Prior to this meeting the Sponsor will have had discussions with the other funding agencies that are shown in the draft pro-forma to discuss the availability of such funding, the timing of their award cycles, the reasonableness of the amount requested, and the compatibility of the funding source with the proposed development. No formal application for these other funding sources needs to have been submitted at the time of the Housing Credit pre-application meeting. Sponsors do not need to have site control for this meeting but do need to have an identified site, and will provide VHFA staff with a site map (i.e. tax map or pre-existing site survey map, such as a map for zoning or subdivision purposes).

The purpose of this meeting is to allow VHFA staff to see how compatible the proposal is with the evaluation criteria in the Plan and to provide feedback to the Sponsor on what if any changes might be considered to make the development more compatible. VHFA staff will also provide feedback on whether other funding sources than those listed in the draft pro-forma ought to be pursued.

## 2. FULL APPLICATION

VHFA is required by law to assure that each project that receives a Housing Credit allocation substantiates its viability and need for Housing Credits. A Sponsor must meet the following basic threshold qualifications:

- I. Submission of a complete VHFA application and Housing Credit Supplement (Appendix 2), including all required attachments and payment of required fees.

At the time of application the Sponsor must submit either elevation drawings or computer-generated images of the completed buildings (for new construction; for rehabilitation of existing structures, photographs will suffice). For both types of projects a site plan needs to be provided. The Sponsor must also provide evidence (i.e. a letter from the town) that they have met with the town's zoning administrator and that the municipality finds the proposal's density is allowed under the current zoning for the site. Other required application submissions are listed in the Housing Credit application package.

The Sponsor must clearly identify and provide an explanation of any line item in the capital budget or operating budget of which all or any portion of the dollar amount therein is going to the Sponsor or to a related party.

The Sponsor of a scattered site development (in which not all of the units are Housing 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 Housing Credit award 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 issued a Letter of Intent, will jeopardize the set-aside of credits, and staff, in consultation with the VHFA Board, 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, loss of site control, or any change that, had it been in the original proposal, might have resulted in a different evaluation of the project.

- 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 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 "Compliance" section).

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

A disinterested party who is approved by the Allocating Agency must conduct a Market Study at the Sponsor's expense. An independently-prepared project-specific Market Study that meets the Market Study Standards must be submitted by the Sponsor at time of application. The Allocating Agency will also consider the 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. Housing Credit Awards will be based upon the experience and capacity of the project team.

The Sponsor 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 Sponsor is proposing multiple projects in any given year, the organization must have the capacity to oversee all of the developments proposed. The Sponsor must demonstrate experience on the development team of having worked on Housing Credit projects and Vermont developments in sufficient depth and in recent time in order to demonstrate both capacity /capability and program knowledge.

V. Developer's Fee / Consultant Fee in the budget does not exceed the program limits (Appendix 3b).

VI. Builder's Overhead, Profit, and General Requirements in the budget comply with Allocation Plan limits (Appendix 3a).

VII. Applicant may, at its 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 Ceiling Credits must agree to a perpetual Housing Subsidy Covenant.

VIII. The developer will provide a Capital Needs Assessment and will ensure that the scope of work addresses all long-term capital needs of the project. For projects that are new construction (or are creating new housing units through an adaptive re-use of a building), or for projects that are "gut" rehabilitation (such that all major systems are either being replaced or are in good condition and are expected to have the same capital lifespan as if they were new) the CNA can be submitted later in the development process (but prior to issuance of the IRS Form 8609). For all other developments the CNA is required prior to issuance of the Reservation Certificate / Binding Rate Agreement or, if no such agreement is needed, prior to the Carryover Allocation. The purpose of this requirement is to provide, in a timely fashion, information to the owner and to VHFA regarding the scope of rehabilitation and the funding of the replacement reserves in the operating budget.

IX. Projects must meet the Mixed-Income Threshold.

X. Project is planned to maintain the Historic Settlement Pattern of Compact Village and Urban Centers separated by rural countryside.

- XI. Projects that are new construction must be located in housing markets with a vacancy rate of 5.0% or less as demonstrated by the Market Study.
- XII. Sponsor must provide detail in the application of which elements (as outlined in Appendix 3e) of Universal Design they intend to incorporate into their proposed development.
- XIII. Sponsor must submit with application the latest report that they are required to submit to DHCD that demonstrates their efforts to comply with E.O. 3-73 regarding the provision of Supportive Housing for the homeless.
- XIV. Sponsor must provide a recent appraisal that conforms with VHFA's Appraisal Standards (Appendix 3g) that demonstrates that the acquisition cost of land and buildings is supported and is reasonable. Staff and the VHFA Board may take extenuating circumstances into account in evaluating the appraisal.

All applications that are approved by the Board will be held to the rules and requirements of the Plan in effect at the time of Board approval, unless there are retroactive changes to the Code that staff need to impose on all previous awardees. When a new Plan is adopted, it will apply to all applications submitted after its adoption only.

### 3. BOARD APPROVAL

The VHFA Board of Commissioners at one of its monthly meetings will vote on approving Housing Credits for specific proposals. In general Staff will notify developers of the timing of this expected meeting (and will target April or May for it), and will notify developers of an application deadline in the months prior to the meeting. Staff may at its discretion choose to have another subsequent allocation meeting at any time if VHFA receives an application from a project for the Delayed Project Set-Aside. At any allocation meeting conditions may be imposed by the Board in addition to conditions that Staff will be requiring. These additional conditions may include, but are not limited to: requiring the Sponsor to seek alternative funding sources to those shown in the pro forma; design changes or the addition of other features or amenities; documentation of representations made by the sponsor; changes to the fee structure of optional services, or to the services themselves; changes to the tenant income mix or rent structure; and a requirement that the project be brought back before the VHFA Board after some conditions have been satisfied. A target of up to two years' worth of Ceiling Credits may be committed via Letters of Intent (this amount may be adjusted from time to time by the VHFA Board). The VHFA Board may decide to commit Credits in excess of two years' worth in two limited circumstances: 1) if a development is bringing in substantial new resources to the State (that are not the sources commonly used that get annual funding appropriated, i.e. HOME, CDBG and state trust fund) that are, in VHFA Staff's determination, essential to the financial strength and viability of the development, and which require award of credits as a precondition to, or create a competitive benefit for, applying for that resource. For purposes of this exception, "substantial" is defined as at least 40% of a project's total cost including non-capital contributions such as funding for services or rental assistance; or 2) if funds are awarded to a project from the Delayed Project Set-Aside.

