



## 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 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. “Effective Date” means the effective date of this Rule set forth at the end of the Rule.
- 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 RHS.
- 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. “Metropolitan Statistical Area” means an area defined as such by the United States Office of Management and Budget.
- Z. “MaineHousing” means Maine State Housing Authority.

- AA. “Need Market Area” means the analysis of labor markets ranked as very high or high based upon review of specific populations of renter households and total subsidized housing units.
- BB. “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.
- CC. “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.
- DD. “Qualified Basis” means qualified basis as defined in Section 42(c) of the Code.
- EE. “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.
- FF. “Qualified Low-income Building” or “Building” means a building as defined in Section 42(c)(2) of the Code.
- GG. “Qualified Low-income Housing Project” or “Project” means a project as defined in Section 42(g) of the Code.
- HH. “Qualified Non-profit Organization” means an organization defined in Section 42(h)(5)(C) of the Code.
- II. “Rehabilitation Costs” means the expenses incurred or to be incurred which qualify as rehabilitation expenditures under Section 42(e) of the Code.
- JJ. “RHS” means the United States Department of Agriculture – Rural Housing Services.
- KK. “Section 8” means Section 8 of the United States Housing Act of 1937, as amended.
- LL. “State” means the State of Maine.
- MM. “State Ceiling” means the State housing credit ceiling established in Section 42(h)(3)(C) of the Code.
- NN. “Total Construction Cost” means the sum of site costs, structures costs, general requirements, bond premiums, and contractor overhead and profit.
- OO. “Total Development Cost” means the sum of Total Construction Costs; soft costs such as permits, engineering, legal; costs associated with obtaining and carrying financing package; and acquisition costs.

PP. “Very Low Income” means individuals or families whose income is at or below 50% of the area median income as defined by HUD.

## 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. Each year MaineHousing 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 2007 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 the elderly.
- B. In consideration of the housing needs identified above, MaineHousing has established the following housing priorities for allocation of the Credit:
1. Projects for larger families which reflect the greatest affordability, i.e. rental Projects that offer the lowest total monthly housing costs and are rent-restricted to the lowest income households.

2. 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.
3. Projects which attract new federal rental subsidies where the Credit is needed to make the Project feasible, including Projects with RHS funding.
4. Projects which meet the housing and service needs of distinct populations of a community including housing for persons who are Homeless.
5. Projects which provide housing for persons with Very Low Income.
6. Projects located in rural areas of the State.

4. State Ceiling

- A. The State Ceiling for the Credit for each calendar year will be the sum of:
  1. \$1.90 multiplied by (a) the cost-of-living adjustment determined in accordance with Section 1(f)(3) of the Code and (b) 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, indicate its desire to compete in this set-aside in its Application and receive the maximum points under Section 7.C of this Rule (Creation of Affordability for Lowest Income Tenants). 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. Rural housing Set-aside. \$350,000 of the annual available Credit will be set aside for Projects that are located in a municipality outside of a Metropolitan Statistical Area and are included in a Qualified Census Tract or Difficult to Develop Area. An Applicant must indicate its desire to compete in this set-aside in its Application and must receive the maximum points under Section 7.C of this Rule (Creation of Affordability for Lowest Income Tenants).
- 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, and a commitment by a qualified service provider(s) to provide the services described in the plan with its Application; and
  - 5. An Applicant must indicate its desire to compete in this set-aside in its Application and must receive the maximum points under Section 7.C of this Rule (Creation of Affordability for Lowest Income Tenants).

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 any single Project may receive is \$500,000, except as provided below.

MaineHousing, in its sole discretion, may allocate Credit in excess of the Maximum Credit Restriction to the highest scoring Project for which the Applicant submits a written request for excess Credit in its Application, provided that the total Credit awarded to the Project shall not exceed 30% of the 2007 State Ceiling.

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 ranked, MaineHousing will determine which Applications will be selected for a reservation of Credits. The deadline for submitting all Applications for 2007 Credit, including Applications for the Set-asides in Section 4 of this Rule, is 5:00 PM on Friday, December 1, 2006. 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. Under Section 42 of the Code 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, subject to the overall limitation on Credit allocation described 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.E.5. (addressed in the subsection 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.E.5. 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. Notwithstanding the foregoing, selected contractors and subcontractors that indicate they provide an eligible group health insurance plan (as defined in Section 7.E.5. of this Rule) 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.

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 Credits that were originally awarded to the Applicant.

If MaineHousing awards points under Section 7.E.5. 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 2007 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 established by MaineHousing.
- B. An Applicant shall agree to maintain the affordability pledged in its Application pursuant to Section 7.C. of this Rule and to keep the low-income 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 agreement to maintain the affordability pledge pursuant to Section 7.C. of this Rule for 90 years, the resident service coordination threshold requirement set forth in Section 6.D.13. 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 Maine Secretary of State, (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 creation of multi-family residential rental property, must be located in a locally designated growth area as identified in the applicable municipality's comprehensive plan. If a municipality has not designated growth areas in its comprehensive plan, 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. The study must be conducted at the Applicant's expense by a qualified professional acceptable to MaineHousing.

The National Council of Affordable Housing Market Analysts (NCAHMA) has adopted guideline documents detailing its standards for definitions and content in an affordable housing market study. MaineHousing strongly encourages Applicants to direct their market analyst to produce a market study consistent with the NCAHMA guideline materials and standards. Any deviation from the guideline materials and standards must be explained in a cover letter submitted by the market analyst with the study.

If, during the course of its review, MaineHousing determines that the market study submitted is inadequate, MaineHousing will require the Applicant to 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 adopted as of the Effective Date, MaineHousing's Green Building Standards in effect as of the Effective Date 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. MaineHousing reserves the right to require additional information it deems necessary in order to process an Application.
- F. 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 34 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. A Project that incorporates one or more of the items listed below will receive 1 point for each category of item provided:
    - a. An on-site community room developed as part of the Project.
    - b. Computer(s) for tenant use in a common area.
    - c. Necessary infrastructure for cable, DSL or wireless Internet service in all units and such service is provided to the tenants free of charge.
    - 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. Project located within  $\frac{1}{4}$  mile of a designated pick-up location for a year-round, regularly scheduled means of public transportation.
  - f. Area(s) for activities either provided on-site at the Project or public access is within  $\frac{1}{2}$  mile of the Project, which 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. If there is a fee or membership is required to use the equipment or facility, it is not eligible in this category.
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 3 points. The Applicant must commit to maintain a waiting list for the persons for whom the preference is given and to provide access to services appropriate to such persons.
  4. A family Project 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 should 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 that has a letter from the State Planning Office supporting the Project as promoting the principles of smart growth and minimizing the effects of sprawl will receive 2 points. The Applicant must submit the letter of support with its Application.
  8. A family Project that is designed and constructed to provide a higher level of accessibility will receive up to 4 points. An elderly Project 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. The Applicant must submit a certification from a qualified architect that specifically identifies which units in the Project meet the minimum State and Federal accessibility requirements and which units are designed to meet the requirements of this category (“Voluntary Pledges”).

9. 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, offer access to a smoking cessation program through the resident service coordinator to all of the residents of the Project and provide an accessible, designated smoking area on-site, but not within any of the buildings containing residential units or common areas, for residents of the Project and their guests. In the Application the Applicant shall commit to satisfy these requirements and include smoking cessation programs within the detailed service plan submitted pursuant to Section 6.D.13. of this Rule.

B. Leveraged Funds (maximum of 18 points).

An Applicant that proposes to leverage funds for a Project from a source other than MaineHousing will receive up to 18 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.

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 October 31, 2006 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. Up to 3 points will be awarded based on the percentage of Developer Fee left as a source of funds for the Project:

No Developer Fee loan will receive 0 points

≤ 25% Developer Fee loan will receive 1 point

> 25% Developer Fee loan will receive 3 points

Alternatively, the maximum 3 points will be awarded if the Developer Fee recognized and charged to the Project is less than 75% of the maximum allowable Developer Fee as described in Section 8.E. of this Rule.

4. A Project that has a commitment of new project-based rental assistance 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

5. 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 2 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.

C. Creation of Affordability for Lowest Income Tenants (maximum of 30 points).

1. 30 points will be awarded for a pledge of 60% or more of the total units in a Project to persons with income at or below 50% of Area Median Income.
2. Applicants that are also applying for financing for the Project from RHS will receive 30 points in this category for meeting the affordability of the applicable RHS program.

Applications for any Set-aside in Section 4 of this Rule must maximize points in this category to be eligible for the Set-aside.

D. Project Location (maximum of 28 points).

1. Projects proposed in a VERY HIGH Need Market Area as determined by MaineHousing will receive 20 points, projects proposed in a HIGH Need Market Area as determined by MaineHousing will receive 15 points

a. Statewide Subsidized Housing Ranks for Applicants Not Applying under the Housing for Persons who are Homeless Set-aside:

Labor Market	Families Statewide Ranking
Augusta	High
Bangor	High
Belfast	High
Bridgton-Paris	High
Brunswick	High
Calais	High
Ellsworth	Very High
Farmington	Very High
Houlton	Very High
Lewiston-Auburn	High
Machias	High
Pittsfield	High
Portland - S. Portland - Biddeford	Very High
Portsmouth, NH-ME	Very High
Presque Isle	High
Rochester-Dover, NH-ME	Very High
Rockland	Very High
Rumford	High
Sanford	High
Skowhegan	High
Waterville	High
York	Very High

Labor Market	Seniors Statewide Ranking
Augusta	High
Bangor	High

Belfast	High
Boothbay Harbor	Very High
Bridgton-Paris	High
Brunswick	Very High
Camden	High
Dover-Foxcroft	High
Ellsworth	Very High
Farmington	Very High
Lewiston-Auburn	High
Lincoln	Very High
Pittsfield	High
Portland-S. Portland-Biddeford	High
Portsmouth, NH-ME	Very High
Presque Isle	High
Rochester-Dover, NH-ME	Very High
Rockland	High
Rumford	High
Sanford	Very High
Skowhegan	High
Waldoboro	Very High
Waterville	High
York	Very High

b. Housing for Persons who are Homeless Set-Aside Housing Ranks:

Region	Ranking
Augusta	Very High
Bangor	Very High
Bridgton-Paris	High
Brunswick	Very High
Belfast	High
Ellsworth	Very High
Lewiston-Auburn	Very High
Machias	High
Portland-South Portland-Biddeford	Very High
Presque Isle	High
Rockland	High
Rumford	High
Sanford	High
Skowhegan	High
Waterville	High

- c. Native American tribal lands are considered a Very High Need Market Area regardless of the targeted population or participation in a Set-aside in Section 4 of this Rule.
2. 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.
  3. Projects that demonstrate preferential treatment for low income tenants whose names are on a public housing or Section 8 waiting list will receive 2 points.
  4. A Project located in a Service Center Community with a population exceeding 15,000 residents will receive 3 points. These communities include:

Augusta	Lewiston	Scarborough
Auburn	Portland	South Portland
Bangor	Saco	Waterville
Biddeford	Sanford	Westbrook
Brunswick		

E. Sponsor Characteristics (maximum of 11 points).

1. Applicants, or any principal thereof, who have had prior experience with MaineHousing and have not been declared in default by MaineHousing in the last five (5) years, or who have successfully developed Qualified Low-Income Housing Projects in other states will receive 2 points.
2. Applicants, or any principal thereof, who have prior experience with Qualified Low Income Housing Projects and who have not been issued an IRS Form 8823 or had an IRS audit finding resulting in a re-capture event, or have not been a principal of any other entity that has been issued an IRS Form 8823 or had an IRS audit finding resulting in a re-capture event in the last three (3) years will receive 2 points. 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.E.3.a (ii) and (v).
- 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.E.3.a (ii) and (v).
- 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.E.3.a (ii) and (v).

