



## Qualified Allocation Plan

*The mission of the Maine State Housing Authority is to assist Maine people to obtain and maintain decent, safe, affordable housing and services suitable to their unique housing needs.*

*In carrying out this mission, the Maine State Housing Authority will provide leadership, maximize resources, and promote partnerships to develop and implement sound housing policy.*

**CHAPTER 16** Allocation of State Ceiling for Low-Income Housing Tax Credit

Summary: The Tax Reform Act of 1986 created the low-income housing tax credit for use by qualifying developers of housing projects which satisfy applicable tenant income and rental targeting requirements. The Maine State Housing Authority has been designated as the housing credit agency for the State responsible for allocation of the annual credit ceiling. This Rule establishes the policies and procedures for the allocation process.

1. Definitions

- A. “Accredited Investor” means an investor with adequate capacity as determined by MaineHousing.
- B. “Act” means the Maine Housing Authorities Act, 30-A M.R.S.A. §4701 et seq., as amended.
- C. “Affordable Housing TIF” means an affordable housing development district and program approved by MaineHousing pursuant to MaineHousing’s Affordable Housing Tax Increment Financing Program and the Act.
- D. “Applicable Fraction” means the fraction defined in Section 42(c)(1)(B) of the Code.
- E. “Applicable Percentage” means the percentage defined in Section 42(b) of the Code.
- F. “Applicant” means an individual or entity applying for Credit governed by this Rule or its successors and assigns, including without limitation the owner of the Project if the owner is not formed or established at the time of Application.
- G. “Application” means an application to MaineHousing for a reservation of Credit governed by this Rule.
- H. “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)(2) of the Code.
- I. “Code” means the Internal Revenue Code of 1986, as amended, including applicable rules and regulations proposed or promulgated thereunder.
- J. “Compliance Period” means the period described in Section 42(i)(1) of the Code.
- K. “Credit” means the low-income housing tax credit established by Section 42 of the Code.

- L. “Credit Period” means the period described in Section 42(f)(1) of the Code.
- M. “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.
- N. “Difficult To Develop Area” means areas of the State which satisfy the requirements of Section 42(d)(5)(C)(iii)(I) of the Code as designated by HUD annually.
- O. “Elderly” has the same meaning as housing for older persons as defined in the federal Fair Housing Act.
- P. “Eligible Basis” means eligible basis as defined in Section 42(d) of the Code.
- Q. “Enterprise Community” means any community that has received a federal designation as an enterprise community or empowerment zone by HUD or RD.
- R. “Extended Low-income Housing Commitment” means an agreement satisfying the requirements of Section 42(h)(6)(B) of the Code.
- S. “Extended Use Period” means the period described in Section 42(h)(6)(D) of the Code.
- T. “Housing Development Costs” means the total of all direct and indirect costs incurred in financing, creating, purchasing or rehabilitating Qualified Low-income Housing Projects except the costs attributable to the acquisition of the land and any existing buildings.
- U. “Housing for Persons who are Homeless” means housing that meets the requirements set forth in Section 4.D. of this Rule.
- V. “Homeless” means homeless as that term is defined in Section 103 of the Stewart B. McKinney Homeless Assistance Act, as amended, 42 U.S.C. § 11302.
- W. “HUD” means the United States Department of Housing and Urban Development.
- X. “Intermediary Costs” means all Housing Development Costs except the actual construction or Rehabilitation Costs attributable to the development of the units.
- Y. “MaineHousing” means Maine State Housing Authority.
- Z. “Owner” means the owner of a Qualified Low-income Building which has been placed in service and has received an allocation of Credit from MaineHousing pursuant to this Rule or a prior Qualified Allocation Plan.

- AA. “Qualified Allocation Plan” or “Plan” means the plan for allocation of the annual State Ceiling on the Credit adopted by the housing credit agency pursuant Section 42(m)(1)(B) of the Code.
- BB. “Qualified Basis” means qualified basis as defined in Section 42(c) of the Code.
- CC. “Qualified Census Tract” means areas of the State which meet the requirements of Section 42(d)(5)(C)(ii)(I) of the Code designated by HUD annually.
- DD. “Qualified Low-income Building” or “Building” means a building as defined in Section 42(c)(2) of the Code.
- EE. “Qualified Low-income Housing Project” or “Project” means a project as defined in Section 42(g) of the Code.
- FF. “Qualified Non-profit Organization” means an organization defined in Section 42(h)(5)(C) of the Code.
- GG. “Rehabilitation Costs” means the expenses incurred or to be incurred which qualify as rehabilitation expenditures under Section 42(e) of the Code.
- HH. “RD” means the United States Department of Agriculture – Rural Development.
- II. “Section 8” means Section 8 of the United States Housing Act of 1937, as amended.
- JJ. “Service Center Community” means a municipality or group of municipalities identified by the State Planning Office as a Regional Service Center pursuant to State Planning Office Rule Chapter 220, *Methodology for Identification of Regional Service Centers*.
- KK. “State” means the State of Maine.
- LL. “State Ceiling” means the State housing credit ceiling established in Section 42(h)(3)(C) of the Code.
- MM. “Total Construction Cost” means the sum of site costs, structures costs, general requirements, bond premiums, and contractor overhead and profit.
- NN. “Total Development Cost” means the sum of Total Construction Costs; soft costs such as permits, engineering, legal; costs associated with obtaining and carrying a financing package; and acquisition costs.
- OO. “Very Low Income” means individuals or families whose income is at or below 50% of the area median income as defined in Section 42 of the Code.

2. Overview

The low-income housing tax credit is established pursuant to Section 42 of the Code. As the housing credit agency for the State of Maine, MaineHousing is responsible for allocating the annual State Ceiling and must adopt a Qualified Allocation Plan pursuant to which all allocations of Credit will be made. A Qualified Allocation Plan must set forth selection criteria and establish certain preferences and priorities for the allocation process in accordance with Section 42 of the Code.

This Rule comprises MaineHousing's Qualified Allocation Plan for the allocation of the 2008 and 2009 annual State Ceiling of the low-income housing tax credit. The purpose of this Rule is to establish criteria for allocating Credit to Qualified Low-income Housing Projects. A process has been established to select those Projects which address the most pressing housing needs of the State. These needs have been assessed and priorities for the allocation of the Credit have been established based on these needs. These needs and priorities are summarized below and have been incorporated into the selection criteria to be used in the selection process. Projects selected under this Rule must be evaluated in accordance with this Rule to determine the amount of Credit to be allocated.

3. Housing Needs/Priorities

- A. MaineHousing annually completes a statewide needs assessment as part of its Consolidated Plan. Based on that annual needs assessment, MaineHousing determines priorities in its housing delivery programs. MaineHousing will allocate Credit resources in a manner consistent with the needs assessment and priorities approved through the Consolidated Plan. The following needs are identified:
1. Creation and maintenance of an adequate supply of decent, safe and sanitary rental housing affordable to Very Low Income persons.
  2. Rehabilitation of existing housing stock, which does not result in displacement or substantially increased housing costs.
  3. Increased availability of housing with services for persons with special needs including, without limitation, persons who are Homeless, persons with mental and physical disabilities and persons who are Elderly.
- B. In consideration of the housing needs identified above, MaineHousing has established the following housing priorities for allocation of the Credit:
1. Projects that incorporate smart growth principles and contribute to vibrant, mixed-use downtown communities.
  2. Projects that incorporate green design and construction methods which create healthy, economical and durable buildings that are efficient to operate and maintain.

3. Projects involving acquisition and/or rehabilitation, which add to or significantly rehabilitate the existing rental housing stock, and are rent-restricted to the lowest income households.
4. Projects which have federal subsidies where the Credit is needed to make the Project feasible, including Projects with RD funding.
5. Projects which meet the housing and service needs of distinct populations of a community including housing for persons who are Homeless.
6. Projects which provide housing for persons with Very Low Income.

4. State Ceiling

- A. The State Ceiling for the Credit for each calendar year will be the sum of:
  1. The per-capita dollar amount established pursuant to Section 42 of the Code multiplied by the State population as determined by the most recent estimate of the State's population released by the United States Bureau of Census before the beginning of such calendar year, or by such other method as may be authorized or required by the Code;
  2. The unused State Ceiling for the State, if any, for the preceding calendar year;
  3. The amount of the State Ceiling returned in the calendar year; and
  4. The amount, if any, allocated to MaineHousing by the United States Secretary of the Treasury from the re-pooling of other states' unused housing credit allocations.
- B. Non Profit Set-aside. \$375,000 of the annual available Credit will be set aside for Projects in which a Qualified Non-profit Organization will own an interest (directly or through a partnership) in accordance with Section 42 (h)(5)(C) of the Code and materially participate in the development and operation of the Project throughout the Compliance Period in accordance with Section 42 (h)(5)(B) of the Code. An Applicant must provide evidence that a Qualified Non-profit Organization will own an interest in the Project in accordance with the Code and indicate its desire to compete in this set-aside in its Application. In the event that the amount of Credit under this set-aside is not sufficient to complete the project proposed by the winning Applicant, additional credit will be allocated to the Applicant up to the maximum credit amount set forth in Section 4.E. of this Rule regardless of the Applicant's score in relation to the scores of other Applicants.

- C. RD Set-aside. \$100,000 of the annual available Credit will be set aside for Projects that are currently financed under a multi-family housing program offered by RD. Funding must be used primarily for rehabilitation of the Project. An Applicant must indicate its desire to compete in this set-aside in its Application.
- D. Housing for Persons who are Homeless Set-aside. \$400,000 of the annual available Credit will be set aside for Projects that satisfy the following criteria.
  - 1. The Project must contain separate living units which include both cooking and bathroom facilities;
  - 2. A minimum of 75% of the units in the Project must be set aside for persons who are Homeless;
  - 3. The Project may be situated on scattered sites;
  - 4. The Applicant must submit a detailed service plan specific to the needs of persons who are homeless, acceptable to MaineHousing, a commitment by one or more qualified service providers to provide the services described in the plan and information about funding for the services with its Application; and
  - 5. An Applicant must indicate its desire to compete in this set-aside in its Application.

Successful Applicants under this set-aside are eligible to receive, if MaineHousing makes the resource available, project-based Section 8 rental subsidy through MaineHousing for at least 25% of the total units in the Project.

- E. Maximum Credit Restriction. The maximum amount of Credits that an Applicant may receive is the lesser of (i) \$20,000 per Credit-eligible unit for a Project and (ii) 30% of the State Ceiling for the year in which the Applicant applied for Credit. MaineHousing may, in its sole discretion, increase the maximum credit amount for a Project that is located downtown as defined in part (a) of the definition of downtown set forth in Section 7.C.5.d.i. of this Rule and was awarded points under Section 7.C.5.a.i. of this Rule to the lesser of (i) \$22,000 per Credit-eligible unit for a Project and (ii) 30% of the State Ceiling for the credit year in which the Applicant applied for Credit.

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

## 5. Allocation Process

- A. Applications will be accepted by MaineHousing in accordance with the reservation cycles identified in Section 5.D. of this Rule. MaineHousing may reject any and all Applications.
- B. Upon receipt of an Application satisfying the requirements of Section 6 of this Rule, MaineHousing will provide notice of the proposed Project to the chief executive officer of the local jurisdiction within which the Project is proposed to be located. Such notice will provide for a fifteen (15) day period in which to comment on the proposed Project. Any comments received will become part of the Application and will be considered by MaineHousing in the selection process.
- C. All Applications, which meet the requirements of Section 6 of this Rule, will be reviewed and ranked according to the selection criteria set forth in Section 7 of this Rule.
- D. Once Applications are ranked, MaineHousing will determine which Applications will be selected for a reservation of Credit. The deadline for submitting all Applications for 2008 Credit, including Applications for the Set-asides in Section 4 of this Rule, is 5:00 PM on Thursday, November 1, 2007. The deadline for submitting all Applications for 2009 Credit, including Applications for the Set-asides in Section 4 of this Rule, is 5:00 PM on Thursday, November 20, 2008. A waiting list will be developed for Applications not initially selected. Any unused Credit will be made available to Applicants on the waiting list in rank order of priority. If MaineHousing issues a notice to proceed under another MaineHousing program for an Application on the waiting list, said Application on the waiting list will be deemed withdrawn.
- E. Once a Project has been selected for a reservation of Credit, MaineHousing will determine the amount of Credit to be reserved based on the evaluation procedure set forth in Section 8 of this Rule. An Applicant may apply for a Credit reservation based on 130% of Eligible Basis for Projects located in Qualified Census Tracts, and Difficult To Develop Areas and other areas designated by MaineHousing pursuant to Section 42(d)(5)(C)(v) of the Code. For purposes of the 2008 State Ceiling and 2009 State Ceiling, MaineHousing has designated the entire State as a difficult to develop area for purposes of Section 42(d)(5)(C)(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. Notwithstanding the foregoing, the amount of Credit shall not exceed the maximum credit restrictions set forth in Section 4.E. of this Rule and shall be subject to the limitations set forth in Section 8 of this Rule.
- F. Once MaineHousing has determined the amount of Credit to be reserved for a Project, the reservation document will be issued pursuant to Section 9 of this Rule.
- G. Projects holding a valid Credit reservation may receive allocations pursuant to either Section 10 or Section 11 of this Rule.

