



Low Income Housing Tax Credit

Qualified Allocation Plan

2015 - 2016



CHAPTER 16 LOW-INCOME HOUSING TAX CREDIT RULE

Table of Contents

1.	Definitions	1
2.	Housing Needs and Priorities	8
	A. Consolidated Plan	8
	B. Housing Priorities	8
3.	State Ceiling, Set Asides and Maximum Credit Amount	9
	A. Amount of State Ceiling	9
	B. Non-Profit Set-aside	9
	C. Preservation Set-aside	9
	D. Set-aside for Replacement Housing in Lewiston	10
	E. Housing for Homeless Set-aside	10
	F. Maximum Credit Amount	11
4.	Allocation Process	11
	A. Pre-Application Site Review	11
	B. Application	12
	C. Ineligible Applicants	13
	D. Notice to Local Jurisdiction	13
	E. Selection Process	13
	F. Notice to Proceed	13
	G. Waiting List	14
	H. Credit Allocation	14
	I. Termination of Application or Notice to Proceed	14
5.	Threshold Requirements	15
	A. Eligible Projects	15
	B. Affordability	15
	C. Maximum Total Development Cost	15
	D. Acquisition and Rehabilitation of Existing Housing	16
	1. Limitations	16
	2. Capital Needs Assessment	16
	3. Minimum Rehabilitation Requirement	18
	4. Existing Project Reserves	19
	5. Relocation/Displacement	19
	E. Project Owner	19
	F. Development and Management Capacity	20
	G. Non-profit Participation	20
	H. Site Control	20

I.	Growth Management Limitations	21
J.	Project Feasibility	21
	1. Development Budget	21
	2. Operating Budget	22
	3. Related Development	22
	4. Right to Re-characterize	23
K.	Market Study	23
L.	Project Design	23
M.	Project Amenities	24
	1. Community Room	24
	2. Laundry Facilities	24
	3. Area Activities	24
	4. Exceptions	25
N.	Resident Service Coordination	25
O.	Smoke-free Housing	25
P.	Waiting List Preference	25
6.	Scoring Criteria	26
A.	Project Characteristics	26
	1. Rehabilitation or Reuse of Existing Housing, Structure or Site	26
	2. Preference for Populations with Special Needs	27
	3. Family Housing	27
	4. Readiness	27
	5. Historic Rehabilitation	27
	6. Accessibility	28
B.	Financial Characteristics	28
	1. Total Development Cost	28
	2. Below Market Capital	30
	3. Acquisition Cost	32
	4. New Project-based Rental Assistance	33
	5. Operating Subsidy	33
C.	Project Location	34
	1. Service Center Community Need	34
	2. Tax Credit/Market Rent Differential	37
	3. Community Revitalization	37
	4. Smart Growth	37
	5. Economic Diversity	39
	6. Certified Business-Friendly Community	39
D.	Sponsor Characteristics	39
	1. Developer Capacity	39
	2. Owner Performance	39
	3. Tax Credit Noncompliance	40

4.	Management Capacity	40
5.	Management Performance	40
E.	Tie Breaker	41
7.	Project Evaluation	41
A.	Amount of Credit	42
B.	Developer Fee	43
1.	Acquisition and Rehabilitation Projects	44
2.	Other Projects	44
3.	Additional Developer Fee	44
C.	General Contractor Intermediary Costs	45
D.	Time of Credit Determination	45
E.	Binding Agreement	45
F.	Construction Cost Increases	45
G.	Disclaimer	46
8.	Allocation of Credit	46
A.	Allocation	46
B.	Carryover Allocation	46
C.	Tax Credit Compliance Experience	48
D.	Extended Use Agreement	48
E.	Converting a Carryover Allocation	48
F.	Cancellation of Carryover Allocation	49
G.	Forward Allocation of Credit	49
H.	Disclaimers	49
9.	Tax-exempt Bond Financed Projects	50
A.	Eligible Buildings	50
B.	Requirements	50
C.	Applicable Percentage	50
D.	Credit Determination	51
E.	Allocation	51
10.	Monitoring	51
A.	Recordkeeping and Record Retention	51
B.	Certification and Review	53
C.	Inspections	57
D.	Monitoring Fee	57
E.	Notification of Noncompliance	57
F.	Liability	57

11.	Rule Limitations	58	
	A.	Other Requirements	58
	B.	Conflicts	58
	C.	Not an Entitlement	58
	D.	Final Agency Action	58
	E.	Waiver	58
	F.	Headings	58
	Statutory Authority	58	
	Basis Statement	58	
	Fiscal Impact of the Rule	63	
	Effective Date	63	

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. This rule repeals and replaces in its entirety the prior Chapter 16, *Low Income Housing Tax Credit Rule*.

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. “Affiliate” means with respect to any person or entity, another entity that said person or entity directly or indirectly controls, is controlled by or is under common control with.
- D. “Affordable Housing TIF” means an affordable housing development district and development program approved by MaineHousing pursuant to MaineHousing’s Affordable Housing Tax Increment Financing Program, 30-A M.R.S.A., Chapter 206, Subchapter 3 and the Act.
- E. “Applicable Fraction” means the fraction defined in Section 42(c)(1)(B) of the Code.
- F. “Applicable Percentage” means the percentage defined in Section 42(b) of the Code.
- G. “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.

- H. “Application” means an application to MaineHousing for an allocation of Credit governed by this rule.
- I. “Benchmark Total Development Cost” means the benchmark Total Development Cost by housing type set forth in Section 6.B.1., as established by MaineHousing based on the historical average Total Development Cost of completed housing by type.
- J. “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.
- K. “Capitalized Lease Value” means the net present value of all lease payments under a lease calculated over the term of the lease using the 10-year Treasury note rate as of 45 days prior to the deadline for Applications for the applicable Credit round plus 300 basis points.
- L. “Certified Business-Friendly Community” means a municipality certified as a Certified Business-Friendly Community by the State Department of Economic and Community Development.
- M. “Code” means the Internal Revenue Code of 1986, as amended, and the applicable regulations promulgated pursuant thereto.
- N. “Community Revitalization Plan” means (1) a community that has been designated by HUD or RD as an Empowerment Zone, a Renewal Community or Enterprise Community, or a Neighborhood Revitalization Strategy Area; or (2) a written plan that is formally adopted by the governing body of a municipality following a concerted planning process and public input, specifically targets a neighborhood or area in the community (not a single building or site or the entire municipality) for redevelopment or revitalization, and includes (a) an assessment of the existing physical structures and infrastructure of the area, (b) detailed policy goals with respect to economic redevelopment, the rehabilitation or development of housing (including multi-family rental housing) and the improvement or expansion of infrastructure, and (c) proposed activities and a timetable for implementing the policy goals. Comprehensive plans, zoning and land use plans and other plans about the growth or use of areas within a municipality, plans for a single development and plans formulated by or on behalf of the Applicant are not Community Revitalization Plans.
- O. “Compliance Period” means the period described in Section 42(i)(1) of the Code.

- P. “Consolidated Plan” means the current version of the *Maine Consolidated Plan* prepared by MaineHousing and the State Department of Economic and Community Development.
- Q. “Credit” means the low-income housing tax credit established pursuant to Section 42 of the Code and allocated pursuant to this rule.
- R. “Credit Period” means the period described in Section 42(f)(1) of the Code.
- S. “Demand Response Transportation” means on-call transportation services that operate at least 3 days per week and provide service throughout the day.
- T. “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.
- U. “Difficult-to-Develop Area” or “DDA” means an area of the State that is designated by HUD as a difficult development area pursuant to Section 42(d)(5)(B)(iii)(I) of the Code or an area of the State that is designated by MaineHousing as a difficult-to-develop area in Section 7.A.3 pursuant to Section 42(d)(5)(B)(v) of the Code.
- V. “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.
- W. “Elderly Housing” means a Project that is designated as elderly housing and receives funding and project-based rental assistance under a RD or HUD multi-family elderly housing program (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) and the Maine Human Rights Act, 5 M.R.S.A. § 4581 et seq.
- X. “Eligible Basis” means eligible basis as defined in Section 42(d) of the Code.
- Y. “Eligible Rehabilitation Costs” means the expenses incurred or to be incurred which qualify as rehabilitation expenditures under Section 42(e) of the Code.

- Z. “Extended Use Agreement” means an agreement that satisfies the requirements of Section 42(h)(6)(B) of the Code.
- AA. “Extended Use Period” means the term designated by MaineHousing in the Extended Use Agreement executed or to be executed in connection with a Qualified Low-income Housing Project pursuant to Section 42(h)(6)(D) of the Code, which is the period set forth in Section 5.B. for Projects allocated Credit under the 2015 State Ceiling and the 2016 State Ceiling.
- BB. “Fixed-route Public Transportation” means year-round, regularly scheduled public transportation that operates at least 5 days per week and provides regular service during commuter hours (commuter hours being 6:30 AM to 9:30 AM and 3:00 PM to 6:00 PM daily).
- CC. “HERA” means The Housing and Economic Recovery Act of 2008 and the regulations promulgated pursuant thereto.
- DD. “Homeless Persons” means homeless persons as defined in the Stewart B. McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11301 et seq., as amended by the Homeless Emergency and Rapid Transition to Housing Act of 2009, and the regulations promulgated pursuant thereto.
- EE. “Housing Development Costs” means the total of all direct and indirect costs incurred in financing, creating, purchasing or rehabilitating a Qualified Low-income Housing Project except the costs attributable to the acquisition of the land and any existing buildings as determined by MaineHousing.
- FF. “HUD” means the United States of America acting through the United States Department of Housing and Urban Development.
- GG. “Intermediary Costs” means all Housing Development Costs except the actual construction or Eligible Rehabilitation Costs attributable to the development of the units.
- HH. “IRS” means the United States Department of Treasury, Bureau of Internal Revenue Service.
- II. “MaineHousing” means Maine State Housing Authority.
- JJ. “Maximum Total Development Cost” means the maximum amount of Total Development Cost by housing type in Section 5.C. that a Project can have and be

eligible for Credit under this rule.