### 4. RESERVATION CERTIFICATE / BINDING RATE AGREEMENT

VHFA staff will issue a Reservation Certificate or a Binding Rate Agreement when certain benchmarks have been met, including any conditions that have been imposed in the VHFA Board Approval and those reflected in the Letter of Intent. Those benchmarks include: submission of a CNA (lesser rehabilitation projects only – see "Application Process – Full Application, Section VIII"); having plans and

specifications for construction in a form sufficient to prepare reasonably accurate construction cost estimates; all required local approvals have been obtained and the Act 250 approval process, if required, has been initiated; submission of a fair housing plan acceptable to VHFA and evidence that the Sponsor has met with the local provider of services to homeless persons; and, all sources of \$100,000 or greater in the pro forma have issued conditional commitments for funding.

With regard to Reservation Certificate / Binding Rate Agreements, VHFA shall retain authority to revise or retract the Certificate at any time if it is judged infeasible for the Sponsor to meet any of the conditions set forth in the Certificate or if financial information provided by the Sponsor indicates, in the opinion of VHFA, that a lesser or greater amount of Housing Credits are needed for project feasibility.

## 5. CARRYOVER ALLOCATION

VHFA is authorized to issue a Carryover Allocation to a Sponsor upon request so long as the Sponsor has met the conditions as stated in the Letter of Intent/Reservation Certificate/Binding Rate Agreement. The Sponsor must submit a Cost Certification no later than one (1) year from the effective date of the Carryover Allocation. This certification must be accompanied by updated project information including a current pro forma. Staff may also ask for documentation of additional costs.

VHFA reserves the right, as permitted by Section 42, to issue less than the maximum credit allocation otherwise supportable by the project's eligible basis. An allocation of Housing Credits to a project in an amount less than requested may be permitted, with conditions that the gap thereby created be filled by another funding 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 / Binding Rate Agreement.

## 6. FINAL TAX CREDIT ALLOCATION (IRS FORM 8609) AND COST CERTIFICATION

CPA-prepared Cost Certifications are recommended for all projects. 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 certification of cost prepared by the owner (which includes 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 certification of costs and supporting documentation, but requires the CPA Cost Certification to be submitted as soon thereafter as possible.

## EVALUATION CRITERIA

Staff will consider all applications submitted in an allocation cycle together and will assign weight to a variety of project and/or sponsor characteristics as outlined below. This weight will be used to rank the projects and that ranking will be the primary staff consideration in making recommendations to the VHFA Board.

- 1) Projects that are in a Downtown, a Village Center or Neighborhood Development Area will receive five checkmarks; projects that support Downtowns or Village Centers or Neighborhood Development Areas by virtue of their location (i.e. that are within a reasonable walking distance from these areas) will receive four checkmarks. A map outlining the Downtown / Village Center / Neighborhood Development Area and the location of the project must be included with the application. Projects located in a Dense Infill Site will receive two checkmarks.
- 2) Projects whose tenancy/type has a majority of the total units two bedroom or larger and are available for General Occupancy will receive five checkmarks. Projects that are for General Occupancy and are of any market-appropriate unit size distribution will receive four checkmarks. Projects that are age-restricted for senior occupancy (and are of any market-appropriate unit size distribution) will receive one or three checkmarks, based on the robustness of the service package offered. Service-Enriched Housing (equivalent to the SASH model) will receive three checkmarks. Staff will evaluate all service plans and will assign one or three checkmarks accordingly.
- 3) Any project that provides Supportive Housing units for the Homeless or At Risk of Homelessness at the proposed project (or within the Sponsor's existing portfolio that are not already dedicated to be Supportive Housing) equal to 25% of the Housing Credit units proposed will receive four checkmarks.
- 4) Projects that can demonstrate the ability to serve households earning no more than 30% of the area median gross income (AMGI) and those on public housing waiting lists by having at least 25% of the total units in the project receive 'new' project-based-rental assistance will receive three checkmarks. ('New' meaning the PBRA is not already at the occupied development, nor is being transferred from another occupied project, unless that transfer happens simultaneous with new rental assistance for the existing tenants). Projects that have existing project-based rental assistance on at least 25% of the total units at the project will receive one checkmark.
- 5) Projects of 20 units and over that have no fewer than 20% of the units in the development unrestricted as to income and rents, or else restricted to households above 60% of the area median gross income, will receive two checkmarks. For developments of under 20 units, a single unit that is either unrestricted or restricted above 60% will similarly receive two checkmarks.
- 6) Projects with Access to Public Transportation will receive two checkmarks.
- 7) Projects that propose the removal of Blight will receive two checkmarks.
- 8) Existing projects that are Federally Subsidized and At-Risk will receive two checkmarks.
- 9) Projects that utilize the Historic Rehabilitation Tax Credit as described in the Internal Revenue Code Section 47(a)(2) will receive one checkmark.
- 10) Projects that will be constructed to and certified as meeting either Passive House Construction standards or Net Zero construction standards will receive one checkmark.
- 11) Projects that are Highly Ready-To-Proceed to construction will receive one checkmark.
- 12) Projects intended for Eventual Tenant Ownership will receive one checkmark.
- 13) Projects that are in a town that has market need and demand but has no affordable housing of the type proposed will receive one checkmark.

## COMPLIANCE

The Budget Reconciliation Act of 1990 adopted by Congress amended Section 42 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 Housing Credit recipients will be required to execute and record a Housing Credit Housing Subsidy Covenant (the "Covenant"). The Covenant must be approved by VHFA. The Covenant must be signed by the Owner and sent to the municipality for recording prior to VHFA issuing a Carryover Allocation or IRS Form 8609. The Covenant will, at a minimum, require conditions wherein the Sponsor and the development must continuously comply with Section 42 and other applicable sections of the Code and the Treasury Regulations issued thereunder and will bind any successors' interest for the specified time period. Except for first position debt, all financing on the development will be subordinate to the Covenant. In the event that a project's funding source requires its own Housing Subsidy Covenant, the provisions of the Housing Credit Housing Subsidy Covenant may be incorporated into such Covenant and the requirement of a separate Housing Credit 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 & Schedule A completed by the Owner, for the first year of the Compliance 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 will be posted annually on VHFA's web site.