- H. 1. MaineHousing shall deem an Application withdrawn or, if a reservation has been issued, the reservation cancelled if one or more of the following events occur after the Application is made or the reservation is issued.
- a. The Application or reservation is assigned or there is a change of Applicant without MaineHousing's prior written consent.
  - b. There is a change in the location of the Project from the location identified in the Application.
  - c. There is any change in the commitments made in the Application, except as provided in Section 7.B.1. and Section 7.D.6. (addressed in subsection H.2. below) of this Rule, which results in a net reduction in the score that the Application received pursuant to the selection criteria set forth in Section 7 of this Rule.
  - d. There is a change in the design of the Project or the financing for the Project from the design or the financing described in the Application which MaineHousing determines, in its sole discretion, would result in a substantial increase in the amount of Credit or other MaineHousing funding for the Project that the Applicant requested in the Application and MaineHousing determined the Applicant was eligible to receive.
  - e. There is any other material or substantive amendment or change to the Application or reservation without MaineHousing's prior written consent.
2. Any change in the commitments made in the Application for which the Applicant was awarded points under Section 7.D.6. of this Rule will be handled as follows. At the time an Applicant (or owner of a Project if different from the Applicant) has received construction bids and is selecting a contractor for its Project, MaineHousing will verify the healthcare coverage achieved in the contractor and subcontractor bid(s) selected by the Applicant to the amount pledged by the Applicant in its Application. If the Applicant fails to fulfill its pledge in its Application, then MaineHousing will determine, in its sole discretion, whether the Applicant made a good faith effort to fulfill its pledge. If MaineHousing determines that the Applicant made a good faith effort to fulfill its pledge in the Application, MaineHousing will not deem the Application withdrawn or re-score the Application.

If MaineHousing determines, in its sole discretion, that the Applicant did not make a good faith effort, MaineHousing will give the Applicant an opportunity to satisfy the pledge made in its Application. If the Applicant fails to fulfill its pledge, MaineHousing will not deem the Application withdrawn, but will re-score the Application. If upon re-scoring, the Application does not score high enough to maintain its award of Credits, the Application will be added to the waiting list

according to its new score relative to the score of other Applications, and the next project on the waiting list will be awarded the Credit that was originally awarded to the Applicant.

If MaineHousing awards points under Section 7.D.6. of this Rule to an Applicant (including an Applicant who fails to fulfill the pledge in its Application but whom MaineHousing determined made a good faith effort), the contractors and subcontractors selected by the Applicant (or owner of the Project if the owner is different from the Applicant) that indicate they provide an eligible group health insurance plan for their employees at the time of bid selection will be required to maintain the eligible group health insurance plan during the construction of the Project. Applicants (and owner of the Project if the owner is different from the Applicant) and general contractors (or construction managers) will not be responsible for compliance by subcontractors. General contractors (and construction managers) will be responsible for their own compliance. Noncompliance by a contractor (including construction managers and subcontractors) will result in MaineHousing notifying the contractor of the violation and giving the contractor an opportunity to cure the violation. If the contractor fails to cure the violation, then MaineHousing will make a formal determination of noncompliance and keep a record of the violation and failure to comply. After three formal determinations of noncompliance by a contractor within any given time period, MaineHousing may notify the contractor that the contractor is suspended for one year from participating in any of MaineHousing's programs. The contractor will have an opportunity to request an administrative hearing to challenge the suspension.

- I. An Application for Credit from the State Ceiling for a particular calendar year which is pending on December 31st of that calendar year may, at the discretion of MaineHousing, be carried over to the succeeding calendar year and, if carried over, may be processed and evaluated in accordance with the Plan then in effect. MaineHousing reserves the right to require a new Application in the succeeding calendar year if necessitated by changes in this Rule or the Code.
- J. An Application requesting a reservation or allocation of Credit from the State Ceiling for calendar years after 2009 will not be accepted until MaineHousing adopts such further amendments to this Rule as it determines necessary to continue MaineHousing's Credit program. MaineHousing may issue a binding commitment to allocate Credit ceiling available in the subsequent year for any Project placed in service in the current year. Credit from the subsequent year's Credit 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 Credit authorized pursuant to this section shall be processed and evaluated in accordance with this Rule and shall be subject to the continuation of MaineHousing's Credit program and applicable law.

## 6. Threshold Application Requirements

- A. Applications will be accepted by MaineHousing only on such form as established by MaineHousing.
- B. An Applicant shall agree to keep at least 60% of the total units in a Project occupied by persons with Very Low Income and to keep the Credit-eligible units in the Project rent-restricted in accordance with Section 42 of the Code for a period of ninety (90) years.
- C. An Applicant who receives a reservation of Credit shall enter into an Extended Low-income Housing Commitment with MaineHousing which contains restrictive covenants that run with the land, are binding on the Applicant and its successors and assigns and are enforceable by MaineHousing and the low-income tenants of the Project. The Extended Low-income Housing Commitment will obligate the Applicant to comply with the Code, the affordability requirements set forth in Section 6.B. of this Rule, the resident service coordination requirement set forth in Section 6.D.13. of this Rule, the public housing and Section 8 waiting list requirement set forth in Section 6.E. of this Rule, and specific commitments made by the Applicant for which the Application was awarded points during the selection process.

The Extended Low-income Housing Commitment shall be recorded in the appropriate registry of deeds prior to all mortgage liens and encumbrances on the Project and before MaineHousing issues an IRS Form 8609. The Extended Low-income Housing Commitment will terminate upon a foreclosure or transfer of the Project in lieu of foreclosure as provided in Section 42(h)(6)(E) of the Code; provided however, that low-income tenants may not be evicted or suffer an increase in gross rent during the three-year period following termination.

- D. An Application must be complete, as determined by MaineHousing, and must meet the following threshold requirements:
  - 1. Must be for a Qualified Low-income Housing Project.
  - 2. Must have a complete development team consisting of a legally existing development entity with a taxpayer identification number, a management company and a tax advisor/consultant.
  - 3. Must include a partnership agreement, articles of incorporation or other evidence of legal existence of the Applicant. If the legal owner of the Project, i.e. the person or entity to whom the Credit will be allocated, has not been formed at the time of Application, the Applicant must establish the legal owner of the Project and submit evidence thereof to MaineHousing before a reservation of Credit is issued for the Project.

4. If a Qualified Non-profit Organization will own an interest in the Project and materially participate in the development and operation of the Project, the Application must provide documentation sufficient for MaineHousing to determine that such organization is a Qualified Non-profit Organization, including without limitation, (a) a Certificate of Good Standing for the organization from the state in which they are incorporated, (b) an Internal Revenue Service letter determining that such organization is an organization described in Section 501(c)(3) or Section 501(c)(4) of the Code and is exempt from taxation under Section 501(a) of the Code, and (c) a certification from the chief executive officer of the organization that (i) the organization has notified the Internal Revenue Service of all changes to the organization that would affect its status under Section 501(c)(3) or 501(c)(4) of the Code and Section 501(a) of the Code and the determination letter has not been modified, suspended or revoked, (ii) the organization is engaged in and has as one of its charitable purposes the fostering and development of low-income housing, and (iii) the organization is not affiliated with or controlled by any for-profit entity.
5. Must have satisfactory site control consisting of ownership, option, purchase and sale contract, long-term lease or other evidence acceptable to MaineHousing.
6. Must demonstrate that the Project complies with the requirements under 30-A M.R.S.A. § 4349-A. Projects which involve new construction, the acquisition of newly-constructed or the conversion of existing buildings to multi-family residential rental property, must be located in a locally designated growth area as identified in the comprehensive plan or growth management plan of the municipality in which the Project is located. If a Project is not located in a designated growth area in the comprehensive or growth management plan of the municipality in which it is located, the Project is not eligible for Credit. If the municipality in which the Project is located has not adopted a comprehensive plan or a growth management plan or the comprehensive or growth management plan adopted by the municipality is not consistent with applicable State law, the Project must be located in an area that is served by a public sewer system with the existing capacity for the Project, an area identified as a census-designated place in the latest Federal Decennial Census, or a compact area of an urban compact municipality as defined under 23 M.R.S.A. § 754. Projects that serve persons identified in 30-A M.R.S.A. § 4349-A(1)(C)(7), including without limitation, persons with disabilities, persons who are homeless and persons who are wards of the State, are excluded from the requirements of 30-A M.R.S.A. § 4349-A.
7. Must demonstrate the financial ability to proceed with the Project by providing current status of applications for construction and permanent loan commitments, or other proof of ability to proceed from existing resources.

Providers which deliver services to special needs populations must provide documentation from an identified source of funding.

8. Must include a proposal from an Accredited Investor or experienced tax credit syndicator. Net proceeds made available to the Project should be identified and expressed as a “factor” of the annual Credit dollar amount anticipated.
9. Must provide a comprehensive market study of the housing needs of low-income persons in the area to be served by the Project acceptable to MaineHousing. The study must be prepared by a qualified professional acceptable to MaineHousing in accordance with the *National Council of Affordable Housing Market Analysts Model Standards for Market Studies for Rental Housing* in effect 120 days prior to the deadline for Applications for the applicable Credit round.

If MaineHousing determines that the market study submitted is inadequate, MaineHousing will require the Applicant to correct the inadequacies or submit a new market study. MaineHousing reserves the right to commission its own market study.

10. Must include schematic designs of the proposed Project which comply with MaineHousing’s Design & Construction Manual dated February 2006 including all amendments in effect 60 days prior to the deadline for Applications for the applicable Credit round, MaineHousing’s Green Building Standards and all applicable local, state and federal codes, regulations, statutes and ordinances. All construction contractors and subcontractors involved in the construction of a Project must comply with MaineHousing’s Contractor Standards For MaineHousing-Financed Multifamily Housing.

Applicants (and owner of the Project if the owner is different from the Applicant) and general contractors (or construction managers) will not be responsible for compliance by subcontractors. General contractors (and construction managers) will be responsible for their own compliance. If a contractor (including construction managers and subcontractors) fails to comply with MaineHousing’s Contractor Standards For MaineHousing-Financed Multifamily Housing, MaineHousing will notify the contractor of the violation and give the contractor an opportunity to cure the violation. If the contractor fails to cure the violation, then MaineHousing will make a formal determination of noncompliance and keep a record of the violation and failure to comply. After three formal determinations of noncompliance by a contractor within any given time period, MaineHousing may notify the contractor that the contractor is suspended for one year from participating in any of MaineHousing’s programs. The contractor will have an opportunity to request an administrative hearing to challenge the suspension.

11. Must provide an acceptable disclosure and certification of the total financing planned for the Project, any proceeds or receipts expected to be generated by reason of the Credit or other tax benefits, the total sources and uses of Project funds and the full extent of all Federal, state and local subsidies which apply or for which the Applicant expects to apply with respect to the Project. This disclosure and certification must include income, operating and development cost projections and methods for satisfying any deficits.
12. Must provide a fifteen year pro forma Project operating statement. In the event the proposed Project has an existing contract for federal assistance which may end or which may terminate within the irrevocable benefit period being pledged by the Applicant, two additional items are required: (a) supplemental written explanation of the impact on the Project's continued operation of such termination or non-renewal, and (b) a pro forma operating statement running five years beyond the anticipated expiration of the contract which includes the impact of transitioning from the contract rent to applicable tax credit rent.
13. Must provide for a resident service coordinator to be available to the residents of the Project to evaluate service needs and refer residents to appropriate services throughout the Compliance Period. The resident service coordinator must be present on-site at the Project and available to the residents a minimum of one day per week, preferably two days per week, and a minimum of 4 to 6 hours per week for Projects with up to 30 units or a minimum of one hour per week for every 5 units for Projects with more than 30 units. Services shall be made available to the residents in a private, confidential setting and shall be free of charge to the residents.

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

MaineHousing will evaluate the service plan and the capacity of the service provider. MaineHousing will identify any deficiencies in the service plan or the capacity of the service provider to comply with this section in the notice to proceed and specify the time period in which the Applicant must correct the deficiencies identified. If the Applicant fails to correct the deficiencies

within the specified time period in the notice to proceed, the Application will be deemed withdrawn.

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

14. Payment of a non-refundable application fee as follows:

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

The non-refundable application fee must be paid for any Application re-submitted or carried over from one tax credit year to the next tax credit year. This subparagraph does not apply to tax-exempt bond financed properties described in Section 12 of this Rule.

- E. An applicant shall agree to give a preference to eligible persons whose names are on a public housing or Section 8 waiting list
- F. MaineHousing reserves the right to require additional information it deems necessary in order to process an Application.
- G. An Applicant may withdraw an Application at any time by written notice to MaineHousing; however, the application fee will not be refunded.

7. Selection Criteria

The following criteria have been chosen to establish a framework for the allocation process. Each category has been assigned a maximum point total in order to weigh the selection process towards addressing the highest housing needs. The factors or characteristics MaineHousing will consider are set forth in each category.

- A. Project Characteristics (maximum of 30 points).
  - 1. A Project involving rehabilitation of existing multi-family rental housing stock containing 5 or more units that also provides protection against displacement and substantial increases in housing costs attributable to the rehabilitation will receive 3 points.
  - 2. An Applicant will receive 1 point for each of the following amenities and services.
    - a. An on-site community room developed as part of the Project.
    - b. Computer(s) for tenant use in a common area of the Project.

