2008-2009 ALLOCATION PLAN
FEDERAL HOUSING CREDIT PROGRAM
VERMONT AFFORDABLE HOUSING TAX CREDIT PROGRAM
STATE OF VERMONT

Joint Committee on Tax Credits

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DEFINITIONS

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

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).

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.

Blight: A condition that exists when a significant portion of a building is uninhabitable or unusable due to neglect, condemnation, or damage from fire or other natural disaster.

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.

Broadband: A form of high-speed data transmission where a single medium (wire, or an equivalent wireless system) can carry different types of information simultaneously (i.e. voice, video and/or data). For example, a single cable may provide internet access, telephone and cable television.

Builder’s Overhead, Profit, and 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.

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. ~~For all new construction, adaptive reuse, and rehabilitation projects wherein all major systems are replaced, a CNA will be required no later than 6 months of construction completion of the project or prior to issuance of the 8609 (whichever comes first) in order to adequately size the replacement reserve. For all other projects, a CNA will be required upfront in order to plan the scope of rehabilitation work as well as the replacement reserve budget.~~ More specifics can be found in the VHFA, VHCB, DHCA (VCDP) Capital Needs Assessment Guidance Policy at http://www.vhfa.org/documents/property_managers/cna_assistance.pdf .

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 annual by an inflation index. Despite the increase, Ceiling Credits are a limited and therefore competitive resource.

Code: The Internal Revenue Code of 1986 as amended.

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) of the Code.

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 developer. There are two versions of the Cost Certification, the "10%" cost certification and the "final" Cost Certification. These must be prepared and submitted for VHFA review prior to issuance of a Carryover Allocation or an IRS Form 8609 respectively.

Design Standards: The standards adopted by VHFA for all properties being developed under the tax credit program. They can be found at www.vhfa.org/documents/developers/design_standards.pdf

Developer's Fee: 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) when the total development cost is less than or equal to $1.5 million. For projects in which the total development cost exceeds $1.5 million, the total Developer's Fee shall not exceed 12% of the total development cost (excluding the fee itself and cash accounts), payable by full occupancy. If at least one-third of the 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 the 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 under 60 units: the "not-to-exceed" limits (above) apply.
>
> Projects of 60 units and over: 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 the greater of 15% of the hard construction cost (including contingency) or $3,500 per unit. 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 10% 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 of the IRS Code) 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 the greater of 15% of the hard construction cost (including contingency) or $3,500 per unit.

> 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.

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) of the Code.

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.

Energy Standards: A standard relating to energy efficiency and water conservation that has been adopted by VHFA, VHCB, and the Vermont Department of Housing and Community Affairs, for their collective housing funding programs. A copy of the standards is available at http://www.vhfa.org/documents/ developers/energy_checklist.pdf.

Eventual Tenant Ownership: Projects must 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) of the Code. 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.

Family Housing: Housing development in which 50% of the residential rental units are two-bedroom or larger.

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.

Green Communities: A standard of construction promoted and maintained by the Enterprise Community Partners, a national nonprofit, to encourage green building practices. More information can be found on the website www.greencommunitiesonline.org.

Historic Settlement Patterns 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.

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

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 developer must ensure the perpetual affordability to moderate and low income Vermonters and that the tax credit will benefit future homeowners.

Housing Subsidy Covenant:* The agreement between the Agency and an owner restricting a property to affordable housing use during the Compliance Period and Extended Use Period. See Section 42(h)6 of the Code.

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.

LEED-H: A standard of construction promoted and maintained by the U.S. Green Building Council to encourage green building practices. LEED-H (also known as LEED for Homes) is an abbreviation for Leadership in Energy and Environmental Design – Homes. More information can be found on the US Green Building Council's website, www.usgbc.org.

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. Multifamily standards are located at http://www.vhfa.org/documents/developers/market_study_standards.pdf.

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 applicant, and meets the minimum requirements of Section 42 of the Code.

Mixed-Income Housing: For developments of 20 units or greater on a single site or contiguous sites, mixed-income means 15% or more of the units are targeted to households whose income is greater than 60% of the Area Median Gross Income (AMGI). For developments of less than 20 units, mixed-income means having at least one unit targeted to households whose income is greater than 60% of the AMGI.

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) of the Code.

