

**STATE OF RHODE ISLAND**



RHODE ISLAND HOUSING

**2006 QUALIFIED ALLOCATION PLAN**

# State of Rhode Island

## Qualified Allocation Plan For the Low-Income Housing Tax Credit Program

### INTRODUCTION

Rhode Island Housing and Mortgage Finance Corporation ("Rhode Island Housing") has been designated the responsibility for administering the federal Low-Income Housing Tax Credit Program for the State of Rhode Island. The Low-Income Housing Tax Credit ("LIHTC") was created pursuant to the Tax Reform Act of 1986 to encourage private sector participation in the construction and rehabilitation of housing for low-income individuals and families. The Omnibus Budget Reconciliation Act of 1989 required states to adopt consistent and objective procedures for allocating low-income housing tax credits to qualified developments. Specifically, federal law requires that a Qualified Allocation Plan ("Allocation Plan") outlining the process for the allocation of tax credits be presented to the public through a hearing for review and comment. Input from the public hearing and comment period as well as all available housing needs data must be considered in the establishment of a final Allocation Plan to be approved and executed by the Governor.

Rhode Island Housing has developed this Allocation Plan to comply with the requirements of Section 42 of the Internal Revenue Code (the "Code") and to ensure that those developments receiving tax credits produce or preserve housing which helps to reduce the most pressing housing needs of the State. This Allocation Plan establishes the priorities that the Low-Income Housing Tax Credit Program will address from among those needs and incorporates those priorities into the criteria used to evaluate all proposals.

All provisions of this Allocation Plan apply to the total amount of tax credits that the State of Rhode Island is authorized to allocate at any time, including projects applying for the four percent tax credit in conjunction with tax-exempt financing that is subject to the private activity bond cap.

### **I. LOW-INCOME HOUSING TAX CREDIT PROGRAM SUMMARY**

#### **A. Overview**

The Low-Income Housing Tax Credit Program was established as part of the Tax Reform Act of 1986 to provide an incentive to non-profit and for-profit developers to produce and maintain rental housing units for low-income individuals and families. The credit was originally authorized for calendar years 1987-1989 and has been extended or modified by Congress periodically since then. As part of the Omnibus Reconciliation Act of 1993, the Program was permanently extended effective July 1, 1992.

The low-income housing tax credit is advantageous to owners of qualified rental housing as the credit is economically more attractive than a tax deduction. The credit represents a direct dollar-for-dollar reduction in tax liability to be taken over a ten-year period. There are three types of credits available to Developers of low-income rental housing. The first type of credit is a 9% (approximate) annual credit for the costs of new construction or substantial rehabilitation of an existing building without any federal subsidies. The second type of credit is a 4% (approximate) annual credit for the costs of new construction or substantial rehabilitation of an existing building with a federal subsidy. The third type of credit is a 4% (approximate) annual credit for the cost of acquiring an existing building that involves substantial rehabilitation. A specific project may qualify for one type of credit or for a combination of the 4% and 9% credits.

The rates of 4% and 9% are upper limits of available credit percentages that fluctuate based on market conditions. The actual tax credit rates ("Applicable Credit Percentages") applicable to any month are based on monthly prevailing interest rates that are calculated and published by the United States Treasury Department. The amount of the annual credit is calculated to yield a present value of either 30% (4% credit), or 70% (9% credit) of certain eligible costs.

For further information and detailed requirements relating to the different credit types and methods of calculating the credit, refer to Section 42 of the Code.

#### **B. Rhode Island Annual Tax Credit Allocation Pool**

Each state is awarded a limited amount of tax credits annually. Rhode Island receives the small state minimum of \$2,125,000 million indexed for inflation. The pool of tax credits may be greater in any year if unused credits are carried forward or if previously allocated credits are returned or rescinded.

If Rhode Island allocates all of its annual per capita credits as well as its tax credits from prior years by the end of any calendar year, the State will qualify for credits from the National Pool. The National Pool is composed of all states' unallocated annual tax credit ceiling, returned or carried forward credits.

#### **C. Needs Assessment and Allocation Priorities**

The Code requires that Rhode Island Housing establish a plan which sets forth the selection criteria which will be considered in allocating tax credits in Rhode Island. The Allocation Plan must include certain statutorily mandated selection criteria, and also encourages criteria that are appropriate to meet local housing needs in Rhode Island.

##### **1) Federal Criteria**

The Code requires that preference for an allocation of credits must be given to developments serving the lowest income tenants, developments which commit to the longest period of affordability, and developments located in a qualified census tract ("QCT") which will contribute to a concerted community revitalization plan in qualified census tracts.

##### **2) Local Criteria**

Rhode Island Housing and the Office of Community Development, Municipal Affairs of the Department of Administration, in collaboration with other City, County and State agencies as well as involving citizen participation has developed the State of Rhode Island's Consolidated Plan 2005 – 2009 (the "Consolidated Plan"). Please refer to the Consolidated Plan available at [www.rihousing.com](http://www.rihousing.com) under the link Research and Reports for a full copy including all exhibits. The Housing Needs and Homeless Assistance section in Chapter 3 describes the projected needs for the five-year period beginning March 1, 2005 and ending February 28, 2010 needs are identified in Chapter 3.

- **General Needs:** Transitional and permanent housing for those currently homeless, caused by among other reasons, housing affordability; Preservation of affordable rental housing threatened by expiring federal subsidies or eligibility for prepaying subsidized mortgages; Concentration of resources to combine affordable housing and community development and stimulate a reversal of disinvestment in Rhode Island's urban areas; Assistance to many rural communities to achieve the 10 percent threshold of the Low and Moderate Income Housing Act; Adequate and appropriate housing with supportive services for the very poor, primarily single-parent households and for members of special needs populations, including the physically disabled; persons with mental illness; persons fleeing domestic violence; veterans; persons with chemical dependencies; and the frail elderly; The housing affordability gap for 40% of the population, who are rent burdened, paying more than 30 percent of their income towards rent and severely rent burdened, paying more than 50 percent of their income towards rent; Shortage of decent, safe and sanitary rental units; Growth in the number of affordable units has lagged considerably behind household growth, and much of the State suffers from a continually aging housing stock, a significant portion of which is characterized by severe or moderate physical problems such as lead-based paint hazards.
- **Elderly (1 – 2 person households):** For elderly households, there is a need for assistance for 7,923 units of affordable rental housing.
- **Families:** For small related renter households there is a need for housing assistance for 10,629 units of affordable rental housing. For large related renter households, there is a need for housing assistance for 4,201 units.
- **Other Households:** For non-related members and one-person non-elderly households, there is a need for 10,077 units of affordable rental housing.
- **Disproportionate Need:** Within the Renters category, there is a disproportionate need (defined by HUD as 10 percentage points higher than all need) among all minority low income households and among extremely low income and low income Hispanic renters.
- **Overcrowding:** The U.S. Census Bureau defines overcrowding as housing units with more than one person per room. According to the 2000 Census data, 2.9 percent of Rhode Island residents were overcrowded and 0.9 percent were severely overcrowded. The average household size for renter-

occupied units was 2.19 people per unit. While overcrowding occurs throughout the State of Rhode Island, the higher rates of overcrowding exist near Providence and nearby cities.