- c. Necessary infrastructure for cable, DSL or wireless Internet service in all units in the Project and such service is provided to the tenants free of charge. To receive the points, the Applicant must include the cost of the service in the Project's annual operating budget included in the Application.
  - d. Laundry capability provided on-site either in each unit as a washer/dryer hook-up or as a fully accessible facility centrally located within the Project.
  - e. Area(s) for activities either provided on-site at the Project free of charge to the tenants or public access is within ½ mile of the Project and there is no fee or membership required to use the equipment or facility. Areas for activity 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.
3. A Project that gives preference in at least 20% of the units in a Project to persons who are homeless or displaced, persons with mental or developmental disabilities, or other persons with special housing needs will receive 2 points. The Applicant must commit to maintain a waiting list for and offer services appropriate to the needs of the persons for whom the preference is given. The Applicant must submit a description of the services and a written commitment or letter of support from a qualified service provider to provide the services with the Application.
  4. A Project for families with a minimum of 20% of the low income units as 3 or more bedroom apartments and an additional 30% of the low-income units as 2 or more bedroom apartments will receive 6 points.
  5. A Project that provides for low-income tenant ownership will receive 1 point. An Applicant shall not transfer ownership of the Project to the tenants until the affordability period required in Section 6.B. of this Rule has expired.
  6. A Project will receive 4 points if the Project has all municipal approvals required to proceed with the Project and any timeframe to appeal such approvals has expired with no appellate action being taken. The Applicant must submit evidence thereof in the form of a letter from the appropriate municipal official or body with its Application and the design of the Project submitted to and approved by the municipality must be acceptable to MaineHousing. The Applicant must meet with MaineHousing's Construction Services Manager concerning the design of the Project before submitting the design to the municipality for approval. Notwithstanding MaineHousing's approval of the level of design of the Project approved by

the municipality, the final design of the Project, including all plans, details and specifications, are subject to MaineHousing's approval

7. A Project for families that is designed and constructed to provide a higher level of accessibility will receive up to 4 points. A Project for persons who are Elderly that is designed and constructed to provide a higher level of accessibility will receive up to 8 points. Two (2) points will be awarded for each 10% of the total units in the Project above the minimum State and Federal accessibility requirements that at a minimum meet the requirements of "Voluntary Pledges" in MaineHousing's Design & Construction Manual under the "Summary of Accessibility Regulations and Additional MaineHousing Requirements". Partial points will not be awarded. To receive the points, the Applicant must submit a certification from a qualified architect in form specified by MaineHousing in the Application.
8. An Applicant who establishes a policy prohibiting smoking in all units and common areas of the Project will receive 1 point. The Applicant must develop and maintain a written occupancy policy that prohibits smoking in the units and the common areas of the Project, include a non-smoking clause in the lease for every household and make educational materials on tobacco treatment programs, including the phone number for the statewide Maine Tobacco HelpLine, available to all residents of the Project through the resident service coordinator.. The Applicant shall commit to satisfy these requirements in the Application and the detailed service plan required pursuant to Section 6.D.13. of this Rule shall include making the tobacco treatment program educational materials available to residents.
9. A Project will receive 2 points if the Project (a) includes the rehabilitation of a certified historic structure and (b) uses capital generated from both the federal historic preservation tax credit equal to 20% of qualified rehabilitation expenditures under Section 47 of the Code and the State historic preservation tax credit equal to 30% of qualified rehabilitation expenditures for affordable housing under 36 M.R.S.A. § 5219-BB et seq. for the development of the Project. A certified historic structure is a building that is listed in the National Register of Historic Places or a building that is located in a registered historic district and certified by the National Park Service as contributing to the historic significance of that district. A registered historic district is any district listed in the National Register of Historic Places or a State or local historic district, provided the State or local district and its enabling statute are certified by the United States Secretary of Interior. The Applicant shall submit certifications from the National Park Service and the Maine Historic Preservation Commission that the structure(s) to be rehabilitated as part of the Project is a certified historic structure with its Application. The Applicant shall also include the projected capital to be generated by the federal and State historic preservation tax credits as capital sources for the development of the Project in the pro forma submitted with

the Application. This scoring criterion only applies to Applications for the 2009 State Ceiling.

B. Leveraged Funds (maximum of 13 points).

An Applicant that proposes to leverage funds for a Project from a source other than MaineHousing will receive up to 13 points. Resources made available either directly, or indirectly by MaineHousing are not eligible for consideration under this criterion.

1. Up to 8 points will be awarded to a Project that has below market funding from a source other than MaineHousing. Tax credit equity, service and operating funds, rental assistance, construction financing and donations or below market purchases of land and buildings are not eligible sources of below market funding under this category. MaineHousing will give consideration under this category to below market funding that has been committed and below market funding that has been applied for, but notification of a commitment has not yet been received by the Applicant. Funds that have not yet been committed will be evaluated at 10% of the amount applied for by the Applicant. The Applicant must submit evidence of the commitment of below market funding or evidence that the below market funding has been applied for with its Application. The evidence must include the terms of the below market funding, including without limitation, the interest rate, the amortization period, the loan term and security required, if any. Capital funding made possible by an Affordable Housing TIF that directly benefits the Project will be evaluated as if it were a grant, provided that funding made possible by an Affordable Housing TIF will not be eligible for consideration under this criterion if the application for the Affordable Housing TIF is submitted to MaineHousing less than 45 days prior to the application deadline for Credit as designated in Section 5.D. of this Rule.

Eligible below market funding will be evaluated based on a present value or net present value basis using the 10-year Treasury note rate as of 30 days prior to the deadline for Applications for the applicable Credit round plus 300 basis points to determine an amount of subsidy per low-income unit. Applicants will receive points based upon the amount of subsidy per low-income unit in the following manner:

\$1 to 2,499	1 point	\$10,000 to 14,999	5 points
\$2,500 to 4,999	2 points	\$15,000 to 19,999	6 points
\$5,000 to 7,499	3 points	\$20,000 to 24,999	7 points
\$7,500 to 9,999	4 points	\$25,000 Plus	8 points

In the event that a below market funding source that the Applicant applied for and MaineHousing considered in this category is not awarded, the Applicant has 90 days to find alternative financing 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.

2. A Project, which consists or will consist of donated land or land and building(s) transferred or leased to the owner of the Project for no consideration or nominal consideration, will receive 2 points. If there is an existing building(s) on the land to be leased or transferred, all of the building(s) and the land must be leased or transferred for nominal or no consideration to the owner of the Project to receive points under this category. For purposes of this subsection, nominal means one percent (1%) or less of the value of the land or land and building(s). The Applicant must submit evidence of the transfer or lease for nominal or no consideration, and evidence of the value of the land or land and building(s) if the consideration is nominal, with its Application.
  
3. A Project that has a commitment of new project-based rental assistance, excluding assistance available under the HUD Project-Based Voucher Program, will be awarded up to 3 points based upon the percentage of units in the Project covered by the rental assistance contract and the length of the rental assistance contract. The Applicant must submit the commitment of project-based rental assistance, including the specific terms of the rental assistance, with the Application.

	Length of Contract	
	5 Years	10 Years
≥ 75% of units covered:	2 points	3 points
≥ 25% of units covered:	1 point	2 points

4. A Project that is directly benefited by an operating subsidy or reduction in operating costs through a tax increment financing, payment in lieu of taxes arrangement, abatement or other form of property tax relief that satisfies the following requirements will receive 3 points. The tax increment financing, payment in lieu of taxes, abatement or other property tax relief arrangement must provide for a minimum of 50% of the Project's annual incremental property tax revenue to be returned to the owner of the Project to pay the operating costs of the Project or foregone by the municipality to reduce the operating costs of the Project for a minimum period of 15 years from construction completion and must be approved by the municipality and all other applicable governing entities. The Applicant shall submit evidence of the tax relief arrangement, the vote or resolution of the governing body of the municipality adopting the arrangement and, as applicable, evidence of approval by all other governing entities, e.g. certificate of approval from MaineHousing if it is an Affordable Housing TIF and the State of Maine Department of Economic and Community Development if it is a commercial tax increment financing arrangement. Funding made possible by an

Affordable Housing TIF will not be eligible for consideration under this criterion if the application for the Affordable Housing TIF is submitted to MaineHousing less than 45 days prior to the application deadline for Credit as designated in Section 5.D. of this Rule.

C. Project Location (maximum of 25 points).

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

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

<b>Service Center Community</b>	<b>Points</b>
Auburn	5
Augusta	5
Bangor	5
Biddeford	5
Brunswick	5
Caribou	5
Lewiston	5
Old Orchard Beach	5
Old Town	5
Portland	5
Rumford	5
Saco	5
Sanford	5
Topsham	5
Waterville	5
Bar Harbor	3
Bath	3
Brewer	3
Calais	3
Eliot	3
Ellsworth	3
Fairfield	3
Farmington	3
Fort Kent	3
Gardiner	3
Houlton	3
Kittery	3

Orono	3
Rockland	3
Scarborough	3
Skowhegan	3
South Portland	3
Winslow	3
Blue Hill	1
Boothbay Harbor	1
Bucksport	1
Dexter	1
Dover-Foxcroft	1
Greenville	1
Hallowell	1
Hampden	1
Lincoln	1
Machias	1
Madawaska	1
Mexico	1
Milford	1
Millinocket	1
Norway	1
Paris	1
Pittsfield	1
Rockport	1
Southwest Harbor	1
Thomaston	1
Westbrook	1

b. Projects for persons who are Elderly located in the following Service Center Communities will receive the following points.

<b>Service Center Community</b>	<b>Points</b>
Auburn	5
Bangor	5
Biddeford	5
Brunswick	5
Fairfield	5
Freeport	5
Kittery	5
Lewiston	5
Saco	5
Sanford	5

Scarborough	5
Skowhegan	5
South Portland	5
Waterville	5
Winslow	5
Augusta	3
Bath	3
Bridgton	3
Bucksport	3
Damariscotta	3
Eliot	3
Hampden	3
Lincoln	3
Mexico	3
Norway	3
Oakland	3
Rockport	3
Topsham	3
Belfast	1
Camden	1
Caribou	1
Dover-Foxcroft	1
Farmingdale	1
Fort Kent	1
Gardiner	1
Hallowell	1
Jackman	1
Milford	1
Millinocket	1
Norridgewock	1
Old Town	1
Presque Isle	1
Rockland	1
Rumford	1
Westbrook	1

- c. Projects under the Housing for Persons who are Homeless Set-Aside that are located in the following Service Center Communities will receive 5 points:

Portland	Bangor	Lewiston
Biddeford	Saco	Sanford

- d. Projects located on Native American tribal lands will receive 5 points.
2. A Project located in an area in which the vacancy rate in comparable Qualified Low Income Housing Projects is less than 7% will receive 2 points.  
A Project located in an area in which the vacancy rate in both comparable Qualified Low Income Housing Projects and comparable market rate multifamily rental housing is less than 7% will receive 3 points.  
MaineHousing will rely on the vacancy information in the market study submitted with the Application as reviewed and approved by MaineHousing.
  3. A Project located in an area in which the average market rent is at least 5% higher than the average maximum tax credit rent for a unit occupied by an individual or family with income at or below 60% of area median income, as determined in accordance with Section 42 of the Code, will receive 1 point.  
A Project located in an area in which the average market rent is at least 10% higher than the average maximum tax credit rent for a unit occupied by an individual or family with income at or below 60% of area median income, as determined in accordance with Section 42 of the Code, will receive 2 points.  
For Projects with units of varying bedroom size, the average rents will be determined using a weighted average based on the number of units of each bedroom size. MaineHousing will rely on the market rent information in the market study submitted with the Application as reviewed and approved by MaineHousing.
  4. A Project that is part of a community revitalization plan will receive 2 points. Projects that involve the rehabilitation of existing multi-family rental housing containing more than 5 units within a community revitalization area will receive 1 additional point. To receive points, an Applicant must submit either (a) evidence of being an Enterprise Community or (b) a copy of the community revitalization plan adopted by the municipality or tribal government referencing the area in which the Project will be located and evidence of official adoption of the plan by the municipality or tribal government with its Application. Projects that are part of a community revitalization plan and are located in a Qualified Census Tract will be given preference over such Projects that are not located in a Qualified Census Tract.
  5. A Project that incorporates the following elements of smart growth will receive up to 10 points.
    - a. A Project that meets one or both of the following criteria will receive 4 points.

- i. A Project that is located (i) within 5,000 feet of a downtown and (ii) within a safe walking distance of not more than 2,500 feet of at least one destination important to the course of daily activities, such as a convenience store or a public school; or
  - ii. A Project that remediates and/or reuses an existing structure(s) or utilizes a formerly developed site rather than new construction in an undeveloped area.
- b. Only Projects that receive 4 points for being located in or near a downtown under Section 7.C.5.a.i. above may receive up to an additional 2 points for the following elements of smart growth.
  - i. A Project located within a safe walking distance of not more than 1,500 feet of a mixed use downtown will receive 2 points.
  - ii. A Project located within a safe walking distance of between 1,500 feet and 2,500 feet of a mixed use downtown will receive 1 point.
- c. A Project that receives 4 points under Section 7.C.5.a. above may receive up to an additional 4 points for the following elements of smart growth.
  - i. A Project located within a safe walking distance of not more than 2,500 feet of year-round employment opportunities, such as service sector positions in healthcare, retail sales and related services, public safety, office and administrative support services, leisure and hospitality, maintenance and repair, and finance and goods producing industries such as construction and manufacturing, will receive 2 points.
  - ii. A Project located within a safe walking distance of between 2,500 feet and 5,000 feet of year-round employment opportunities, such as service sector positions in healthcare, retail sales and related services, public safety, office and administrative support services, leisure and hospitality, maintenance and repair, and finance and goods producing industries such as construction and manufacturing, will receive 1 point.
  - iii. A Project located within a safe walking distance of not more than 1,500 feet of a public school or library will receive 1 point.
  - iv. A Project located within 1,500 feet of a designated pick-up location for a year-round, regularly scheduled means of public transportation will receive 1 point.