Qualified Census Tract (QCT):* Defined in Section 42 (d)(5)(C) of the Code, 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.

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) of the Internal Revenue Code; 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.

Serving Tenants on Public Housing Waiting Lists: Projects must demonstrate that the tenant group to be served by the development are families and individuals that are on waiting lists to receive Section 8 rental assistance but are not yet receiving such assistance.

An example of this is a letter of commitment from a public housing authority board to provide project-based Section 8 Certificates or Vouchers to the proposed project.

Special Needs Housing: Special Needs Housing includes any project that incorporates a majority of special needs populations and provides service-enriched housing. Special needs populations include households or individuals who cannot live independently without supportive services. Such populations include, but are not limited to:

- persons in need of transitional housing to avoid or alleviate homelessness;
- at-risk youth;
- frail elders or persons with physical, sensory, cognitive, developmental and/or mental disabilities;
- or other populations where a combination of housing and supportive services will enhance the quality of life for both residents and the community at large.

Criteria for Defining Special Needs Housing for Seniors

Projects that serve persons who are:
- lower income or at risk of Medicaid dependency; and
- frail or disabled.

will be considered Special Needs Housing only if the project meets one or more of the following criteria:

1. Licensed Residential Care Homes, Assisted Living Residences, Therapeutic Community Residences, Homes for the Terminally Ill, Continuing Care Retirement Communities or other licensed combination of housing and care or services; or,
2. Unlicensed combinations of affordable housing and affordable services that the Vermont Department of Aging and Disabilities finds will help residents to accomplish independent living and/or aging in place and where services and housing are affordable and/or coordinated with eligibility for publicly subsidized services. Projects will have a plan to utilize applicable Medicaid State Plan services, Medicaid Waiver Programs, federal or state funded services or programs, and local nonprofit services to the extent possible and in a manner such that independent living and/or aging in place is promoted to the extent possible and to a greater extent than in so-called “independent” housing; or,
3. Projects that:
    a. Have been named by the Vermont Real Choices Integrating Long Term Supports with Affordable and Accessible Housing Grant Advisory Group as an access project; or,
    b. Are deemed by the Department of Aging & Independent Living to provide a critical option for seniors in regions or market areas that have not met the state goal for community-based long-term care service utilization relative to nursing home utilization; or,

4. Give a preference or otherwise target units to renters participating in a 1915 c Medicaid Waiver or 1115 Medicaid Research and Demonstration program designed to provide alternatives to nursing home or other institutional placements.

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, 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.

State Credit: Means the Affordable Housing Tax Credit established by the Vermont legislature in 2000, as set forth in 32 VSA chapter 151, subchapter 11I, section 5930u. Projects utilizing Ceiling or Bond Credits may also apply for State Credits. Since State Credits are used with either Ceiling or Bond Credits, the allocation process for the State Credits will mirror that of the federal credit for which they are applying.

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 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 becoming homeless 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: A set of design practices intended to make space usable by many people, to the greatest extent possible, at little or no extra cost. Some Universal Design features include: entrances which do not involve steps; wide doorways; and light switches located at a height more reachable by all (including children and the elderly).

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.

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. It can be found at http://www.vhfa.org/documents/developers/year_15.pdf.

INTRODUCTION

The purpose of this Allocation Plan is to set forth the process and criteria under which specific housing developments will be selected to receive Homeownership Tax Credits, State Affordable Housing Tax Credits and federal Housing Credits that have been returned from allocations made in 2006 or 2007 or that otherwise may become available in 2008 and 2009. In accordance with the requirements of the Omnibus Budget Reconciliation Act of 1989, this Allocation Plan describes the application and allocation decision-making process. Priorities are set by the requirements of the law and by the rental housing needs of Vermont, as determined by the Joint Committee on Tax Credits (Joint Committee) and the VHFA Board of Commissioners.

The Agency of Commerce and Community Development (ACCD) was designated as the Housing Credit Allocating Agency by then Governor Kunin in March 1987. An advisory Joint Committee on Tax Credits was established to review and adopt allocation policies. The Joint Committee is comprised of the Commissioner of Housing and Community Affairs or his or her designee, the Executive Director of VHFA or his or her designee, the Executive Director of the State Housing Authority or his or her designee, the Director of Planning, Office of Policy Research and Coordination, and one additional member representing housing interests appointed by the Secretary of ACCD.
Through a Memorandum of Understanding, ACCD gave the administration of the program to VHFA. In 2004, VHFA was designated the State Housing Credit Agency by Executive Order of Governor Douglas.