- KK. “Maximum Credit Amount” means the maximum amount of Credit a Project is eligible to receive pursuant to Section 3.F.
- LL. “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 Credit and the amount of Credit to be allocated for the Project.
- MM. “Owner” means the legal owner of a Qualified Low-income Housing Project or Building for which an Application has been submitted to MaineHousing or which has received an allocation of Credit from MaineHousing pursuant to this Qualified Allocation Plan or a prior Qualified Allocation Plan for the State.
- NN. “Ownership Transfer Rule” means Chapter 27 of MaineHousing’s rules, *Transfers of Ownership Interests*, and the policies and procedures related thereto, all as may be amended.
- OO. “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.
- PP. “Principal” means any entity with an ownership interest in the Owner that controls the development and day-to-day operation of the Project, which includes the general partner(s) if the Owner is a limited partnership and the manager(s) or member(s) invested with the management authority if the Owner is a limited liability company, and all persons and entities with an ownership interest in or control of said entity.
- QQ. “Project” means the multi-family housing project described in the Application.
- RR. “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.
- SS. “Qualified Basis” means qualified basis as defined in Section 42(c)(1) of the Code.
- TT. “Qualified Census Tract” means an area of the State designated by HUD as a qualified census tract pursuant to Section 42(d)(5)(B)(ii) of the Code.
- UU. “Qualified Low-income Housing Project” means a project as defined in Section 42(g) of the Code.

- VV. “Qualified Low-income Building” or “Building” means a building as defined in Section 42(c)(2) of the Code.
- WW. “Qualified Non-profit Organization” means an organization defined in Section 42(h)(5)(C) of the Code.
- XX. “Related Development” means any development of which the Project is a part or is related and the Project cannot be completed without the completion of the development.
- YY. “RD” or “Rural Development” means the United States of America acting through the United States Department of Agriculture, Rural Housing Services.
- ZZ. “Safe Walking Distance” means a pedestrian route appropriate to the area with sidewalks or paved wide shoulders suitable for walking, crosswalks and traffic signals at busy roads or intersections, and year-round walkability, which includes being plowed during the winter.
- AAA. “Section” or “subsection” mean or refer to sections and subsections of this rule.
- BBB. “Section 8” means Section 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437f, as amended.
- CCC. “Service Center Community” means an entire municipality designated by the Municipal Planning Assistance Program of the State Department of Agriculture, Conservation and Forestry as a Regional Service Center in January 2013.
- DDD. “Significant Place of Employment” means an industrial, business or office park with at least 5 separate employers; a shopping mall that is anchored by one or more big box or large department stores and has at least 10 or more stores or establishments; or a single non-seasonal place of employment with at least 100 employees.
- EEE. “State” means the State of Maine.
- FFF. “State Ceiling” means the State’s housing credit ceiling established pursuant to Section 42(h)(3)(C) of the Code.
- GGG. “State’s Growth Management Law” means the provisions set forth in 30-A M.R.S.A. § 4349-A, as amended.
- HHH. “Tax Credit Certification” means the annual certification and tenant data that the Owner is required to submit pursuant to Section 10.B.

- III. “Tax Increment Financing” means a development district and development program approved by a municipality or a tax increment financing district approved by the State Department of Economic and Community Development pursuant to 30-A M.R.S.A., Chapter 206.
- JJJ. “Total Construction Cost” means the sum of site costs, costs of constructing or rehabilitating structures, systems, facilities, units and components, general requirements, bond premiums, and contractor overhead and profit as determined by MaineHousing.
- KKK. “Total Development Cost” means the sum of all costs associated with the development, construction and rehabilitation of a Project, including without limitation, acquisition costs, the Capitalized Lease Value of all leases of land or land and building(s), demolition costs, Total Construction Costs, construction contingency, 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, as determined by MaineHousing.
- LLL. “Total Development Cost Per Unit” means the quotient of the Total Development Cost divided by the total number of all units in the Project. A resident managers unit that is not included in the Applicable Fraction will not be included in the total number of units for purposes of calculating the Total Development Cost Per Unit.
- MMM. “UPCS” means the Uniform Physical Conditions Standards established by HUD pursuant to 24 CFR § 5.703 as amended.
- NNN. “Very Low Income” means individuals or families whose income is at or below 50% of the area median income as determined in accordance with Section 42(g) of the Code.

SECTION 2: HOUSING NEEDS AND PRIORITIES

- A. **Consolidated Plan.** MaineHousing annually completes a statewide needs assessment as part of the 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 a substantial increase in housing costs for tenants.
 3. Increased availability of housing with services for persons with special needs including, without limitation, persons who are homeless, persons with disabilities and 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;
 4. Projects that contribute to economically diverse communities;
 5. Projects that significantly rehabilitate and preserve existing affordable rental housing;
 6. Projects that have federal subsidies but need the Credit to make the Project feasible, including Projects with RD and HUD funding;
 7. Projects that meet the housing and service needs of distinct populations of a community, including Homeless Persons and other persons with special needs; and

8. Projects that receive new or preserve existing project-based rental assistance to provide housing for persons with Very Low Income.

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

- A. **Amount of State Ceiling.** The State Ceiling 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, using 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 determined by any other method as may be authorized or required by the Code;
 2. The unused State Ceiling, 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.

All of the current per-capita State Ceiling remaining at the end of a calendar year, after all current year allocations and carryover allocations have been made and less any State Ceiling that is or will be returned to the national pool of federal low-income housing tax credits, 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 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. If the amount of Credit under this set-aside is not sufficient to complete the Project proposed in the highest-scoring eligible Application, additional Credit will be allocated for the Project regardless of the score of the Application relative to the scores of the other Applications.
- C. **Preservation Set-aside.** Up to \$300,000 of the annual State Ceiling will be set aside for the preservation and rehabilitation of one existing multi-family rental housing project that (i) is subject to a restrictive covenant requiring any of the housing units to be affordable to persons with income at or below 80% of area median income as determined by HUD, and (ii) satisfies the minimum rehabilitation requirements set forth in Section 5.D.3. Demolition and reconstruction of housing on the same site

or another site will be treated as new construction and is not eligible for this set-aside.

If the amount of Credit under this set-aside is not sufficient to complete the Project proposed in the highest-scoring eligible Application, MaineHousing may, in its sole discretion, (1) allocate additional Credit to the highest-scoring eligible Application regardless of the score of the Application relative to the scores of all other Applications, (2) allocate the Credit under this set-aside to the next highest-scoring eligible Application that does not need more than the amount of the Credit available under the set-aside, or (3) not allocate any Credit under this set-aside.

- D. **Set-aside for Replacement Housing in Lewiston.** Up to \$600,000 of the 2015 State Ceiling will be set aside for the replacement of certain rental units destroyed by fire in May 2013 and the rehabilitation of the remaining units in a scattered-site rental housing project known as Pierce Place which is located on Pierce Street and Bartlett Street in Lewiston, Maine and is subject to a single housing assistance payments contract funded under the Section 8 Project-Based Rental Assistance Program for the purpose of preserving the project-based rental assistance that will be lost if the units destroyed by fire are not replaced. The Applicant must satisfy the requirements in subsections 2, 4 and 5 of Section 5.D and the minimum rehabilitation requirements in Section 42(e)(3) of the Code with respect to the rehabilitation of the remaining units in the project.

If the amount of Credit under this set-aside is not sufficient to complete the Project, MaineHousing may, in its sole discretion, allocate additional Credit to the Application regardless of the score of the Application relative to the scores of all other Applications.

- E. **Housing for Homeless Set-aside.** Up to \$400,000 of the annual State Ceiling will be set aside for a Project that provides permanent housing for Homeless Persons and satisfies the following criteria.

1. The Project must contain separate living units which include sleeping accommodations, kitchen facilities and bathroom facilities.
2. At least 75% of the units in the Project must be set aside for Homeless Persons.
3. The Project may be situated on scattered sites.
4. Services that specifically address the needs of Homeless Persons must be offered to the residents of the Project throughout the Compliance Period. The services must be acceptable to MaineHousing and include, without

limitation, housing stabilization services. The services must be provided on-site in an appropriate setting by one or more qualified third-party service providers. The services must be fully funded from sources other than the Project's operating budget and must be free of charge to the residents of the Project.

5. Project-based rental assistance must be available for units that will be set aside for Homeless Persons. MaineHousing is not specifically making project-based rental assistance available in connection with this set-aside.

If the amount of Credit under this set-aside is not sufficient to complete the Project proposed in the highest-scoring eligible Application, MaineHousing may, in its sole discretion, allocate additional Credit to the highest-scoring eligible Application regardless of the score of the Application relative to the scores of all other Applications.

- F. **Maximum Credit Amount.** The maximum amount of Credit that will be allocated for each Project is the lesser of (i) \$20,000 per Credit-eligible unit for a Project and (ii) 30% of the annual State Ceiling from which the Applicant applied for Credit.