- **Lead Based Paint Needs:** Due to the age of its housing, Rhode Island has a large number of housing units that may contain lead-based paint hazards. HUD estimates that, based on the age of the housing, 62-90% of housing units contain lead paint hazards. Based on these estimates, approximately 250,000 of Rhode Island's 439,837 housing units are affected by lead-based paint. The Rhode Island Department of Health reports that 188 Rhode Island children were poisoned by lead-based paint hazards in 2003, that is almost 100 children per month. The majority of these children (803) live in the State's urban areas.

#### **D. Lock-In of Applicable Credit Percentages**

1) For developments subject to the state cap: Each project's Applicable Credit Percentage will be established based on published rates in effect in one of the following: (i) the month the project is placed-in-service; (ii) the month in which a binding and irrevocable election to lock-in the Applicable Credit Percentage is made between the Owner and Rhode Island Housing or; (iii) at the time of issuance by Rhode Island Housing of a Carryover Allocation Agreement.

This binding and irrevocable election will be made subsequent to a reservation of tax credits and generally before the Carryover Allocation Agreement is signed. The Applicable Credit Percentage election will be made as part of a written binding agreement such as the tax credit reservation letter or the carryover allocation agreement. A selection of a monthly credit percentage will only be valid if the binding agreement is executed by the end of that specific month.

2) For developments utilizing tax exempt bond financing with 4% credit:

The Applicable Credit Percentage can only be locked-in on two occasions—in the month in which the tax-exempt bonds were issued or at the placed-in-service date. Due to the length of time between these two opportunity dates, Developers should seek professional advice to mitigate some of the financial and market risk associated with this election.

3) Under Section 42(h)(7)(D) in allocating a housing credit dollar amount, Rhode Island Housing must specify the applicable percentage and the maximum qualified basis of the building. The applicable percentage may be less, but not greater than, the appropriate percentage for the month the building is placed in service, or the month elected by the taxpayer under Section 42(b)(2)(A)(ii)(I). Whether the appropriate percentage is the appropriate percentage for the 70-percent present value credit or the 30-percent present value credit is determined under Section 42(l)(2) when the building is placed in service.

For further information and detailed requirements relating to binding credit percentages, refer to Section 42 of the Code.

## **E. Eligibility Requirements**

To receive an allocation of tax credits, whether from the State's allocated pool (9% credits) or through the use of tax-exempt bond financing (4% credits), a project must meet eligibility requirements under both the Allocation Plan and the Code. While many of these requirements are briefly summarized below, applicants should note that the federal rules governing low-income housing tax credits are complex. All Developers are advised to consult a qualified tax attorney and/or accountant to determine eligibility for the credit. In making this determination, qualified professionals are expected to be current and knowledgeable with all private letter rulings (PLRs) and technical assistance memoranda (TAMs) issues by the Internal Revenue Service ("IRS") which may provide insight to the Service's view regarding eligible basis determinations.

In allocating tax credits, Rhode Island Housing makes no representations to Owners or other parties regarding compliance with the Code, Treasury Regulations or other laws or regulations governing low-income housing tax credits. Neither Rhode Island Housing nor its employees, agents, representatives, Board Members, or employees shall be liable for any matters arising out of, or in relation to, the allocation of low-income housing tax credits.

### **1) Residential Rental Property**

In order for a project to qualify as a low-income housing project, it must be residential property. In general, the project must be: used other than on a transient basis; rented or available for rent on a continuous basis; available to members of the general public; and suitable for occupancy. Facilities providing continuous nursing, medical, or psychiatric care are not considered residential rental units for tax credit purposes. Continual care, however, should not be confused with certain supportive services which can be provided, such as assuring that tenants obtain incidental care, as needed, by facilitating the making of medical appointments and by providing transportation to medical facilities, and by the provision of basic first-aid skills in case of emergencies.

### **2) Extended Use Period**

The Code requires that the low-income occupancy and rent restrictions be maintained during the initial compliance period of 15 years (Section 42(l)(1)). In addition, the occupancy restrictions must be maintained for an extended use period of an additional 15 years (Section 42(h)(6)(D)). Rhode Island Housing requires the following:

a. A Declaration of Land Use Restrictive Covenants ("Declaration") committing to an extended use period of affordability for the qualifying units of at least thirty years and a prohibition during the entire extended use period – not just the three year vacancy decontrol period – against evicting or terminating of tenancy of existing tenants in low-income units other than for good cause, must be executed by the project owner.

b. If a development is allocated Credit under the nonprofit set-aside, the current owner (and any new owner) during the compliance period must continue to qualify under that set aside. The Owner will indicate in the Declaration that they are electing to qualify under the nonprofit set-aside.

c. For projects financed with tax-exempt bond proceeds, the required extended use period of affordability will be the greater of (i) the period that the tax-exempt bonds remain outstanding or (ii) thirty years.

d. In addition, the Declaration provides that the owner waive the right to seek termination of the Declaration by petitioning Rhode Island Housing to find a buyer of the development as provided in Section 42(h)(6)(E)(I)(II).

e. **Regulatory Agreement** In addition to the Declaration, Rhode Island Housing requires that a Regulatory Agreement be recorded prior to any lien documents and not subject to revocation in the event of foreclosure. The development owner may be required to have all lien holders of a Development complete and sign a subordination to the Regulatory Agreement that will subordinate their liens to the provisions of the Regulatory Agreement.

### **3) Rent and Tenant Income Restriction**

The project must meet certain tenant income and rent restrictions:

a. **Income Restrictions:**

The Project must elect one of the following Minimum Set-Asides:

at least 20 percent of the rental units in the project must be rent restricted for and occupied by households with incomes no higher than 50 percent of the area median gross income ("AMGI"), adjusted for family size.

**OR**

at least 40 percent of the rental units must be rent restricted and occupied by households with incomes no higher than 60 percent of the AMGI, adjusted for family size.

b. **Rent Restrictions:**

The gross rent charged to a tenant (including utilities) cannot exceed 30% of the deemed income limit for a qualified low-income household at 50% or 60% of AMGI adjusted for family size, assuming 1.5 persons per bedroom. A table of qualified rents is located in the Developers Handbook.

For more information on tenant income and rent restrictions, including rules for calculating rents, see Section 42 of the Code.

### **4) Least Amount of Tax Credit Necessary for Project Feasibility**

The Code requires that Rhode Island Housing may not allocate credits in excess of the minimum necessary for the financial feasibility of the project and its continued viability as a qualified low-income housing project throughout the credit period.