- d. For purposes of this Section 7.C.5, the following terms have the following meanings.
  - i. A “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 commercial and mixed-use buildings, 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 § 4311 et seq.
  - ii. The term “mixed use” means the integration of two or more land uses such as residential, commercial and office, with a strong pedestrian orientation.
  - iii. A “safe walking distance” means year-round pedestrian access by one or more of the following, as appropriate to the area: sidewalks adjacent to the Project, paved wide shoulders suitable for walking, crosswalks and traffic signals at busy roads or intersections.

D. Sponsor Characteristics (maximum of 12 points).

- 1. An Applicant, or any principal thereof, who has prior experience with MaineHousing and has not been declared in default by MaineHousing in the last five (5) years, or who has successfully developed Qualified Low-Income Housing Projects in other states will receive 2 points.
- 2. An Applicant will receive 2 points if the Applicant, any principal thereof or any affiliate of any principal thereof, has prior experience with Qualified Low Income Housing Projects and in the last three (3) years (a) has not been issued an IRS Form 8823 or (b) was issued an IRS Form 8823, but it was subsequently reported as “noncompliance corrected” within the specified time period for correction, and (c) has not had an IRS audit finding resulting in a recapture event. Applicants must complete the self-certification section of the Application to receive these points.
- 3. a. An Applicant will receive 2 points if a nonprofit organization that satisfies the following requirements has an ownership interest in the Project.
  - i. The Internal Revenue Service has determined that the nonprofit organization is an organization described in Section

501(c)(3) or 501(c)(4) of the Code and is exempt from taxation under Section 501(a) of the Code;

- ii. The nonprofit organization must be duly organized and existing or authorized to do business under the laws of the State of Maine and must be in good standing in its state of incorporation (if not the State of Maine) and the State of Maine;
  - iii. The nonprofit organization must be engaged in and have as one of its charitable purposes the fostering and development of low-income housing;
  - iv. The nonprofit organization is not affiliated with or controlled by any for-profit entity; and
  - v. The nonprofit organization must have a general partner interest in the owner of the Project and be the managing general partner of the Project.
- b. A for-profit corporation will be deemed to satisfy the requirements of this criterion if 100% of the stock of the corporation is held by one or more Qualified Nonprofit Organizations at all times during the period such corporation is in existence in accordance with Section 42(h)(5)(D) of the Code and the for-profit corporation satisfies the requirements of Sections 7.D.3.a (ii) and (v) above.
- c. A nonprofit corporation will be deemed to satisfy the requirements of this criterion if a single nonprofit organization that satisfies the requirements in subparagraphs (a)-(e) above is the sole member of the nonprofit corporation during the period the nonprofit corporation has an ownership interest in the Project, which period shall not be less than the Extended Use Period, and the nonprofit corporation satisfies the requirements of Sections 7.D.3.a (ii) and (v) above.
- d. A limited liability company will be deemed to satisfy the requirements of this criterion if a single nonprofit organization that satisfies the requirements in subparagraphs (a)-(e) above owns 100% of the limited liability company during the period the limited liability company has an ownership interest in the Project, which period shall not be less than the Extended Use Period, the limited liability company is disregarded as an entity separate from the nonprofit organization for tax purposes under the Code and the limited liability company satisfies the requirements of Sections 7.D.3.a (ii) and (v) above.

- e. A public housing authority will be deemed to satisfy the requirements of Section 7.D.3.a. above if the public housing authority is duly organized, validly existing and in good standing under the laws of the State of Maine; is exempt from taxation under the Code; has as one of its purposes the fostering and development of housing for low-income persons; and has an ownership interest in the Project and is the sole or managing general partner of the owner of the Project.
- f. A tribal housing authority will be deemed to satisfy the requirements of Section 7.D.3.a. above if the tribal housing authority is duly organized and legally existing under governing tribal law; has as one of its purposes the fostering and development of housing for low-income persons; and has an ownership interest in the Project and is the sole or managing general partner of the owner of the Project.

The Applicant shall specifically describe in the Application how the Applicant satisfies the requirements of this Section 7.D.3. above and shall submit supporting organizational documents, IRS determination letter(s), clerk's certificate(s) regarding shareholder and membership interest(s) as applicable, certificates of good standing and other evidence acceptable to MaineHousing with the Application.

- 4. Projects that will be managed by a management company with a) low income housing tax credit training and b) a minimum of three (3) years of successfully managing a Qualified Low-Income Housing Project will receive 2 points. Applicants must submit a binding commitment from the management company to manage the Project and a certificate(s) or other evidence satisfactory to MaineHousing of the management company's low income housing tax credit training and experience with its Application.
- 5. An Applicant will receive 1 point if the market study of the Project required under Section 6.D.9. of this Rule is prepared by a member of the National Council of Affordable Housing Market Analysts in good standing.
- 6. An Applicant (or the owner of a Project if different from the Applicant) that employs contractors (including general contractors, construction managers, subcontractors and material suppliers) that provide an eligible group health insurance plan to their employees in accordance with the requirements of this criterion will be awarded up to 3 points, based on the percentage of contractors or the percentage of the Total Construction Costs paid to contractors who provide an eligible group health insurance plan, as follows.

If at least 60% but less than 70% of the contractors provide an eligible group health insurance plan **or** at least 60% but less than 70% of the Total Construction Costs are to be paid to contractors who

provide an eligible group health insurance plan, the Applicant will receive 1 point.

If at least 70% but less than 80% of the contractors provide an eligible group health insurance plan **or** at least 70% but less than 80% of the Total Construction Costs are to be paid to contractors who provide an eligible group health insurance plan, the Applicant will receive 2 points.

If 80% or more of the contractors provide an eligible group health insurance plan or 80% or more of the Total Construction Costs are to be paid to contractors who provide an eligible group health insurance plan, the Applicant will receive 3 points.

An “eligible group health insurance plan” is a group health insurance plan that:

(a) Includes comprehensive coverage for at least the following range of benefits:

- (i) inpatient and outpatient hospital services;
- (ii) physicians' surgical and medical services;
- (iii) laboratory and x-ray services; and
- (iv) well-baby and well-child care, including age-appropriate immunizations;

(b) imposes co-payment and deductible costs on the employee that do not exceed 10% of the actuarial value of all benefits afforded by the plan; and

(c) affords coverage that has an actuarial value no less than 80% of the actuarial value of coverage that is provided to employees of the State. For purposes of this subsection, "actuarial value" means the expected cost of a benefit based on assumptions as to relevant variables such as morbidity, mortality, persistency and interest. When comparing the actuarial value of one benefit or package of benefits to another, both actuarial values must be based on the same assumptions.

If a contractor provides family coverage, the health insurance plan must make the same or comparable coverage available for the benefit of the employee's dependent children who are under 19 years of age.

If the health insurance plan provides coverage for employees only, the contractor must pay at least 60% of the premium for employee coverage. If the health insurance plan provides family coverage for employees, the contractor must pay at least 50% of the premium for employee coverage plus some portion of the premium for the family coverage.

For purposes of this subsection, Total Construction Costs are determined at the time the owner of the Project enters into a construction contract with the general contractor (or construction manager) for the construction of the Project. The eligible group health insurance plan must be in place at the time the contractors bid on the Project and must be maintained during the construction of the Project.

To be eligible for these points an Applicant must submit with their Application a plan which describes the efforts that will be made to meet the pledge made under this selection criterion.

E. Tie Breaker

In the event the total score of two or more Applications is the same and MaineHousing has, in its sole discretion, determined that there is not enough Credit to fund both or all of these Applications, MaineHousing will use the following criteria to prioritize these Application(s) for purposes of awarding the available Credit.

1. An Application for a Project that will be located in the same municipality and serve the same targeted population (e.g. Elderly, family, etc.) as an Application that was awarded Credit during the same funding round will be eliminated from further consideration under the tie-breaker analysis, but will be placed on the waiting list based on its total score relative to other Applications that were not awarded Credits.

2. The remaining Applications will be re-scored by adding the points the Applications received during the original scoring process under the selection criteria in Section 7.A.6. (municipal approvals), Section 7.B.1. (below market funding), and Section 7.C.5. (smart growth) of this Rule. MaineHousing will award Credit to Applications based on the new score, from the highest to the lowest scoring Applications, to the extent Credit is available, as determined by MaineHousing in its sole discretion.

3. In the event Applications remain tied after being re-scored according to the above process and there is not enough Credit to fund all of these Applications, MaineHousing will prioritize and award Credit to the remaining Applications based on the actual difference between the average market rent and the average maximum tax credit rent for the area in which the Project is located as determined in accordance with Section 7.C.3. of this Rule, from

the Application with the greatest actual difference to the Application to the least actual difference, to the extent Credit is available, as determined by MaineHousing in its sole discretion.

Projects that are not awarded Credit through this process will remain on the waiting list in order of their original score.

8. Project Evaluation

- A. Once a Project is selected, MaineHousing will determine the amount of Credit to be reserved. The amount requested in the Application will be the basis on which MaineHousing will determine the actual reservation, but the amount reserved will not necessarily equal the amount requested. 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.
- B. The amount of Credit reserved for a Project cannot exceed the lesser of the amount the Project is eligible for under the Code or 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. The evaluation process will be extensive and will require Applicants to provide significant amounts of financial information and Project detail. In making this determination, MaineHousing will consider:
1. The sources and uses of funds and the total financing planned for the Project, including the reasonableness of development costs and operating expenditures;
  2. Any proceeds or receipts expected to be generated by reason of tax benefits; and
  3. The percentage of the housing credit dollar amount used for Project costs other than Intermediary Costs.

These factors will not be applied so as to impede the development of Projects in hard-to-develop areas.

- C. In order to arrive at the amount of Credit dollars to be reserved for a Project, MaineHousing must identify the equity gap between development sources and uses which the Credit is designed to fill. In order to fulfill its statutory responsibility to allocate only the amount of Credit necessary for the financial feasibility of a Project and its viability throughout the Credit Period, MaineHousing reserves the right to limit recognition of Intermediary Costs, re-characterize Project sources and uses and make reasonable assumptions on projected revenues and expenses in the process of calculating the amount of Credit to be reserved or allocated to a Project. When

applicable, MaineHousing will also take into consideration any restrictions imposed by federal laws and regulations imposing limitations on the combining of the Credit with other federal subsidies (“subsidy layering” guidelines).

- D. In order to fully evaluate the proposal’s need for Credit, the expectation exists that availability of the Credit is a necessary incentive for the developer to undertake completion of the Project. Extreme caution should be taken to avoid incurring construction costs prior to the receipt of a reservation of Credit. MaineHousing reserves the right to cease processing any Application which has incurred construction costs prior to applying for Credit.

In cases providing significant public purpose, when construction costs have been incurred prior to MaineHousing’s decision to select any Application, developers should be prepared to demonstrate why the absence of Credit presents a serious risk to the overall viability and operation of the Project.

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

Typically, the Developer Fee consists of two components, overhead and profit, which must be separately identified in the development budget for the Project. The Developer Fee, including these two components, shall be limited to \$15,000 per unit for the first 20 units in the Project and \$12,500 per unit for each additional unit in the Project, which total amount 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.

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

Overhead	up to 2% of Total Construction Cost
General Requirements	up to 8% of Total Construction Cost
Profit	up to 6% of Total Construction Cost

- G. In reviewing Project costs MaineHousing will consider the reasonableness of the per unit Total Development Cost. However, the following standards will not automatically be used as a limit when calculating the amount of Credit for which the Project is eligible. Each Project will first be compared with historical data for similar Qualified Low-income Housing Projects, i.e. size, location, funding source, etc. Costs will be evaluated against industry cost standards. Consideration will be allowed for costs associated with tenant service and common area spaces. Otherwise, the per unit cost recognized for Credit allocations should not exceed the HUD 221(d)(3) per unit limits established for the State. MaineHousing will require additional documentation if MaineHousing feels the proposed costs are not comparable or reasonable.
- H. The evaluation of each Project to determine the amount of Credit dollars for which it is eligible will be performed as of each of the following dates:
1. The Application.
  2. The allocation of Credit.
  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 Qualified Low-income Housing Project and provide such other information MaineHousing deems necessary in order to complete its evaluation.

- I. 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.

9. Reservation of Credit

- A. Applicants will receive a Notice to Proceed indicating that an evaluation pursuant to Section 8 of this Rule will be undertaken. At the completion of the evaluation, MaineHousing will issue conditional reservations of Credit. The amount of Credit dollars reserved for a Project shall be the amount determined by MaineHousing pursuant to Section 8 of this Rule.
- B. Conditions contained in a conditional reservation will be performance-based, taking into consideration the specific circumstances of each Project and may include, without limitation:
1. Payment of a Credit reservation fee equal to 3% of the amount of the reservation at the time of reservation.

