



## 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.*

**INDEPENDENT AGENCIES  
MAINE STATE HOUSING AUTHORITY**

**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. Maine State Housing Authority has been designated as the housing credit agency for the State responsible for allocation and administration of the annual credit ceiling. This Rule establishes the policies and procedures for allocating and administering the credit.

1. Definitions

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

- L. “Credit Period” means the period described in Section 42(f)(1) of the Code.
- M. “Developer Fee” means the compensation to the individual(s) or entity(ies) responsible for the work, costs and risks associated with the development of a Project, including amounts paid to consultants to perform tasks on behalf of such individuals or entities, but does not include compensation for professional services such as environmental assessments, rental market studies, soil tests, and water tests.
- N. “Difficult To Develop Area” means areas of the State which satisfy the requirements of Section 42(d)(5)(C)(iii)(I) of the Code as designated by HUD annually.
- O. “Elderly” has the same meaning as housing for older persons as defined in the federal Fair Housing Act.
- P. “Eligible Basis” means eligible basis as defined in Section 42(d) of the Code.
- Q. “Enterprise Community” means any community that has received a federal designation as an enterprise community or empowerment zone by HUD or RD.
- R. “Extended Low-income Housing Commitment” means an agreement satisfying the requirements of Section 42(h)(6)(B) of the Code.
- S. “Extended Use Period” means the period described in Section 42(h)(6)(D) of the Code.
- T. “Housing Development Costs” means the total of all direct and indirect costs incurred in financing, creating, purchasing or rehabilitating Qualified Low-income Housing Projects except the costs attributable to the acquisition of the land and any existing buildings.
- U. “Housing for Persons who are Homeless” means housing that meets the requirements set forth in Section 4.D. of this Rule.
- V. “Homeless” means homeless as that term is defined in Section 103 of the Stewart B. McKinney Homeless Assistance Act, as amended, 42 U.S.C. § 11302.
- W. “HUD” means the United States Department of Housing and Urban Development.
- X. “Intermediary Costs” means all Housing Development Costs except the actual construction or Rehabilitation Costs attributable to the development of the units.
- Y. “MaineHousing” means Maine State Housing Authority.

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

OO. “Very Low Income” means individuals or families whose income is at or below 50% of the area median income as defined in Section 42 of the Code.

2. Overview

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

This Rule comprises MaineHousing's Qualified Allocation Plan for the allocation of the 2010 and 2011 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 and procedures for administering the Credit and monitoring the Qualified Low-income Housing Projects after allocation of the Credit. A process has been established to select those Projects which address the most pressing housing needs of the State. These needs have been assessed and priorities for the allocation of the Credit have been established based on these needs. These needs and priorities are summarized below and have been incorporated into the selection criteria to be used in the selection process. Projects selected under this Rule must be evaluated in accordance with this Rule to determine the amount of Credit to be allocated.

3. Housing Needs/Priorities

A. MaineHousing annually completes a statewide needs assessment as part of its Consolidated Plan. Based on that annual needs assessment, MaineHousing determines priorities in its housing delivery programs. MaineHousing will allocate Credit resources in a manner consistent with the needs assessment and priorities approved through the Consolidated Plan. The following needs are identified:

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

- B. In consideration of the housing needs identified above, MaineHousing has established the following housing priorities for allocation of the Credit:
1. Projects that incorporate smart growth principles and contribute to vibrant, mixed-use downtown communities.
  2. Projects that incorporate green design and construction methods which create healthy, economical and durable buildings that are efficient to operate and maintain.
  3. Projects involving acquisition and/or rehabilitation, which add to or significantly rehabilitate the existing rental housing stock, and are rent-restricted to the lowest income households.
  4. Projects which have federal subsidies where the Credit is needed to make the Project feasible, including Projects with RD funding.
  5. Projects which meet the housing and service needs of distinct populations of a community including housing for persons who are Homeless.
  6. Projects which provide housing for persons with Very Low Income.

4. State Ceiling

- A. The State Ceiling for the Credit for each calendar year will be the sum of:
1. The per-capita dollar amount established pursuant to Section 42 of the Code multiplied by the State population as determined by the most recent estimate of the State's population released by the United States Bureau of Census before the beginning of such calendar year, or by such other method as may be authorized or required by the Code;
  2. The unused State Ceiling for the State, if any, for the preceding calendar year;
  3. The amount of the State Ceiling returned in the calendar year; and
  4. The amount, if any, allocated to MaineHousing by the United States Secretary of the Treasury from the re-pooling of other states' unused housing credit allocations.
- B. Non Profit Set-aside. Ten percent (10%) of the annual State Ceiling will be set aside for Projects in which a Qualified Non-profit Organization will own an interest (directly or through a partnership) in accordance with Section 42 (h)(5)(C) of the Code and materially participate in the development and operation of the Project

throughout the Compliance Period in accordance with Section 42 (h)(5)(B) of the Code. An Applicant must provide evidence that a Qualified Non-profit Organization will own an interest in the Project in accordance with the Code and indicate its desire to compete in this set-aside in its Application. In the event that the amount of Credit under this set-aside is not sufficient to complete the project proposed by the highest-scoring eligible Applicant, additional Credit will be allocated to the Applicant up to the maximum credit amount set forth in Section 4.F. of this Rule regardless of the Applicant's score in relation to the scores of other Applicants.

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

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

- E. TCAP Set-aside. \$800,000 of the 2010 State Ceiling will be set aside for Projects that received a notice of award under the 2009 Tax Credit Assistance Program Selection Process and Criteria. An Applicant must indicate its desire to compete in this set-aside and include a copy of the notice of award in its Application. In the event the amount of Credit under this set-aside is not sufficient to complete the project(s) proposed by the highest and second highest-scoring eligible Applicants, additional Credit will be allocated to the Applicant(s), regardless of the Applicant's (s') score(s)

in relation to the scores of other Applicants, provided the total amount of Credit allocated to each Applicant shall not to exceed the maximum credit amount set forth in Section 4.F. of this Rule.

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

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

5. Allocation Process

- A. The deadline for submitting all Applications for the 2010 State Ceiling, including Applications for the Set-asides under the 2010 State Ceiling in Section 4 of this Rule, is 5:00 PM on Thursday, April 29, 2010. The deadline for submitting all Applications for the 2011 State Ceiling, including Applications for the Set-asides under the 2011 State Ceiling in Section 4 of this Rule (excluding the Set-aside in Section 4.E.), is 5:00 PM on Thursday, October 28, 2010. MaineHousing may reject any and all Applications.
- B. Upon receipt of an Application satisfying the requirements of Section 6 of this Rule, MaineHousing will provide notice of the proposed Project to the chief executive officer of the local jurisdiction within which the Project is proposed to be located. Such notice will provide for a fifteen (15) day period in which to comment on the proposed Project. Any comments received will become part of the Application and will be considered by MaineHousing in the selection process.
- C. All Applications, which meet the requirements of Section 6 of this Rule, will be reviewed and ranked according to the selection criteria set forth in Section 7 of this Rule.
- D. Once Applications are ranked, MaineHousing will determine which Applications will be selected to receive an award of Credit, which award will be evidenced by a notice to proceed. 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 received a notice to proceed, MaineHousing will determine the amount of Credit to be allocated based on the evaluation procedure set forth in Section 8 of this Rule. An Applicant may apply for Credit based on 130% of Eligible Basis for Projects located in Qualified Census Tracts, and Difficult To Develop Areas and other areas designated by MaineHousing pursuant to Section 42(d)(5)(C)(v) of the Code. For purposes of the 2010 State Ceiling and 2011 State Ceiling, MaineHousing has designated the entire State as a difficult to develop area for purposes of Section 42(d)(5)(C)(v) of the Code because of the high cost of developing housing in the State, the low median income of the State's population and the high, and still increasing, annual operating costs for housing in the State relative to other states in the United States. Notwithstanding the foregoing, the amount of Credit shall not exceed the maximum credit restrictions set forth in Section 4.F. of this Rule and shall be subject to the limitations set forth in Section 8 of this Rule.
- F. Projects with an award of Credit may receive allocations pursuant to Section 9 or Section 10 of this Rule.
- G.
  - 1. MaineHousing shall deem an Application withdrawn or, a notice to proceed, if issued, cancelled if one or more of the following events occur after the Application is made or the notice to proceed is issued.
    - a. The Application or notice to proceed is assigned or there is a change of Applicant without MaineHousing's prior written consent.
    - b. There is a change in the location of the Project from the location identified in the Application.
    - c. There is any change in the commitments made in the Application, except as provided in Section 7.B.1. and Section 7.D.5. (addressed in subsection G.2. below) of this Rule, which results in a net reduction in the score that the Application received pursuant to the selection criteria set forth in Section 7 of this Rule.
    - d. There is a change in the design of the Project or the financing for the Project from the design or the financing described in the Application which MaineHousing determines, in its sole discretion, would result in a substantial increase in the amount of Credit or other MaineHousing funding for the Project that the Applicant requested in the Application and MaineHousing determined the Applicant was eligible to receive.

e. There is any other material or substantive amendment or change to the Application without MaineHousing's prior written consent.

2. Any change in the commitments made in the Application for which the Applicant was awarded points under Section 7.D.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.

If MaineHousing determines, in its sole discretion, that the Applicant did not make a good faith effort, MaineHousing will give the Applicant an opportunity to satisfy the pledge made in its Application. If the Applicant fails to fulfill its pledge, MaineHousing will not deem the Application withdrawn, but will re-score the Application. If upon re-scoring, the Application does not score high enough to maintain its award of Credits, the Application will be added to the waiting list according to its new score relative to the score of other Applications, and the next project on the waiting list will be awarded the Credit that was originally awarded to the Applicant.

If MaineHousing awards points under Section 7.D.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.

- H. 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.
- I. An Application for an allocation of Credit from the State Ceiling for calendar years after 2011 will not be accepted until MaineHousing adopts such further amendments to this Rule as it determines necessary to continue MaineHousing's Credit program. MaineHousing may issue a binding commitment to allocate Credit ceiling available in the subsequent year for any Project placed in service in the current year. Credit from the subsequent year's Credit ceiling may only be committed upon MaineHousing's determination that the amount of Credit that remains in the current year's State Ceiling is insufficient to ensure the viability or feasibility of the Project. Any binding commitment to allocate subsequent year's Credit authorized pursuant to this section shall be processed and evaluated in accordance with this Rule and shall be subject to the continuation of MaineHousing's Credit program and applicable law.

