

Summary: The state low income housing tax credit law was enacted to provide funds for the development and preservation of multi-family affordable housing. Under the law, at least 80% of the credit to be allocated in a calendar year must be set aside for the construction or adaptive reuse of buildings for new rental units. Over time, MaineHousing must seek to allocate 30% of the credit for new rental units to senior housing and 20% of the credit for new rental units to “rural areas.” In addition, at least 10% of the credit to be allocated in a calendar year, must be set aside for qualified rural development preservation projects that incur at least \$100,000 in improvements. This rule defines “rural areas” and provides for the allocation and administration of the credit and procedures for recapturing the credit for noncompliance.

1. Definitions. The following terms shall have the following meanings:
  - a. “Affordable Housing Project” means a qualified low-income housing project, as defined by Section 42(g) of the Code.
  - b. “Allocation of Credit Certification” means a certification that a project is allowed the State Low Income Housing Tax Credit and includes information required by the State of Maine Department of Administrative and Financial Services, Bureau of Revenue Services.
  - c. “Area Median Gross Income” has the same meaning as in Section 42 of the Code, as adjusted for family size.
  - d. “Code” means the United State Internal Revenue Code of 1986, as amended.
  - e. “Compliance Period” means
    - i. For a Qualified Maine Project, the period beginning on the date the first building of the project is placed in service and ending on the date that is 15 years after the last building in the project is placed in service; and
    - ii. For a Qualified Rural Development Preservation Project, the period beginning on the date the rehabilitation of the first building of the project receives a certificate of occupancy, if required, or the date of Rural Development’s notice of final inspection of the building and ending on the date that is 15 years from the date the last building of the project receives a certificate of occupancy, if required, or the date of Rural Development’s notice of final inspection of the building.
  - f. “Credit-qualified Affordable Housing Project” means a Qualified Maine Project or a Qualified Rural Development Preservation Project, as applicable to the project.

- g. “Credit Units” means all of the Federal Low-Income Housing Tax Credit units in a Qualified Maine Project or all of the units in a Qualified Rural Development Preservation Project that are assisted or financed by Rural Development.
- h. “Difficult Development Area” has the same meaning as in Section 42(d) of the Code.
- i. “Director” means the director of MaineHousing.
- j. “Federal Low-Income Housing Tax Credit” means the federal tax credit as provided in Section 42 of the Code.
- k. “MaineHousing” means the Maine State Housing Authority.
- l. “Owner” is the person or entity that holds legal title to the Credit-qualified Affordable Housing Project.
- m. “Qualified Allocation Plan” means the applicable Federal Low-Income Housing Tax Credit rule adopted by MaineHousing.
- n. “Qualified Census Tract” has the same meaning as in Section 42(d) of the Code.
- o. “Qualified Maine Project” means an Affordable Housing Project that is:
  - i. Either the construction of one or more new buildings or the adaptive reuse of one or more previously constructed buildings that have not been previously used for residential purposes;
  - ii. Subject to a restrictive covenant requiring an income mix in which at least 60% of the units in the project to which credits are allocated are restricted to households with income at or below 50% of Area Median Gross Income; and
  - iii. Eligible for the 30% present value credit as described in Section 42 of the Code as a result of tax-exempt financing described in Section 42(h)(4)(B) of the Code.
- p. “Qualified Rural Development Preservation Project” means an Affordable Housing Project in which at least 75% of the residential units are assisted or financed under a Rural Development program.
- q. “Rural Areas” are all parts of the State of Maine that are deemed rural for purposes of Rural Development multi-family housing (<https://eligibility.sc.egov.usda.gov/eligibility/welcomeAction.do?pageAction=mfhc>).
- r. “Rural Development” means the United States Department of Agriculture, Office of Rural Development, Rural Housing Service.