2. Deadline for final working drawings and specifications.
  3. Deadline for loan closing(s).
  4. Deadline for receipt of information necessary for MaineHousing to make its determination on allocation or carryover allocation of Credit.
  5. Prohibition against amendments or changes as set forth in Section 5.I. of this Rule.
  6. Termination date.
- C. When reservations of the Credit have been issued in an amount equal to the applicable State Ceiling, standby reservations may be issued in the same manner as described in Section 9.A. of this Rule. Applicants receiving standby reservations will only be allowed to proceed if a sufficient amount of the applicable State Ceiling becomes available through lapsed or withdrawn reservations, the return of Credit or receipt of Credit from the national re-pooling of unused housing Credit allocations.
- D. An Applicant may cancel or withdraw a reservation by submitting written notice thereof to MaineHousing.
- E. Reservations and standby reservations of Credit from the State Ceiling for a particular calendar year which are in effect on December 31 of that calendar year may be converted to reservations of Credit from the State Ceiling for the following year upon mutual agreement of the parties.
- F. At the time of issuance of a reservation, 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 must satisfy the requirements of the Code and will contain the same performance-based conditions set forth in the Applicant's conditional reservation. The Applicant may also choose either to fix the Applicable Percentage for each Qualified Low-income Building in the Project by irrevocably electing the percentage for the month in which the Applicant and MaineHousing enter into such Binding Agreement or to select the applicable percentage for the month the building is placed in service.
- G. MaineHousing may, in its sole discretion, allocate additional Credit for a Project facing increased construction costs, 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.
- H. Prior to a reservation of Credit, an Applicant must demonstrate proficiency in the area of Credit compliance monitoring by completing a Credit compliance monitoring

training approved by MaineHousing or receiving certification from a Credit trainer approved by MaineHousing.

10. Allocation of Credit

A. Provided that an Applicant's Project is placed in service, within the meaning of the Code, in the calendar year for which a reservation of Credit has been issued and such reservation is still in effect, MaineHousing will allocate Credit to the Applicant, by issuance of IRS Form 8609 or such other form required by the IRS, 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 as follows:

Projects of up to 10 units	\$ 250
Projects of 11 to 23 units	\$ 500
Projects of 24 or more units	\$1,000

This paragraph does not apply to tax-exempt bond financed Projects described in Section 12 of this Rule.

4. A monitoring fee in an amount equal to \$250 per Credit eligible unit in the Project, not to exceed \$25,000 per Project.

B. The amount of Credit allocated on behalf of each Qualified Low-income Building shall be the lesser of:

1. The maximum amount for which the Project is eligible under the Code, as determined by MaineHousing based on information provided by the Applicant;

2. The amount determined by MaineHousing as the minimum amount necessary for the financial feasibility of the Project and its viability as a Qualified Low-income Housing Project throughout the Credit Period; and
  3. The amount stated in the conditional reservation.
- C. 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 Internal Revenue Service gives effect to such allocation. CREDIT RECIPIENTS ARE RESPONSIBLE FOR TAKING ONLY THE AMOUNT OF CREDIT AUTHORIZED UNDER THE CODE AND RECOGNIZED BY THE INTERNAL REVENUE SERVICE AND NO RELIANCE MAY BE PLACED ON MAINEHOUSING BY ANY PARTY FOR THIS DETERMINATION.

11. Carryover Allocation

- A. If the Project, or individual Qualified Low-income Building within the Project will not be placed in service, within the meaning of the Code, in the calendar year for which a reservation of Credit has been issued, MaineHousing may issue a carryover allocation to qualifying Applicants or choose to carry over the balance of the State Ceiling as provided in Section 4.A. of this Rule. In order to be considered for a carryover allocation, an Applicant must provide:
1. A complete request for carryover 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. This certification must include income, operating and development cost projections and methods for satisfying any deficits.
  3. Status report on the progress of development of the Project and the likelihood of the Project proceeding to completion.
  4. An allocation fee as follows:

Projects up to 10 units	\$ 250
Projects with 11 to 23 units	\$ 500
Projects with 24 or more units	\$1,000

- B. The amount of the carryover allocation for each Qualified Low-income Building shall be the lesser of:
1. The maximum amount for which the Project is eligible under the Code, as determined by MaineHousing based on information provided by the Applicant;
  2. The amount determined by MaineHousing as the minimum amount necessary for the financial feasibility of the Project and its viability as a Qualified Low-income Housing Project throughout the Credit Period; and
  3. The amount stated in the conditional reservation.
- C. A carryover allocation made by MaineHousing will be effective only if:
1. MaineHousing receives satisfactory evidence that more than ten percent (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 twelve (12) months of the date the carryover allocation is made, and
  2. The Qualified Low-income Building is placed in service within two (2) years following the calendar year in which the allocation is made and only to the extent that the Internal Revenue Service gives effect to such allocation.
- The entity satisfying the requirements set forth in this Section 11.C. must be the same entity that received the carryover allocation. CREDIT RECIPIENTS ARE RESPONSIBLE FOR TAKING ONLY THE AMOUNT OF CREDIT AUTHORIZED UNDER THE CODE AND RECOGNIZED BY THE INTERNAL REVENUE SERVICE AND NO RELIANCE MAY BE PLACED ON MAINEHOUSING BY ANY PARTY FOR THIS DETERMINATION.
- D. In order to ensure maximum utilization of the Credit, MaineHousing may impose performance conditions on developers receiving carryover allocations and may terminate or cancel the allocation for failure to comply with such conditions.
- E. MaineHousing may, in its sole determination, convert a carryover allocation of Credit from the State Ceiling for a particular calendar year to a reservation of Credit from the State Ceiling for the year in which the carryover allocation is terminated or the following year subject to the requirements of this subsection. The carryover allocation must be rescinded by the mutual consent of MaineHousing and the Applicant. At the time the carryover allocation is rescinded, there shall not have been any changes in the Project design or financing which, in the sole determination of MaineHousing, would substantially affect the score that the Applicant received pursuant to the applicable selection criteria or result in a cost increase which would render the Project withdrawn pursuant to Section 5.H. of this Rule. There must be extenuating circumstances, which result in the Applicant's likely failure to meet the

10% basis test in Section 11.C.1. of this Rule or the likely failure of the Project to be placed in service within two (2) years following the year in which the allocation was made. The Project will only be required to meet the requirements of the 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. Credit returned to MaineHousing as a result of the termination or cancellation of a carryover allocation prior to September 30 in a particular calendar year shall be added to the State Ceiling for the calendar year in which it is returned. Credit returned as a result of a termination or cancellation of a carryover allocation after September 30 shall be added to the State Ceiling for the calendar year in which it is returned or the following year.
- G. MaineHousing may carry over the entire unallocated portion of the State Ceiling and deny all requests for Project-specific carryover allocations.

## 12. Tax-Exempt Bond Financed Projects

- A. 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. Except as otherwise provided in the Code, Qualified Low-income Buildings financed with the proceeds of tax-exempt bonds subject to the state volume cap on such bonds which are placed in service after 1989, in order to qualify for the Credit without an allocation from the State Ceiling, must satisfy the requirements for application and allocation set forth in Section 6 of this Rule (other than the affordability threshold requirement set forth in Section 6.B.) and Section 10 of this Rule (other than the requirement for issuance of a conditional reservation) and be evaluated by the issuer of the bonds according to the evaluation procedures set forth in Section 8 of this Rule to determine the proper amount of the Credit.
- C. Developers of properties financed with tax-exempt bonds and seeking Credit without an allocation from the State Ceiling may, to the extent the Project is not yet placed in service and is otherwise authorized by the Code, elect to fix the Applicable Percentage for each Qualified Low-income Building in the Project by irrevocably electing the percentage for the month in which the bonds are issued or the Applicable Percentage for the month the building is placed in service. Such an election must be made on forms provided by MaineHousing and must be made by the fifth day of the month following the month in which the bonds are issued.

- D. Developers of properties seeking Credit without an allocation from the State Ceiling must request the issuance of an IRS Form 8609 for each Qualified Low-income Building in the year the Project is placed in service. Such request must be made on forms provided by MaineHousing. This request must also include an audit report on the schedule of project costs prepared by an independent, third party certified public accountant.
- E. Once MaineHousing has reviewed the Project in accordance with this Section 12 and deemed the Project eligible to receive Credit, a determination letter will be issued.

13. Monitoring and Notification of Noncompliance

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

- A. Recordkeeping and record retention. Owners must keep on file and available to MaineHousing upon request, records for each Qualified Low-income Building in the Qualified Low-income Housing Project, including without limitation, the following information.
  - 1. The total number of residential rental units in each Qualified Low-income Building (including the number of bedrooms and the size in square feet of each residential rental unit).
  - 2. The number of residential rental units in each Qualified Low-income Building that are designated low-income units.
  - 3. The rent charged on each residential rental unit in each Qualified Low-income Building (including any utility allowances).
  - 4. The number of occupants in each low-income unit.
  - 5. The low-income unit vacancies in each Qualified Low-income Building and information that shows when, and to whom, the next available units were rented.

6. An income certification for each household occupying a Credit-eligible unit in the Project at initial occupancy and upon any change in the size or composition of the household occupying the unit.
7. Annual income certifications for each household occupying a Credit-eligible unit in the Project, except (a) no annual income certifications are required for a Project in which 100% of the units in the Project are subject to the applicable income limit elected pursuant to Section 42(g)(1) of the Code for the Project (i.e. either 100% of the units at 60% AMI or 100% of the units at 50% AMI), and (b) for a Project in which 100% of the units are Credit-eligible units but the Project is subject to multiple income targeting requirements, annual income certifications are only required for households in units subject to the lower income targeting requirements (e.g. in a 100% Credit-eligible Project with 60% AMI, 50% AMI, 40% AMI and 30% AMI units, annual income certifications are required for the 50% AMI, 40% AMI and 30% AMI units). For Projects financed or assisted under State or federal programs that require annual income certifications, the owner must provide annual income certifications for each household occupying a Credit-eligible unit in the Project.
8. Documentation to support each low-income tenant's income certification (for example, a copy of the tenant's federal income tax return, Forms W-2, 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.
9. The Eligible Basis and Qualified Basis of each Qualified Low-income Building at the end of the first year of the Credit Period.
10. The character and use of the nonresidential portion of a Qualified Low-income Building included in the Qualified Low-income Building's Eligible Basis (for example, tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities or facilities reasonably required by the Project).

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

applicable Extended Use Period or six (6) years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period of the Qualified Low-income Building. First year quarterly reports shall be filed with MaineHousing.

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

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

1. All Owners must certify to MaineHousing annually throughout the Extended Use Period of the Qualified Low-income Housing Project for the calendar year preceding certification that:

- a. The Project met the minimum low-income set-aside test applicable to the Project and complies with the additional low-income targeting pledged by the Owner as set forth in the Extended Low Income Housing Commitment on which the allocation was based, (e.g. 40% AMI and 50% AMI);
- b. There was no change in the Applicable Fraction of any Qualified Low-income Building or that there was a change and a description of the change;
- c. The Owner has received an annual income certification from each low-income household and documentation to support that certification, except as provided under Section 13.A.7. of this Rule, or in the case of a tenant receiving Section 8 housing assistance payments, the statement from a public housing authority described in Section 13.A.7. of this Rule;
- d. Each qualified low-income unit in the Project was rent-restricted under Section 42(g)(2) of the Code;
- e. All units in the Project were available for use by the general public and used on a nontransient basis, except for transitional housing for the homeless provided under Section 42(i)(3)(B)(iii) of the Code;
- f. Each Qualified Low-income Building was suitable for occupancy under applicable health, safety and building codes;
- g. There was no change in the Eligible Basis of any Qualified Low-income Building or if there was a change, the nature of the change (for example, a common area has become commercial space, or a fee is now charged for a tenant facility formerly provided without charge);

- h. All tenant facilities included in the Eligible Basis of any Qualified Low-income Building, such as swimming pools, other recreational facilities and parking areas, were provided on a comparable basis without charge to all tenants in the Qualified Low-income Building;
- i. If a low-income unit in the Qualified Low-income Building became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the Qualified Low-income Building were or will be rented to tenants not having a qualifying income;
- j. If the income of tenants of a low-income unit in the Qualified Low-income Building increased above the limit allowed under Section 42 of the Code, the next available unit of comparable or smaller size in the Qualified Low-income Building was or will be rented to tenants having a qualifying income;
- k. The Project complies with the Extended Low-income Housing Commitment for Qualified Low-income Buildings subject to Section 7108(c)(1) of the Revenue Reconciliation Act of 1989;
- l. The Project complies with the requirements of all applicable Federal and State housing programs (e.g. RD, Federal HOME, HUD Section 8, or Tax-Exempt Bonds);
- m. The Project has not received notice of any violation of applicable building codes. In the event a violation occurs the owner must report all violations to MaineHousing including a summary of or copies of violations issued. The Owner must indicate whether the violations have been corrected and must retain all original reports of violation;
- n. No findings of discrimination under the Federal Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. § 3601 *et seq.*) or the Maine Human Rights Act (5 M.R.S.A., Chapter 337, Subchapter IV) have occurred at the Project. A finding of discrimination includes an adverse final decision by HUD, an adverse final decision by a substantially equivalent State or local fair housing agency, or an adverse judgment from a Federal or State court;
- o. No applicant for tenancy in possession of a Section 8 voucher was refused housing solely because of their status as a Section 8 voucher-holder;