- e. A public housing authority will be deemed to satisfy the requirements of Section 7.E.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.E.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.E.3. 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 (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.

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 use 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 return to the developer from the Project in two or fewer years will be included in the Developer Fee calculation.

The standard Developer Fee to be recognized for purposes of calculating the Credit must separately identify two components: (1) overhead and (2) profit. Together these two components will 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 Developer Fees.

The level of risk associated with developing the Project will be considered when determining whether the recognized fee should exceed the standard. In extenuating circumstances, as determined by MaineHousing, the maximum recognized fee may equal up to 20% of the Housing Development Costs plus 15% of the costs of acquisition of land, existing buildings and equipment, all determined without regard to Developer Fees and without regard to Section 42(d)(5)(C) of the Code. Extenuating circumstances might include a difficult local approval process, the overall size of a Project to be undertaken, renovations qualifying for historic tax credits, contribution of Developer Fees to the Project in the form of reserves or equity loans or demonstration that other sources of subsidy are not available.

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, the Authority 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 Credits or receipt of Credits 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. Proposals facing increased Project development costs and, therefore, potentially qualifying for less than a substantial amount of additional Credit, may request additional Credit and not be subject to funding rounds. However, such requests will be subject to Credit availability and any decision to favor such requests will be at the sole discretion of MaineHousing.
- 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.
5. Must provide a comprehensive market study of the housing needs of low-income persons in the area to be served by the Project. The study must be conducted at the Applicant's expense by a qualified professional acceptable to MaineHousing.

The National Council of Affordable Housing Market Analysts (NCAHMA) has adopted guideline documents detailing its standards for definitions and content in an affordable housing market study. MaineHousing strongly encourages Applicants to direct their market analyst to produce a market study consistent with the NCAHMA guideline materials and standards. Any deviation from the guideline materials and standards must be explained in a cover letter submitted by the market analyst with the study.

If, during the course of its review, MaineHousing determines that the market study submitted is inadequate, MaineHousing will require the Applicant to submit a new market study. MaineHousing reserves the right to commission its own market study.

- 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. Satisfactory evidence that the Applicant's basis in the Project at the end of the calendar year will exceed 10% of Applicant's reasonably expected basis in the Project at the end of the second calendar year following the calendar year in which the carryover allocation is made. Projects receiving a carryover allocation after June 30 of the credit year will have six (6) months from the date of the allocation to provide evidence that the Applicant's basis in the Project will exceed 10% of the Applicant's reasonably expected basis in the Project at the end of the second calendar year following the calendar year in which the carryover allocation is made. The entity satisfying the 10% basis test set forth in this subsection must be the same entity that receives the allocation of Credit.
  4. Status report on the progress of development of the Project and the likelihood of the Project proceeding to completion.

5. 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 the 10% basis test referred to in Section 11.A.3. of this Rule has been satisfied, 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. **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.A.3. 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 resident service coordinator threshold requirement set forth in Section 6.D.13.) 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 sold, as opposed to 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. MaineHousing will make tax-exempt financing available to Projects that are financed under the RHS 515 Program to enable the Projects to receive 4% Low-Income Housing Tax Credits without an allocation from the State Ceiling.
- F. 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. 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. The annual income certification of each low-income tenant per unit or a copy of the waiver from the annual income certification requirement which is available to 100% Credit eligible properties.
7. 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.
8. The Eligible Basis and Qualified Basis of each Qualified Low-income Building at the end of the first year of the Credit Period.
9. 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.

10. 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 tenant and documentation to support that certification 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. RHS, 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 RHS 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 RHS 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 RHS 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 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:** November 6, 2006

**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"). MaineHousing is modifying this Rule, which is the qualified allocation plan for allocating the 2006 State Ceiling, to establish the qualified allocation plan for allocating the 2007 State Ceiling (referred to herein as the "Rule" or the "2007 QAP"). Significant changes from the 2006 qualified allocation plan include (i) a bifurcation of the scoring criterion that rewards projects with a higher level of handicapped accessibility to reward a higher level of accessibility in elderly projects than in family projects; (ii) the addition of a new scoring criterion to encourage developers to adopt a policy prohibiting smoking in the units and common areas of a project to improve indoor air quality and promote healthy living environments for residents; (iii) modification of the leveraged funds category to provide an incentive for a wider range of capital subsidy, including even small amounts of subsidy, which reduces the amount of MaineHousing subsidy necessary to develop a project; (iv) the addition of a new scoring criterion to incrementally reward developers who have a commitment of project-based rental assistance based on the number of assisted units in the project and the length of the rental assistance contract; (v) the addition of a new scoring criterion to reward developers who have certain property tax relief arrangements pursuant to which a portion of the annual incremental property tax revenue is used to pay the operating costs of the project or is foregone by the municipality to reduce the operating costs of the project; (vi) modification of the existing contractor health insurance criterion to reflect MaineHousing's experience with the availability of employer-funded health insurance among contractors of MaineHousing-financed multifamily housing; (vii) modification of existing criteria to clarify or better effectuate the intent of the criteria; and (viii) other updates, clarifications and grammatical changes.

### **Summary of Comments and Responses to Comments on Proposed Rule**

MaineHousing held a public hearing on August 15, 2006 to receive testimony on the proposed 2007 Qualified Allocation Plan. The following persons and organizations testified at the public hearing: Bruce C. Gerrity on behalf of Mid-Coast Builders Alliance (“Mid-Coast Builders”); Nathan Szanton, Managing Member of Maine Workforce Housing, LLC (“Maine Workforce Housing”); Maurice A. Selinger, III, Chairman of the Southern Maine Affordable Rental Housing Coalition (“SMARHC”); Dana Totman, President of Avesta Housing (“Avesta Housing”); William E. Shanahan, Vice President of Northern New England Housing Investment Fund (“NNEHIF”); Lisa Pohlmann, Associate Director of Maine Center for Economic Policy (“MECEP”); Jim McGregor, Executive Vice President of Maine Merchants Association (“MMA”); George Bertini of the United Brotherhood of Carpenters and Joiners of America-Local 1996, Augusta, Maine (who read a letter on behalf of Charles Enos, Vice President of Operations, United Constructors and Builders, LLC) (the “Carpenters Union”); Joseph P. Ditre, Executive Director of Consumers for Affordable Health Care Foundation (“CAHC”); John Hanson, President of Maine State Building and Construction Trades Council (“MSBCTC”); Tina Pettingill, Chair of Smoke-free Housing Coalition of Maine (“Smoke-free Housing Coalition”); Amy Wagner, Community Health Improvement Coordinator for Healthy Living Project (“Healthy Living Project”); Gilbert LaPierre, Business Manager of Laborers Local, Augusta 327 (“Laborers Local 327”); Donald J. Mansius, Director of Forest Policy and Management for Maine Forest Service (“Maine Forest Service”); Jack Comart, attorney at Maine Equal Justice Partners (“MEJP”); John Butts, Executive Director of Associated Constructors of Maine (“ACM”); Kristine Ossenfort of Maine State Chamber of Commerce (“Chamber of Commerce”); Kathleen Newman, President of Associated Builders and Contractors (“ABC”); and Linda Gifford of Maine Association of Realtors (“MAR”).

MaineHousing held the comment period open until Friday, August 25, 2006. MaineHousing received written comments from persons and organizations that testified at the public hearing and from other persons and organizations before and after the hearing, including: Mid-Coast Builders Alliance; SMARHC; Avesta Housing; MECEP; CAHC; MEJP; Maine Forest Service; Healthy Living Project; ACM; Chamber of Commerce; MAR; Pamela M.B. Studwell on behalf of Maine Coalition on Smoking or Health (“Maine Coalition on Smoking”); R. Clayton Cleaves, Director of Pleasant Point Passamaquoddy Reservation Housing Authority and Chair of Wabanaki Housing Circle (the “Wabanaki Housing Circle”); Lorna Fogg, Senior Vice-President of Travois, Inc. (“Travois”); Senator Beth Edmonds, President of the Maine Senate; Michael Bodaken, Executive Director of National Housing Trust (“NAHT”); Chris Pinkham, President of Maine Association of Community Banks (“MACB”); Cynthia Taylor of Housing Initiatives of New England Corporation (“HINEC”); and Tim Gooch of Best Apartments, Inc. (“Best Apartments”).

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

## **General**

**Comment:** Avesta and NNEHIF commented that the resources available under the 2007 QAP are limited, so the 2007 QAP should not attempt to be all things to all people. NNEHIF commented that the tax credit program is the only program for producing and preserving the State’s rental housing stock, so the 2007 QAP should focus on housing.

**Response:** As the State’s housing credit agency, MaineHousing is required to adopt an allocation plan that includes selection criteria that address the priorities and the policies of the housing credit agency. The Code mandates that certain preferences and selection criteria are included in the plan. Some of these mandates are directly related to housing, e.g. housing needs, project location and serving the lowest income tenants. These criteria are more heavily weighted. Housing needs and project location account for up to 23 points and serving the lowest income tenants accounts for up to 30 points. Some of these mandates are less directly related to housing, e.g. tenants with special housing needs, characteristics of the sponsor or developer of the housing and community revitalization efforts. Most of the selection criteria in the 2007 QAP specifically address these mandates and represent 84 points of the total 121 available points.