SECTION 4: ALLOCATION PROCESS

- A. **Pre-Application Site Review.** A prospective Project must undergo a site review and evaluation by MaineHousing pursuant to this subsection before an Application is submitted. An Application for a Project that has not undergone a site review and evaluation by MaineHousing will not be eligible to submit an Application. The purpose of the evaluation is for MaineHousing to determine, in its sole discretion, the prospective Project's suitability for housing. MaineHousing will consider (1) the physical site of the prospective Project, (2) the difficulty of developing the site, (3) the building(s) to be constructed and/or the building(s) to be rehabilitated as part of the Project, (4) any demolition, remediation or site work to be performed in connection with the Project and (5) the projected capital and operating costs of developing and operating the Project. The demolition and reconstruction of existing housing that has not been condemned or declared blight by the municipality in which it is located is subject to MaineHousing's prior written approval, in its sole discretion. The Applicant must submit all information about a prospective Project required by MaineHousing, in form and substance acceptable to MaineHousing, and a fee in the amount of \$500 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. MaineHousing will notify the Applicant in writing within 30 days 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.

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 subsection.

- B. **Application.** The deadline for submitting all Applications for the 2015 State Ceiling, including Applications for the set-asides of the 2015 State Ceiling in Section 3, is 5:00 PM on Thursday, October 9, 2014. The deadline for submitting all Applications for the 2016 State Ceiling, including Applications for the set-asides of the 2016 State Ceiling in Section 3, is 5:00 PM on Thursday, October 8, 2015.

The Application shall be in the form prescribed by MaineHousing. The Applicant must complete the Application and submit it electronically to MaineHousing by the applicable deadline set forth above. The application fee required under this subsection and a full-size copy of the schematic to-scale plans required under Section 5.L. shall be postmarked no later than the applicable deadline set forth above. The Application must be complete. If an Applicant fails to complete any of the prescribed forms or schedules in the Application or submit any of the information or documentation required in the Application with respect to the threshold requirements in Section 5, 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

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 one or more of the following has occurred.
1. Any Applicant or any Principal or Affiliate of either (i) has been declared in default or has been 60 days or more delinquent on any loan with MaineHousing, unless the default or delinquency has been cured or there is an approved payment or workout plan in place and in good standing prior to the applicable deadline for submitting an Application; 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 previously waived by MaineHousing; or (iii) is presently debarred, suspended, proposed for debarment, or excluded from participation in any federal or state programs; or (iv) has in the last 10 years had any proceeding in or for bankruptcy, receivership, reorganization or any other arrangement for relief from creditors commenced against it that affects a MaineHousing-funded project and was not dismissed within 90 days of commencement, or commenced any proceeding in or for bankruptcy, receivership, reorganization or any other arrangement for relief from creditors that affects a MaineHousing-funded project.
 2. Any Principal or Affiliate thereof, or any tax credit syndicator or investor or any Affiliate thereof that will have a controlling interest in any limited partner or member of the Owner of the Project has transferred its interest in any Qualified Low-income Housing Project or Building after March 25, 2014 in violation of the Ownership Transfer Rule, unless the violation has been cured prior to the applicable deadline for submitting an Application.
- 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 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 set forth in Section 5 will be reviewed and scored according to the scoring criteria set forth in Section 6. Applications will be ranked and selected based on score, from the highest scoring to the lowest scoring Application. The tie breaker mechanism in Section 6.E. will be used to prioritize Applications with the same score.
- 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 construction plans and specifications and all other information required by MaineHousing to perform the evaluation and deadlines for closing the financing for the Project and completing the Project.

- G. **Waiting List.** All Applications that are accepted and scored, but not selected, will be placed on a waiting list prioritized by score, from the highest to the lowest scoring Application. Any Credit that is returned or is otherwise unused will be made available to the next Application(s) on the waiting list that can achieve feasibility with the available Credit and any subsidy that was returned with the Credit or is otherwise available in connection with the Credit. An Application for a Project on the waiting list will be deemed withdrawn if the Project is given an award notice 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. Credit will be allocated in accordance with Section 8 of this rule.
- I. **Termination of Application or Notice to Proceed.** MaineHousing will deem an Application withdrawn and any Notice to Proceed, if issued, cancelled if one or more of the following occur after the Application is submitted.
1. The Application or the 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 scoring criteria set forth in Section 6, except as provided 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 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 threshold requirements set forth in this Section 5 must be satisfied to be eligible for Credit. The Applicant must demonstrate satisfaction of the following threshold requirements by completing all required information and submitting all required documentation with respect to the threshold requirements in the Application.

- A. **Eligible Projects.** The Project described in the Application must be a Qualified Low-income Housing Project.
- B. **Affordability.** An Applicant must agree for a minimum period of 45 years to maintain the Project as residential rental housing, keep at least 40% of the total Credit-eligible units in a Project occupied by persons with Very Low Income and keep the Credit-eligible units in the Project rent-restricted in accordance with Section 42 of the Code.
- C. **Maximum Total Development Cost.** An Application will not be accepted, processed or approved by MaineHousing if, at any time prior to the later of the construction loan closing for the Project or an allocation of Credit 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

Demolition and reconstruction of all housing on the same site or another site will be treated as new construction. 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 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 of an existing historic school into 10 units plus the construction of a new addition containing 10 units is \$240,000 per unit, which is 50% of the \$265,000 Maximum Total Development Cost for Adaptive Reuse plus 50% of the \$215,000 Maximum Total Development Cost for the new construction of Elderly Housing.

D. **Acquisition and Rehabilitation of Existing Housing.** Projects that involve the acquisition and rehabilitation of existing multi-family housing are subject to the following limitations and requirements.

1. **Limitations.** Projects that involve the acquisition and rehabilitation of existing affordable housing, except Projects that also involve the addition of at least 20 new units, are only eligible for the Credit made available under the Preservation Set-aside in Section 3.C.
2. **Capital Needs Assessment.** The Application must include a capital needs assessment of the existing housing that will be rehabilitated as part of the Project. The capital needs assessment must be performed by a qualified independent third party acceptable to MaineHousing, such as a licensed architect or engineer, must be completed within one (1) year before the deadline for submitting Applications, and must satisfy the following requirements.
 - a. The assessment must include a site visit, an interview with the on-site property manager and maintenance personnel concerning prior and pending repairs and improvements and existing or chronic physical deficiencies, and a physical inspection of the interior and exterior of at least 10% of the units and all other structures, facilities, systems and components that will be part of the Project, including the following.
 - i. Site, including without limitation topography, drainage, pavement, curbing, walkways, sidewalks, parking, landscaping, amenities, water, sewer, storm drainage, and all utility lines;
 - ii. Structural systems and components, both substructure and superstructure, including without limitation exterior walls, balconies and stairways, exterior doors and windows, and roofing;

- iii. Interiors, including without limitation unit and common area finishes and substrata (e.g. flooring, underlayment, carpeting, plaster or drywall, wall coverings and paint condition), and unit and common area kitchen finishes, cabinets, countertops and appliances, and unit and common area bathroom finishes, fixtures and accessories, laundry facilities, and common area lobbies and corridors; and
- iv. Building systems, including without limitation plumbing supplies and drainage, domestic hot water production, heating, ventilating and air-conditioning production and distributions systems, electrical power distribution and metering systems, lighting controls and fixtures, smoke, fire and any other alarm systems, fire protection systems, security systems, and elevators.

The capital needs assessment must specifically identify all structures, systems, facilities, units and components that were inspected and must include a concise overview of the physical and operational condition of the existing housing and a detailed assessment of the expected useful life and the remaining useful life of each structure, system, facility, unit and component inspected. The assessment must also consider the presence of environmental and other hazards, including without limitation, asbestos, lead paint, mold, water damage and insect infestations.

- b. The capital needs assessment must include a recommended scope of work and a cost estimate to complete the scope of work that addresses the following capital needs of the Project, without consideration of financial feasibility:
 - i. Correction of all violations of applicable federal, state and local building, health and life safety codes and correction of all deferred maintenance;
 - ii. Rehabilitation or replacement of all structures, systems, facilities, units and components that have reached or exceeded their useful lives or will reach their useful lives within 5 years;
 - iii. Rehabilitation of all units and common areas and facilities to bring them into compliance with MaineHousing's *Quality Standards and Procedures Manual* in effect 60 days prior to the

deadline for Applications for the applicable Credit round, to the maximum extent feasible;

- iv. Rehabilitation of the minimum number of units and all common areas and facilities that are necessary to comply with the most current requirements for new construction projects under applicable federal, state and local accessibility laws, regulations, standards and guidance (which include without limitation, Section 504 of the Rehabilitation Act of 1973, HUD's housing regulations at 24 C.F.R. Part 8 and any accessibility standard designated by HUD; Title II and Title III of the Americans with Disabilities Act of 1990 and the 2010 Standards of Accessible Design; and if the Project involves substantial rehabilitation, the Maine Human Rights Act, the Maine Human Rights Commission's Chapter 8, Housing Regulations, and ANSI Standard A117.1-2009); and
 - v. Remediation and disposal of any environmental or other hazards identified in the assessment.
- c. The capital needs assessment must also identify any structures, systems, facilities, units and components with a remaining useful life of less than 30 years. The Application must include a plan for future rehabilitation or replacement of any identified structure, system, facility, unit and component with a useful life of less than 30 years that is not included in the scope of work for the Project, including possible funding sources, which will be considered in establishing the appropriate funding amounts for the Project's reserve accounts.

If MaineHousing determines that the capital needs assessment is inadequate, MaineHousing may, in its sole discretion, (a) reject the capital needs assessment (resulting in a withdrawal of the Application), (b) require the Applicant to correct the deficiencies or submit a new capital needs assessment, or (c) commission a capital needs assessment for the Project at the expense of the Applicant.