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 incentive for the development, acquisition and rehabilitation of low-income housing allows owners, developers, and/or investors to reduce their federal tax liability in exchange for the provision of eligible low-income rental housing.

SUMMARY OF ALLOCATION PLAN REQUIREMENTS

The 1989 and 1990 laws made numerous changes to the Housing Credit program, including the requirement to create a "qualified allocation plan." The State's Allocation Plan must set forth selection criteria that include:

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

In addition, the states must give preference among selected projects to those serving the lowest income tenants and to those serving qualified tenants (those persons at or below the maximum income limits set by law) for the longest period, as well as projects in Qualified Census Tracts that contribute to a concerted community revitalization plan.

States may include such other criteria as they deem appropriate and there are no requirements as to the relative weight of the various factors. As part of the review for each selected project, the chief executive officer of the particular local jurisdiction within which the project is located is to be provided "a reasonable opportunity" to comment on the proposed allocation.

Additional Housing Credit responsibilities of the Allocating Agency mandated by Congress include:

1. Assurance that the amount of Housing Credits allocated does not exceed the amount "necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period."

2. Evaluation of all projects for consistency with the Allocation Plan and for credit need, including situations when the project is financed using tax-exempt bonds.

3. Agreement to "an extended low-income housing commitment" for every project. This agreement must be recorded as a restrictive covenant binding all successor owners and must allow low-income individuals the right to enforce the commitment in state court (see Section 8, "Compliance"). The commitment must require continued low-income occupancy for all Housing Credit units for the Extended-Use Period. Under the terms of the Housing Subsidy Covenant, applicants for both Ceiling and Bond Credits agree not to exercise the opt-out provision of the Code [Section 42 (h)(6)(E)(i)(II)]. The owner agrees that they will make no such notification to the Allocating Agency to terminate the extended use

provisions. Nonprofit organizations, government agencies, and tenant groups can arrange in advance, through a right of first refusal, to purchase the project at the end of the initial 15-year Compliance Period, also at a pre-determined price. Even after such a purchase, the property is subject to the Extended-Use Period of the housing subsidy covenant.

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

The State has adopted certain other additional requirements for the program, including:

Cost Certification Requirements: Detailed project financial documentation must be submitted at various stages of the Housing Credit approval process, in support of VHFA's responsibilities under the law. Certifications regarding projected or actual costs and sources of funds are required at the time the 10% test is met and at the time the final Housing Credit allocation (IRS Form 8609) is requested.

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

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

Optional Services: Sponsors of developments offering optional services shall describe the services to be offered and the cost(s). Optional services must be competitively priced, reasonable, and affordable. Assumptions regarding income from optional services shall be reasonable and result in a financially feasible project. The Allocating Agency may reject applications based on services being offered if those services are not reasonable and/or competitively-priced. Projects which either add or remove services after an application has already been submitted will need to be reviewed anew.

Energy Standards and Design Standards: VHFA has adopted Energy Standards and Design Standards for projects receiving Housing Credits or State Credits. In addition to these there are Federal requirements that may apply to projects receiving Housing Credits, including: the Fair Housing Amendments Act of 1988 (45 U.S.C. 3604(F)(3)(c)); and, if certain HUD assistance is also being provided, the requirements outlined in HUD Notice PIH 2003-31.

Cost Guidelines: VHFA encourages development at the lowest reasonable cost and will review development costs for reasonableness.

Return of Previously Allocated Credits: VHFA may re-issue Housing Credits allocated to projects that have not utilized the Housing Credit. Returned Housing Credits will be re-used in accordance with this Allocation Plan. In the event that the following four conditions are met, the Allocating Agency may accept a return of Housing Credits from a Project and re-allocate an amount of Housing Credits less than or equal to the amount of returned Housing Credits to the same Project without the necessity of holding a competitive round for the Housing Credits:

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

Continuance of Ownership Entity: The applicant for Housing Credits must be an entity that will have an ownership interest in the development. Historically (in most cases) a limited partnership or limited liability company has been the owner. The limited partnership or limited liability company need not be legally created when the application is filed, but the identity of all principals must be disclosed in the application and the application must be submitted by at least one legally existing principal on behalf of the owner. VHFA reserves the right throughout the allocation process, up to the issuance of the IRS Form(s) 8609, to approve any changes in the identity of the principals of the ownership entity or such changes to the ownership entity's governing documents as VHFA, at its sole discretion, considers material.