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. Management agents are also required to demonstrate that they have received some Fair Housing training. Owners and managers are required to accept the Common Tenant Rental Application and provide project and vacancy information and participate in VHFA's Directory of Affordable Housing (DOARH). Management Agents must provide notice of available units to local and regional organizations providing services to the homeless. The owner and/or management agent is required to have a lease with a minimum term of six months and this lease must contain an addendum to address VAWA.

Additionally, if the development has received either TCAP or 1602 Exchange Program funds the owner must comply with the VHFA Asset Management Policy.

Information on rental housing management and compliance can be found at –  
<http://www.vhfa.org>

- II. Recordkeeping and Record Retention

The owner of a Housing Credit eligible development must keep records for each qualified Housing 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) which may take into account the presence of a Resident Manager's Unit;
- 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).
- h. Evidence that units are either under a memorandum of understanding or master leased to a Human Service Agency continue to remain dedicated to Supportive Housing so long as funding is available to provide the proposed supportive services. Failure to submit an annual report on the locations and number of Supportive Housing units being served in some cases may be a violation of the Housing Subsidy Covenant and can make the Sponsor ineligible to receive future allocations of Housing Credits.

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.

As part of the compliance monitoring reporting requirements, each property owner (or syndicator) will be required to submit annual operating statements showing property income and expenses in a format acceptable to VHFA.

Tenant-specific data must be uploaded annually through the VHFA Web Compliance Management System. Hard copies of the utility allowance schedule, the Tax Credit Questionnaire and the Fair Housing Questionnaire must be reported annually as well.

### III. Certification and Review Procedures

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

- a. Certification Procedure – see “Owner’s Certificate of Continuing Program Compliance” [www.vhfa.org/rentalhousing/forms-and-documents](http://www.vhfa.org/rentalhousing/forms-and-documents)

b. Review Procedure

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

c. Exception for Certain Properties

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

- 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.
- iii. Projects in which 100% of the units are Housing Credit units are not required to recertify annually **after** the first annual recertification has been completed. However, it should be noted that other funding sources do not allow this waiver (ie: Section 8, HOME and RD).

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 Treasury 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 up to 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 Housing Credits are allocated. The Agency's obligation to monitor for compliance does not make the Agency liable for an owner's non-compliance.

## VERMONT AFFORDABLE HOUSING TAX CREDITS

The Vermont tax credit for affordable housing is governed by 32 VSA § 5930u and has three eligible uses:

### **RENTAL HOUSING TAX CREDITS**

#### **I. Eligible Project**

An eligible project is a rental housing project identified in 26 U.S.C. § 42(g) and meets all of the requirements laid out the Vermont Qualified Allocation Plan.

#### **II. Preference will be given first to projects that are financed using 4% (bond) tax credits; additional preference will be given to projects that also:**

- a. That target a minimum of the equivalent 10% of the units to households who are Homeless or At Risk of Homelessness, and/or
- b. Agree to a perpetual Housing Subsidy Covenant.

### **HOMEOWNERSHIP TAX CREDITS**

#### **I. Project Selection**

The Homeownership Tax Credit may only be allocated to a development or project intended for owner-occupied housing (See Eligible Development below.)

#### **II. Eligible Applicant**

Both for-profit and non-profit developers who have demonstrated financial strength and experience in for-sale single family housing development consistent with the nature and scope of the proposed development as determined by VHFA may apply for the Homeownership Tax Credit. State instrumentalities such as VHFA or VHCB, and municipalities are eligible applicants.

#### **III. Eligible Development / Project**

Projects must meet each of the following criteria:

- a. Eligible housing types include: single family detached units, mobile homes, and single family attached units including: condominium, cooperative, cohousing and planned unit developments.

Units may be stick-built, modular, panelized or manufactured homes; however, all units except mobile homes must conform to the VHFA Green Building and Design Standards. Mobile homes must meet Energy Star standards.

- b. All units receiving the Homeownership Tax Credit must be owner occupied.
- c. A newly constructed/substantially rehabilitated single unit or home can be considered an Eligible Development / Project.

Preference will be given to projects which meet the following criteria:

- a. Down payment assistance programs
- b. Projects which are supported under an Employer Assisted Housing Program
- c. Development provides new construction in housing markets where there is a demonstrable lack of single family affordable housing stock through a market analysis.
  - i. Project is planned to maintain the Historic Settlement Pattern of Compact Village and Urban Centers separated by rural countryside; or,
  - ii. Projects that are in Downtown or a Village Center; or,
  - iii. Projects that support Downtowns or Village Centers by virtue of their location (i.e. that are within a reasonable walking distance from the town core); or,
  - iv. Projects that are consistent with the Vermont Neighborhoods Program
- d. Project uses Section 8 Homeownership Vouchers in combination with Homeownership Tax Credit for deeper subsidy to very low income households.
- e. Project serves as permanent replacement housing for homes damaged or destroyed in a natural disaster.

#### IV. Purchase Price Limit & Occupancy Standard

The Homeownership Tax Credit units in the project must sell at or below the purchase price limits allowed by the VHFA program and that the credit makes the home available at a reduced cost to the buyer.

The Housing Developer must agree to provide sales documentation, upon request of the Agency that demonstrates 100% of the Homeownership Tax Credit units are owner occupied (32 V.S.A. § 5930u (9)(b)(2)(A))

#### V. Income Limit

The Homeownership Tax Credit units in the project must be sold to households whose incomes are at or below 120% of the Statewide Median Income.

The Homeownership Tax Credit may be evenly spread over the units or divided disproportionately to allow a greater range of affordability.

#### VI. Term of Affordability

All units or programs receiving the Homeownership Tax Credit must be created and maintained as an affordable housing resource in perpetuity.

program, or through a soft second mortgage program. The covenant or second mortgage must name the nonprofit or public designee that will monitor the resale and enforce the mechanism of affordability. Either of these two programs must be administered by an existing entity that administers similar programs (such as VHFA, VHCB, or a community-based non-profit who has a demonstrated plan, has adequate experience with homeownership programs, has adequate staff capacity, and has adequate funding).