Rhode Island Housing must evaluate the amount of the credit at three specific times: (1) at the time of application, (2) at the time of reservation, and (3) at the time the building is placed-in-service and an IRS Form 8609 is issued. We will consider the proposal's distribution of the tax benefits between direct development costs, soft costs, fees, operating reserves and other costs and evaluate the need for tax credits to fill the gap after other financing sources and subsidies have been taken into account. Sponsors will be required to certify the source and value of other subsidies and funding for the proposal.

#### **5) Minimum Property Standards**

Projects must meet state or local health or building codes or regulations. Corrections necessary to repair code violations must be specified in a rehabilitation work plan. The Developer will be required to provide certification or to demonstrate to Rhode Island Housing that any code violations have been corrected prior to receiving an allocation of the tax credit. Compliance with health, safety and building codes is an ongoing obligation; non-compliance may result in penalties and/or recapture of credit.

#### **6) Placed-In-Service Requirements**

Rhode Island Housing will allocate credits only to projects which can be reasonably expected to become eligible for the credits in the year in which the Developer is to be awarded tax credits. This means that projects must either be able to be placed-in-service in that year or have incurred more than ten percent of their reasonably anticipated project basis by the later of six months after reservation or year-end. Placed-in-service generally refers to the issuance of the first Certificate of Occupancy for each building in the project.

#### **7) Minimum Rehabilitation Requirements**

The Code requires that tax credit projects involve minimum rehabilitation expenditures. For a building to be substantially rehabilitated, the expenditures during any 24-month period must be at least the greater of: (a) ten percent of the depreciable basis of the building determined as of the first day of the 24-month period; or, (b) an average of \$3,000 per low income unit. Exceptions may apply for properties acquired from government entities and "expiring use" properties.

#### **8) Ten Year Placed In Service Restriction**

To be eligible for the acquisition credit, buildings may not have been placed in service within the last ten years. Generally, a transfer of the building results in a new placed-in-service date if, on the date of the transfer, the building is occupied or ready for occupancy. Exceptions may apply to certain property transfers and expiring use properties. In cases involving the purchase of a development that previously utilized low-income housing tax credits for acquisition, the property may not be eligible for acquisition credit from the second purchase until the completion of the initial 15-year compliance period. According to a recent private letter ruling released by the Internal Revenue Service (Private Letter Ruling 200502019), transfers of 99 percent partnership interest do not result in a new

“placed in service” date. However, always consult with a tax specialist for questions of specific project eligibility.

#### **9) Community Service Facilities**

The portion of a residential building used as a community service facility may be eligible for the low income housing tax credit. A community service facility is a facility designed to primarily serve individuals whose income is 60 percent or less of area median income. No more than 10% of the total basis of the building may come from the community service facility portion of the building.

#### **10) Market Study**

Prior to closing, Rhode Island Housing requires that a comprehensive market study analyzing the market area, including the depth and breadth of demand, comparable properties and rates, comparable operating expenses, market absorption rates as well as a study of the needs of the prospective population be conducted as a condition of credit allocation. This study will be completed by a disinterested party approved by Rhode Island Housing and at the Developer's expense.

#### **11) Native American Housing Assistance**

Assistance provided under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) will not be taken into account in determining whether a building is federally subsidized for purposes of the low income housing credit. Therefore, such buildings will qualify for 9% credit as deeper targeting consistent rules consistent with the special targeting for HOME-financed projects are followed (i.e. 40 percent of the units at 50 percent of area median income).

#### **12) Home Ownership Option**

Developments wishing to convert to home ownership at the end of the 15-year compliance period may do so under the Code. Rhode Island Housing will approve no more than one (1) conversion application per calendar year. As these developments will be rental housing for a minimum of fifteen years, they will be underwritten as a rental development and are subject to the same underwriting criteria set forth in the Developers' Handbook.

### **F. HUD Qualified Census Tracts/Difficult-To-Develop Areas**

Projects located in the United States Department of Housing and Urban Development's ("HUD") designated qualified census tracts ("QCTs") or difficult-to-develop areas ("DDAs") may be eligible for additional tax credits. DDAs are designated annually by HUD as updated income and FMR data become available.

QCTs are defined as any census tract (or equivalent geographic area) in which at least 50% of the households have incomes of less than 60% of the AMGI or census tracts which have a poverty rate of 25 percent or better. HUD periodically publishes the list of new QCTs in Rhode Island.

A DDA is defined as any area that has high construction, land, and utility costs relative to the Area Median Gross Income ("AMGI"). For further information on limitations on these designations, refer to Federal Register Volume 69, No. 229/ Tuesday, November 30, 2004. The designations of QCTs under section 42 of the Code published December 12, 2002, as supplemented on December 19, 2003, remain in effect.

HUD Notice of November 2, 2004, sets out an important change in the Effective Date for DDAs and the application of DDA's to tax credit developments. The 2005 list of DDAs are effective (1) for allocations of credit after December 31, 2004; or (2) for purposes of Section 42(h)(4)(B) of the Code, if the bonds are issued and the building is placed in service after December 31, 2004. If an area is not on a subsequent list of DDAs, the 2005 lists are effective for the area if (1) the allocation of credit to an applicant is made no later than the end of the 365-day period after the submission to the credit-allocating agency of a complete application by the applicant, and the submission is made before the effective date of the subsequent lists; or (2) for purposes of Section 42(h)(4)(B) of the Code, the bonds are issued or the building is placed in service no later than the end of the 365-day period after the applicant submits a complete application to the bond-issuing agency, and the submission is made before the effective for the subsequent lists, provided that both the issuance of the bonds and the placement in service of the building occur after the application is submitted.

The additional credits available to projects falling within the definitions of either or both of these categories are derived by increasing the project's eligible basis for the new construction or substantial rehabilitation portion of the project by up to 30%. The actual increase in basis is determined at the discretion of the allocating agency pursuant to its analysis of the maximum amount of subsidy necessary to complete the project. The 30% increase is not available for the costs associated with the acquisition portion of any project.

#### **G. HUD Subsidy Layering Guidelines**

All projects submitted to Rhode Island Housing that may receive low-income housing tax credits in combination with any form of HUD housing assistance will be subject to the subsidy layering review guidelines of Section 911 of the Housing and Community Development Act of 1992. These requirements are designed to ensure that participants in affordable multi-family housing developments do not receive excessive compensation by combining various HUD housing assistance with assistance from other federal, state, or local agencies. The guideline standards are divided into three categories: Builder's Profit, Developer's Fee, and Syndication Expenses. HUD has established safe harbor and ceiling standards for each of these categories. Housing credit agencies may perform the subsidy layering review function provided the agency certifies to HUD that it will properly apply the guidelines. Rhode Island Housing has assumed these responsibilities.

