

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)



Low Income Housing Tax Credit

Qualified Allocation Plan

2013



CHAPTER 16 LOW-INCOME HOUSING TAX CREDIT RULE

Table of Contents

1.	Definitions	1
2.	Housing Needs and Priorities	5
	A. Consolidated Plan	5
	B. Housing Priorities	6
3.	State Ceiling, Set Asides and Maximum Credit Amount	6
	A. Amount of State Ceiling	6
	B. Non-Profit Set-aside	7
	C. Preservation Set-aside	7
	D. Maximum Credit Amount	8
4.	Allocation Process	8
	A. Pre-Application Site Review	8
	B. Application	9
	C. Ineligible Applicants	9
	D. Notice to Local Jurisdiction	10
	E. Selection Process	10
	F. Notice to Proceed	10
	G. Waiting List	10
	H. Credit Allocation	10
	I. Termination of Application or Notice to Proceed	11
5.	Threshold Requirements	11
	A. Eligible Projects	11
	B. Affordability	11
	C. Maximum Total Development Cost	12
	D. Development Capacity	12
	E. Project Owner	12
	F. Non-profit Participation	12
	G. Site Control	13
	H. Located in a Growth Area	13
	I. Project Feasibility	13
	J. Development Budget	14
	K. Operating Budget	14
	L. Tax Credit Investor	14
	M. Market Study	14
	N. Project Design	14
	O. Resident Service Coordination	15
	P. Project Amenities	15
	1. Community Room	15
	2. Laundry Facilities	16
	3. Area Activities	17

4.	Exceptions	17
Q.	Smoke-free Housing	17
R.	Waiting List Preference	18
6.	Scoring Criteria	18
A.	Project Characteristics	18
1.	Reuse of Existing Housing, Structures or Site	18
2.	Preference for Populations with Special Needs	18
3.	Family Housing	18
4.	Tenant Ownership	19
5.	Readiness	19
6.	Historic Rehabilitation	19
B.	Financial Characteristics	20
1.	Total Development Cost	20
2.	Below Market Capital	21
3.	Acquisition Cost	24
4.	New Project-based Rental Assistance	25
5.	Operating Subsidy	25
C.	Project Location	26
1.	Service Center Community Need	26
2.	Vacancy Rate	28
3.	Tax Credit/Market Rent Differential	29
4.	Community Revitalization	29
5.	Smart Growth	29
D.	Sponsor Characteristics	31
1.	Developer Experience	31
2.	Tax Credit Noncompliance	31
3.	Management Experience	31
E.	Tie Breaker	31
7.	Project Evaluation	31
A.	Amount of Credit	32
B.	Developer Fee	34
C.	General Contractor Intermediary Costs	34
D.	Time of Credit Determination	35
E.	Binding Agreement	35
F.	Cost Increases	35
G.	Disclaimer	35
8.	Allocation of Credit	36
A.	Allocation	36
B.	Carryover Allocation	36
C.	Tax Credit Compliance Experience	38
D.	Extended Low Income Housing Commitment	38
E.	Converting a Carryover Allocation	38
F.	Cancellation of Carryover Allocation	39
G.	Forward Allocation of Credit	39

H.	Disclaimers	39
9.	Tax-exempt Bond Financed Projects	40
A.	Eligible Buildings	40
B.	Requirements	40
C.	Applicable Percentage	40
D.	Credit Determination	40
E.	Allocation	40
10.	Monitoring	41
A.	Recordkeeping and Record Retention	41
B.	Certification and Review	43
C.	Data Collection	46
D.	Inspections	46
E.	Monitoring Fee	46
F.	Notification of Noncompliance	47
G.	Liability	47
11.	Rule Limitations	47
A.	Other Requirements	47
B.	Conflicts	47
C.	Not an Entitlement	47
D.	Final Agency Action	48
E.	Waiver	48
F.	Headings	48
	Statutory Authority	48
	Basis Statement	48
	Fiscal Impact of the Rule	60
	Effective Date	60

99-346 MAINE STATE HOUSING AUTHORITY

Chapter 16: LOW-INCOME HOUSING TAX CREDIT RULE

Summary: The Tax Reform Act of 1986 created the federal low-income housing tax credit to encourage private capital investment in the development of qualified affordable residential rental housing. Section 42 of the Internal Revenue Code of 1986, as amended, and associated regulations and guidance govern the federal low-income housing tax credit. Section 42 of the Code requires housing credit agencies to adopt a qualified allocation plan for allocating and administering the federal low-income housing tax credit, including the annual ceiling of federal low-income housing tax credits allocated to housing credit agencies. Maine State Housing Authority is the designated housing credit agency for the State of Maine. This rule is the qualified allocation plan for the State of Maine. It establishes the policies, selection criteria and procedures for allocating and administering the federal low-income housing tax credit in the State of Maine.

SECTION 1: DEFINITIONS

- A. “Act” means the Maine Housing Authorities Act, 30-A M.R.S.A. §4701 et seq., as amended.
- B. “Adaptive Reuse” means the conversion of existing non-housing buildings or structures to multi-family residential rental housing.
- C. “Affordable Housing TIF” means an affordable housing development district and program approved by MaineHousing pursuant to MaineHousing’s Affordable Housing Tax Increment Financing Program and the Act.
- D. “Applicable Fraction” means the fraction defined in Section 42(c)(1)(B) of the Code.
- E. “Applicable Percentage” means the percentage defined in Section 42(b) of the Code.
- F. “Applicant” means an individual or entity applying for Credit governed by this rule or its successors and assigns, including without limitation the Owner of the Project if the Owner is not formed or established at the time of Application.
- G. “Application” means an application to MaineHousing for a reservation of Credit governed by this rule.
- H. “Benchmark Total Development Cost” means the benchmark Total Development Cost established by MaineHousing based on the historical average Total Development Cost of completed Projects by type and set forth in Section 6.B.1.

- I. “Binding Agreement” means a binding agreement executed by MaineHousing and the Applicant pursuant to which the Applicant elects the Applicable Percentage for a Project pursuant to Section 42(b) of the Code.
- J. “Code” means the Internal Revenue Code of 1986, as amended, including applicable rules and regulations proposed or promulgated thereunder.
- K. “Compliance Period” means the period described in Section 42(i)(1) of the Code.
- L. “Credit” means the low-income housing tax credit established by Section 42 of the Code.
- M. “Credit Period” means the period described in Section 42(f)(1) of the Code.
- N. “Demand Response Transportation” means on-call transportation services that operate at least 3 days per week and provides service throughout the day.
- O. “Developer Fee” means the compensation to the individual(s) or entity(ies) responsible for the work, costs and risks associated with the development of a Project, including amounts paid to consultants to perform tasks on behalf of such individuals or entities, but does not include compensation for professional services such as environmental assessments, rental market studies, soil tests, and water tests.
- P. “Difficult To Develop Area” means areas of the State which satisfy the requirements of Section 42(d)(5)(B)(iii)(I) of the Code as designated by HUD annually or as designated by MaineHousing in Section 7.A.3 in accordance with Section 42(d)(5)(B)(v) of the Code.
- Q. “Downtown” means (a) the central business district of a community that serves as the center for socioeconomic interaction in the community and is characterized by a cohesive core of existing commercial and mixed-use buildings (such as residential, commercial and office with a strong pedestrian orientation), often interspersed with civic, religious and residential buildings and public spaces, typically arranged along a main street and intersecting side streets, walkable and served by public infrastructure; or (b) an area identified as a downtown in a comprehensive plan adopted pursuant to 30-A M.R.S.A § 4312 et seq.
- R. “Elderly Housing” means a Project that is receives funding and rental assistance under RD or HUD multi-family rental housing programs for persons who are elderly (such as RD’s Section 515 Rural Rental Housing Program and HUD’s Section 202 Supportive Housing for the Elderly Program) or meets the definition of “housing for older persons” under the federal Fair Housing Act, 42 U.S.C. § 3607(b)(2).

- S. “Eligible Basis” means eligible basis as defined in Section 42(d) of the Code.
- T. “Enterprise Community” means any community that has received a federal designation as an enterprise community or empowerment zone by HUD or RD.
- U. “Extended Low-income Housing Commitment” means an agreement satisfying the requirements of Section 5 of this rule and Section 42(h)(6)(B) of the Code.
- V. “Extended Use Period” means the period described in Section 5.B. pursuant to Section 42(h)(6)(D) of the Code.
- W. “Fixed-route Public Transportation” means year-round, regularly scheduled public transportation that operates at least 5 days per week and provides regular service during at least commuter hours (commuter hours being 6:30 AM to 9:30 AM and 3:00 PM to 6:00 PM daily).
- X. “Formerly Developed Site” means (i) a site currently used for other than residential or agricultural purposes, (ii) a site formerly used for other than residential housing with 4 or fewer dwelling units or agricultural purposes on which one or more substantial buildings or structures currently exist or have been demolished or removed for purposes of redeveloping the site, or (iii) a site otherwise designated by a municipality for redevelopment to renew a blighted area. An undeveloped portion of an existing site, regardless of the use of the existing site, is not a formerly developed site for purposes of this scoring category.
- Y. “Housing Development Costs” means the total of all direct and indirect costs incurred in financing, creating, purchasing or rehabilitating Qualified Low-income Housing Projects except the costs attributable to the acquisition of the land and any existing buildings.
- Z. “HUD” means the United States Department of Housing and Urban Development.
- AA. “Intermediary Costs” means all Housing Development Costs except the actual construction or Rehabilitation Costs attributable to the development of the units.
- BB. “IRS” means the United States Department of Treasury, Bureau of Internal Revenue Service.
- CC. “MaineHousing” means Maine State Housing Authority.
- DD. “Maximum Total Development Cost” means the maximum Total Development Cost by Project type that is eligible for Credit under this Qualified Allocation Plan

pursuant to Section 4.C.

- EE. “Maximum Credit Amount” means the maximum amount of Credit a Project is eligible to receive pursuant to Section 3.D.
- FF. “Notice to Proceed” means the notice to the Applicant that a Project has been selected for further evaluation to determine the Project’s eligibility for and the amount of Credit to be allocated for the Project.
- GG. “Owner” means the owner of a Qualified Low-income Building which has been placed in service and has received an allocation of Credit from MaineHousing pursuant to this rule or a prior Qualified Allocation Plan.
- HH. “Placed in Service” means the date on which a Qualified Low-income Building is suitable and available for occupancy as determined in accordance with Section 42 of the Code.
- II. “Qualified Allocation Plan” or “Plan” means the plan for allocation and administration of the Credit, including the annual State Ceiling, adopted by the housing credit agency pursuant Section 42(m)(1)(B) of the Code.
- JJ. “Qualified Basis” means qualified basis as defined in Section 42(c)(1) of the Code.
- KK. “Qualified Census Tract” means areas of the State which meet the requirements of Section 42(d)(5)(B)(ii) of the Code designated by HUD annually.
- LL. “Qualified Low-income Building” or “Building” means a building as defined in Section 42(c)(2) of the Code.
- MM. “Qualified Low-income Housing Project” or “Project” means a project as defined in Section 42(g) of the Code.
- NN. “Qualified Non-profit Organization” means an organization defined in Section 42(h)(5)(C) of the Code.
- OO. “Rehabilitation Costs” means the expenses incurred or to be incurred which qualify as rehabilitation expenditures under Section 42(e) of the Code.
- PP. “RD” means the United States Department of Agriculture – Rural Development.
- QQ. “Safe Walking Distance” means year-round pedestrian route appropriate to the area, including sidewalks adjacent to the Project, paved wide shoulders suitable for

walking, crosswalks and traffic signals at busy roads or intersections, and the route must be walkable year-round, including during the winter, i.e. plowed.

- RR. “Section” or “Subsection” mean or refer to sections and subsections of this rule.
- SS. “Section 8” means Section 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437f, as amended.
- TT. “Service Center Community” means a municipality or group of municipalities identified by the State Planning Office as a Regional Service Center pursuant to State Planning Office Rule Chapter 220, *Methodology for Identification of Regional Service Centers*.
- UU. “State” means the State of Maine.
- VV. “State Ceiling” means the State housing credit ceiling established in Section 42(h)(3)(C) of the Code.
- WW. “State’s Growth Management Law” means the provisions set forth in 30-A M.R.S.A. § 4349-A, as amended.
- XX. “Total Construction Cost” means the sum of site costs, structures costs, general requirements, bond premiums, and contractor overhead and profit.
- YY. “Total Development Cost” means the sum of all costs of developing and constructing or rehabilitating a Project, including without limitation, acquisition costs, Total Construction Costs, soft costs (such as permits, design and engineering fees, environmental site assessment fees and legal fees), costs associated with obtaining and carrying a financing package, Developer Fee and project reserves.
- ZZ. “Urban Infill Site” means land that was left vacant or underutilized in the development of an urban area, including, for example, a vacant lot between existing buildings or a parking lot in an urban area.
- AAA. “Very Low Income” means individuals or families whose income is at or below 50% of the area median gross income as determined in accordance with Section 42 of the Code.

SECTION 2: HOUSING NEEDS AND PRIORITIES

- A. **Consolidated Plan.** MaineHousing annually completes a statewide needs assessment as part of its Consolidated Plan. Based on that annual needs assessment, MaineHousing determines priorities in its housing delivery programs. MaineHousing will allocate Credit resources in a manner consistent with the needs assessment and

priorities approved through the Consolidated Plan. The following needs are identified:

1. Creation and maintenance of an adequate supply of decent, safe and sanitary rental housing affordable for persons with Very Low Income.
2. Rehabilitation of existing housing stock, which does not result in displacement or substantially increased housing costs.
3. Increased availability of housing with services for persons with special needs including, without limitation, housing for persons who are homeless, housing for persons with mental and physical disabilities and housing for persons who are elderly.

B. **Housing Priorities.** In consideration of the housing needs identified above, MaineHousing has established the following housing priorities for allocation of the Credit:

1. The most efficient use of the Credit and other MaineHousing resources, including Projects that have the lowest Total Development Cost;
2. Projects that provide housing for persons with Very Low Income;
3. Projects that incorporate smart growth principles and contribute to vibrant, mixed-use downtown communities;
4. Projects involving acquisition and rehabilitation, which add to or significantly rehabilitate and preserve existing rental housing;
5. Projects which have federal subsidies but need the Credit to make the Project feasible, including Projects with RD and HUD funding;
6. Projects which meet the housing and service needs of distinct populations of a community, including person who are homeless or have other special needs; and
7. Projects that receive new or preserve existing project-based rental assistance to provide housing for persons with income at or below Very Low Income.