3. **Minimum Rehabilitation Requirement.** The Project must need at least \$40,000 of hard rehabilitation costs per unit of existing housing. For purposes of this subsection, hard rehabilitation costs include site costs, the costs identified in the capital needs assessment pursuant to Section 5.D.2.b., the costs of complying with any construction requirements of other funding sources for the Project, contractor profit and overhead, and general conditions incurred in connection with the rehabilitation of the existing

housing. Hard Rehabilitation Costs do not include construction contingency, relocation costs or soft costs. The Project must satisfy the minimum rehabilitation requirements in Section 42(e)(3) of the Code if greater than the minimum rehabilitation requirement set forth in this subsection.

MaineHousing will rely on the capital needs assessment, as reviewed and approved by MaineHousing, to determine whether the Project satisfies the requirements of this subsection. The Applicant must agree to complete the rehabilitation recommended in the capital needs assessment and include the above-described hard rehabilitation costs associated with the proposed rehabilitation in the Total Development Cost of the Project to the maximum extent feasible, as determined by MaineHousing, even if the proposed rehabilitation exceeds the minimum rehabilitation requirements of this subsection and Section 42(e)(3) of the Code.

4. **Existing Project Reserves.** The Application must identify all existing project accounts and reserves that will be transferred with the purchase of the Project and indicate whether any of the accounts or reserves will be used as a source of funding for the rehabilitation of the Project.
5. **Relocation/Displacement.** The Project must comply with MaineHousing's *Temporary Relocation and Permanent Displacement Policies* and, if the Project is federally-assisted, all applicable federal requirements, including without limitation, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §4201 *et seq.* and 49 C.F.R. Part 24 and Section 104(d) of the Housing and Community Development Act of 1970, as amended, and 24 C.F.R. §42, which may require that assistance be provided to permanently or temporarily displaced tenants. The Applicant must take all reasonable steps to minimize the displacement of existing tenants at the Project site. The Application must identify any tenants who will be permanently displaced in connection with the acquisition and rehabilitation of the Project and the reason for the displacement. An estimate of all costs associated with the permanent and temporary displacement or relocation of tenants must be included in the Total Development Cost of the Project. A relocation plan that complies with all applicable requirements must be submitted to MaineHousing before an allocation of Credit will be made for the Project.

- E. **Project Owner.** The Applicant must be the entity that will be the Owner of the Project if the entity has been legally formed as of the date of the Application. If the entity that will be the Owner of the Project has not been legally formed as of the date of the Application, the Applicant must be the tax credit developer for the Project. At a minimum, the Application must identify the organizational structure and all of the Principals of the entity that will be the Owner of the Project. The

Applicant must legally form the entity that will be the Owner of the Project and submit evidence thereof to MaineHousing before an allocation of Credit will be made for the Project.

- F. **Development and Management Capacity.** The Applicant must demonstrate sufficient capacity to develop, complete, maintain and operate the Project, including without limitation, a development team consisting of a tax credit developer, a design professional, a management company, a resident service coordinator, a tax advisor (accountant or other tax professional) and an attorney for real estate, financing, tax credits, organizational and land use purposes. The Applicant must demonstrate that all members of the development team are qualified and have sufficient experience and capacity to perform their respective roles. If the tax credit developer or the management company does not have sufficient knowledge or experience with respect to federal low-income housing tax credits, the Applicant must hire a qualified tax credit consultant with sufficient federal low-income housing tax credit experience and capacity to assist the tax credit developer or the management company, as applicable. The Application does not require financial statements as part of the initial submission; however, MaineHousing may, in its sole discretion, require financial statements from the tax credit developer and any Principal or any Affiliate of either with respect to any Application that is selected to receive a Notice to Proceed.
- G. **Non-profit Participation.** To qualify for the Non-profit Set-aside, a Qualified Non-profit Organization must own an interest in the Project and materially participate in the development and operation of the Project in accordance with Section 42(h)(5)(B) of the Code. This requirement will be satisfied if the Applicant demonstrates in the Application that the general partner or manager (or managing member) of the Owner of the Project is a Qualified Non-profit Organization or a business corporation in which one or more Qualified Non-profit Organization(s) owns 100% of the stock of the corporation in accordance with Section 42(h)(5)(C) of the Code.
- H. **Site Control.** The Applicant must have site control of the Project as of the date of the Application. Evidence of satisfactory site control includes ownership, an option, a purchase and sale contract, a long-term lease or other evidence acceptable to MaineHousing.

The term of the site control must be for no less than 120 days following the last date on which the Application is due with the unilateral right of the Applicant to extend the term for an additional 120 days or any combination of extension terms that adds up to 120 days. The purpose of this requirement is to ensure that the Applicant has control of the Project site for the estimated period of time necessary to process the Application, have a construction loan closing and acquire the Project site.

Any purchase and sale agreement or option should specifically allow entry to the Project site for inspection purposes, such as conducting an environmental site assessment, a capital needs assessment or other reasonable purpose. Any purchase and sale agreement or option for an existing occupied property should also specifically allow access to records and other information regarding the existing tenants (including without limitation current rent and income information, to the extent available) for relocation and displacement purposes.

- I. **Growth Management Limitations.** A Project that involves the new construction of or the acquisition of newly-constructed multi-family residential rental property or the conversion of existing buildings to multi-family residential rental property must comply with the State's Growth Management Law. If the municipality in which the Project is located has adopted a comprehensive plan or growth management plan that is consistent with applicable State law, then the Project must be located in a designated growth area as identified in the comprehensive plan or growth management plan of the municipality to be eligible for Credit. If the Project is not located in a designated growth area in said comprehensive or growth management plan of the municipality, then 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 (1) an area that is served by a public sewer system with existing capacity for the Project, (2) an area identified as a census-designated place in the latest Federal Decennial Census, or (3) 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 Law.

- J. **Project Feasibility.** The Applicant must demonstrate the financial ability to develop and complete the Project and the financial viability of operating the Project throughout the Compliance Period for the Project.

1. **Development Budget.** The Applicant must identify (a) all sources of funding for the development and completion of the Project, including the amount, timing, terms and conditions of the funding and the status of the funding (e.g. applied for or committed) as of the date of the Application, and (b) all uses of the funding based on the projected costs of developing and completing the Project and the projected schedule for completing the Project.

The sources of funding must include, at a minimum, construction financing; permanent financing and funding, including all sources of subsidy directly or indirectly funding the Project; equity generated from the Credit from a tax credit investor with adequate capacity, as determined by MaineHousing, or an experienced tax credit syndicator; equity generated from any federal or state historic rehabilitation tax credits if the Project is eligible for the credits from a tax credit investor with adequate capacity as determined by MaineHousing or an experienced tax credit syndicator; all project reserves transferred to the Project and available to be used as funding for the development and completion of the Project; and any income to the Project. All equity should be identified and expressed as a “factor” of the credit or benefit dollar amount anticipated.

The sources of funding must be sufficient to pay for all projected costs of developing, acquiring, constructing and/or rehabilitating and completing the Project, including without limitation all lease-up costs and funding of required project accounts and reserves.

2. **Operating Budget.** The Applicant must identify (a) all sources of income for the Project projected over the Compliance Period, including without limitation all rental income from the residential units in the Project, income from any commercial or non-residential space, rental assistance and operating subsidies (such as operating subsidy from tax increment financing), and the amount, terms and conditions of such income, and (b) all costs of operating the Project projected over the Compliance Period for the Project. The Applicant must identify all forms of property tax relief (such as a PILOT or tax abatement or exemption) that reduce the operating costs for the Project.

If any rental assistance or operating subsidy or reduction may expire or terminate during the Compliance Period, the Applicant must explain the impact on the Project’s continued operation after such expiration or termination, including a separate pro forma operating statement for a minimum period of 5 years after the date of expiration or termination showing the transition from the rental assistance or operating subsidy or reduction.

3. **Related Development.** If the Project is part of, or related to, another development and cannot be completed without the completion of the other development, either structurally or financially, then the Applicant must also demonstrate that the Related Development will be completed prior to or concurrently with the completion of the Project and that there is sufficient capacity and funding to complete the Related Development. If the entity

that will be the Owner of the Project will own or otherwise be responsible for the completion of the Related Development, the Applicant must fully disclose all sources of funding and all projected costs of developing and completing the Related Development as part of the development budget for the Project. Otherwise, the Applicant must provide a separate development budget for the Related Development. If the operation of the Related Development is necessary for the feasibility of the Project, the Applicant must submit an acceptable operating budget for the Related Development fully disclosing all of the projected income costs of operating the Related Development during the Compliance Period.

4. **Right to Re-characterize.** MaineHousing may re-characterize any information about the sources and uses submitted by the Applicant in the development budget or the operating budget that MaineHousing determines (a) is not consistent with the supporting documentation submitted by the Applicant or the requirements of a funding source, or (b) is unreasonable based on historical data for comparable Qualified Low-income Housing Projects, industry standards and market conditions. The Applicant must specify methods for satisfying any deficits that arise or are identified after the Application is submitted.

- K. **Market Study.** The Application must include a comprehensive market study 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.

The market study must evaluate the housing needs of low-income persons in the area to be served by the Project, the need and demand for the Project (including the number of units, the population served and the bedroom configuration) and how the Project will address the identified need and demand, and the anticipated impact on similar housing opportunities that are currently available or are under construction or planned in the area the Project will serve, and must otherwise be acceptable to MaineHousing.

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.

