

RHODE ISLAND HOUSING AND MORTGAGE FINANCE CORPORATION

FIRST AMENDMENT TO AND THE RESTATEMENT OF THE
RULES AND REGULATIONS OF THE CORPORATION APPLICABLE TO THE
ALLOCATION OF LOW INCOME HOUSING TAX CREDITS

SECTION 1. CONSTRUCTION OF RULES AND REGULATIONS

1.1 SECTION 1. CONSTRUCTION OF RULES AND REGULATIONS

1.1 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..

1.2 Definitions.

- 1.2.1 "Act" means the Housing and Mortgage Finance Corporation Act more particularly set forth in Chapter 55 of Title 42 of the Rhode Island General Laws of 1956, as amended.
- 1.2.2 "Board of Commissioners" or "Board" means the Board of Commissioners of the Corporation.
- 1.2.3 "Corporation" means the Rhode Island Housing and Mortgage Finance Corporation, a public corporation organized and existing under the Act.
- 1.2.4 "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 the Tax 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 Section 142(d) of the Tax Code.
- 1.2.5 "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.
- 1.2.6 "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 Section 142(d) of the 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.
- 1.2.7 "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.
- 1.2.8 "Non-Profit Housing Sponsor" means a Housing Sponsor described in paragraphs (3) or (4) of Section 501(c) of the Tax Code, which is exempt from tax under Section 501(a) of the Tax Code 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.
- 1.2.9 "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 Section 3.2 of these Rules and Regulations 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.

- 1.2.10 "Rental Housing Production and Rehabilitation Program" means the Corporation's program to encourage the acquisition, development, construction and rehabilitation of rental housing in the State of Rhode Island adopted pursuant to the Rental Housing Production Regulations.
- 1.2.11 "Rental Housing Production Regulations" means the Rules and Regulations of the Corporation Applicable to the Rental Housing Production and Rehabilitation Program adopted by the Board of Commissioners on April 24, 1987, as the same may be amended from time to time.
- 1.2.12 "Reservation Period" means any period during which the Corporation has requested and is reviewing applications for the reservation of Tax Credits
- 1.2.13 "Tax Code" means 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.
- 1.2.14 "Tax Credit Program" means any program now in effect and as amended from time to time providing federal income tax credits ("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.

SECTION 2. LOW INCOME HOUSING TAX CREDITS

2.1 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.

2.2 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.

2.3 Role of the Corporation. Under existing law, the Corporation has been designated as the housing credit agency of 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.

SECTION 3. RESERVATION OF TAX CREDITRS AND APPLICATION PROCESS

- 3.1 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 these Rules and Regulations and all applicable provisions of the Tax Code have been satisfied.
- 3.2 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 by Program Bulletin. Applications shall be received by the Corporation during a Reservation Period at its principal offices located at 44 Washington Street, Providence, Rhode Island 02903 on Mondays through Fridays, except holidays, between the hours of 9:00 a.m. and 5:00 p.m.

- 3.3 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 herein 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.
- 3.4 Contents of Application. Each Housing Sponsor seeking a reservation of Tax Credits shall submit to the Corporation in triplicate:
- 3.4.1 The name, address and telephone number of the Housing Sponsor together with the name, title and telephone number of the individual(s) designated to correspond and communicate with the Corporation in connection with the Application;
 - 3.4.2 Certified copies of the organizational documents of the Housing Sponsor including its enabling legislation, constitution, Articles of Association or Incorporation and by-laws, declaration of trust, partnership, limited partnership or joint venture agreement, as the case may be, together with all amendments thereto and, in the case of Non-Profit Housing Sponsors, a copy of the determination letter from the Internal Revenue Service as to recognition of exemption from federal income taxation;
 - 3.4.3 A copy of the most recently available audited annual financial statements of the Housing Sponsor prepared in accordance with generally accepted accounting principles consistently applied and duly certified by a licensed certified public accountant covering a period ending within twelve (12) months prior to the date submitted;
 - 3.4.4 Evidence of site control of the Development;
 - 3.4.5 A proposed construction timetable;
 - 3.4.6 Information describing how the Development qualifies for Tax Credits under the Tax Code;
 - 3.4.7 A pro forma calculation of the requested Tax Credits certified to by an independent certified public accountant for the Housing Sponsor;
 - 3.4.8 The experience of the Housing Sponsor and its capacity to undertake and place the Low Income Rental Units in service in the allocation year;
 - 3.4.9 The likelihood of sustained compliance with the targeting requirements and term restrictions of the Tax Code including the sources of funds that will allow the Development to remain in compliance over such term;
 - 3.4.10 Detailed pro forma financial information relating to the Development including an operating budget which clearly sets forth, to the satisfaction of the Corporation, the sources and applications of Development funds including the extent to which the Housing Sponsor is "at risk" under Section 42(k) of the Tax Code; and
 - 3.4.11 Other information as shall in the discretion of the Corporation be required to make a determination as to whether a reservation of Tax Credits is appropriate.