SECTION 3: STATE CEILING, SET-ASIDES AND MAXIMUM CREDIT AMOUNT

A. **Amount of State Ceiling.** The State Ceiling for the State for each calendar year will be the sum of:

1. The per-capita dollar amount established pursuant to Section 42(h)(3) of the Code multiplied by the State population as determined by the most recent estimate of the State's population released by the United States Bureau of Census before the beginning of such calendar year, or by such other method as may be authorized or required by the Code;
2. The unused State Ceiling for the State, if any, for the preceding calendar year;
3. The amount of the State Ceiling returned in the calendar year; and
4. The amount, if any, allocated to MaineHousing by the United States Secretary of the Treasury from the re-pooling of other states' unused housing credit allocations.

If, at the close of a calendar year, after all current year allocations and carryover allocations have been made, there is a portion of the current per capita State Ceiling remaining, it will automatically be carried over and added to the State Ceiling for the following year to be allocated as part of the State Ceiling for that year.

- B. **Non-Profit Set-aside.** Ten percent (10%) of the annual State Ceiling will be set aside for Projects in which a Qualified Non-profit Organization will own an interest (directly or through a partnership) and materially participate in the development and operation of the Project throughout the Compliance Period in accordance with Section 42 (h)(5)(B) of the Code. An Applicant must provide evidence that a Qualified Non-profit Organization will own an interest in the Project in accordance with the Code and indicate its desire to compete in this set-aside in its Application. If the amount of Credit under this set-aside is not sufficient to complete the Project proposed by the highest-scoring eligible Applicant, additional Credit will be allocated to the Applicant regardless of the Applicant's score in relation to the scores of other Applicants.
- C. **Preservation Set-aside.** Up to \$500,000 of the annual State Ceiling will be set aside for Projects that preserve and rehabilitate existing multi-family rental housing that (i) has outstanding financing from a RD rental housing program and project-based rental assistance from RD which will be assumed by the Owner or will be replaced with new capital financing and/or project-based rental assistance from RD, or (ii) has an existing Section 8 project-based rental assistance contract or similar HUD project-based rental assistance contract (excluding assistance provided under the Section 8 Project-Based Voucher Program) which will be assumed by the Owner or replaced with a new Section 8 project-based rental assistance contract on similar terms. The Credit must be used primarily for the rehabilitation of the Project. An Applicant must indicate its desire to compete in this set-aside in its Application. If

the amount of Credit under this set-aside is sufficient to complete the Project proposed by the highest-scoring eligible Applicant, but is not sufficient to complete the Project proposed by the second highest-scoring eligible Applicant, additional Credit may be allocated to the second highest-scoring Applicant, regardless of the Applicant's score in relation to the scores of other Applicants, based on the quality of the Application and the most efficient use of Credit as determined by MaineHousing in its sole discretion.

- D. **Maximum Credit Amount.** The maximum amount of Credit that an Applicant may receive is the lesser of (i) \$20,000 per Credit-eligible unit for a Project and (ii) 30% of the State Ceiling for the year in which the Applicant applied for Credit. MaineHousing may, in its sole discretion, increase the Maximum Credit Amount for a Project that is located Downtown and was awarded points under Section 6.C.5.a. to the lesser of (i) \$22,000 per Credit-eligible unit for a Project and (ii) 30% of the State Ceiling for the credit year in which the Applicant applied for Credit.

MaineHousing will make a pre-determination about the boundaries of a Downtown and a Project's eligibility under the selection criterion in Section 6.C.5.a. for purposes of determining the Maximum Credit Amount, provided the Applicant submits all information necessary for MaineHousing to make such determination at least 15 days prior to the deadline for Applications for the applicable Credit round.

SECTION 4: ALLOCATION PROCESS

- A. **Pre-Application Site Review.** A prospective Project for which an Applicant expects to submit an Application must undergo a site review and evaluation by MaineHousing to be eligible to apply for Credit. The purpose of the evaluation is to determine the prospective Project's suitability for housing, which determination shall be made solely by MaineHousing. MaineHousing will consider the physical site of the prospective Project, the difficulty of developing the site, the building(s) to be constructed and/or the building(s) to be rehabilitated as part of the Project, any demolition, remediation or site work to be performed in connection with the Project and the projected capital and operating costs of developing and operating the Project. MaineHousing will notify the Applicant in writing within thirty (30) of receiving a complete request for site review if MaineHousing determines a prospective Project is unsuitable. If a prospective Project is deemed unsuitable based on the evaluation, the Project is not eligible to apply for Credit. Information about prospective Projects in form and substance required by MaineHousing and a fee in the amount of \$500 shall be submitted to MaineHousing at least 45 days prior to the deadline for Applications for the applicable Credit round. The fee will be applied to the Application fee.

An Applicant may appeal MaineHousing’s determination that a prospective Project is unsuitable to MaineHousing’s Director within 20 days of the date of the notice from MaineHousing. The appeal must be in writing and identify the Applicant and the Project. The Applicant may submit additional information not previously provided to MaineHousing with the appeal if the Applicant believes the information is relevant to the suitability of the Project. MaineHousing’s Director will promptly respond with a written decision on the appeal. An Applicant must use and complete this appeal process before pursuing other remedies. A decision by MaineHousing’s Director pursuant to this appeal process constitutes final agency action with respect to the site review process described in this subparagraph.

B. **Application.** The deadline for submitting all Applications for the 2013 State Ceiling, including Applications for the Set-asides under the 2013 State Ceiling in Section 3, is 5:00 PM on Thursday, October 25, 2012.

Applications shall be in the form prescribed by MaineHousing and shall be complete. If an Applicant fails to complete any of the prescribed forms or schedules in the Application, the Application will be rejected.

The Application must include a non-refundable application fee as follows:

Projects of up to 11 units	\$ 250
Projects of 11 to 23 units	\$ 500
Projects of 24 or more units	\$1,000

The non-refundable application fee must be paid for any Application re-submitted or carried over from one tax credit year to the next tax credit year.

MaineHousing reserves the right to require additional information it deems necessary in order to process an Application.

MaineHousing may reject any and all Applications and may refuse to award any or all of the Credit in its sole discretion. An Applicant may withdraw an Application at any time by written notice to MaineHousing, but the application fee will not be refunded.

C. **Ineligible Applicants.** An Application will not be accepted, processed, or approved by MaineHousing if the Applicant or any affiliate or principal thereof, or any entity controlled by the Applicant or affiliate or principal thereof, (i) has in the last six months been declared in default or been 60 days or more delinquent on any loan with MaineHousing unless an approved payment or workout plan is in place and in good standing; or (ii) has ever been the owner of any MaineHousing-financed project in which MaineHousing has foreclosed a mortgage interest or received a deed-in-lieu of foreclosure of a mortgage interest unless waived by MaineHousing

for public policy reasons, which waiver must be in writing, signed by the Director of MaineHousing and state the justification for the waiver; or (iii) is presently debarred, suspended, proposed for debarment, or excluded from participation in federal or state programs.

- D. **Notice to Local Jurisdiction.** Upon receipt of an Application, MaineHousing will provide notice of the proposed Project to the chief executive officer of the municipality and the public housing authority with jurisdiction over the proposed location of the Project. Such notice will provide for a fifteen (15) day period in which to comment on the proposed Project. Any comments received will become part of the Application and will be considered by MaineHousing in the selection process.
- E. **Selection Process.** Applications that are received and accepted by MaineHousing and meet the threshold requirements of Section 5 will be reviewed and scored according to the selection criteria set forth in Section 6. The Applications will be ranked from highest scoring to the lowest scoring Application. The tie breaker mechanism in Section 6.E. will be used to rank Applications with the same score. Once Applications are ranked, MaineHousing will determine which Applications will be selected to receive an award of Credit.
- F. **Notice to Proceed.** MaineHousing will issue a Notice to Proceed to Applications selected to receive an award of Credit. The Notice to Proceed must be accepted by the Applicant by executing and returning the original Notice to Proceed to MaineHousing within a specified time. The Notice to Proceed will provide that MaineHousing will evaluate the Project pursuant to Section 7 to determine the amount of Credit, if any, to be allocated to the Project. The Notice to Proceed will include deadlines for submitting the information necessary for MaineHousing to perform the evaluation, submitting construction plans and specifications, closing the construction and permanent financing for the Project and placing the Project in service.
- G. **Waiting List.** A waiting list will be developed for Applications not initially selected. Any unused Credit will be made available to Applications on the waiting list in rank order of priority. An Application for a Project on the waiting list will be deemed withdrawn if MaineHousing issues a Notice to Proceed for the Project under another MaineHousing program.
- H. **Credit Allocation.** Once the Applicant accepts the Notice to Proceed by executing and returning the Notice to Proceed to MaineHousing, MaineHousing will determine the amount of Credit to be allocated for the Project based on the evaluation procedure set forth in Section 7. The amount of Credit will not exceed the Maximum Credit Amount and will be subject to other limitations set forth in Section 7. A Project may receive an allocation of Credit pursuant to Section 8.

- I. **Termination of Application or Notice to Proceed.** MaineHousing shall deem an Application withdrawn or, a Notice to Proceed, if issued, cancelled if one or more of the following events occur after the Application is made or the Notice to Proceed is issued.
 1. The Application or Notice to Proceed is assigned or there is a change of Applicant without MaineHousing's prior written consent.
 2. There is a change in the location of the Project from the location identified in the Application.
 3. There is any change in the commitments made in the Application which results in a net reduction in the score that the Application received pursuant to the selection criteria set forth in Section 6, except as set forth in Section 6.B.1. and Section 6.B.2.
 4. There is a change in the design of the Project or the financing for the Project from the design or the financing described in the Application which MaineHousing determines, in its sole discretion, would result in a substantial increase in the amount of Credit or other MaineHousing funding for the Project that the Applicant requested in the Application and MaineHousing determined the Applicant was eligible to receive.
 5. The Total Development Cost of the Project exceeds the Maximum Total Development Cost.
 6. There is any other material or substantive amendment or change to the Application without MaineHousing's prior written consent.

SECTION 5: THRESHOLD REQUIREMENTS

The following threshold requirements must be satisfied to be eligible for Credit. The Application must include evidence of satisfaction of these threshold requirements.

- A. **Eligible Projects.** The Application must be for a Qualified Low-income Housing Project.
- B. **Affordability.** An Applicant shall agree to maintain the Project as residential rental housing, to keep at least 60% of the total units in a Project occupied by persons with Very Low Income and to keep the Credit-eligible units in the Project rent-restricted in accordance with Section 42 of the Code for a period of ninety (90) years.

- C. **Maximum Total Development Cost.** An Application for a Project will not be accepted, processed or approved by MaineHousing if at any time prior to the construction loan closing for the Project the Total Development Cost of the Project exceeds the maximum Total Development Cost for a Project of its type as follows.

Type of Project	Maximum Total Development Cost
New Construction (Elderly)	\$215,000 per unit
New Construction (Family)	\$240,000 per unit
Acquisition and Rehabilitation of Existing Housing	\$150,000 per unit
Adaptive Reuse	\$265,000 per unit

A Project that involves the acquisition and demolition of an existing structure(s) will be treated as a new construction project. If a Project involves more than one of these project types, the Maximum Total Development Cost of the Project is the sum of the percentage of Total Development Cost allocable to each type, based on the number of residential units in each type, as applied to the Maximum Total Development Cost for the respective type. For example, the Maximum Total Development Cost of an Elderly Housing Project that involves the conversion an existing historic school into 10 housing units plus the construction of an addition with 10 additional housing units is \$240,000 per unit, which is 50% of the Maximum Total Development Cost for Adaptive Reuse and 50% of the Maximum Total Development Cost for the new construction of Elderly Housing.

- D. **Development Capacity.** The Application must identify a complete development team consisting of a legally existing development entity with a taxpayer identification number, a management company and a tax advisor or consultant.
- E. **Project Owner.** The Application must identify the owner of the Project if the owner is different from the Applicant, or at a minimum the type of entity the owner will be, and all principals of the owner, and must include the existing organizational documents for the Applicant and the owner, if different from the Applicant, and all principals of the owner. If the legal owner of the Project (i.e. the person or entity to whom the Credit will be allocated) has not been formed at the time of Application, the Applicant must establish the legal owner of the Project and submit evidence thereof to MaineHousing before an allocation of Credit will be made to the Project.
- F. **Non-profit Participation.** If a Qualified Non-profit Organization will own an interest in the Project and materially participate in the development and operation of the Project, the Application must include documentation sufficient for MaineHousing to determine that such organization is a Qualified Non-profit

Organization, including without limitation, (a) a certificate of good standing for the organization from the state in which they are incorporated, (b) a letter from the IRS determining that such organization is an organization described in Section 501(c)(3) or Section 501(c)(4) of the Code and is exempt from taxation under Section 501(a) of the Code, and (c) a certification from the chief executive officer of the organization that (i) the organization has notified the IRS of all changes to the organization that would affect its status under Section 501(c)(3) or 501(c)(4) of the Code and Section 501(a) of the Code and the determination letter has not been modified, suspended or revoked, (ii) the organization is engaged in and has as one of its charitable purposes the fostering and development of low-income housing, and (iii) the organization is not affiliated with or controlled by any for-profit entity.

- G. **Site Control.** The Application must include evidence of satisfactory site control consisting of ownership, option, purchase and sale contract, long-term lease or other evidence acceptable to MaineHousing.
- H. **Located in a Growth Area.** The Application must include evidence that the Project complies with the State's Growth Management Law. Projects which involve new construction, the acquisition of newly-constructed or the conversion of existing buildings to multi-family residential rental property, must be located in a locally designated growth area as identified in the comprehensive plan or growth management plan of the municipality in which the Project is located. If a Project is not located in a designated growth area in the comprehensive or growth management plan of the municipality in which it is located, the Project is not eligible for Credit. If the municipality in which the Project is located has not adopted a comprehensive plan or a growth management plan or the comprehensive or growth management plan adopted by the municipality is not consistent with applicable State law, the Project must be located in an area that is served by a public sewer system with the existing capacity for the Project, an area identified as a census-designated place in the latest Federal Decennial Census, or a compact area of an urban compact municipality as defined under 23 M.R.S.A. § 754. Projects that exclusively serve certain populations, including persons with disabilities, persons who are homeless and persons who are wards of the State, are excluded from the requirements of the State's Growth Management Laws.
- I. **Project Feasibility.** The Application must demonstrate the financial ability to proceed with and complete the Project, including the then current status of construction and permanent financing for the Project, or other proof of ability to proceed from existing resources. Providers which deliver services to special needs populations must provide documentation evidencing the commitment of an identified source of funding for the services. If the Project is part of or related to a development and cannot be completed without the completion of the development, either structurally or financially, then the Applicant must demonstrate the financial

ability to complete the Project and the development.