- L. **Project Design.** The Application must include schematic to-scale plans of the proposed Project which comply with MaineHousing's *Quality Standards and Procedures Manual* 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.

M. **Project Amenities.** The Project must include or provide for the following amenities and services, except as provided 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. 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 tenants of the Project.
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 multi-family 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 *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 multi-family housing project.
3. **Area Activities.** An area(s) of activity must be located on the Project site or within a Safe Walking Distance of 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 of this subsection 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, zoning restrictions or other land use limitations.

- N. **Resident Service Coordination.** The Applicant must make a resident service coordinator available to the tenants of the Project to evaluate service needs and refer tenants 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 tenants a minimum of one (1) day per week, preferably 2 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 (1) hour per week for every 5 units for Projects with more than 30 units. The resident service coordinator shall meet with tenants in an on-site office or other appropriate private setting to evaluate individual service needs and refer tenants to appropriate services. The services provided by the resident service coordinator shall be free of charge to the tenants.

If MaineHousing determines that the service plan or the capacity of the service provider is inadequate, MaineHousing will identify any deficiencies in the Notice to Proceed and specify the time period in which the Applicant must correct the identified deficiencies. 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.

- O. **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 tenants of the Project through the resident service coordinator.
- P. **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, except for a Project that is financed by Rural

Development or receives rental assistance under the Section 8 Project-Based Rental Assistance Program.

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 scoring 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 that MaineHousing will consider are set forth in the scoring criteria. The Applicant must complete all information and submit all documentation required in the Application with respect to a scoring criteria to be eligible for the points under the scoring criteria.

A. Project Characteristics (maximum of 15 points).

1. **Rehabilitation or Reuse of Existing Housing, Structure or Site.** The Application will be awarded 3 points if the Project or the site on which the Project will be developed has one or more of the following characteristics.
 - a. Rehabilitation of existing multi-family rental housing containing 5 or more units without displacing any existing tenants and without increasing any tenant's housing costs (including rent and all other charges paid by the tenant) by more than 10%.
 - b. Rehabilitation, remediation or reuse of an existing substantial building or structure other than multi-family rental housing.
 - c. Site on which one or more substantial buildings or structures, used for other than residential housing with 4 or fewer dwelling units or agriculture purposes, have been or will be demolished or removed for purposes of redeveloping the site.
 - d. Site that was left vacant or nearly vacant in the development of the Downtown or other city or town center, such as a vacant lot or a parking lot between abutting commercial buildings, multi-family rental housing with more than 4 units and other substantial buildings.
 - e. Site designated by a municipality for redevelopment to renew a blighted area.

The undeveloped portion of an existing site, regardless of the use of the existing site, is not eligible for points under this subsection.

2. **Preference for Populations with Special Needs.** The Application will be awarded 2 points if preference is given in at least 20% of the units in the Project to persons who are homeless or displaced, have disabilities or have other special housing needs. The Applicant must identify and commit to maintain a waiting list for the specific population(s) that will be given preference, and must offer services that are appropriate to the needs of the persons for whom the preference is given through a qualified third-party provider other than the resident service coordinator required pursuant to Section 5.N.
3. **Family Housing.** An Application for a family housing Project 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. An Application for a family housing Project will be awarded 2 points if a minimum of 70% of the total low income units in the Project are two or more bedroom units. [Note: In determining the amount of Credit to be allocated, the 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. **Readiness.** An Application will be awarded 4 points if (a) the Project has all municipal land use approvals (except a building permit and other permits customarily issued during construction such as electrical and plumbing permits) and all State land use approvals (such as site plan, subdivision, stormwater or wetlands approvals) required to proceed with and complete the Project, and (b) any Related Development has all municipal land use approvals (except a building permit and other permits customarily issued during construction) and all State land use approvals required to proceed with and complete the Related Development, and (c) the timeframe to appeal all such approvals has expired as of the date of the Application with no appellate action being taken or all appeals have been resolved as of the date of the Application. The design of the Project submitted to and approved by the municipality and the State 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 and the State for approval. Notwithstanding MaineHousing's approval of the level of design of the Project approved by the municipality and the State, the final design of the Project, including all plans, details and specifications, must be approved by MaineHousing.
5. **Historic Rehabilitation.** An Application 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.

6. **Accessibility.** An Application will be awarded one (1) point if the Project is designed and constructed or rehabilitated to include at least one (1) more accessible unit for persons with mobility impairments than is required by applicable federal and state accessibility laws and associated regulations. At a minimum, the additional unit(s) must meet the requirements for a Type A unit under ANSI Standard A117.1-2009.

B. Financial Characteristics (maximum of 28 points).

1. **Total Development Cost.** An Application 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	\$110,000	\$105,000	\$115,000
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 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 units plus the construction

of a new addition containing 10 units is \$202,500 per unit, which is 50% of the \$225,000 Benchmark Total Development Cost for Adaptive Reuse plus 50% of the \$180,000 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. An Application 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 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
<10% less	4 points

- b. An Application 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 for that type of project as follows.

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

If there is any increase in the Total Development Cost of the Project between the date of the Application and the later of the construction loan closing for the Project or an allocation of Credit for the Project and the 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 based on its effect under this scoring criteria and the below market capital scoring criteria in Section 6.B.2.

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 MaineHousing notifies the Applicant that the Application has been re-scored. The plan must identify the source(s) of

funding to cover the increased cost and provide the timeframe for application, commitment and closing for the source(s) of funding, and must otherwise be acceptable to MaineHousing. If any of the source(s) of funding in the plan qualify as below market capital under Section 6.B.2. and the plan is otherwise acceptable to MaineHousing, then MaineHousing will again re-score the Application under Section 6.B.2.

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 (1) the total score of the Application, after re-scoring, is less than the total score of the highest scoring Application on the waiting list, and (2) the Applicant cannot submit a plan to cover the increased Total Development Cost with eligible below market funding in an amount sufficient to increase the score of the Application (if re-scored under Section 6.B.2.) to a total score that is higher than the highest scoring Application on the waiting list. If the total score of the Application is equal to the score of one or more other Applications, MaineHousing will use the tie breaker mechanism in Section 6.E. to determine the priority of the Application.

2. **Below Market Capital.** An Application for 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 in this subsection as 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>
\$100,000 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

Construction-period financing, donations or below market purchases of land and buildings, service funding, operating funds, rental assistance, tax credit equity and resources made available, either directly or indirectly, by MaineHousing are also not eligible sources of below market funding under this subsection, except as follows. Developer fee that is allowed under Section 7.B.1 or 7.B.2 and is deferred or loaned as below market capital funding for the Project qualifies as eligible below market funding under this subsection. Any additional developer fee allowed pursuant to Section 7.B.3

is not eligible under this subsection.

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 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.

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 45 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 for different loan types based on a current market rate of 5.25% (10- year Treasury rate for a comparable loan plus 300 basis points) follow.

- a. Example 1 - The value of a \$500,000 loan @ 3% amortized over 30 years 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 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 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 any Tax Increment Financing 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 subsection unless a complete application for the Affordable Housing TIF that complies with the laws governing Affordable

Housing TIFs is submitted to MaineHousing at least 45 days prior to the deadline for Applications for the applicable Credit round.

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 from the date MaineHousing notifies the Applicant that the Project is no longer feasible 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.** An Application will be awarded up to 4 points based on the acquisition costs of the Project relative to the average acquisition costs 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 complete demolition of all existing structures on the site will be treated as a new construction project.

For purposes of this subsection, the acquisition costs of the Project include the purchase price for all of the land and any existing building(s) that are part of the Project, the cost of razing any building(s) and structure(s) on the Project site and the Capitalized Lease Value of all leases of land or land and building(s) that are part of the Project, except leases for off-site parking for the Project. The value of any project reserves that are transferred to the Project as part of the acquisition and are included in the purchase price will not be included in the acquisition costs for purposes of this subsection.

4. **New Project-based Rental Assistance.** An Application 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 under this subsection 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 points under this subsection. 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.

5. **Operating Subsidy.** An Application for a Project that is directly benefited by an operating subsidy or reduction in operating costs through any Tax Increment Financing, a 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 (a) 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 the completion of the Project, and (b) must be approved by the municipality in which the Project is located and all other applicable governing entities. Projects that are located

in municipalities or areas of the State that do not assess or collect real estate taxes and Projects that are exempt from real estate taxes are not eligible for points under this subsection. Resources made available, either directly or indirectly, by MaineHousing are not eligible for consideration under this subsection. Funding made possible by an Affordable Housing TIF will not be eligible for consideration under this subsection unless a complete application for the Affordable Housing TIF that complies with the laws governing Affordable Housing TIFs is submitted to MaineHousing at least 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.** An Application for 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 set forth below.
 - a. Applications for family housing Projects located in the following Service Center Communities will be awarded the following points.