#### VII. Final Allocation and Cost Certification

Upon approval by the Board of Commissioners of VHFA, a developer/applicant will receive a letter of intent from VHFA for the Homeownership Tax Credit.

Upon submission of a final cost certification VHFA will issue a Credit Certificate and a State 8609 for the Homeownership Tax Credit project.

### **VHFA DOWN PAYMENT ASSISTANCE TAX CREDITS**

- I. The Vermont Housing Finance Agency (Agency) has the authority to allocate affordable housing tax credits, as authorized by the Vermont legislature, to finance down payment assistance loans that meet the following requirements:
  - a. the loan is made in connection with a mortgage through an Agency program;
  - b. the borrower is a first-time homebuyer of an owner-occupied primary residence; and
  - c. the borrower uses the loan for the borrower's down payment or closing costs, or both.
- II. The Agency shall require the borrower to repay the loan upon the transfer or refinance of the residence.
- III. Loan terms and program requirements will be reviewed and approved annually by the Board of the Vermont Housing Finance Agency.

## DEFINITIONS

Each definition containing an asterisk (\*) is intended to be consistent with the tax credit program statutes at US Internal Revenue Code Section 42 and Regulations 1.42-1(T) through 1.42-17.

**Access to Public Transportation:** The development is within 0.5 miles of public transportation that operates at regular times on fixed routes and are used by the public.

**Allocating Agency (or Agency):** means Vermont Housing Finance Agency (VHFA).

**Applicable Fraction:\*** The fraction used to determine the qualified basis of the qualified low income building, which is the smaller of the unit fraction or the floor space fraction, all determined as provided in Section 42(c)(1).

**Applicable Percentage\*:** The percentage used in calculating the tax credit based on a building's qualified basis as defined in Section 42(b), as may be set or amended from time to time by IRS guidance or Congressional action.

### **At Risk of Homelessness:**

#### Category 1 (Individuals and Families)

An individual or family who:

1. Has an annual income below 30% of median family income for the area; **AND**
2. Does not have sufficient resources or support networks immediately available to prevent them from moving to an emergency shelter or another place defined in Category 1 of the "homeless" definition; **AND**
3. Meets one of the following conditions:
  - i Has moved because of economic reasons two or more times during the preceding 60 days immediately preceding the application for assistance; **OR**
  - ii Is living in the home of another because of economic hardship; **OR**
  - iii Has been notified that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance; **OR**
  - iv Lives in a hotel or motel and the cost is not paid for by charitable organizations or by Federal, State, or local government programs for low-income individuals; **OR**
  - v Lives in an SRO or efficiency apartment unit in which there reside more than two persons or lives in a larger housing unit in which there reside more than one and a half persons per room; **OR**
  - vi Is exiting a publicly funded institution or system of care; **OR**
  - vii Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the State's approved Con Plan

#### Category 2 (Unaccompanied Children and Youth)

A child or youth who does not qualify as homeless under the homeless definition, but qualifies as homeless under another Federal Statute.

#### Category 3 (Families with Children and Youth)

An unaccompanied youth who does not qualify as homeless under the homeless definition, but qualifies as homeless under section 725(2) of the McKinney-Vento Homeless Assistance Act, and the parent(s) or guardian(s) or that child or youth if living with him or her.

**Basis Boost:** An increase of up to 30% in eligible basis provided to Ceiling Credit buildings which meet the State requirements for the Basis Boost set forth herein.

**Binding Rate Agreement:**\* A document in which the owner of a project elects, irrevocably, to fix the applicable percentage with respect to a building or buildings. (The percentage for non-federally subsidized buildings will not be less than 9% per year.)

**Blight:** A condition that exists when a significant portion of a building or site is uninhabitable or unusable due to neglect, condemnation, or damage from fire or other natural disaster. This definition may be met by: a project in which there is one building which is in a blighted condition (whether it's a project having only one building, or if there is at least one building within a multi-building scattered site project); or a project which involves the clean-up of a brownfield; or a project which may involve the demolition of unused non-housing structures which may be in a blighted condition or a condition of disrepair which has an adverse effect on the surrounding community, in order to develop a site into affordable housing. Blight will include the construction of new affordable units as replacement housing for units damaged or destroyed in a declared natural disaster area in the same municipality affected by that disaster.

**Bond Credits:** (“Automatic Housing Credits”, “out-of-cap credits”, or “4% credits”) Housing Credits that are available to a project when half or more of a project’s total cost is financed with tax-exempt financing. Bond Credits differ from Ceiling Credits.

**Builder’s Overhead, Profit, and General Requirements:** Limits that apply when there is an identity of interest between the developer and builder (Appendix 3a).

**Capital Needs Assessment (CNA):** An independently, professionally prepared report that evaluates the systems of a building and identifies the remaining useful life of those systems, as well as estimating the cost of replacing them (Appendix 3i).

**Carryover Allocation:**\* An allocation of current year tax credit authority by the Allocating Agency, pursuant to Section 42(h)(1)(E) of the Code and Treasury Regulations Section 1.42-6.

**Ceiling Credits:** Federal Housing Credits that are allocated to each state based on its population. Federal legislation passed at the end of 2000 granted the State of Vermont a “small state set-aside” of \$2,000,000, which is adjusted annually by an inflation index. Ceiling Credits are a limited and therefore competitive resource.

**Code:** The Internal Revenue Code of 1986 as amended.

**Common Tenant Application:** The application adopted for use by the housing funding agencies of Vermont, as may be modified or amended from time to time (Appendix 3k).

**Community Revitalization Plan** – In Vermont the State’s program for designating downtowns, village centers, and neighborhood development areas is the program that is used to identify areas for community revitalization.

**Compliance Period:**\* The period of 15 taxable years beginning with the first taxable year of the credit period, as defined in Section 42(i)(1).

**Consolidated Plan:** The current State of Vermont HUD Consolidated Plan for Housing and Community Development programs, which can be found at <http://accd.vermont.gov/housing/plans-data-rules/hud>

**Consultant Fee:** 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. Consultant Fees are included in the Developer's Fee. VHFA shall make the final determination of which fees in a specific project shall be considered Consultant Fees.