- J. **Development Budget.** The Application must include an acceptable disclosure and certification of the total financing planned for the Project and any development of which the Project is a part or to which it is related and the Project cannot be completed without the completion of the development, any proceeds or receipts expected to be generated by reason of the Credit or other tax benefits, the total sources and uses of Project funds and the full extent of all Federal, state and local subsidies which apply or for which the Applicant expects to apply with respect to the Project. This disclosure and certification must include income, operating and development cost projections and methods for satisfying any deficits.
- K. **Operating Budget.** The Application must include a 15 year pro forma Project operating statement. In the event the proposed Project has an existing contract for federal assistance which may end or which may terminate within the Credit Period, two additional items are required: (a) supplemental written explanation of the impact on the Project's continued operation of such termination or non-renewal, and (b) a pro forma operating statement running five years beyond the anticipated expiration of the contract which includes the impact of transitioning from the contract rent to applicable tax credit rent.
- L. **Tax Credit Investor.** The Application must include a proposal from a tax credit investor with adequate capacity as determined by MaineHousing or an experienced tax credit syndicator. Net proceeds made available to the Project should be identified and expressed as a “factor” of the annual Credit dollar amount anticipated.
- M. **Market Study.** The Application must include a comprehensive market study of the housing needs of low-income persons in the area to be served by the Project acceptable to MaineHousing. The study must be prepared by a qualified professional acceptable to MaineHousing in accordance with the *National Council of Affordable Housing Market Analysts Model Standards for Market Studies for Rental Housing* in effect 120 days prior to the deadline for Applications for the applicable Credit round.
- If MaineHousing determines that the market study submitted is inadequate, MaineHousing will require the Applicant to correct the inadequacies or submit a new market study. MaineHousing reserves the right to commission its own market study.
- N. **Project Design.** The Application must include schematic to-scale plans of the proposed Project which comply with MaineHousing’s *Multifamily Construction, Rehabilitation and Renovation Quality Standards and Procedures Manual*, as same may be amended from time to time, in effect 60 days prior to the deadline for Applications for the applicable Credit round, and all applicable local, state and federal codes,

regulations, statutes and ordinances.

- O. **Resident Service Coordination.** The Applicant must make a resident service coordinator available to the residents of the Project to evaluate service needs and refer residents to appropriate services, and must maintain funding for the resident service coordinator throughout the Compliance Period. The resident service coordinator must be present on-site at the Project and available to the residents a minimum of one day per week, preferably two days per week, and a minimum of 4 to 6 hours per week for Projects with up to 30 units or a minimum of one hour per week for every 5 units for Projects with more than 30 units. The resident service coordinator shall meet with residents in an on-site office or other appropriate private setting to evaluate individual service needs and refer residents to appropriate services. The services provided by the resident service coordinator shall be free of charge to the residents.

The Application must (i) include a commitment to comply with the requirements of this Section, (ii) include a detailed service plan which describes the services that will be offered to the residents of the Project, (iii) identify and describe the experience and training of the proposed resident service coordinator(s) that will provide the services described in the service plan, (iv) identify where the services will be provided to the residents of the project (e.g. on-site office), and (v) include a services budget of all costs associated with offering the services in the service plan (including without limitation the salary, benefits, travel, orientation and ongoing training or education of the resident service coordinator(s), the operation of the office or other space used to provide the services and office equipment and supplies), and describe the funding source(s) for the services budget.

MaineHousing will evaluate the service plan and the capacity of the service provider. MaineHousing will identify any deficiencies in the service plan or the capacity of the service provider to comply with this section in the Notice to Proceed and specify the time period in which the Applicant must correct the deficiencies identified. If the Applicant fails to correct the deficiencies within the specified time period in the Notice to Proceed, the Application will be deemed withdrawn.

The Applicant must enter into a service contract with the service provider on terms and conditions acceptable to MaineHousing before the construction loan closing for the Project.

- P. **Project Amenities.** The Project must include or provide for the following amenities and services, except as provided in Subsection 4 below.
1. **Community Room.** The Project must (i) include an on-site community room developed as part of the Project, or (ii) have access to an existing

community room at a multi-family housing project located on the same site or an adjoining site to the Project site, provided the existing community room (a) is, or with modifications made in connection with the Project will be, fully accessible and located on an accessible path to the Project, (b) has, or with modifications made in connection with the Project will have, sufficient capacity to serve the tenants of the Project and the existing multifamily housing project, and (c) will be available to the tenants of the Project at no cost during the Compliance Period. The plans submitted in the Application must show the dimensions of the community room and the location of the community room on the Project site or in relation to the Project if located on an adjoining site. For a scattered-site Project, only one community room is required and should be centrally located to the greatest extent possible to best serve all of the residents of the Project. For a Project using an existing community room on the site or an adjoining site, the Application must also include (i) a letter from the owner of the existing community room indicating the community room is available to the tenants of the Project at no cost during the Compliance Period and on the same terms and conditions as the tenants of the existing multifamily housing project, and the community room has, or with modifications will have, sufficient capacity in terms of size and utilization to serve all of the tenants of the existing multifamily housing project and the Project, (ii) a certification from a design professional that the existing community room is, or with modifications will be, accessible and located on an accessible path to the Project, and (iii) a detailed description of any modifications to be made to the existing community room in connection with the Project and a proposed budget for the modifications.

2. **Laundry Facilities.** The Project must (i) include a washer/dryer hook-up in each unit, or (ii) include a fully accessible laundry facility centrally located within the Project, or (iii) have access to an existing laundry facility at a multifamily housing project located on the same site or an adjoining site to the Project site, provided the existing laundry facility (a) is, or with modifications made in connection with the Project will be, fully accessible and located on an accessible path to the Project, (b) has, or with modifications will have, sufficient capacity regarding the size of the facilities and the number of washing machines and dryers specified in the applicable *Multifamily Construction, Rehabilitation and Renovation Quality Standards and Procedures Manual* to serve the tenants of the Project and the existing multifamily housing project and (c) will be available to the tenants of the Project during the Compliance Period to the same extent as the tenants of the existing multifamily housing project. The plans submitted in the Application must show the laundry capability for the Project, including the washer/dryer hook-ups or the dimensions of any laundry facilities, the number of washing machines

and dryers, and the location of such facilities on the Project site or in relation to the Project if located on an adjoining site. For a Project using an existing laundry facility on the site or an adjoining site, the Application must also include (i) a letter from the owner of the existing laundry facilities confirming the facilities are available to the tenants of the Project during the Compliance Period and on the same terms and conditions as the tenants of the existing multifamily housing project; (ii) a certification from a design professional that the existing laundry facilities are, or with modifications will be, accessible and located on an accessible path to the Project, and (iii) a detailed description of any modifications to be made to the existing laundry facilities in connection with the Project and a proposed budget for the modifications.

3. **Area Activities.** An area(s) of activity must be located on the Project site or within ½ mile of the Project. Such area(s) of activity must be free of charge to the tenants of the Project and not require membership to use the facilities or equipment. Areas for activity are recreational in nature and include but are not limited to ball-fields, basketball courts, tennis courts, playgrounds with equipment, gardening plots, bike trails, walking trails and ice-skating rinks. Areas of activity do not include activities such as banking, shopping and dining. Projects with single-family detached style units satisfy this requirement if each unit has a private lawn with sufficient room for a swing set or other play equipment, gardening or other activities, as determined by MaineHousing.
4. **Exceptions.** The requirements set forth in the Subsection P do not apply to existing multifamily housing projects if the Applicant can demonstrate that it is impracticable to comply with the requirements because of the nature of the site, structural limitations, or zoning restrictions or other land use limitations.

- Q. **Smoke-free Housing.** The Applicant must establish and implement a policy prohibiting smoking in all units and common areas of the Project. The Applicant must develop and maintain a written occupancy policy that prohibits smoking in the units and the common areas of the Project, include a non-smoking clause in the lease for every household and make educational materials on tobacco treatment programs, including the phone number for the statewide Maine Tobacco HelpLine, available to all residents of the Project through the resident service coordinator. The Application must include a commitment to comply with the requirements of this Section and the proposed policy and lease provision or addendum implementing the policy, and the detailed service plan required pursuant to Section 5.O. shall include making the tobacco treatment program educational materials available to residents.

- R. **Waiting List Preference.** The Application must include a commitment of the Applicant to give a preference to eligible persons whose names are on a public housing or Section 8 waiting list.

SECTION 6: SCORING CRITERIA

Applications that are accepted by MaineHousing and meet the threshold requirements in Section 5 will be reviewed and scored according to the selection criteria set forth in this Section. The scoring criteria are weighted based on the housing priorities set forth in Section 2. The factors or characteristics MaineHousing will consider are set forth in the criteria.

A. **Project Characteristics (maximum of 16 points).**

1. **Reuse of Existing Housing, Structures or Sites.** A Project will be awarded 3 points if the Project either (a) involves the rehabilitation of existing multi-family rental housing containing 5 or more units that also provides protection against displacement and substantial increases in housing costs attributable to the rehabilitation, or (b) involves the rehabilitation, remediation or reuse of an existing substantial building or structure, or (c) utilizes an Urban Infill Site or a Formerly Developed Site rather than new construction on an undeveloped site.
2. **Preference for Populations with Special Needs.** A Project that gives preference in at least 20% of the units in a Project to persons who are homeless or displaced, persons with mental or developmental disabilities, or other persons with special housing needs will be awarded 2 points. The Applicant must commit to maintain a waiting list for and offer services appropriate to the needs of the persons for whom the preference is given. The Applicant must submit a description of the services and a written commitment or letter of support from a qualified service provider to provide the services with the Application.
3. **Family Housing.** A Project for families will be awarded 4 points if a minimum of 50% of the total low income units in the Project are two or more bedroom units and a minimum of 20% of the total low income units in the Project are three or more bedroom units. A Project for families will be awarded 2 points if a minimum of 70% of the total low income units in the Project are two-bedroom units. [Note: In determining the amount of Credit to be allocated to a Project, the applicable Credit rent for three or more bedroom units will be the maximum Credit rent for two-bedroom units plus \$50.00. See Section 7.A.]

4. **Tenant Ownership.** A Project that provides for low-income tenant ownership will be awarded one (1) point. An Applicant shall not transfer ownership of the Project to the tenants until the Extended Use Period has expired.

5. **Readiness.** A Project will be awarded 4 points if the Project has all municipal land use approvals and any required State land use approvals (for example, site plan, subdivision, stormwater or wetlands), required to proceed with and complete the Project (except a building permit and other permits customarily issued during construction such as electrical and plumbing permits) and any timeframe to appeal such approvals has expired with no appellate action being taken. The design of the Project submitted to and approved by the municipality must be acceptable to MaineHousing. The Applicant must meet with MaineHousing's Construction Services Manager concerning the design of the Project before submitting the design to the municipality for approval. Notwithstanding MaineHousing's approval of the level of design of the Project approved by the municipality, the final design of the Project, including all plans, details and specifications, are subject to MaineHousing's approval. If the Project is part of or related to a development and cannot be completed without the completion of the development, either structurally or financially, then the Applicant must provide evidence of all municipal approvals, and if applicable State approvals, for the development. The Application must include (a) a legal opinion or a letter from the appropriate municipal official or body confirming all such municipal approvals have been issued and are in effect and the applicable appeal periods have expired with no appeals or resolution of all appeals, and (b) a legal opinion or certification from a design professional that no State approvals are required, or if required, all such State approvals have been issued and are in effect and the applicable appeal periods have expired with no appeals or resolution of all appeals; and (c) a copy of all approvals.

6. **Historic Rehabilitation.** A Project will be awarded 2 points if the Project includes the rehabilitation of a certified historic structure and uses capital generated from both the federal historic preservation tax credit under Section 47 of the Code and the State historic preservation tax credit under 36 M.R.S.A. § 5219-BB for the development of the Project. The Applicant shall submit written evidence from the National Park Service that the structure(s) to be rehabilitated as part of the Project is a certified historic structure. The Applicant shall also include the projected capital to be generated by the federal and State historic preservation tax credits as capital sources for the

development of the Project in the pro forma submitted with the Application.

B. Financial Characteristics (maximum of 28 points).

1. **Total Development Cost.** A Project will be awarded points or lose points based on the Total Development Cost of the Project relative to the following benchmark and range of Total Development Cost for a Project of its type.

Type of Project	Benchmark Total Development Cost (per unit cost)	Lower Limit of Range (per unit cost)	Upper Limit of Range (per unit cost)
New Construction (Elderly)	\$180,000	\$175,000	\$185,000
New Construction (Family)	\$205,000	\$200,000	\$210,000
Acquisition and Rehabilitation of Existing Housing	\$125,000	\$120,000	\$130,000
Adaptive Reuse	\$225,000	\$220,000	\$230,000

If a Project involves more than one project type, the Benchmark Total Development Cost and the lower limit and upper limit of the associated range of Total Development Cost will be determined as follows. The Benchmark Total Development Cost is the sum of the percentage of Total Development Cost allocable to each project type, based on the number of residential units in each project type, as applied to the Benchmark Total Development Cost for the respective project type. The lower limit of the associated range of Total Development Cost is \$5,000 less than the Benchmark Total Development Cost and the upper limit of the associated range is \$5,000 more than the Benchmark Total Development Cost. For example, the Benchmark Total Development Cost for an Elderly Housing Project that involves the conversion of an existing historic school into 10 housing units plus the construction of an addition with 10 additional housing units is \$202,500 per unit, which is 50% of the Benchmark Total Development Cost for Adaptive Reuse and 50% of the Benchmark Total Development Cost for the new construction of Elderly Housing. The lower and upper limits of the associated range of Total Development Cost for the Project are \$197,500 and \$207,500 respectively.

- a. A Project will be awarded up to 10 points based on the percentage by which the Total Development Cost of the Project is less than the lower limit of the range of Total Development Cost set forth in above for that type of project as follows.

<u>Percentage of Total Development Cost to Lower Limit of Range</u>	<u>Points</u>
>15% less	10 points
10% - 15% less	6 points
less than 10% less	4 points

- b. A Project will lose up to 8 points based on the percentage by which the Total Development Cost of the Project is higher than the upper limit of the range of Total Development Cost set forth above for that type of project as follows.

<u>Percentage of Total Development Cost to Upper Limit of Range</u>	<u>Points</u>
less than 10% higher	-3 points
10% - 13% higher	-5 points
>13% higher	-8 points

If the Total Development Cost of the Project increases after the date of the Application by more than 5% of the Total Development Cost represented in the Application and such increase is not the result of market conditions or other reason beyond the control of the Applicant as determined by MaineHousing, MaineHousing will re-score the Application. If an Application is re-scored and the total score of the Application is less than the total score of the highest scoring Application on the waiting list after re-scoring, any Notice to Proceed issued with respect to the Application will be automatically terminated and the Application will be placed on the waiting list in the order of its score relative to other Applications. If the total score of an Application is equal to the score of one or more other Applications, MaineHousing will use the tie breaker mechanism in Section 6.E. to prioritize the Applications.

2. **Below Market Capital.** A Project with eligible below market capital funding from a source other than MaineHousing will be awarded up to 6 points based on the present value or net present value, as applicable, of the below market funding (referred to as the Subsidy) relative to the Total

Development Cost of the Project as follows.