6. Threshold Application Requirements

- A. Applications will be accepted by MaineHousing only on such form as established by MaineHousing.
- B. An Applicant shall agree to keep at least 60% of the total units in a Project occupied by persons with Very Low Income and to keep the Credit-eligible units in the Project rent-restricted in accordance with Section 42 of the Code for a period of ninety (90) years.
- C. Applications for existing residential rental projects receiving Section 8 project-based rental assistance (excluding assistance provided under the Project-Based Voucher Program pursuant to 24 CFR Part 983) are not eligible for the 2010 State Ceiling and 2011 State Ceiling.
- D. An Applicant shall agree to enter into an Extended Low-income Housing Commitment with MaineHousing which contains restrictive covenants that run with the land, are binding on the Applicant and its successors and assigns and are enforceable by MaineHousing and the low-income tenants of the Project. The Extended Low-income Housing Commitment will obligate the Applicant to comply with the Code, the affordability requirements set forth in Section 6.B. of this Rule, the resident service coordination requirement set forth in Section 6.F.13. of this Rule and the public housing and Section 8 waiting list requirement set forth in Section 6.F.14. 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 so long as any indebtedness owed to MaineHousing in connection with the Project is satisfied in full; provided however, that low-income tenants may not be evicted or suffer an increase in gross rent during the three-year period following termination.

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

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

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

located in an area that is served by a public sewer system with the existing capacity for the Project, an area identified as a census-designated place in the latest Federal Decennial Census, or a compact area of an urban compact municipality as defined under 23 M.R.S.A. § 754. Projects that serve persons identified in 30-A M.R.S.A. § 4349-A(1)(C)(7), including without limitation, persons with disabilities, persons who are homeless and persons who are wards of the State, are excluded from the requirements of 30-A M.R.S.A. § 4349-A.

7. Must demonstrate the financial ability to proceed with and complete 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 evidencing the commitment of an identified source of funding for the services. If the Project is part of or related to a development and cannot be completed without the completion of the development, either structurally or financially, then the Applicant must demonstrate the financial ability to complete the Project and the development.
8. Must include a proposal from an Accredited Investor or experienced tax credit syndicator. Net proceeds made available to the Project should be identified and expressed as a “factor” of the annual Credit dollar amount anticipated.
9. Must provide a comprehensive market study of the housing needs of low-income persons in the area to be served by the Project acceptable to MaineHousing. The study must be prepared by a qualified professional acceptable to MaineHousing in accordance with the *National Council of Affordable Housing Market Analysts Model Standards for Market Studies for Rental Housing* in effect 120 days prior to the deadline for Applications for the applicable Credit round.

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

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

MaineHousing's Contractor Standards For MaineHousing-Financed Multifamily Housing.

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

11. Must provide an acceptable disclosure and certification of the total financing planned for the Project and any development of which the Project is a part or to which it is related and the Project cannot be completed without the completion of the development, any proceeds or receipts expected to be generated by reason of the Credit or other tax benefits, the total sources and uses of Project funds and the full extent of all Federal, state and local subsidies which apply or for which the Applicant expects to apply with respect to the Project. This disclosure and certification must include income, operating and development cost projections and methods for satisfying any deficits.
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 Credit Period, two additional items are required: (a) supplemental written explanation of the impact on the Project's continued operation of such termination or non-renewal, and (b) a pro forma operating statement running five years beyond the anticipated expiration of the contract which includes the impact of transitioning from the contract rent to applicable tax credit rent.
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 and must maintain funding for the resident service coordinator throughout the Compliance Period. The resident service coordinator must be present on-site at the Project and available to the residents a minimum of one day per week, preferably two days per week, and

a minimum of 4 to 6 hours per week for Projects with up to 30 units or a minimum of one hour per week for every 5 units for Projects with more than 30 units. The resident service coordinator shall meet with residents in an on-site office or other private setting to evaluate individual service needs and refer residents to appropriate services. The services provided by the resident service coordinator shall be free of charge to the residents.

The Application 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. An Applicant shall agree to give a preference to eligible persons whose names are on a public housing or Section 8 waiting list
15. 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 11 of this Rule.



- G. MaineHousing reserves the right to require additional information it deems necessary in order to process an Application.
- H. 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 32 points).
  - 1. A Project will receive 3 points if the Project either (a) involves the rehabilitation of existing multi-family rental housing containing 5 or more units that also provides protection against displacement and substantial increases in housing costs attributable to the rehabilitation, or (b) involves the rehabilitation, remediation or reuse of an existing substantial building or structure, or (c) utilizes a formerly developed site rather than new construction on an undeveloped site.
  - 2. An Applicant will receive 1 point for each of the following amenities and services.
    - a. An on-site community room developed as part of the Project. An existing community room in a multi-family housing project located on an adjoining site will also qualify if it is available to the residents of the Project at no cost during the Compliance Period. The Application must include a letter from the owner of the existing community room indicating the community room is available to the residents of the Project to the same extent as the residents of the existing multifamily housing project and the community room has sufficient capacity in terms of size and utilization to serve all of the residents of the existing multifamily housing project and the Project.
    - b. Computer(s) for tenant use in a common area of the Project.
    - c. Necessary infrastructure for cable, DSL or wireless Internet service in all units in the Project and such service is provided to the tenants free of charge. To receive the points, the Applicant must include the cost of the service in the Project's annual operating budget included in the Application.
    - d. Laundry capability provided on-site either in each unit as a washer/dryer hook-up or as a fully accessible facility centrally located within the Project.

- e. Area(s) for activities either provided on-site at the Project free of charge to the tenants or public access is within ½ mile of the Project and there is no fee or membership required to use the equipment or facility. Areas for activity include but are not limited to ball-fields, basketball courts, tennis courts, playgrounds with equipment, gardening plots, bike trails, walking trails and ice-skating rinks. Areas of activity do not include activities such as banking, shopping and dining.
3. A Project that gives preference in at least 20% of the units in a Project to persons who are homeless or displaced, persons with mental or developmental disabilities, or other persons with special housing needs will receive 2 points. The Applicant must commit to maintain a waiting list for and offer services appropriate to the needs of the persons for whom the preference is given. The Applicant must submit a description of the services and a written commitment or letter of support from a qualified service provider to provide the services with the Application.
4. A Project for families with a minimum of 20% of the low income units as 3 or more bedroom apartments and an additional 30% of the low-income units as 2 or more bedroom apartments will receive 6 points.
5. A Project that provides for low-income tenant ownership will receive 1 point. An Applicant shall not transfer ownership of the Project to the tenants until the affordability period required in Section 6.B. of this Rule has expired.
6. A Project will receive 4 points if the Project has all municipal approvals required to proceed with and complete 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. If the Project is part of or related to a development and cannot be completed without the completion of the development, either structurally or financially, then the Applicant must provide evidence of all municipal approvals for the development. The Applicant must meet with MaineHousing's Construction Services Manager concerning the design of the Project before submitting the design to the municipality for approval. Notwithstanding MaineHousing's approval of the level of design of the Project approved by the municipality, the final design of the Project, including all plans, details and specifications, are subject to MaineHousing's approval

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

B. Leveraged Funds (maximum of 16 points).

An Applicant that proposes to leverage funds for a Project from a source other than MaineHousing will receive up to 16 points. Resources made available either directly, or indirectly by MaineHousing are not eligible for consideration under this criterion.

1. Up to 6 points will be awarded to a Project that has below market capital 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.

If the Total Development Cost of a Project exceeds the Total Development Cost for that type of Project that is acceptable MaineHousing as described in this criteria, the total amount of eligible below market funding for the Project will be reduced by the amount by which the Total Development Cost of the Project exceeds the acceptable Total Development Cost for that type of Project. For purposes of this criteria, the acceptable Total Development Cost for a new construction project is \$215,000 per unit, the acceptable Total Development Cost for the acquisition and rehabilitation of existing multi-family residential rental housing is \$175,000 per unit and the acceptable Total Development Cost of converting an existing non-housing structure(s) to multi-family residential rental housing (so-called adaptive, re-use) is \$265,000 per unit. If a Project involves one or more of these types, the acceptable Total Development Cost for the Project will be the percentage of the Total Development Cost for each type applied to the acceptable Total Development Cost attributable to the respective type. [Example: A Project involves the adaptive, reuse of an existing building plus the new construction of housing units. The costs associated with the adaptive, reuse of the existing building are 60% of the Total Development Cost and the costs associated with new construction being 40% of the Total Development Cost. The acceptable Total Development Cost for the Project will be 60% of the acceptable Total Development Cost for adaptive, reuse projects set forth above plus 40% of the acceptable Total Development Cost for new construction projects set forth above.]

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

The Applicant must submit evidence of the commitment of below market funding or evidence that the below market funding has been applied for with its Application. The evidence must include the terms of the below market

funding, including without limitation, the interest rate, the amortization period, the loan term and security required, if any.

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

Eligible below market funding will be evaluated based on a present value or net present value basis using the 10-year Treasury note rate as of 30 days prior to the deadline for Applications for the applicable Credit round plus 300 basis points to determine the amount of subsidy. Applicants will receive points based upon the percentage of this subsidy amount to the Total Development Cost of the Project as follows:

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

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.

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

MaineHousing, then MaineHousing will re-score the Application.

If an Application is re-scored and the total score of the Application is less than the total score of the highest scoring Application on the waiting list after re-scoring, any notice to proceed issued with respect to the Application will be automatically terminated and the Application will be placed on the waiting list in the order of its score relative to other Applications. If the total score of an Application is equal to the score of one or more other Applications, MaineHousing will use the tie breaker mechanism in Section 7.E. of this Rule to prioritize the Applications.