The State ceiling of low income housing tax credits is a scarce, valuable source of federal public funding, which should be allocated in a socially and financially responsible manner consistent with MaineHousing’s priorities and policies. The remaining criteria in the 2007 QAP address these other policies of MaineHousing, e.g. incenting developers to leverage other non-MaineHousing funds to provide for the most efficient use of resources and encouraging a greater level of accessibility than is required by law to address the “graying” of Maine’s population. Investors and developers have strongly advocated for some of these additional selection criteria, e.g. incentives for readiness in terms of land use approvals and minimizing sprawl.

All of the criteria in the QAP are related to housing, some more directly than others. Overall, the 2007 QAP represents a well-balanced plan for allocating the credit based on the requirements of the Code and the priorities and policies of MaineHousing.

**Comment:** NNEHIF commented that it is difficult to comment on the Rule without knowing the parameters of the Rental Loan Program and suggested that MaineHousing make the Rental Loan Program guide available with the Rule so that potential applicants and investors understand all of the available MaineHousing resources.

**Response:** MaineHousing acknowledges that most, if not all, applicants to the QAP also apply to the Rental Loan Program. The Rental Loan Program Guide has remained consistent over the last several years. This year, MaineHousing overhauled the Rental Loan Program to make it a continuous program that does not have to be renewed annually and to clarify MaineHousing’s current practices, but did not make significant changes to the requirements of the Program. The new Rental Loan Program Guide was published on September 15, 2006. As a result of this process, the Rental Loan Program should be available in coming years when MaineHousing proposes the QAP.

### **Section 3 and Section 4 of the Rule – Priorities and Set-asides.**

**Comment:** NNEHIF commented that set-asides should be eliminated, to the extent they are not required by the Internal Revenue Code. Avesta commented that the priority for rural housing in Section 3.B.6. and the Rural Housing Set-aside should be eliminated because the priority and set-aside contribute to sprawl and unnecessary fuel consumption.

**Response:** The 2007 QAP includes the Non-profit Set-aside, the Housing for Homeless Set-aside and the Rural Housing Set-aside. The Non-profit Set-aside is required by the Code. MaineHousing established the other two set-asides to encourage applicants to consider projects that achieve MaineHousing’s priorities but may not score well in the open competitive round. These priorities and set-asides represent commitments made by MaineHousing to certain governmental partners that provide funding and services. For example, the purpose of the Rural Housing Set-aside is to encourage applicants to develop projects in rural areas of the State. The priority for rural housing and the Rural Housing Set-aside provide support for projects that are applying for financing from the United States Department of Agriculture – Rural Development. The definition of rural housing under the set-aside is broad, so it is possible that a project can be located in an area that is considered rural, but does not contribute to sprawl, e.g. downtown Windham. If no one qualifies for the set-asides, the unused credit is added to the pool of credit for which applicants compete under the QAP.

**Comment:** Travois commented that the requirement that a project be located in Difficult to Develop Area or a Qualified Census Tract to qualify for the Rural Housing Set-aside should be eliminated because it excludes many rural areas in the State that should qualify for this set-aside.

**Response:** Eligibility for the set-aside is 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 130% boost in low income housing tax credits to make the projects feasible. Only projects located in a Difficult to Develop Area or Qualified Census Tract are eligible for the boost. If a project is located on tribal lands that are encompassed by a Difficult to Develop Area or Qualified Census Tract, the project will be eligible for the set-aside.

**Comment:** NAHT requested that MaineHousing consider establishing a set-aside for projects that preserve and improve existing affordable housing in Maine.

**Response:** The preservation of existing rental housing is a priority under Section 3.A.2. of the QAP. Consistent with this priority, MaineHousing has established a selection criterion in Section 7.A.1. of the QAP that encourages the acquisition and rehabilitation of existing rental housing without displacement. MaineHousing also has other resources and programs available for the preservation of existing rental housing. MaineHousing’s preservation efforts to date have been successful, so there is no need at this time to establish a set-aside under the QAP.

#### **Section 5.D. of the Rule – Application Deadline**

**Comment:** Travois commented that MaineHousing should extend the application deadline because the QAP has not been finalized.

**Response:** The application deadline has been changed from November 4, 2006 to December 1, 2006 because MaineHousing extended the approval process for the 2007 QAP to consider a substantive change to the originally proposed 2007 QAP.

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

### ***Section 6.D.6.***

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

**Response:** Tribal lands are not subject to the growth management law referenced in this threshold requirement. Nevertheless, projects on tribal lands should be consistent with the intent of this law. Applications for projects on tribal lands should address how a project meets the intent of this statute. 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.10. Contractor Standards – On-the-job Training***

**Comment:** ACM commented that the OJT requirements are not required by either federal or state law.

**Response:** MaineHousing is subject to both federal and state affirmative action laws which require MaineHousing to develop an affirmative action plan including practices and procedures designed to increase the number of women and minorities at all levels and in all segments of the workforce where imbalances exist. According to the Department of Labor, a manifest imbalance exists in the construction industry. Although women constitute 47% of the State's workforce and pay approximately half of the taxes, only 2% to 3% of the workers on publicly-funded construction projects are women. On-the-job training and targeted outreach are standard approaches for achieving a housing construction workforce that reflects the gender and racial mix in the State's workforce. In particular, on-the-job training is a strategy that has been successfully used by the State of Maine Department of Transportation to achieve one of the most integrated workforces in the highway construction industry.

### ***Section 6.D.10 Green Building Standards***

**Comment:** ACM and Laborers Local 327 expressed support for the green building standards.

**Comment:** MAR does not support the green building standards, because they increase the cost of affordable housing.

**Response:** MaineHousing acknowledges that there may be minor upfront capital cost associated with MaineHousing's green building standards, but any such cost, according to

the available studies, will result in significant long-term and, in some cases, short-term savings for projects constructed in accordance with the green building standards.

### ***Section 6.D.13. Resident Service Coordination***

**Comment:** Avesta commented that MaineHousing should not use housing resources to pay for resident services. Avesta recommended that MaineHousing eliminate the resident service coordination requirement in Section 6.D.13. of the Rule, and in lieu of the requirement, work with the Department of Health and Human Services (DHHS) to fund resident services.

**Response:** The type and extent of services offered to residents vary depending on the size and location of the project and the needs of the tenants. The 2007 QAP requires owners to offer a minimal level of resident service coordination to residents. A resident service coordinator assesses the individual needs of a resident and refers the resident to appropriate services. A resident service coordinator does not typically provide direct services to residents. Resident service coordination has proven to be beneficial to property owners and managers as well as tenants. The annual cost of offering this minimum level of resident service coordination is relatively small, and funding the cost through the project's operating budget provides greater assurance that the services will be available throughout the compliance period. The term of funding for services by outside sources, such as the DHHS is often limited to one year. Offering direct services to residents of the project is typically more expensive and is funded with other available resources. DHHS may be a source, but it is inappropriate to assume that DHHS should fund all resident services, because the level and type of services can differ greatly. If project owners decide to offer direct services to residents, the owner is responsible for determining the appropriate services and identifying the funding source.

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

**Comments:** Wabanaki Housing Circle commented that MaineHousing's 90-year affordable rental housing requirement is inconsistent with the unique housing needs of tribal communities and is a significant obstacle to tribal use of federal low income housing tax credits. Wabanaki Housing Circle and Travois commented that tribal communities have a fundamentally different housing market.

Wabanaki Housing Circle explained that tribal lands and communities are communally-owned and held in trust in perpetuity for the benefit of the tribe and are totally independent from conventional real estate markets. As such, there is no market for land and the market for housing is limited to housing tribal members. Travois commented that tribal communities are isolated from economic centers, jobs and other sources of wealth, but tribal members will choose unemployment or underemployment and substandard or overcrowded housing to live in tribal communities because of their cultural values. As a result, tribal communities have a high proportion of low-income residents and the nation's highest level of substandard and overcrowded housing. Travois referenced a report included in its comments published by the National American Indian Housing Council, entitled *Home Not Sweet: The Effect of Poor Housing Conditions on Native Americans and Their Children*.

Wabanaki Housing Circle and Travois commented that homeownership is more consistent with the housing needs in these limited, permanent and socially distinct communities. Wabanaki Housing Circle referred to a U.S. Commission on Civil Rights report entitled, *A Quiet Crisis, Federal Funding and Unmet Needs in Indian Country*, dated June 2003, homeownership among Native Americans is approximately around 33% of the United States population. Wabanaki Housing Circle commented that with counseling and supportive services over an extended tenancy period and a purchase price substantially below the value of the home at the end of the period, the tax credit program would be a way to assist low income tribal members to become homeowners.

Travois commented that the 90-year rental housing requirement is inconsistent with eventual homeownership. Travois commented that some states are concerned about the loss of affordable rental housing if rental units convert to homeownership after the compliance period, but 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 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.

Wabanaki Housing Circle and Travois commented that the federal low income housing tax credit program is an important source of funding to address tribal housing needs. Travois commented that the tax credit program has become increasingly important with the steady reduction in direct federal housing assistance historically available to tribes.

Travois 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.

Wabanaki Housing Circle commented that alternative homeownership programs depend on owner financing and are no substitute for the deep subsidy available under the tax credit program: MaineHousing's Home Mortgage Program and Indian Mortgage Insurance Program are not effective alternatives, because most tribal members do not have the financial capacity to borrow and repay the full cost of new or rehabilitated housing plus interest plus mortgage insurance, and neither program offers support for housing development by tribal housing authorities or addresses the need to increase the housing supply in tribal communities. Wabanaki Housing Circle commented that MaineHousing is not fulfilling its mission to provide decent, safe and affordable housing in Maine's five small tribal communities.

Wabanaki Housing Circle suggested that MaineHousing (i) exempt projects on tribal lands from the 90-year extended use period and the corresponding restriction on tenant ownership set forth in Section 7.A.5. of the Rule, and (ii) provide additional points for projects on tribal lands providing for home ownership. Travois urged MaineHousing to modify the 2007 QAP to provide for new housing and the rehabilitation of existing HUD homes on tribal land with eventual tenant ownership after the compliance period.

