

No. 11

EXECUTIVE ORDER

**PRESCRIBING PROCEDURES TO ALLOCATE THE STATE LOW INCOME HOUSING CREDIT
UNDER SECTION 42 OF THE UNITED STATES INTERNAL REVENUE CODE**

WHEREAS, section 42 of the United States Internal Revenue Code (“the Code”) establishes a federal tax credit for housing persons of low income to be administered by state housing agencies (“Low Income Housing Tax Credit”);

WHEREAS, the Code authorizes the governor of each state to establish a formula for allocating the Low Income Housing Tax Credit limit among governmental units and other issuing authorities in the State;

WHEREAS, the Code requires that the allocation of Low Income Housing Tax Credits be coordinated by a single state housing agency;

WHEREAS, the Code requires each agency allocating the Low Income Housing Tax Credits to prepare a qualified allocation plan which sets forth the criteria and preferences by which Low Income Housing Tax Credits will be allocated to projects;

WHEREAS, the amount of the Low Income Housing Tax Credit Ceiling is established pursuant to the Revenue Procedure for each calendar year, based upon the most recent population estimate released by the United States Bureau of the Census;

WHEREAS, the Low Income Housing Tax Credit should be allocated in a manner which maximizes the public benefit by addressing the State's need for low income housing and community revitalization incentives in distressed areas of the State;

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and laws of the State of New York, do hereby order as follows:

A. Definitions

As used herein, the following terms shall have the following meanings:

1. “Code” shall mean the United State Internal Revenue Code.

2. "Commissioner" shall mean the Commissioner of the Division of Housing and Community Renewal.
3. "Low Income Housing Tax Credit Ceiling" shall mean the dollar amount of allocation authority apportioned to New York State pursuant to the Revenue Procedure referenced in the Code for a calendar year.
4. "Tax Credit" shall mean the Low Income Housing Tax Credit allocated to specific projects under Section 42 (b) of the Code.
5. "State Qualified Allocation Plan" shall mean the plan to guide the allocation and monitoring of the Low Income Housing Tax Credit Ceiling in a manner which addresses State and local housing needs and, where possible, addresses the most pressing State and local housing needs, fosters community revitalization, saves social services and public assistance expenses and leverages economic development.
6. "Housing Credit Agency" or "HCA" shall mean any State Housing Credit Agency or Local Housing Credit Agency.
7. "State Housing Credit Agency" shall mean the New York State Division of Housing and Community Renewal or any other New York State agency, governmental unit or public benefit corporation concerned with housing and designated by the Commissioner as an HCA, within the meaning of section 42 (h) (7) (A) of the Code. The Division of Housing and Community Renewal shall be the main HCA in New York State.
8. "Local Credit Agency" or "LCA" shall mean any political subdivision, or any other local governmental unit or issuing authority concerned with housing and designated by the Commissioner as an HCA, within the meaning of Section 42 (h) (7) (A) of the Code.

B. Allocation of Low Income Housing Credit Ceiling

1. The Commissioner shall, in accordance with the State Qualified Allocation Plan, allocate the annual Low Income Housing Credit Ceiling to State and Local Housing Credit Agencies.
2. The Commissioner shall monitor the allocation of Tax Credits to insure that at least 10 percent of the overall Low Income Housing Tax Credit Ceiling is reserved and set aside for use by qualified non-profit organizations that materially participate in the development and operation of projects. The Commissioner may increase an allocation of the Low Income Housing Tax Credit Ceiling in order to insure sufficient means to implement a complete program of credit activity and provide for innovative initiatives for addressing State and local housing needs.
3. State and Local Housing Credit Agencies that seek to receive an initial allocation of the Low Income Housing Tax Credit Ceiling shall submit an application to the Commissioner as specified by the Commissioner on or before January 1 of each calendar year. The application shall include:
 - a. a qualified allocation plan, as defined by the Code;
 - b. a request for an allocation of Low Income Housing Tax Credit Ceiling consistent with the qualified allocation plan;
 - c. a certification that all necessary steps will be taken to fulfill the responsibilities of an HCA as set forth under the Code and that the applicant will comply with all procedures and guidelines promulgated by the Commissioner; and
 - d. such other information as the Commissioner may require.
4. The Commissioner shall make an initial allocation of the Low Income Housing Tax Credit Ceiling to HCAs within thirty days of receipt of the HCA applications as specified above, and by February 15 of each calendar year or as soon thereafter as practicable. The Commissioner from time to time may make additional allocations to such credit agencies from the Statewide Reserve.
5. After receiving an allocation of the Low Income Housing Tax Credit Ceiling from the Commissioner, each HCA shall submit to the Commissioner on July 1 of each calendar year a report on the progress of its program which shall include a statement of the amount of its Low Income Housing Tax Credit Ceiling that is expected to remain unused. On and after September 15, or as soon thereafter as practicable, any of the Low Income Housing Tax Credit Ceiling which the Commissioner determines is likely to remain unused shall revert to the Statewide Reserve for reallocation by the Commissioner.

C. Procedures and Guidelines

The Commissioner is authorized to establish procedures and guidelines to implement the provisions of this order. Such procedures and guidelines shall set forth the amount of the Low Income Housing Tax Credit Ceiling for the State and provide guidance to HCA's in applying for an allocation and submitting reports and certifications sufficient to enable the Commissioner to make any report required by Section 42 of the Code and this Executive Order. Such procedures and guidelines may address processing and monitoring costs and any other matters the Commissioner deems appropriate.

D. Effectiveness

Nothing contained in this order shall be deemed to supersede, alter or impair any provision of the Act, or any regulations promulgated thereunder. Executive Order No.135, issued on February 27, 1990, is hereby revoked and superseded by this Executive Order as of the date hereof.

G I V E N under my hand and the Privy Seal of the
State in the City of Albany this second
day of March in the year two thousand
eleven.

BY THE GOVERNOR

Secretary to the Governor