<u>Percentage of Subsidy to Total Development Cost</u>	<u>Point(s)</u>
Up to 3%	1 point
> 3% up to 6%	2 points
>6% up to 9%	3 points
>9% up to 12%	4 points
>12% up to 15%	5 points
> 15%	6 points

Tax credit equity, service and operating funds, rental assistance, construction financing and donations or below market purchases of land and buildings are not eligible sources of below market funding under this category. Resources made available, either directly or indirectly, by MaineHousing are not eligible for consideration under this criterion.

The total amount of eligible below market funding for the Project will be reduced by the amount the Total Development Cost of the Project exceeds the Benchmark Total Development Cost. If a Project involves more than one of the project types, the Benchmark Total Development Cost for the Project will be determined in accordance with Section 6.B.1.

MaineHousing will only give consideration under this category to below market funding that has been committed and below market funding that has been applied for, but a commitment has not yet been received by the Applicant. Funds that have not yet been committed will be evaluated at 10% of the amount applied for by the Applicant.

The Applicant must submit evidence of the commitment of below market funding or evidence that the below market funding has been applied for with its Application. The evidence must include the terms of the below market funding, including without limitation, the interest rate, the amortization period, the loan term and any security required.

Eligible below market funding will be evaluated based on a present value or net present value basis, as applicable, using the 10-year Treasury note rate as of 30 days prior to the deadline for Applications for the applicable Credit round plus 300 basis points to determine the amount of Subsidy. Examples of the calculation of the amount of Subsidy follow.

- a. Example 1 - The value of a \$500,000 loan @ 3% amortized over 30 years and the current market rate for a comparable loan is 5.25% (10-

year Treasury rate for a comparable loan plus 300 basis points) is calculated as follows: The difference between the monthly payments at 5.25% (\$2,761.02) and the monthly payments at 3% (\$2,108.02) is \$653.00. The net present value of this cost savings over 30 years is \$118,253.16.

- b. Example 2 - The value of a \$500,000 loan with interest accruing at 3% for 30 years and the current market rate for a comparable loan is 5.25% (10-year Treasury rate for a comparable loan plus 300 basis points) is calculated as follows: The difference between the future value of the loan at 5.25% (\$2,230,776) and the future value at 3% (\$1,213,631) is \$1,107,144. The present value of this lump sum payment savings due in 30 years is \$238,528.95.
- c. Example 3: The value of a \$500,000 loan at 0% for 30 years and the current market rate for a comparable loan is 5.25% (10-year Treasury rate for a comparable loan plus 300 basis points) is the difference between the future value of the loan (\$500,000) and the present value of the loan at 5.25% (\$107,723), which is \$392,227.

Capital funding made possible by an Affordable Housing TIF that directly benefits the Project will be evaluated as if it were a grant, provided that funding made possible by an Affordable Housing TIF will not be eligible for consideration under this criterion if the application for the Affordable Housing TIF is submitted to MaineHousing less than 45 days prior to the deadline for Applications for the applicable Credit round.

If the Total Development Cost of the Project increases after the date of the Application by more than 5% of the Total Development Cost represented in the Application and such increase is not the result of market conditions or other reason beyond the control of the Applicant as determined by MaineHousing, the Applicant shall submit a written plan describing how the Applicant intends to cover the increased Total Development Cost to MaineHousing within 30 days of the date the Applicant accepts the construction bid for the Project. The plan must identify the source(s) of funding to cover the increased cost, must provide the timeframe for application, commitment and closing of the source(s) of funding, and must be approved by MaineHousing. If the plan identifies a source(s) of funding that does not qualify as below market capital funding under this Subsection or the plan is otherwise unacceptable to MaineHousing, then MaineHousing will re-score the Application.

If a below market funding source that an Applicant was awarded points for

under this Subsection is terminated or not awarded and the Project is not feasible, the Applicant has 90 days to find alternative funding with similar terms. If after 90 days the Applicant cannot find a replacement source, or the replacement source has different terms, MaineHousing will re-score the Application.

If an Application is re-scored and the total score of the Application is less than the total score of the highest scoring Application on the waiting list after re-scoring, any Notice to Proceed issued with respect to the Application will be automatically terminated and the Application will be placed on the waiting list in the order of its score relative to other Applications. If the total score of an Application is equal to the score of one or more other Applications, MaineHousing will use the tie breaker mechanism in Section 6.E. to prioritize the Applications.

3. **Acquisition Cost.** A Project will be awarded up to 4 points based on the acquisition cost of all of the land and any existing building(s) transferred or to be transferred as part of the Project relative to the average acquisition cost for a Project of its type as determined by MaineHousing based on historical average acquisition costs of completed Projects of each type as follows.

Type of Project	Average Acquisition Cost
New Construction	\$14,000 per unit
Acquisition and Rehabilitation of Existing Housing	\$47,000 per unit
Adaptive Reuse	\$12,000 per unit

<u>Acquisition Cost Relative to Average Acquisition Cost</u>	<u>Points</u>
0% to 1% (nominal)	4 points
>1% to <25%	3 points
25% to 50%	2 points
>50% to 75%	1 point

A Project that involves the acquisition and demolition of an existing structure(s) will be treated as a new construction project and the acquisition cost of the Project is the purchase price for the land and the structure(s) plus the cost of demolition. A Project that consists of land or land and building(s) leased or to be leased as part of the Project for no consideration or nominal consideration will be awarded 4 points. The Applicant must

submit evidence of the purchase price or rent for all land or land and building(s) transferred or leased or to be transferred or leased as part of the Project.

4. **New Project-based Rental Assistance.** A Project will be awarded up to 5 points based on the percentage of units in the Project for which new project-based rental assistance has been committed as follows.

<u>Percentage of Units</u>	<u>Points</u>
Up to 25%	1 point
25% to < 50%	2 points
50% to < 75%	3 points
75% to <100%	4 points
100%	5 points

Assistance provided under the Project-Based Voucher Program pursuant to 24 CFR Part 983 is eligible for points hereunder only if the Project has been awarded assistance pursuant to a competitive process prior to the date of the Application. Project-based rental assistance made available, either directly or indirectly, by MaineHousing is not eligible for consideration under this criterion. To be eligible, the terms of the project-based rental assistance must be similar to the terms of RD or HUD project-based rental assistance or provide rental assistance in the minimum amount of \$200 per assisted unit per month. The Applicant must submit the commitment of project-based rental assistance, including the specific terms of the rental assistance, with the Application.

5. **Operating Subsidy.** A Project that is directly benefited by an operating subsidy or reduction in operating costs through a tax increment financing, payment in lieu of taxes arrangement, abatement or other form of property tax relief that satisfies the following requirements will be awarded 3 points. The tax increment financing, payment in lieu of taxes, abatement or other property tax relief arrangement must provide for a minimum of 50% of the Project's annual incremental property tax revenue to be returned to the owner of the Project to pay the operating costs of the Project or foregone by the municipality to reduce the operating costs of the Project for a minimum period of 15 years from construction completion and must be approved by the municipality and all other applicable governing entities. Projects located in municipalities or areas of the State that do not assess or collect real estate taxes are not eligible for points under this criterion. Resources made available, either directly or indirectly, by MaineHousing are not eligible for consideration under this criterion. The Applicant shall submit evidence of

the tax relief arrangement, the vote or resolution of the governing body of the municipality adopting the arrangement and, as applicable, evidence of approval by all other governing entities, e.g. certificate of approval from MaineHousing if it is an Affordable Housing TIF and the State of Maine Department of Economic and Community Development if it is a commercial tax increment financing arrangement. Funding made possible by an Affordable Housing TIF will not be eligible for consideration under this criterion if the application for the Affordable Housing TIF is submitted to MaineHousing less than 45 days prior to the deadline for Applications for the applicable Credit round.

C. Project Location (maximum of 23 points).

1. **Service Center Community Need.** A Project located in a Service Center Community will be awarded up to 5 points based on the need for the type of affordable housing in the Service Center Community as determined by MaineHousing and shown below.

a. Projects for families located in the following Service Center Communities will be awarded the following points.

Service Center Community	Points
Auburn	5
Augusta	5
Bangor	5
Biddeford	5
Brunswick	5
Ellsworth	5
Lewiston	5
Old Orchard Beach	5
Old Town	5
Portland	5
Rumford	5
Saco	5
Sanford	5
Waterville	5
Westbrook	5
Brewer	3
Caribou	3
Fairfield	3

Farmington	3
Gardiner	3
Houlton	3
Kittery	3
Madawaska	3
Mexico	3
Orono	3
Rockland	3
Scarborough	3
Skowhegan	3
South Portland	3
Topsham	3
Winslow	3
Bar Harbor	1
Bath	1
Belfast	1
Calais	1
Dexter	1
Eliot	1
Fort Kent	1
Hallowell	1
Hampden	1
Lincoln	1
Millinocket	1
Norway	1
Paris	1

- b. Elderly Housing located in the following Service Center Communities will be awarded the following points.

Service Center Community	Points
Auburn	5
Augusta	5
Bangor	5
Biddeford	5
Brunswick	5
Kittery	5
Lewiston	5
Saco	5
Sanford	5

Scarborough	5
South Portland	5
Waterville	5
Winslow	5
Bath	3
Bridgton	3
Caribou	3
Eliot	3
Ellsworth	3
Fairfield	3
Freeport	3
Hampden	3
Madawaska	3
Oakland	3
Rockland	3
Skowhegan	3
Topsham	3
Westbrook	3
Belfast	1
Bucksport	1
Lincoln	1
Mexico	1
Norridgewock	1
Norway	1
Pittsfield	1
Rockport	1
Rumford	1
Van Buren	1

c. Projects located on Native American tribal lands will be awarded 5 points.

2. **Vacancy Rate.** A Project located in an area in which the vacancy rate in comparable Qualified Low Income Housing Projects is less than 5% will be awarded 2 points. A Project located in an area in which the vacancy rate in both comparable Qualified Low Income Housing Projects and comparable market rate multifamily rental housing is less than 5% will be awarded 3 points. MaineHousing will rely on vacancy data collected by MaineHousing on Qualified Low Income Housing Projects in the State and the vacancy data in the market study submitted with the Application as reviewed and approved by

MaineHousing in determining eligibility for the points under this criteria.

3. **Tax Credit/Market Rent Differential.** A Project located in an area in which the average market rent for comparable properties is at least 5% higher than the average maximum tax credit rent for a unit occupied by an individual or family with income at or below 60% of area median income, as determined in accordance with Section 42 of the Code, will be awarded one (1) point. A Project located in an area in which the average market rent for comparable properties is at least 10% higher than the average maximum tax credit rent for a unit occupied by an individual or family with income at or below 60% of area median income, as determined in accordance with Section 42 of the Code, will be awarded 2 points. For Projects with units of varying bedroom size, the average rents will be determined using a weighted average based on the number of units of each bedroom size in the Project. MaineHousing will rely on the market rent information in the market study submitted with the Application as reviewed and approved by MaineHousing.
4. **Community Revitalization.** A Project that contributes to a concerted community revitalization plan will be awarded 2 points. A Project that either involves the rehabilitation of existing multi-family rental housing containing more than 5 units or is located in a Qualified Census Tract will be awarded one (1) additional point. An Applicant must submit either (a) evidence of an Enterprise Community or (b) a copy of a formal plan adopted by the municipality or tribal government and evidence of official adoption of the plan by the municipality or tribal government with its Application. The Project must be located in the defined area targeted for revitalization and the Project or Project site must be specifically identified as part of the revitalization effort or multi-family rental housing must be one of the revitalization efforts identified in the plan.
5. **Smart Growth.** A Project that satisfies one of the following elements of smart growth will be awarded up to 10 points. A Project is eligible for points under only one of the following criteria; the points are not cumulative.
 - a. A Project located within a Safe Walking Distance of not more than 1,500 feet of a Downtown will be awarded 10 points.
 - b. A Project will be awarded 8 points if the Project is located within a Safe Walking Distance of not more than 1,500 feet of a designated pick-up location for existing Fixed-route Public Transportation to the Downtown of the municipality in which the Project is located or a proximate Downtown that serves the area in which the Project is located.

- c. A Project will be awarded 6 points if the Project is located within a Safe Walking Distance of at least three destination(s) important to the course of daily living that are appropriate to the population served by the Project. At least one of the destinations important to the course of daily living must be within a Safe Walking Distance of not more than 1,500 feet of the Project and the other destinations important to the course of daily living must be within Safe Walking Distance of not more than 2,500 feet of the Project to qualify for the points under this criteria. An eligible destination important to the course of daily living includes a grocery store, a public school if the Project is a family project, a pharmacy, a bank or credit union, a post office, a retail store, a general health care practitioner's office (not a specialist), a public library, a hospital or significant places of employment. A single establishment containing more than one destination important to the course of daily living will be considered only one destination important to the course of daily living for purposes of this criteria (e.g. a retail store which includes groceries, a pharmacy and a bank will be considered only one destination, not four destinations). An applicant must justify, to MaineHousing's satisfaction, other destinations it believes are important to the course of daily living. Convenience stores, gas stations, restaurants and other food service establishments are not eligible destinations for purposes of this criterion.
- d. A Project will be awarded 3 points if Demand Response Transportation is available to all of the residents of the Project. Demand Response Transportation services with eligibility criteria that limit or deny service to any residents of the Project are not eligible for the points.
- e. To be awarded the points under Subsections a., b. or c. above, the Applicant must submit a map generated by readily available internet services or commercial software, preferably Mapquest, Google Maps (free to user version), MSN Livesearch or Google Earth (subscription service). The map must clearly show the specific address for the entrance to the Project, (Point A) and the ending point or destination (Point B), the distance between Point A and Point B in terms of feet, and the exact route from Point A to Point B used in determining the distance. The entire route must be a Safe Walking Distance and should not cut across parking lots.

To be awarded the points under Subsection b. above, the Application must include a copy of the schedule and map for the Fixed-route Public Transportation. To be awarded the points under Subsection

d. above the Application must include the schedule for the Demand Response Transportation service and a letter from the Demand Response Transportation service that identifies any eligibility criteria for the service and confirms it all of the residents of the Project will be served.

D. Sponsor Characteristics (maximum of 6 points).

1. **Development Experience.** An Applicant, or any principal thereof, who has prior experience with MaineHousing and has not been declared in default by MaineHousing in the last five (5) years, or who has successfully developed Qualified Low-Income Housing Projects in other states will be awarded 2 points.
2. **Tax Credit Noncompliance.** An Applicant will be awarded 2 points if the Applicant, any principal thereof or any affiliate of any principal thereof, has prior experience with Qualified Low Income Housing Projects and in the last three (3) years (a) has not been issued an IRS Form 8823 or (b) was issued an IRS Form 8823, but it was subsequently reported as “noncompliance corrected” within the specified time period for correction, and (c) has not had an IRS audit finding resulting in a recapture event.
3. **Management Experience.** Projects that will be managed by a management company with a) low income housing tax credit training and b) a minimum of three (3) years of successfully managing a Qualified Low-Income Housing Project will be awarded 2 points. Applicants must submit a binding commitment from the management company to manage the Project and a certificate(s) or other evidence satisfactory to MaineHousing of the management company’s low income housing tax credit training and experience with its Application.