The Corporation reserves the right to waive any of the foregoing requirements in any particular case, and to supplement any of the foregoing requirements from time to time by Program Bulletin. Any information or materials submitted must be in form and substance satisfactory to the Corporation in all respects.

- 3.5 Evaluation of Applications for Reservations of Tax Credits. The Corporation shall evaluate applications for reservations of Tax Credits in accordance with the criteria set forth in the Tax Credit Allocation Plan (the "Plan") attached hereto as Exhibit A which has been approved in accordance with the Tax Code and adopted by the Corporation with these Rules and Regulations. The Plan may be revised from time to time, in accordance with the requirements of the Tax Code, by Program Bulletin.
- 3.6 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:
- (i) 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;
 - (ii) 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
 - (iii) Such other reasons as may be established by the Corporation and made available by Program Bulletin from time to time.

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.

SECTION 4. ALLOCATION

- 4.1 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 the Corporation requires. 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 not entitled to Tax Credits, it shall so notify the Housing Sponsor; provided, however, that such Tax Credits may be 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.
- 4.2 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 Section 5.2 and 5.3 hereof.

SECTION 5. FEES

- 5.1 Housing Sponsors Seeking Corporation Financing. Both for-profit and Non-Profit Housing Sponsors that submit Proposals for Corporation financing under the Rental Housing Production and Rehabilitation Program shall not be required to pay fees to reserve Tax Credits in addition to the fees set forth in Section 5 of the Rental Housing Production and Rehabilitation Regulations.

- 5.2 Other Housing Sponsors Organized for Profit. Each for-profit Housing Sponsor (other than one described in Section 5.1 hereof) shall pay to the Corporation a Reservation Fee at the time of application of \$500 plus 2% of the Tax Credit amount for which application has been made.
- 5.3 Other Non-Profit Housing Sponsors. A Reservation Fee of \$250 plus 2% of the Tax Credit amount requested shall be paid to the Corporation by each Non-Profit Housing Sponsor (other than a Non-Profit Housing Sponsor described in Section 5.1 hereof) at the time of application.
- 5.4 Return of Reservation Fee. If the Housing Sponsor is denied a reservation of Tax Credits by the Corporation because (i) the Development does not qualify or (ii) the Tax Credit Authority for the period in which the Tax Credit is sought has been exhausted, the Reservation Fee shall be refunded to the Housing Sponsor. If the Housing Sponsor withdraws or otherwise fails to complete the Development, the Reservation Fee shall be retained by the Corporation.

SECTION 6. MISCELLANEOUS

- 6.1 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.
- 6.2 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.
- 6.3 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.

EXHIBIT TO FIRST AMENDMENT TO AND THE RESTATEMENT OF THE
RULES AND REGULATIONS OF THE CORPORATION
APPLICABLE TO THE ALLOCATION OF LOW INCOME HOUSING TAX CREDITS

TAX CREDIT ALLOCATION PLAN

INTRODUCTION

The purpose of this Tax Credit Allocation Plan is to explain how the Corporation will select housing development proposals to receive Low Income Housing Tax Credits. The Corporation has developed this Plan to comply with the requirements of the Revenue Reconciliation Act of 1989 and to ensure that the selected developments produce housing which helps to reduce the most pressing housing needs of the State. The housing needs of the State have been assessed by the Corporation and by others. This Plan establishes the priorities the Tax Credit Program should address from among those needs and incorporates these priorities into the criteria that will be used to evaluate proposals.

I. NEEDS ASSESSMENT AND ALLOCATION PRIORITIES

A. Needs Assessment. In 1988 the Corporation developed a five-year Strategic Plan. Part of that planning process included an assessment of the State's housing needs. The needs identified during that process are:

- A shortage of both rental and homeownership units – growth in the number of units has lagged considerably behind household growth,
- A dramatic increase in the need for rental housing for certain rapidly growing renter household types – particularly single-parent households and households of unrelated individuals,
- A need to address the housing affordability gap – Incomes have lagged behind rent increases and home purchase prices,
- The need for housing with an array of supportive services for very poor, primarily single-parent households,
- The need for adequate and appropriate housing for members of special needs populations,
- The need to stem the increase in homelessness, especially among families, and to provide transitional and permanent housing for those currently homeless, and
- The need to preserve affordable rental housing threatened by expiring federal subsidies or eligible for prepaying subsidized mortgages.

Other housing needs identified by the Corporation and by other groups in the State include:

- The need to increase the supply of stable rental housing for families, particularly large families,
- The need to expand affordable housing opportunities throughout the State, particularly outside the inner cities,
- The need to ensure long-term affordability,
- The need for housing for very-low-income households,
- The need for preserving and increasing the supply of single-room occupancy housing for low-income individuals, and
- The desire for promoting development of affordable housing by non-profit developers.