**Response:** The resources available to MaineHousing for the development and preservation of rental housing in the State are becoming more limited; the federal low income housing tax credit is one of the remaining resources. The low income housing tax credit for rental housing and the subsidy resources available to MaineHousing are not conducive to achieving the goals of the commenters. To date, MaineHousing has not been able to develop an affordable homeownership model, using the low income housing tax credit and available subsidy resources. The development and preservation of long-term rental housing in the State is a more efficient use of this limited resource. Support for a federal homeownership tax credit specifically designed to create affordable homeownership opportunities has grown in recent years. A homeownership tax credit would be a better source of funding for homeownership on tribal lands.

Granting a special exemption from the 90-year affordable rental housing threshold requirement or awarding additional points in the selection criterion for eventual homeownership for projects on tribal lands is not appropriate or fair to other applicants with projects that are not located on tribal lands.

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 the Wabanaki Housing Circle, as it has historically, to address the housing needs on tribal lands. MaineHousing's Affordable Subdivision Program for the development of housing for ownership by first-time homebuyers may be a viable alternative.

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

### ***Section 3.A.2. (Priority) and Section 7.A.1. (Selection Criterion) – Rehabilitation of existing rental housing without displacement***

**Comment:** Avesta commented that the points under this selection criterion should be for new construction because Maine lacks an adequate supply of apartments.

**Comment:** NAHT supports the priority for acquisition and rehabilitation of existing rental housing stock and this selection criterion because preservation of existing housing (a) is approximately 1/3 less expensive than new construction, (b) maintains a mix of income profiles and housing options in strong markets, (c) is often located near jobs and transportation contributing to "smart growth" development, (d) inherently green and sustainable, conserving energy, land and other scarce resources, (e) involves a much easier development process with respect to land use

restrictions, material and labor costs, NIMBYism and other political constraints, and (f) preserves expiring Section 8 project-based rental assistance.

**Response:** Low income housing tax credits allocated under the QAP have been predominantly awarded to new construction projects in recent years. The rehabilitation of existing rental housing is a priority under Section 3.A.2. of this 2007 QAP for the reasons expressed by NAHT. The purpose of this selection criterion is to encourage developers to rehabilitate existing housing, rather than do new construction, consistent with this priority and MaineHousing’s consolidated plan.

***Section 3.B.1. (Priority) and Section 7.A.4. (Selection Criterion) – Family housing***

**Comment:** Avesta commented that the priority for larger families in Section 3.B.1. of the Rule should be eliminated and the selection criterion in Section 7.A.4. of the Rule should be modified to eliminate the incentive for three-bedroom units because the average household size in Maine, currently 1.9, is shrinking.

**Response:** According to a 2005 survey done by the Census Bureau, the average household size in Maine is 2.37. Regardless, the Code mandates that the selection criteria in the qualified allocation plan include tenant populations of individuals with children, i.e. family housing. MaineHousing established a priority for family housing in Section 3.B.1. and the selection criterion in Section 7.A.3. of the 2007 QAP in accordance with this mandate. Last year developers and managers of affordable rental housing expressed concern that the three-bedroom units are difficult to lease. In response to these concerns, MaineHousing modified Section 7.A.3. in the 2006 QAP to shift the emphasis from three-bedroom units to two-bedroom units, but continued to require a minimum number of three-bedroom units consistent with the Code. The commenter suggests there is no need for three-bedroom units. MaineHousing has heard from other developers that there is a need for three-bedroom units but families cannot afford the tax credit rent for three-bedroom units. MaineHousing will explore this issue further. If the issue is the affordability of the tax credit rent, then MaineHousing will address the issue when underwriting on a project-by-project basis.

**Comment:** HINEC commented that the priority given to three-bedroom units for families is unfair considering the rapid growth in the elderly population in the next four to six years. HINEC suggested that the priority for family housing should be minimized to encourage the development of elderly housing.

**Response:** As stated in the prior response, the Code requires MaineHousing to include a selection criterion for family housing in the qualified allocation plan. To address the “graying” of the State’s population, MaineHousing added a selection criterion to the 2006 QAP to encourage the development of accessible housing. MaineHousing modified the selection criterion in this 2007 QAP to encourage the development of accessible elderly housing.

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

**Comment:** Travois commented that projects on tribal lands should be awarded the maximum points, because they are not subject to an official approval process.

**Response:** Projects on tribal lands are subject to approval by the Tribe, so projects that submit evidence of approval from the Tribe are eligible for the points under this selection criterion. Applicants must also submit plans and specifications for the design of projects to MaineHousing's Construction Services Manager for review and approval in accordance with *MaineHousing's Construction and Design Standards* and applicable codes.

### ***Section 7.A.7. – Smart Growth***

**Comment:** Travois commented that projects on tribal lands should be eligible for these points if the project has Tribal approval.

**Response:** The State Planning Office process is not an approval process; it is an assessment. The State Planning Office reviews certain characteristics of a project and determines whether the project minimizes the effects of sprawl. Projects located on tribal lands must undergo this assessment like all other projects in order to be eligible for points under this selection criterion.

### ***Section 7.A.9. – Smoke-free housing policy***

**Comment:** The Smoke-free Housing Coalition, the Healthy Living Project and the Maine Coalition on Smoking or Health expressed support for the scoring criterion. The Smoke-free Housing Coalition pointed out that Maine is second only to California to pass a selection criterion in its qualified allocation plan.

**Response:** MaineHousing is committed to providing a safe housing environment, free from the hazards of second-hand smoke, for all residents. This selection criterion encourages developers to institute a no-smoking policy, which appears to be the most effective way to prevent the movement of second-hand smoke throughout multi-family residential rental buildings.

**Comment:** The Smoke-free Housing Coalition provided materials at the hearing that could be provided to all applicants. The Healthy Living Project and the Maine Coalition on Smoking or Health also indicated that they would be happy to provide materials on smoking-free policies, including information on smoking cessation, to applicants. The Maine Coalition on Smoking or Health indicated that it is working with the Smoke-free Housing Coalition on model lease language.

**Response:** The materials offered could be a great resource to all of MaineHousing's applicants, developers, owners and property managers. Staff will work with the commenters to provide links on MaineHousing's website to these valuable resources.

**Comment:** The Smoke-free Housing Coalition suggested that MaineHousing modify the wording in the selection criterion to require that applicants provide “access” to smoking cessation programs, rather than requiring them to directly provide the service.

**Response:** We made the suggested change to 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 recommended that MaineHousing adopt a policy which would require that the location of any outdoor smoking area be at least 25 feet or more from a building entryway in accordance with rules proposed by the Maine Department of Health and Human Services (DHHS) for public places and not be sited within or immediately adjacent to a proposed or existing recreational area or near outdoor areas proposed for the principal use of children, such as a playground, in accordance with existing DHHS rules.

**Response:** MaineHousing will develop requirements for the design and location of designated smoking areas in MaineHousing’s *Design and Construction Manual*. We will strive to make the requirements consistent with the DHHS rules, but the requirements should be flexible to address the unique design and location of each project.

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

**Comment:** NNEHIF commented that this selection criterion would be easier if points were awarded based on the amount of MaineHousing resources used, i.e. the applicant that used the fewest MaineHousing resources is awarded the most points.

**Response:** The suggested change to this selection criterion is not consistent with MaineHousing’s current approach to the application process for the QAP. The suggested approach may be easier if MaineHousing required applicants to have final budgets and commitments from all sources of funding before applying to the QAP. However, MaineHousing does not require this level of readiness at the time of application. Instead, MaineHousing rewards developers that have identified and secured commitments of below-market funding at the time of application through the selection criterion in Section 7.B.1. of the QAP. It has become increasingly difficult to fund affordable rental housing with one funding source. Often, multiple sources are necessary to fund a project. The process of identifying and securing commitments from all funding sources and resolving any conflicting requirements of the different sources is time-consuming and can result in delays in the development process which add to the cost of developing projects. This can result in a change in amount of funding needed from the time of application to the time of commitment. If the selection criterion rewarded applicants for using fewer MaineHousing resources at the time of application, any change during the development process that increased the need for MaineHousing funding could affect the applicant’s score. A net reduction in an applicant’s score would be deemed a withdrawal of the application under the current QAP.

**Comment:** Travois commented that 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 in accordance with the QAP. Depending on how NAHASDA funds are structured in a transaction, they can 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 requested that 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:** MaineHousing will award points for the lease or donation of land or land and buildings, provided that it is leased or donated for no consideration or nominal consideration, regardless of where the land or land and buildings is located. So, any lease or sale of tribal land or tribal land and buildings thereon for no monetary value or nominal value is eligible for points under this selection criterion.

***Section 7.B.4. – Leveraged funds/project-based rental assistance or operating subsidy***

**Comment:** Avesta commented that MaineHousing should award more points, i.e. 5 points, 10 points and 15 points, for project-based rental assistance because projects with rental assistance can serve persons with lower incomes down to 30% of area median income, rental assistance is a valuable resource and projects with rental assistance have less financial risk.

**Response:** MaineHousing added this new scoring criterion in recognition that rental assistance is a valuable resource for any rental project serving low income persons, the availability of rental assistance is limited and the application process is difficult. The total available points available under all scoring criteria related to leveraged funds, including this new scoring criterion, increased from 13 to 18 points. Increasing the total points available under this new scoring criterion, as suggested by the commenter, would significantly skew the weight of this category and the overall weight of the leveraged funds category of scoring criteria relative to other scoring criteria and scoring categories in the 2007 QAP. For example, this new rental assistance scoring criterion would have the same weight as the housing needs scoring criteria.

***Section 7.D.1. – Needs rankings***

**Comment:** SMARHC, Avesta and NNEHIF commented that MaineHousing should use absolute need, the actual number of households in an area that need rental housing in the State, rather than relative need, the percentage of households in an area relative to the total households in the State that need rental housing, in its housing needs analysis. Using relative need shifts scoring priorities away from the population centers to the rural areas of the State. SMARHC noted that 50% of the State's renters are located in Bangor, Lewiston-Auburn and Portland.

**Response:** MaineHousing produces rental housing throughout the entire State, not just in urban areas. Historically, MaineHousing used absolute need rather than relative need, which favored large population centers. Last year, MaineHousing changed from absolute to relative need to remove this urban bias and level the playing field among all of Maine's labor markets. Even with the change, 5 of the 7 projects that were awarded tax credits under the 2006 QAP were located in urban areas, including Portland, South Portland, Bangor, Lewiston and Sanford.