**Cost Certification:** A certified accountant-prepared statement (following the format outlined in the VHFA Housing Credit Application package) that documents the capital costs incurred by the Sponsor. There are two versions of the Cost Certification, the "10%" cost certification and the "final" Cost Certification. These must be submitted for VHFA review.

**Delayed Project Set-Aside:** A set-aside of Ceiling Credits for projects that had been awarded Ceiling Credits but had to return those credits due to factors beyond the control of development team, and those factors caused lengthy delays and did not allow the project to move forward on the timelines as described in the application materials and/or the credit award documentation. Those factors include but are not limited to permit appeals, lawsuits, and unforeseen physical impediments to construction commencement. This set-aside is not intended to cover long timelines needed to assemble financing. The purpose of this set-aside is to show programmatic support for projects that were evaluated by the VHFA Staff and Board and received an award of Housing Credits but then faced prolonged timelines and delays due to some form of opposition to the project (from neighbors, local community members, municipalities, etc.) and had to return those Housing Credits due to those delays. Staff will use discretion in determining which projects are eligible to receive credits from this set-aside. Any unused credits from this set-aside as of time of the annual allocation meeting will be released from it and will be available to all applicants.

**Dense Infill Sites:** Sites not in or within designated downtowns, village centers or neighborhood development area intended to provide convenient neighborhood and city-wide oriented goods and services and employment opportunities within walking or biking distance of many of the city's or town's residential areas.

**Developer's Fee:** Capital budget fee taken by the developer as compensation for their time and risk associated with the development.

**Difficult Development Area (DDA):\*** Any area designated by the Secretary of Housing & Urban Development as having high construction, land and utility costs relative to Area Median Gross Income in accordance with Section 42(d)(5)(C)(iii)(I).

**Downtown:** Defined in the Consolidated Plan and as provided for in 24 VSA Chapter 76A, "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.

**Employer Assisted Housing Program:** A program through which employers assist workers in the purchase of a home through down payment assistance grants or closing cost grants.

**Eventual Tenant Ownership:** A project that is intended for "eventual tenant ownership" is one that can demonstrate that the tenants that will be occupying the project at the end of the tax credit initial

compliance period would have the choice of purchasing their residence, either as a condominium, a housing cooperative, or a single-family home.

**Extended-Use Period:**\* The period described in Section 42(h)(6)(D). For projects receiving 9% (ceiling/allocated) credits, the extended use period is perpetual. For projects receiving 4% (bond) credits, this period is a minimum of 30 years.

**Fair Housing:** The US Fair Housing Act (45 USC 3601-3619), the State of Vermont Fair Housing Act, and any rules and regulations relating thereto from HUD or from the State of Vermont (9 VSA Chapter 139).

**Federally Subsidized and At-Risk:**\* Defined as 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.

**General Public Use:** To be available for “general public use” a building must be open and available to the general public. Buildings that restrict occupancy to tenants with special needs, or tenants who share a common occupation or interest, or members of a specified group (so long as those restrictions are otherwise permitted by law and by Federal, State or local programs or requirements) do not violate the general public use requirement because of these restrictions.

**Green Building and Design Standards:** A standard relative to building practices acceptable to VHFA including design and energy efficiency (Appendix 3d).

**Highly Ready-To-Proceed:** Any project that has received all necessary local, state, and federal permits necessary to begin construction with the exception of the final building permit, and is past any appeal periods on such permits.

**Historic Settlement Pattern of Compact Village and Urban Centers:** 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.

**Homeless:** Defined here as household meeting criteria in one of the following categories:

Category 1: Literally Homeless:

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning: (i) Has a primary nighttime residence that is a public or private place not meant for human habitation; (ii) Is living in a publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs); or (iii) Is exiting an institution where s/he has resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

Category 2: Imminent Risk of Homelessness

(2) Individual or family who will imminently lose their primary nighttime residence, provided that: (i) The residence will be lost within 14 days of the date of application for homeless assistance; (ii) No

subsequent residence has been identified; and (iii) The individual or family lacks the resources or support networks needed to obtain other permanent housing;

Category 3: Homeless under other Federal statutes

(3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who: (i) Are defined as homeless under the other listed federal statutes; (ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing during the 60 days immediately prior to the homeless assistance application; (iii) Have experienced persistent instability as measured by two moves or more during the preceding 60 days; and (iv) Can be expected to continue in such status for an extended period of time due to special needs or barriers; or

Category 4: Fleeing/Attempting to Flee DV

(4) Any individual or family who: (i) Is fleeing, or is attempting to flee, domestic violence.; (ii) Has no other residence; and (iii) Lacks the resources or support networks to obtain other permanent housing.

**Homeownership Tax Credit:** Tax credits provided for owner-occupied developments which meet the eligibility criteria of the Vermont Housing Finance Agency homeownership loan program. The Sponsor or applicant must ensure the resources created by the credits support perpetual affordability to moderate and low income Vermonters and that the tax credit will benefit future homeowners.

**Housing Credits:\*** Means low income housing tax credits as described in Section 42.

**Housing Subsidy Covenant:\*** The agreement (sometimes called a Land Use Restriction Agreement) between the Agency and an owner restricting a property to affordable housing use during the Compliance Period and Extended Use Period. See Internal Revenue Code Section 42(h)6.

**Human Service Agency:** A local non-profit organization whose mission is to serve people with special needs including people who are homeless, disabled, youth at risk, victims of domestic violence, veterans and other vulnerable populations. This organization can typically provide supportive services and/or emergency or temporary housing to the community.

**IRS Form 8609:\*** The Low Income Housing Credit Allocation Certification, IRS Form 8609, is prepared by the Agency once the project is completed and its costs have been reviewed and certified by a certified public accountant. The first part of the form is completed by the Agency, the second part by the owner. The form is then attached to the owner's federal income tax return every year for the Compliance Period.

**Letter of Intent:** A letter issued by the Agency that sets aside Housing Credits for a development, subject to conditions. The amount of the credits may be subject to change depending on the project's budget, but the amount stated in the Letter will equal the project's qualified basis times the applicable percentage in effect at the time of the letter (plus some allowance for future fluctuations in the basis or the percentage).