Service Center Community	Points
Auburn	5
Augusta	5
Bangor	5
Bath	5
Biddeford	5
Brunswick	5
Ellsworth	5
Lewiston	5
Portland	5
Sanford	5
South Portland	5
Waterville	5
Westbrook	5
Brewer	3
Caribou	3
Farmington	3
Houlton	3
Kittery	3

Norway	3
Old Orchard Beach	3
Orono	3
Presque Isle	3
Rockland	3
Rumford	3
Saco	3
Scarborough	3
Skowhegan	3
Windham	3
Bar Harbor	1
Blue Hill	1
Bridgton	1
Calais	1
Falmouth	1
Fort Kent	1
Gardiner	1
Hermon	1
Lincoln	1
Madawaska	1
Mexico	1
Millinocket	1
Topsham	1
Van Buren	1
Wiscasset	1

- b. Applications for Elderly Housing Projects 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
Falmouth	5
Kennebunk	5
Kittery	5
Lewiston	5

Portland	5
Saco	5
Sanford	5
Scarborough	5
Skowhegan	5
South Portland	5
Waterville	5
Westbrook	5
Bar Harbor	3
Bath	3
Belfast	3
Brewer	3
Bridgton	3
Camden	3
Caribou	3
Ellsworth	3
Freeport	3
Gardiner	3
Houlton	3
Madawaska	3
Norway	3
Old Orchard Beach	3
Presque Isle	3
Rockland	3
Rumford	3
Topsham	3
Windham	3
Bethel	1
Blue Hill	1
Damariscotta	1
Dexter	1
Farmington	1
Fort Kent	1
Hermon	1
Lincoln	1
Mexico	1
Millinocket	1
Mount Desert	1
Newport	1

Oxford	1
Pittsfield	1
Rangely	1
Rockport	1
Van Buren	1
Wiscasset	1

- c. Applications for Projects located on Native American tribal lands will be awarded 5 points.
 - d. Applications for Projects that are eligible for the Housing for Homeless Persons Set-aside will be awarded 5 points.
2. **Tax Credit/Market Rent Differential.** An Application for a Project located in an area in which the average market rent for comparable multi-family rental housing is at least 5% higher than the average maximum tax credit rent for housing occupied by individuals and families 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. An Application for a Project located in an area in which the average market rent for comparable multi-family rental housing is at least 10% higher than the average maximum tax credit rent for housing occupied by individuals and families 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 housing 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 housing. MaineHousing will rely on the market rent information in the market study submitted with the Application, as reviewed and approved by MaineHousing, to determine eligibility for the points under this subsection. For purposes of this subsection, comparable housing is housing that is located in the same geographical area and is not subsidized under any state or federal housing program.
3. **Community Revitalization.** An Application will be awarded 2 points if the Project is located within the boundaries of a clearly defined area targeted for revitalization in a Community Revitalization Plan and the Project is part of or contributes to the revitalization goals and efforts specified in the Community Revitalization Plan concerning the rehabilitation or development of housing in the targeted area. One (1) additional point will be awarded if the Project involves the rehabilitation of existing multi-family rental housing containing more than 5 units or is located in a Qualified Census Tract.
4. **Smart Growth.** An Application for a Project that incorporates the following principles of smart growth will be awarded up to 10 points.

- a. An Application will be awarded up to 4 points if the Project has or provides access to public transportation as follows:
 - i. An Application for a Project that is located within a Safe Walking Distance of not more than ½ mile of a designated pick-up location for existing Fixed-route Public Transportation will be awarded 4 points; or
 - ii. An Application will be awarded 1 point if Demand Response Transportation is available to all of the tenants of the Project. Demand Response Transportation services with eligibility criteria that limit or deny service to any tenants of the Project are not eligible for the points.
- b. An Application for a Project that is located within a Safe Walking Distance of not more than ½ mile of a Downtown will be awarded 2 points.
- c. An Application for a Project that is located within a Safe Walking Distance of not more than ½ mile of at least 3 destinations important to the course of daily living appropriate for the population served by the Project will be awarded 2 points. An eligible destination important to the course of daily living includes a grocery store, a public school only if the Project is housing for families, a daycare only if the Project is housing for families, a senior center only if the Project is Elderly housing, 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 or a hospital. 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 subsection. If there is more than one destination important to the course of daily living within a single establishment, each destination will be counted separately for purposes of this subsection (e.g. a retail store that also includes a pharmacy and a bank branch will be treated as 3 destinations important to the course of daily living).
- d. An Application for a Project that is located within 5 miles of a Significant Place of Employment will be awarded 2 points.

5. **Economic Diversity.** An Application will be awarded 2 points if the Project is located in (a) a municipality with an area median household income of \$40,000 or more as determined pursuant to the American Community Survey, or (b) a Qualified Census Tract and at least 20% of the units in the Project are market rate units.
6. **Certified Business-Friendly Community.** An Application for a Project that is located in a Certified Business-Friendly Community will be awarded one (1) point.

D. Sponsor Characteristics (maximum of 6 points).

1. **Developer Capacity.** An Application will be awarded up to 2 points based on the development experience of any Principal or Affiliate thereof as follows.
 - a. An Application will be awarded 2 points if any Principal or Affiliate thereof (a) has completed the development of one or more multi-family rental housing projects with MaineHousing funding or (b) has completed the development of one or more Qualified Low-income Housing Projects in any other state(s).
 - b. An Application will be awarded one (1) point if any Principal or Affiliate thereof has experience developing and operating any multi-family rental housing. The Application will be awarded one (1) additional point if the Applicant contracts with a qualified consultant with experience successfully developing and completing Qualified Low-income Housing Projects to develop the Project.
2. **Owner Performance.** An Application will lose points based on the performance of any Principal or Affiliate thereof as follows.
 - a. An Application will lose 2 points if at any time in the 5 years prior to the applicable Application deadline, any Principal or Affiliate thereof has been 60 days or more delinquent in the payment of any MaineHousing loan (except delinquencies resulting from the delay or loss of Section 8 housing assistance payments), has been declared in default by MaineHousing or has failed to pay taxes or municipal assessments resulting in a lien on any housing funded by MaineHousing.
 - b. An Application will lose one (1) point if the construction loan closing does not occur within 15 months of the date the Notice to Proceed

was first issued for any Qualified Low-income Housing Project developed by any Principal or Affiliate thereof that was issued a Notice to Proceed after November 1, 2013, unless the delay was the direct result of circumstances beyond the control of said Principal or Affiliate thereof.

- c. **Applications for 2015 State Ceiling Only** –An Application will lose one (1) point if 10% or more of the Qualified Low-income Housing Projects that have been Placed in Service in the State in the last 10 years by any Principal or Affiliate thereof had a year-end operating deficit(s), as determined by MaineHousing, in the last full Fiscal Year, unless such operating deficits are sufficiently funded to reduce the percentage of Qualified Low-income Housing Projects with outstanding year-end operating deficits to less than 10% by the applicable Application deadline.
 - d. **Applications for 2016 State Ceiling Only** –An Application will lose one (1) point if one or more of the Qualified Low-income Housing Projects that have been Placed in Service in the State in the last 10 years by any Principal or Affiliate thereof had a year-end operating deficit(s), as determined by MaineHousing, in the last full Fiscal Year, unless all such operating deficits are fully funded by the applicable Application deadline.
- 3. **Tax Credit Noncompliance.** An Application will be awarded 2 points if any Principal or Affiliate thereof (a) has operated one or more Qualified Low Income Housing Projects for at least 3 full Fiscal Years and (b) in the 3 years prior to the applicable Application deadline (i) has not been issued an IRS Form 8823, or was issued an IRS Form 8823 for a violation of UPCS or local inspection standards (box 11c of IRS Form 8823) and such violation was subsequently reported as “noncompliance corrected” within the specified time period for correction, and (ii) has not had an IRS audit finding resulting in a recapture event.
 - 4. **Management Capacity.** An Application will be awarded 2 points if the Project will be managed by a management company with staff that has low income housing tax credit training and at least 3 years of experience successfully managing a Qualified Low-income Housing Project(s).
 - 5. **Management Performance.** An Application will lose points based on the performance of the management company that will manage the Project as follows.

- a. An Application will lose one (1) point if the last 2 consecutive physical plant inspections by MaineHousing of any Qualified Low-income Housing Project that is managed by the management company and is still in the Compliance Period had a below average or unsatisfactory rating. An Application will lose 2 points if the last 2 consecutive physical plant inspections by MaineHousing of 2 or more Qualified Low-income Housing Projects that are managed by the management company and are still in the Compliance Period had a below average or unsatisfactory rating.
- b. **Applications for 2016 State Ceiling Only** - The Application will lose one (1) point if in the 12 months prior to the applicable Application deadline, any of (i) the audited financial report (AFR), (ii) the annual project budget or (iii) the Tax Credit Certification for any Qualified Low-income Housing Project that is managed by the management company and is still in the Compliance Period were submitted after the deadline for submission thereof.

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 the Applications with the same score, the Application for the Project with the lowest Total Development Cost Per Unit will be selected.

If there are two or more Applications with the same Total Development Cost Per Unit, the Application that includes a commitment and an acceptable plan to convert the Project to affordable homeownership for the low-income residents and their successors after the Extended Use Period will be selected. The plan must describe how the transfer of ownership to the residents will occur, the price or process for determining the purchase price, what financial assistance will be available for residents (including any reserves) and how the affordability will be maintained, and must provide for homebuyer counseling and professional representation of the residents at the time of the conversion.

An Application that is not selected under this tie-breaker process will be placed on the waiting list in the order of the Application's score relative to the other Applications on the waiting list.

SECTION 7: PROJECT EVALUATION

After an Applicant executes and returns the Notice to Proceed to MaineHousing, MaineHousing will evaluate the Total Development Cost 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, HUD-designated 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 2015 and 2016 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 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 services 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 Applicant 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 developing a Project, including, without limitation, creating the Project concept, identifying and

acquiring the Project site, obtaining construction and permanent financing, obtaining necessary subsidies, negotiating the syndication of investment interests in the Project, obtaining all necessary regulatory approvals, constructing and/or rehabilitating the Project 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 tax credit 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 additional limitations.