- p. If the Owner received its Credit allocation from a portion of the State Ceiling set-aside for a Project involving a Qualified Non-Profit Organization under Section 42(h)(5) of the Code, then a Qualified Non-profit Organization materially participated in the operation of the Project within the meaning of Section 469(h) of the Code; and
  - q. There has been no change in the ownership or management of the Project.
2. Annually throughout the Extended Use Period applicable to the Project, Owners must complete and submit to MaineHousing a tenant status report on a form prescribed by MaineHousing. The tenant status report shall accurately reflect tenant income, rent data and other occupancy information required by MaineHousing for each Qualified Low-income Building in a Project for the prior calendar year.
  3. MaineHousing will review the tenant files of at least 20% of the low income units in each Project at least once every three (3) years. For new Projects placed in service, MaineHousing will complete a review of tenant records of 20% of the low income units at the Project within two (2) years following the year the last Qualified Low-income Building is placed in service. The tenant records to be reviewed, will be selected randomly by MaineHousing. Notice of Project selection, as well as the required timeframe for submission of details, will be provided by MaineHousing to the Owner in writing.
  4. Owners of Qualified Low-income Buildings financed under the RD 515 program or Qualified Low-income Buildings of which 50% or more of the aggregate basis is financed with the proceeds of tax-exempt bonds are not required to submit, and MaineHousing is not required to review, the tenant income certifications, supporting documentation and rent records if RD or the bond issuer, as applicable, has entered into an agreement with MaineHousing to provide information concerning the income and rent of the tenants in the Qualified Low-income Building to MaineHousing. If the information provided by RD or the bond issuer is not sufficient for MaineHousing to make the required determinations, MaineHousing shall request the necessary additional income or rent information from the Owner.
  5. MaineHousing shall review all certifications and supporting documentation submitted hereunder for compliance with the requirements of Section 42 of the Code.
  6. The annual owner certifications, an executed Form 8609 and 8609-A for each Qualified Low-income Building and the tenant status report for each building required hereunder must be submitted to MaineHousing on or before a date established by MaineHousing, but in no event, later than May 1 of each year. The certification must cover the preceding calendar year and

must be made as of December 31 of the prior year. A completed and executed Form 8609 is only required to be submitted one time and must accompany the initial submission. The certifications shall be made on forms prescribed by MaineHousing and shall be made under penalty of perjury.

C. Inspections. MaineHousing will perform property inspections consistent with Uniform Physical Condition Standards (UPCS) on a one-to-three year cycle, and shall have the right, at any time upon thirty (30) days notice to the Owner, to review all records referred to in Section 13 of this Rule.

D. Monitoring Fee. All Applications shall be required to remit a one-time monitoring fee equal to \$250 for each Credit eligible unit in the Project, not to exceed \$25,000 per 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 shall notify the Owner in writing of the missing, incomplete or insufficient certification. In the event MaineHousing discovers through audit, inspection, review or some other manner that the Project is not in compliance with the provisions of Section 42 of the Code, MaineHousing shall notify the Owner in writing of the nature of such noncompliance. In either case, such notice shall provide the Owner with a reasonable correction period, not to exceed ninety (90) days, in which the Owner must supply the completed certifications and/or bring the Project into compliance with Section 42 of the Code. If MaineHousing determines there is good cause, it may extend the correction period for up to six (6) months. Within forty-five (45) days after the end of the correction period, including any permitted extensions, MaineHousing shall file the required Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance, with the Internal Revenue Service 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 ALLOWABLE. MAINEHOUSING'S OBLIGATION TO MONITOR FOR COMPLIANCE WITH THE REQUIREMENTS OF SECTION 42 OF THE CODE DOES NOT MAKE MaineHousing LIABLE FOR AN OWNER'S NONCOMPLIANCE.

#### 14. Additional Requirements

- A. Applicant's eligibility for use of the Credit after allocation of the Credit is conditioned on Applicant's continued compliance with certain tenant income and rental restrictions. Failure to comply with such restrictions can result in forfeiture and recapture penalties being imposed upon Applicant by the Internal Revenue Service. **MAINEHOUSING ACCEPTS NO RESPONSIBILITY AND NO RESPONSIBILITY SHALL BE IMPLIED BY THE ISSUANCE OF A RESERVATION, 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.**
- B. Any provision of applicable Federal or State law, including without limitation, the Code and the Act, shall take precedence over this Rule in the event of any inconsistency.
- C. This Rule does not preclude such additional or alternative requirements as may be necessary to comply with the Code or the Act.
- D. 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.
- E. The Director of MaineHousing, individually or by exercise of the delegation 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.
- F. Upon determination of good cause, the Director of MaineHousing or the Director's designee may, subject to statutory limitations, waive any provision of this Rule. Each waiver shall be in writing and shall be supported by documentation of the pertinent facts and grounds.

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

**EFFECTIVE DATE:** September 17, 2007

**BASIS STATEMENT:** The Internal Revenue Code of 1986, as amended, (the "Code") requires Maine State Housing Authority ("MaineHousing"), as the State's designated housing credit agency, to adopt a qualified allocation plan for allocating and administering the State ceiling of low income housing tax credits (the "State Ceiling"). This Rule, as modified, is the qualified allocation plan for allocating the 2008 State Ceiling and the 2009 State Ceiling (sometimes referred to herein as the "QAP"). MaineHousing is proposing significant changes to the Rule intended to achieve certain economic and public policy objectives.

*Original Proposed Rule*

The cost of developing affordable housing is increasing and there are fewer financial resources available. MaineHousing is instituting several changes to contain development costs and provide for a more efficient use of low income housing tax credits. One change is a new per unit cap on the amount of credit projects are eligible to receive based on the number of low income units, instead of a per project limitation, to allow the development of larger, more cost-effective housing projects. Another cost containment measure is a stricter per unit cap on developer fees. The developer fee cap replaces a former selection criterion that encouraged developers to defer receipt of a percentage of their fee as a source of funding for the development of the project. Finally, MaineHousing is limiting the amount of additional low income housing tax credits a project can receive after an application has been selected. Recently, a growing number of projects have experienced significant increased development costs from the time an application is selected to the time the project receives loan approval. The new limitation is based on an industry standard for determining whether a design professional has designed a project to budget.

MaineHousing made significant changes to the housing needs selection criteria. Concerns about the analysis MaineHousing has historically used to determine the housing need rankings in the qualified allocation plan has increased in recent years, most of which were concerns about MaineHousing's use of labor market areas as the basis for the needs analysis and the lack of reliable data on vacancy and market rent. MaineHousing shares some of these concerns and is replacing the former housing needs rankings with new selection criteria that are based on the need for affordable housing in service center communities, rather than labor market areas, and rely on vacancy data and data on rent comparables in the market studies required to be submitted with the application for low income housing tax credits. Because MaineHousing is relying on data in the market studies for purposes of scoring applications, all market studies must comply with the National Council of Affordable Housing Market Analysts (NCAHMA) Model Standards for Market Studies for Rental Housing. Previously, MaineHousing only encouraged market studies that met the NCAHMA guidelines. Also, MaineHousing has created a new selection criterion that encourages applicants to use NCAHMA members to prepare the market studies.

Another significant change is the creation of new selection criteria to encourage smart growth. The new criteria incorporate some of the smart growth criteria from the prior qualified allocation plan, but remove the State Planning Office from the determination process and substantially increase the relative weight of the category. The original proposed criteria focused the development of housing in downtowns and within safe walking distance of services important to daily life.

Other changes include: (i) changing certain selection criteria that all applicants pledge in their applications to threshold criteria, including minimum affordability and preference for persons on Section 8 and public housing waiting lists; (ii) changing the rural housing set-aside to a set-aside for the preservation of multi-family housing previously funded by Rural Development because of the lack of Rural Development funding for new multifamily housing construction; (iii) instituting a tie breaker mechanism for awarding credits to applications that have the same total score but for which MaineHousing does not have enough credits to fund both applications; (iv) modification of existing criteria to clarify or better effectuate the intent of the criteria; and (v) other updates, clarifications and grammatical changes.

The original proposed rule also eliminated the former project-based rental assistance selection criterion and established a new selection criterion to encourage the development of affordable housing in difficult to develop areas and qualified census tracts, in which projects are qualified for additional credit based on a regulatory 30% increase in the eligible basis of the project.

### *Substantial Changes to Proposed Rule*

In response to comments on the proposed amendments to the rule received during the public hearing and the extended comment period, MaineHousing is considering the following modifications, one or more of which modifications may be considered substantially different from what was proposed. The modifications under consideration include: (1) modifying the selection criterion that encourages smoke-free housing to clarify owners are required only to provide educational materials on tobacco treatment programs rather than provide access to tobacco treatment programs to residents to qualify for points under the criterion (Section 7.A.8. of the modified rule); (2) reinstating the project-based rental assistance selection criterion deleted in the proposed amendments to the rule, but excluding HUD project-based voucher assistance (Section 7.B.3. of the modified rule); (3) eliminating the proposed new selection criterion that would have encouraged the development of affordable housing in difficult to develop areas and qualified census tracts (former Section 7.C.4. of the originally proposed rule) and, accordingly, removing the criterion from consideration under the proposed new tie breaker mechanism (Section 7.E.2. of the originally proposed rule); and (4) further expanding the new comprehensive smart growth selection criterion to encourage the reuse or remediation of existing structures or previously developed sites as an alternative to development in or near downtowns (Section 7.C.5. of the modified rule). MaineHousing made these changes to the final Rule.

### *Process*

MaineHousing held a public hearing on June 25, 2007 to receive testimony on the proposed Rule. The following persons and organizations testified at the public hearing: John Anton, Chair-Elect of Maine Affordable Rental Housing Coalition; Tina Pettingill, Chair of The Smoke-free Housing Coalition of Maine; and Mr. Bernardin, Director of Acquisitions of The Caleb Foundation. MaineHousing held the comment period open until Friday, July 5, 2007. MaineHousing received written comments from organizations that testified at the public hearing and from other persons and organizations before and after the hearing, including: Maine Affordable Rental Housing Coalition; The Smoke-free Housing Coalition of Maine; Peter H. Piccirillo, President of Planning Insights, Inc.; Diane Hartley, Deputy Director of The Housing Partnership; John DelVecchio of the State Planning Office; Pamela M. B. Studwell, Senior Policy Analyst at the Maine Coalition on Smoking or Health; Tim Gooch, President of Best Apartments, Inc.; Lorna Fogg of Travois, Inc.; and Michael Bodaken, Executive Director of the National Housing Trust.

MaineHousing reopened the comment period on the Rule for a period of at least 30 days, ending at 5:00 PM on Friday, August 11, 2007 to accept comments on the substantial changes to the Rule. MaineHousing did not receive any comments on the substantial changes to the Rule during this period.

## Summary of Comments and Responses to Comments on Rule

A summary of the testimony and comments and MaineHousing's response to the testimony and comments follows.

### Section 4 of the Rule

#### *Set-asides*

**Comment:** Travois, Inc. commented MaineHousing should reinstate the rural housing set-aside, but remove the requirement that a project be located in Difficult to Develop Area or a Qualified Census Tract to qualify for the set-aside.

**Response:** Eligibility for the set-aside was previously limited to rural housing located in a Difficult to Develop Area or a Qualified Census Tract because residential rental projects in rural areas in Maine typically need the 30% increase in low income housing tax credits to make the projects feasible. HUD eliminated the great majority of Difficult to Develop Areas in Maine this year, which results in fewer feasible projects unless the applicant has alternative sources of funding to make up for the loss of additional credits. These additional funds are eligible for points under Section 7.B.1., thus already creating an advantage for those projects. RD has a significant portfolio of aging affordable housing. Often these projects only require minimal amounts of credit to be feasible, but would not compete well enough to win and award. RD has instituted a variety of programs to work collaboratively with the tax credit program in order to preserve and rehabilitate these aging projects. It is important that MaineHousing take this opportunity to assist in the preservation effort.

**Comments:** The National Housing Trust commented the State of Maine has a significant preservation problem: Project-based Section 8 rental assistance contractors for 103 properties with 3,678 assisted units will expire before the end of FY 2012, with 33 of the properties, including 1,438 assisted units owned by for-profit entities, and 353 rural Section 515 properties with 5,943 affordable units may be at risk due to high operating costs, low rents and physical deterioration.

The National Housing Trust supports the RD Set-aside, but suggests MaineHousing increase the amount of the set-aside to \$350,000 and limit the use of the tax credit equity to rehabilitation.

The National Housing Trust expressed it supports MaineHousing's priority and the scoring criterion for the rehabilitation of existing multifamily housing and commented MaineHousing has preserved at least 15 properties containing 914 units through its tax credit programs. In addition to these efforts, The National Housing Trust encouraged MaineHousing to create a larger tax credit set-aside for all proposals involving the preservation and rehabilitation of existing multifamily rental housing, not only rural housing.

**Response:** The \$350,000 credit limit for the former rural housing set-aside contemplated the cost of newly-constructed housing. MaineHousing set a smaller credit limit for the RD set-aside because the cost of rehabilitating the average-sized RD project in the State is much less and will require far less credit, which is one of the benefits of preserving existing

housing, as pointed out by the National Housing Trust in its comments on the Rule. MaineHousing currently offers a variety of programs aimed at preserving other existing multifamily rental housing, including existing Section 8 projects. To date these programs have worked well and the number of expiring Section 8 owners that opt out of their contract is very minimal.