Senior Housing and Ceiling Credits: The Housing Needs Assessment, conducted as part of the 2005 Consolidated Plan, showed a much higher need for family housing than independent senior housing. Therefore, this Qualified Allocation Plan's highest priorities will be to alleviate the shortage of affordable family housing, to reduce and eventually eliminate homelessness, and house those with special needs, as defined by the Consolidated Plan.

Senior housing will be considered for funding when it leverages new rental assistance or other subsidies* for the lowest income seniors or when it meets a clear, unmet need in the region.

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

Per Project Limit: There is an overall per project limit of 30% of the annual "per capita" tax credits. The Joint Committee on Tax Credits can waive this limit for projects of "statewide significance". A project of statewide significance is defined as: one which, if it does not go forward: 1) will result in a loss of considerable federal funding for Vermonters; or 2) will result in the displacement of a large number of low income households; or 3) will result in the continued presence of significant health hazards (e.g. extraordinary environmental cleanup is a component of the project and the cost of that cleanup is high). The VHFA Board may amend this definition and may determine on a case-by-case basis that a project has statewide significance even if it does not meet one of these three definitions. By law, a minimum of 10% of Vermont's annual credit ceiling must be reserved for developments sponsored by nonprofit organizations that own an interest in the project (directly or through a partnership) and materially participate in the development and operation of the project throughout the compliance period.

Broadband:
Broadband or high-speed access to the Internet is rapidly becoming an essential tool for both community and economic vitality. In order for the residents of Vermont to have access to the same educational, social and employment opportunities as other parts of the world, broadband access is critical. Unfortunately many low to moderate-income households are unable to access the service, primarily due to cost and availability factors. The state of Vermont should promote Broadband access through their housing policy in the follow manner:

1. Require that all new affordable housing units and substantial renovations of existing units will have the appropriate wiring (or an equivalent wireless system) to support high-speed video, voice and data.

2. Encourage owners and managers of all affordable units to work with broadband providers and tenants to aggregate demand for more affordable services. The State should work with key stakeholders to develop a procedure to ensure that these relationships develop.

Investor Services Fees (also called Asset Management Fees):
Developers whose affiliated general partner provides a direct asset management function may take a budgeted fee not to exceed $8 per unit per month, and any additional asset management fees or other income from operations will be taken only as a distribution of surplus cash. Developers may be required to submit some evidence of compliance (accounting records, affidavit, etc.) with this requirement on existing Housing Credit projects in order to be eligible to apply for Housing Credits for any new or existing developments.

APPLICATION PROCESS

The process of applying for and receiving Ceiling Credits involves six benchmarks, each carrying with it submission requirements. These are outlined on Table A (attached). 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.

1. PRE-APPLICATION MEETING

VHFA staff and the developer will meet to discuss the proposal. Prior to this meeting the developer 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. Developers 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 developer 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. An applicant must meet the following basic qualifications:

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

At the time of application the developer 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 developer 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 developer 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. Applicant 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 developer's expense. An independently-prepared project-specific market study that meets the Market Study Standards must be submitted by the developer 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 developer must demonstrate the capacity to undertake the development as proposed, either through its own experience and capacity or through the use of experienced consultants. In the event the developer is proposing multiple projects in any given year, the organization must have the capacity to oversee all of the developments proposed.

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

The developer 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.

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

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.

In projects receiving credits "automatically" from the use of tax-exempt bond financing, a 30 year Housing Subsidy Covenant will be required. Both types of Covenants will require that the income and rent restrictions imposed by the Housing Credit Program will remain in effect for the initial 15 Year Compliance Period as described in the Covenant. Income and rent restrictions may be modified in accordance with the Year 15 Policy.