In accordance with Section 911 of the Housing and Community Development Act of 1992 and the Published Guidelines for Subsidy Layering, the following standards will be applied to all developments subject to subsidy layering:

- 1) **Builder's Profit** - for developments subject to subsidy layering, up to 6 percent of construction costs will be allowed for builder's profit, 2 percent of construction costs for builder's overhead, and 6 percent of construction costs for general requirements. For those developer's where there is an identity of interest between the owner and the general contractor, the maximum amount of builder's profit allowed is 50% of the amounts referenced in the current Program Bulletin. Note also that for projects subject to section 911 Subsidy Layering reviews, alternative general contractor fee limits may apply.
- 2) **Developer Fees** - The safe harbor for Developer's fees is 10 percent, including developer overhead, of the total development cost of the project not including developer fee and operating reserve. Rhode Island Housing may approve exceptions to the safe harbor standard and allow developer's fees of up to 15 percent of the total development cost of a project.
- 3) **Syndication Expenses** - The safe harbor limits for syndication expenses, excluding bridge loan costs, are (a) 10 percent of gross syndication proceeds for private offerings and (b) 15 percent of gross syndication proceeds for public offerings. Rhode Island Housing may approve exceptions to these percentages allowing up to 15 percent of gross syndication proceeds for private offerings and up to 24 percent of gross syndication proceeds for public offerings.

In addition for each development, Rhode Island Housing will establish an applicable market rate for equity. This market rate will be used to determine the net syndication proceeds at the project's placed in service date. The rate will be based upon the development's market value, comparable syndications, and/or Rhode Island Housing's estimation of market trends.

#### **H. Single Room Occupancy Units**

Federal law requires that a low-income unit may not be used on a transient basis. In general, tax regulations require a minimum of a six month lease. However, an exception may apply for single room occupancy units that are rented on a month-to-month basis or for longer periods.

#### **I. Housing For the Homeless**

The tax credit has become a substantial resource for permanent supportive housing for the homeless. The portion of a building used to provide supportive services may be included in the qualified basis. Permanent supportive housing for the homeless must contain sleeping accommodations and kitchen and bathroom facilities and be located in a building used exclusively to facilitate the transition of homeless individuals to independent living within 24 months.

#### **J. Handicapped Accessibility**

Tax credit projects must comply with all applicable federal and state statutes and regulations regarding the operation of adaptable and accessible housing for the handicapped.

### **K. Affirmative Action/Equal Employment Opportunity ("EEO")**

Rhode Island Housing is committed to affirmative action and EEO. We have established minimum workforce utilization goals for Minority Business Enterprises and/or Women Business Enterprises ("MBE/WBE"), and monitor construction projects for compliance with these goals. All developments receiving funding under the Rental Production Program must use best efforts to (a) award at least 10% of the total construction contract dollar amount to minority and female owned businesses, and (b) ensure that at least 10% of labor hours for all trades are performed by minorities and/or women. Developers are encouraged to exceed the minimum goals set by Rhode Island Housing. Note that only those businesses included in the Rhode Island Department of Administration's Directory of Certified Minority and Women Business Enterprises will be recognized in measuring the minority and women business and workforce utilization goals. Further note that for purposes of measuring these goals, Rhode Island Housing does not include persons of Portuguese descent as a recognized minority.

All sponsors receiving an allocation of credits from Rhode Island Housing must enter into an Affirmative Action Agreement detailing specific affirmative action goals and definitive, aggressive strategies and action steps to ensure that such goals are achieved.

### **L. Industry Recommended Standards**

In evaluating and underwriting housing development proposals, Rhode Island Housing is guided by (or) generally follows industry recommended standards developed by the National Council of State Housing Agencies (NCSHA). These NCSHA recommended standards are set forth in the Rhode Island Housing Developers Handbook.

## **II. APPLICATION PROCESS, RANKING METHOD, & REVIEW CRITERIA – 9% CREDITS**

### **A. Funding Rounds**

Rhode Island Housing may hold up to three competitive funding rounds each year. Funding rounds will be announced by Rhode Island Housing via Program Bulletin and/or issuance of Request for Proposals ("RFPs"), and by advertisement in local print media. Rhode Island Housing may adjust the number or timing of funding rounds if required by the passage of federal legislation or adoption of IRS rules and regulations, to accommodate variations in demand for or supply of the credit, or for other compelling circumstances. Rhode Island Housing reserves the right to create an official low income housing tax credit waiting list for proposals which demonstrate considerable merit but for which allocable credit is not available.

During the review period, staff will determine the need for the credit and the financial feasibility of the proposals; however, this determination is not a warranty by Rhode Island Housing of the feasibility or viability of any proposal. Rhode Island Housing reserves the right to rescind reservations of tax credits for projects in the event that Rhode Island Housing determines that the project is unfeasible as proposed or that a change in circumstances has materially altered the proposal as submitted and approved. Any such rescissions shall be in writing and provided to the applicant.

The anticipated schedule for LIHTC reservations is as follows:

***First Funding Round***

RFP issuance.	On or about mid-August.
Proposals submission deadline	On or about the first Friday in October.
Reservation decisions rendered by Rhode Island Housing's Board of Commissioners	At the November or December Board Meeting

***Additional Funding Rounds (if needed)***

will be held if necessary to allocate remaining credit or returned credit. Rhode Island Housing reserves the right to limit competition in subsequent competitive funding rounds to proposals that were submitted in the first and/or second competitive funding round.

Rhode Island Housing reserves the right to reserve available credit to award outside of competitive funding rounds to projects which were previously awarded credits and which either have (a) returned their previously awarded credits to Rhode Island Housing for use by other developments pursuant to an agreement with Rhode Island Housing or (b) qualify for and can demonstrate a need for additional credits to meet project feasibility requirements. Rhode Island Housing reserves the right to award any additional credits received during any year to qualified projects that were previously placed on a waiting list in prior rounds. Rhode Island Housing may consider making a reservation of tax credits for qualified application(s) received outside the context of the first or subsequent funding rounds if tax credits are available from the previous year. In such event, a general priority will be given to projects which best demonstrate readiness to proceed, and/or projects which have previously received credit awards from Rhode Island Housing.

**B. Project Selection Process**

Rhode Island Housing's selection process for allocating tax credits is designed to select proposals which address the State's housing needs priorities identified in the State of Rhode Island's Consolidated Plan 2005 – 2009 as the federal criteria included in the Tax Code. Proposals will be subject to a comparative evaluation process based on the review criteria stated below. An aggregate assessment ranking will determine the order in which proposals will be funded based on available resources.

In the comparative review process, each proposal will be evaluated against other proposals in the competitive funding round for each review criteria category. An aggregate assessment will be made to consider all aspects of the development proposal and numerical rankings will be made to determine the order of project selection and funding. Factors considered in determining the aggregate assessment ranking include, but are not limited to, the comparative review rankings, demonstrated need, local community needs and priorities, total development cost, industry recommended standards, leveraging outside resources, long-term feasibility, application quality, program compliance and the goals of Rhode Island Housing.