**Comment:** SMARHC, Avesta and NNEHIF commented that the labor market areas, as re-defined this year in the needs analysis, are too broad, e.g. Portland includes Hiram and Parsonfield, which are rural, contribute to sprawl, longer commutes, and the development of open space, and limit access to employment. The commenters indicated that they will work with professionals in the coming year to develop housing market areas in the State and invited MaineHousing to participate in the process.

**Response:** MaineHousing has historically used labor market areas in the housing needs analysis for the following reasons.

1. By definition, labor markets are very closely related to housing and reflect the current reality of commute patterns and consumer choices relative to employment and housing.
2. Labor market areas are used nationally and established with similar criteria making comparison across various geographical areas valid.
3. Labor market areas are large enough to generally avoid large fluctuations in data caused by a single non-recurring employment or housing event.
4. Labor market areas are used in State law and are one level of analysis used by many state agencies, university studies and researchers throughout the State – making many analyses done in the State comparable and consistent. The Maine Office of GIS provides shape files allowing mapping of data by labor market area so that various datasets can be viewed geographically on a consistent and comparable basis.
5. Many data sources, including, the Maine Department of Labor, make data available by labor market area.
6. Many MaineHousing analyses and reports have been historically done by labor market area, making comparisons across time valid.

In 2005, the Maine Department of Labor changed the labor market areas. Certain labor markets that contain major metropolitan areas were expanded to include some rural areas. The commenters suggest that the continued use of labor market areas will result in projects located in these rural areas being awarded more points because they are part of a labor market area that includes major metropolitan areas, which would contribute to sprawl.

Labor market areas, although not perfect, still provide a valid measure of housing needs throughout the State. The QAP includes other requirements and selection criterion designed to discourage sprawl. Section 6.D.6 of the QAP limits the new construction of projects in a designated growth area as defined within the municipality's comprehensive plan or in an area that has been certified by the State Planning Office as being consistent with Maine's growth

management law in accordance with 30-A M.R.S.A. § 4349-A. Section 6.D.9 of the Plan requires that each project must provide a comprehensive market study prepared by a qualified professional in accordance with the standards of the National Council of Affordable Housing Market Analysts. One purpose of a market study is to prevent the development of affordable housing where it is not needed. Certain of the physical plant amenities selection criteria in Section 7.A.2., e.g. location within ¼ mile of public transportation, favor projects located in urban areas. Projects that the State Planning Office determines promote smart growth and minimize sprawl are eligible for 2 points under Section 7.A.7. Last year, MaineHousing added a new 3-point selection criterion for projects located in service center communities.

In March and May 2006 MaineHousing met with interested persons to discuss the data and methodology MaineHousing uses to determine the need ranking for each labor market area. MaineHousing made several changes to the housing needs analysis as a result of this process. These changes include:

1. Using the updated 31 labor market areas;
2. updating the demographic data to the most recently available for family and elderly housing;
3. narrowing the population considered in the analysis to renter households with incomes between 40% area median income and 60% area median income to better reflect the population that can afford tax credit rents;
4. including tenant based vouchers as part of the demand for units rather than as a supply; and
5. incorporating data from MaineHousing's rent reasonableness database in considering the median rent for each labor market area.

MaineHousing will continue to meet with interested parties to improve the housing needs data and methodology. MaineHousing is willing to work with SMARHC to investigate the establishment of specific housing markets.

**Comment:** Avesta commented that MaineHousing should eliminate the population growth index in the senior housing needs analysis, because the index measures the growth of the total senior population, not just low-income seniors, and does not reflect whether the growth has been accompanied by increased housing units. Avesta cited Brunswick as an example, having recently experienced high senior population growth, most of which growth was high-income seniors for which new housing has been developed. Best Apartments commented that the population growth index in the needs analysis formula favors small communities in which a small increase in the senior population results in a greater increase in the percentage of senior population.

**Response:** The purpose of the index is to measure a demographic change that can put pressure on the specific labor/housing market. A change in this index can relate to both an "aging in place" population and a population increase in the number of elderly. As an index, rather than a specific number, differences in overall population numbers should be corrected. This index is designed to identify areas in which the population is reaching the 65+ age group more rapidly than others. The index assumes that the growing elderly

population has the same income distribution as the elderly population did at the start. Hence, large increases in this measurement lead to larger impacts on low income elderly rental supply.

**Comment:** HINEC expressed concern that the need for senior housing in the Portland area dropped from Very High under the 2006 QAP to High in the 2007 QAP. HINEC is developing a project in Scarborough and their market study shows that there is a critical need for senior housing in Scarborough.

**Comment:** Best Apartments commented that the 2000 census data is not accurate and should not be used in the needs analysis, citing as an example that the vacancy rate in Augusta is 3% to 4% according to the Augusta Housing Authority and 8.6% according to the census data. Best Apartments thinks that Augusta should be a “very high” need area rather than a “high” need area for senior housing. Best Apartments suggested that MaineHousing should consider housing authority waiting lists in its needs analysis.

**Response:** As described above, MaineHousing made a number of changes to the housing needs analysis this year. Every effort was made to use the most accurate statistical information that is available for the entire State. It is virtually impossible to make the housing needs analysis perfect and there will always be a margin of statistical error, however insignificant. While pertinent data may be available for specific areas, it is critical that the data used in the housing needs analysis be available for the entire State and be consistently applied across the State. Because MaineHousing recognizes that there may be smaller areas or specific municipalities that have more or less need than the broader labor market area, MaineHousing requires applicants to submit a market study prepared by a qualified professional that assesses the need for affordable housing in the specific area where a project will be located. MaineHousing will consider whether to housing authority waiting lists in the housing needs analysis in the coming year.

**Comment:** SMARHC and NNEHIF commented that MaineHousing should establish another program to develop rental housing in rural areas, because tax credit investors feel that rural projects are too complicated, too risky and are difficult to rent-up and keep occupied. SMARHC suggested that MaineHousing work with them in the coming legislative session for a bond issue or other financial resources to develop rental housing in the rural areas of the State.

**Response:** MaineHousing is committed to providing affordable rental housing throughout the State, provided that it is economically viable from a development and operational standpoint. Market studies are a critical to ensuring that projects will be viable. MaineHousing’s definition of rural in the QAP is very broad and may include service-oriented communities that can support a tax credit project if sized and sited appropriately. MaineHousing has allocated low income housing tax credits to several successful projects that are considered smart growth, but are located in rural areas. MaineHousing is always interested in new resources or an increase in available resources for the development of affordable housing in the State and is happy to work with SMARHC to seek funding for rural housing.

## **Section 7.D.2. - Community Revitalization**

**Comment:** Travois commented that an Indian Housing Plan should be accepted as the community revitalization plan.

**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, the applicant will be eligible for points under this selection criterion. The Code requires MaineHousing to give a preference to projects that are located in a QCT and are part of a community revitalization effort. The extra point satisfies this requirement.

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

**Comment:** Travois 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.E.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 specific purpose of the selection criterion in Section 7.E.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.E.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, like Travois, 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 chose 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 chose to manage their own projects, even with the oversight of a consultant, should not be eligible.

#### ***Section 7.E.5. – Contractor health insurance selection criterion***

**Proponents:** Senator Edmonds, Maine Workforce Housing, MECEP, CAHC, MEJP, the Carpenters Union, MSBCTC and Laborers Local 327 expressed support for the selection criterion.

**Opponents:** Mid-Coast Builders, ACM, ABC, Chamber of Commerce, MACB, MMA and MAR expressed opposition to the selection criterion.

#### ***Public Policy – MaineHousing’s Authority and Role***

**Comments:** MECEP commented that it is fair and good policy to ask employers who are benefiting from public funds to contribute to the economic well-being of the State by providing health insurance. MECEP and CAHC commented that the contractor health insurance selection criterion is consistent with the State’s goal of universal health coverage.

Senator Edmonds, MECEP and CAHC commented that it avoids the hidden taxpayer cost of shifting the burden of insuring workers onto other public programs, like Medicare and MaineCare. Senator Edmonds and CAHC also commented that uncompensated care costs, charity care and bad debt, are borne by individuals and businesses through higher insurance premiums and hospital charges.

MECEP, CAHC and Laborers Local 327 commented that it is not fair that employers who do not provide health insurance coverage to their employees can offer a lower bid than those employers who more adequately compensate their employees. The Carpenters Union read a letter from United Constructors and Builders, LLC commenting that it is difficult to compete with other contractors who misclassify their workers and do not provide health insurance for their workers. The health insurance incentive promotes a level playing field among competing firms by ensuring that employers who provide health insurance are not at a competitive disadvantage with employers who do not provide coverage. CAHC pointed out that employers who provide health insurance coverage to their workers experience a double whammy; they pay for health insurance coverage for their own employees and they also pay for the costs of those employers who do not provide coverage, through taxes and higher insurance premiums, which compounds their competitive disadvantage.

Laborers Local 327 commented that 26% of insurance premiums represent the cost of covering the uninsured. As healthcare costs increase, insurance premiums increase, which causes employers to

lower or drop coverage or become less competitive when bidding, which further increases the number of uninsured and taxpayer burden.

MECEP indicated that there is a trend among publicly-funded institutions nationwide to include job standards, including health insurance standards, in subsidy programs. According to a 2003 Purinton study entitled, *The Policy Shift to Good Jobs, Cities, States and Counties Attaching Job Quality Standards to Development Subsidies*, 29 out of 43 states had a health insurance benefit standard or significantly higher wages in lieu of health benefits in at least one subsidy program.

Mid-Coast Builders commented that the selection criterion violates the principles of separation of powers between the legislative and executive branches, because the legislature establishes public policy and the executive branch implements public policy. Mid-Coast Builders commented that during the Business Research and Economic Development Committee's consideration of L.D. 1943, which would have prohibited MaineHousing from adopting selection criterion not required by law, the Committee emphasized that it wasn't a question of whether health insurance is a good idea; rather it was the Committee's belief that the Legislature establishes policy, not the agencies. MMA expressed concern with the proliferation of rulemaking by state agencies that are not accountable to the voters in the State.