1. **Acquisition and Rehabilitation Projects.** For Projects that only involve the rehabilitation of existing housing, 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) \$10,000 per unit for the first 20 units in the Project and \$5,000 for each additional unit above 20 units in the Project plus any unused construction contingency returned to the Owner after completion of the Project, and (b) the maximum Developer Fee set forth above; and
2. **Other Projects.** For Projects other than those described in subsection (1) above, 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 plus any unused construction contingency returned to the Owner after completion of the Project, and (b) the maximum Developer Fee set forth above; and
3. **Additional Developer Fee.** 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 and Profit	up to 8% of Total Construction Cost
General Requirements	up to 8% 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 Applicable 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. **Construction 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 Section 8.B. 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 all Buildings in the Project are 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 Section 8.A. 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 Use Agreement.** Prior to an allocation of Credit, the Owner must enter into an Extended Use Agreement 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 Use Agreement 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 scoring criteria set forth in Section 6.

The Extended Use Agreement must 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 3-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 scoring 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 Section 8.B.3.a. 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 will 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 will 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.** The Project must satisfy the requirements set forth in Section 4, except the application deadline in Section 4.B., the selection process and the waiting list described in Sections 4.E. and 4.G., and the Maximum Credit Amount limitation referred to in Section 4.H. The Project must also satisfy the requirements of Section 5, except the affordability threshold requirement set forth in Section 5.B. and the threshold requirements for projects involving the acquisition and rehabilitation of existing housing set forth in Section 5.D. 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, except that the Project will not be subject to the Maximum Credit Amount referred to in Section 7. A Project will not be subject to the developer fee limits in Section 7.B.1, 7.B.2 and 7.B.3. if it is awarded debt and Credit only; Projects awarded subsidy are subject to the developer fee limits. The Project must comply with the requirements for an allocation pursuant to Section 8.A. and is subject to the monitoring requirements in Section 10.
- C. **Applicable Percentage.** The Owner of a Project that is not yet Placed in Service may, subject to Section 42 of the Code, elect to fix the Applicable Percentage for each Qualified Low-income Building in the Project by irrevocably electing the Applicable Percentage for the month in which the tax-exempt bonds are issued. 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. If the Project does not elect to fix the Applicable Percentage in the month in which the tax-exempt bonds are issued, the Applicable

Percentage will be the Applicable Percentage for the month in which each Qualified Low-income Building is Placed in Service.

- 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 Use Agreement. 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 square footage 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 Qualified Low-income Housing 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 Section 10.A.6.
8. Annual income certifications for each household occupying a Credit-eligible unit in the Qualified Low-income Housing Project, except (a) no annual income certifications are required for a Qualified Low-income Housing Project in which 100% of the units are subject to the applicable income limit elected pursuant to Section 42(g)(1) of the Code for the Qualified Low-income Housing Project (i.e. either 100% of the units at 60% AMI or 100% of the units at 50% AMI), and (b) for a Qualified Low-income Housing Project in which 100% of the units are Credit-eligible units but the Qualified Low-income Housing 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 Qualified Low-income Housing Project in which 100% of the units are Credit-eligible 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 a Qualified Low-income Housing Project 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 Qualified Low-income Housing Project.

For a Qualified Low-income Housing 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 6 years during the affordability period, commencing on the date on which the first Building in the Qualified Low-income Housing 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 Qualified Low-income Housing Project).

These records shall be maintained for each Qualified Low-income Building throughout the Extended Use Period. These records shall be retained for at least 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 Extended Use Period or 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 for the calendar year preceding certification that:
 - a. The Qualified Low-income Housing Project met the minimum low-income set-aside test applicable to the Qualified Low-income Housing Project and complies with the additional low-income

targeting pledged by the Owner as set forth in the Extended Use Agreement 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 Credit-eligible unit in the Qualified Low-income Housing Project was rent-restricted under Section 42(g)(2) of the Code;
- e. All units in the Qualified Low-income Housing 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 Credit-eligible 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. Qualified Low-income Buildings subject to Section 7108(c)(1) of the Revenue Reconciliation Act of 1989 comply with the requirements thereof and the Extended Use Agreement;
- l. The Qualified Low-income Housing 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 Qualified Low-income Housing 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 Qualified Low-income Housing 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 Qualified Low-income Housing 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 Qualified Low-income Housing 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 Qualified Low-income Housing Project.

2. Annually throughout the Extended Use Period, Owners must submit to MaineHousing certain information and data about the tenants in Credit-eligible units in each Qualified Low-income Building required by Section 42 of the Code and HERA for the prior calendar year, including household income; monthly rental payments; family composition; use of rental assistance under Section 8 and other similar assistance; the race, ethnicity, age and disability status of the members of the households; and all other occupancy information required by MaineHousing. The information and data shall be submitted to MaineHousing electronically and in the format required by MaineHousing to transmit data to HUD.
3. MaineHousing will review the tenant files of at least 20% of the Credit-eligible units in each Qualified Low-income Housing Project at least once every 3 years. For new Qualified Low-income Housing Projects Placed in Service, MaineHousing will complete a review of tenant records of 20% of the low income units at the Qualified Low-income Housing Project within 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 Tax Credit Certification 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 Tax Credit Certification must include information and data for the period of January 1 through December 31 of the preceding calendar

year. A completed and executed Form 8609 must be submitted with and at the time the first Tax Credit Certification is due. The form and content of the Tax Credit Certification is prescribed by MaineHousing and must be submitted in the format required by MaineHousing under penalty of perjury.

- C. **Inspections.** MaineHousing will perform property inspections consistent with UPCS on a one-to-three year cycle, and shall have the right, at any time upon at least 30 days' notice to the Owner, to review all records referred to in this Section.
- D. **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.

- E. **Notification of Noncompliance.** In the event MaineHousing does not receive the certifications required hereunder when due or they are incomplete or insufficient, MaineHousing will 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 Qualified Low-income Housing Project is not in compliance with the provisions of Section 42 of the Code, MaineHousing will notify the Owner in writing of the nature of such noncompliance. In either case, such notice will provide the Owner with a reasonable correction period, not to exceed 90 days, in which the Owner must supply the completed certifications and/or bring the Qualified Low-income Housing 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 6 months. Within 45 days after the end of the correction period, including any permitted extensions, MaineHousing will 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.
- F. **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 ALLOCATED. 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, contain additional requirements with respect to 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 a determination of good cause, the Director of MaineHousing or the Director's designee may, subject to statutory limitations, waive any provision of this rule. The waiver must be in writing and must 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") and the Maine Housing Authorities Act require 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 allocated to Maine annually (the "State Ceiling").

Chapter 16 of MaineHousing's rules, the *Low Income Housing Tax Credit Rule*, is the State's qualified allocation plan for allocating and administering the Credit. This rule, sometimes referred to herein as the plan, repeals and replaces in its entirety the prior Chapter 16, referred to herein as the prior plan. This rule provides for a two-year qualified allocation plan, and governs the allocation of the 2015 State Ceiling and the 2016 State Ceiling. MaineHousing is adopting a two-year qualified allocation plan in response to developer input that predictability in the qualified allocation plan is

critical in their planning efforts.

The priority in the selection process for the 2015 State Ceiling and the 2016 State Ceiling in the plan continues to be cost containment. This plan includes the same cost containment selection criteria as the prior rule without change, and the cost containing scoring category continues to be the highest scoring category.

This plan maintains the limitations on the use of the State Ceiling for the acquisition and rehabilitation of existing housing that were in the prior plan, but makes some of these limitations more restrictive. These limitations reflect MaineHousing's policy of maximizing the use and efficiency of the State Ceiling, which is a valuable and limited resource. The credit rate for construction and rehabilitation of housing is 9%, but only 4% for acquisition, so using the State Ceiling for acquisition, particularly in related-party transactions, is a less efficient use of the State Ceiling. The acquisition and rehabilitation of existing affordable housing, particularly housing with project-based rental assistance from Rural Development and HUD, can usually be funded with the so-called "automatic" low-income housing tax credit which has a lower credit rate of 4% and is generated from the use of tax-exempt bond financing from the State's bond cap. However, not all projects involving the acquisition and rehabilitation of existing affordable housing are feasible under this program. So, this plan maintains the preservation set-aside for the acquisition and rehabilitation of existing affordable housing, but reduces the amount of the set-aside to \$300,000 and limits the set-aside to one project, rather than the \$500,000 set-aside for up to two projects under the prior plan. This plan also requires a higher minimum amount of rehabilitation, \$40,000 per unit rather than \$30,000 per unit under the prior plan. The associated capital needs assessment requirements and what constitutes hard rehabilitation costs for purposes of determining whether a project meets this minimum rehabilitation requirement have also been clarified. These additional restrictions further ensure that the set-aside is used for preservation projects that are most at risk. This plan includes the developer fee limit for projects that only involve the acquisition and rehabilitation of existing housing that was in the prior plan without change.

This plan includes two new set-asides. One of the set-asides is for the reconstruction of Pierce Place in Lewiston, Maine which was partially destroyed by fire in May 2013 to preserve the Section 8 project-based rental assistance that will be lost if the units destroyed by the fire are not replaced. Some of these units are larger bedroom units for which there is a great need in Lewiston and which will not be replaced under this plan without the set-aside, because the project would not otherwise be competitive under this plan. The other set-aside is for housing for homeless persons with rental assistance and supportive services that are necessary for persons who are chronically homeless to achieve housing stability and self-sufficiency in furtherance of MaineHousing's policies and initiatives to prevent and end homelessness. A needs ranking for housing for homeless persons was also added. If the credit under any of the set-asides is not awarded, then the credit is available for allocation to projects competing for credit in the open pool.