E. **Tie Breaker.** In the event the total score of two or more Applications is the same and MaineHousing has, in its sole discretion, determined that there is not enough Credit to fund both or all of these Applications, the Application for the Project with the lowest Total Development Cost will be selected. An Application not selected under this tie-breaker process will be placed on the waiting list in the order of the Application’s score.

SECTION 7: PROJECT EVALUATION

After an Applicant executes and returns the Notice to Proceed to MaineHousing, MaineHousing will evaluate the Total Development Costs of the Project to determine the

amount of Credit, if any, to be allocated to the Project in accordance with this Section.

- A. **Amount of Credit.** The amount of Credit allocated to the Project will be determined in accordance with the following.
1. The amount requested in the Application will be the basis on which MaineHousing will make its determination, but the amount MaineHousing determines the Project is eligible to receive may not equal the amount requested in the Application.
 2. The calculation of the amount of Credit will be based on the Applicable Percentage for the month in which the calculation is made unless there has been a qualified irrevocable election of the Applicable Percentage for a prior month.
 3. The calculation of the amount of Credit will be based on 130% of Eligible Basis for Projects located in Qualified Census Tracts, and Difficult To Develop Areas and other areas designated by MaineHousing pursuant to Section 42(d)(5)(B)(v) of the Code. For purposes of the 2013 State Ceiling, MaineHousing has designated the entire State as a difficult to develop area for purposes of Section 42(d)(5)(B)(v) of the Code because of the high cost of developing housing in the State, the low median income of the State's population and the high, and still increasing, annual operating costs for housing in the State relative to other states in the United States.
 4. MaineHousing will use the maximum Credit rent in determining the amount of Credit, except that for three or more bedroom units, MaineHousing will use the maximum Credit rent for two-bedroom units plus \$50.00.
 5. The amount of Credit allocated for a Project will not exceed the lesser of the following:
 - a. the amount the Project is eligible to receive under Section 42 of the Code as determined by MaineHousing;
 - b. the amount MaineHousing determines is necessary for the financial feasibility of the Project and its viability as a Qualified Low-income Housing Project throughout the Credit Period; or
 - c. the Maximum Credit Amount.

6. The Applicant must submit financial and all other information about the Project required by MaineHousing. MaineHousing will evaluate the need for Credit based on the following.
 - a. All sources of funding for the Project, including the terms and conditions of the funding;
 - b. The uses of funds, including the reasonableness of development costs and operating expenditures; and
 - c. Any proceeds or receipts expected to be generated by reason of tax benefits.
7. In order to determine the amount of Credit a Project is eligible to receive, MaineHousing must identify the equity gap between development sources and uses which the Credit is designed to fill. MaineHousing reserves the right to limit recognition of Intermediary Costs, re-characterize Project sources and uses and make reasonable assumptions with respect to projected revenues and expenses in the process of calculating the amount of Credit to be allocated to a Project. MaineHousing will also take into consideration any limitations imposed by federal laws and regulations when combining of the Credit with other federal subsidies (“subsidy layering” guidelines).
8. MaineHousing will evaluate the reasonableness of the Total Development Cost of the Project. MaineHousing will compare the proposed costs associated with the Project to historical data for similar Qualified Low-income Housing Projects (i.e. size, location, funding source, etc.) and industry cost standards. Consideration will be given to costs associated with tenant service and common area spaces. MaineHousing will require additional information and documentation if MaineHousing feels any of the proposed costs are not comparable or reasonable.
9. In evaluating the Project’s need for Credit, the expectation is that availability of the Credit is a necessary incentive for the developer to complete the Project. Applicants should not incur construction costs before MaineHousing determines the amount of Credit a Project is eligible to receive. MaineHousing reserves the right to cease processing any Application which has incurred construction costs prior to applying for Credit. If construction costs are incurred prior to the selection of an Application, the Applicant must demonstrate why the absence of Credit presents a serious risk to the overall viability and operation of the Project.

- B. **Developer Fee.** MaineHousing will limit recognition of Developer Fees. The standard fee, regardless of whether costs used to calculate the fee include compensation paid to consultants, will be based on all aspects of Project development including, without limitation, creation of the Project concept, identification and acquisition of the Project site, obtaining construction and permanent financing, obtaining necessary subsidies, negotiation of syndication of investment interests in the Project, obtaining all necessary regulatory approvals, construction and marketing. Fees paid to consultants do not include fees for professional services such as those for environmental assessments, rental market studies, soil tests, and water tests. Reserves, in the form of cash, expected to be paid to the developer from the Project will be included in the Developer Fee calculation.

Typically, the Developer Fee consists of two components, overhead and profit, which must be separately identified in the development budget for the Project. The Developer Fee, including these two components, shall not exceed an amount equal to 15% of the Housing Development Costs, plus 10% of the costs of acquisition of land, existing buildings and equipment, all determined without regard to the Developer Fee, subject to Section 42 of the Code and the following limitations.

1. The Developer Fee due and payable from the total funding for the Project's development budget, including without limitation, equity contributions, shall not exceed an amount equal to the lesser of (a) \$17,500 per unit for the first 20 units in the Project and \$15,000 for each additional unit above 20 units in the Project and (b) the maximum Developer Fee set forth above; and
2. To be eligible for additional Developer Fee up to the maximum set forth above, the Applicant must agree that any such additional Developer Fee will be used as a funding source for the development, acquisition and construction or rehabilitation of the Project, either by deferring payment or making a loan of the additional Developer Fee to be repaid from the surplus cash of the Project, and the Applicant must demonstrate there is a reasonable certainty that any additional Developer Fee will be fully repaid from the surplus cash of the Project, as determined by MaineHousing pursuant to its underwriting criteria, during the Credit Period or such longer period as allowed by the investor or syndicator for the Project.

- C. **General Contractor Intermediary Costs.** In reviewing Intermediary Costs, MaineHousing will limit recognition of certain general contractor costs. Regardless of the geographic location of the Project, the standards for general contractor overhead, general requirements and profit will be an amount not greater than 16% of the Total Construction Cost, within the following ranges:

Overhead	up to 2% of Total Construction Cost
----------	-------------------------------------

General Requirements	up to 8% of Total Construction Cost
Profit	up to 6% of Total Construction Cost

D. **Time of Credit Determination.** The evaluation of each Project to determine the amount of Credit to be allocated to the Project will be performed as of each of the following dates.

1. The Application. The Notice to Proceed will evidence the determination made at the time of Application.
2. The allocation of Credit, and as applicable the carryover allocation.
3. The date each Qualified Low-income Building is Placed in Service.

Prior to each determination, the Applicant shall certify to MaineHousing the full extent of all federal, State and local subsidies which apply with respect to the Project and provide such other information MaineHousing deems necessary in order to complete its evaluation.

E. **Binding Agreement.** After the Applicant accepts a Notice to Proceed by executing and returning the Notice to Proceed to MaineHousing, and to the extent authorized by the Code, MaineHousing and the Applicant may enter into a Binding Agreement to fix the maximum Credit dollar amount to be allocated to each Qualified Low-Income Building for which Credit has been requested. Any such Binding Agreement shall satisfy the requirements of the Code and will contain certain performance-based conditions, including without limitation the conditions set forth in the Notice to Proceed. The Applicant may choose to fix the Applicable Percentage for each Qualified Low-income Building in the Project by irrevocably electing the percentage for the month in which the Applicant and MaineHousing enter into a Binding Agreement or to select the applicable percentage for the month in which the Building is Placed in Service.

F. **Cost Increases.** MaineHousing may, in its sole discretion, allocate additional Credit if the construction costs of the Project increase after the date of the Application and the increase is the result of market conditions or other reasons beyond the control of the Applicant as determined by MaineHousing in its sole discretion, provided that the additional Credit amount will not exceed an amount that will generate capital contributions in an amount equal to 5% of the Total Construction Cost for the Project estimated at the time construction bids on the Project are requested and is subject to Credit availability.

G. **Disclaimer.** PURSUANT TO FEDERAL LAW, ANY DETERMINATION MADE BY MAINEHOUSING HEREUNDER SHALL NOT BE CONSTRUED

TO BE A REPRESENTATION OR WARRANTY AS TO THE FEASIBILITY OR VIABILITY OF ANY PROJECT AND MAY NOT BE RELIED UPON AS A REPRESENTATION OR WARRANTY BY ANY PARTY.

SECTION 8: ALLOCATION OF CREDIT

- A. **Allocation.** MaineHousing will allocate Credit for the Project by issuance of IRS Form 8609 or such other form prescribed by the IRS in the year the Project is Placed in Service after receipt of the following:
1. A complete request for allocation of Credit, which must be in a form prescribed by MaineHousing and must include an audit report on the schedule of project costs prepared by an independent, third party certified public accountant.
 2. Certification of the total financing planned for the Project, all proceeds or receipts expected to be generated by reason of the Credit or other tax benefits, the total sources and uses of Project funds and the full extent of all Federal, state and local subsidies which apply or which the Applicant expects to apply with respect to the Project. In addition, the Applicant must identify all costs associated with the sale (i.e. commissions, due diligence, legal, accounting, reserves, etc.). This certification must include income, operating and development cost projections and methods for satisfying any deficits.
 3. An allocation fee equal to 3% of the amount of Credit allocated to the Project less the amount of any allocation fee paid pursuant to Subsection B. below in connection with the issuance of a carryover allocation for the Project.
 4. A monitoring fee in an amount equal to \$600 per Credit eligible unit in the Project.
- B. **Carryover Allocation.** If a Project or any Qualified Low-income Building that is part of the Project will not be Placed in Service in the calendar year for which a Project is awarded Credit, MaineHousing may issue a carryover allocation for the Project.
1. In order to be considered for a carryover allocation, an Applicant must submit the following.
 - a. A complete request for carryover allocation of Credit in a form prescribed by MaineHousing shall be submitted to MaineHousing no

later than the first day of December of the year in which the carryover allocation is made.

- b. Certification of the total financing planned for the Project, all proceeds or receipts expected to be generated by reason of the Credit or other tax benefits, the total sources and uses of Project funds and the full extent of all Federal, State and local subsidies which apply or which the Applicant expects to apply with respect to the Project. This certification must include income, operating and development cost projections and methods for satisfying any deficits.
 - c. Status report on the progress of development of the Project and the likelihood of the Project proceeding to completion.
2. A carryover allocation must be executed by the Applicant and returned to MaineHousing, together with an allocation fee equal to 3% of the amount of Credit allocated to the Project, no later than December 31 of the year in which the carryover allocation is made.
 3. A carryover allocation will be subject to the following conditions:
 - a. MaineHousing receives satisfactory evidence that more than 10% of the reasonably expected basis in the Project, determined as of the second calendar year following the calendar year in which the carryover allocation is made, is incurred within 12 months of the date the carryover allocation is made, including an audit report on the schedule of project costs prepared by an independent, certified public accountant in form and substance acceptable to MaineHousing;
 - b. The Project is Placed in Service within 2 years following the calendar year in which the carryover allocation is made and only to the extent that the IRS gives effect to such carryover allocation; and
 - c. Any performance conditions MaineHousing may require to ensure maximum utilization of Credit.

Failure to comply with these conditions may result in a termination or cancellation of the carryover allocation.

4. After the Project/Qualified Low-income Building is Placed in Service, the Owner shall submit a request for issuance of Form 8609 or such other form prescribed by the IRS in accordance with Subsection A above. The entity making the request must be the same entity that received the carryover

allocation.

5. MaineHousing may carry over any unallocated portion of the State Ceiling and deny any or all requests for Project-specific carryover allocations.

- C. **Tax Credit Compliance Experience.** Prior to an allocation of Credit, the Applicant must demonstrate proficiency of the entity managing the Project in the area of Credit compliance monitoring. The entity must complete a Credit compliance monitoring training approved by MaineHousing or receive a certification from a Credit trainer approved by MaineHousing.
- D. **Extended Low Income Housing Commitment.** Prior to an allocation of Credit, the Owner must enter into an Extended Low-income Housing Commitment with MaineHousing which contains restrictive covenants that run with the land, are binding on the Owner and its successors and assigns and are enforceable by MaineHousing and the low-income tenants of the Project. The Extended Low-income Housing Commitment will obligate the Owner to comply with the Code, the affordability requirements and certain other threshold requirements set forth in Section 5, and certain commitments made by the Applicant for which the Application was awarded points under the selection criteria set forth in Section 6.

The Extended Low-income Housing Commitment shall be recorded in the appropriate registry of deeds prior to all mortgage liens and encumbrances on the Project and before MaineHousing issues any IRS Form 8609 for the Project. The Extended Use Period will terminate on the date the Project is acquired by foreclosure or transfer of the Project in lieu of foreclosure so long as any indebtedness owed to MaineHousing in connection with the Project is satisfied in full and the acquisition is not part of an arrangement, a purpose of which is to terminate the Extended Use Period pursuant to Section 42(h)(6)(E) of the Code; provided however, that low-income tenants may not be evicted or suffer an increase in gross rent during the three-year period following termination.

- E. **Converting a Carryover Allocation.** MaineHousing may, in its sole determination, convert a carryover allocation of Credit from the State Ceiling for a particular calendar year to a carryover allocation of Credit from the State Ceiling for the year in which the carryover allocation is terminated or the following year subject to the requirements of this subsection. The carryover allocation must be rescinded by the mutual consent of MaineHousing and the Applicant. At the time the carryover allocation is rescinded, there shall not have been any changes in the Project design or financing which, in the sole determination of MaineHousing, would substantially affect the score that the Applicant received pursuant to the applicable selection criteria or result in a cost increase which would render the Project withdrawn pursuant to Section 4.I. There must be extenuating circumstances, which result in

the Applicant's likely failure to meet the 10% basis test in Subsection B.3.a. above or the likely failure of the Project to be Placed in Service within 2 years following the year in which the allocation was made. The Project will only be required to meet the requirements of the Qualified Allocation Plan in effect at the time the Project received the original allocation of Credit. If the Applicant has entered into a Binding Agreement and elected to lock the Applicable Percentage, then the Applicant is bound by the Applicable Percentage elected under the original Binding Agreement.

- F. **Cancellation of Carryover Allocation.** Credit returned to MaineHousing as a result of the termination or cancellation of a carryover allocation prior to September 30 in a particular calendar year shall be added to the State Ceiling for the calendar year in which it is returned. Credit returned as a result of a termination or cancellation of a carryover allocation after September 30 shall be added to the State Ceiling for the calendar year in which it is returned or the following year.