**Market Area:** Unless otherwise defined in the Agency's market study standards, market area refers to the city or town in which the proposed development is located, and adjacent cities or towns.

**Market Study:** Defined as a comprehensive study of housing needs of low-income individuals in the market area to be served by the project. The market study needs to follow any standards that have been adopted by the Agency (Appendix 3h).

**Minimum Set-Aside Election:**\* Means the federally imposed minimum proportion of total project units set aside as low income units at one or more area median gross income level(s). The minimum set-asides include the “20-50” test and the “40-60” test. This election is made by the Sponsor, and meets the minimum requirements of Section 42.

**Mixed-Income Threshold:** For projects under 20 units, no mixed-income requirement; projects of 20 – 49 units, 5% of the units must be market rate; projects 50 units or over, 10% of the units must be market rate. Market rate units are targeted to households whose income is greater than 60% of the Area Median Gross Income (AMGI).

**Neighborhood Development Area:** As defined by 24 VSA Sec. 2793(e)(b).

**Net Zero:** A Zero Energy Building is an energy-efficient building where, on a source energy basis, the actual annual delivered energy is less than or equal to the on-site renewable exported energy.

**Nonprofit Material Participation:**\* Means involvement in the development and operation of a project by a Nonprofit Sponsor (defined below) which is regular, continuous, and substantial as defined in Section 42 and 469(h) of the Code.

**Nonprofit Sponsor:**\* An organization that is described in Section 501(c)(3) or (4) of the Code, that is exempt from federal income taxation under Section 501(a) of the Code, that is not affiliated with or controlled by a for profit organization, and includes as one of its exempt purposes the fostering of low income housing within the meaning of Section 42(h)(5)(C).

**Qualified Census Tract (QCT):**\* Defined in Section 42 (d)(5)(C), means a census tract designated by the Secretary of Housing & Urban Development in which 50 percent or more of households have an income less than 60 percent of the area median gross income or in which there exists a poverty rate of 25 percent or greater.

**Passive House:** Passive House is a rigorous, voluntary standard for energy efficiency in a building, reducing its ecological footprint. It results in ultra-low energy buildings that require little energy for space heating or cooling. Passive House standards are enumerated by two certifying bodies: Passive House Institute US (PHIUS) or Passive House International (PHI).

**Reservation Certificate:**\* A document in which the Agency and the owner enter into a binding agreement as to the Housing Credit dollar amount to be allocated to a building or buildings.

**Resident Manager’s Unit:**\* Means a unit set aside by an owner of a development as a residential rental unit for a manager. In accordance with IRS Revenue Ruling 92-61, a manager’s unit can be included in the eligible basis of the building but will be excluded from both the numerator and the denominator of the applicable fraction. A manager’s unit is not classified as a residential rental unit, but rather as a facility reasonably required by a project that is functionally related and subordinate to residential rental units

**Residential Rental Unit:**\* A rental unit in a development used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation. Qualified units are rented or available for rent on a continuous basis, with a term of at least 6 months, are available to members of the general public, and are suitable for occupancy.

**Right of First Refusal:** A separate legal document that entitles an entity to purchase the property from the owner (which will generally be a limited partnership or limited liability company) for a specified price

and under specified conditions. The Right of First Refusal price must be the highest 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); or 3) the target return provided in the Borrower's Limited Partnership Agreement or other document provided to the 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.

**Section 42:** Section 42 of the Code.

**Service-Enriched Housing:** A combination of housing and services intended to help residents to live healthier, stable, satisfying, and productive lives. Services provide the support and care residents need to maintain or improve their health and to live safely in the housing site. The best examples of Service-Enriched Housing, such as the Vermont Blueprint for Health Support and Services at Home (SASH) program, address a range of health, social, and economic needs of residents. Service-Enriched Housing sites should meet the following criteria:

- Close to other community resources residents will need to access: food and other shopping, pharmacy, transportation, physician/medical services.
- Include common areas and residential units that support people with disabilities and aging in place, including physical accessibility and Universal Design features.
- Implement specific methods of serving residents with low incomes, disabilities, chronic health conditions, and/or frailty associated with aging.
- Implement stable and predictable methods of providing services that address a range of needs in an individualized and flexible manner to support individual resident needs, either through site employees or agreements with other entities. Common support services include meals, cooking assistance, cleaning, shopping assistance, personal care, social and recreational activities, and transportation.
- Implement practices that build positive relationships with residents and other community agencies, and empower residents to direct their own lives through supportive decision-making.
- Implement methods of improving access to health care and the health status of residents.
- Implement methods of measuring outcomes or performance, and for improving performance.

Two levels of Service-Enriched Housing will be considered when rating age-restricted housing developments:

1. SASH participation or equivalent comprehensive service package that provides for a care or enhanced service coordinator and wellness nurse who will work in partnership with community providers. Participation in these services is voluntary and free of charge. Staffing level shall be adequate to serve all residents living in the building. Standards for the this level of Service-Enriched Housing will be similar to those laid out in the Vermont Blueprint for Health Support and Services at Home (SASH) program or the HUD Supportive Services Demonstration for Elderly Households (FR-5900-N-22). It is expected that this model will provide preventative health care and services coordination, including self-management education and coaching, particularly relating to chronic health conditions, medication management assistance, crisis intervention, and transition support after a hospital, nursing home or short-term rehab facility stay. Comprehensive initial and periodic resident assessments would be expected.
2. The other level of Service-Enriched Housing would offer similar services but at a lower staffing level to a majority of the residents in the building. Professional support for residents aging in place or those with disabilities, information and referral, and wellness and social programming would be provided.

Staffing at Service-Enriched Housing would be in addition to management staff normally needed to be on site to serve regular resident needs or meet property management functions. Applicants will be asked to provide detailed descriptions of their proposed service provision and answer how they will meet each element of this definition, as well as provide an Annual Supportive Services Plan and Budget.

**Supportive Housing:** Supportive housing is permanent housing with supportive services for persons who are Homeless or At Risk of Homelessness. It plays an important role in the continuum of care and provides housing with services to help individuals or families become successful in independent permanent housing which may not include services. Candidates are often referred by, but not limited to, the following: homeless shelters, corrections departments, mental health agencies, community action agencies and other social service providers. Residency is not time limited.