#### ***Section 4.E. – Maximum Credit Restriction***

**Comment:** Travois, Inc. commented the tax credit caps are too low for many projects on tribal land, which have higher construction costs because projects on tribal land are located in rural areas and have higher construction bids due to tribal employment rights and other procurement issues.

**Response:** The tax credit caps were established based on a review of project costs over the most recent years when construction costs increased rapidly. This review included a variety of project types and locations, including rural areas and tribal land. MaineHousing understands that there are particular issues with respect to developing on tribal land and has contacted Travois, Inc. to set up a meeting to specifically understand these issues and further the working relationship between the tribes and MaineHousing.

### **Section 6 of the Rule - Threshold Application Requirements**

#### ***Section 6.A. – Affordability restrictions***

**Comment:** Travois, Inc. commented MaineHousing should create a scoring criterion to award points to projects that set aside units for lower income persons and families, i.e. 30%, 40% and 50% area median income, and reduce rents to levels affordable to such lower income persons and families, the points to be awarded based on a sliding scale with the most points awarded to projects serving the largest number of persons and families with income at or below 30% of area median income.

**Response:** The tax credit program provides capital resources to developers, not operating subsidies. There are many locations in Maine where the tax credit rent cannot support the operating cost of the unit if the rental limits are set much below 50% of area median income. MaineHousing does not currently offer any rental subsidy in conjunction with the QAP. It is acceptable for applicants who can provide a secure rental subsidy to the project to offer units at lower levels of area median income. MaineHousing rewards projects with project-based rental assistance under the scoring criterion in Section 7.B.3 of the Rule.

#### ***Section 6.B. – 90 years of affordable rental housing***

**Comments:** Travois, Inc. commented MaineHousing's 90-year affordable rental housing requirement is inconsistent with the unique housing needs of tribal communities; homeownership is more consistent with the housing needs in these communities. Travois, Inc. commented some states award points for homeownership and allow rental units to be sold to tenants after the 15-year compliance period and cited a recent private letter ruling allowing a tax credit project to replace its

existing 30-year affordability period with a Year 15 option-to-buy conversion plan.

Travois, Inc. recognized that some states are concerned about the loss of affordable rental housing if rental units convert to homeownership after the compliance period, but commented that allowing rental units to become homeownership units after the 15-year compliance period does not decrease the affordable rental housing stock, because the low-income renters will be the persons purchasing the homes and not moving to another rental unit. Travois, Inc. suggested that MaineHousing could place affordability restrictions on the homeownership units to keep the units affordable for subsequent owners if MaineHousing is concerned with keeping the units affordable, although Travois believes that allowing homeowners to accumulate equity and cash out better the lives of the homeowners.

Travois, Inc. commented that homeownership is difficult on tribal land, because banks are hesitant to loan money. The only options are to pay cash, purchase a mobile home or purchase an existing home previously constructed with HUD funds which need substantial repair and are not energy efficient.

Travois, Inc. commented that the tax credit program has become increasingly important with the steady reduction in direct federal housing assistance historically available to tribes, and urged MaineHousing to modify the QAP to allow developers to convert projects to homeownership after the initial 15 year compliance period.

**Response:** According to our housing need statistics, there are approximately 23,400 renter households that earn between 40 and 60% AMI and only 18,300 rental units available to them that are subject to restrictive rental covenants and/or rental assistance contracts. That leaves a deficit of 5,100 units for these renters. MaineHousing produces an average of 150 rental units each year under the QAP. MaineHousing is committed to continuing to produce long-term restricted rental units, yet the resources available for the development of rental housing in the State are becoming more limited; the federal low income housing tax credit is one of the few remaining resources.

MaineHousing is concerned about decent, safe and affordable housing for all persons in Maine, including persons living on tribal lands. Although tribal lands are technically not within MaineHousing's area of operation, MaineHousing includes the tribes in developing MaineHousing's consolidated plan. MaineHousing established the Indian Mortgage Insurance Program to help Native Americans qualify for residential mortgage loans. Since 2001 MaineHousing has provided approximately \$1,205,469 for the construction of three adult family care homes to keep Native American seniors on tribal land. In 2003 MaineHousing awarded \$500,000 in low income housing tax credits and \$560,000 in subsidy for the construction of a 28 unit tax credit project on tribal lands.

MaineHousing agrees that homeownership on tribal lands is important and looks forward to working with Maine's Native American tribes, as it has historically, to address the housing needs on tribal lands. As noted above, MaineHousing has reached out to Travois, Inc. to schedule a conversation to address issues such as homeownership on tribal lands.

#### ***Section 6.D.6. - Growth management requirements***

**Comment:** Travois, Inc. commented an Indian Housing Plan should be accepted as the comprehensive plan for tribal lands.

**Response:** If an Indian Housing Plan is the equivalent of a comprehensive plan, and an applicant can show that a project on tribal land is located in an area designated by the Tribe as a growth area, then the applicant should satisfy this requirement.

#### ***Section 6.D.9. – Market study requirements***

**Comment:** Planning Insights, Inc. expressed concern that MaineHousing and investors are relying on market studies that are older than one year and recommended MaineHousing limit the shelf life of market studies.

**Response:** The market analysts who prepare these studies have the professional expertise to determine when the market conditions warrant an update or totally new study. They should set forth these parameters in the market studies in accordance with the NCAHMA guidelines.

#### ***Section 6.D.10. – Green building standards***

**Comment:** The National Housing Trust “enthusiastically” supports MaineHousing’s prioritization of projects that incorporate green design and construction methods and its requirement that all projects comply with the green buildings standards, particularly the inclusion of green standards for rehabilitation projects.

**Response:** MaineHousing is committed to producing and rehabilitating the most environmentally conscious and durable housing possible. Support for that objective is always appreciated.

### **Section 7 of the Rule - Selection Criteria**

#### ***Section 7.A.4. – Family housing***

**Comment:** The Maine Affordable Rental Housing Coalition supports giving scoring priority to developments that serve families, but commented MaineHousing should modify the criterion to award points to projects without age restrictions and allow the market to determine the appropriate unit mix rather than dictating the number of two and three or more bedroom units.

**Response:** The Code requires MaineHousing to have a selection criterion that includes tenant populations of individuals with children. MaineHousing’s interpretation of this requirement has consistently been that individuals with children need a unit with a minimum of two bedrooms. To give points to a project simply because it has no age restriction does

not meet the intent of the Code. To date MaineHousing has not received market data that would warrant changing the bedroom mix currently required under this scoring criterion.

**Comment:** The National Housing Trust suggested MaineHousing modify the family housing criterion to require a lower percentage of multiple-bedroom units in projects involving the rehabilitation of existing multifamily housing, because these project have established floor plans that may be costly to modify.

**Response:** The current bedroom mix required under this criterion has not been a problem for any projects involving the rehabilitation of existing family housing. Potential applicants should meet with members of MaineHousing's Construction Services staff to discuss any such issues prior to making an application.

#### ***Section 7.A.5. – Tenant Ownership***

**Comment:** Travois, Inc. requested MaineHousing consider its comments on the 90-year affordable rental housing threshold requirement.

**Response:** A summary of these comments is set forth above. The Code requires MaineHousing to give consideration to eventual tenant ownership in its selection criteria. This one-point category satisfies that requirement.

#### ***Section 7.A.6. – Municipal Approvals/Readiness***

**Comment:** Travois, Inc. commented projects on tribal lands should be awarded the maximum points under this category, because they are not subject to an official approval process required for construction, e.g. zoning and building permit regulations.

**Response:** The purpose of this criterion is to reward projects that have all necessary approvals and are ready to proceed to construction. Projects on tribal land are subject to approval by the Tribe. Projects that have been approved by the Tribe and are authorized to proceed to construction would be eligible for the points under this selection criterion. Applicants must submit plans and specifications for the design of projects to MaineHousing's Construction Services Manager for review and approval in accordance with *MaineHousing's Design and Construction Manual* and applicable codes.

#### ***Section 7.A.8. – Smoke-free housing***

**Comment:** The Smoke-free Housing Coalition of Maine and the Maine Coalition on Smoking or Health recommended MaineHousing modify the wording in the selection criterion to clarify applicants are not required to offer tobacco cessation classes or programs, but to provide information about these resources, including the phone number for the statewide Maine Tobacco Helpline, to residents.

**Response:** We incorporated the suggested language changes in the Rule. MaineHousing did not intend to require owners to directly provide these services. This change clarifies our intent.

**Comment:** The Maine Coalition on Smoking or Health commented MaineHousing should increase the number of points awarded under this criterion to 3 points to reflect that ensuring good air quality in projects is a high priority of MaineHousing.

**Response:** The purpose of the Project Characteristics scoring criteria is to provide an incentive for applicants to include certain amenities and design features and offer certain benefits to residents that they may not otherwise do without the incentive. Nearly all of the applicants to last year's QAP pledged smoke-free housing. We do not believe that increasing the points under this criterion will create a greater incentive.

### ***Section 7.B.1. – Leveraged funds/below-market funding***

**Comment:** Travois, Inc. commented Native American Housing and Self Determination Act (NAHASDA) funds, which are federal tribal housing funds and are often subject to the applicable federal rate, should qualify as leveraged funds under this selection criterion.

**Response:** Any below market funding source that meets the requirements in Section 7.B.1. will be considered, and depending on how the NAHASDA funds are structured in a transaction, they may qualify as below market funding eligible for points under this selection criterion.

### ***Section 7.B.2. – Donation or transfer of property for nominal value***

**Comment:** Travois, Inc. requested MaineHousing award partial points for the lease of tribal land and the sale of homes to partnerships for projects involving acquisition and rehabilitation on tribal lands.

**Response:** The purpose of this scoring criterion is to reduce the cost of a project. Purchasing buildings for the purpose of generating acquisition tax credits increases the cost of a project and the amount of tax credits which defeats this purpose.

### ***Section 7.B.3. – Project-based rental assistance***

**Comment:** The Maine Affordable Rental Housing Coalition commented MaineHousing should restore the scoring criterion that rewards projects that have a commitment of new project-based rental assistance, except Section 8 project-based vouchers, and should increase the points under the scoring criterion. The Maine Affordable Rental Housing Coalition recognizes project-based rental assistance is rare and shrinking, but pointed out Rural Development is providing a small amount of rental assistance for its new Section 515 developments and HUD Section 202 and 811 developments, which can now leverage low income housing tax credits as a funding source, have Section 8 project-based rental assistance.

**Response:** MaineHousing agrees with the commenter that project-based rental assistance is valuable and projects that have a commitment of new project-based rental assistance should be rewarded. MaineHousing originally proposed to delete this scoring criterion, because the only source of project-based rental assistance that appeared to be available is Section 8 project-based vouchers. Because PHA's cannot rely on the QAP to award Section 8 project-based vouchers to projects if projects are awarded points under the QAP for having a commitment of such vouchers under the Section 8 regulations, MaineHousing decided to delete the scoring criterion. MaineHousing recently became aware that Rural Development has added a small amount of rental assistance back to its budget for new Section 515 multifamily housing developments. MaineHousing also recognizes tax credit developers are beginning to use low income housing tax credits in HUD Section 202 and 811 developments, now that several regulatory hurdles have been removed or addressed to allow the combination of these funds in developing multifamily housing projects. As a result, MaineHousing has reinstated the scoring criteria, but removed Section 8 project-based vouchers. While MaineHousing agrees that project-based rental assistance is valuable, there is a natural financial incentive for developers to pursue project-based rental assistance to make projects financially stronger than projects without project-based rental assistance. We believe 3 points is a sufficient additional incentive for developers to pursue project-based rental assistance.

#### ***Section 7.C.1. – Need***

**Comments:** The Caleb Foundation and The Housing Partnership commented MaineHousing should grandfather any application from the 2007 QAP round that received points under Section 7.C.1. for being located in a "Very High Need Market Area" because they invested significant funds to locate their projects in areas where developers were encouraged to locate projects under the 2007 QAP.

**Response:** MaineHousing will not grandfather an applicant from a previous QAP that received maximum points under a similar category because it would improperly favor one applicant over another in the upcoming competition. MaineHousing replaced the former needs scoring criterion from labor markets to service center communities in order to focus more intensely in these areas. In making this change, MaineHousing was mindful of the impact this would have on proposals to the 2007 QAP that were not successful.

#### ***Former Section 7.C.4. – DDA/QCT***

**Comments:** The Maine Affordable Rental Housing Coalition recommended MaineHousing delete the scoring criterion that would reward projects located in a DDA or a QCT, because the process HUD uses to determine DDAs is not indicative of the housing needs of the State and, arguably, QCTs promote concentration of poverty. Travois, Inc. expressed concern about the lack of DDAs and QCTs in the state.

**Response:** MaineHousing initially proposed the criterion to encourage the development of affordable housing in DDAs and QCTs in which projects are eligible for additional credit based on a regulatory 30% increase in the eligible basis of the projects. MaineHousing

agrees with the comments about the designation of DDAs and believes there is a sufficient financial incentive to locate projects in these areas without a scoring incentive. Therefore, MaineHousing has removed the scoring criterion.

#### ***Current Section 7.C.4. - Community Revitalization***

**Comment:** Travois, Inc. commented that an Indian Housing Plan should be accepted as the community revitalization plan. Travois, Inc. also questioned the extra point for projects located in a QCT, because of the lack of DDAs and QCTs in the State.