2. A Project, which consists or will consist of donated land or land and building(s) transferred or leased to the owner of the Project for no consideration or nominal consideration, will receive 2 points. If there is an existing building(s) on the land to be leased or transferred, all of the building(s) and the land must be leased or transferred for nominal or no consideration to the owner of the Project to receive points under this category. For purposes of this subsection, nominal means one percent (1%) or less of the value of the land or land and building(s). The Applicant must submit evidence of the transfer or lease for nominal or no consideration, and evidence of the value of the land or land and building(s) if the consideration is nominal, with its Application.
3. A Project that has a commitment of new project-based rental assistance for 75% or more of the units in the Project will receive 5 points. A Project that has a commitment of new project-based rental assistance for 25% or more of the units in the Project but less than 75% of the units in the Project will receive 3 points. Assistance provided under the Project-Based Voucher Program pursuant to 24 CFR Part 983 is eligible for points hereunder only if the Project has been awarded assistance pursuant to a competitive process prior to the date of the Application. The Applicant must submit the commitment of project-based rental assistance, including the specific terms of the rental assistance, with the Application.
4. A Project that is directly benefited by an operating subsidy or reduction in operating costs through a tax increment financing, payment in lieu of taxes arrangement, abatement or other form of property tax relief that satisfies the following requirements will receive 3 points. The tax increment financing, payment in lieu of taxes, abatement or other property tax relief arrangement must provide for a minimum of 50% of the Project's annual incremental property tax revenue to be returned to the owner of the Project to pay the operating costs of the Project or foregone by the municipality to reduce the operating costs of the Project for a minimum period of 15 years from construction completion and must be approved by the municipality and all other applicable governing entities. Projects located in municipalities or areas

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

C. Project Location (maximum of 23 points).

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

<b>Service Center Community</b>	<b>Points</b>
AUBURN	5
BANGOR	5
BATH	5
BIDDEFORD	5
BRUNSWICK	5
ELLSWORTH	5
HOULTON	5
LEWISTON	5
OLD ORCHARD BEACH	5
OLD TOWN	5
PORTLAND	5
ROCKLAND	5
RUMFORD	5
SACO	5
SANFORD	5
SKOWHEGAN	5
WATERVILLE	5

WESTBROOK	5
AUGUSTA	3
BAR HARBOR	3
BREWER	3
CARIBOU	3
FAIRFIELD	3
FARMINGTON	3
GARDINER	3
KITTERY	3
MADAWASKA	3
MEXICO	3
NORWAY	3
ORONO	3
PARIS	3
PITTSFIELD	3
PRESQUE ISLE	3
SOUTH PORTLAND	3
TOPSHAM	3
WINSLOW	3
BELFAST	1
BRIDGTON	1
BUCKSPORT	1
CALAIS	1
CAMDEN	1
DEXTER	1
DOVER-FOXCROFT	1
ELIOT	1
FORT KENT	1
HALLOWELL	1
HAMPDEN	1
LINCOLN	1
MILLINOCKET	1
OAKLAND	1
ROCKPORT	1
SCARBOROUGH	1
THOMASTON	1



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

<b>Service Center Community</b>	<b>Points</b>
AUBURN	5
AUGUSTA	5
BANGOR	5
BIDDEFORD	5
BRUNSWICK	5
CARIBOU	5
ELLSWORTH	5
KITTERY	5
LEWISTON	5
PORTLAND	5
SACO	5
SANFORD	5
SCARBOROUGH	5
SKOWHEGAN	5
SOUTH PORTLAND	5
WATERVILLE	5
WESTBROOK	5
WINSLOW	5
BATH	3
BELFAST	3
BRIDGTON	3
CALAIS	3
CAMDEN	3
DOVER-FOXCROFT	3
ELIOT	3
FAIRFIELD	3
FARMINGTON	3
GARDINER	3
HOULTON	3
LINCOLN	3
MADAWASKA	3
MILLINOCKET	3
NORWAY	3
OLD TOWN	3
PRESQUE ISLE	3
ROCKLAND	3
RUMFORD	3

TOPSHAM	3
BAR HARBOR	1
BETHEL	1
BREWER	1
BUCKSPORT	1
DAMARISCOTTA	1
DEXTER	1
FARMINGDALE	1
FORT KENT	1
FREEPORT	1
GREENVILLE	1
HAMPDEN	1
MEXICO	1
NEWPORT	1
NORRIDGEWOCK	1
OAKLAND	1
OLD ORCHARD BEACH	1
ORONO	1
OXFORD	1
PARIS	1
PITTSFIELD	1
ROCKPORT	1
VAN BUREN	1

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

Portland	Bangor	Lewiston
Biddeford	Saco	Sanford

- d. Projects located on Native American tribal lands will receive 5 points.
2. A Project located in an area in which the vacancy rate in comparable Qualified Low Income Housing Projects is less than 7% will receive 2 points. A Project located in an area in which the vacancy rate in both comparable Qualified Low Income Housing Projects and comparable market rate multifamily rental housing is less than 7% will receive 3 points. MaineHousing will rely on vacancy data collected by MaineHousing on Qualified Low Income Housing Projects in the State and the vacancy information in the market study submitted with the Application as reviewed and approved by MaineHousing in determining eligibility for the points under this criteria.

3. A Project located in an area in which the average market rent is at least 5% higher than the average maximum tax credit rent for a unit occupied by an individual or family with income at or below 60% of area median income, as determined in accordance with Section 42 of the Code, will receive 1 point. A Project located in an area in which the average market rent is at least 10% higher than the average maximum tax credit rent for a unit occupied by an individual or family with income at or below 60% of area median income, as determined in accordance with Section 42 of the Code, will receive 2 points. For Projects with units of varying bedroom size, the average rents will be determined using a weighted average based on the number of units of each bedroom size. MaineHousing will rely on the market rent information in the market study submitted with the Application as reviewed and approved by MaineHousing.
4. A Project that is part of a community revitalization plan will receive 2 points. Projects that involve the rehabilitation of existing multi-family rental housing containing more than 5 units within a community revitalization area will receive 1 additional point. To receive points, an Applicant must submit either (a) evidence of being an Enterprise Community or (b) a copy of the community revitalization plan adopted by the municipality or tribal government referencing the area in which the Project will be located and evidence of official adoption of the plan by the municipality or tribal government with its Application. Projects that are part of a community revitalization plan and are located in a Qualified Census Tract will be given preference over such Projects that are not located in a Qualified Census Tract.
5. A Project that satisfies one of the following elements of smart growth will receive up to 10 points. A Project is eligible for points under only one of the following criteria; the points are not cumulative.
  - a. A Project located within a safe walking distance of not more than 1,500 feet of a downtown will receive 10 points.
  - b. A Project located within a safe walking distance of not more than 2,500 feet of a downtown will receive 8 points.
  - c. A Project will receive 6 points if the Project is located within a safe walking distance of at least three destination(s) important to the course of daily living that are appropriate to the population served by the Project. At least one of the destinations important to the course of daily living must be within safe walking distance of not more than 1,500 feet of the Project and the other destinations important to the course of daily living must be within safe walking distance of not more than 2,500 feet of the Project to qualify for the points under

this criteria. An eligible destination important to the course of daily living includes a grocery store, a public school if the Project is a family project, a pharmacy, a bank or credit union, a post office, a retail store, a general health care practitioner's office (not a specialist), a public library, a hospital or significant places of employment. A single establishment containing more than one destination important to the course of daily living will be considered only one destination important to the course of daily living for purposes of this criteria (e.g. a retail store which includes groceries, a pharmacy and a bank will be considered only one destination, not four destinations). An applicant must justify, to MaineHousing's satisfaction, other destinations it believes are important to the course of daily living. Convenience stores, gas stations, restaurants and other food service establishments are not eligible destinations for purposes of this criterion.

- d. A Project located within a safe walking distance of not more than 1,500 feet of a designated pick-up location for existing fixed-route public transportation to the downtown of the municipality in which the Project is located or a proximate downtown that serves the area in which the Project is located will receive 3 points.
- e. For purposes of this Section 7.C.5, the following terms have the following meanings.
  - i. A "downtown" means (a) the central business district of a community that serves as the center for socioeconomic interaction in the community and is characterized by a cohesive core of existing commercial and mixed-use buildings, often interspersed with civic, religious and residential buildings and public spaces, typically arranged along a main street and intersecting side streets, walkable and served by public infrastructure; or (b) an area identified as a downtown in a comprehensive plan adopted pursuant to 30-A M.R.S.A § 4311 et seq.
  - ii. The term "mixed use" means the integration of two or more land uses such as residential, commercial and office, with a strong pedestrian orientation.
  - iii. A "safe walking distance" means year-round pedestrian access by one or more of the following, as appropriate to the area: sidewalks adjacent to the Project, paved wide shoulders suitable for walking, crosswalks and traffic signals at busy roads or intersections.

iv. The term “fixed-route public transportation” means year-round, regularly scheduled public transportation that (a) for a family Project, operates at least 5 days per week and provides regular service during commuter hours (commuter hours being 6:30 AM to 9:30 AM and 3:00 PM to 6:00 PM daily), and (b) for a Project for persons who are elderly, operates at least 3 days per week and provides regular service throughout the day.

f. The Applicant must submit evidence of the Project’s eligibility for the smart growth elements represented in the Application.

The Applicant must submit a map generated by readily available internet services or commercial software, preferably Mapquest, Google Maps (free to user version), MSN Livesearch or Google Earth (subscription service). The map must clearly show the specific address for the entrance to the Project, (Point A) and the ending point or destination (Point B), the distance between Point A and Point B in terms of feet, and the exact route from Point A to Point B used in determining the distance. The entire route must conform to the definition of safe walking distance set forth in Section 7.C.5.e.iii. and should not cut across parking lots. According to the definition, the route must be walkable year-round, including during the winter, i.e. plowed. An Applicant requesting points under Section 7.C.5.d. must also submit a copy of the schedule and map for the public transportation.

g. MaineHousing will make a pre-determination about the boundaries of a downtown and a Project’s eligibility under the selection criterion in Sections 7.C.5.a. and 7.C.5.b. above, provided the Applicant submits all information necessary for MaineHousing to make such determination at least 15 days prior to the deadline for Applications for the applicable Credit round.

D. Sponsor Characteristics (maximum of 11 points).

1. An Applicant, or any principal thereof, who has prior experience with MaineHousing and has not been declared in default by MaineHousing in the last five (5) years, or who has successfully developed Qualified Low-Income Housing Projects in other states will receive 2 points.
2. An Applicant will receive 2 points if the Applicant, any principal thereof or any affiliate of any principal thereof, has prior experience with Qualified Low Income Housing Projects and in the last three (3) years (a) has not been issued an IRS Form 8823 or (b) was issued an IRS Form 8823, but it was subsequently reported as “noncompliance corrected” within the specified

time period for correction, and (c) has not had an IRS audit finding resulting in a recapture event. Applicants must complete the self-certification section of the Application to receive these points.