**Response:** MaineHousing is an independent agency. MaineHousing's charge is to improve the housing conditions in the State, so that all persons in the State have access to decent, safe and affordable housing. MaineHousing is tasked with identifying the housing needs in the State and developing strategies to meet these housing needs. The Maine Housing Authorities Act gives MaineHousing broad authority to develop programs and allocate resources available to MaineHousing to achieve these objectives. Inherent in this charge and this broad authority, MaineHousing makes housing policy for the State. MaineHousing, as the State's designated housing credit agency, establishes and implements the QAP. The QAP is the State's policy for allocating the low income housing tax credit for the development and preservation of affordable multi-family residential rental housing the State.

MaineHousing should not develop programs and allocate public resources that are inconsistent with State policy or contribute to social imbalances that the State and other agencies and instrumentalities of the State are trying to correct. Awarding contracts on MaineHousing-funded multi-family projects to contractors who are able to submit lower bids on MaineHousing-funded projects because they are not paying for health care coverage for their employees is in direct conflict with State policy.

In making housing policy and allocating public resources, MaineHousing should be consistent with other State policy. MaineHousing's incentive is consistent with two major State policies: (1) increasing health care coverage for all of Maine's citizens; and (2) lowering Maine's tax burden.

The State's policy on health care, according to the Governor's Office of Health Policy and Finance, is as follows: *Maine is committed to achieving access to quality and affordable health care for all Maine people. To do so, the State promotes policies that increase access to health coverage and is committed to using its resources to that end. Maine has the highest rate of uninsured in New England and the lowest rate*

*of employer sponsored coverage. We lead New England states in rates of chronic illness and disease and we pay more of our incomes on health care than 45 other states. To reverse these trends, all Maine people, businesses and providers, must work collaboratively to reduce escalating health care costs, ensure the best possible quality of health care services, and increase access to health coverage. This approach reflects the State's commitment to ensuring all Maine people have access to quality and affordable coverage."* Requiring contractors who benefit from the public dollars that are available through MaineHousing's programs to provide health insurance for their employees is consistent with, and promotes the State's policy on health care. As one commenter points out below, creating an incentive for employers who receive public funds to provide health insurance is particularly appropriate and fair in an employer-based health insurance system.

Governor Baldacci and the Legislature have acted to lower Maine's tax burden. Taxpayers and the businesses in the State that provide their employees health care coverage subsidize employers that do not provide health care for their employees through increased uncompensated care, increased welfare costs, increased health insurance premiums paid by the State for State employees and increased private health insurance premiums. Without the incentive, taxpayers would not only be subsidizing the development of affordable housing; they would also be subsidizing those contractors who build it by paying for the health care costs of the uninsured workers of these contractors.

Working at cross-purposes with policies of the State to improve the overall social condition of the State is not an efficient use of public resources and does not improve the housing conditions of the State. Persons with decent wages and health care coverage are in a better position to afford to live in decent, safe housing.

**Comments:** Mid-Coast Builders, commented that the Legislature passed L.D. 1943, legislation which would have prohibited MaineHousing from adopting selection criterion not required by law if the Governor had not vetoed the legislation. ACM, MMA, Chamber of Commerce, and MAR agreed with Mid-Coast Builders that the health insurance selection criterion is contrary to the clear intent of the Legislature and that MaineHousing is ignoring the Legislature. MAR commented that it is concerned that MaineHousing will lose credibility with the Legislature.

Senator Edmonds commented that MaineHousing faced a difficult decision when it had to choose between eliminating the selection criterion in deference to the Legislature's enacting L.D. 1943 and maintaining the selection criterion in support of the Governor's veto of the legislation and policy position on the issue. Senator Edmonds said that she believes MaineHousing made the right choice.

**Response:** As Senator Edmonds stated in her comment, MaineHousing had a difficult decision to make when the Senate passed and the House passed under the hammer (i.e. without discussion or a formal vote) L.D. 1943, which would have prohibited MaineHousing from adopting selection criterion not required by law, and the Governor vetoed the bill.

MaineHousing's Director, Dale McCormick, talked with both Senator Bromley (who sponsored the bill and is the Senate Chair of the Committee that heard the bill) and Representative Smith (the House Chair of the Committee that heard the bill) and they agreed that MaineHousing was in a difficult position. Director McCormick, out of respect for the

Chairs, had an open conversation and was forthcoming in the direction MaineHousing planned to go, which was to continue to offer the health insurance incentive since the bill did not become law. MaineHousing did not ignore the Legislature.

Maine created authorities, such as FAME, the Maine Municipal Bond Bank, and MaineHousing, specifically to be independent of state government. Authorities like MaineHousing are designed to use business methods to achieve public purposes. Although independent, authorities like MaineHousing are accountable.

MaineHousing is accountable to both the Governor and the Legislature, and as such, is accountable to the public. The Legislature and the Governor make and change policy. The Legislature and the Governor disagreed about whether the policy should be changed. The effort to change MaineHousing's incentive failed and the policy was not overturned. This happened this year, but the checks and balances are in place and working.

**Comments:** Mid-Coast Builders, ACM, Chamber of Commerce, MMA and MAR commented that MaineHousing is acting outside the scope of its authority. The Chamber of Commerce commented that health insurance standards for contractors is unrelated to the allocation of tax credits and is outside the scope of MaineHousing's rulemaking authority set forth in 30-A MRSA § 4741, sub-§§ 1 and 14.

**Response:** 30-A MRSA § 4741 (14) authorizes MaineHousing, as the housing credit agency for the State, to establish the QAP through rulemaking for the purpose of allocating the State's ceiling of low income housing tax credits. Section 42 of the Internal Revenue Code requires housing credit agencies to include certain selection criteria in the QAP, but otherwise, gives MaineHousing discretion to establish other selection criteria in the QAP to address local priorities and policies. The state and federal laws authorizing adoption of the QAP give MaineHousing discretion to require or incent employer-sponsored health insurance coverage in its allocation plan. The passage of LD 1943 does not affect this authority, because it failed to become law.

**Comments:** Mid-Coast Builders, MAR and Chamber of Commerce commented that health insurance is not MaineHousing's purpose and mission, which is to develop and maintain affordable housing.

**Response:** MaineHousing has a fairly broad mission. MaineHousing's mission 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, MaineHousing will provide leadership, maximize resources and promote partnerships to develop and implement sound housing policy.* MaineHousing is one of the largest sources of funding for the development of affordable housing in the State, but we are also charged with helping low and moderate income people to rent apartments and buy their first homes. Encouraging contractors to provide health insurance coverage for their workers helps these workers to obtain decent, safe and affordable housing, and not doing so harms the low and moderate income people that we serve. Furthermore, the development of affordable housing is economic development; MaineHousing's programs and funding create

jobs. In creating jobs, MaineHousing should, at a minimum, encourage the employers who benefit from the public funds to offer health insurance coverage to their workers.

### ***Effect on Industry and Housing Construction***

Chamber of Commerce commented that Maine is a state of small businesses. According to the Kaiser Family Foundation, 96.6% of large businesses (businesses with 50 or more employees) offer health insurance to their employees, whereas only 42.7% of small businesses (businesses with fewer than 50 employees) offer health insurance for their employees. The health insurance standard may have the unintended consequence of favoring large companies.

Chamber of Commerce also commented that the selection criterion punishes employers who want to provide health insurance coverage for their employees, but cannot afford to provide health insurance. Attracting and retaining workers is a powerful enough incentive to provide employee health insurance coverage.

**Response:** Last year, in response to concerns that some of the smaller contractors do not provide health insurance for their employees, MaineHousing replaced the original proposal that all contractors on MaineHousing-financed projects provide health insurance coverage as a threshold requirement with an incentive which awards points to developers who hire the contractors that provide health insurance based on the percentage of contractors or the percentage of the total construction costs paid to contractors who provide health insurance, the minimum being one point for 70%, which reflected our assessment of the current availability of health insurance in the construction industry. This year, we modified the selection criterion to lower the minimum threshold to 60% and reduced the maximum amount of points that can be awarded from 4 points to 3 points based on our recent experience and information.

MECEP commented that opponents point to the negative effect on business climate, but the 2003 Purinton study found that a small number of public development officials, 16 out of 119, received complaints about job quality standards negatively impacting their development efforts, and that a vast majority of officials said there were no reactions, problems or complaints, and that health insurance standards were less of a concern than other standards.

Workforce Housing shared its experience with Walker Terrace, the first MaineHousing-financed project to which MaineHousing's health insurance standard applied. Workforce Housing commented that it conducted a normal bid process, the general contractor was able to accept the lowest responsible bid from all subcontractors and achieve 74% health insurance coverage, and did not experience any problems during construction relating to the health insurance requirements. Workforce Housing opined that the criterion is not going to affect the development of affordable housing projects in the State. Workforce Housing commented that we do not build affordable housing in a vacuum, that it is connected to society in general and health insurance is an important issue, and supports MaineHousing's policy to encourage the provision of health insurance.

ACM, ABC and MAR commented that the health insurance standards will increase the cost of affordable housing which will result in fewer low income units. ACM commented that the

contractor standards and the health insurance standard will result in a 10%-12% increase on top of the increase in the cost of construction materials, which was almost 9% last year and 25% over the last four years nationally.

**Response:** MaineHousing has not seen a material increase in project costs. MaineHousing has experience with three projects subject to a 70% contractor health insurance threshold requirement under another multi-family housing program instituted last year, which uses the same approach and definitions as this incentive. MaineHousing acknowledges that there may be some minor increased costs for smaller contractors who do not currently offer health insurance to their employees. According to our data, the estimated cost is \$4,500 for a \$5,000,000 project.

Nevertheless, from a public policy perspective, contractors who benefit from the public funds should provide health insurance to their employees. Otherwise, MaineHousing is giving public funds to low-bidders, because they do not offer health insurance to their employees. The result is that taxpayers and the businesses that do provide health insurance pick up the health care costs of uninsured workers through increased uncompensated care, Medicaid, welfare and the State's health care costs and health insurance premiums. Any additional costs associated with the selection criterion will result in long-term public health and welfare savings for the State, and consequently, the taxpayers.

ABC and MAR commented that the selection criterion will reduce the number of contractors who will bid on projects, which will result in increased costs. ABC commented that contractors will not bid on MaineHousing-financed projects because of the hassle factor, i.e. they do not want to fill out the paperwork.