Aggregate assessment rankings in no way guarantee an award of tax credits to a particular development. During proposal review and throughout the tax credit allocation process, Rhode Island Housing will utilize its sound and reasonable judgment and it will exercise its discretion consistent with sensible and fair business practices. Rhode Island Housing reserves the right not to reserve tax credits to any applicant or project, regardless of the proposal's aggregate assessment ranking, if it determines, in its sole and absolute discretion, that 1) a reservation for any applicant or project does not further the purposes and goals set forth in this plan; 2) available resources are not sufficient to fulfill a tax credit request; 3) there exists an over-concentration of projects in a specific geographic location; or 4) there exists an over-concentration of specific production types (e.g. new production, assisted living, preservation or capital upgrades). In addition, Rhode Island Housing reserves the right to adjust aggregate assessment rankings or rescind a reservation of tax credits if there is a material change in the project which adversely affects the achievement of stated goals and/or diminishes the proposal's ability to address documented housing needs.

If Rhode Island Housing allocates low income housing tax credits outside of the priorities and selection criteria set forth in this Allocation Plan, we will provide a written explanation of our decision to the general public.

### **C. Tax Credit Review Criteria**

The tax credit allocation review criteria fall into two categories: Threshold Criteria and Comparative Criteria. Generally, only proposals that satisfy the Threshold Criteria will be considered under the Comparative Criteria.

#### **1. Threshold Criteria**

- a) Site control: All sponsors must demonstrate site control in the form of a deed, current option, purchase and sales agreement, designation from a public authority, or a sound, feasible plan for obtaining site control within the funding period.
- b) Readiness to Proceed: All sponsors must demonstrate readiness to proceed. Such judgments will be made on the basis of evidence of the sponsor's ability to incur more than ten percent of the project's reasonably anticipated eligible basis by the later of six months after reservation or December 31 of the year in which the LIHTCs are allocated; availability or ability to secure in a timely manner all financing commitments required to achieve project feasibility; and likelihood of expeditiously moving the project to construction (based, e.g., on status of acquisition of property, land use and zoning approvals, and environmental/historical reviews).
- c) Creditworthiness and Good Standing: Rhode Island Housing reserves the right to deny tax credits to any proposal where (i) any materially participating entity (owner or management agent) is not in good standing regarding compliance monitoring of other tax credit projects; or (ii) any partner, sponsor or other key development team member has been determined by Rhode Island Housing to be uncreditworthy. Creditworthiness takes into consideration management capabilities, character, and capacity.

- d) Financial Feasibility: Rhode Island Housing reserves the right to deny tax credits to any applicant of a proposal for which adequate funding sources have not been identified for all development costs. While commitments from these sources do not have to be secured before applying for tax credits, the applicant must be able to demonstrate to the allocating agency's satisfaction that the sources identified are reasonably likely to be available to the Developer within a time frame which facilitates readiness to proceed as noted above.

## **2. Comparative Criteria**

- a) Development Team Capacity: The development team will be evaluated for professional capacity to plan, build, market, and operate the proposed development. The performance record of the sponsor, consultant, architect, management agent and contractor will be measured by the quality and quantity of previous development, design, construction and property management efforts, as well as affirmative action records. Each team member is expected to demonstrate satisfactory prior experience on projects of similar scale and complexity; to have satisfactory professional references; and to devote sufficient staffing and resources to complete the proposed development. If a development team member does not have satisfactory prior experience, a written plan must be submitted to outline how this technical capacity will be achieved. The mortgagor and contractor will also be evaluated for creditworthiness and financial capacity. The composition of a non-profit sponsor's Board of Directors and the tenure of its respective members will be given significant consideration.

For service-enriched housing proposals, development team members will also be evaluated on the basis of demonstrated success in (i) the development, design and construction of housing with supportive services; and (ii) the planning and delivery of services including adequacy of staffing and/or oversight of third party contracts for services.

- b) Marketability and Housing Needs: Marketability and housing needs will be evaluated relative to the proposed locality of the development, target market population, rent levels and affordability, project design and amenities. Sponsors will be required to demonstrate marketability and housing needs through such documentation as: letters of local support; information on market comparables; information on the supply and quality of the existing housing stock and rent burdens; information on other planned development/revitalization activity in the area; assessment of potential market cannibalization of existing subsidized housing developments; local demographics (including income, age and any special needs characteristics); marketing and outreach strategies; and information demonstrating that the proposed location is appropriate for the target population in terms of environment, quality, proximity to services, and attractiveness of the site and its surroundings.

Developers are encouraged to set rents so that the proposed rents are affordable to residents in a given location and not simply set at the program's maximum rents. One aspect of a development's marketability is to have rents that are affordable and attractive to prospective tenants. Therefore, additional consideration will be given to projects that demonstrate that the proposed tax credit rents are below rents of comparable, unassisted units in the market.

- c) Site and Design Factors: The proposed site, including any existing improvements, must support the market population in terms of desirability of location; environmental quality; adequacy of utilities and transportation; proximity to civic, social and commercial services; and appropriateness of the proposed development to the specific site (e.g., conformance with neighborhood character and land use patterns; impact on surrounding area; extent to which the proposal furthers local revitalization efforts; visual impact).

In addition, site conditions will be evaluated in terms of suitability for construction or rehabilitation. For new construction, ledge, wetlands, existence of subsurface contamination, grade, and soil suitability are typical considerations. For rehabilitation, existing structural conditions, ease or difficulty of adaptations, abatement of hazardous materials, appropriateness of existing buildings, layout and site plan for the proposed resident population will be considered. Zoning and historic district restrictions will be considered in all cases.

The proposed scope of work will be evaluated to ensure that it is comprehensive and will provide for the long-term viability of the housing development, its utility, and the systems of the structure(s). The proposal will also be evaluated based on its potential to meet Rhode Island Housing design standards including: conformance with applicable laws, regulations, and code requirements; satisfactory architectural treatment and sensitivity in scale and character with surrounding buildings; appropriateness of the building and unit plans, site design, and amenities to the target population; use of materials and energy conservation measures to enhance durability and operating cost efficiency; and adequacy of estimated construction costs to complete the proposed scope of work.

One of the objectives in making program funds available to a Developer is to produce developments of quality construction and livable design that will enhance the communities in which they are built. All developments to be financed through Rhode Island Housing must meet the requirements set forth in Rhode Island Housing's Design and Construction Submission Guide.

- d) Financial Analysis

- 1) Management Plan/Operating Budget: Operating budgets will be reviewed to determine adequacy and reasonableness of each

expense line item, including but not limited to management fees, maintenance and administrative costs, replacement reserves, taxes, insurance, and costs of any planned tenant services. Proposed management agents and management plans will be reviewed to determine the acceptability of planned procedures for managing the development's operations. For service-enriched housing proposals, management plans will also be reviewed for demonstrated appropriateness and sufficiency of planned services for the target population, the inclusion of a cohesive, well-conceived and financially feasible service program, and the organizational capacity of the service provider(s) to deliver the proposed services. As part of the required management plan, an affirmative fair housing marketing plan will be required to identify those eligible groups least likely to apply for residency at the proposed development and devise a strategy for attracting them.