3. a. An Applicant will receive 2 points if a nonprofit organization that satisfies the following requirements has an ownership interest in the Project.
  - i. The Internal Revenue Service has determined that the nonprofit organization is an organization described in Section 501(c)(3) or 501(c)(4) of the Code and is exempt from taxation under Section 501(a) of the Code;
  - ii. The nonprofit organization must be duly organized and existing or authorized to do business under the laws of the State of Maine and must be in good standing in its state of incorporation (if not the State of Maine) and the State of Maine;
  - iii. The nonprofit organization must be engaged in and have as one of its charitable purposes the fostering and development of low-income housing;
  - iv. The nonprofit organization is not affiliated with or controlled by any for-profit entity; and
  - v. The nonprofit organization must have a general partner interest in the owner of the Project and be the managing general partner of the Project.
- b. A for-profit corporation will be deemed to satisfy the requirements of this criterion if 100% of the stock of the corporation is held by one or more Qualified Nonprofit Organizations at all times during the period such corporation is in existence in accordance with Section 42(h)(5)(D) of the Code and the for-profit corporation satisfies the requirements of Sections 7.D.3.a (ii) and (v) above.
- c. A nonprofit corporation will be deemed to satisfy the requirements of this criterion if a single nonprofit organization that satisfies the requirements in subparagraphs (a)-(e) above is the sole member of the nonprofit corporation during the period the nonprofit corporation has an ownership interest in the Project, which period shall not be less than the Extended Use Period, and the nonprofit corporation satisfies the requirements of Sections 7.D.3.a (ii) and (v) above.

- d. A limited liability company will be deemed to satisfy the requirements of this criterion if a single nonprofit organization that satisfies the requirements in subparagraphs (a)-(e) above owns 100% of the limited liability company during the period the limited liability company has an ownership interest in the Project, which period shall not be less than the Extended Use Period, the limited liability company is disregarded as an entity separate from the nonprofit organization for tax purposes under the Code and the limited liability company satisfies the requirements of Sections 7.D.3.a (ii) and (v) above.
- e. A public housing authority will be deemed to satisfy the requirements of Section 7.D.3.a. above if the public housing authority is duly organized, validly existing and in good standing under the laws of the State of Maine; is exempt from taxation under the Code; has as one of its purposes the fostering and development of housing for low-income persons; and has an ownership interest in the Project and is the sole or managing general partner of the owner of the Project.
- f. A tribal housing authority will be deemed to satisfy the requirements of Section 7.D.3.a. above if the tribal housing authority is duly organized and legally existing under governing tribal law; has as one of its purposes the fostering and development of housing for low-income persons; and has an ownership interest in the Project and is the sole or managing general partner of the owner of the Project.

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

- 4. Projects that will be managed by a management company with a) low income housing tax credit training and b) a minimum of three (3) years of successfully managing a Qualified Low-Income Housing Project will receive 2 points. Applicants must submit a binding commitment from the management company to manage the Project and a certificate(s) or other evidence satisfactory to MaineHousing of the management company's low income housing tax credit training and experience with its Application.
- 5. An Applicant (or the owner of a Project if different from the Applicant) that employs contractors (including general contractors, construction managers, subcontractors and material suppliers) that provide an eligible group health

insurance plan to their employees in accordance with the requirements of this criterion will be awarded up to 3 points, based on the percentage of contractors or the percentage of the Total Construction Costs paid to contractors who provide an eligible group health insurance plan, as follows.

If at least 60% but less than 70% of the contractors provide an eligible group health insurance plan **or** at least 60% but less than 70% of the Total Construction Costs are to be paid to contractors who provide an eligible group health insurance plan, the Applicant will receive 1 point.

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

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

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

- (a) Includes comprehensive coverage for at least the following range of benefits:
  - (i) inpatient and outpatient hospital services;
  - (ii) physicians' surgical and medical services;
  - (iii) laboratory and x-ray services; and
  - (iv) well-baby and well-child care, including age-appropriate immunizations;
- (b) imposes co-payment and deductible costs on the employee that do not exceed 10% of the actuarial value of all benefits afforded by the plan; and
- (c) affords coverage that has an actuarial value no less than 80% of the actuarial value of coverage that is provided to employees of the State. For purposes of this subsection, "actuarial value" means the expected cost of a benefit based on assumptions as to relevant



variables such as morbidity, mortality, persistency and interest. When comparing the actuarial value of one benefit or package of benefits to another, both actuarial values must be based on the same assumptions.

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

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

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

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

#### E. Tie Breaker

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

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

2. The remaining Applications will be re-scored by adding the points the Applications received during the original scoring process under the selection criteria in Section 7.A.6. (municipal approvals), Section 7.B.1. (below market funding), and Section 7.C.5. (smart growth) of this Rule.

MaineHousing will award Credit to Applications based on the new score, from the highest to the lowest scoring Applications, to the extent Credit is available, as determined by MaineHousing in its sole discretion.

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

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

8. Project Evaluation

- A. MaineHousing will issue a notice to proceed to all Applications selected to receive an allocation of Credit pursuant to the selection criteria set forth in this Rule. The notice to proceed will indicate that an evaluation will be conducted pursuant to this Section 8 to determine the amount of Credit to be allocated to the Project and will include, without limitation, the following conditions.
1. Deadline for receipt of information necessary for MaineHousing to make its determination on allocation or carryover allocation of Credit.
  2. Deadline for final working drawings and specifications.
  3. Deadline for loan closing(s).
  4. Prohibition against amendments or changes as set forth in Section 5.G. of this Rule.
  5. Termination date.
- B. The amount requested in the Application will be the basis on which MaineHousing will make its determination, but the amount MaineHousing determines the Project is eligible to receive may reserved will not equal the amount requested in the Application. 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.

- C. The amount of Credit allocated 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, or the maximum amount for which the Project is eligible to receive pursuant to Section 4.F. of this Rule. The evaluation process will be extensive and will require Applicants to provide significant amounts of financial information and Project detail. In making this determination, MaineHousing will consider:
1. The sources and uses of funds and the total financing planned for the Project, including the reasonableness of development costs and operating expenditures;
  2. Any proceeds or receipts expected to be generated by reason of tax benefits; and
  3. The percentage of the housing credit dollar amount used for Project costs other than Intermediary Costs.

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

- D. In order to determine the amount of Credit a Project is eligible to receive, MaineHousing must identify the equity gap between development sources and uses which the Credit is designed to fill. 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 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).
- E. In order to fully evaluate the proposal’s need for Credit, the expectation is that availability of the Credit is a necessary incentive for the developer to undertake completion of the Project. Applicants should avoid incurring construction costs before MaineHousing determines the amount of Credit a Project is eligible to receive. MaineHousing reserves the right to cease processing any Application which has incurred construction costs prior to applying for Credit.

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.

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

Typically, the Developer Fee consists of two components, overhead and profit, which must be separately identified in the development budget for the Project. The Developer Fee, including these two components, shall be limited to \$15,000 per unit for the first 20 units in the Project and \$12,500 per unit for each additional unit in the Project, which total amount shall not exceed an amount equal to 15% of the Housing Development Costs, plus 10% of the costs of acquisition of land, existing buildings and equipment, all determined without regard to the Developer Fee.

- G. 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

- H. 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.
- I. After the Applicant receives a notice to proceed, and to the extent authorized by the Code, MaineHousing and the Applicant may enter into a Binding Agreement to fix the maximum Credit dollar amount to be allocated to each Qualified Low-Income

Building for which Credit has been requested. Any such Binding Agreement shall satisfy the requirements of the Code and will contain certain performance-based conditions, including without limitation the conditions set forth in the notice to proceed. The Applicant may choose to fix the Applicable Percentage for each Qualified Low-income Building in the Project by irrevocably electing the percentage for the month in which the Applicant and MaineHousing enter into a Binding Agreement or to select the applicable percentage for the month in which the building is placed in service.

- J. MaineHousing may, in its sole discretion, allocate additional Credit for a Project facing increased construction costs, provided that the additional Credit amount will not exceed an amount that will generate capital contributions in an amount equal to 5% of the Total Construction Cost for the Project estimated at the time construction bids on the Project are requested and is subject to Credit availability.
- K. 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.
- L. 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.

- M. 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. 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 Project has been awarded Credit,

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 equal to 3% of the amount of Credit allocated to the Project, unless the Applicant paid the allocation fee pursuant to Section 10.A.4. in connection with the issuance of a carryover allocation for the Project.

This sub-paragraph does not apply to tax-exempt bond financed Projects described in Section 11 of this Rule.

4. A monitoring fee in an amount equal to \$400 per Credit eligible unit in the Project.
- B. The amount of Credit allocated on behalf of each Qualified Low-income Building shall be the lesser of:
1. The maximum amount for which the Project is eligible under the Code, as determined by MaineHousing based on information provided by the Applicant;
  2. The amount determined by MaineHousing as the minimum amount necessary for the financial feasibility of the Project and its viability as a Qualified Low-income Housing Project throughout the Credit Period; and
  3. The maximum amount for which the Project is eligible to receive pursuant to Section 4.F. of this Rule.
- 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.

10. 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 Project is awarded Credit, MaineHousing may issue a carryover allocation to qualifying Applicants or choose to carry over the balance of the State Ceiling as provided in Section 4.A. of this Rule. In order to be considered for a carryover allocation, an Applicant must provide:
1. A complete request for carryover allocation of Credit, which must be in a form prescribed by MaineHousing and must include an audit report on the schedule of project costs prepared by an independent, third party certified public accountant.
  2. Certification of the total financing planned for the Project, all proceeds or receipts expected to be generated by reason of the Credit or other tax benefits, the total sources and uses of Project funds and the full extent of all Federal, State and local subsidies which apply or which the Applicant expects to apply with respect to the Project. This certification must include income, operating and development cost projections and methods for satisfying any deficits.
  3. Status report on the progress of development of the Project and the likelihood of the Project proceeding to completion.
  4. An allocation fee equal to 3% of the amount of Credit allocated to the Project.
- 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 maximum amount for which the Project is eligible to receive pursuant to Section 4.F. of this Rule.

C. A carryover allocation made by MaineHousing will be effective only if:

1. MaineHousing receives satisfactory evidence that more than ten percent (10%) of the reasonably expected basis in the Project, determined as of the second calendar year following the calendar year in which the carryover allocation is made, is incurred within twelve (12) months of the date the carryover allocation is made, and

2. The Qualified Low-income Building is placed in service within two (2) years following the calendar year in which the allocation is made and only to the extent that the Internal Revenue Service gives effect to such allocation.

The entity satisfying the requirements set forth in this Section 10.C. must be the same entity that received the carryover allocation. CREDIT RECIPIENTS ARE RESPONSIBLE FOR TAKING ONLY THE AMOUNT OF CREDIT AUTHORIZED UNDER THE CODE AND RECOGNIZED BY THE INTERNAL REVENUE SERVICE AND NO RELIANCE MAY BE PLACED ON MAINEHOUSING BY ANY PARTY FOR THIS DETERMINATION.