Supportive services include, but are not limited to, life skills, budgeting, credit counseling, and housekeeping and parenting. The purpose of the services is to stabilize situations and allow the individual or family to develop the resources or skills needed to access independent permanent housing.

Services may be provided by the organization managing the housing or coordinated by them with other public or private agencies who are local partners. Supportive housing can be provided in one structure or several structures, at one site or in multiple structures at scattered sites.

**Tax Credit Rent:\*** A rent which, including tenant-paid utilities, cannot exceed 30% of qualifying income (up to 50% or 60% of area gross median income depending on the Minimum Set-Aside Election). To calculate rent, a certain number of occupants are assumed to occupy a unit depending on the unit's number of bedrooms (not number of occupants) (e.g. 1 person in a studio and 1.5 persons per bedroom for units of one bedroom and larger).

**Transitional Housing:** Some people who are Homeless or At Risk of Homelessness need more intensive services and therefore providing them with transitional housing helps them reach their goals until they can move into permanent housing. Transitional housing is similar to Supportive Housing since there is not always a distinction in the type or design of a transitional housing unit. The only distinction from permanent Supportive Housing is that the housing occupancy is time limited; residency generally lasts from six months to two years.

Similar to Supportive Housing, Transitional Housing plays an important role in the continuum of care and provides housing with services to help individuals or families become successful in some form of permanent housing, whether it be supportive or independent. Candidates are referred by similar agencies as Supportive Housing, and the supportive services can also be those listed under Supportive Housing. Those services can also be provided by the organization managing the housing or coordinated by them with other public or private agencies who are local partners. Transitional Housing can be provided in a purpose built facility or as part of existing housing in one structure or several structures, at one site or in multiple structures at scattered sites.

**Universal Design:** Also called Human Centered Design or Design for All. A set of design practices intended to make space usable by many people, to the greatest extent possible, at little or no extra cost (Appendix 3e).

**Village Center:** As defined and designated by the Agency of Commerce and Community Development, Division for Historic Preservation and as provided for in 24 VSA Chapter 76A, this means the central area of a village or town. Only projects in those towns that have obtained this designation can meet this evaluation category.

**Violence Against Women and Justice Reauthorization Act of 2013 (VAWA):** All owners and property managers must execute a lease addendum (HUD-91067) which provides the following protections:

1. The Landlord may not consider incidents of domestic violence, dating violence or stalking as serious or repeated violations of the lease or other “good cause” for termination of assistance, tenancy or occupancy rights of the victim of abuse.
2. The Landlord may not consider criminal activity directly relating to abuse, engaged in by a member of a tenant’s household or any guest or other person under the tenant’s control, cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant’s family is the victim or threatened victim of that abuse.
3. The Landlord may request in writing that the victim, or a family member on the victim’s behalf, certify that the individual is a victim of abuse and that the Certification of Domestic Violence, Dating Violence or Stalking, Form HUD-91066, or other documentation as noted on the certification form, be completed and submitted within 14 business days, or an agreed upon extension date, to receive protection under the VAWA. Failure to provide the certification or other supporting documentation within the specified timeframe may result in eviction.

**Year 15 Policy:** This policy: 1) outlines options available to owners of Housing Credit properties once they reach year 15 in their tax credit partnerships. Options include maintaining a development as affordable housing; selling or transferring ownership to an entity exercising a right of first refusal; or selling a development through the Qualified Contract Process; and 2) contains information about modified compliance monitoring requirements after year 15 Appendix 31).

## **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 any Housing Credit allocation is for its own purposes. VHFA makes 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 Housing Credit program.

No member, officer, agent or employee of 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 Housing Credit.

Notwithstanding any other limitations of this Plan, VHFA may enter into commitments to allocate Housing 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 VHFA Board of Commissioners may, at its sole discretion, reserve or allocate credits to a project regardless of its rank or score, provided the Board finds that the project serves a positive community development need or the public good. 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 Allocating 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 and its own experience and interpretation of the Plan in making the final reservation or allocation decision.

All tax credit awards are made subject to the availability of tax credits under applicable state and federal law and to any and all rules, regulations and requirements thereunder.

Content, including policies, linked in the Appendices are updated independent of the Qualified Allocation Plan.

## **Appendices**

1. Housing Credit Program Administration Personnel
2. Application Materials
3. Related Policies
  - a. Builder's Overhead, Profit, General Requirements
  - b. Developer Fee Policy
  - c. VHFA Policy on Investor Services Fees
  - d. Green Building and Design Standards
  - e. Universal Design Policy and menu of features
  - f. VHFA Policy on Program Fees
  - g. VHFA Appraisal Policy
  - h. VHFA Market Study Standards
  - i. VHFA/VHCB/DHCA Capital Needs Guidance Policy
  - j. Governor's Executive Order No. 3-73
  - k. Common Tenant Application
  - l. VHFA Year 15 Policy

**Appendix 1 - Housing Credit Program Administration Personnel**

Joint Committee on Tax Credits (QAP content):

Josh Hanford, Deputy Commissioner, Department of Housing and Community Development

Sarah Carpenter, Executive Director, Vermont Housing Finance Agency

Gustave Seelig, Executive Director, Vermont Housing and Conservation Trust Fund

Angus Chaney , Director of Housing, Agency of Human Services  
(Governor's designee)

Richard M. Williams, Executive Director, Vermont State Housing Authority

VHFA Board (project approvals):

L. Randolph Amis (Chair)  
Gustave Seelig (Vice-Chair)  
Lamont Barnett  
Michael Pieciak  
Dagyne T. Canney  
Lucy Leriche  
Jeanne A. Morrissey  
Beth Pearce

VHFA Staff (allocations and compliance):

Sarah Carpenter, Executive Director, (802) 652-3421

Joe Erdelyi / Josh Slade (applications and underwriting), (802) 652-3432 or (802) 652-3414