2) Development and Construction Costs: Development and construction costs will be reviewed for adequacy and reasonableness in accordance with the guidelines established in the underwriting guidelines of the Rhode Island Housing Developers Handbook.

e) Satisfaction of State Housing Needs: Additional consideration will be given to proposals which address the State's housing needs as well as Rhode Island Housing's programmatic policies and objectives such as:

1) Production: Production of new units is considered the creation of additional affordable housing stock not currently existing in the community, the construction of assisted living housing, or conversion of existing housing to assisted living. Production may also take the form of preserving existing state or federally-subsidized housing which is at risk of being lost from the affordable housing inventory and for which no federal preservation resources exist. Capital upgrades to existing affordable housing developments may also be considered for production. Any proposal that calls for the reduction of affordable rental units will be discouraged.

2) One for One Replacement: Loss of existing subsidized affordable units must be accompanied with a plan for one for one replacement of affordable rental units.

3) Housing Development Types: Priority will be given to projects involving the substantial rehabilitation of deteriorated residential properties. (For purposes of this criteria, substantial rehabilitation entails construction/rehabilitation costs in excess of fifty percent (50%) of replacement value.) Priority will also be given to projects involving new construction in conjunction with demolition of blighted structures or where few rehabilitation alternatives exist. Consideration will be given to projects intended for eventual tenant ownership and for projects which utilize sites of critical importance, such as an in-fill property or historic building (as evidenced by planning documents of a city or town, historic commission, community association or other group).

Proposals that entail the reuse or conversion of existing residential property to better serve residents will also be considered.

4) Provision of Housing for Lowest Income Populations: Priority will be given to those projects, which provide housing for populations with incomes below 45% of Area Median Gross Income, adjusted for family size.

f) Leveraging/Cost Effectiveness: Projects which require the least amount of Rhode Island Housing Targeted Loan funds and Rhode Island Housing HOME funds will be given strong consideration.

Proposals which can achieve feasibility at total development costs which are reasonable, in Rhode Island Housing's determination, on a per unit or per square foot cost without sacrificing construction scope and quality will be given strong consideration.

g) Community Impact: Consideration will be given to projects which address the State's housing needs, Rhode Island Housing's programmatic policies and objectives and which enhance neighborhood revitalization and housing opportunities in local communities. Factors considered include:

1) Geographic Location: Consideration will be given to projects located in areas with little or no (less than 2.5%) existing subsidized family housing and in cities or towns which have high rent burdens, dilapidated housing stock, and long housing waiting lists as indicated by the State's Consolidated Plan and/or local housing authority data.

2) Neighborhood Revitalization Projects: Applicants are strongly encouraged to demonstrate how the proposed housing contributes to an overall plan to revitalize the neighborhood. This could include an analysis of available supportive services, economic development activities, community safety, and recreational services among others. Applicants should demonstrate how the housing will enhance the neighborhood's revitalization as well as how the housing will be supported by available services in the community. Priority will be given to projects that implement Rhode Island Housing's approved Neighborhood Revitalization Plan.

3) Local Support: Consideration will be given to projects demonstrating substantial local support, from either local officials, community development staff, community-based organizations, business groups, etc.

4) Affirmative Action Achievements: Strong consideration will be given to proposals which have 1) State-certified MBE or WBE development team members; 2) sponsors and/or contractors who have achieved a minority or women business utilization record of 20% of total contract dollars on at least one project with a contract amount of at least \$500,000 within the last 5 years; or 3) sponsors and/or contractors who have achieved a minority and women workforce utilization goal of at least 20% of total workforce hours on at least one project with a contract amount of at least \$500,000 within the last 5 years.

5) Responsiveness to Local Housing Needs: Priority will be given to those projects which are demonstrated to be responsive to housing needs in a particular community including tenant populations with special needs and tenant populations of individuals with children. Proposals, which provide appropriate and needed supportive services for residents in conjunction with a housing component, will be given strong consideration.

6) Priority will be given to sites identified in local affordable housing plans.

**D. Non-Profit Set-Aside, 9% Credits**

In accordance with Section 42(h)(5)(B) of the Code, Rhode Island Housing will set-aside a minimum of ten percent of the total tax credit allocation available for qualified non-profit organizations that materially participate as determined by Rhode Island Housing in the development and management of the project throughout the compliance period under the meaning of the Code. These credits will be administered in the same manner as tax credits allocated to for-profit developers. While providing for a minimum set-aside, this provision will not impose a ceiling on the total percentage of credits which may be allocated to non-profit entities.

In order to qualify for credits from the non-profit set-aside, organizations must certify that they are a qualified non-profit organizations (and any new owner) during the compliance period must continue to qualify under that set-aside. The term “qualified nonprofit organization” means any organization that is described in section 501(c )(3) or (4), is exempt from tax under section 501(a),and includes as one of its exempt purposes the fostering of low-income housing.

**E. Assisted Living Program**

Low-income housing tax credits, both from the state cap, and outside the state cap (available through tax-exempt bond financing) are available to applicants proposing assisted living developments, provided that the proposal identifies long term funding for essential services.

**III. TAX-EXEMPT FINANCINGS WITH 4% CREDIT:**

While proposals utilizing tax-exempt bond financing with 4% credit may not be required to participate in a competitive funding process, all development proposals must meet the requirements of the Qualified Allocation Plan and Developers Handbook. These requirements include, but are not limited to, satisfactory underwriting review by Rhode Island Housing; restrictions on general requirements, builder’s overhead and profit, legal fees, and management fees; basic design and construction standards; and the payment of underwriting, compliance monitoring, and tax credit allocation fees.

**IV. UNDERWRITING GUIDELINES**

Rhode Island Housing has developed standards for construction costs per square foot and general contractor fees in addition to guidelines for development costs, reserve

requirements, developer's fees, consulting and legal fees. These guidelines must be incorporated into all proposals requesting low income housing tax credits and can be found in the Rhode Island Housing Developers Handbook.

**V. FEE STRUCTURE FOR TAX CREDIT PROPOSALS**

All tax credit proposals, including those seeking credits from the State's allocated pool or in conjunction with tax-exempt bond financing, shall be assessed the following fees:

**A. Application Fees:**

Tax credit proposals will be assessed a non-refundable application fee, payable upon application submission, as follows:

Non-Profit Developer: \$500  
 For-Profit Developer: \$1,000

**B. Underwriting Fee:**

Rhode Island Housing will charge an underwriting fee for the review of all 4% and 9% credit proposals as follows:

<b>Combined Loan Amount</b>	<b>Non-Profit Developer</b>	<b>For-Profit Developer</b>
Up To \$1,000,000	\$2,500	\$5,000
Up To \$1,500,000	\$5,000	\$7,500
Up To \$2,000,000	\$7,500	\$10,000
Up To \$2,500,000	\$10,000	\$15,000
Up To \$3,000,000	\$15,000	\$20,000
Greater than \$3,000,000	\$25,000	\$35,000

These underwriting fees will be applied toward Rhode Island Housing's origination fees if Rhode Island Housing provides financing.