D. In order to ensure maximum utilization of the Credit, MaineHousing may impose performance conditions on developers receiving carryover allocations and may terminate or cancel the allocation for failure to comply with such conditions.

E. MaineHousing may, in its sole determination, convert a carryover allocation of Credit from the State Ceiling for a particular calendar year to a carryover allocation of Credit from the State Ceiling for the year in which the carryover allocation is terminated or the following year subject to the requirements of this subsection. The carryover allocation must be rescinded by the mutual consent of MaineHousing and the Applicant. At the time the carryover allocation is rescinded, there shall not have been any changes in the Project design or financing which, in the sole determination of MaineHousing, would substantially affect the score that the Applicant received pursuant to the applicable selection criteria or result in a cost increase which would render the Project withdrawn pursuant to Section 5.G. of this Rule. There must be extenuating circumstances, which result in the Applicant's likely failure to meet the 10% basis test in Section 10.C.1. of this Rule or the likely failure of the Project to be placed in service within two (2) years following the year in which the allocation was made. The Project will only be required to meet the requirements of the Plan in effect at the time the Project received the original allocation of Credit. If the Applicant has entered into a Binding Agreement and elected to lock the Applicable Percentage, then the Applicant is bound by the Applicable Percentage elected under the original Binding Agreement.



- F. Credit returned to MaineHousing as a result of the termination or cancellation of a carryover allocation prior to September 30 in a particular calendar year shall be added to the State Ceiling for the calendar year in which it is returned. Credit returned as a result of a termination or cancellation of a carryover allocation after September 30 shall be added to the State Ceiling for the calendar year in which it is returned or the following year.
- G. MaineHousing may carry over the entire unallocated portion of the State Ceiling and deny all requests for Project-specific carryover allocations.

11. Tax-Exempt Bond Financed Projects

- A. A Qualified Low-income Building which is financed with the proceeds of tax-exempt bonds subject to the State volume cap on such bonds qualifies for the Credit on the portion of the Eligible Basis of the building financed with such bond proceeds without an allocation from the State Ceiling. If 50% or more of the Eligible Basis of a Qualified Low-income Building is financed with the proceeds of tax-exempt bonds subject to the state volume cap on such bonds, all of the Eligible Basis of the building qualifies for the Credit without an allocation from the State Ceiling.
- B. Except as otherwise provided in the Code, Qualified Low-income Buildings financed with the proceeds of tax-exempt bonds subject to the state volume cap on such bonds which are placed in service after 1989, in order to qualify for the Credit without an allocation from the State Ceiling, must satisfy the requirements for application and allocation set forth in Section 6 of this Rule (other than the affordability threshold requirement set forth in Section 6.B.) and Section 9 of this Rule and be evaluated by the issuer of the bonds according to the evaluation procedures set forth in Section 8 of this Rule to determine the proper amount of the Credit.
- C. Developers of properties financed with tax-exempt bonds and seeking Credit without an allocation from the State Ceiling may, to the extent the Project is not yet placed in service and is otherwise authorized by the Code, elect to fix the Applicable Percentage for each Qualified Low-income Building in the Project by irrevocably electing the percentage for the month in which the bonds are issued or the Applicable Percentage for the month the building is placed in service. Such an election must be made on forms provided by MaineHousing and must be made by the fifth day of the month following the month in which the bonds are issued.
- D. Developers of properties seeking Credit without an allocation from the State Ceiling must request the issuance of an IRS Form 8609 for each Qualified Low-income Building in the year the Project is placed in service. Such request must be made on forms provided by MaineHousing. This request must also include an audit report on the schedule of project costs prepared by an independent, third party certified public accountant.

- E. Once MaineHousing has reviewed the Project in accordance with this Section 11 and deemed the Project eligible to receive Credit, a determination letter will be issued.

12. Monitoring and Notification of Noncompliance

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

- A. Recordkeeping and record retention. Owners must keep on file and available to MaineHousing upon request, records for each Qualified Low-income Building in the Qualified Low-income Housing Project, including without limitation, the following information.
  - 1. The total number of residential rental units in each Qualified Low-income Building (including the number of bedrooms and the size in square feet of each residential rental unit).
  - 2. The number of residential rental units in each Qualified Low-income Building that are designated low-income units.
  - 3. The rent charged on each residential rental unit in each Qualified Low-income Building (including any utility allowances).
  - 4. The number of occupants in each low-income unit.
  - 5. The low-income unit vacancies in each Qualified Low-income Building and information that shows when, and to whom, the next available units were rented.
  - 6. An income certification for each household occupying a Credit-eligible unit in the Project at the time of initial occupancy and source documents verifying the income of the household, including for example, a copy of federal income tax returns, W-2 forms or verifications of income from third parties such as employers or State agencies paying unemployment compensation. Tenant income is calculated in a manner consistent with the determination of annual income in accordance with Section 8 of the United States Housing

Act of 1937, not in accordance with the determination of gross income for federal income tax liability. In the case of a tenant receiving Section 8 housing assistance payments, the documentation requirement is satisfied if the public housing authority provides a statement to the Owner declaring that the tenant's income does not exceed the applicable income limit under Section 42(g) of the Code.

7. An income certification for each new member added to the household of a Credit-eligible unit after initial occupancy and third party verification of the new member's income as described in Section 12.A.6 above.
8. Annual income certifications for each household occupying a Credit-eligible unit in the Project, except (a) no annual income certifications are required for a Project in which 100% of the units in the Project are subject to the applicable income limit elected pursuant to Section 42(g)(1) of the Code for the Project (i.e. either 100% of the units at 60% AMI or 100% of the units at 50% AMI), and (b) for a Project in which 100% of the units are Credit-eligible units but the Project is subject to multiple income targeting requirements, annual income certifications are only required for households in units subject to the lower income targeting requirements (e.g. in a 100% Credit-eligible Project with 60% AMI, 50% AMI, 40% AMI and 30% AMI units, annual income certifications are required for the 50% AMI, 40% AMI and 30% AMI units). For Projects financed or assisted under State or federal programs that require annual income certifications, the owner must provide annual income certifications for each household occupying a Credit-eligible unit in the Project.

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

9. The Eligible Basis and Qualified Basis of each Qualified Low-income Building at the end of the first year of the Credit Period.
10. The character and use of the nonresidential portion of a Qualified Low-income Building included in the Qualified Low-income Building's Eligible

Basis (for example, tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities or facilities reasonably required by the Project).

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

11. A determination of the student status of the resident household.
- B. Certification and review. Owners must certify compliance with the requirements of Section 42 of the Code as follows:
1. All Owners must certify to MaineHousing annually throughout the Extended Use Period of the Qualified Low-income Housing Project for the calendar year preceding certification that:
    - a. The Project met the minimum low-income set-aside test applicable to the Project and complies with the additional low-income targeting pledged by the Owner as set forth in the Extended Low Income Housing Commitment on which the allocation was based, (e.g. 40% AMI and 50% AMI);
    - b. There was no change in the Applicable Fraction of any Qualified Low-income Building or that there was a change and a description of the change;
    - c. The Owner has received all income certifications and third-party verification thereof required under Section 12.A. of this Rule;
    - d. Each qualified low-income unit in the Project was rent-restricted under Section 42(g)(2) of the Code;
    - e. All units in the Project were available for use by the general public and used on a nontransient basis, except for transitional housing for the homeless provided under Section 42(i)(3)(B)(iii) of the Code;
    - f. Each Qualified Low-income Building was suitable for occupancy under applicable health, safety and building codes;

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

substantially equivalent State or local fair housing agency, or an adverse judgment from a Federal or State court;

- o. No applicant for tenancy in possession of a Section 8 voucher was refused housing solely because of their status as a Section 8 voucher-holder;
  - p. If the Owner received its Credit allocation from a portion of the State Ceiling set-aside for a Project involving a Qualified Non-Profit Organization under Section 42(h)(5) of the Code, then a Qualified Non-profit Organization materially participated in the operation of the Project within the meaning of Section 469(h) of the Code; and
  - q. There has been no change in the ownership or management of the Project.
- 2. Annually throughout the Extended Use Period applicable to the Project, Owners must complete and submit to MaineHousing a tenant status report on a form prescribed by MaineHousing. The tenant status report shall accurately reflect tenant income, rent data and other occupancy information required by MaineHousing for each Qualified Low-income Building in a Project for the prior calendar year.
  - 3. MaineHousing will review the tenant files of at least 20% of the low income units in each Project at least once every three (3) years. For new Projects placed in service, MaineHousing will complete a review of tenant records of 20% of the low income units at the Project within two (2) years following the year the last Qualified Low-income Building is placed in service. The tenant records to be reviewed, will be selected randomly by MaineHousing. Notice of Project selection, as well as the required timeframe for submission of details, will be provided by MaineHousing to the Owner in writing.
  - 4. Owners of Qualified Low-income Buildings financed under the RD 515 program or Qualified Low-income Buildings of which 50% or more of the aggregate basis is financed with the proceeds of tax-exempt bonds are not required to submit, and MaineHousing is not required to review, the tenant income certifications, supporting documentation and rent records if RD or the bond issuer, as applicable, has entered into an agreement with MaineHousing to provide information concerning the income and rent of the tenants in the Qualified Low-income Building to MaineHousing. If the information provided by RD or the bond issuer is not sufficient for MaineHousing to make the required determinations, MaineHousing shall request the necessary additional income or rent information from the Owner.

5. MaineHousing shall review all certifications and supporting documentation submitted hereunder for compliance with the requirements of Section 42 of the Code.
  6. The annual owner certifications, an executed Form 8609 and 8609-A for each Qualified Low-income Building and the tenant status report for each building required hereunder must be submitted to MaineHousing on or before a date established by MaineHousing, but in no event, later than May 1 of each year. The certification must cover the preceding calendar year and must be made as of December 31 of the prior year. A completed and executed Form 8609 is only required to be submitted one time and must accompany the initial submission. The certifications shall be made on forms prescribed by MaineHousing and shall be made under penalty of perjury.
- C. Inspections. MaineHousing will perform property inspections consistent with Uniform Physical Condition Standards (UPCS) on a one-to-three year cycle, and shall have the right, at any time upon thirty (30) days notice to the Owner, to review all records referred to in Section 12 of this Rule.
- D. Monitoring Fee. All Applications shall be required to remit a one-time monitoring fee equal to \$400 for each Credit eligible unit in the Project. This fee must be paid prior to the issuance of the IRS Form 8609.