- G. **Forward Allocation of Credit.** MaineHousing may issue a binding commitment to allocate State Ceiling available in the subsequent year for any Project Placed in Service in the current year. Credit from the subsequent year's State Ceiling may only be committed upon MaineHousing's determination that the amount of Credit that remains in the current year's State Ceiling is insufficient to ensure the viability or feasibility of the Project. Any binding commitment to allocate subsequent year's State Ceiling authorized pursuant to this section shall be processed and evaluated in accordance with this Qualified Allocation Plan and shall be subject to MaineHousing authority to allocate Credit and applicable law.

- H. **Disclaimers.** An allocation made by MaineHousing will be effective only with respect to a Qualified Low-income Building Placed in Service during the calendar year in which the allocation is made and only to the extent that the IRS gives effect to such allocation. CREDIT RECIPIENTS ARE RESPONSIBLE FOR TAKING ONLY THE AMOUNT OF CREDIT AUTHORIZED UNDER THE CODE AND RECOGNIZED BY THE IRS AND NO RELIANCE MAY BE PLACED ON MAINEHOUSING BY ANY PARTY FOR THIS DETERMINATION.

The Owner's eligibility for the Credit after allocation of the Credit is conditioned on the Owner's continued compliance with certain tenant income and rental restrictions. Failure to comply with such restrictions can result in forfeiture of Credit and recapture penalties imposed by the IRS. MAINEHOUSING ACCEPTS NO RESPONSIBILITY AND NO RESPONSIBILITY SHALL BE IMPLIED BY THE ISSUANCE OF AN ALLOCATION OR CARRYOVER ALLOCATION OF CREDIT ON BEHALF OF A PARTICULAR PROJECT, FOR ENFORCEMENT OF, OR COMPLIANCE WITH, ANY OF THESE RESTRICTIONS NOW OR HEREAFTER IMPOSED.

SECTION 9: TAX-EXEMPT BOND FINANCED PROJECTS

Certain Projects financed with tax-exempt bond proceeds may be eligible for Credit without an allocation from the State Ceiling, subject to the following.

- A. **Eligible Buildings.** A Qualified Low-income Building which is financed with the proceeds of tax-exempt bonds subject to the State volume cap on such bonds qualifies for the Credit on the portion of the Eligible Basis of the building financed with such bond proceeds without an allocation from the State Ceiling. If 50% or more of the Eligible Basis of a Qualified Low-income Building is financed with the proceeds of tax-exempt bonds subject to the state volume cap on such bonds, all of the Eligible Basis of the Building qualifies for the Credit without an allocation from the State Ceiling.
- B. **Requirements.** A Qualified Low-income Project must satisfy the requirements set forth in Section 4 (other than the application deadline in Subsection 4.B., the selection process described in Section 4.E. and the waiting list pursuant to Section 4.G provided the Project may be subject to a selection process and waiting list pursuant to a tax-exempt bond financing program, and the Maximum Credit Restriction pursuant to Section 4.H.) and Section 5 (other than the affordability threshold requirement set forth in Section 5.B.). The Project will be evaluated in accordance with the procedures set forth in Section 7 to determine the amount of Credit to be allocated to the Project and must comply with the requirements for an allocation pursuant to Section 8.A. The Project is subject to the monitoring requirements in Section 10.
- C. **Applicable Percentage.** The Owner of a Project that is not yet Placed in Service and is otherwise authorized by the Code may elect to fix the Applicable Percentage for each Qualified Low-income Building in the Project by irrevocably electing the percentage for the month in which the tax-exempt bonds are issued, or the Applicable Percentage will be the Applicable Percentage for the month the Building is Placed in Service. Such an election must be made on forms provided by MaineHousing and must be made by the fifth (5th) day of the month following the month in which the tax-exempt bonds are issued.
- D. **Credit Determination.** Once MaineHousing has reviewed the Project in accordance with this Section and deemed the Project eligible to receive Credit, a determination letter will be issued pursuant to Section 42(m) of the Code.
- E. **Allocation.** The Owner of a Project must request the issuance of an IRS Form 8609 for each Qualified Low-income Building in the year the Project is Placed in Service. The request must satisfy the requirements of Section 8.A.

SECTION 10: MONITORING

MaineHousing is required by Federal law to monitor Qualified Low-income Housing Projects for noncompliance with the provisions of Section 42 of the Code and to notify the IRS when it becomes aware of any such noncompliance. In January 2007 the IRS issued its “Guide for Completing Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition”. The purpose of the Guide is to provide standardized operational definitions for the noncompliance categories listed on Form 8823. Compliance with the monitoring procedures is a requirement of the Extended Low-income Housing Commitment. MaineHousing reserves the right to impose a reasonable fee for the administrative burden resulting from this on-going monitoring requirement. Owners must comply with the following requirements:

- A. **Recordkeeping and Record Retention.** Owners must keep on file and available to MaineHousing upon request, records for each Qualified Low-income Building in the Qualified Low-income Housing Project, including without limitation, the following information.
1. The total number of residential rental units in each Qualified Low-income Building (including the number of bedrooms and the size in square feet of each residential rental unit).
 2. The number of residential rental units in each Qualified Low-income Building that are designated low-income units.
 3. The rent charged on each residential rental unit in each Qualified Low-income Building (including any utility allowances).
 4. The number of occupants in each low-income unit.
 5. The low-income unit vacancies in each Qualified Low-income Building and information that shows when, and to whom, the next available units were rented.
 6. An income certification for each household occupying a Credit-eligible unit in the Project at the time of initial occupancy and source documents verifying the income of the household, including for example, a copy of federal income tax returns, W-2 forms or verifications of income from third parties such as employers or State agencies paying unemployment compensation. Tenant income is calculated in a manner consistent with the determination of annual income in accordance with Section 8 of the United States Housing Act of 1937, not in accordance with the determination of gross income for

federal income tax liability. In the case of a tenant receiving Section 8 housing assistance payments, the documentation requirement is satisfied if the public housing authority provides a statement to the Owner declaring that the tenant's income does not exceed the applicable income limit under Section 42(g) of the Code.

7. An income certification for each new member added to the household of a Credit-eligible unit after initial occupancy and third party verification of the new member's income as described in Subsection A.6.above.
8. Annual income certifications for each household occupying a Credit-eligible unit in the Project, except (a) no annual income certifications are required for a Project in which 100% of the units in the Project are subject to the applicable income limit elected pursuant to Section 42(g)(1) of the Code for the Project (i.e. either 100% of the units at 60% AMI or 100% of the units at 50% AMI), and (b) for a Project in which 100% of the units are Credit-eligible units but the Project is subject to multiple income targeting requirements, annual income certifications are only required for households in units subject to the lower income targeting requirements (e.g. in a 100% Credit-eligible Project with 60% AMI, 50% AMI, 40% AMI and 30% AMI units, annual income certifications are required for the 50% AMI, 40% AMI and 30% AMI units). For Projects financed or assisted under State or federal programs that require annual income certifications, the owner must provide annual income certifications for each household occupying a Credit-eligible unit in the Project.

For a Project in which 100% of the units are Credit-eligible units, MaineHousing will allow a self-certification from each household for which an annual income certification is required under this subsection, except a third party verification of the household's income shall be required every six years during the affordability period, commencing on the date on which the first building in the Project is Placed in Service, and otherwise upon request by MaineHousing. The self-certification shall be in writing, shall indicate the size of the household and annual household income, shall include a certification from the household that the information is complete and accurate, shall indicate that third-party source documentation will be provided upon request by the Owner or MaineHousing and shall be witnessed.

9. The Eligible Basis and Qualified Basis of each Qualified Low-income Building at the end of the first year of the Credit Period.

10. The character and use of the nonresidential portion of a Qualified Low-income Building included in the Qualified Low-income Building's Eligible Basis (for example, 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).

These records shall be maintained for each Qualified Low-income Building throughout the applicable Extended Use Period. These records shall be retained for at least six (6) years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the Credit Period, however, shall be retained until the later of the end of the applicable Extended Use Period or six (6) years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period of the Qualified Low-income Building. First year quarterly reports shall be filed with MaineHousing.

11. A determination of the student status of the resident household.

B. Certification and Review. Owners must certify compliance with the requirements of Section 42 of the Code as follows:

1. All Owners must certify to MaineHousing annually throughout the Extended Use Period of the Qualified Low-income Housing Project for the calendar year preceding certification that:
 - a. The Project met the minimum low-income set-aside test applicable to the Project and complies with the additional low-income targeting pledged by the Owner as set forth in the Extended Low Income Housing Commitment on which the allocation was based, (e.g. 40% AMI and 50% AMI);
 - b. There was no change in the Applicable Fraction of any Qualified Low-income Building or that there was a change and a description of the change;
 - c. The Owner has received all income certifications and third-party verification thereof required under Section 10.A.;
 - d. Each qualified low-income unit in the Project was rent-restricted under Section 42(g)(2) of the Code;

- e. All units in the Project were available for use by the general public and used on a nontransient basis, except for transitional housing for the homeless provided under Section 42(i)(3)(B)(iii) of the Code;
- f. Each Qualified Low-income Building was suitable for occupancy under applicable health, safety and building codes;
- g. There was no change in the Eligible Basis of any Qualified Low-income Building or if there was a change, the nature of the change (for example, a common area has become commercial space, or a fee is now charged for a tenant facility formerly provided without charge);
- h. All tenant facilities included in the Eligible Basis of any Qualified Low-income Building, such as swimming pools, other recreational facilities and parking areas, were provided on a comparable basis without charge to all tenants in the Qualified Low-income Building;
- i. If a low-income unit in the Qualified Low-income Building became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the Qualified Low-income Building were or will be rented to tenants not having a qualifying income;
- j. If the income of tenants of a low-income unit in the Qualified Low-income Building increased above the limit allowed under Section 42 of the Code, the next available unit of comparable or smaller size in the Qualified Low-income Building was or will be rented to tenants having a qualifying income;
- k. The Project complies with the Extended Low-income Housing Commitment for Qualified Low-income Buildings subject to Section 7108(c)(1) of the Revenue Reconciliation Act of 1989;
- l. The Project complies with the requirements of all applicable Federal and State housing programs (e.g. RD, Federal HOME, HUD Section 8, or Tax-Exempt Bonds);
- m. The Project has not received notice of any violation of applicable building codes. In the event a violation occurs the owner must report all violations to MaineHousing including a summary of or copies of

violations issued. The Owner must indicate whether the violations have been corrected and must retain all original reports of violation;

- n. No findings of discrimination under the Federal Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. § 3601 *et seq.*) or the Maine Human Rights Act (5 M.R.S.A., Chapter 337, Subchapter IV) have occurred at the Project. A finding of discrimination includes an adverse final decision by HUD, an adverse final decision by a substantially equivalent State or local fair housing agency, or an adverse judgment from a Federal or State court;
 - o. No applicant for tenancy in possession of a Section 8 voucher was refused housing solely because of their status as a Section 8 voucher-holder;
 - p. If the Owner received its Credit allocation from a portion of the State Ceiling set-aside for a Project involving a Qualified Non-Profit Organization under Section 42(h)(5) of the Code, then a Qualified Non-profit Organization materially participated in the operation of the Project within the meaning of Section 469(h) of the Code; and
 - q. There has been no change in the ownership or management of the Project.
- 2. Annually throughout the Extended Use Period applicable to the Project, Owners must complete and submit to MaineHousing a tenant status report on a form prescribed by MaineHousing. The tenant status report shall accurately reflect tenant income, rent data and other occupancy information required by MaineHousing for each Qualified Low-income Building in a Project for the prior calendar year.
 - 3. MaineHousing will review the tenant files of at least 20% of the low income units in each Project at least once every three (3) years. For new Projects Placed in Service, MaineHousing will complete a review of tenant records of 20% of the low income units at the Project within two (2) years following the year the last Qualified Low-income Building is Placed in Service. The tenant records to be reviewed, will be selected randomly by MaineHousing. Notice of Project selection, as well as the required timeframe for submission of details, will be provided by MaineHousing to the Owner in writing.
 - 4. Owners of Qualified Low-income Buildings financed under the RD Section 515 Rural Rental Housing Program or Qualified Low-income Buildings of

which 50% or more of the aggregate basis is financed with the proceeds of tax-exempt bonds are not required to submit, and MaineHousing is not required to review, the tenant income certifications, supporting documentation and rent records if RD or the bond issuer, as applicable, has entered into an agreement with MaineHousing to provide information concerning the income and rent of the tenants in the Qualified Low-income Building to MaineHousing. If the information provided by RD or the bond issuer is not sufficient for MaineHousing to make the required determinations, MaineHousing shall request the necessary additional income or rent information from the Owner.

5. MaineHousing shall review all certifications and supporting documentation submitted hereunder for compliance with the requirements of Section 42 of the Code.
 6. The annual owner certifications, an executed Form 8609 and 8609-A for each Qualified Low-income Building and the tenant status report for each building required hereunder must be submitted to MaineHousing on or before a date established by MaineHousing, but in no event, later than May 1 of each year. The certification must cover the preceding calendar year and must be made as of December 31 of the prior year. A completed and executed Form 8609 is only required to be submitted one time and must accompany the initial submission. The certifications shall be made on forms prescribed by MaineHousing and shall be made under penalty of perjury.
- C. **Data Collection.** Annually, the Owner shall provide certain data required by The Housing and Economic Recovery Act of 2008 (HERA) about its Project and the tenants, including without limitation, information concerning the race, ethnicity, family composition, age, income, use of rental assistance under Section 8 and other similar assistance, disability status and monthly rental payments of households residing in units in the Project for which the Owner receives Credit. The data shall be submitted to MaineHousing electronically and in the format required by MaineHousing to transmit the data to HUD.
- D. **Inspections.** MaineHousing will perform property inspections consistent with Uniform Physical Condition Standards (UPCS) on a one-to-three year cycle, and shall have the right, at any time upon thirty (30) days notice to the Owner, to review all records referred to in this Section.
- E. **Monitoring Fee.** All Applications shall be required to remit a one-time monitoring fee equal to \$600 for each Credit eligible unit in the Project. This fee must be paid prior to the issuance of the IRS Form 8609.

MaineHousing reserves the right to waive all or part of the fee in the event the partnership enters in a compliance monitoring agreement acceptable to MaineHousing, and agrees to provide sufficient annual documentation to enable MaineHousing to perform its required oversight.