ACM and MMA commented that the standards will be felt mainly by the subcontractors and the suppliers. The larger subcontractors will be able to meet the standard, but the smaller subcontractors who do not meet the standard will not bid. ACM commented that some subcontractors have indicated that they will purchase the health care coverage for the MaineHousing-financed project and drop it when the project is complete.

**Response:** MaineHousing's experience with the three projects subject to the 70% contractor health insurance threshold requirement under the multi-family housing program mentioned before is that they have not experienced difficulty in attracting enough bidders. Based on the information that we have on these projects, they all appear to have met the requirement without the significant increased costs forecasted by opponents to the incentive. Workforce Housing, LLC commented that they were able to attract enough bidders and accept the lowest responsible bid from all subcontractors and achieve 74% health insurance coverage.

MaineHousing has expressed its willingness to work with the industry to ease the perceived administrative burden with this incentive. MaineHousing developed an easy-to-use two-page worksheet for contractors to complete which provides MaineHousing with the minimum information that it needs to determine whether the developer has met its pledge.

MaineHousing is committed to working with developers and contractors to make this effort a success.

ABC commented that a Maine Center for Economic Policy study in 2004 showed that 8 out of 10 construction companies offer health insurance to their employees, so the problem is not necessarily with the construction industry.

**Response:** MaineHousing adopted the incentive because contractors receive a significant portion of the public funds expended pursuant to MaineHousing's multifamily rental housing programs, including the QAP. MaineHousing is pleased that the vast majority of contractors provide health insurance to their employees. Based on these statistics, the availability of contractors that offer employee group health insurance coverage should not be an issue. The selection criterion should be an incentive to contractors to maintain health insurance coverage for their employees.

### ***Incentive; Not a Mandate***

**Comments:** MEJP, CAHC and MSBCTC commented that the health insurance selection criterion is not a requirement, just an incentive. CAHC commented that MaineHousing lowered the standard from last year, but as modified, the incentive is still sufficient to maintain a baseline of coverage for those employers who are currently providing coverage so that MaineHousing does not give an economic advantage to employers who reduce or drop coverage for their employees. CAHC and MEJP commented that the incentive is reasonable. CAHC commented that creating an incentive for employers who receive public funds to provide health insurance is particularly appropriate and fair in an employer-based health insurance system. MSBCTC commented that the selection criterion is a modest incentive and uses public resources in a manner that is consistent with the legislature's policy that everyone in the State have access to, can afford and have quality healthcare. Senator Edmonds said that the selection criterion is a modest incentive that is not tantamount to a requirement.

Chamber of Commerce and MAR disagreed that the selection criterion is an incentive; the effect is that it is a requirement.

**Response:** Not all contractors on MaineHousing-financed projects must provide health insurance to their employees for a developer to receive points, even the maximum points, under the selection criterion. As indicated above, we lowered the minimum threshold from 70% to 60% and reduced the total number of points available under the selection criterion from 4 points to 3 points. Developers who pledge to use 80% of contractors or pay 80% of the total construction costs to contractors who provide health insurance will be awarded the maximum points under the selection criterion. The health insurance selection criterion only accounts for 3 points out of the total 121 points available under Section 7 of the 2007 QAP. In addition, of the 7 successful projects under the 2006 QAP, 4 pledged some level of contractor health insurance coverage and 3 were successful without pledging any coverage.

### *Technical Requirements of the Selection Criterion*

**Comments:** Mid-Coast Builders commented that the definition of an eligible health insurance plan in the selection criterion does not address the quality of the health insurance provided by contractors to their employees, so MaineHousing may be doing a great disservice to employees of contractors who provide poor quality health insurance coverage but satisfy the definition of an eligible health insurance plan under the criterion. Mid-Coast Builders commented that health insurance is complicated and MaineHousing does not have the expertise to assess the quality of health insurance, particularly ERISA plans and health plans offered by out-of-state contractors that are not subject to the State's insurance regulations. Because MaineHousing lacks the necessary expertise, Mid-Coast advised against modifying the definition to provide more detail, such as a limit on deductibles, as suggested by proponents of the criterion.

Chamber of Commerce commented that establishing out-of-pocket and/or deductible requirements will penalize those companies that cannot afford health insurance coverage with lower deductibles. Chamber of Commerce commented that establishing a maximum deductible amount of \$1,500 will eliminate some Dirigo Choice businesses, because one of the policies available has a \$1,750 deductible.

MECEP, MEJP and CAHC commented that MaineHousing should establish standards for what qualifies as an eligible group health insurance plan, because employers who provide high deductible health insurance plans, which leave employees with large out-of-pocket costs, are currently eligible for the points.

MECEP commented that health insurance policies are complex, but other states and municipalities are in the process of establishing models. MEJP suggested that MaineHousing work with the Bureau of Insurance, employer/union representatives and health insurance advocates in the coming year to establish a standard. In the interim, MECEP and MEJP recommend that MaineHousing add an out-of-pocket maximum limit for expenses such as deductibles and co-pays to the definition of an eligible group health insurance plan. MECEP suggests that MaineHousing use \$2,000 for individual coverage and \$4,000 for family coverage. MEJP suggests that MaineHousing use \$4,000 for an individual per year and \$8,000 for a family per year, and that bidders simply certify this to MaineHousing as part of the bidding process.

CAHC recommends that MaineHousing use the definition of "health benefit plan" set forth in 36 MRSA §5219-O(2) used by the Maine Revenue Service for awarding a state health insurance tax credit to employers with less than 5 employees instead of adding a deductible. CAHC commented that MaineHousing should not use the \$4,000 individual and \$8,000 family maximum out-of-pocket limits, i.e. the Dirigo Choice limits, because they apply to enrollees with incomes at the highest level for the program. Also, these limits are for all costs; the deductible limits are much lower.

**Response:** In response to the above comments, MaineHousing decided to consider incorporating the definition of a qualified health plan set forth in 36 MRSA §5219-O(2) in MaineHousing's requirements for an eligible group health insurance plan. MaineHousing

opened a 30-day public comment period on the proposal while MaineHousing staff researched the proposal. The public comment period expired at 5:00 PM on October 13, 2006. Following the comment period, MaineHousing decided make the change to the proposed Rule. A summary of the comments, MaineHousing's responses and the rationale for making the change are set forth below beginning on page 70.

**Comment:** ACM, MACB and MMA are opposed to expanding the scope of the health insurance criterion to include material suppliers. ACM and MACB commented that it will increase the cost of affordable housing and may cause hardships for smaller Maine-owned construction material suppliers. ACM commented that "material suppliers" is not defined in the Rule and questioned whether vendors who provide \$2,000 or less in materials or supplies are covered. ACM commented that requiring contractors to collect health insurance information from material suppliers will cause more confusion during the bid process and will be administratively burdensome, because there can be as many as 100 material suppliers on a MaineHousing-financed multi-family project and some contractors are from out-of-state or Canada.

**Response:** MaineHousing added material suppliers at the request of developers to assist them to meet their pledge to select contractors who provide health insurance. Most suppliers provide an eligible health insurance plan for their employees, so including them in the criterion can only help a developer satisfy its pledge under the criterion. To ease the potential administrative burden associated with the requirement, MaineHousing does not expect contractors to obtain information from vendors who provide \$2,000 or less in materials or supplies for a project (referred to herein as small vendors). MaineHousing will assume that small vendors provide an eligible health insurance plan for their employees and include the total amount of the small vendor contracts in determining whether a developer satisfies its pledge using the percentage-of-contract-price approach. For developers using the percentage-of-contractors approach, MaineHousing will treat all small vendors as one contractor.

**Comment:** Chamber of Commerce suggested a technical change in Section 5.H.2. and Section 7.E.5. of the Rule to require "an" rather than "the" eligible health insurance plan to allow employers to change plans during the construction of the project.

**Response:** We made the suggested changes. See Sections 5.H.2. and 7.E.5. of the Rule.

**Comment:** Chamber of Commerce commented that the minimum employer contribution in the definition of an eligible health insurance plan and the minimum percentage of contractors or project dollars to be eligible for points are arbitrary.

**Response:** The minimum percentage of contractors or project dollars eligible for points under the selection criterion has been modified this year to reflect MaineHousing's experience with the criterion under last year's qualified allocation plan and MaineHousing's experience with another MaineHousing multi-family housing program that requires a certain level of contractor health insurance coverage as a threshold requirement. The required level of employer-paid premiums is based on industry standards.

**Comment:** ACM commented that the enforcement mechanism is unique and questions whether MaineHousing has the staff to make enforcement practical and meaningful.

**Response:** The enforcement mechanism for the incentive and the other contractor standards incorporates principles in the construction industry, e.g. the concept of good faith, and is intended to educate and encourage contractors, not penalize them. In prior years, MaineHousing has contracted with consultants experienced in labor standards to monitor compliance with the Davis-Bacon Act and other related labor standards. The consultant will also monitor compliance with the contractor standards, including compliance with any contractor health insurance pledge made by a developer for which the developer was awarded points under the incentive.

### ***Proposed New Selection Criteria***

**Comment:** NAHT commented that green technologies and methods should be integrated into the rehabilitation of existing housing to improve energy efficiency, conserve water and other resources and use healthy building materials. NAHT supports MaineHousing's requirement that projects involving the rehabilitation of existing housing comply with MaineHousing's Green Building Standards. NAHT suggests that MaineHousing establish a scoring criterion that rewards projects involving the rehabilitation and preservation of existing housing that incorporate energy efficiency, water conservation (such as common-area laundry rooms) and the use of green and health-friendly building materials.

**Response:** All tax credit projects, including projects involving the rehabilitation of existing housing, must be designed and constructed with MaineHousing's Green Building Standards pursuant to Section 6.D.10. of the 2007 QAP. MaineHousing currently encourages the rehabilitation of existing rental housing through the 3-point selection criterion in Section 7.A.1. of the 2007 QAP. A separate selection criterion, in addition to these criteria, would be superfluous.

**Comment:** The Maine Forest Service commented that MaineHousing should establish a scoring criterion that awards points for the use of wood products that are produced in Maine and are certified by a third party as originating from well-managed forests through a chain of custody program. This would support the expansion of the market and increase demand for the use of certified wood products. The Maine Forest Service suggested that the points should be based on the percentage of Maine wood products by volume and the percentage of certified wood products by volume and the number of points should be sufficiently high to impact the market.