**C. Allocation Fees:**

Tax credit proposals will be assessed a tax credit allocation fee, payable prior to Rhode Island Housing's issuance of IRS Form 8609, as follows:

Non-Profit Developer: 0.5 % of the ten year allocation amount  
 For-Profit Developer: 1.0% of the ten-year allocation amount

**VI. COMPLIANCE MONITORING**

The IRS requires that the allocating agency monitor compliance with Section 42 of the Code and all applicable regulations on a project-by-project basis. This requirement became effective January 1, 1992 and applies to all buildings for which the low-income housing tax credit is, or has been, allowable at any time. Rhode Island Housing may perform compliance monitoring or may contract with an agent to perform this function. The monitoring procedure includes provisions for record keeping and record retention, annual certification and review, on-site records review, building inspection and notification to Owners and the IRS of non-

compliance. Please refer to Rhode Island Housing's Compliance Monitoring Manual (the "Compliance Manual") for detailed monitoring requirements.

The compliance monitoring procedure is adopted pursuant to the Code. Rhode Island Housing or its agent reserves the right to amend this procedure as may be necessary or appropriate to conform to applicable changes in the Code or regulations. In addition, Rhode Island Housing or its agent may adopt further monitoring forms and procedures as part of its Compliance Manual or as otherwise deemed appropriate.

APPLICANTS AND OWNERS ARE ADVISED THAT COMPLIANCE WITH THE REQUIREMENTS OF SECTION 42 OF THE CODE IS THE RESPONSIBILITY OF THE OWNER OF THE DEVELOPMENT. MONITORING OF THE DEVELOPMENT BY RHODE ISLAND HOUSING OR ITS AGENT DOES NOT IN ANY MANNER AFFECT, MODIFY, OR SUBSTITUTE FOR THIS RESPONSIBILITY. MONITORING BY RHODE ISLAND HOUSING OR ITS AGENT DOES NOT CONSTITUTE A DETERMINATION OF ANY KIND REGARDING THE DEVELOPMENT'S ELIGIBILITY FOR THE TAX CREDIT UNDER SECTION 42 OF THE CODE.

**A. Recordkeeping and Record Retention**

Recordkeeping: For each year in the compliance period, which is equal to fifteen taxable years beginning in the first year the tax credit is taken, the Owner shall maintain records for each building in the project showing the:

1. Total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit).
2. Percentage of residential rental units in the building that are low-income units as defined by Section 42(g), and the size in square feet of each low-income unit.
3. Rent charged on each residential rental unit in the building (including any utility allowance).
4. Number of occupants in each low-income unit if the rent is determined by the number of occupants per unit under Section 42(g)(2) (as in effect prior to 1989 amendments).
5. Annual income certification for each low-income tenant per unit.
6. Documentation to support each low-income tenant's income certification (for example, a copy of the tenant's federal income tax returns, W-2 Form, and/or verification from a third party such as an employer or a state agency paying unemployment compensation).
7. Each low-income vacancy in the building and information that shows when, and to whom, the next available units were rented.
8. Eligible basis and qualified basis of the building at the end of the first year of the credit period.
9. Character and use of the non-residential portion of the building included in the building's eligible basis under Section 42(d).

Record Retention: The Owner shall retain records relative to the first year of the credit period for at least six years beyond the due date (with extensions) for filing the tax return for the last year of the compliance period of the building. The Owner shall retain the records described above for all subsequent years in the compliance period for at least six years after the due date (with extensions) for filing the federal income tax return for that year.

Additionally, for each year that any Agreements remain in effect after the compliance period, the Owner shall retain records adequate to demonstrate compliance with the terms and conditions of the Agreement, including, but not necessarily limited to, income of tenants and rents charged at the development. The Owner shall retain the records pertaining to a particular year for at least six years following the close of that year.

## **B. Certifications and Reporting**

Annual Certification: The Owner of every project that has received tax credits must submit to Rhode Island Housing by January 31<sup>st</sup> of each year during the compliance period an Owner's Annual Certification of Continuing Compliance. As required under U. S. Treasury Revenue Regulation 1.42-5, the Owner shall certify to Rhode Island Housing under the penalty of perjury, whether for the preceding 12-month period:

1. The project was continually in compliance with the terms and conditions of its Agreements with Rhode Island Housing.
2. The project met either the 20-50 test under Section 42(g)(1)(A) or the 40-60 test under Section 42(g)(1)(B), whichever minimum set-aside test was applicable to the project. (The 20-50 Test means that a minimum of 20% of the project's units were set-aside for tenants at 50% of the AMGI at tax credit restricted rent levels. The 40-60 test means that a minimum of 40% of the project's units were set-aside for tenants at 60% of the AMGI at tax credit restricted rent levels).
3. There was any change in the applicable fraction as defined by Section 42I(1)(B) of any building in the project, and if there was a change, a description of that change.
4. The Owner has received an annual income certification from each low-income tenant, and documentation to support that certification; or in the case of a tenant receiving Section 8 housing assistance payments, that the Owner has received a statement from a public housing authority that the tenant's income does not exceed the applicable income limit under Section 42(g).
5. Each low-income unit in the project was rent-restricted under Section 42(g)(2).
6. All units in the project were for use by the general public (as defined in Treasury Regulation 1.42-9), including the requirement that no finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, occurred in the project.
7. Each building in the project was suitable for occupancy, taking into account local health, safety and building codes.
8. There was any change in the eligible basis (as defined in Section 42(d)) of any building in the project, or there was a change, and information regarding the nature of that change.

9. All tenant facilities included in the eligible basis under Section 42(d) of any building in the project were provided on a comparable basis without charge to all tenants in the building.
10. If a low-income unit in the project became vacant during the year, reasonable attempts were made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income.
11. If the income of tenants of a low-income unit in the project increased above the limit allowed in Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was or will be rented to tenants having a qualifying income.
12. An extended low-income housing commitment as described in Section 42(h)(6) was in effect (for buildings subject to Section 7108(c) of the Revenue Reconciliation Act of 1989).
13. All low-income units in the project were used on a non-transient basis (except for permanent supportive housing for the homeless provided under Section 42(l)(3)(B)(iii) or single room occupancy units rented on a month-to-month basis under Section 42(l)(3)(B)(iv)).

First Year Certification: A copy of the IRS Form 8609, with Part II completed by the Owner, for the first year of the Compliance Period.

Additional Information as Required: The Owners of all low-income housing projects will also be required to submit to Rhode Island Housing information on tenant income, occupancy, and rent for each low-income unit, in the form and manner designated by Rhode Island Housing. Rhode Island Housing reserves the right to require Owners of all low-income projects to submit additional information as it deems necessary.