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

- E. Notification of noncompliance. In the event MaineHousing does not receive the certifications required hereunder when due or they are incomplete or insufficient, MaineHousing 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.

13. 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 AN ALLOCATION OR CARRYOVER ALLOCATION OF CREDIT ON BEHALF OF A PARTICULAR PROJECT, FOR ENFORCEMENT OF, OR COMPLIANCE WITH, ANY OF THESE RESTRICTIONS NOW OR HEREAFTER IMPOSED.
- 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:**

**BASIS STATEMENT:** The Internal Revenue Code of 1986, as amended, (the “Code”) requires Maine State Housing Authority (“MaineHousing”), as the State’s designated housing credit agency, to adopt a qualified allocation plan for allocating and administering the State ceiling of low income housing tax credits (the ‘State Ceiling’). This Rule, as modified, is the qualified allocation plan for allocating the 2010 State Ceiling and the 2011 State Ceiling (sometimes referred to herein as the “QAP”). The modifications to the Rule reflect the following changes from the prior qualified allocation plan.

Existing multifamily rental housing receiving Section 8 project-based rental assistance, other than project-based vouchers, is excluded from eligibility for the 2010 State Ceiling and 2011 State Ceiling.

Existing Section 8 projects are better suited for “automatic” low-income housing tax credits generated by tax-exempt bond financing than low-income housing tax credits allocated pursuant to the State Ceiling. First, these projects can support the tax-exempt debt necessary to generate the automatic low-income housing tax credits because the debt is taken into consideration in calculating Section 8 project rental assistance. Also, these projects utilize a substantial amount of acquisition credit. The credit rate for the portion of State Ceiling used for acquisition is 4%, whereas the credit rate for the portion of the State Ceiling used for rehabilitation and construction is 9%. As a result, acquisition credit generates significantly less equity than rehabilitation/new construction credit. The credit rate for all automatic low-income housing tax credits is 4%. Reserving the State Ceiling for new construction and adaptive/reuse projects is a more efficient use of the State Ceiling.

MaineHousing established a new site evaluation and review process to determine the suitability of proposed projects for housing, based on the difficulty and the cost of developing the proposed project. Applicants to the program must undergo the evaluation prior to applying for credit. If the proposed project is deemed to be unsuitable, the project will not be eligible to apply. Applicants will pay a fee of \$500 to cover the cost of performing the evaluation, which will be applied to the tax credit application fee.

The methodology used to award points for below market funding in the leveraged selection criteria has been replaced with a new methodology. In the prior qualified allocation plan, the points for below market funding were based on the net present value of eligible below market funding per unit in a project. This method had the unintended effect of rewarding projects that secured significant leveraged funds to pay for extraordinary development costs. The purpose of the below market funding criteria is to reward projects that leverage other funds to reduce the amount of MaineHousing subsidy necessary to develop a project, not to pay for extraordinary development costs. The proposed methodology is based on the percentage of the net present value of eligible below market funds to the total development cost of a project and discounts the amount of eligible below market funding by the amount of any excess development costs above specified acceptable total development costs by project type, established by MaineHousing based on its experience.

The smart growth criteria have been substantially modified to recognize forms of smart growth other than development in or near downtowns. Development and revitalization of Maine’s downtowns continues to be a high priority of the State, so the selection criteria continue to prioritize

projects that are located at or near downtown. The proposed modifications (a) reduce the distance projects must be located from a downtown to be eligible for the maximum points, (b) combine the reuse of existing buildings or developed sites with the prior selection criteria for rehabilitation of existing multifamily housing in the Project Characteristics selection criteria because they are duplicative for purposes of smart growth, (c) eliminate the subcategories of additional points for being located near certain activities of daily living, such as areas of employment, schools, libraries and a bus stop, (d) recognize other forms of smart growth by replacing those subcategories with, in descending order of point value, points for the location of projects in neighborhoods with a sufficient number of destinations important to daily living appropriate for the population served by the project and points for the location of projects near designated pick-up locations for a fixed public transportation route, (e) establish a process for predetermining whether a project is eligible under the downtown smart growth selection criteria, and (f) specifying the supporting documentation applicants must submit to be eligible under the smart growth selection criteria.

MaineHousing received funding under the federal Tax Credit Assistance Program established pursuant to Section 2, Division A, Title XII of the American Recovery and Reinvestment Act of 2009 (“TCAP”). In order to be eligible for TCAP funding, a project must receive an award of low-income housing tax credits before September 30, 2009. The 2009 low income housing tax credit ceiling was not sufficient to fund all of the tax credit projects that applied for and were eligible to receive TCAP funding. Three tax credit projects received a TCAP award and a nominal amount of low income housing tax credits to maintain their eligibility for TCAP funding. MaineHousing has enough TCAP funding remaining for two of the three projects. If MaineHousing does not expend the remaining TCAP funds by February 17, 2012, we will have to return the funds to the United States Department of Housing and Urban Development (HUD). So, MaineHousing established a set-aside for the projects that have a funding award under MaineHousing’s Tax Credit Assistance Program to use the remaining TCAP funds.

The federal agencies that provide project-based rental assistance are no longer issuing long-term assistance contracts. New project-based rental assistance contracts from HUD and United States Department of Agriculture, Rural Housing Services (RD) are one-year contracts. So, MaineHousing removed the contract term element of the project-based rental assistance selection criteria. The criteria has also been modified to allow Section 8 project-based vouchers, provided that the applicant has been awarded the vouchers pursuant to a competitive selection process prior to applying for low income housing tax credits.

MaineHousing removed the one point selection criteria for market studies prepared by a member in good standing of the National Council of Affordable Housing Market Analysts (NCAHMA), because NCAHMA members do not appear to produce better quality market studies, and the substantial cost of obtaining and maintaining a NCAHMA membership has had a greater impact on Maine-based market analyst. Nevertheless, MaineHousing still requires all market studies to comply with the format and substance of the NCAHMA standards for rental housing market studies.

The credit reservation has been eliminated. Through the evolution of the low income housing tax credit program and changes in federal law, including for example the deadline for the 10% test, the credit reservation and the carryover allocation are being executed at the same time, making the credit

reservation unnecessary. The credit allocation fee due at the time of a carryover allocation and/or final allocation of the credits will be eliminated and replaced with the fee that is historically due at the time a credit reservation is issued.

MaineHousing increased the amount of the low-income housing tax credit monitoring fee to MaineHousing's actual cost of monitoring tax credit projects. The increased fee is less than the national average for other states.

Other changes include updating the needs analysis, modifying existing criteria and provisions to clarify or better effectuate the intent of the criteria or provisions and grammatical changes.

## **Process**

MaineHousing held a public hearing on January 19, 2010 to receive testimony on the proposed amendments to the Rule and continued to accept written comments on the proposed amendments to the Rule through January 29, 2010. Kevin Bunker of Developer's Collaborative, Lock Kiermaier representing GrowSmart Maine, John Egan of Coastal Enterprises, Inc., Nathan Szanton of Maine Workforce Housing, and Debora Keller of Avesta Housing testified at the public hearing. In addition, all persons and organizations who testified at the public hearing, except John Egan of Coastal Enterprises, Inc., submitted written comments. William Floyd of Maine Affordable Housing Coalition, Ruta Dzenis of Maine State Planning Office, Jim Hatch of Jim Hatch Associates, Developer's Collaborative and Freeport Housing Trust, Paul Boghossian of Hathaway Creative Center, and Timothy O'Neil of Monks O'Neil Development, LLC submitted written comments on the proposed amendments to the Rule

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

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

### **Section 4.E. TCAP Set-aside**

**Comment:** Ms. Keller (Avesta Housing) expressed support for the set-aside for projects that received a notice of award under the 2009 Tax Credit Assistance Program Selection Process and Criteria.

**Response:** No response required.

### **Section 6.B. Threshold Requirements - Affordability**

**Comment:** Mr. Szanton (Maine Workforce Housing) questioned the affordability threshold requirement that 60% of all units in a tax credit project must be occupied by person(s) with very low income (income at or below 50% of area median income). He commented that mixed income housing with a greater number of market rate units than low-income units is better in some communities because of market demand or the politics in those communities. He suggested reducing the threshold to allow 40% or 50% of units in a tax credit project be occupied by persons

with low income (income at or below 60% of area median income).

**Response:** Section 42 of the Code requires developers to make a minimum election to keep 40% of the units in a project occupied by persons with income at or below 60% of area median income or 20% of the units in a project occupied by persons with income at or below 50% of area median income. Section 42 of the Code also requires MaineHousing to give preference to projects serving the lowest income individuals. Balancing the scarce funding sources available to MaineHousing to subsidize tax credit rents and MaineHousing's priority to provide housing for persons with very low income (that is, income at or below 50% of area median income) as reflected in Section 3.B. of the Rule, MaineHousing requires 60% of the units in a tax credit project be occupied by persons with very low income.

Historically, MaineHousing incented developers to pledge greater and/or longer affordability through scoring criteria. Because the low income housing tax credit program has always been over-subscribed, the scoring criteria effectively became threshold criteria because all applicants pledged the maximum affordability to secure the maximum points. So, in 2008 MaineHousing established the threshold requirement in the Rule. A mixed-income project would not be competitive if affordability was a scoring criterion, unless the weight of the criteria was insignificant. To not give significant weight to the criteria would be inconsistent with MaineHousing's mission, priorities and the Code.

The most efficient use of the State ceiling of low income housing tax credits and the limited subsidy that is available, is the development of projects in which all of the units qualify for low income housing tax credits, referred to as credit eligible units. Although, as Mr. Szanton pointed out, only units occupied by persons with income at or below 50% or 60% area median income are credit eligible, it has been MaineHousing's experience that the tax credits subsidize costs associated with the market rate units, because the rental income from the market rate units doesn't usually cover the cost of debt necessary to construct those units and associated costs.

### **Section 6.C. Threshold Requirements – Exclusion of Existing Section 8 Housing**

**Comment:** Ms. Keller (Avesta Housing) expressed support for the exclusion of existing multifamily rental housing receiving Section 8 project-based rental assistance. She suggested that this exclusion should be expanded to exclude all existing multi-family residential rental housing. She commented that the State ceiling of low-income housing tax credits should be allocated to new construction only, because this scarce resource should be used to create new affordable units to serve more low-income households.

**Response:** MaineHousing agrees that the best use of the State ceiling of low income housing tax credits is the creation of new affordable units. However, new affordable units can also be created by the adaptive re-use of an existing structure and the conversion of existing market-rate multifamily housing. The re-use of any existing structure is green, and the cost of converting existing market-rate housing is usually less than new construction. Furthermore, while existing multifamily housing receiving Section 8 project-based rental assistance should be financed with tax-exempt financing and automatic low income housing tax credits generated from the tax-exempt financing, the State ceiling

of low income housing tax credits is a better source for some types of existing affordable multi-family housing, such as existing housing financed by Rural Development in which the tax credits can be used primarily, if not exclusively, for rehabilitation of the housing.

### **Section 6.E. Threshold Requirements – New Pre-Application Site Review Process**

**Comments:** Ms. Keller (Avesta Housing) and Mr. Szanton (Maine Workforce Housing) expressed support for the new pre-application site review process. They asked for more information about the evaluation criteria and Ms. Keller asked for an appeal process.

**Response:** MaineHousing has prepared an application form, including more guidance on the requirements and evaluation criteria, which MaineHousing has distributed to developers. A copy of the application is also available on MaineHousing’s website. MaineHousing has modified Section 6.E. of the Rule to provide for an internal appeal process.

### **Section 7.A.1. Scoring Criteria – Existing Structures and Sites**

**Comment:** Mr. Hatch (Jim Hatch Associates and Developer’s Collaborative) commented that reusing an existing building is more “green” than reusing a previously developed site or upgrading an existing housing project. He suggested modifying the scoring criteria to award 4 points for reusing an existing non-housing building and 3 points for reusing a previously developed site or rehabilitating an existing housing project.

**Response:** Re-using existing buildings and previously developed sites and rehabilitating existing multifamily housing are all forms of smart development and should be treated equally for scoring purposes. Smart development is not only about being green, although all of these forms of development are green. The cost of rehabilitating existing multifamily housing is usually substantially less than adaptive reuse projects or new construction on previously developed sites.

### **Section 7.A.2.a. Scoring Criteria –Project Amenities/On-site Community Room**

**Comment:** Mr. Hatch (Jim Hatch Associates and Developer’s Collaborative) commented that the point under the scoring criteria for projects with an on-site community room should also be available for projects developed on a site adjoining an existing project with a community room that is close by and available to the residents of the proposed project.

**Response:** MaineHousing agrees, provided the existing community room is available to the residents of the new project to the same extent as the residents of the existing project and has sufficient capacity to support the additional residents of the new project. MaineHousing modified Section 7.A.2.a. of the Rule accordingly.

### **Section 7.A.4. Scoring Criteria – Family Projects**

**Comment:** Ms. Keller (Avesta Housing) commented that the scoring criteria for projects with a minimum of 20% of the low income units as 3 or more bedroom units plus an additional 30% of the low income units as 2 or more bedroom units is contrary to Maine demographics which indicate an aging population and shrinking families. Mr. Szanton (Maine Workforce Housing) commented the data in market studies he has seen lately indicate projected growth in mostly one- and two-bedroom units.

**Response:** Section 42 of the Code requires MaineHousing to have selection criteria that include tenant populations of individuals with children. Although Maine demographics indicate an aging population and shrinking families, the demographics also show that persons with low income, the population the program serves, are more likely to have families with children. Furthermore, MaineHousing's multifamily portfolio still has projects with waiting list for 3-bedroom units in some areas of the State. Families with children need two-bedrooms, at a minimum, and may need more bedrooms based on the number of children and the age and gender of the children. If a market study does not support the development of family housing in a particular area or community, then applicants should not develop a family project in that area. However, modifying the criteria will effectively eliminate any incentive for developers who are willing to create family housing in markets where it is needed.

#### **Section 7.B.1. Scoring Criteria – Leveraged Funds/Below Market Funding**

**Comment:** Mr. Floyd (Maine Affordable Housing Coalition), Mr. Hatch (Jim Hatch Associates and Developer's Collaborate), Mr. Bunker (Developer's Collaborative) and Ms. Keller (Avesta Housing) opposed the provision in the below market funding scoring criteria that deems an application withdrawn if the total development cost of a project awarded points under the scoring criteria increases more than 5% from the total development cost represented in the project application and the applicant is unable to find alternative non-MaineHousing funding to cover the increased total development cost within 90 days. They commented that (a) developers cannot accurately project the total development cost of a project within 5% at that stage of the development process, particularly for rehabilitation of existing structures, (b) the provision encourages applicants to overestimate the expected total development costs of a project, (c) the provision does not take into consideration market fluctuations beyond the control of the developer which may occur during the period of time, typically one year, between the date of application and the determination of the project's total development cost just before construction loan closing, (d) the limitation on cost increases will create a conflict with an applicant's desire to include green design features and amenities in its project, (e) deeming an application withdrawn if total development costs increase more than 5% is punitive to an applicant who has invested considerable time and money in developing a project, and (f) very few, if any, sources of alternative financing, such as CDBG funds, AHP funds, TIF proceeds, etc. can be identified, applied for and committed within 90 days. They suggested modifying the provision to allow for a 15% increase in a project's total development cost and to allow applicants 180 days to find alternative funding. An alternative suggested by Mr. Bunker is to award points for using less than the maximum amount of subsidy available to projects under the program.

**Response:** MaineHousing has analyzed a typical development budget and determined that a 5% allowance is not unreasonable if developers are not underestimating their budgets. For a project with a total development cost of \$5,000,000, a 5% increase is \$250,000. The total development cost for a project involving the adaptive reuse of an existing non-housing structure is likely to be higher, so the actual dollar allowance will be greater. An unintended consequence of increasing the percentage increase allowed beyond 5% could be that developers will underestimate their budgets to maximize their score under this category. Applicants will not know the actual total development cost of a project until the project has gone through the bid process, shortly before the construction loan closing. At that point, developers do not have much time to fill the development gap before they must begin construction to hold the bid prices, which usually have a life of no more than 60 days. Also, Applicants have two years from the date the low income housing tax credits are allocated (which allocation occurs no later than the end of the credit year, i.e. December 31, 2010 for the 2010 State Credit Ceiling) to complete the project and begin occupying it with residents, which limits the amount of time they have to find an alternative funding source. Depending on the availability of other funding sources, for example, AHP with set funding rounds, alternative below market funding sources may be limited. Applicants may have to request additional funds from MaineHousing, defer developer fee or negotiate a higher price for the credit to fill the gap, start construction and place the project in service within these time constraints.

The purpose of this category is to incent developers to find alternative below market funding sources to reduce the amount of MaineHousing necessary to fund the project. An Applicant that underestimates the total development cost of a project to maximize its score and then cannot find an alternative eligible below market funding source because of time constraints and uses additional MaineHousing funding or other ineligible funding to fill the gap should not be rewarded.

Notwithstanding, MaineHousing is sympathetic to the concerns of the commenters. Accordingly, MaineHousing has modified the scoring criteria as follows. If the actual total development cost of a project exceeds the projected total development cost in the application by more than 5%, the application will not be deemed withdrawn. The applicant must submit a plan for filling the gap created by the increase, which must identify the resources to fill the funding gap and the timeline for securing the funds. If the increase is the result of fluctuations in the construction market that are beyond the control of the applicant, the application will not be withdrawn or re-scored. If all or part of the increase is not the result of market fluctuations and the plan proposes gap funding that is not eligible below market funding or poses a significant risk that the project will experience significant additional costs or will not meet the deadlines imposed by the tax credit regulations, MaineHousing will reject the plan and the project will be re-scored.

MaineHousing explored Mr. Bunker's suggestion at a meeting with developers. Developers objected to this approach because developers explained they need a leveraged funds category to encourage municipal officials to provide funding, such as CDBG, HOME or a TIF, for projects they want developed in their communities.

**Comment:** Mr. Hatch (Jim Hatch Associates and Developer's Collaborative) and Mr. Bunker (Developer's Collaborative) commented that the below market funding criteria favors smaller

projects because the maximum amount of sources of non-MaineHousing subsidy typically available for projects, such as FedHOME, CDBG and AHP, is limited.

**Response:** While FedHOME, CDBG and AHP are common sources, they are not the only below market funding sources that are eligible under the criteria. From the commenter's perspective, MaineHousing's below market funding scoring criteria favors smaller projects, because projects with smaller total development costs don't need as much below market funding to get points under the criteria. MaineHousing's below market funding criteria have historically favored smaller projects in that respect. Larger projects cost more to construct, so more below market funding is necessary to achieve the MaineHousing subsidy savings a smaller project can. That being said, most of the applications MaineHousing receives are for smaller projects. We have seen few large projects. Last year, the largest project in the application pool, a 66-unit project, received the maximum number of points under the leveraged funds category because it was able to secure a \$1,000,000 HOPE VI grant. Larger projects should be incented to secure more below market funding to achieve the relative savings of smaller projects with less below market funding.

### **Section 7.B.3. Scoring Criteria – Project-based Rental Assistance**

**Comments:** Mr. Hatch (Jim Hatch Associates and Developer's Collaborative), Mr. Bunker (Developer's Collaborative) and Ms. Keller (Avesta Housing) expressed support for the proposed change to the Rule to allow projects that have been awarded project-based vouchers to be eligible for the points under the selection criteria for projects that receive project-based rental assistance. Ms. Keller also expressed support for the removal of the term of project-based assistance contracts from the criteria. Ms. Keller further commented the points awarded under the criteria should be significantly higher, because project-based rental assistance is the most effective way to serve low-income families through the tax credit program. She suggested awarding one point for every two units receiving rental assistance up to a maximum of 10 points.

**Response:** MaineHousing agrees that project-based rental assistance is currently the most effective way to serve persons with lower incomes in tax credit projects. While we don't agree that the scoring criteria should have a greater value than below market capital funding or have the same value as projects located in or near downtowns, we have increased the points for projects in which 25% or more of the units receive project-based rental assistance from 2 to 3 points and for projects in which 75% or more of the units receive project-based rental assistance from 3 to 5 points.

### **Section 7.C.1.b. Scoring Criteria - Need for Elderly Projects in Service Center Communities**

**Comment:** Mr. Hatch (Freeport Housing Trust) questioned the reduction from 5 points to 1 point for elderly projects in Freeport in the selection criteria concerning need for elderly projects in service center communities.

**Response:** In the last two years, the need for senior housing in the 40% of area median income to 60% of area median income range has dropped slightly, but enough to move Freeport from the low end of the high need category two years ago to the high end of the low need category this year relative to need in other service center communities.