**Response:** MaineHousing currently encourages the use of sustainable lumber in the Green Building Standards. Using framing and finish lumber harvested from sustainable managed forests is one option for satisfying Section 8 of the Green Building Standards. MaineHousing is encouraged by the recent movement made in the market for sustainable lumber; however, we remain concerned about the current cost and availability of sustainable lumber and the current state of the chain-of-custody process. If the market continues to expand, MaineHousing may be in a position next year to make the option under the Green

Building Standards a requirement, which seems more appropriate than making one available option under the required Green Building Standards a scoring criterion.

## **Section 8 of the Rule – Project Evaluation**

**Comment:** NNEHIF commented that the underwriting criteria MaineHousing uses to determine project financial feasibility should be identified in the Rule.

**Response:** In accordance with Section 42(m)(2)(D) of the Code, the amount of low income housing tax credits allocated to a project must not exceed the amount necessary for the financial feasibility of the project and its viability as a qualified low income housing tax credit project throughout the qualified project period. Most, if not all, applicants to the QAP also apply to the Rental Loan Program for funding. In fact, sponsors apply for tax credits and financing under the Rental Loan Program at the same time using the same application form, because MaineHousing rarely receives an application for tax credits only. The Rental Loan Program Guide contains MaineHousing’s guidelines for underwriting the funding available under the Rental Loan Program. MaineHousing does not underwrite tax credit only projects per se. For tax credit only projects, MaineHousing reviews the development budget and the amount and payment schedule for developer fees and, provided the costs are reasonable and justified, allocates low income housing tax credits in an amount, when combined with other funding sources, is no more than the total development budget.

**Comment:** NNEHIF expressed concern that MaineHousing is underwriting projects at the maximum tax credit rent for units limited to persons with income at or below 60% of area median income.

**Response:** This comment relates to the underwriting guidelines under the Rental Loan Program, not the QAP. Nevertheless, MaineHousing does not necessarily underwrite all projects at the maximum tax credit rent. An applicant must submit a market study in connection with its application to the Rental Loan Program and the QAP. MaineHousing determines the appropriate level of rent for each project based on several factors in the market study, including without limitation, the maximum tax credit rent, HUD established Fair Market Rents, market rental rates.

**Comment:** NNEHIF commented that if MaineHousing continues to cap the per unit soft debt subsidy under the Rental Loan Program, applicants will choose 130% boost areas to develop projects.

**Response:** This comment is outside the scope of the rulemaking because it relates to the Rental Loan Program. Nevertheless, MaineHousing will respond. The purpose of the subsidy (deferred debt) made available under the Rental Loan Program is to substitute amortizing debt that the project could afford if the project didn’t pledge to keep 60% of the units in the project occupied by persons with income at or below 50% of area median income. MaineHousing recognizes that rising construction and operating costs have caused gaps in funding for projects. MaineHousing encourages developers to obtain below market funding from non-MaineHousing sources and affordable housing tax increment financing

through the leveraged funds selection criteria in the QAP to fill these gaps. This year, the criterion has been modified to make it easier for developers to maximize points for capital subsidy sources, even small amounts, to encourage developers to seek gap funding from sources other than MaineHousing. While choosing to locate a project in a 130% boost area may eliminate the gap, it is possible to make projects that are not located in a boost area work with gap funding from other sources.

## **Summary of Comments and Response to Comments on the Substantial Change**

In response to testimony and comments received on the contractor health insurance selection criterion set forth in Section 7.E.5. of the proposed Rule, MaineHousing considered incorporating the Maine Revenue Service definition of “health benefit plan” in 36 M.R.S.A. §5219-O(2) into the definition of an eligible group health insurance plan in the selection criterion. Making this change would be a substantial change to the proposed Rule. MaineHousing notified interested parties on September 12, 2006 and published a notice in the Secretary of State’s rulemaking advertisement in the State’s major newspapers on September 13, 2006 about the proposed change and the 30-day comment period during which MaineHousing would accept comments on the change. The comment period expired at 5:00 PM on October 13, 2006.

On October 17, 2006 following the close of the comment period, MaineHousing decided to make the change to the proposed Rule. Based on MaineHousing’s research on the proposed change, which included discussions with the State of Maine Bureau of Insurance, the definition of “health benefit plan” in the Maine Revenue Code is a good standard for ensuring that the health insurance coverage that contractors are providing to their employees and for which applicants are awarded points under the contractor health insurance incentive is basic, quality health insurance coverage, not bare bones or poor quality coverage. MaineHousing agrees with comments made during the public hearing and comment period on the proposed Rule that MaineHousing should not reward contractors that provide poor quality health insurance coverage to their employees.

During the comment period on the proposed substantial change, MaineHousing received comments from Donna Chapman, an individual from Windham, Maine; Gail Rizzo, President of Maine Association of REALTORS (“MAR”); Kristine M. Ossenfort, Senior Governmental Affairs Specialist of Maine State Chamber of Commerce (“Maine Chamber”); Kathleen M. Newman, President of Associated Builders & Contractors of Maine (“ABC”); and David Clough, State Director of National Federation of Independent Businesses in Maine (“NFIB”). The following is a summary of these comments and MaineHousing’s response.

**Comments:** Maine Chamber commented that most businesses do not have the ability to determine whether their health insurance plans meet the standard. NFIB commented that it would be time-consuming for and there is a cost to contractors to determine whether a health insurance plan meets the standard. NFIB commented that it opposed the health plan definition at the time of its adoption in connection with the health care tax credit in the Maine Revenue Code because it was not helpful to small businesses.

MAR and Maine Chamber commented that MaineHousing does not have the expertise to interpret or administer the proposed health insurance plan standard. MAR commented that the proposed

change will increase MaineHousing's administrative costs, because of the additional staff time to regulate health insurance plans, and create liability for MaineHousing.

**Response:** MaineHousing will expect each contractor included in the applicant's pledge under the contractor health insurance incentive to provide a certification from the contractor or the contractor's health insurance carrier that the contractor's health insurance plan meets the definition. If a contractor does not have the ability to determine whether the contractor's health insurance plan meets the definition, the contractor can provide a certification from the contractor's health insurance carrier that the contractor's health insurance plan meets the definition. MaineHousing encourages contractors to consult their health insurance carriers. MaineHousing's compliance officer will monitor compliance with this requirement. This approach should not add to staff time or increase cost. MaineHousing is not aware of any liability associated with the contractor health insurance incentive or the proposed change to the definition of an eligible group health insurance plan in the incentive.

**Comment:** Maine Chamber commented that establishing a minimum benefit level is analogous to requiring that the coverage be a specific product or offered by a particular insurance carrier.

**Response:** MaineHousing is not requiring that a specific product or health insurance plan be offered or that contractors use a particular insurance carrier. The purpose of the proposed change is to ensure that the health insurance plans for which applicants are awarded points under the contractor health insurance incentive provide quality basic health care coverage, not so-called bare bones coverage, to the contractors' employees. MaineHousing should not reward contractors that provide poor quality health insurance coverage to their employees.

**Comments:** Ms. Chapman, ABC and NFIB commented that the proposed change will increase the high cost of housing construction and limit the contractors that will bid on MaineHousing projects.

Ms. Chapman commented that real estate has come to a screeching halt in Maine and that some builders will go out of business. MaineHousing is adding to the burden of these builders, creating a disincentive for in-state contractors to bid on MaineHousing-financed housing and a market that is not competitive.

ABC commented that the public purpose and duty of public officials in managing public funds is to purchase quality construction at the best price. Publicly-funded contracts should be awarded on the basis of the lowest responsive, responsible bid. To do otherwise limits market participation in public construction, increasing prices and harming local workers and contractors. ABC commented that MaineHousing's contractor standards are contrary to this public purpose and duty, because the standards seek social benefits beyond the completion of a project that are not construction-related.

Maine Chamber, MAR and ABC commented that the contractor health insurance criterion will increase the cost of developing affordable housing and reduce available funding, which seems contrary to MaineHousing's mission and purpose to provide affordable housing and maximize resources to that end.

**Response:** The comments are outside the scope of the proposed change on which MaineHousing has requested public comment. MaineHousing received similar comments about increased costs and limiting the number of bidders during the public hearing and comment period on the 2007 QAP. MaineHousing's response to these comments is set forth above. MaineHousing's experience with three projects that are subject to a 70% contractor health insurance threshold requirement under another multi-family housing program has been that bids have come in at or below cost estimates.

**Comments:** Maine Chamber commented that 96.6% of Maine businesses with 50 or more employees provide health insurance coverage and only 42.7% of Maine businesses with 50 or fewer employees offer health insurance. Maine Chamber and NFIB commented that using the proposed health plan definition may favor larger businesses over small businesses in Maine. NFIB commented that this is contrary to the public purpose of economic growth.

Ms. Chapman and Maine Chamber commented that good businesses offer health insurance if they can afford it. Maine Chamber commented that worker attraction and retention are powerful incentives for Maine employers to offer health insurance. The contractor health insurance incentive is viewed by businesses that cannot afford to offer health insurance as a punishment.

**Response:** The comment is outside the scope of the proposed change on which MaineHousing has requested public comment. MaineHousing received similar comments during the public hearing and comment period on the 2007 QAP. MaineHousing's response to these comments is set forth above.

**Comment:** Ms. Chapman commented that some persons who are paid well and can afford health insurance do not spend their money on health insurance. She said that health insurance is a personal choice, not a builder's responsibility and not MaineHousing's issue.

Maine Chamber and MAR commented that the expansion and promotion of health insurance coverage in Maine is not MaineHousing's purpose or mission. Maine Chamber commented that the proposed change continues to be contrary to the clear intent of the Legislature.

Maine Chamber, NFIB and ABC commented that the health insurance selection criterion and the proposed change are outside the scope of MaineHousing's rulemaking authority because they are unrelated to the allocation of low income housing tax credits and construction of affordable housing. NFIB commented that the proposed change compounds MaineHousing's error in pursuing public-policy rulemaking in the absence of specific legislative authority or guidance.

**Response:** Adopting the health insurance selection criterion with the proposed change in the definition of an eligible group health insurance plan in the incentive is not outside of MaineHousing's authority or its mission. MaineHousing received similar comments during the public hearing and comment period on the 2007 QAP. See pages 60-62 above for MaineHousing's response to these comments.

**FISCAL IMPACT OF THE RULE:** The sale of the low income housing tax credits will raise approximately \$23,190,000 in equity, which equity 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.