**Response:** As long as the Indian Housing Plan indicates that the project is part of a community revitalization effort and the applicant provides a copy of the plan and evidence of adoption of the plan by the Tribe, an applicant would be eligible for points under this selection criterion.

#### ***Section 7.C.5. – Smart Growth/Downtown***

**Comment:** The Maine Affordable Rental Housing Coalition expressed its supports MaineHousing's efforts to prioritize smart growth in the scoring process, but commented the focus on development in downtowns is too narrow. The Maine Affordable Rental Housing Coalition suggested MaineHousing use GrowSmart Maine's criteria as a point of reference and look at projects developed under past QAPs through the filter of the proposed scoring criterion.

**Response:** MaineHousing has reviewed GrowSmart Maine's criteria and met with the head of the organization. GrowSmart Maine's criteria are more broad based and cover more than housing. However, MaineHousing agrees that the reuse of existing buildings and formerly developed sites that are outside of downtown can be considered smart growth and green and has expanded the scoring criterion accordingly.

**Comment:** The State Planning Office commented the definition of downtown excludes smaller scale, mixed-use village centers. The commenter also suggested MaineHousing clarify that wide paved shoulders in the definition of safe walking distance must be plowed and require applicants to indicate who is responsible for ensuring that the entire safe walking distance is plowed and maintained. Finally, the commenter supports the link to places of employment, but questioned what level of employment fulfills the criterion, e.g. a year-round car wash/garage with two full-time employees.

**Response:** Smaller scale, mixed-use village centers were intentionally excluded from consideration because of the absence of a definition that can be consistently applied during the evaluation process. The use of the words "year-round" in the definition of a "safe walking distance" on page 27 are meant to include winter use and any plowing necessary to maintain the route. The size of business or businesses providing employment opportunities is not specifically mentioned because it is entirely possible that there would be several smaller opportunities that when added together create enough of a mass to provide sufficient opportunities.

**Comment:** Travois, Inc. commented it would be extremely rare for projects on tribal land to meet the smart growth criteria because of the inherent cultural differences that encourage scattered single family developments on tribal land and the tribes should not be penalized for their lack of housing density and inability to locate housing near community resources. The commenter suggested MaineHousing should exempt projects on tribal land from the criteria and create a set-aside for projects located on tribal land or a scoring criterion for projects located on tribal land that equals the total points available under the smart growth scoring criterion.

**Response:** MaineHousing considers smart growth a critical component of the QAP and disagrees with the commenter that project's located on tribal lands cannot meet the requirements of the category. It is likely that there exists an organized area which encompasses a variety of services, civic and religious destinations, and public spaces. Applicants are responsible for pointing out characteristics of the community that are consistent with the criteria in an effort to receive points.

**Comment:** Mr. Gooch disagrees with the criterion and how the term smart growth is used in the criterion. Mr. Gooch questioned the criterion's focus on downtowns when jobs and activities of daily living are located in business parks and shopping malls, which are not located downtown. If people live downtown, they will have to commute to work, to shop and for recreation which causes urban sprawl, which is more harmful for the environment and the State. Mr. Gooch commented MaineHousing should continue to redevelop old downtowns, but should develop new areas too. He suggested MaineHousing meet with GrowSmart Maine to develop smart growth criteria.

**Response:** The number of projects produced under the QAP annually is very limited, so it is important to give an advantage to projects that meet MaineHousing's priorities. Currently the state as a whole is focused on re-energizing and revitalizing Maine's downtowns, as recommended within the report from the Brookings Institute. As previously mentioned, MaineHousing staff have met with representatives of GrowSmart Maine and have received positive feedback and support for the smart growth criterion proposed in the QAP. MaineHousing staff will be scheduling future meetings with GrowSmart Maine.

#### ***Section 7.D.1. and Section 7.D.2. – Experience of developer***

**Comment:** Travois, Inc. commented that tribal housing authorities have little or no experience with the tax credit program, but are very experienced in developing low-income housing and the associated administrative requirements. As such, tribal housing authorities should be awarded points under these selection criteria if they contract with a company, like Travois, to provide oversight and training in developing tax credit projects until the tribal housing authority becomes proficient.

**Response:** The purpose of these selection criteria is to reward experienced, successful developers and owners of housing. Tribal housing authorities do not have to have experience with tax credit projects to be eligible for points under the selection criterion in Section 7.D.1 in the QAP. They can also have experience with MaineHousing under other programs, provided that they have not been in default within the last 5 years. MaineHousing has experience with different tribal housing authorities during the last several years through other programs.

The purpose of the selection criterion in Section 7.D.2. of the QAP is to reward developers with tax credit experience. The regulations relating to the development of low income housing tax credit projects are distinct and more complicated than those associated with other affordable housing programs. Developers without tax credit experience who hire consultants with tax credit experience are not eligible for these points, so inexperienced tribal housing authorities that hire a tax credit consultant should not be eligible.

#### ***Section 7.D.4. - Experience of manager***

**Comment:** Travois commented that tribal housing authorities have little or no experience with the tax credit program, but are very experienced in managing low-income housing and the associated administrative requirements. Tribal housing authorities should not be forced to enter into management arrangements with a for-profit management agent, because they have significant philosophical differences about how to manage housing. Investors are comfortable with tribal housing authorities managing tax credit projects with oversight and training. Tribal housing authorities should be awarded points under this selection criterion if they contract with a company to provide oversight and training until the tribal housing authority becomes proficient.

**Response:** The specific purpose of this selection criterion is to reward developers who use management companies that are experienced in managing tax credit projects. The regulations relating to the management of low income housing tax credit projects are distinct and more complicated than those associated with other affordable housing programs. MaineHousing does not require tribal housing authorities to hire a management agent. Tribal housing authorities can choose to manage their own properties. However, other owners without tax credit experience who choose to manage their own projects or who hire management companies without tax credit experience are not eligible for these points, so tribal housing authorities without tax credit experience who choose to manage their own projects, even with the oversight of a consultant, should not be eligible.

#### ***Section 7.D.4. – NCAHMA-certified market analysts***

**Comment:** Planning Insights, Inc. “strongly” recommends MaineHousing delete/remove the scoring criterion that rewards proposals that include a market study prepared by a NCAHMA member, because there are only two firms in New England that are NCAHMA members and the cost of becoming a member would exceed \$7,000. Planning Insights, Inc. commented it has 15 years experience preparing market studies, and MaineHousing, Rural Development and HUD have relied on its market studies.

**Response:** To date, MaineHousing has not heard of any potential applicants having a problem finding NCAHMA members to perform their market analysis and initial feedback has shown that there are more than two firms in New England with NCAHMA members. MaineHousing added new scoring criteria in the QAP which rely heavily on the data in market studies. As a result, MaineHousing is requiring all market studies conform to the NCAHMA guidelines and created this one-point selection criterion to reward applicants who

use NCAHMA members to prepare their market studies. Applicants are not required to use a NCAHMA member; they get one point if they do.

## **Proposed New Selection Criteria**

### **Section 8 – Project Evaluation**

#### ***Developer Fee Caps***

**Comment:** The Maine Affordable Rental Housing Coalition supports the elimination of the scoring criterion that rewarded developers to defer developer fee to fund projects, and is not opposed to a cap on developer fees, but suggests MaineHousing establish a cap on net developer fees rather than gross developer fees so projects that need additional capital can maximize gross developer fees to increase the eligible basis of a project to support additional tax credits.

**Response:** MaineHousing is entrusted by the U.S. Department of the Treasury to be as efficient as possible with the allocation of low income housing tax credits. Allowing gross developer fees to be higher than reasonable solely for the purpose of creating feasibility is not an efficient use of the Credit.

#### **General Comments**

**Comment:** The Maine Affordable Rental Housing Coalition commented MaineHousing should increase the maximum possible score under the QAP to 100 points, because (a) the exercise of changing the scoring will compel parties to assess the importance they assign to each category, and (b) a 100-point base offers users a quick reference point for understanding the importance of an individual scoring category.

**Comment:** The Maine Affordable Rental Housing Coalition suggested MaineHousing review the weighting of the scoring categories against its priorities.

**Response:** This year in particular there was a marked difference from the previous year in the overall achievable score under the QAP because MaineHousing made certain long-standing significant scoring criterion threshold criterion. Each time the QAP is re-drafted, staff spend time reviewing the relative importance of each individual scoring criterion and each category of scoring criteria to ensure that the scoring emphasis reflects MaineHousing's priorities as set forth in the QAP.

**Comment:** The Maine Affordable Rental Housing Coalition suggested MaineHousing adopt the proposed QAP for 2008 only, because MaineHousing made significant changes to the QAP this year and may want the opportunity to refine some of the changes after a year's experience.

**Response:** MaineHousing decided that, based on the changes, at least two years of experience is necessary to determine if the changes achieve the intended result. If after the first year MaineHousing wants to make changes to the QAP, MaineHousing can go through the rulemaking process.

**FISCAL IMPACT OF THE RULE:** The sale of the 2008 State ceiling of low income housing tax credits is projected to raise approximately \$23,500,000 in equity and the sale of the 2009 State ceiling of low income housing tax credits is projected to raise approximately \$24,000,000 in equity. The equity generated by the sale of the low income housing tax credits will be used to develop affordable housing for low-income persons. The proposed amendments will not impose any costs on municipalities or counties for implementation or compliance.

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

**EFFECTIVE DATE:**

**BASIS STATEMENT:**

The *Housing and Economic Recovery Act of 2008*, effective July 30, 2008, made significant changes to the federal low-income housing tax credit program administered pursuant to Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"). The federal law increases the State ceiling of low-income housing tax credits for 2008 and 2009 and makes other changes that affect low-income housing tax credit projects that have not yet been placed in service, including projects which applied for an allocation of the 2008 State ceiling of low-income housing tax credits and were selected for further processing this year and projects which have received a carryover allocation of low income housing tax credits. Some of the changes to the Code require modifications to the Rule. The most significant change gives housing credit agencies the discretion to develop standards for designating areas within their respective states as "difficult to develop areas" that qualify for a 130% adjustment in the eligible basis of the project, which is the basis for calculating the amount of low income housing tax credits a project is eligible to receive under Section 42 of the Code. Historically, only projects located in HUD-designated high-cost areas, known as "Qualified Census Tracts" and "Difficult to Develop Areas," were eligible to receive the 130% basis adjustment. For purposes of the 2008 State Ceiling and the 2009 State Ceiling, MaineHousing has designated the entire State of Maine as a "difficult to develop area" in which projects that need the 130% basis adjustment to be financially feasible will be eligible. MaineHousing has designated the entire State of Maine because of the high cost of developing housing in the State, the low median income of the State's population, and the high annual operating costs, which continue to increase dramatically with the cost of heating oil rising, relative to the rest of the United States. Other changes to the Rule include the following: (1) increasing the per unit caps on the amount of low-income housing tax credits projects are eligible to receive to realize the benefit of the increase in the State ceiling for 2008 and 2009 and the change in the credit rate to the greater of 9% or the credit rate as it has been calculated in accordance with Section 42 of the Code; (2) adding a scoring criterion for projects that include the rehabilitation of a certified historic structure and use capital generated from both the federal and State historic preservation tax credits for the development of the project to comply with the federal requirement that housing credit agencies include a selection criterion in their qualified allocation

plans regarding the historic nature of a project; (3) designating MaineHousing's Green Building Standards as a selection criterion to comply with the federal requirement that housing credit agencies include a selection criterion in their qualified allocation plans encouraging the energy efficiency of a project and amending MaineHousing's Green Building Standards to require the installation of solar assist (preheat) domestic hot water systems in projects; (4) extending the time period for projects that receive a carryover allocation to satisfy the 10% cost test to 12 months from the date a carryover allocation is made; (5) eliminating the annual income re-certification requirement for (i) projects in which all of the units in the project are subject to the applicable income limit of the minimum low-income set-aside for the project (i.e. either 100% of the units at 60% AMI or 100% of the units at 50% AMI), and (ii) units subject to the highest income targeting requirement in 100% credit-eligible projects subject to multiple income targeting requirements (e.g. 60% AMI units in a 100% credit-eligible project with multiple income targeting requirements, such as 60% AMI, 50% AMI and 40% AMI units); (6) removing the requirement that MaineHousing make tax-exempt financing available for projects financed under Rural Development's 515 Program to generate automatic low-income housing tax credits, because the historical barriers to allocating low-income housing tax credits from the State ceiling to federally-assisted projects have been removed by the federal law; (7) extending the deadline for submitting applications for the 2009 State ceiling of low income housing tax credits; (8) clarifying the requirements of the State's growth management law; and (9) making other updates, clarifications and grammatical changes.

**FISCAL IMPACT OF THE RULE:** The allocation of the original 2008 State ceiling of low income housing tax credits was projected to raise approximately \$23,500,000 in equity and the allocation of the 2009 State ceiling of low income housing tax credits was projected to raise approximately \$24,000,000 in equity. Based on the changes to Section 42 of the Code pursuant to the *Housing and Economic Recovery Act of 2008*, the changes in the tax credit market over the last year and the proposed changes to the Rule, the 2008 State ceiling of low income housing tax credits is now projected to raise approximately \$24,050,000, and the 2009 State ceiling of low income housing tax credits is now projected to raise \$23,700,000 in equity. The equity generated by the sale of the low income housing tax credits will be used to develop affordable rental housing.