- F. **Notification of Noncompliance.** In the event MaineHousing does not receive the certifications required hereunder when due or they are incomplete or insufficient, MaineHousing shall notify the Owner in writing of the missing, incomplete or insufficient certification. In the event MaineHousing discovers through audit, inspection, review or some other manner that the Project is not in compliance with the provisions of Section 42 of the Code, MaineHousing shall notify the Owner in writing of the nature of such noncompliance. In either case, such notice shall provide the Owner with a reasonable correction period, not to exceed ninety (90) days, in which the Owner must supply the completed certifications and/or bring the Project into compliance with Section 42 of the Code. If MaineHousing determines there is good cause, it may extend the correction period for up to six (6) months. Within forty-five (45) days after the end of the correction period, including any permitted extensions, MaineHousing shall file the required Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance, with the IRS regardless of whether the noncompliance or failure to certify has been corrected.
- G. **Liability.** COMPLIANCE WITH THE REQUIREMENTS OF SECTION 42 OF THE CODE IS THE RESPONSIBILITY OF THE OWNER OF THE QUALIFIED LOW-INCOME BUILDING FOR WHICH THE CREDIT IS ALLOWABLE. MAINEHOUSING'S OBLIGATION TO MONITOR FOR COMPLIANCE WITH THE REQUIREMENTS OF SECTION 42 OF THE CODE DOES NOT MAKE MAINEHOUSING LIABLE FOR AN OWNER'S NONCOMPLIANCE.

SECTION 11: RULE LIMITATIONS

- A. **Other Requirements.** Section 42 of the Code, related provisions of the Code and all associated regulations and guidance, as amended from time to time, may contain additional requirements concerning the Credit. Applicants and Owners are subject to and must comply with all such requirements.
- B. **Conflicts.** If this rule conflicts with any provision of federal or State law, the federal or State law shall control.
- C. **Not an Entitlement.** This rule establishes a pool of eligible Applicants but does not preclude additional reasonable criteria and does not confer any automatic right or entitlement to Credit on any person or entity eligible hereunder.

- D. **Final Agency Action.** The Director of MaineHousing, individually or by exercise of the delegation of powers contained in the Act, shall make all decisions and take all action necessary to implement this rule. Such action of the Director shall constitute final agency action.
- E. **Waiver.** Upon determination of good cause, the Director of MaineHousing or the Director's designee may, subject to statutory limitations, waive any provision of this rule. Each waiver shall be in writing and shall be supported by documentation of the pertinent facts and grounds.
- F. **Headings.** The headings in this rule are for convenience only and do not define or limit the scope of the provisions of this rule.

STATUTORY AUTHORITY: 30-A MRSA §§4741(1) and 4741(14), Section 42 of the Internal Revenue Code of 1986, as amended

BASIS STATEMENT: The Internal Revenue Code of 1986, as amended, (the "Code") requires Maine State Housing Authority ("MaineHousing"), as the State's designated housing credit agency, to adopt a qualified allocation plan for allocating and administering federal low income housing tax credits ("Credit"), including without limitation the State ceiling of federal low-income housing tax credits ("State Ceiling").

This rule repeals and replaces in its entirety the prior rule, entitled *Allocation of State Ceiling for Low-Income Housing Tax Credit Rule*, which was the qualified allocation plan for allocating and administering the 2012 State ceiling of federal low income housing tax credits. This rule is the State's qualified allocation plan for allocating and administering the federal low-income housing tax credits, including the 2013 State ceiling of federal low-income housing tax credits.

The primary priority in the selection process for federal low-income housing tax credits, including the 2013 State Ceiling, under this qualified allocation plan is cost containment. This priority is reflected in the new cap on total development costs of projects based on the type of project and new or modified scoring categories that incent lower development costs. A new category awards points to projects with lower total development costs relative to a certain benchmark, established based on historical MaineHousing data on the average costs of projects by project type, and deducts points for projects with higher total development costs relative to the benchmark. This new scoring category, as an individual scoring category, has the greatest impact on scoring. A former scoring category that awarded points for donated property or property purchased at nominal value has been expanded to award points for acquisition costs below the average purchase price for projects by type based on historical MaineHousing data to incent applicants to purchase properties at less than market value.

In addition, prior selection criteria that could increase the costs of projects have been removed or modified. The scoring criteria that incented a greater level of accessibility and the threshold requirement that projects provide free Internet service to residents in their units and a computer with

Internet access in a common area have been removed. MaineHousing has eliminated *MaineHousing's Green Building Standards*, adopted the Maine Uniform Building and Energy Code (MUBEC) and revised and replaced the former *Construction Services Design and Construction Manual*. The maximum points awarded to projects with new project-based rental assistance have been slightly reduced to ensure these points do not offset the negative scoring impact on projects with higher total development costs. The new project-based rental assistance scoring category has also been modified to establish a minimum value of rental assistance to be eligible.

In conjunction with these cost containment measures, MaineHousing is proposing a cost-saving change to its companion debt and subsidy program; federal and state historic tax credit projects will not be eligible for subsidy from MaineHousing because these projects generate sufficient equity from the tax credits to pay for the development of a reasonably-priced historic project. However, should financial markets experience a significant change which decreases the total equity available to an historic project, MaineHousing, in its sole discretion, may award subsidy to a project up to an amount which fills the resulting gap. Subsidy will not be used to increase the total development cost of a project on which the project was scored under the new total development cost scoring category, except as provide in the scoring category, and will not exceed the subsidy limits under the debt and subsidy program.

This rule makes other changes from the prior rule. The family housing scoring scoring category has been modified to give more flexibility to develop family housing without three or more bedroom units in areas of the State where there is no need. MaineHousing is proposing an associated change to its companion subsidy program to underwrite three or more bedroom units in family housing projects at the maximum tax credit rent for two-bedroom units plus \$50.00. The housing for homeless set-aside has been removed because of a lack of demand for several years, and MaineHousing has other programs to serve this need. The prohibition against projects with existing Section 8 project-based rental assistance has been removed and the set-aside for preservation of existing Rural Development projects with project-based rental assistance has been modified to include projects with existing Section 8 project-based rental assistance and to increase the amount of the set-aside. Section 8 project-based rental assistance is a valuable resource to provide affordable housing to persons with the lowest income in the State. Historically, these projects have been funded under MaineHousing's tax-exempt bond financing program and Credit without an allocation from the State Ceiling, but some existing Section 8 projects are not feasible under the tax-exempt financing program. The scoring criterion for projects located within 2500 feet of a downtown has been removed and the points under the scoring criteria for projects with 1500 feet of a designated pick-up location for fixed-route public transportation have increased. The rule requires all projects to provide smoke-free housing because of the health effects on non-smoking residents and the increased maintenance and other costs and risks associated with operating housing where smoking is allowed, and most residents prefer smoke-free housing. The target vacancy rate in the vacancy rate scoring category has been reduced to 5% to incent the development of housing in areas where there is more need. The service center community need scoring criteria have been updated to reflect the most recent available data. The rule makes other minor modifications, clarifications, grammatical changes and formatting improvements from the prior rule.

Process

In accordance with Executive Order 20 FY 11/12 dated August 24, 2011, MaineHousing submitted the proposed rule to the Office of the Governor for review and authorization to publish the proposed rule for public review and comment. The Office of the Governor approved the proposed rule.

MaineHousing held a public hearing on June 19, 2012 to receive public comment on the proposed rule and continued to accept written comments on the proposed rule through June 29, 2012. John Egan of Coastal Enterprises, Inc. (CEI) and Greg Paxton of Maine Preservation testified at the public hearing. Timothy M. O'Neil of Monks O'Neil Development LLC and Greg Payne representing the Maine Affordable Housing Coalition (MAHC) also testified at the public hearing and submitted written comments on the proposed rule. John O'Dea representing the Associated General Contractors of Maine (AGC), Dennis Marble of the Bangor Area Shelter, Sarah Mayberry of The Smoke-Free Housing Coalition of Maine, Ed Miller of the American Lung Association, Adam Rose of Travois, Inc., TR Quesada of Fore River Company, David Bateman of Bateman Partners LLC and Kerry W. Kirby of 365 Connect Multifamily Technology Solutions submitted written comments on the proposed rule.

Summary of Comments and MaineHousing's Response to Comments on the Proposed Rule

Section 3.C. Preservation Set-aside

Comment: Mr. O'Neil commented that the Preservation Set-aside should be expanded to include multi-family housing financed by MaineHousing, low-income housing tax credit projects that have or about to complete the tax credit compliance period (so-called Year 15 tax credit projects) and other below-market financed projects that are at risk of becoming market rate properties through prepayment or other loss of low-income use restrictions or that preserve occupied, low-income restricted properties.

Response: Some of the types of projects identified by the commenter may be at risk of becoming market rate properties. However, the loss of valuable project-based rental assistance is a higher priority, so the set-aside is limited to projects with existing project-based rental assistance, which include Rural Development and HUD-funded projects. The projects identified by the commenter are eligible to apply and compete for credit under the proposed rule.

Section 4.B. Application

Comment: AGC commented that the rule should include a policy on curable deficiencies in applications like certain HUD programs such as HUD's 202 Program.

Response: HUD requires electronic filing of applications to the Section 202 Program. Curable deficiencies under the HUD 202 Program are technical deficiencies associated with the electronic

filing process such as using an invalid DUNS (D&B Data Universal Numbering System) number or an incorrect User ID or password or the submission triggers a “virus detect” notice. They do not include failure to submit required information or to satisfy substantive threshold requirements, which are the only bases on which MaineHousing has rejected applications. Also, MaineHousing staff is available prior to the application deadline to respond to questions about the requirements and scoring criteria under the program. Submission of a complete application that meets the threshold requirements is an important indication of a developer’s capacity. Allowing developers to correct substantive deficiencies in their applications after the deadline is unfair to developers who submit complete, eligible applications, will delay the process and potentially could foster lax application submissions overall.

Section 5.B. Affordable Rental Housing

Comment: Travois, Inc. commented that the rule should not limit the number of units that can be converted to homeownership before the end of the 90-year extended use period to 40% of the units in a project. Travois, Inc. commented that owners should have the option to convert their tax credit projects to homeownership after the 15-year compliance period. Travois, Inc. commented that Section 42 of the Code acknowledges the importance of homeownership by allowing the conversion of rental units to homeownership after the compliance period and requiring housing credit agencies to address it in the selection criteria. Travois, Inc. commented that homeownership is difficult on tribal land other than through the tax credit program because banks are hesitant to loan money to individuals for housing on trust land. The only options are to pay cash or purchase existing homes previously built with HUD funding which need substantial rehabilitation.

Response: The commenter’s understanding of this section is not MaineHousing’s intent. MaineHousing requires tax credit projects be maintained as rental housing for a period of 90 years, 40% of which units must be affordable. MaineHousing has modified this section to clarify.

Constructing new and preserving existing rental housing are important housing needs in this State. According to our housing need statistics, there are approximately 23,300 renter households that earn between 40 and 60% AMI and only 17,400 rental units available to this income group that are subject to restrictive rental covenants and/or rental assistance contracts. That leaves a deficit of 5900 units for these renters. The resources available to develop new and preserve affordable rental housing in the State are limited. The federal low income housing tax credit is one of the few remaining resources. MaineHousing produces an average of 150 rental units each year under the program. To preserve the affordable rental housing created under the program, MaineHousing requires tax credit owners to maintain these projects as long-term affordable rental housing.

Tribal lands are not technically within MaineHousing’s area of operation. Nevertheless, MaineHousing includes the tribes in developing MaineHousing’s consolidated plan and will continue, as it has historically, to meet with tribes to address housing issues on tribal lands, including homeownership. MaineHousing established the Indian Mortgage Insurance Program to help individuals on tribal land qualify for residential mortgage loans, and has been working to improve

the program. In addition, MaineHousing has made its resources, including nearly \$950,000 in low-income housing tax credits and more than \$1,765,000 in subsidy available for multifamily and supportive housing on tribal lands.

Section 5.N. Project Design

Comment: AGC commented that *MaineHousing's Green Building Standards* should be replaced with the Maine Uniform Building and Energy Code (MUBEC), except that certain provisions of the Green Building Standards should be incorporated in MaineHousing's design and construction standards, such as blower door testing and the cost of LEED certification. AGC also recommended a major overhaul of *Construction Services Design and Construction Manual* using MUBEC and AGC's Blue Book as the foundation.

Response: AGC's comments were submitted before the proposed rule was finalized. Before the proposed rule was finalized, MaineHousing convened a working group to review *MaineHousing's Green Building Standards* and *Construction Services Design and Construction Manual*. As a result, MaineHousing replaced *MaineHousing's Green Building Standards* and *Construction Services Design and Construction Manual* with more streamlined design, construction and energy efficiency standards, entitled *MaineHousing's Quality Standards and Procedures Manual*, which incorporate MUBEC, AGC's Blue Book and certain provisions of the former standards, such as blower door testing. MaineHousing did not include LEED certification as an allowable expense, because the new design and construction standards establish an appropriate level of energy efficiency practices for projects funded by MaineHousing and LEED certification seems like an unnecessary additional cost.

Comment: MAHC commented that it understood the parking requirements in the new construction standards would defer to the parking requirements of the municipality in which a project is located if the municipality has parking requirements. MAHC also commented that the new construction standards should apply to projects selected under the prior qualified allocation plan that have not gone out to bid yet.

Response: We have modified the design and construction requirements to defer to the parking requirements in the municipality in which a project is located if the municipality has parking requirements. If a municipality does not have any parking requirements, MaineHousing will require at least one parking space for each unit unless a developer submits an acceptable plan supporting less than one-for-one parking.

After the new design and construction standards are adopted, developers may use the new standards if they can demonstrate a cost savings for their projects. Developers cannot use the standards if the additional cost of complying with the new standards increases the overall cost of their projects.

Comment: CEI supports the changes to MaineHousing's construction standards. Maine Preservation commented that the changes to MaineHousing's green building standards will reduce the cost of historic projects because historic projects had difficulty complying with the standards.

Response: No response is required.

Section 5.O. Resident Service Coordination

Comment: 365 Connect Multifamily Technology Solutions commented that the rule should be modified to include the delivery of on-line supportive services to residents to supplement on-site programs. The commenter commented that on-site programs are not always convenient for residences, have a history of poor attendance and are expensive to maintain, and a majority of persons in the United States are connected online so on-line programs will reach more residents. The commenter specifically suggested that additional points should be awarded to projects that offer (a) on-line services through multiple delivery systems such as computers and mobile devices, (b) educational information through on-line videos, (c) on-line systems with links to local resources and mapping capabilities so residents can find the resources closest to them, (d) on-line communication with the management company, (e) on-line emergency alert systems to all residents to receive alert notices from the management company, and (f) on-line systems that allow residents to view their lease and rental obligations, such as lease end and start dates, monthly rent and other charges and payment terms.

Response: Section 5.O. of the proposed rule requires on-site resident service coordination. Before considering any changes to the program, MaineHousing would need more information about on-line supportive service programs, including without limitation the types, availability and cost of such systems, and would want input from owners and managers of tax credit projects and other interested parties about the systems and services. MaineHousing staff will look into this for next year's qualified allocation plan.