The plan includes significant changes to the sponsor characteristics scoring category that has historically been in the qualified allocation plan. The category includes new scoring criteria to

encourage participation by developers who have experience developing multi-family housing but are new to the tax credit program. Applicants will be awarded one point if they have any prior experience developing multi-family rental housing, but have not developed a tax credit project, and will be awarded an additional point for contracting with a qualified tax credit consultant to develop the housing. The total points under this new criteria is equal to the points awarded to developers who have prior tax credit experience or other multi-family housing experience with MaineHousing. The category also includes new performance scoring criteria to discourage future poor performance by owners and management companies. Applicants will be penalized for any defaults, delinquencies and liens affecting MaineHousing-funded properties in the last 5 years, outstanding operating deficits in 10% or more of their tax credit projects developed in the last 10 years, and, for projects awarded credit in or after the 2014 tax credit round, taking more than 15 months to bring the project to construction loan closing. In the 2016 tax credit round, applicants will be penalized for having operating deficits in any of the tax credit projects that they have developed in the last 10 years. Applicants will be rewarded for using a management company that has staff with tax credit training and 3 years of experience successfully managing tax credit projects, but applicants can lose one point if they use a management company that manages projects with two consecutive below average or unsatisfactory physical plant inspections, and can lose an additional point in the 2016 tax credit round if they use a management company that fails to meeting reporting deadlines in the prior year. While applicants continue to be eligible for up to 6 points under the sponsor characteristics scoring category, those who are poor performers or hire tax credit developers or management companies that are poor performers in MaineHousing's rental housing portfolio can lose up to 5 points in the 2015 tax credit round and up to 6 points in the 2016 tax credit round.

Smart growth is still an important consideration in the selection of tax credit projects in this plan, but the approach is different from the prior plan. This plan recognizes a variety of smart growth initiatives by giving generally equal priority to projects that are located in or near downtown, located near activities important to daily activity, located within a short commuting distance of jobs and have access to public transportation, but continues to give a higher priority to projects that are located near pick-up locations for fixed-route public transportation. The points are cumulative, so the more that a project promotes these smart growth principles, the higher the project will score. Projects that are located near a pick-up location for fixed-route public transportation and incorporate all of the other smart growth principles will receive the maximum points available under this category.

MaineHousing will continue to use service center communities as the basis for ranking housing need across the State in this plan. Service center communities are municipalities which provide jobs and retail sales to surrounding areas and are centers for services such as education, health care, cultural, recreational and social services. They are designated by the State as part of the State's growth management initiatives to promote development in urban centers and prevent sprawl. Last year MaineHousing hired an independent market analyst to review the housing needs criteria. The consultant concluded that using service center communities as the basis for ranking housing need in the State was the fairest approach. This year, developers suggested using federal and/or state urban areas instead of or in addition to service center communities. Federal urban areas and State urban

compact areas are designations that are based on population and traffic flow and are used by the State to determine responsibility for road maintenance, which has little relevance to where housing should be located. Also, federal urban areas include portions of municipalities, but the census data is only available for each municipality in its entirety, so there is no readily available housing data for the portions of municipalities that are part of federal urban areas. MaineHousing will continue to consider alternative methods for ranking housing need, but at this time, using service center communities is the most logical approach because service center communities provide residents with access to services, jobs and amenities that are important to daily living. The housing needs category has been updated based on the latest census data on the demand for and supply of affordable housing served by this program and the latest service center community designations. Changes in the needs rankings from the prior plan reflect population shifts since last year.

The vacancy rate scoring criteria in the prior plan is not included in this plan. MaineHousing continues to struggle to find a reliable source of data for vacancy rates in market rate housing. In the prior plan, MaineHousing used the market rate vacancy data in the American Community Survey at the recommendation of an independent market consultant. In practice, the quality of the American Community Survey data is questionable because, for example, the data showed no vacancies in some communities that based on other indicators should have had some level of vacancies. We do not have confidence in any of the available data sources to keep the scoring criteria at this time.

The plan includes two new one-point scoring categories. One of the categories incents the development of housing in State designated business-friendly communities consistent with the State's economic development policy. Housing is a significant component of and can be a catalyst for economic development in a community, so coordination of programs and policies between MaineHousing and the State's Department of Economic and Community Development is important. The other category incents greater accessibility than is required by applicable law to address the growing need for accessible housing, particularly as the State's elderly population continues to increase significantly. It is less expensive to create an accessible unit in the construction or rehabilitation of a project than it is to retrofit a unit to make it accessible in response to a reasonable modification request.

This plan modifies the economic diversity scoring category that was introduced in the prior plan. The criteria in the prior plan that awarded points for being located in a census tract that had a higher area median household income than other census tracts in the municipality (or county for municipalities with only one census tract) have been replaced with a single criterion that awards points for being located in a municipality with an average area median income of \$40,000 or more. The replaced criteria had the unintended result of not awarding points to a project in a community with a much higher area median income than other communities for which points were awarded to projects in the last scoring round. Although the area median income in the census tract was higher than other communities, it was lower than the other census tract in its community. The development of affordable housing in higher income areas, regardless of the median income of the area relative to other areas in a municipality or the county in which it is located, should be

encouraged because these areas are more likely to have better educational opportunities, community services and employment opportunities. The economic diversity category in this plan still includes the other criterion that awards points for mixed-income projects in qualified census tracts.

The tenant ownership scoring criteria in the prior plan has become a tie breaker mechanism under this plan. Section 42 of the Code requires eventual tenant ownership to be included in the selection criteria in the qualified allocation plan. Over time, the tenant ownership criteria, which has remained unchanged since it was first introduced in the plan, has become an ineffective scoring criteria because most applicants pledge tenant ownership but do not provide meaningful plans for implementing it. We have not yet been presented with a feasible model for converting rental housing in our portfolio to tenant ownership. The expectation is that most developers will refinance their tax credit projects at the end of the compliance period and continue to operate them as affordable rental housing. To make the pledge more effective, this plan requires applicants who pledge eventual tenant ownership to submit a detailed plan for implementing affordable tenant ownership at the end of the 45-year extended use period. Applicants will not be bound by the pledge unless the pledge is used to break a tie between two applications with the same total development cost per unit.

The plan includes changes to the below market funding scoring category that was in the prior plan. The prior plan did not include a minimum funding amount, so applicants were pledging insignificant amounts, \$2,500 or \$5,000, for one point. Under this plan, applicants must have at least \$100,000 of below-market funding to be eligible for any points. Eligible below market funding has been expanded to recognize all tax increment financing (TIF) revenues used for capital funding as grants, not just revenues from affordable housing TIFs, because they are all sources of funding for the project regardless of the defining characteristics of the TIF district. Also, eligible below market funding now includes any developer fee that is deferred or loaned as below market capital funding for a project, except developer fee that exceeds the limits and is allowed under the plan for the specific purpose of providing additional equity funding for a project.

Other modifications to and clarifications of selection criteria from the prior plan included in this plan are as follows. The threshold requirement that projects give preference to persons on a public housing authority or Section 8 waiting list now excludes Section 8 project-based rental assistance projects, which are also required by Section 8 to maintain a waiting list. To be eligible for the 20% special needs housing preference scoring criteria, an applicant must specify the population that will be served and contract with a third-party service provider, other than the project's resident service coordinator, to offer services appropriate to the needs of the targeted population. The definition of "total development cost per unit" has been modified to exclude a resident manager unit if the unit is considered common space in the applicable fraction of a project. The demolition and reconstruction of existing housing that has not been condemned or declared as blight will not be eligible for credit unless otherwise approved by MaineHousing; replacement of housing that can be feasibly preserved through rehabilitation is not an efficient use of the credit and is unnecessarily disruptive for the tenants. The waiting list process has been modified to allow MaineHousing to skip over projects on the waiting list that cannot feasibly use credit and subsidy returned during a

credit round to the first project on the waiting list that can utilize the returned credit and subsidy. Projects applying for automatic credit and tax-exempt debt only will only be subject to the maximum developer fee limits, not the lower MaineHousing developer fee limits.

This plan also clarifies certain scoring criteria carried over to this plan. The scoring criteria that encourages the reuse of existing sites and buildings has been modified to more clearly express our intent, particularly with respect to what we have historically referred to as urban infill. The definition of urban infill has been deleted, but the plan more clearly defines that developing on a vacant lot or a parking lot in the town or city center, rather than developing an undeveloped parcel in a residential suburb or maximizing the use of a lot under the zoning regulations, is what is intended. The ineligibility provisions and the definitions of principal and affiliate have been modified to more clearly reflect our intent. A clarification was made to the operating subsidy scoring criteria to reflect that projects exempt from real estate taxes in a community that assesses taxes, such as projects on federal land, are not eligible for points. This plan also clarifies that project reserves transferred as part of a project are not included in the calculation of acquisition costs for purposes of the scoring criteria that rewards lower acquisition costs.

Other than as set forth above, the selection criteria and provisions governing the administration of the Credit in this rule are essentially the same as the prior rule with minor grammatical changes and formatting improvements.

Process

MaineHousing held public meetings in the course of developing the proposed rule on February 26, 2014, March 27, 2014 and April 29, 2014. 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 comment. The Governor's Office approved the proposed rule on May 21, 2014.

FISCAL IMPACT OF THE RULE: The 2015 State ceiling of low-income housing tax credits is projected to raise approximately \$27,000,000 in equity and the 2016 State ceiling of low-income housing tax credits is projected to raise approximately \$28,000,000 in equity. The equity generated by the low-income housing tax credits will be used to develop affordable housing for low-income persons. The rule will not impose any costs on municipalities or counties for implementation or compliance.

EFFECTIVE DATE: