

HOUSING DIVISION RULES

PART IV: ADMINISTRATION OF THE HOUSING INVESTMENT TAX CREDIT PROGRAM

1. AUTHORITY.

These rules are issued pursuant to authority vested in the Department of Housing and Community Development by 32 V.S.A. § 5830c (d).

2. DEFINITIONS.

The definitions set forth in this Section 2 shall apply to the Rules of the Housing Division, Part IV, Administration of the Housing Investment Tax Credit.

2.1 "Affordable housing" means housing in which:

(a) At least 50 percent of the units shall be occupied by households whose income does not exceed 100 percent of the greater of the state or area median income except when eligible housing charities use charitable investments to finance loans to individual borrowers. In that case, consistent with 32 V.S.A. § 5830c (d) (4) (C) loans made from charitable investments shall not be made to any borrowers with incomes above 100 percent of the greater of the state or area median income. Area median income shall be the county or Metropolitan Statistical Area median income published by the federal Department of Housing and Urban Development.

(b) The goal shall be to provide housing at a cost of no more than 30 percent of a household's gross income. Housing costs for renters shall include rent and utility payments. Housing costs for homeowners shall include mortgage payments, property insurance and property taxes.

(c) The affordability of the unit(s) shall be protected for the duration of the term of any loan made pursuant to 32 V.S.A. § 5830c (d) (4) or at least 15 years, whichever is greater, through a housing subsidy covenant or other legally binding instrument, which shall terminate upon the issuance of a judgment of foreclosure or a transfer of the property in lieu of foreclosure.

2.2 "Bank Prime Loan Rate" means the March average prime loan rate, as of March 31 each year, used by insured United States chartered commercial banks to price short-term business loans, as published in the Federal Reserve Board's statistical release.

2.3 "Charitable Investment" means a loan or deposit made to an eligible housing charity, on which the actual annual rate of return is at or below the charitable threshold rate.

2.4 "Charitable threshold rate" means, for each year beginning July 1, a rate which is the greater of two percentage points below the most recent bank prime loan rate, or one percent.

2.5 "Commissioner" means the Commissioner of the Department of Housing and Community Development.

2.6 "Commissioner of Taxes" means the Commissioner of the Department of Taxes for the State of Vermont.

2.7 "Department" means the Department of Housing and Community Development of the Agency of Commerce and Community Development for the State of Vermont.

2.8 "Eligible housing charity" means either a governmental agency or instrumentality, or a private not-for-profit organization that has applied for and has not been denied tax-exempt status by the United States Internal Revenue Service (IRS) and that is determined eligible by the Commissioner of the Department of Housing and Community Development in accordance with Rule 3. Charities qualifying under this definition must have applied to the IRS for tax-exempt status and must have received conditional approval before the Commissioner will approve its eligibility to participate in this program.

2.9 "Fiscal year" means July 1 through June 30.

2.10 "Tax Year" means January 1 through December 31.

2.11 "Tax credit certificates" or "certificates of eligibility for tax credits" or "certificate of eligibility to receive tax credit investments" are certificates issued by the Commissioner to eligible housing charities authorizing the charity to accept charitable investments pursuant to this chapter in an amount up to the dollar amount specified on the certificates. These certificates shall not be considered a security under 9 V.S.A. § 4202a (10).

3. APPLICATION FOR STATUS AS AN ELIGIBLE HOUSING CHARITY.

3.1 Any not-for-profit organization, governmental agency, or instrumentality of the state must qualify as an eligible housing charity to accept charitable investments eligible for tax credits under this statute. Such organizations shall make application to the Commissioner on a form provided by the Department of Housing and Community Development. The Commissioner shall make a determination of eligibility and shall

provide written verification of the same if the organization meets the statutory requirements under 32 V.S.A. § 5830c, Subdivision (d) (1) through (d) (5).

3.2 Eligibility to receive certificates will remain valid until such time as the Commissioner revokes it upon a finding that it fails to substantially meet the eligibility criteria.

4. DISTRIBUTION OF TAX CREDIT CERTIFICATES AMONG ELIGIBLE HOUSING CHARITIES.

4.1 Subject to the availability of tax credit certificates, as defined in Rule 4.3 and the distribution formula as defined in Rule 4.4, the Commissioner shall issue tax credit certificates to the following organizations:

- (a) those which have applied for eligibility as an eligible housing charity;
- (b) those which have received written verification of that status;
- (c) those which have subsequently applied for tax credit certificates; and
- (d) those which evidence that they have made a good faith effort to ensure each affordable housing project receiving funds under this program meets the planning goals under 24 V.S.A. § 4302 (b) and (c) and have attempted to mitigate any potential adverse impacts caused by failure to meet the goals.

4.2 Deleted.

4.3 Availability of Tax Credit Certificates

- (a) In no event shall the Commissioner issue or permit to be outstanding more than \$5,000,000 in tax credit certificates in the aggregate in any fiscal year. Each \$1.00 in tax credit certificates shall be equal to \$1.00 in charitable investment funds received by an eligible charity from an investor pursuant to 32 V.S.A. § 5830c.
- (b) The certificate amount does not represent the dollar amount of actual tax credits to be received by the investor, nor does it constitute approval by the Commissioner of Taxes of the investor's eligibility to receive tax credits, nor does it constitute approval by the Commissioner of specific affordable housing investments.
- (c) An eligible housing charity which is allocated tax credit certificates may designate which of its investors shall claim tax credits pursuant to this statute. A tax credit may be claimed by the investor for the life of the charitable investment,

until the eligibility of the housing charity is revoked, or the statutory authority is repealed, whichever comes first.

(d) Tax credit certificates shall be available for re-issuance in an amount equivalent to the amount by which the principal on a charitable investment is partly or fully repaid to an investor or it is determined that the principal will not be repaid. The housing charity shall notify the Commissioner within 30 days of the date such tax credit certificates become available for re-issuance in the case of a loan that is fully repaid or will not be paid, and shall provide documentation of the same. For all others, calculations of the amount by which the loan has been repaid during the tax year shall be made available to the Commissioner on January 31. Said charity may then re-apply for available certificates. Until the Commissioner is notified of the availability of tax credit certificates pursuant to this subsection, the full amount of the tax credit certificates issued to a recipient housing charity shall be considered to be outstanding and not available for re-issuance. In no event may the housing charity designate new investors to receive tax credits without receiving a re-issuance of tax credit certificates from the Commissioner.

(e) Any balance between the amount of tax credit certificates issued to a housing charity and the amount of charitable investments actually received by the charity as of December 31st each year must be reported to the Department by January 31. That portion of the amount of each tax credit certificate issued and unused may be recalled and redistributed to other eligible housing charities, by February 21, in accordance with Rule 4.1 and 4.4.

4.4 Distribution of Available Tax Credit Certificates Among Eligible Charities

(a) On or after the first working day in July of each year, in accordance with Subsections 4.1 and 4.2 above, the Commissioner shall issue 60% of the available tax credit certificates equally among eligible housing charities, subject to the following limits:

(1) Charities which have loaned or invested \$50,000 to \$500,000 in projects which meet the definition of affordable housing as defined in Subsection 2.1 above for the three fiscal years preceding the date of its application for tax credit certificates shall receive no more than \$200,000 in tax credit certificates, in any given issuance;

(2) Charities which have loaned or invested over \$500,000 in projects which meet the definition of affordable housing as defined in Subsection 2.1 above for the three fiscal years preceding the date of its application for tax credit certificates shall receive no more than \$1,000,000 in tax credit certificates, in any given issuance.

(b) The Commissioner may issue the remaining 40% of the available tax credit certificates to eligible housing charities at any time.

(c) In allocating the tax credit certificates, and subject to the above limitations, the Commissioner may consider whether an eligible charity requires a lesser or greater amount of certificates based on past performance and anticipated charitable investments or whether another distribution method is in the best interests of fostering affordable housing. The Commissioner shall make the reason for his or her distribution available to the public in writing.

4.5 Charities may not accept investments eligible for the HITC program in amounts less than \$1,000.

4.6 Eligible housing charities may return unexpended tax credit certificates to the Commissioner at any time for redistribution in accordance with Subsection 4.4 above.

4.7 The Commissioner shall furnish the Commissioner of Taxes with a list of eligible housing charities with the amount of their respective tax credit certificates by July 15 and March 15 of each year.

5. REVOCATION OF ELIGIBILITY.

5.1 The Commissioner may revoke an organization's status as an eligible housing charity upon finding, after notice and a hearing, that the organization fails to meet substantially all the criteria under 32 V.S.A. § 5830c (d) (1) through (d) (5).

5.2 If eligibility is revoked the effective date shall be no earlier than the date the charity received notice of the revocation. The tax credit certificate shall be invalid as of the date of revocation, but investors shall be eligible for tax credits until the end of the tax year in which revocation occurs.

5.3 If eligibility is revoked, the organization shall reimburse the State for the full amount of any tax credits allowed its investors after the effective date of revocation of eligibility. The reimbursement shall be prorated on a monthly basis with the charity's liability beginning on the first day of the month following revocation.

5.4 The organization shall pay to investors the full amount of any tax credits claimed by the investor, but disallowed by the Commissioner of Taxes due solely to the revocation of eligibility.

5.5 Charities which have had their eligibility revoked by the Commissioner shall not be liable for the value of tax credits to investors in the tax years following revocation.

5.6 Any person aggrieved by the denial or revocation of the eligibility of a housing charity may appeal to superior court.

6. COMMISSIONER'S RESPONSIBILITIES.

6.1 Under 32 V.S.A. § 5830c (a), the Commissioner shall approve charitable investments in an eligible housing charity. Such approval shall be deemed to have been granted by the Commissioner if:

- (a) the sum total of the charitable investment, or the total of all charitable investments accepted by the eligible housing charity does not exceed the amount of tax credit certificates issued by the Commissioner;
- (b) the recipient organization has been determined to be an eligible housing charity and the Commissioner has not revoked the eligibility;
- (c) the actual annual rate of return on the charitable investment is at or below the charitable threshold rate;
- (d) the investment is equal to, or more than \$1,000;
- (e) the charitable investment has a fixed term at which time the principal will have been amortized or come due in full.

6.2 Approval of a charitable investment by the Commissioner in accordance with Subsection 6.1 shall not imply approval of a tax credit by the Commissioner or by the Commissioner of Taxes.

6.3 Approval of a charitable investment in accordance with Subsection 6.1 shall not imply that the Commissioner has made an investment offering or has approved the sale of a security. No written information prepared by the Department on the HITC Program shall in any way be considered an investment offering.

6.4 Once the eligible housing charity's status has been determined by the Commissioner under Subsection 3 and charitable investments have been approved in accordance with Subsection 6.1, the Commissioner shall not become involved in the approval of individual investments made by the charity into specific affordable housing developments except in accordance with Subsection 4.1 (d).

6.5 The Commissioner shall monitor compliance with the HITC program by requiring:

- (a) Eligible housing charities to submit the information required under 32 V.S.A. § 5830c (f) (3) to the Department when it is submitted to the Commissioner of Taxes; and

(b) on or before January 31 and July 31 of each year the eligible housing charity shall submit the following information in a format approved by the Commissioner:

- (1) a list of the charitable investments accepted by the eligible housing charity with the interest rate and term of each loan from each investor and the date each charitable investment was made to the charity;
- (2) a list of the affordable housing projects in which investors' funds were invested and the degree to which the project meets 32 V.S.A. § 5830c (c) (1) (A) through (C); the interest rate and term of each loan made by the charity in accordance with 32 V.S.A. § 5830c (d) (4); the date funds were disbursed to each project;
- (3) evidence of compliance with subsection 4.1 (d) and
- (4) any other information reasonably required by the Department to administer this program.