### **Section 7.C.2. Scoring Criteria – Need for Affordable Housing/Vacancy Rates**

**Comment:** Ms. Keller (Avesta Housing) commented that using vacancy data collected by MaineHousing and market studies creates ambiguity in the scoring criteria for awarding points to projects located in markets with low vacancy rates. She suggests using only one source of information, and if MaineHousing uses its own data, MaineHousing should provide the data to the development community before the application deadline to help developers locate project sites.

**Response:** Historically, market studies were the most reliable source of vacancy information for market rate housing, low income housing tax credit projects and other affordable housing. Two years ago MaineHousing began collecting vacancy data on low income housing tax credit projects in the State. The vacancy data collected by MaineHousing for tax credit projects is more reliable than the data reported in the market studies. The data in market studies is based on a snapshot in time and not over a period of time. The vacancy data collected by MaineHousing for tax credit projects is based on the actual unit months over a period of one year. MaineHousing does not currently collect reliable data on market rents, so market studies still seem to be the most reliable source of market rate vacancies. MaineHousing's vacancy data is available upon request.

### **Section 7.C.3. Scoring Criteria – Tax Credit Rents Compared to Market Rents**

**Comment:** Ms. Keller (Avesta Housing) commented that all projects should have rents at least \$100 less than the market rent as a threshold requirement under the Rule, because MaineHousing should not put scarce subsidy in projects in which the rent is more than the market rent.

**Response:** MaineHousing agrees with Ms. Keller that the rents in tax credit projects should not be more than the market rents in the area in which the project is located. This is the purpose of the scoring criteria for awarding points to projects based the percentage difference between the maximum tax credit rent for the project and the market rent in the area in which the project is located. However, to make this scoring criteria or Ms. Keller's suggestion a threshold requirement would exclude many communities, including most of the communities in central and northern Maine. The low income housing tax credit program is a State-wide program and should be available to all communities in the State of Maine.

### **Section 7.C.5. Scoring Criteria – Smart Growth**

**Comments:** Mr. Hatch (Jim Hatch Associates and Developer's Collaborative) and Mr. Kiermaier (GrowSmart Maine) opposed the changes to the smart growth selection criteria in the Rule and suggested keeping the smart growth selection criteria in the prior Rule. Mr. Hatch commented that the prior Rule recognizes that there are sites within one-half mile of a downtown that are smarter than others.

Mr. Bunker (Developer's Collaborative), Mr. Kiermaier (GrowSmart Maine), Ms. Dzenis (Maine State Planning Office), Mr. Boghossian (Hathaway Creative Center) and Mr. Egan (Coastal Enterprises, Inc.) specifically opposed the modification to the downtown scoring criteria to award

the maximum number of points to projects within 2,500 feet of a downtown, rather than 1,500 feet of a downtown under the prior Rule. Mr. Bunker commented that the change undermines the intent to favor smart growth projects, because the change will significantly increase the number of projects that will be eligible for the points and will not drive development downtown as strongly as the prior Rule. Mr. Kiermaier commented that there are very few downtowns in Maine in which a radius of 2500 feet would place a project near the core downtown area and the Rule should continue to heavily favor the location of housing in core downtown areas. Mr. Boghossian commented that locating projects within 1,500 feet of a downtown and within short walking distance of destinations found there, such as libraries and public transportation, is key to downtown revitalization. He also commented that three quarters of a mile is about the most people will walk before resorting to automobile transportation. All of the commenters suggested that projects should be located within 1,500 feet of a downtown to be awarded the maximum points under the smart growth criteria. Mr. Bunker and Ms. Dzenis suggested adding a scoring criterion to award 7 points to projects located within 2,500 feet of a downtown.

Mr. Bunker (Developer's Collaborative) also expressed concern that the proposed 7 point scoring criteria for projects within 1,500 feet of at least 3 destinations important to the course of daily living may have the unintended consequence of awarding smart growth points to a non-smart growth project, such as a project located near a strip mall with a hair salon, credit union and insurance agent. He suggested MaineHousing should tighten up the scoring criteria if MaineHousing wants to recognize forms of smart growth other than proximity to downtown. Ms. Dzenis suggested reducing the points awarded under the criteria from 7 points to 5 points and adding language to the effect that a single establishment cannot be counted as more than one destination important to the course of daily living.

Ms. Dzenis (Maine State Planning Office) also suggested other changes to the proposed smart growth criteria, including (a) adding a scoring criterion to award 9 points to a project located within 2,500 of a downtown which remediates and/or reuses an existing structure or utilizes a formerly developed site rather than new construction in an undeveloped area, (b) reducing the points awarded to a project located within 1,500 feet of a designated pick-up location of a fixed-route public transportation system from 3 points to 2 points, and (c) adding a scoring criterion to award one point to a family project located within 1500 feet of a public school if the public school is not one of the destinations important to daily living identified under the 7 point smart growth scoring criteria proposed by MaineHousing in the Rule.

Mr. Egan (Coastal Enterprises, Inc.) commented that it is more difficult to meet the smart growth criteria in rural areas in which municipalities have not clearly defined or designated downtowns and suggested MaineHousing should be more flexible in determining the outer limits of a downtown.

Ms. Keller (Avesta Housing) commented meeting the criteria is difficult in many suburban areas that do not have defined downtowns either, such as Windham and Scarborough. She commented that the current definition of downtown severely limits the number of communities in Maine that qualify as downtown and suggested modifying the definition of downtown to include more than one central business district of a community.

**Response:** MaineHousing agrees with many of the comments made on the smart growth scoring criteria and, in response to the comments, has made the following changes to Section 7.C.5. of the Rule.

1. The 10 point scoring criteria was modified to require projects be located within 1,500 feet of a downtown.

2. A new 8 point scoring criteria for projects located within 2,500 feet of a downtown was added. Awarding 8 points, rather than the 7 points suggested by Mr. Bunker and Ms. Dzenis, is more consistent with the smart growth criteria in the former Rule.

3. The new smart growth criteria for awarding points located near destinations important to the course of daily living was modified by reducing the points from 7 to 6 points, requiring a project be located within 1,500 feet of at least one destination important to the course of daily living and within 2,500 feet of other destinations important to the course of daily living, and providing that a single establishment containing more than one destination important to the course of daily living will only be considered one destination for purposes of the scoring criteria. To specifically address Mr. Bunker's example of a strip mall with a hair salon, a credit union and an insurance agency meeting the originally proposed 7-point category, MaineHousing would not consider a hair salon or an insurance agency as eligible destinations important to the course of daily living.

MaineHousing did not make other changes proposed by Ms. Dzenis of the State Planning Office because these changes are already addressed in the smart growth criteria or other scoring criteria in the Rule. Applications that involve the reuse of an existing structure or previously developed site are eligible for 3 points under the scoring criteria in Section 7.A.1. of the Rule. A public school is an eligible destination important to the course of daily living under the 6 point scoring criteria, so adding another criterion for being located near a public school would be redundant, and projects for persons who are elderly would and should not be eligible for the one point.

Also, MaineHousing did not modify the definition of downtown as suggested by Ms. Keller. The source of the definition is the State's growth management laws. MaineHousing defers to the Maine State Planning Office and municipalities to define downtowns and determine the downtown's boundaries. The definition currently allows a municipality to designate more than one downtown in its community. Recognizing that not all municipalities have downtowns, MaineHousing established the new 6 point scoring criteria to award points to projects that are located in areas where development has already occurred, provided the development includes destinations important to the course of daily living of the residents of the project.

### **Other Comments**

**Comment:** Mr. O'Neil (Monks O'Neil Development, LLC) commented MaineHousing should make resources available for existing multifamily housing that has been severely impacted by the closing of Brunswick Naval Air Station (BNAS) and the nationwide economic downturn, like Riverside Estates in Brunswick, Maine. He suggested creating a set-aside of low income housing tax

credits for the preservation and redevelopment of existing, non-base multifamily housing located in the primary BNAS market communities of Bath and Brunswick or in the alternative, establishing scoring criteria to award points to existing, non-base multifamily housing that has been operating for at least 10 years, has not been significantly improved in the last 10 years, is located in Bath or Brunswick and is currently financed by MaineHousing, HUD or Rural Development, and the redevelopment of the housing will result in the creation of at least 20 additional affordable units.

**Response:** MaineHousing agrees that preservation of projects described by Mr. O'Neil is important. The rehabilitation of existing housing is recognized in the scoring criteria set forth in Section 7.A.1. of this Rule. Notwithstanding, the creation of new affordable housing units should be favored given the limited State ceiling of low income housing tax credits and the scarcity of the associated subsidy. Tax-exempt bond financing and automatic low income housing tax credits generated by the tax-exempt financing are better sources of financing for the projects described by Mr. O'Neil.

**Comment:** Mr. Egan (Coastal Enterprises, Inc.) encouraged MaineHousing to keep an open line of communication with syndicators, because the syndicators' interests are not always consistent with MaineHousing's policies reflected in the selection criteria in the Rule. He commented that the market has changed significantly in the last 18 months, and as a result, yields are down, syndicators are imposing more requirements, and their underwriting standards are more conservative than MaineHousing's standards.

**Response:** MaineHousing appreciates and agrees with Mr. Egan's comments and proactively communicates with in-state and out-of-state syndicators on a regular basis.

**Comment:** Ms. Keller (Avesta Housing) commented that the cost of affordable housing has escalated to a level that is not sustainable, and as a result, fewer projects are funded and fewer low income families are housed. She suggested a per unit cap of \$265,000 for all projects.

**Response:** MaineHousing has instituted per unit and per project caps on MaineHousing resources, both low income housing tax credits and other subsidy under the Rental Loan Program, in amounts sufficient to create a reasonably priced multifamily housing development and provide incentives to get outside resources to minimize the use of MaineHousing's subsidy resources. The proposed total development caps in the new below market funding scoring criteria are intended to provide additional limits by not rewarding overly expensive projects with points for non-MaineHousing subsidy resources, but not expressly excluding them from competing for MaineHousing's resources.

**FISCAL IMPACT OF THE RULE:** The sale of the 2010 State ceiling of low income housing tax credits is projected to raise approximately \$19,352,000 in equity and the sale of the 2011 State ceiling of low income housing tax credits is projected to raise approximately \$19,812,500 in equity. The equity generated by the sale of the low income housing tax credits will be used to develop affordable housing for low-income persons. The proposed amendments will not impose any costs on municipalities or counties for implementation or compliance.