### **C. Records Review**

In accordance with Section 1.42-5(c)(2)(ii)(B), all projects will be reviewed by the end of the second calendar year following the year the last building in the project is placed in service. Rhode Island Housing will conduct an on-site records review of all tax credit projects each year. In each of the projects, the tenant records of at least 20% of the low-income units in conjunction with a physical inspection of the same tenant's unit will be examined. Rhode Island Housing may elect to audit any higher amount if it deems appropriate.

The records inspection will include an examination of the annual tenant income certification, the documentation the Owner has received to support that certification, and the rent record for each low-income tenant in at least 20% of the low-income units for the current year and the prior two years.

Rhode Island Housing reserves the right to perform an on-site records review of any low-income housing project at least through the end of the compliance period and for any additional term that any Agreements remain in effect.

### **D. Inspection**

Rhode Island Housing will conduct annual physical inspections, as well as property management file audits, on all of the tax credit developments monitored by Rhode Island Housing. Rhode Island Housing will select the low-income units to be inspected in each development to correspond to the tenant file records reviewed. The minimum number of units to be inspected will be the greater of 20% of the project's low-income units or 3 low-income units.

Inspections of building and low-income units will be made in accordance with local health, safety, and building codes and Rhode Island Housing Physical Inspection Standards which incorporate the HUD physical inspection standards.

Rhode Island Housing retains the right to perform an on-site inspection of any low-income housing project at least through the end of the compliance period and for any additional term that the Agreement remains in effect.

#### **E. Notification Of Non-Compliance**

As outlined in Section 42(m)(1)(B)(iii), Rhode Island Housing or its agent has the responsibility to notify the IRS of non-compliance with the low-income housing tax credit provisions by completing Form 8823 "Low-Income Housing Credit Agency Report of Non-Compliance." In the event that Rhode Island Housing or its agent learns of an event of non-compliance, it will send a letter to the project's Owner describing the condition and, where appropriate, recommending actions to correct the problem. The agency shall retain records of non-compliance or failure to certify in accordance with Treasury Regulations.

The Owner of the low-income housing project shall have 30 days from the date of the notice to correct and supply proof that the noncompliance has been corrected (e.g. copies of income certifications/lease/rent rebate, etc.).

If Rhode Island Housing determines that the clarification from the Owner on the noncompliance issue establishes that the Owner was always in compliance, then no Form 8823 is issued and the Owner is notified within five (5) business days.

If Rhode Island Housing determines that there was noncompliance and the issue is now remedied, then Form 8823 will be filed with the IRS and the Owner will be notified no later than 45 days after the end of the time allowed to the Owner to take remedial action.

The correction period may be extended in the sole discretion of Rhode Island Housing for up to an additional 60 days upon the written appeal of the Owner (received on or before the expiration of the 30 day period) requesting such an extension, if the agency determines that the Owner is making a good faith effort to provide the missing information and/or bring the project into compliance with the provisions of Section 42 of the Code.

Rhode Island Housing may thereafter extend the correction period for up to six months, but only if the agency determines in its discretion that there is a good cause for granting the extension.

#### **F. Liability of the Owner**

Compliance with the requirements of Section 42 is the responsibility of the Owner of the building for which the credit is allowable. Rhode Island Housing's obligation to monitor for compliance with the requirements of Section 42 does not make it responsible for the Owner's noncompliance.

#### **G. Annual Compliance Training**

The Owner must certify that the Management Agent or a member of the on-site staff attends training for compliance in managing a tax credit project at least once annually. Certifications of training must be submitted to Rhode Island Housing by June 20<sup>th</sup> of each year.

### **VII. EVENTS OF RECAPTURE**

A full recapture of credits occurs if the building fails to meet the minimum set-aside requirement. A partial recapture of credits occurs if the building's low-income occupancy percentage decreases, but not below the minimum set-aside level, and/or if eligible basis decreases. The potential effect of non-compliance is to increase taxes in the year of non-compliance based on all previous years that the credit was earned. The excess of the credit actually earned each year over the credits that would be allowed if the credits were claimed ratably over the fifteen-year compliance period (the accelerated portion of the credit) plus interest is recaptured. In this event, IRS Form 8611 "Recapture of Low-Income Housing Credit" must be filed by the project's Owner and retained for three years following the Compliance Period.

It is important to note that there are additional items that trigger recapture. Please refer to Section 42 of the Code and the Rhode Island Housing Tax Credit Compliance Manual for a more complete listing.

### **VIII COMPLIANCE MONITORING FEES**

#### **A. Compliance Monitoring Fees:**

In order to offset the cost of compliance monitoring, a low-income housing unit fee will be assessed to all tax credit developments per LIHTC unit. This fee will be due and payable on July 1<sup>st</sup> at the beginning of the fiscal year for Rhode Island Housing. This fee will be reviewed on an annual basis and may be increased to cover administrative costs at Rhode Island Housing's discretion.

#### **B. Compliance Manual Fee:**

Rhode Island Housing will provide all low-income housing project Owners who have received an allocation of tax credits with a copy of its Compliance Manual for a fee; otherwise it will be available on our website at [www.rihousing.com](http://www.rihousing.com).

### **IX. MODIFICATION OF THE ALLOCATION PLAN**

Without limiting the generality of Rhode Island Housing's power and authority to administer the allocation of low-income housing tax credits according to federal law, regulations, and this Allocation Plan, Rhode Island Housing shall make such determinations and decisions, publish administrative guidelines and rules, require the use of such forms, establish such procedures and otherwise administer allocations of tax credits in such manner as may be, in Rhode Island Housing's determination, necessary, desirable, or incident to its responsibilities as the

administrator of the Low-Income Housing Tax Credit Program. The Governor recognizes and acknowledges that Rhode Island Housing may encounter situations which have not been foreseen or provided for in the Allocation Plan and expressly delegates to Rhode Island Housing the authority to amend the Allocation Plan subject to fulfillment of the requirements of the Administrative Procedures Act and any other requirements imposed by law. The Governor further recognizes and acknowledges that Rhode Island Housing will administer allocations of tax credits in all situations and circumstances, including, without limiting the generality of the foregoing, the power and authority to control and establish procedures for controlling any misuse or abuses of the tax credit allocation system and the power and authority to resolve conflicts, inconsistencies or ambiguities, if any, in this Allocation Plan or which may arise in administering the Low-Income Housing Tax Credit Program. The Governor further expressly delegates to Rhode Island Housing the ability to amend this Allocation Plan to ensure compliance with federal law and regulations as such federal law may be amended and as federal regulations are promulgated governing tax credits.

**X. APPROVAL OF THE GOVERNOR**

I, Donald L. Carcieri, Governor of the State of Rhode Island and Providence Plantations, do hereby signify my approval of this Tax Credit Qualified Allocation Plan for the distribution of federal low-income housing tax credits in this State, in conformance with Section 42 of the Internal Revenue Code.

Signed: \_\_\_\_\_  
Donald L. Carcieri, Governor

Date: \_\_\_\_\_, 2005