- s. “Rural Development Headquarters” means the national office of Rural Development.
  - t. “Rural Development Section 515 Properties” means rental housing projects financed under Section 515 of the Housing Act of 1949 (42 U.S.C. 1498).
  - u. “Rural Development State Director” means the state director of the Rural Development state office for the State of Maine.
  - v. “Senior Housing” means multifamily affordable rental housing units serving seniors that receive funding and project-based rental assistance under a Rural Development program or a United States Department of Housing and Urban Development multifamily elderly housing program or that meet the definition of “housing for older persons” under the federal Fair Housing Act, 42 United States Code, Section 3607(b)(2) and the Maine Human Rights Act.
  - w. “State Credit” means the tax credits awarded pursuant to the State Low Income Housing Tax Credit Law and this rule.
  - x. “State Low Income Housing Tax Credit Law” means 36 M.R.S. §5219-WW and 30-A M.R.S. §4722, sub-§1, ¶GG, as may be amended from time to time.
  - y. “Supportive Housing” means housing to assist persons with special needs in achieving housing stability, including persons who have experienced chronic homelessness or who are displaced, have a disability, are a victim of domestic violence or who have other special housing needs.
  - z. “UPCS” means Uniform Physical Condition Standards, the physical inspection standards established by the United States Department of Housing and Urban Development for decent, safe and sanitary housing pursuant to 24 C.F.R. §5.703, as may be amended from time to time.
2. Set Asides.
- a. Eighty percent of the State Credit available to be allocated in any calendar year, including any State Credit that has been carried forward or returned, is set aside for Qualified Maine Projects that use the Federal Low-Income Housing Tax Credit in conjunction with tax-exempt bonds issued by MaineHousing.
  - b. Ten percent of the State Credit first available to be allocated in any calendar year is set aside for Qualified Rural Development Preservation Projects, and if not allocated in that calendar year must be carried forward and be available to be allocated in subsequent calendar years for Qualified Rural Development Preservation Projects. Upon January 1, 2029, any amount previously set aside under this section 2.b. and not previously allocated to a Qualified Rural Development Preservation Project is released from the set aside and need not be allocated to a Qualified Rural Development Preservation Project.

3. Priorities.

- a. In reserving and allocating the State Credit for Qualified Maine Projects, MaineHousing will prioritize:
  - i. use of the State Credit in Qualified Census Tracts and Difficult Development Areas;
  - ii. efficient use of MaineHousing resources including without limitation the Federal Low-Income Housing Tax Credit, the State Credit, and 0% deferred financing resources to maximize the number of new residential units created;
  - iii. project readiness including approvals and financing in place;
  - iv. over time, 30% of the cumulative State Credit for Qualified Maine Projects Credits allocated to Senior Housing and 20% of the cumulative State Credit for Qualified Maine Projects allocated to Rural Areas; and
  - v. projects with an occupancy preference for persons who qualify for Supportive Housing in the greater of 4 units or 20% of the total number of units.
- b. In reserving and allocating State Credit for Qualified Rural Development Preservation Projects, MaineHousing will prioritize projects that:
  - i. are Rural Development Section 515 Properties being transferred to a new Owner in accordance with Rural Development requirements;
  - ii. incur a minimum of \$100,000 in property improvements in accordance with the State Low Income Housing Tax Credit Law; and
  - iii. are not claiming the Federal Low Income Housing Tax Credit.

4. Notice of Reservation of Credit.

- a. MaineHousing will issue a notice of reservation of State Credit for Qualified Maine Projects as follows:
  - i. the notice of reservation will be issued at the same time as the Notice to Proceed described in the Qualification Allocation Plan;
  - ii. the notice of reservation will remain in effect as long as the Notice to Proceed remains in effect; and
  - iii. the notice of reservation may include State Credit to be allocated in future years.

- b. MaineHousing will issue a notice of reservation of State Credit for Qualified Rural Development Preservation Projects after receipt of the following:
  - i. An approval of transfer issued by Rural Development Headquarters;
  - ii. Current appraisal and capital needs assessment in compliance with Rural Development requirements;
  - iii. Repair plan approved by Rural Development; and
  - iv. Any additional documents needed by MaineHousing to determine the amount of credit.
  
- 5. Allocation of Credit.
  - a. MaineHousing will issue an Allocation of Credit Certification for a Qualified Maine Project after:
    - i. MaineHousing issues a Form 8609 for the Federal Low Income Housing Tax Credit; and
    - ii. A restrictive covenant meeting the requirements of the State Low Income Housing Tax Credit Law and this rule is executed by the Owner and MaineHousing and recorded in the appropriate registry of deeds.
  
  - b. MaineHousing will issue an Allocation of Credit Certification for a Qualified Rural Development Preservation Project after:
    - i. receipt of a notice of final inspection from the Rural Development State Director;
    - ii. Calculation by MaineHousing of the amount of State Low Income Housing Tax Credit to be awarded to the Qualified Rural Development Preservation Project; and
    - iii. A restrictive covenant meeting the requirements of the State Low Income Housing Tax Credit Law and this rule is executed by the Owner and MaineHousing and recorded in the appropriate registry of deeds.
  
- 6. Recapture.
  - a. MaineHousing may recapture State Credit in accordance with this section if any one or more of the following occurs:
    - i. For a Qualified Maine Project, failure to comply with any one or more of the following as determined in accordance with Section 42(g) of the Code;

1. The applicable income limitation on any of the Credit Units;
  2. The next available unit rule; or
  3. The rent restriction on any of the Credit Units;
- ii. For a Qualified Rural Development Preservation Project, a notice of violation or default of the Rural Development financing or rental assistance contract for the project that is not cured within any cure period specified by Rural Development in the notice, as may be extended by Rural Development;
  - iii. Failure to maintain the project in a safe, decent, sanitary condition and in good repair in accordance with UPCS;
  - iv. Disposition of the project through sale, foreclosure, deed-in-lieu of foreclosure, or otherwise unless the project continues to be a Credit-qualified Affordable Housing Project;
  - v. Failure to comply with the minimum election made by Owner pursuant Section 42(g)(1) of the Code or the project otherwise fails to qualify as an Affordable Housing Project, as determined by MaineHousing;
  - vi. Loss of the project, any of the Credit Units, or any required amenities included in the eligible basis of the project that MaineHousing determines are essential to the operation of the project through damage, destruction, eminent domain, condemnation, or other action or event;
  - vii. Dissolution, liquidation, termination of existence, insolvency, or business failure of or assignment for the benefit of creditors by Owner;
  - viii. Any bankruptcy, receivership, reorganization, arrangement, insolvency, dissolution, or liquidation proceeding, or any other proceedings for the relief of debtors, under the U.S. Bankruptcy Code or any similar law, state or federal, whether now or hereafter existing, is instituted by or against Owner; or
  - ix. Any other action or event that results in the project no longer being maintained as a Credit-qualified Affordable Housing Project.

The event of noncompliance in the above clause iv. of this subsection if the project will not continue to be a Credit-qualified Affordable Housing Project and the events of noncompliance in the above clauses v. through ix. of this subsection are considered egregious noncompliance for purposes of this section.

- b. MaineHousing will not recapture State Credit for any noncompliance that is corrected by Owner before MaineHousing discovers the noncompliance.

- c. MaineHousing will give Owner written notice of noncompliance and a reasonable period of time established by MaineHousing to correct the noncompliance. The notice will specify each event of noncompliance and the period of time for correcting the noncompliance, which may be different for each event. The period of time for correcting an event of noncompliance may be extended by MaineHousing. Any extension will be written and provide the reason for the extension.
- d. If all of the events of noncompliance specified in the notice are corrected within their respective correction periods, MaineHousing will not recapture State Credit.
- e. If any of the events of noncompliance specified in the notice are not corrected within the respective period for correcting the noncompliance, MaineHousing will recapture State Credit. Except for egregious noncompliance set forth in subsection a. above, MaineHousing will defer recapture of the State Credit until the earliest of:
  - i. The end of the Compliance Period;
  - ii. Disposition of the project through sale, foreclosure, deed-in-lieu of foreclosure, or otherwise;
  - iii. Transfer of any interest in Owner that must be approved by MaineHousing pursuant to the MaineHousing *Transfers of Ownership Interests Rule*;
  - iv. MaineHousing determines there is a pattern of uncorrected noncompliance by the Owner; or
  - v. Any egregious noncompliance set forth in subsection a. above.
- f. The amount of the recapture of State Credit will be calculated when it is collected as follows:
  - i. The amount of recapture is the difference between (a) the total State Credit allocated to the project and (b) an amount equal to the product of the total State Credit allocated to the project multiplied by a fraction, the numerator of which is the number of months the project remained a Credit-qualified Affordable Housing Project since the project was placed in service and the denominator of which is 180, which difference is then prorated in proportion to the number of Credit Units that do not remain in compliance.
  - ii. The number of months in which the project has remained a Credit-qualified Affordable Housing Project is the Compliance Period less the period of noncompliance.

The period of noncompliance is the period of time from the first day of the month in which the noncompliance first occurred, not when it was discovered, to the last day of the month in which the noncompliance is corrected. If there are multiple events of noncompliance, the period of noncompliance is the first day of the first month in which any event of

noncompliance, not corrected within the applicable correction period, began to the last date of the month in which all noncompliance is corrected.

If recapture is collected before the end of the Compliance Period for any egregious noncompliance or other reason that results in the project no longer being maintained as a Credit-qualified Affordable Housing Project, the period of noncompliance will also include the period beginning on the first day of the month in which MaineHousing notifies Owner that recapture is due and ending on the last day of the Compliance Period.

- g. MaineHousing will give Owner written notice of the recapture amount and how the recapture amount was calculated. Owner must pay the recapture amount within the period of time set forth in the notice, which will not be less than 30 days and may be extended in writing by MaineHousing. If Owner does not pay the full amount of the recapture within the required period of time, MaineHousing may lien the project for the recapture amount plus accrued interest at the pre-judgment interest rate, in effect on the date of the lien as calculated in accordance with 14 M.R.S. §1602-B, until the lien is paid in full as set forth in the State Low Income Housing Tax Credit Law.
- h. All notices to Owner will be sent by registered mail or certified mail, return receipt requested, to Owner's last known address and will be deemed received within three (3) business days of being mailed.

7. General.

- a. MaineHousing may publish program guides for the allocation of the State Credit in accordance with the State Low Income Housing Tax Credit Law and this rule.
- b. MaineHousing will track annual allocations and provide information required by the State of Maine Department of Administrative and Financial Services, Bureau of Revenue Services to determine eligibility and amount of credit allocated each calendar year.
- c. MaineHousing will charge a reasonable fee for each State Credit project to defray its increased costs due to the State Credit.

8. Rule Limitations.

- a. Other Laws. If this rule conflicts with any provision of applicable federal or state law, such federal or state law shall control.
- b. Waivers. Upon determination for 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 for the waiver.
- c. Full Discretion. MaineHousing is entitled to the full discretion allowed by law in making all decisions and interpretations under this rule.

- 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. Freedom of Access Act. MaineHousing is subject to the Freedom of Access Act, 1 M.R.S.A. §401 *et seq.*, which requires the disclosure of all information provided to MaineHousing that is not specifically excluded, such as confidential information under the Act. MaineHousing shall not be liable for the disclosure of any information that it determines must be disclosed under the Freedom of Access Act.
- f. Liability. Compliance with State Low Income Housing Tax Credit Law is the responsibility of the Owner. MaineHousing is in no way responsible for an Owner's compliance or liable for an Owner's noncompliance. Any allocation, review or inspection by MaineHousing and any determination made by MaineHousing pursuant to this rule is for the sole benefit of MaineHousing. No liability or responsibility for Owner compliance with applicable requirements and no representation or warranty of a project's feasibility or viability, eligibility for State Credit, or compliance shall be implied or construed from any such actions and determinations by MaineHousing.
- g. Headings/Context. The headings in this rule are for convenience only and do not define or limit the scope of the provisions of this rule.

**BASIS STATEMENT:** This replacement rule repeals and replaces in its entirety the current State Low Income Housing Tax Credit Rule. The rule provides for the allocation and administration of the state affordable housing tax credit, a refundable credit for the development and preservation of certain affordable multifamily rental housing in Maine. The law establishing the credit requires MaineHousing to recapture credit for noncompliance and provides for a lien to enforce repayment of recapture. The replacement rule adds procedures for determining what constitutes noncompliance that causes recapture and when recapture is calculated and collected. The new procedures limit recapture to material noncompliance that is not corrected within a reasonable period of time and, except in cases of severe or repeated noncompliance, defer recapture to the end of the 15-year compliance period and limit recapture to the period of noncompliance to maintain the affordability of the projects, particularly the very low-income units, to the greatest extent possible during the compliance period and to minimize the financial impact on the projects.

**PUBLIC COMMENT:**

*Process*

**STATUTORY AUTHORITY:** 30-A M.R.S. §§4722(1)(GG) and 4741(1) and 36 M.R.S. §5219-WW.

**FISCAL IMPACT NOTE:** \$10,000,000 per year tax credits.

**EFFECTIVE DATE:** \_\_\_\_\_, 2022.