B. Priorities

Not all of the State's housing needs listed above can be met through the Tax Credit Program. From this list, the Corporation has developed the following need priorities to address when allocating tax credits:

- Creating new Low Income Rental Units,
- Converting non-residential property into new housing units or substantially rehabilitating existing units to create safe and decent affordable housing units,
- Preserving existing subsidized units and preventing displacement of those tenants,
- Combining other sources of funding, including foundation grants, grants of real estate from state and municipal governments and agencies, and Community Development Block Grant funds,
- Developing units in areas of the State with little or no existing affordable housing,
- Accommodating the needs of families rather than individuals; handicapped persons; or households with a handicapped member, and
- Including non-profit organizations as a development sponsor or partner.

The Revenue Reconciliation Act of 1989 listed other priorities for the Tax Credit Program as well. Those include:

- Proposals with the highest percentage of tax credit benefits applied directly to development costs rather than intermediary fees, and
- Proposals serving the lowest income households or providing the longest restricted use periods.

The Revenue Reconciliation Act also states that the selection criteria must address:

- Development location,
- Housing needs characteristics,
- Proposal characteristics,
- Sponsor characteristics,
- Participation of local tax-exempt organizations,
- Special housing needs, and
- Public housing waiting lists.

II. PROPOSAL SELECTION CRITERIA

The Corporation's selection criteria for allocating 1990 tax credits to financially feasible development proposals are designed to address the State's housing needs priorities identified above as well as the Federal priorities included in the Tax Code. Proposals will be evaluated the following way: First, all proposals must address the federally legislated criteria; second, all proposals must satisfy at least one of the Threshold criteria; and third; proposals must address at least one of the Ranking criteria. Proposals will be ranked by how many of these criteria are met as well as by how effectively the proposals address the chosen criteria.

The criteria for ranking proposals are:

FEDERALLY LEGISLATED CRITERIA (All proposals must address both of these criteria to be considered for an allocation.)

- All proposals will be expected to have the highest percentage of tax credit benefits possible applied directly to development costs rather than to intermediaries.

- Priority will be given to proposals serving the lowest income households possible or having the longest restrictions on use for low-income households.

THRESHOLD CRITERIA (All proposals must satisfy at least one of these criteria)

- Creating new units of affordable rental housing through new construction or conversion of non-residential property to new affordable housing units.
- Substantially rehabilitating existing poor or uninhabitable housing into safe and decent affordable housing.
- Replacing or preserving existing federally subsidized housing facing expiration of its affordable use restrictions.

RANKING CRITERIA (All proposals must meet at least one of the following criteria. The number of criteria satisfied as well as the substance of how they would be addressed will be considered.)

- Providing housing for low-income families, rather than individuals, and providing three, four and five-bedroom units.
- Having sponsors with a proven development track record.
- Using other sources of funding.
- Locating the development in an area with little or no existing affordable housing.
- Providing housing for special needs and handicapped persons and households.
- Encouraging inclusion of a non-profit developer as a sponsor or partner.
- Marketing the affordable units to households on public housing waiting lists.

III SPECIAL SET-ASIDES

The Tax Act required that 10% of Rhode Island's Tax Credits be reserved for exclusive use by non-profit developers. Should the set aside be completely allocated, non-profit developers will be considered along with for-profit developers for the remaining available credits.

III. APPLICATION PROCESS

The Tax Credit application process will be governed by the Corporation's Tax Credit Program Rules and Regulations and Program Guide. The Corporation will establish time periods for credit allocation commitments as well as performance standards for the development to assure the use of the State's credit allocation. Requests will be evaluated according to the criteria above to determine how well the proposal addresses the State's housing needs and priorities. Corporation staff will also review the proposal to determine the need for the credit and the financial feasibility of the proposal with the credit; however, this determination cannot be considered a warranty by the Corporation of the feasibility or viability of the proposal. For other information on the application process, refer to the Program Guide and the Rules and Regulations.

IV. EVALUATION OF THE CREDIT

The Tax Act requires the Corporation to evaluate the amount of the credit three times: at application, at the time of reservation, and at the date the building is placed in service and Form 8609 is issued. The evaluation will consider the proposed 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.

V. PROCEDURE FOR NOTIFYING THE IRS ON NON-COMPLIANCE

In the event that the Corporation learns that a development sponsor is not in compliance with the requirements of the Tax Code, the Corporation will send a letter to the sponsor describing the area

of non-compliance and recommending actions to correct the problem. If the problem has not been corrected within 30 days, the Corporation will notify the IRS of the alleged violation and the actions that were recommended.

APPROVAL OF THE GOVERNOR

I, Edward D. DiPrete, Governor of the State of Rhode Island and Providence Plantations, do hereby signify my approval of this Tax Credit 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: Edward D. DiPrete, Governor

Date: January 31, 1990