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## **TITLE 825 - HOUSING AND MORTGAGE FINANCE CORPORATION**

### **CHAPTER 30 - RULES RELATIVE TO MULTIFAMILY LOAN PROGRAMS**

#### **SUBCHAPTER 00 - N/A**

PART 4 – Allocation of Low Income Housing Tax Credits

#### **4.1 CONSTRUCTION OF RULES AND REGULATIONS**

Construction with Act and Tax Code. Unless otherwise defined herein or unless a different meaning is required from the context in which they are used herein, all words and terms used in these Rules and Regulations are as defined in the Act and the Tax Code.

#### **4.2 DEFINITIONS**

"Act" means the Housing and Mortgage Finance Corporation Act more particularly set forth in R.I. Gen. Laws Chapter 42-55, as amended.

"Board of Commissioners" or "Board" means the Board of Commissioners of the Corporation.

"Corporation" means the Rhode Island Housing and Mortgage Finance Corporation, a public corporation organized and existing under the Act.

"Development" means a multi-family residential housing complex to be acquired, constructed, developed and/or rehabilitated by a Housing Sponsor. A Development may be a multi-family residential housing complex portions of which are located on non-contiguous parcels of land; provided, however, that each unit in a housing complex on non-contiguous parcels must be "rent restricted" as defined in 26 U.S.C. the Internal Revenue Code, or each parcel on which portions of such complex are located must meet the applicable 20-50 Test or the 40-60 Test, as set forth in 26 U.S.C. § 142(d).

"Housing Sponsor" means corporations, individuals, joint ventures, partnerships, limited partnerships, trusts, firms, associations, or other legal entities or any combination thereof, whether organized for profit or not, qualified either to own, construct, acquire, develop or rehabilitate a Development.

"Low-Income Housing Tax Credits" means the low-income housing tax credits allowable against the federal income tax pursuant to 26 U.S.C. §§ 38 and 42.

"Low-Income Persons or Families" means persons or families whose income does not exceed the applicable percentages of the Area Median Gross Income

as defined in 26 U.S.C. § 142(d) ("Tax Code"). Statistical data relating to Area Median Gross Income of Low-Income Persons or Families shall be made available to Housing Sponsors by Program Bulletin from time to time.

"Low-Income Rental Unit" means a unit, including single room occupancy and other units eligible for allocation of Tax Credits under the Tax Code, to be rented to Low-Income Persons or Families.

"Non-Profit Housing Sponsor" means a Housing Sponsor described in the Internal Revenue Code, 26 U.S.C. §§ 501(c)(3) or (4) which is exempt from tax under 26 U.S.C. § 501(a) which has as one of its exempt purposes the fostering of low-income housing. Non-Profit Housing Sponsor also includes any other entity qualifying as such under the Tax Code

"Program Bulletin" means a bulletin issued by the Corporation implementing a section or sections of these Rules and Regulations. A request for an application to reserve Tax Credits pursuant to § 4.4(B) of this Part, may also constitute a Program Bulletin. Copies of all Program Bulletins shall be maintained by the Corporation at its principal office, and shall be available for inspection and copying during the hours of 9:00 a.m. to 5:00 p.m. on Mondays through Fridays, except holidays.

"Qualified Allocation Plan" shall have the meaning set forth in § 4.4(B) of this Part.

"Reservation Period" means any period during which the Corporation has requested and is reviewing applications for the reservation of Tax Credits.

"Special Reserve" shall have the meaning set forth in § 4.4(C) of this Part.

"Tax Code" means 26 U.S.C., the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations now or hereafter promulgated thereunder relating to Tax Credits.

"Tax Credit Program" means any program now in effect and as amended from time to time providing Tax Credits to taxpayers who acquire, develop, rehabilitate, construct or maintain dwelling units for Low-Income Persons or Families which program authorizes the Corporation to allocate or approve Tax Credits for such taxpayer's use.

"Tax Credits" mean the Low-Income Housing Tax Credits.

"Treasury Department" means the United States Department of the Treasury.

### **4.3 LOW-INCOME HOUSING TAX CREDITS**

- A. The Tax Credit Program. Low-Income Housing Tax Credits have been set aside for each state in accordance with a formula established in the Tax Code. The

amount of Tax Credits available for the State of Rhode Island may be increased or decreased from time to time in accordance with federal law.

- B. Applicability and Interpretation of Rules and Regulations. These Rules and Regulations govern the allocation of Tax Credits among eligible Housing Sponsors that acquire, construct, or rehabilitate Developments in Rhode Island. These Rules and Regulations are intended to be read *in pari materia* with the Tax Code. To the extent any provision of the Tax Code now in effect or hereafter adopted would operate or render ineffective any allocation of Tax Credits made or to be made hereunder, these Rules and Regulations shall be deemed to have been amended to conform with such provision, to the extent necessary to resolve such inconsistency.
- C. Role of the Corporation. Under existing law, the Corporation has been designated as the housing credit agency for the State of Rhode Island, and is generally responsible for the administration and allocation of the Tax Credit Program in the State of Rhode Island.

#### **4.4 RESERVATION OF TAX CREDITS AND APPLICATION PROCESS**

- A. Allocation of Tax Credits. The Corporation will allocate Tax Credits using a reservation system. Tax Credits will be finally allocated when the Development is placed in service or at such other period or periods permitted under the Tax Code, provided all terms and conditions of this Part and all applicable provisions of the Tax Code have been satisfied.
- B. Application for Reservation of Tax Credits. The Corporation shall seek applications for reservations of Tax Credits during each Reservation Period which may be a calendar quarter or such other period of time as the Corporation may establish from time to time in a Qualified Allocation Plan that has been approved in accordance with the Tax Code and adopted by the Corporation (as in effect from time to time, the "Plan"). Applications shall be received by the Corporation in accordance with the Plan.
- C. Rules Relating to Non-Profit Housing Sponsors. The Corporation will reserve the amount of Tax Credits required by the Tax Code for exclusive use by Non-Profit Housing Sponsors (the "Special Reserve"). The allocation of Tax Credits among Non-Profit Housing Sponsors shall be made by the Corporation from the Special Reserve in accordance with the same procedures and priorities established in the Plan for for-profit Housing Sponsors. When the Special Reserve has been exhausted, applications by Non-Profit Housing Sponsors shall be considered along with applications for for-profit Housing Sponsors against the general State of Rhode Island allocation.
- D. Contents of Application. Each Housing Sponsor seeking a reservation of Tax Credits shall submit to the Corporation an application and supporting materials,

as set forth in the Plan. Any information or materials submitted must be in form and substance satisfactory to the Corporation in all respects.

- E. Evaluation of Applications for Reservations of Tax Credits. The Corporation shall evaluate applications for reservations of Tax Credits in accordance with the Plan.
- F. Right of Corporation to Withdraw Reservation. The Corporation may, at its sole option and discretion, reduce the amount of Tax Credits reserved for any Housing Sponsor or withdraw the entire amount of Tax Credits so reserved if:
  - 1. The Application of such Housing Sponsor contains any fraudulent statement or material misstatement or omits to state any material fact required to be contained therein;
  - 2. it appears to the Corporation that the Development or any portion thereof for which Tax Credits have been reserved will not to be acquired, constructed and/or rehabilitated in a time period adequate to meet the time periods under the Tax Code; or
  - 3. Such other reasons as may be established by the Corporation and made available by Program Bulletin from time to time.
- G. The Corporation shall notify the Housing Sponsor, at its address set forth in the Application, prior to any reduction in or withdrawal of Tax Credits previously reserved for such Housing Sponsor.

#### **4.5 ALLOCATION**

- A. Final Allocation of Tax Credits. The final allocation of Tax Credits shall be made at such time as the Corporation has received such revised eligibility determinations, calculations, certifications, legal and accounting opinions, and other documentation as required by the Corporation. Final allocations shall be made at such time or times as the Tax Code permits. If the Corporation shall determine that the Housing Sponsor is no longer entitled to Tax Credits, it shall so notify the Housing Sponsor; provided, however, that such Tax Credits may be re-allocated subject to satisfaction of terms and conditions as the Corporation shall deem necessary or appropriate to assure that the Housing Sponsor shall become entitled to the Tax Credits. In the event that a Housing Sponsor does not request its entire allocation of reserved Tax Credits or is deemed by the Corporation not to be entitled to any or all of its reserved Tax Credits, the Corporation may set aside or allocate, as applicable, such unallocated Tax Credits to other qualified Housing Sponsors in other manner as the Corporation deems appropriate.
- B. Request for Additional Tax Credits. Prior to the allocation of Tax Credits, a Housing Sponsor may request a reservation of additional Tax Credits. Any request for additional Tax Credits shall include such revised eligibility

determinations, calculations, opinions, certifications and documentation as the Corporation shall require in order to determine that the Housing Sponsor will be entitled to such additional Tax Credits in accordance with the provisions of these Rules and Regulations. The Corporation may require each Housing Sponsor seeking additional Tax Credits to pay additional fees in accordance with the rates set forth in §§ 4.6(B) and (C) of this Part.

#### **4.6 FEES**

Each Housing Sponsor shall pay to the Corporation applications fees, underwriting fees, and allocation fees as set forth in the Plan.

#### **4.7 MISCELLANEOUS**

- A. Monitoring and Continuing Compliance. Each Housing Sponsor shall submit to the Corporation copies of all information required from time to time by federal statutes or regulations to be furnished in connection with the Tax Credit Program at the time such information is made available to the Treasury Department. The Corporation may from time to time conduct on-site inspections of Developments to which Tax Credits have been allocated either with or without prior notice to the Housing Sponsor.
- B. Extended Use and Resale Restrictions. The Tax Code imposes additional restrictions providing for extended use of Low-Income Persons or Families beyond the initial compliance period, and placing restrictions on the resale of Developments to which Tax Credits were allocated in certain years, as set forth in the Plan. Each Housing Sponsor shall cause to be submitted to the Corporation such documents, notices and other information deemed necessary by the Corporation to comply with such restrictions of the Tax Code.
- C. Agreements with the Corporation. The Corporation may, at its sole option and discretion, require any Housing Sponsor to execute and deliver to the Corporation such agreements, documents, certificates and other instruments as it shall deem necessary to administer and monitor the Tax Credit Program.