Kim Roy / Kathy Curley (compliance monitoring), (802) 652-3433 or (802) 652-3457

## Appendix 2 – Application Materials

- Application Materials
  - <http://www.vhfa.org/rentalhousing/application-materials>
  - Common Application
    - <http://www.vhfa.org/rentalhousing/developers/lihtc/application-materials/common-app>
  - Multifamily Rental Proforma
    - <http://www.vhfa.org/sites/default/files/documents/developer/ProForma%202015.xlsx>
  - VHFA Underwriting Guidelines
    - <http://www.vhfa.org/documents/developers/Underwriting%20Guidelines%20%28Rev%2005%2025%2016%29.pdf>
  - Supportive Service Plan
    - <http://www.vhfa.org/sites/default/files/documents/developer/Supportive%20Services%20Plan.docx>
  - Supportive Service Budget
    - <http://www.vhfa.org/sites/default/files/documents/developer/Supportive%20Service%20Budget.xlsx>
  - AHP Evaluation for Supportive Services
    - <http://www.vhfa.org/sites/default/files/documents/developer/AHS%20Evaluation.pdf>
  - Benchmark Guidelines
    - <http://www.vhfa.org/documents/developers/Benchmark%20Guidelines%202016.pdf>
- [Submission Timing Table](http://www.vhfa.org/documents/developers/housingCredAppSubTim.pdf)  
<http://www.vhfa.org/documents/developers/housingCredAppSubTim.pdf>

### Appendix 3 – Related Policies

- (a) Builder's Overhead, Profit, General Requirements  
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.
- (b) Developer Fee Policy  
Capital budget fee taken by the developer as compensation for their time and risk associated with the development. The total Developer's Fee shall not exceed 15% of the total development cost (excluding the fee itself and cash accounts). The maximum cash portion of the Developer's Fee shall not exceed \$1,000,000. 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 Developer's Fee (but not less than \$100,000) is deferred, then the developer can take up to a 15% fee. The term of repayment of a deferred Developer's 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.

In addition to these not-to-exceed limits, the Developer's Fee shall be calculated according to the following schedule:

Projects of fewer than 60 units: the "not-to-exceed" limits (above) apply.

Projects of 60 units and more: the maximum Developer's Fee shall be 10% of total development cost as defined above, and the maximum cash portion of the fee (i.e. the total fee less any lent back to the project) shall not exceed \$1,000,000.

For all projects that involve the refinance, recapitalization, or workout of developments already in the developer's portfolio (including transfers to or from related-party controlled partnerships or limited liability companies), the maximum developer's fee will be no more than 15% of the hard construction cost (including contingency). For projects that involve the arm's length acquisition of an existing subsidized development from an unrelated seller involving substantial construction work to be done by the buyer, the fee limit shall be 12% of the total development cost (which for purposes of calculating the fee excludes the fee itself and capitalized cash accounts) "Substantial construction work" for purposes of this section is defined as: any development whose construction eligible basis (as defined by Section 42) less developer's fee (and less consultant fees that are by definition included in the developer's fee limit) is greater than the project's acquisition eligible basis plus land cost. For projects that involve an arm's length acquisition of an existing subsidized development with less than substantial construction work, the developer's fee will be no more than of 15% of the hard construction cost (including contingency).

When any developer-related party is doing any work at all on the development (except for: 1) construction, which has separate limits, and 2) architectural, which will be reviewed for cost reasonableness), then that work will be considered part of the overall limit.

The Sponsor and the Allocating Agency prior to the issuance of the initial Housing Credit Reservation Certificate/Binding Rate Agreement shall agree upon the amount of the Developer's Fee. In the event that no Reservation Certificate or Binding Rate Agreement is issued, the relevant date will be the issuance of the Carryover Allocation. 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 Housing Credits. However, 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 Developer's Fee. VHFA may consider exceptions to the Developer's Fee limit on a case-by-case basis for extraordinary circumstances.

- (c) VHFA Replacement Reserve - Surplus Cash Distribution Policy  
<http://www.vhfa.org/sites/default/files/documents/multifamily/Replacement%20Reserve%20Surplus%20Cash%20Distributions%202015.pdf>
- (d) Green Building and Design Standards  
<http://www.vhfa.org/documents/developers/gbs.pdf>
- (e) Universal Design Policy and menu of features  
<http://www.vhfa.org/documents/developers/Universal%20Design%20Policy.pdf>
- (f) VHFA Policy on Program Fees  
[http://www.vhfa.org/rentalhousing/developers/rates#quicktabs-rental\\_developer\\_rates\\_and\\_fees=4](http://www.vhfa.org/rentalhousing/developers/rates#quicktabs-rental_developer_rates_and_fees=4)
- (g) VHFA Appraisal Policy  
<http://www.vhfa.org/documents/developers/Appraisal%20Standards%20-%20VHFA%20guide%202015.pdf>
- (h) VHFA Market Study Standards  
<http://www.vhfa.org/documents/developers/Market%20Study%20Guidelines%202016.pdf>
- (i) VHFA/VHCB/DHCA Capital Needs Guidance Policy  
<http://www.vhfa.org/documents/developers/CNA%20-%20VHFA%20guide%202015%20REV%2007%2016.pdf>
- (j) Governor's Executive Order 3-73  
<http://legislature.vermont.gov/statutes/section/03APPENDIX/003/00073>
- (k) Common Tenant Application  
[http://www.vhfa.org/documents/property\\_managers/VTcommonRentalApp.pdf](http://www.vhfa.org/documents/property_managers/VTcommonRentalApp.pdf)
- (l) VHFA Year 15 Policy  
<http://www.vhfa.org/documents/multifamily/Year%2015%20policy%20-%20VHFA%20guide%202015.pdf>

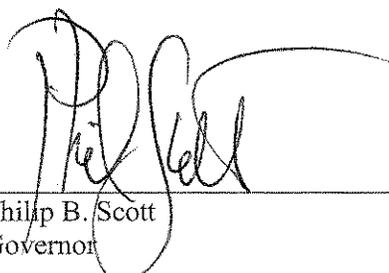
PHILIP B. SCOTT  
Governor



State of Vermont  
OFFICE OF THE GOVERNOR

The State of Vermont's Qualified Allocation Plan has been developed and approved by the Vermont Housing Finance Agency in accordance with the Federal Internal Revenue Code (IRC) of 1986, Section 42, as amended and 32 V.S.A. § 5930u. This Qualified Allocation Plan shall remain in effect until amended by the Vermont Housing Finance Agency and approved 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: \_\_\_\_\_

  
Philip B. Scott  
Governor