VIII. The developer will provide a Capital Needs Assessment for all projects 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. Threshold Criteria (For Ceiling Credit Applications Only): In order to be brought to the Board for approval, the project must meet at least three of the top tier evaluation categories and at least one other (top tier or lower tier) evaluation categories from the "Consolidated Plan Priorities / Other Priorities" evaluation criterion. In addition, for projects of 20 or more units, at least 15% of the units must be Mixed-Income Housing. For projects of less than 20 units, there is no Mixed-Income Housing requirement (second tier criteria points will be awarded to Mixed-Income Housing projects under twenty units). Finally, all rehabilitation developments must plan on performing a substantial rehabilitation such that all of the long-term capital needs that have been identified in the Capital Needs Assessment will be addressed. In most cases this amount of rehabilitation will exceed the minimum required by the Code, which is $3,000 per unit. In the event that the credits are fully committed and competition for the credits becomes more intense requiring lockouts of applications for extended periods of time, the Board may at its discretion change the minimum threshold requirements (e.g. require more than the three top tier and one additional as described above) and evaluate projects competitively.

3. BOARD APPROVAL

The VHFA Board of Commissioners at its monthly meeting will vote on approving Housing Credits for specific proposals. At that time 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).

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 suitable to VHFA and evidence that the developer 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 developer to meet any of the conditions set forth in the Certificate or if financial information provided by the applicant indicates, in the opinion of VHFA, that a lesser or greater amount of Housing Credits are needed for project feasibility.

5. CARRYOVER ALLOCATION

VHFA is authorized to issue Carryover Allocations to certain projects that will not be placed in service by the later of: 1) the end of year in which a reservation is issued, or 2) six months from the date in which the Reservation Certificate / Binding Rate Agreement was issued, so long as a minimum of 10% of the reasonably expected basis (depreciable basis plus land) has been expended by that time. The owner must provide a Cost Certification prior to the issuance of 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 of the Internal Revenue Code, 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

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.

CPA-prepared cost certifications are recommended for all projects.

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

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

Top Tier Priorities:

a. Project provides rehabilitation, including lead-based paint abatement, accessibility modifications, and energy efficiency upgrades; or infill new construction in housing markets with a vacancy rate of 3.5% or less; or in housing markets where there is insufficient rehabilitatable housing stock or a lack of affordable housing stock.

b. Project provides family housing, unless local or regional need for another type of housing is demonstrated in the market study to be greater.

c. Project is planned to maintain the historic settlement pattern of compact village and urban centers separated by rural countryside.

d. Projects that are in a downtown or a village center, or 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) will also qualify for this criterion. **A map outlining the downtown / village center and the location of the project must be included with the application.**

e. Project proposes the removal of blight.

f. Any project that incorporates a majority of Special Needs populations and provides service-enriched housing.

g. Project accommodates workforce housing in a ski area where: development in the nearest downtown or village center is infeasible; the community is underserved in having its affordable housing needs met; the site is available at a bargain-sale or other below market price; the housing is clustered on the site; and reasonable efforts have been made to connect the site to other services in the community.

Second Tier Priorities:

a. Mixed-Income Housing Developments. To receive acknowledgment for meeting this priority no fewer than 20% of the units in the development must be either unrestricted as to income and rents, or restricted to households above 60% of the area median gross income. This priority applies to developments that consist of 20 or more units on a single site or contiguous sites. For developments of under 20 units, a single unit that is either unrestricted or restricted above 60% is needed for the development to meet this priority.

b. Projects exhibiting a unique design, such as a creative rehabilitation of a historic structure of statewide significance. For purposes of this priority, "historic structure" refers to properties that are themselves designated as historic by the State Division of Historic Preservation, and not just structures that are located in (or contribute to) a historic district.

Development of a project that is universally designed would also meet this priority. Other proposals exhibiting unique design could also meet this priority and will be evaluated on a case-by-case basis.

c. Housing affordable to households earning less than or equal to 30% of the area median gross income (AMGI) or housing that targets clients of agencies that serve the homeless;

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

e. Projects intended for eventual tenant ownership.

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

a. The lowest income tenants, and
b. Qualified tenants for the longest period.

III. Preference must be given for the acquisition and rehabilitation of existing federally subsidized projects, where the preservation of a project's existing affordability is at risk.

IV. Geographic targeting: Project is in a market area that has been underserved historically in having its affordable housing needs met. The stock of affordable, assisted housing in the market area will be considered to see if housing of the type proposed is already present in the market area.

V. Preference must be given to projects that will be built to LEED H or Green Communities standards.

COMPLIANCE

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

In order to implement this responsibility, all 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 developer 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 is four dollars per Housing Credit unit per month.

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

II. 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);

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

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

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

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

g. The character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d) (*e.g.* tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities or facilities reasonably required by the project).

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

Annually, the owner must provide a project status report that summarizes the activity of the development. The format of this report is included in the VHFA compliance manual which can be found at http://www.vhfa.org/documents/property_managers/lihtc_manual/LIHTC_Compliance_Manual_702.pdf.

III. Certification and Review Procedures

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

a. Certification Procedure

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

i. The project meets the requirements of the 20-50 test under Section 42(g)(1)(A) or the 40-60 test under Section 42(g)(1)(B), according to the election made by the sponsor at the time of the allocation;

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

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

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

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

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

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

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

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

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

xi. If the income of tenants of a Housing Credit eligible unit in the project increases above the limit allowed in Section 42(g)(2)(D)(ii) the next available unit of comparable or smaller size in the project will be rented to tenants having a qualifying income;

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

xiii. During the preceding 12-month period no tenants in low-income units were evicted or had their tenancies terminated other than for good cause and that no tenant had an increase in the gross rent with respect to a low-income unit not otherwise permitted under Section 42 of the Code.

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

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

The certifications required under the above paragraph of this Section III (Certifications and Review Procedures) must be made at least annually through the end of the 15-year compliance period under Section 42(i)(1) and be under penalty of perjury. The format of this certification can be found in the VHFA Compliance Manual.

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 Buildings

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

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.

HOMEOWNERSHIP TAX CREDIT

I. Project Selection

The Homeownership Tax Credit may only be used on projects that participate in the VHFA Homeownership Construction Loan program, or on projects that are participating in a Mobile Home Park Home Replacement Program, to be designed and administered by VHFA.

II. Eligible Developer

Both for-profit and not-for-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 may apply for the Homeownership Tax Credit.

III. Eligible Development

Projects must meet each of the following criteria:

a. Developments must be equal to or greater than five (5) units. Eligible housing types include: single family detached units, single family attached units including: condominium, cooperative, cohousing and planned unit developments. Units may be stick-built, modular, panelized or manufactured homes; however, projects must conform to the VHFA Building and Design Standards.

b. Development provides infill new construction in housing markets where there is a lack of affordable housing stock.

c. Project is planned to maintain the historic settlement pattern of compact village and urban centers separated by rural countryside; or, projects that are in downtown or a village center, or 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) will also qualify for this criterion.

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

a. Projects which are supported under an Employer Assisted Housing Program.

b. Project uses Section 8 Homeownership Vouchers in combination with Homeownership Tax Credit for deeper subsidy to very low income households.

IV. Purchase Price Limit & Occupancy Standard

Fifty-one percent (51%) of the units in the project must sell at or below the higher of: the purchase price limits allowed by the VHFA program, or the purchase price limits of the Homeland program.

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.

V. Income Limit

Fifty-one percent (51%) of the units in the project must be sold to households whose incomes are at or below the VHFA income limits.

The Homeownership Tax Credit may be “stepped” subsidies to allow for different income levels per unit thereby increasing an income mix. The Homeownership Tax Credit may be evenly spread over some units as well.

VI. Term of Affordability

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

Perpetually affordable housing may be ensured through a shared appreciation model, a program modeled after the Homeland program, or through a soft second mortgage program. In the case of a shared appreciation model or a program modeled after the Homeland program, there will be a soft second mortgage and a covenant to secure the subsidy. The covenant must name the nonprofit designee that will monitor the resale. Either of these two programs must be administered by an existing entity that administers similar programs (such as 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 will receive a letter of intent from VHFA for the Homeownership Tax Credit.

Upon completion of the project (or the phased completion of units) VHFA will issue a Credit Certificate and a State 8609 for each unit.

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.

VHFA may enter into binding 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.

The State of Vermont's Housing Credit Allocation Plan for 2008 – 2009 has been developed by Vermont Housing Finance Agency in accordance with the Federal Internal Revenue Code (IRC) of 1986, Section 42, as amended. This Allocation Plan shall remain in effect until amended by the Governor of the State of Vermont as may be necessitated by changes in federal law or changes in the State's housing market.

Approved by: ____________________
James Douglas, Governor

Effective Date: ____________________