Section 5.P. Project Amenities

Comment: Travois, Inc. commented that the proposed rule does not address how scattered site projects with single-family detached style units comply with the requirements for a community room and areas of activity. Travois, Inc. commented that requiring a community room at each site is not feasible. Travois, Inc. further commented that private lawns for single-family detached style rental housing should be sufficient to meet the requirement for areas of activity if other areas of activity are impracticable. Travois, Inc. suggested exempting scattered site projects from the community room and areas of activity requirements if the applicant can demonstrate compliance is impractical.

Response: A community room and areas of activity are important amenities for tenants in rental housing. The proposed rule specifically addresses each of these requirements with respect to scattered site and single-family detached style rental housing. Section 5(P)(1) of the proposed rule provides that for scattered site projects, the community room should be centrally located to the greatest extent possible to ensure all residents of the project have the benefit of the community room. The last sentence of Section 5(P)(3) of the proposed rule provides that a project with single-family detached style rental housing units and private lawns with sufficient room to play or garden

or for other activities satisfies the areas of activity requirement. Section 5(P)(4) of the proposed rule exempts existing housing, including single-family detached style housing, from these requirements if the applicant can demonstrate impracticability. New projects have more flexibility. Developers should not select sites for new projects that cannot meet these requirements.

Section 5.Q. Smoke-free Housing Policy

Comments: The Smoke-free Housing Coalition, the American Lung Association and AGC support changing the scoring category incenting projects to adopt a smoke-free housing policy in the former rule to a threshold requirement. Smoke-free housing reduces maintenance and property-casualty insurance costs, reduces the risk of fire and protects residents from the health hazards associated with exposure to second-hand smoke.

Response: Earlier this year MaineHousing convened a working group of interested parties to discuss changing the former scoring criteria to a threshold requirement. The group unanimously agreed the change should be made.

Section 6.A.3. Family Housing

Comment: AGC commented that the family housing scoring criteria compel developers to include three-bedroom units in projects even if there is no market demand or the location of the project is not well-suited for children. AGC commented that the scoring category should incent two or more bedroom units which would allow developers to include three-bedroom units if needed in the market in which the project is located, but not compel three-bedroom units where the market does not.

Response: AGC's comments were submitted before the proposed rule was finalized. MaineHousing modified this scoring category between receiving the comments and finalizing the proposed rule to award points for family housing with two-bedroom units in areas of the State where the market does not need three or more bedroom units. The scoring category maintains a greater number of points for family housing with three or more bedroom units to encourage the development of family housing with a greater number of bedrooms in markets where they are needed. MaineHousing also modified its companion subsidy program to underwrite three or more bedroom units in family housing projects at the maximum tax credit rent for two-bedroom units plus \$50.00 to address concerns expressed about the ability of families to pay the maximum tax credit for three or more bedroom units.

Section 6.B.1. Total Development Cost

Comment: CEI suggested using a benchmark related to per-square foot construction cost rather than per-unit total development cost to measure cost-containment. CEI commented that the per-unit total development cost measure includes certain costs, such as taxes, reserves and environmental costs, that would result in different scores for two similar projects in terms of the

number of bedrooms and population served because of the location or the particular conditions of the community or the project site. CEI also commented that the total development cost benchmark is based on historical data and not reflective of any changes in the market.

Response: MaineHousing convened a working group to explore different cost containment measures, including a per-square foot construction cost approach. The group concluded that such an approach could result in the development of high-cost projects, such as historic buildings that are not conducive to housing or properties with significant environmental costs or challenging site conditions. A per-unit total development cost approach considers all of the costs of project development. Selecting projects that can serve the same population and the same number of persons in a location where housing is needed for less is a more efficient use of resources and may result in the development of more housing.

Actual cost data from the development of tax credit projects over the last several years is the most accurate measure of development costs for projects. Any changes in market conditions will have a similar impact on all projects.

Comment: MAHC and AGC support the concept of encouraging lower total development costs, but commented that the total points allocated to the scoring category is out of proportion with other scoring categories in the proposed rule, such as who will be served by the project, how effectively a project meets local market needs and where projects are located. MAHC expressed concern that tax credits and MaineHousing's scarce subsidy may be awarded to projects that could have been financed by the private market. MAHC also expressed concern that the weight of the category may overpower local control and preferences for the type of housing needed in a community, such as developing less expensive efficiency one-bedroom units rather than larger bedroom units for families. MAHC commented that there appears to be a technical error in subsection (a) of the scoring category.

Response: The working group that MaineHousing convened on cost containment spent a significant amount of time discussing the weight of the new total development cost scoring category. The weight of the category reflects MaineHousing's current policy that cost containment is the highest priority in developing multi-family housing under its programs.

The technical error in subsection (a) and a similar error in subsection (b) of this scoring category have been corrected.

Comment: AGC commented that the total development cost selection criteria should allow for market-driven material cost increases that may occur between application and loan approval, because the cost of certain building materials, such as drywall and concrete, have risen dramatically recently.

Response: AGC's comments were submitted before the proposed rule was finalized. The scoring category in the proposed rule allows for cost increases up to 5% caused by market conditions

beyond the control of the developer. If costs increase by more than 5% or are not the result of market conditions, the application will be re-scored rather than rejected.

Section 6.B.4. New Project-based Rental Assistance

Comment: Mr. Marble commented that project-based vouchers are needed to help preserve older affordable housing that is at risk of being sold or converted to for-profit endeavors.

Response: Project-based vouchers are an important source of funding to preserve existing housing and to create new affordable housing. The proposed rule includes a scoring category to encourage developers to obtain new project-based rental assistance, including project-based vouchers. The proposed rule also includes a preservation set-aside for existing Rural Development and HUD Section 8 projects with project-based rental assistance.

Comment: MAHC commented that the points awarded for new project-based rental assistance should be restored to the 7 points awarded under the prior rule. MAHC commented that project-based rental assistance is the most critical resource for serving persons who are most in need of housing because they cannot afford tax credit rents without rental assistance.

Response: The points under this category were slightly reduced to 5 points to ensure that the maximum points under this category would not offset the negative scoring impact on projects with high total development costs. The category is still heavily weighted compared to other scoring categories and MaineHousing encourages the development of projects with project-based rental assistance.

Section 6.C.1. Service Center Need

Comment: MAHC commented that the needs rankings in this scoring category do not always align with developer experience and asked MaineHousing to share the data supporting the rankings.

Response: MaineHousing provided its data to MAHC.

Section 6.C.5. Smart Growth

Comment: AGC commented that more points should be given to projects near transportation pick-up locations and there should be more parity in the smart growth selection criteria between rural and urban areas.

Response: AGC's comments were submitted before the proposed rule was finalized. MaineHousing modified this scoring category between receiving the comments and finalizing the proposed rule to increase the points awarded to projects within 1,500 feet of a pick-up location for public transportation from 3 points to 8 points.

The smart growth selection criteria encourage development of rental housing in areas that make sense, not just downtown. Not all municipalities have a downtown or public transportation, particularly in rural areas of the State, but many of them have areas where rental housing makes sense because of the development that has occurred in the area and the availability of and proximity to employment, services and other activities important to the course of daily living of residents. The scoring category awards points for the development of projects in these areas and projects that have access to demand response transportation.

Comment: Travois, Inc. commented that the point value of the demand response transportation selection criteria should be same as the selection criteria for projects within a safe walking distance of 1,500 feet of a designated public transportation pick-up because both services provide households with access to community services.

Response: Public transportation provides more regular and convenient transportation services than demand response transportation services.

Section 6.D.1. Management Company Experience

Comment: Travois, Inc. commented that the integration of a management consultant with tax credit experience in the management of a project achieves the purpose of ensuring compliance with the tax credit requirements, and should be eligible for the points under the management company experience scoring category. Travois, Inc. commented that it doesn't make sense for tribal housing authorities to hire a management company because they have vast experience managing low-income housing. Travois suggested adopting Oklahoma's approach which awards points based on the number of successful projects that are operated in compliance with the tax credit requirements regardless of how they are managed.

Response: The low income housing tax credit regulations are complicated and distinct from other affordable housing programs. In MaineHousing's experience, projects managed by experienced full service management companies are less likely to have compliance issues than projects that use a co-management approach or hire a consultant. So, through the scoring criteria, MaineHousing encourages developers to use management companies that are experienced in managing tax credit projects. Tax credit consultants and co-management arrangements are not prohibited under the program, but they are not eligible for points under this scoring category. As tribal housing authorities obtain the necessary training and certification and gain experience, they will become eligible for the points under the scoring criteria.

Other Comments on the Rule

Comment: AGC commented that the scoring category that incents a greater level of accessibility should be eliminated because it adds unnecessary design complexity and increases construction and appliance costs by at least \$3,000.

Response: AGC's comments were submitted before the proposed rule was finalized. MaineHousing eliminated this scoring category in the final proposed rule.

Comment: Mr. Quesada commented that extra points should be awarded to projects that receive historic tax credits, because residents like them and they keep federal tax dollars in the State. Mr. Quesada also commented that in-town projects should be rewarded by maintaining a downtown location bonus rather than awarding 8 points to locations near a bus route. Mr. Quesada commented that in-town projects, particularly those in rehabilitated and historic buildings, have many societal and financial benefits such as using existing infrastructure which reduces the need for new municipal and state services, preserving liveliness and societal values in municipalities and reducing demand on undeveloped rural land.

Response: MaineHousing supports the rehabilitation of historic projects by awarding points to these projects under the proposed rule. MaineHousing supports in-town development and rehabilitation by awarding points under several scoring categories in the proposed rule, including (a) Section 5(A)(1) which awards points for using infill sites or reusing existing housing, structures or sites, (b) Section 5(A)(6) which awards points for historic rehabilitation, (c) Section 5(C) which awards points to projects that are part of a community revitalization plan, often involving downtown areas, and (d) the smart growth scoring criteria in Section 5(C)(5). The proposed rule maintains the 10-point category for projects located within 1,500 feet of downtown. The new 8-point scoring category for projects located within 1,500 feet of a bus stop was not intended to eliminate the former category for projects located within 2,500 feet of a downtown. Most projects that are located within 2,500 feet of a downtown, and some projects located more than 2,500 feet of a downtown, will be eligible for the 8 points because many municipalities, including all of the larger municipalities in the State, have public transportation.

Comment: AGC commented that MaineHousing should adopt a qualified allocation plan earlier to allow six months between the final adoption of the plan and the date applications are due to give developers adequate time to explore projects.

Response: The timing of adoption of the qualified allocation plan (this rule) is regularly discussed at public meetings about the qualified allocation plan. The current timeline is consistent with feedback received at those meetings. We will discuss the timeline at an upcoming quarterly meeting with developers.

Ineligibility of Historic Projects for Subsidy

Comment: Maine Preservation and MAHC commented that historic projects should be eligible for MaineHousing subsidy. Maine Preservation commented that the changes in the proposed rule will eliminate expensive historic projects and urged MaineHousing not to make historic projects ineligible for subsidy at this time. Maine Preservation and MAHC commented that very few historic projects developed as affordable housing have not needed MaineHousing subsidy. MAHC provided a matrix of the funding sources for historic projects. The commenters expressed concern that not

providing subsidy to historic projects will discourage housing providers from developing historic projects. This would result in the loss of federal subsidy (the equity generated by the federal tax credit) and community revitalization. Maine Preservation commented that not doing historic projects reduces the total amount of funding available to develop affordable housing because of the equity generated by the federal and state historic tax credits and will result in fewer housing units developed. Maine Preservation commented that historic projects use less subsidy than new construction projects because of the additional equity and further commented that more jobs are created or maintained in historic projects than in new construction projects, 60% to 70% of the investment being used for jobs in historic projects and 50% in new construction projects. Maine Preservation provided a report on the economic impact of historic preservation and the State historic preservation tax credit on Maine.

Response: MaineHousing supports the development of historic tax credit projects. The proposed rule includes a scoring category that encourages the development of historic projects with equity generated from federal and state historic tax credits. However, some historic buildings should not be used for affordable housing because of structural challenges, significant environmental contamination or cost. MaineHousing analyzed the historic projects that have been developed and found that the projects that needed subsidy were too expensive and either would not qualify or would not score well under the proposed rule. All of the historic projects that needed subsidy in the matrix provided by MAHC were “automatic” tax credit projects or were too expensive. MaineHousing is only making State ceiling tax credit projects, not “automatic tax credit projects, ineligible for subsidy. MaineHousing continues to encourage the development of historic projects. The equity generated by federal and state historic tax credits is a valuable resource for affordable housing and, because of the additional equity from the state historic tax credits, generates sufficient resources without MaineHousing’s subsidy to develop a reasonably-priced historic affordable housing project. MaineHousing will monitor the impact of the changes in the proposed rule and the companion subsidy program and make adjustments, if necessary, in next year’s program.

Comment: Mr. Bateman commented that the language in the Basis Statement of the proposed rule concerning the ineligibility of historic projects for MaineHousing’s subsidy should be modified to give MaineHousing flexibility to award subsidy to historic projects if there is a significant change in the financial markets that decreases the amount of equity available to tax credit projects. Mr. Bateman provided specific language.

Response: MaineHousing added the suggested language to the Basis Statement with two modifications or clarifications. The first modification gives MaineHousing sole discretion in awarding subsidy to historic projects under these circumstances and the second modification limits the amount of subsidy awarded to any project to the total development cost of the project on which the project was scored rather than the total development cost benchmarks in Section 6.B. of the proposed rule.

Comment: Mr. O’Neil commented that a change in the financial markets that reduces the amount of available equity would affect all tax credit projects, not just historic projects, and

questioned whether MaineHousing had additional resources available or resources would be reallocated among the projects awarded credit to fill the gap in historic projects.

Response: Changes in the financial markets that reduce the amount of equity generated by historic tax credits will most likely also reduce the equity generated by low-income housing tax credits. Under these extreme circumstances, MaineHousing should have the flexibility to reallocate resources among the projects selected in the scoring process to ensure the highest scoring projects, including historic projects, can be developed. Projects selected during the scoring process receive a notice to proceed which discloses that it is not an allocation of credit or a commitment of subsidy and further provides that any credit allocation or funding commitment is subject to the availability of resources and market conditions. MaineHousing does not allocate credit or commit resources until the investor has issued a commitment of equity. MaineHousing currently has the flexibility to reallocate resources among non-historic projects; we would not have flexibility with respect to historic projects. The above language gives MaineHousing the flexibility to fund an historic project that is the highest scoring project or among the highest scoring projects that can be funded with available resources.

FISCAL IMPACT OF THE RULE: The 2013 State ceiling of low income housing tax credits is projected to raise approximately \$25,400,000 in equity. The equity generated by the low income housing tax credits will be used to develop affordable housing for low-income persons. The proposed amendments will not impose any costs on municipalities or counties for implementation or compliance.

EFFECTIVE DATE: