



Qualified Allocation Plan

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

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

Chapter 16 Allocation of State Ceiling For Low-Income Housing Tax Credit

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**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)(B)(iii)(I) of the Code as designated by HUD annually or as designated by MaineHousing in Section 5.E. of this Rule in accordance with Section 42(d)(5)(B)(v) of the Code.
- O. “Elderly Housing” means a Project that meets the definition of “housing for older persons” under the federal Fair Housing Act, 42 U.S.C. § 3607(b)(2).
- 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 a Project 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)(1) of the Code.
- CC. “Qualified Census Tract” means areas of the State which meet the requirements of Section 42(d)(5)(B)(ii) 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, 42 U.S.C. § 1437f, 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, design and engineering fees, environmental site assessment fees and

legal fees; 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 gross income as determined in accordance with 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 2012 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, Housing for Persons who are Homeless, Elderly Housing and housing for persons with mental and physical disabilities.

- 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.
 7. Projects that received project-based rental assistance to provide housing for persons with income at or below 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(h)(3) 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) 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.E. of this Rule regardless of the Applicant's score in relation to the scores of other Applicants.
- C. RD Set-aside. Up to \$250,000 of the annual State Ceiling will be set aside for the highest-scoring eligible Application for a Project that is currently financed under a multi-family housing program offered by RD, including capital financing, or assumption of existing financing, and project-based rental assistance. 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.

In the event 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.E. of this Rule regardless of the Applicant's score in relation to the scores of other Applicants.

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

- E. **Maximum Credit Restriction.** The maximum amount of Credits that an Applicant may receive is the lesser of (i) \$20,000 per Credit-eligible unit for a Project and (ii) 30% of the State Ceiling for the year in which the Applicant applied for Credit. MaineHousing may, in its sole discretion, increase the maximum credit amount for a Project that is located downtown as defined in part (a) of the definition of downtown set forth in Section 7.C.5.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 2012 State Ceiling, including Applications for the Set-asides under the 2012 State Ceiling in Section 4 of this Rule, is 5:00 PM on Thursday, November 17, 2011. 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)(B)(v) of the Code. For purposes of the 2012 State Ceiling, MaineHousing has designated the entire State as a difficult to develop area for purposes of Section 42(d)(5)(B)(v) of the Code because of the high cost of developing housing in the State, the low median income of the State's population and the high, and still increasing, annual operating costs for housing in the State relative to other states in the United States. Notwithstanding the foregoing, the amount of Credit shall not exceed the maximum credit restrictions set forth in Section 4.E. of this Rule and shall be subject to the limitations set forth in Section 8 of this Rule.
- F. 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. 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.
- 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 2012 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 shall be in the form prescribed by MaineHousing and shall be complete. If an Applicant fails to complete any of the prescribed forms or schedules in the Application, the Application will be rejected.
- B. No Application will be accepted, processed, or approved by MaineHousing if the Applicant or any affiliate or principal thereof, or any entity controlled by the Applicant or affiliate or principal thereof, (i) has in the last six months been declared in default or been 60 days or more delinquent on any loan with MaineHousing unless an approved payment or workout plan is in place and in good standing; or (ii) has ever been the owner of any MaineHousing-financed project in which MaineHousing has foreclosed a mortgage interest or received a deed-in-lieu of foreclosure of a mortgage interest unless waived by MaineHousing for public policy reasons, which waiver must be in writing, signed by the Director of MaineHousing and state the justification for the waiver; or (iii) is not presently debarred, suspended, proposed for debarment, or excluded from participation in federal or state programs.
- C. 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.
- D. 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 2012 State Ceiling.
- E. 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.C. of this Rule, the resident service coordination requirement set forth in Section 6.G.13. of this Rule and the public housing and Section 8 waiting list requirement set forth in Section 6.G.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.

- F. 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 within thirty (30) of receiving a complete request for site review if MaineHousing determines a prospective Project is unsuitable. If a prospective Project is deemed unsuitable based on the evaluation, the Project is not eligible to apply for Credit. 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.

- G. An Application must be complete, as determined by MaineHousing, and must meet the following threshold requirements:
1. The Application must be for a Qualified Low-income Housing Project.
 2. The Application must identify 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. The Application must identify the owner of the Project if the owner is different from the Applicant, or at a minimum the type of entity the owner will be, and all principals of the owner, and must include the existing organizational documents for the Applicant and the owner, if different from the Applicant, and all principals of the owner. 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 include 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. The Application must include evidence of satisfactory site control consisting of ownership, option, purchase and sale contract, long-term lease or other evidence acceptable to MaineHousing.
 6. The Application must include evidence 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. The Application must demonstrate the financial ability to proceed with and complete the Project, including the then current status of construction and permanent financing for the Project, 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. The Application 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. The Application must include 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. The Application must include schematic to-scale plans of the proposed Project which comply with *MaineHousing's Construction Services Design & Construction Manual*, as same may be amended from time to time, in effect 60 days prior to the deadline for Applications for the applicable Credit round, *MaineHousing's Green Building Standards*, as amended from time to time, in effect 60 days prior to the deadline for Applications for the applicable Credit round, and all applicable local, state and federal codes, regulations, statutes and ordinances.
11. The Application must include 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. The Application must include 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. The Application must include a commitment of the Applicant to 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 to 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 appropriate 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. The Application must include a commitment of the Applicant to give a preference to eligible persons whose names are on a public housing or Section 8 waiting list.
15. The Project must include or provide for the following amenities and services, except as provided in subsection e. below.
 - a. The Project must (i) include an on-site community room developed as part of the Project, or (ii) have access to an existing community room at a multi-family housing project located on the same site or an adjoining site to the Project site, provided the existing community room (a) is, or with modifications made in connection with the Project will be, fully accessible and located on an accessible path to the Project, (b) has, or with modifications made in connection with the Project will have, sufficient capacity to serve the tenants of the Project and the existing multifamily housing project, and (c) will be available to the tenants of the Project at no cost during the Compliance Period. The plans submitted in the Application must show the dimensions of the community room and the location of the

community room on the Project site or in relation to the Project if located on an adjoining site. For a scattered-site Project, only one community room is required and should be centrally located to the greatest extent possible to best serve all of the residents of the Project. For a Project using an existing community room on the site or an adjoining site, the Application must also include (i) a letter from the owner of the existing community room indicating the community room is available to the tenants of the Project at no cost during the Compliance Period and on the same terms and conditions as the tenants of the existing multifamily housing project, and the community room has, or with modifications will have, sufficient capacity in terms of size and utilization to serve all of the tenants of the existing multifamily housing project and the Project, (ii) a certification from a design professional that the existing community room is, or with modifications will be, accessible and located on an accessible path to the Project, and (iii) a detailed description of any modifications to be made to the existing community room in connection with the Project and a proposed budget for the modifications.

b. The Project must (i) include a washer/dryer hook-up in each unit, or (ii) include a fully accessible laundry facility centrally located within the Project, or (iii) have access to an existing laundry facility at a multi-family housing project located on the same site or an adjoining site to the Project site, provided the existing laundry facility (a) is, or with modifications made in connection with the Project will be, fully accessible and located on an accessible path to the Project, (b) has, or with modifications will have, sufficient capacity regarding the size of the facilities and the number of washing machines and dryers specified in the applicable *MaineHousing's Construction Services Design and Construction Manual* to serve the tenants of the Project and the existing multifamily housing project and (c) will be available to the tenants of the Project during the Compliance Period to the same extent as the tenants of the existing multi-family housing project. The plans submitted in the Application must show the laundry capability for the Project, including the washer/dryer hook-ups or the dimensions of any laundry facilities, the number of washing machines and dryers, and the location of such facilities on the Project site or in relation to the Project if located on an adjoining site. For a Project using an existing laundry facility on the site or an adjoining site, the Application must also include (i) a letter from the owner of the existing laundry facilities confirming the facilities are available to the tenants of the Project during the Compliance Period and on the same terms and conditions as the tenants of the existing multifamily housing project; (ii) a certification from a design professional that the existing laundry facilities are, or with modifications will be, accessible and located on an accessible path to the Project, and (iii) a detailed description of any modifications to be made to the existing laundry facilities in connection with the Project and a proposed budget for the modifications.

c. The Project must include the necessary infrastructure for cable, DSL or wireless Internet service in all units in the Project and the Applicant must provide the corresponding service to the tenants of the Project free of charge. In addition, the Applicant must provide at least one computer in a common area of the Project for tenant use.

d. An area(s) of activity must be located on the Project site or within 1/2 mile of the Project. Such area(s) of activity must be free of charge to the tenants of the Project and not require membership to use the facilities or equipment. Areas for activity are recreational in nature and include but are not limited to ball-fields, basketball courts, tennis courts, playgrounds with equipment, gardening plots, bike trails, walking trails and ice-skating rinks. Areas of activity do not include activities such as banking, shopping and dining. Projects with single-family detached style units satisfy this requirement if each unit has a private lawn with sufficient room for a swing set or other play equipment, gardening or other activities, as determined by MaineHousing.

e. The requirements set forth in subsections a, b and d of this Section 6.G.15 do not apply to existing multifamily housing projects if the Applicant can demonstrate that it is impracticable to comply with the requirements because of the nature of the site, structural limitations, or zoning restrictions or other land use limitations.

16. The Application must include a non-refundable application fee as follows:

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

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.

H. MaineHousing reserves the right to require additional information it deems necessary in order to process an Application.

I. 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 27 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 an urban infill site or a formerly developed site rather than new construction on an undeveloped site.

For purposes of this scoring category, the following terms have the following meanings.

- a. A “formerly developed site” means (i) a site currently used for other than single-family residential or agricultural purposes, (ii) a site formerly used for other than single-family residential or agricultural purposes on which one or more substantial buildings or structures currently exist or have been demolished or removed for purposes of redeveloping the site, or (iii) a site otherwise designated by a municipality for redevelopment to renew a blighted area. An undeveloped portion of an existing site, regardless of the use of the existing site, is not a formerly developed site for purposes of this scoring category.
 - b. “Single family residential” means residential housing with 4 or fewer dwelling units.
 - c. “Urban infill site” means land that was left vacant or underutilized in the development of an urban area, including, for example, a vacant lot between existing buildings or a parking lot in an urban area.
2. 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.
 3. A Project for families in which a minimum of 50% of the total low income units in the Project are two or more bedroom units and a minimum of 20%

of the total low income units in the Project are three or more bedroom units will receive 6 points.

4. 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.C. of this Rule has expired.
5. A Project will receive 4 points if the Project has all municipal approvals, and if applicable State approvals, required to proceed with and complete the Project (except a building permit and other permits customarily issued during construction such as electrical and plumbing permits) and any timeframe to appeal such approvals has expired with no appellate action being taken. The design of the Project submitted to and approved by the municipality must be acceptable to MaineHousing. The Applicant must meet with MaineHousing's Construction Services Manager concerning the design of the Project before submitting the design to the municipality for approval. Notwithstanding MaineHousing's approval of the level of design of the Project approved by the municipality, the final design of the Project, including all plans, details and specifications, are subject to MaineHousing's approval. 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, and if applicable State approvals, for the development. The Application must include (a) a legal opinion or a letter from the appropriate municipal official or body confirming all such municipal approvals have been issued and are in effect and the applicable appeal periods have expired with no appeals or resolution of all appeals, and (b) a legal opinion or certification from a design professional that no State approvals are required, or if required, all such State approvals have been issued and are in effect and the applicable appeal periods have expired with no appeals or resolution of all appeals; and (c) a copy of all approvals.
6. A Project for families that is designed and constructed to provide a higher level of accessibility will receive up to 4 points. Elderly Housing 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 the applicable *MaineHousing's Construction Services Design & Construction Manual* under the "Summary of Accessibility Regulations and Additional MaineHousing Requirements". Partial points will not be awarded. To receive the points, all required and pledged accessible units must be graphically depicted and labeled on the Project plans included in the Application.

7. 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.G.13. of this Rule shall include making the tobacco treatment program educational materials available to residents.
8. 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 for the development of the Project. The Applicant shall submit written evidence from the National Park Service that the structure(s) to be rehabilitated as part of the Project meets one of the requirements of Section 7.A.8(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 18 points).

An Applicant that proposes to leverage funds for a Project from a source other than MaineHousing will receive up to 18 points. Resources made available either directly, or indirectly by MaineHousing are not eligible for consideration under this criterion.

1. Up to 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 will receive up to 7 points based on the percentage of units in the Project for which new project-based rental assistance has been committed as follows.

<u>Percentage of Units</u>	<u>Points</u>
Up to 25%	1 point
25% to < 50%	2 points
50% to < 75%	4 points
75% to <100%	6 points
100%	7 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.

Service Center Community	Points
AUBURN	5
AUGUSTA	5
BANGOR	5
BIDDEFORD	5
BRUNSWICK	5
ELLSWORTH	5
LEWISTON	5
OLD ORCHARD	
BEACH	5
PORTLAND	5
RUMFORD	5
SACO	5
SANFORD	5
WATERVILLE	5
WESTBROOK	5
BATH	3
BREWER	3
CARIBOU	3
FAIRFIELD	3
FARMINGTON	3
GARDINER	3
HOULTON	3
MADAWASKA	3
NORWAY	3

OLD TOWN	3
ORONO	3
PARIS	3
ROCKLAND	3
SKOWHEGAN	3
SOUTH PORTLAND	3
TOPSHAM	3
WINSLOW	3

BAR HARBOR	1
BELFAST	1
CALAIS	1
DOVER-FOXCROFT	1
ELIOT	1
FORT KENT	1
HALLOWELL	1
KITTERY	1
LINCOLN	1
MEXICO	1
MILLINOCKET	1
PITTSFIELD	1
PRESQUE ISLE	1
ROCKPORT	1
SCARBOROUGH	1

- b. Elderly Housing located in the following Service Center Communities will receive the following points.

Service Center Community	Points
AUBURN	5
AUGUSTA	5
BANGOR	5
BIDDEFORD	5
BRUNSWICK	5
KITTERY	5
LEWISTON	5
SACO	5
SANFORD	5
SCARBOROUGH	5
SKOWHEGAN	5
SOUTH PORTLAND	5
WINSLOW	5

BRIDGTON	3
CARIBOU	3
ELIOT	3
ELLSWORTH	3
FAIRFIELD	3
GARDINER	3
HAMPDEN	3
MADAWASKA	3
MEXICO	3
OAKLAND	3
PARIS	3
ROCKLAND	3
WATERVILLE	3
WESTBROOK	3

BATH	1
BUCKSPORT	1
CAMDEN	1
DAMARISCOTTA	1
DOVER-FOXCROFT	1
FARMINGDALE	1
FREEPORT	1
LINCOLN	1
NORRIDGEWOCK	1
NORWAY	1
PRESQUE ISLE	1
ROCKPORT	1
RUMFORD	1
TOPSHAM	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	Auburn
Biddeford	Saco	Sanford	Augusta

- 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 in the Project. 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 will receive 3 points if (i) the Project is 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, or (ii) an on-call transportation service is available to all of the residents of the Project. On-call transportation services with eligibility criteria that limit or deny service to any residents of the Project are not eligible for the 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 § 4312 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 Elderly Housing, 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.

To receive the points under Section 7.C.5.d.i. above, the Application must include a copy of the schedule and map for the fixed-route public transportation, and to receive points under Section 7.C.5.d.ii. above the Application must include a letter from the on-call transportation service that identifies any eligibility criteria for the service and confirms it will serve all of the residents of the Project.

- 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 6 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. 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.

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 Housing, family housing, 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.5. (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 to accept the notice to proceed by executing and returning the notice to proceed to MaineHousing.
 2. Deadline for receipt of information necessary for MaineHousing to make its determination on allocation or carryover allocation of Credit.
 3. Deadline for final working drawings and specifications.
 4. Deadline for loan closing(s).
 5. Prohibition against amendments or changes as set forth in Section 5.G. of this Rule.
 6. 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 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.E. 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 not exceed an amount equal to 15% of the Housing Development Costs, plus 10% of the costs of acquisition of land, existing buildings and equipment, all determined without regard to the Developer Fee, subject to Section 42 of the Code and the following limitations.

1. The Developer Fee due and payable from the total funding for the Project's development budget, including without limitation, equity contributions, shall not exceed an amount equal to the lesser of (a) \$17,500 per unit for the first 20 units in the Project and \$15,000 for each additional unit above 20 units in the Project and (b) the maximum Developer Fee set forth above; and
2. To be eligible for additional Developer Fee up to the maximum set forth above, the Applicant must agree that any such additional Developer Fee will be used as a funding source for the development, acquisition and construction or rehabilitation of the Project, either by deferring payment or making a loan of the additional Developer Fee to be repaid from the surplus cash of the Project, and the Applicant must demonstrate there is a reasonable certainty that any additional Developer Fee will be fully repaid from the surplus cash of the Project, as determined by MaineHousing pursuant to its underwriting criteria, during the Credit Period or such longer period as allowed by the investor or syndicator for the Project.

- 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 accepts a notice to proceed by executing and returning the notice to proceed to MaineHousing, and to the extent authorized by the Code, MaineHousing and the Applicant may enter into a Binding Agreement to fix the maximum Credit dollar amount to be allocated to each Qualified Low-Income Building for which Credit has been requested. Any such Binding Agreement shall satisfy the requirements of the Code and will contain certain performance-based conditions, including without limitation the conditions set forth in the notice to proceed. The Applicant may choose to fix the Applicable Percentage for each Qualified Low-income Building in the Project by irrevocably electing the 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 an allocation 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. The notice to proceed will evidence the determination made at the time of 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.C. of this Rule in connection with the issuance of a carryover allocation for the Project.

4. A monitoring fee in an amount equal to \$600 per Credit eligible unit in the Project.
- B. 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.E. 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 in a form prescribed by MaineHousing shall be submitted to MaineHousing no later than December 1 of the year in which the carryover allocation is made.
 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.
- 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.E. of this Rule.
- C. A carryover allocation must be executed by the Applicant and returned to MaineHousing, together with an allocation fee equal to 3% of the amount of Credit allocated to the Project, no later than December 31 of the year in which the carryover allocation is made.
- D. 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, including an audit report on the schedule of project costs prepared by an independent, certified public accountant in form and substance acceptable to MaineHousing; 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.D. 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.

- E. 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.
- F. 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.D.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.
- G. 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.
- H. 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.C.) 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 (5th) 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. Data Collection. Annually, the Owner shall provide certain data required by The Housing and Economic Recovery Act of 2008 (HERA) about its Project and the tenants, including without limitation, information concerning the race, ethnicity, family composition, age, income, use of rental assistance under Section 8 and other similar assistance, disability status and monthly rental payments of households residing in units in the Project for which the Owner receives Credit. The data shall

be submitted to MaineHousing electronically and in the format required by MaineHousing to transmit the data to HUD.

- D. 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.
- E. Monitoring Fee. All Applications shall be required to remit a one-time monitoring fee equal to \$600 for each Credit eligible unit in the Project. This fee must be paid prior to the issuance of the IRS Form 8609.

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

- F. 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.

- G. 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

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 (sometimes referred to herein as the "QAP") for allocating and administering federal low income housing tax credits, including without limitation the State ceiling of federal low income housing tax credits (the "State Ceiling"). This Rule, as modified, is the qualified allocation plan for allocating and administering federal low income housing tax credits, including without limitation the 2012 State Ceiling. The modifications to the Rule reflect the following changes from the prior qualified allocation plan.

A number of the changes to the Rule are necessary due to the dwindling availability of subsidy resources to fund the development of affordable multifamily housing. The availability of traditional subsidy resources has declined over the last several years, and MaineHousing is concerned that these resources will become scarcer going forward. Funding under the American Recovery and Reinvestment Act of 2009 (ARRA) supported us through the tax credit crisis, but has been exhausted, and funding under the Maine Energy, Housing and Economic Recovery Program (the so-called Part E or MEHER bonds) is only a short-term solution. The Federal government has authorized the creation of the National Affordable Housing Trust Fund, but has not funded it yet and, considering the current political climate, will probably not fund it in the immediate future. Currently, tax credits are the least scarce resource available to develop affordable housing.

To maximize the use of tax credits, MaineHousing has modified the structure of the developer fee, which is an eligible tax credit cost subject to limitations set forth in Section 42 of the Code. Under this new structure, the total developer fee will be increased to a certain percentage of acquisition and construction costs, but the developer will collect only a portion of the developer fee when the project is completed; the rest of the fee must be deferred or loaned as a source of funding for the project. The deferred or loaned fee reduces the need for subsidy. At the same time, the modified structure maintains the benefit of the net developer fee approach implemented in 2008 to control costs by limiting what the developer can collect upfront.

A criticism of the 2008 changes to the developer fee has been that the caps are too low and do not cover the costs of developing projects. We were reluctant to increase the fees during the tax credit crisis; with the crisis passed we have increased the net fee to the developer collects upfront without increasing the need for subsidy. Even though we have increased the net developer fee under the new structure, we have kept the net fee lower than the net fees allowed by other housing credit agencies so more of the total developer fee increase can be used to pay other project costs.

The exemption for tax-exempt bond projects from the tax credit application fee and the tax credit allocation fee has been removed. Historically, MaineHousing's bond resolution has subsidized the costs of administering MaineHousing's tax credit program with respect to those projects that receive automatic tax credits generated by the use of tax-exempt bond financing.

In 2009, MaineHousing increased the monitoring fee to cover MaineHousing's cost of monitoring tax credit projects. The increase was not sufficient and MaineHousing has incurred additional costs in connection with new software requirements under the Housing and Economic Recovery Act of 2008 (HERA), so the amount of the low-income housing tax credit monitoring fee has increased to cover these costs. The increased fee is less than the national average for other states.

Notwithstanding the scarcity of subsidy, the demand for affordable housing for persons with incomes lower than those designated by Section 42 of the Code is growing due to the economic downturn. The federal tax credit program is designed to serve persons whose income is at 50% or 60% of area median income (AMI). To serve persons with lower incomes, subsidy is necessary to reduce debt or to provide operating or rental assistance for projects. Project-based rental assistance has become the only resource available to serve persons with lower incomes in tax credit projects. MaineHousing increased the total points and staggered the points under the project-based rental

assistance scoring criteria to incent developers to secure project-based rental assistance, at any level, to serve persons with lower incomes.

In response to feedback from the tax credit community in the State, MaineHousing is moving some of the scoring criteria to threshold criteria, because most developers receive the points under the scoring criteria. The former project amenities and services scoring criteria is now a threshold requirement under the Rule. These amenities and services, including community space, laundry facilities, internet access and recreational activities, are important benefits for the tenants and most applicants pledge these amenities and services in their applications. We included an exception for existing multi-family housing projects if it is impracticable to incorporate these amenities.

In response to tax credit developers in rural communities, we are giving on-call bus service points under the smart growth criteria, provided the service does not have eligibility criteria that exclude any residents from using the service. On-call bus services are the only form of public transportation in more rural communities.

Some changes are the result of MaineHousing's experience scoring tax credit projects and include clarifying the intent of scoring criteria and the submission requirements. For example, the project characteristics scoring criteria have been modified to include urban infill sites and to include a specific definition of the term, "formerly developed site", which is more restrictive than MaineHousing's prior application of the term. Under this definition, sites with single-family homes or foundations and sites that are the undeveloped portion of an existing site with existing multi-family or other uses will no longer be eligible.

Clarifications were also made to the families with children housing scoring criteria and the land use approvals scoring criteria. Projects are required to pledge only half of the total units as two or more bedrooms, 20% of which must be three or more bedroom units, to qualify for the families with children points. As previously worded, certain projects, depending on the total number of units in the project, needed to pledge more than half of the units in order to qualify. The land use approval category is now clear that except for building permits and other permits typically issued during construction, all land use approvals, including municipal and state approvals, if applicable, are necessary to qualify for the points. Building permits and other similar permits have never been required for land use approval points, but that was not clear in the scoring category. Most projects do not require state approvals, but we specifically added state approvals because a recent project did.

Changes to other scoring criteria clarify the submission requirements to receive points under scoring criteria, such as requiring accessible units be shown on the plans submitted with the application under the greater accessibility scoring criteria.

Some of the changes tighten up existing procedures and incorporate existing practices not clearly stated in the Rule. We have restated the requirement that applications must be on MaineHousing forms and must be complete and added that if the forms are not used or completed, the application will be rejected. In the last few years, some applicants have not used the MaineHousing forms to provide the required information. Tax credit applications are complicated and voluminous. MaineHousing specifically designed its forms, particularly budget and construction forms, to provide

the information it needs in a format to most efficiently determine whether the application complies with the requirements of the QAP. When applicants didn't complete the required forms, the scoring committee culled through the applications in an attempt to find, or in some cases extrapolate, the information from the application. This creates inefficiencies in a process that is already time-consuming, and is unfair to the applicants who complete the forms. Similarly, the carryover allocation process has been clarified. Some applicants have not been submitting requests for carryover allocations with the requisite information on time or paying the allocation fee on time. Under this QAP, applicants who do not follow these procedures will risk forfeiting their credit award.

The Rule now incorporates MaineHousing's practice concerning the treatment of applications from individuals and entities that are or have been in default, have had an ownership interest in a project in which a MaineHousing mortgage has been foreclosed, or have been debarred. The Rental Loan Program, the companion subsidy program to the QAP, includes these provisions. Although it doesn't happen often, applicants can apply for credits under the QAP without applying to the Rental Loan Program, so the provisions should also be in the QAP.

As with every qualified allocation plan, MaineHousing updated the housing needs analysis and modified the service center community scoring criteria accordingly. The housing needs analysis for family and elderly housing is calculated using the number of households with annual income between 40% and 60% of the area median income, the existing subsidized units, subsidized units in the pipeline and the available Section 8 rental assistance (project based and housing choice vouchers). The estimate of the number of households and household income, by community, provided by Claritas for 2010 showed a decrease of nearly 2,000 households in Maine from the data used in the last qualified allocation plan. For the 2010 estimates, Claritas continued to forecast from the 2000 Census baseline but also relied heavily on US Census Bureau American Community Survey (ACS) data for the time period of 2006 through 2009. As the 2000 Census data gets older and the ACS data continues to improve, relying more heavily on interim ACS data yields better estimates. Also, more accurate information on project based Section 8 units and Section 8 Housing Choice Vouchers (including those not administered by MaineHousing) is available and has been incorporated in this analysis. Since the last qualified allocation plan, internal and external data changes have led to a better estimate of need. For the Housing for Homeless Set-aside, need is based on the most recent shelter utilization data; communities with higher shelter bed nights have a greater need for housing for the homeless. Because of increased shelter usage in 2010, we added Auburn and Augusta to the list of service center communities with the greatest need for housing for the homeless.

HERA requires owners of tax credit projects to submit certain information, including the race, ethnicity, family composition, age, income, use of rental assistance, disability status and monthly rental payments of tenants in tax credit projects. Recently, HUD issued guidance requiring the information to be submitted electronically using a specific software program, which MaineHousing is in the process of purchasing. Owners must submit the information to MaineHousing in the requisite format so MaineHousing can transmit the data to HUD in accordance with HERA and HUD's guidelines.

Other changes include increasing the RD Set-aside to assure sufficient credit is available for the highest-scoring eligible project, removing the TCAP Set-aside because the Tax Credit Assistance Program funding under ARRA has been exhausted, modifying existing criteria and provisions to clarify or better effectuate the intent of the criteria or provisions and grammatical changes.

Process

In accordance with Executive Order 09 FY 11/12 dated January 10, 2011, MaineHousing submitted the above-described modifications to the Rule to the Office of the Governor for review and authorization to proceed to publish same for public review and comment. Pursuant to this process, the following four modifications were made to the Rule. First, the Rule is a one-year qualified allocation plan rather than the originally proposed two-year plan. Second, the requirement that construction contractors, subcontractors and material suppliers comply with *MaineHousing's Contractor Standards For MaineHousing-Financed Multifamily Housing*, which includes without limitation wage provisions, proper classification of employees and on-the-job training requirements, has been removed. Third, the scoring criteria incenting the use of contractors, subcontractors and material suppliers that provide health insurance to their employees have been removed. Finally, the scoring criterion incenting nonprofit sponsorship has been removed.

MaineHousing held a public hearing on August 16, 2011 to receive testimony on the the Rule and continued to accept written comments on the Rule through August 26, 2011. Randy Poulton of Nickerson & O'Day Construction, Rick Whiting on behalf of the Auburn Housing Authority and Mark Brooks on behalf of the Wishcamper Companies testified at the public hearing. John O'Dea on behalf of the Associated General Contractors of Maine, Greg Payne on behalf of the Maine Affordable Housing Coalition, Tina Pettengill on behalf of the Smoke-Free Housing Coalition, Michelle Edwards on behalf of the American Lung Association, Carol Coles on behalf of the Partnership for a Tobacco Free Maine and the Maine Center for Disease Control, and Debora Keller on behalf of Avesta Housing also testified at the public hearing and, in addition, provided written comments. Adam Rose on behalf of Travois, Inc., Ignatius MacLellan on behalf of the Northern New England Housing Investment Fund, Guy Gagnon on behalf of the Biddeford Housing Authority and Thomas Ptacek, Marcia Frank and Jeanna Roath on behalf of Preble Street Homeless Voices for Justice submitted written comments.

Summary of Comments and Responses

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

Threshold Requirements

Section 6.A. Applications

Comment: Avesta Housing commented that MaineHousing should give applicants a certain period of time to cure deficiencies or correct administrative errors not critical to scoring in their applications.

Response: The suggestion seems inconsistent with the changes MaineHousing proposed to make the application process more efficient, and could lead to delays in the scoring process. The ability to submit a complete application that meets the threshold requirements is an important indication of a developer's competence and understanding of the program. The suggestion seems unfair to developers who submit complete applications because it benefits developers who submit incomplete applications and could delay the process, and potentially could foster lax application submissions overall.

Section 6.B. Applicant/Developer History

Comment: Biddeford Housing Authority questioned why MaineHousing would award low income housing tax credits to a developer with a poor track record.

Response: As explained in the above basis statement, it has been MaineHousing's policy and practice to not provide assistance to developers who are in default, have owned property on which MaineHousing has foreclosed a mortgage or have been debarred or suspended. This policy is included in all of MaineHousing's programs, including the companion subsidy program to the qualified allocation plan on which we have relied to enforce these provisions. Although it rarely occurs, developers can apply for low income housing tax credits without subsidy so we decided to include the policy in the qualified allocation plan also. This is not a change in policy.

Section 6.D. Existing Section 8 Project-based Rental Projects

Comment: Wishcamper Companies commented that existing Section 8 project-based rental projects should be eligible for the State ceiling of low income housing tax credits.

Response: Reserving the State ceiling for new construction and adaptive/reuse projects is a more efficient use of the State ceiling. Existing multifamily rental housing receiving Section 8 project-based rental assistance should be funded with "automatic" low-income housing tax credits generated by tax-exempt bond financing rather than the State ceiling. 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 State ceiling used for acquisition is 4%, whereas the credit rate for State ceiling used for rehabilitation and construction is 9%. As a result, acquisition credit generates significantly less equity than rehabilitation and new construction credit. The credit rate for all automatic low-income housing tax credits is 4% regardless of whether it is used for acquisition or rehabilitation or new construction.

Section 6.F. Pre-Application Site Review

Comment: Avesta Housing commented that the process should include a timeframe within which an applicant will be notified if a site is unsuitable.

Response: Scheduling site visits and completing evaluations is dependent in part on the number of requests received at one time, but MaineHousing should be able to notify an applicant if a site is

unsuitable within 30 days of receipt of a complete site request. This section has been modified accordingly.

Section 6.G.10. Construction Services Design & Construction Manual and Green Building Standards

Comments: Nickerson & O'Day Construction, the Associated General Contractors (AGC), the Maine Affordable Housing Coalition (MAHC) and Avesta Housing commented that the Design & Construction Manual and Green Building Standards are unnecessary, add complexity to and increase the cost of developing affordable housing, which is subject to multiple regulations and requirements of funding sources.

They commented that the Design & Construction Manual and the Green Building Standards do not distinguish between new construction and projects that involve the rehabilitation of existing housing or adaptive reuse, so the requirements often conflict with other regulatory requirements, such as the National Park Service's requirements for historic credit projects, or cannot be met because of existing conditions that cannot be changed, and resolving these conflicts or getting a waiver takes time, adds cost and causes unnecessary delay in the development process.

They further commented that the Design & Construction Manual and the Green Building Standards are prescriptive. MAHC and Avesta suggested they should be performance-based. MAHC commented that the prescriptive approach of the Green Building Standards inhibits a developer's ability to best address energy efficiency based on the unique circumstances associated with the adaptive reuse of an existing building.

The commenters suggested that the development process would be easier, less expensive and take less time if the Design & Construction Manual was a guideline rather than a requirement and the Green Building Standards were eliminated.

The commenters suggested the following changes be made to the Design & Construction Manual and the Green Building Standards for projects developed under this 2012 qualified allocation plan.

1. AGC, MAHC and Avesta Housing suggested "changing the shalls to shoulds" in the Design & Construction Manual, making it a guideline rather than a requirement. If MaineHousing will not make it a guideline for all projects, AGC suggested that it should at least be a guideline for all projects involving the acquisition and rehabilitation of existing housing, adaptive reuse of existing buildings including historic buildings and the development of supportive housing.
2. Avesta Housing suggested the following specific changes to the Design & Construction Manual: (a) allowing central air-conditioning in projects; (b) clarifying the submission requirements for waivers; (c) eliminating the requirement for storage accessible from the exterior because it increases the amount of land needed for a project and storage can be addressed other ways; (d) allowing all projects with whole building ventilation to use ductless

range hoods; (e) consolidating the 90% and 100% plan reviews; and (f) clarifying the developer's ability to choose a project delivery method.

3. AGC, MAHC and Avesta Housing suggested eliminating the Green Building Standards and requiring all projects to meet the Maine Uniform Building and Energy Code (MUBEC). They commented that compliance with MUBEC and current standard practices accomplishes the goal of creating energy efficient and durable projects.
4. If MaineHousing will not eliminate the Green Building Standards, AGC suggested eliminating the Green Building Standards as a standalone document and moving critical requirements that exceed MUBEC and current standard practices, for example blower door tests and commissioning, to the Design & Construction Manual. AGC also suggested making any Green Building Standards retained a guideline rather than a requirement for all projects involving the acquisition and rehabilitation of existing housing, adaptive reuse of existing buildings including historic buildings and the development of supportive housing.
5. AGC, MAHC and Avesta Housing suggested the following specific changes to the Green Building Standards: (a) eliminating the requirement for solar assist (preheat) domestic hot water systems, because the systems are not feasible in all projects and the process of proving a system is not economically feasible is costly and causes significant delays; (b) eliminating the requirement that bathroom exhaust fans meet ASHRAE 62.2 – 2003 in buildings that incorporate Energy Recovery Ventilation units; (c) eliminating the requirement that the window glass have a solar heat gain coefficient of .35 or higher because it causes overheating in the summer; (d) eliminating the requirement that projects provide space for recycling containers in those communities where private haulers do not collect recyclables because the added cost to the project; and (e) modifying the interior lighting fixture requirements to allow any compact fluorescent fixture with integrated ballast. AGC also suggested eliminating the requirement for educational materials because of the added cost.
6. AGC suggested removing provisions that require contractors to comply with the Design & Construction Manual and the Green Building Standards because contractually the contractor's obligation is limited to providing the labor, materials, equipment and services specified in the contract documents. The design professional should incorporate the relevant requirements of these standards in the contract documents.

Response: As a steward of public funds, both state and federal, MaineHousing has an obligation to ensure that all projects built with these public funds meet certain minimum quality standards. In addition, Section 42 of the Code requires the qualified allocation plan to include selection criteria concerning energy efficiency and the Federal HOME Program requires MaineHousing to have minimum rehabilitation standards. The Green Building Standards and the Design & Construction Manual address these requirements.

MaineHousing convened a working group of developers and industry partners to review the Design & Construction Manual and the Green Building Standards. The working group has considered the above suggestions in its deliberations. As a result, MaineHousing has made the following changes

which will be in effect for applicants under this qualified allocation plan.

The changes to the Design & Construction Manual include:

- a. adding language to the preface acknowledging that projects involving rehabilitation may not be able to meet all of the requirements, and established a process to prioritize and define applicable requirements based on the particular circumstances of each project;
- b. changing many former requirements to guidelines (i.e. 140 “shalls” have become “shoulds”);
- c. eliminating the 100% plan review;
- d. relaxing the storage requirements for elderly projects acknowledging they may be difficult to achieve or unwarranted;
- e. removing references to contractors complying with the requirements, other than appropriate design/building professionals;
- f. allowing ductless range hoods in buildings with whole-building ventilation systems;
- g. adding MUBEC as a minimum standard for all projects;
- h. reducing the ratio of washers and dryers in elderly projects; and
- i. allowing dehumidification systems in projects with whole building ventilation systems.

Most of the Green Building Standards exceed the MUBEC requirements, so MaineHousing is reluctant to make significant changes without further discussion.

In response to comments, MaineHousing did relax the solar domestic hot water requirements:

- a. Installation of a solar domestic hot water system is now voluntary.
- b. The cost-benefit analysis is now less prescriptive.
- c. If an applicant determines, based on its analysis, that installation of solar domestic hot water panels is not feasible, the applicant has the option of (a) making minimal preparations for the installation of panels in the future, such as installing the infrastructure and properly orienting the building(s), or (b) proposing other energy efficiency measures or upgrades to the building envelope that exceed the requirements of the Green Building Standards and are equal in cost to making the minimal preparations for future installation of the panels.

Other changes to the Green Building Standards include more flexibility under the light fixture requirements to reflect changes in the industry and editing the commissioning requirement to exclude the building envelope.

The working group will continue to meet and consider additional changes to the Design & Construction Manual and the Green Building Standards and will report any additional changes for consideration in the next qualified allocation plan.

Section 6.G.15.a. Project Amenities – Community Room

Comment: Travois, Inc. commented that the Rule does not address how scattered site projects with single-family detached style units comply with the requirement for a community room. Requiring a community room at each site is not feasible. Travois, Inc. suggested exempting scattered site projects from the community room requirement if the applicant can demonstrate compliance is impractical.

Response: A community room is an important amenity for tenants in rental housing. The proposed Rule requires a community room for each project, not for each site. The requirement has been modified to clarify that only one community room is required for a scattered site project and the community room should be centrally located to the greatest extent possible to ensure all residents of the project have the benefit of the community room. Existing housing, including single-family detached style housing, is exempt from this requirement if the applicant can demonstrate impracticability. New projects have more flexibility. Developers should not select sites for new projects that cannot meet this requirement.

Section 6.G.15.c. Project Amenities – Internet Service and Computer in Common Area

Comment: Travois, Inc. questioned MaineHousing's rationale for requiring free internet service for tenants, and commented that tenants in tribal communities on a waiting list don't care if a unit has free internet service. Travois, Inc. further commented that providing the service is difficult in rural areas, and providing free internet service in single-family detached style housing will be expensive. Travois, Inc. suggested making internet service a scoring criterion.

Response: In the current technological and educational environment in which homework, research and many of daily activities are done through the internet, low-income households who cannot afford internet access are at disadvantage. The purpose of this amenity is to overcome this limitation. It is not intended to be a marketing tool. There are less expensive ways to provide internet service, even in rural areas, such as wireless service.

Comment: Maine Affordable Housing Coalition and Avesta Housing commented that the requirement for a computer in a common area should be removed, because the requirement for wireless internet service for each unit is sufficient for tenant computer needs and the common area computers are wasted, frequently stolen and seldom used.

Response: Even though the projects are providing free internet service in the units, not all households have access to or can afford a computer. The common area computer gives these households access.

Section 6.G.15.d. Project Amenities – Areas of Activity

Comment: Travois, Inc. commented that the Rule does not address how scattered site projects with single-family style units comply with the areas of activity requirement. Travois, Inc. commented that private lawns for single-family detached style rental housing should be sufficient to meet the requirement for areas of activity if other areas of activity are impracticable. Travois, Inc. suggested exempting scattered site projects from the areas of activity requirement if the applicant can demonstrate compliance is impractical.

Response: MaineHousing agrees that a project with single-family detached style rental housing units and private lawns with sufficient room to play or garden or for other activities should satisfy this requirement. The requirement has been modified accordingly. Other multifamily rental housing must demonstrate other areas of activity. Existing housing, including single-family detached style housing, is exempt from this requirement if the applicant can demonstrate impracticability. New projects have more flexibility. Developers should not select sites for new projects that cannot meet this requirement.

Section 6.G.15.e. Project Amenities – Exemptions

Comment: Travois, Inc. commented that new and existing single-family detached style housing should be exempt from the threshold requirements for community room, laundry facilities and areas of activity, particularly existing sites.

Response: Existing housing, including single-family detached style housing, is exempt from this requirement if the applicant can demonstrate impracticability. New projects have more flexibility. Developers should not select sites for new projects that cannot meet these requirements. The requirements for a community room and areas of activity are specifically addressed above. Projects that cannot provide an accessible, centrally-located laundry facility(ies) can provide washer/dryer hook-ups in each unit, which is better suited for single-family detached style housing.

Scoring Criteria

Section 7.A. 1. Redevelopment Opportunities

Comment: Avesta Housing commented that a definition for “urban infill site” should be added to the criteria.

Response: A definition for “urban infill site” has been added to the scoring criteria.

Comment: Biddeford Housing Authority questioned the reduction in points for infill development.

Response: MaineHousing did not reduce the points for infill development. The “Project Characteristics” heading applies to all scoring criteria under that heading: the reduction in points indicated in the heading results from changing the former project amenities scoring criteria to threshold criteria.

Section 7.A.3. Family Projects

Comments: Maine Affordable Housing Coalition (MAHC) and Avesta Housing commented that the family housing scoring criteria compels developers to include 3-bedroom units in their projects even if there is no market demand or the location of the project is not well-suited for children. MAHC commented that New Hampshire’s qualified allocation plan only requires 2-bedroom units in its family housing scoring criteria. Avesta Housing commented that its management company has difficulty filling the 3-bedroom units in its projects, but doesn’t know if the cause is lack of market demand or the rent is too high. Avesta Housing suggested that developers should be encouraged to underwrite 3-bedroom units at lower rents.

Response: Section 42 of the Code requires qualified allocation plans to include selection criteria that address tenant populations of individuals with children. Housing credit agencies determine how to satisfy this requirement based on the demographics of their service area. Although Maine demographics indicate an aging population and shrinking families, the demographics also show that persons with low income, the population the low income housing tax credit program serves, are more likely to be families with children. 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. Based on current Census data, data in MaineHousing’s multifamily portfolio and discussions with developers throughout the State, there is still a need for 3 or more bedroom units in various areas of the State. The family housing scoring criteria creates an incentive for developers to create family housing in markets where it is needed. If a market study does not support the development of family housing in a particular area or community, then applicants should not develop family projects in that area.

MaineHousing believes that developers have difficulty filling 3-bedroom units because the maximum tax credit rent is too high for these units. The average income of a low-income family that needs a 3-bedroom unit is not likely to be more than the average income of a low-income household that needs a 2-bedroom unit, but the tax credit rent can be significantly higher for a 3-bedroom unit than a 2-bedroom unit in some markets. MaineHousing is currently examining how to encourage developers to underwrite 3-bedroom units at lower rents for family projects in markets where maximum tax credit rents for 3-bedroom units are not affordable in the context of the Rental Loan Program, the companion subsidy program to the low income housing tax credit program.

Section 7.A.7. Smoke-free Housing Policy

Comments: The Smoke-Free Housing Coalition of Maine, the American Lung Association, the Partnership for a Tobacco Free Maine, the Maine Affordable Housing Coalition, Avesta Housing and the Auburn Housing Authority commented that MaineHousing should require all projects to

have a policy that prohibits smoking in all buildings and in entryways and other openings that allow smoke to enter and circulate within the building through the ventilation system or open doors and windows. The Smoke-Free Housing Coalition of Maine and the Partnership for a Tobacco Free Maine commented that a buffer zone protecting entryways and other openings that allow circulation within a building is consistent with the Center for Disease Control's rule relating to smoking in the workplace and public places.

The Smoke-Free Housing Coalition of Maine, the American Lung Association and the Partnership for a Tobacco Free Maine provided information on the health hazards of exposure to second-hand smoke and commented that populations with the greatest need for affordable housing, including children, elderly and persons with disabilities such as heart or respiratory diseases and disorders, are the most vulnerable. They commented that there is no safe level of exposure and the only way to effectively eliminate the risks associated with indoor exposure is to ban indoor smoking. The Smoke-Free Housing Coalition of Maine submitted a position paper by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) supporting this comment. The position paper indicates that other strategies such as ventilation and air cleaning and ventilation systems may reduce the risk but do not eliminate it.

The Smoke-Free Housing Coalition of Maine, the American Lung Association and the Partnership for a Tobacco Free Maine also commented that smoke-free housing reduces operating costs, including cleaning and repairs when turning over units, overall maintenance and property casualty insurance premiums. They further commented that it reduces the risk of smoking-related fires, the primary cause of residential fire deaths in Maine.

The Smoke-Free Housing Coalition of Maine commented there is growing support for smoke-free housing policies nationally and in Maine. According to the Smoke-Free Housing Coalition of Maine, Maine is one of 4 states that have addressed smoke-free housing in their qualified allocation plans, but 12 other states are considering it. HUD has issued two notices encouraging public housing authorities and owners of subsidized housing to adopt smoke-free housing policies. According to the Smoke-Free Housing Coalition of Maine, 260 public housing authorities, including 22 public housing authorities in Maine, have adopted policies. Auburn Housing Authority commented that it was fifth in the country to adopt a policy. The Smoke-Free Housing Coalition of Maine commented that surveys show 78% of low-income tenants want smoke-free housing and nearly 50% of Maine landlords have smoke-free housing, and further commented that most projects pledge smoke-free housing under MaineHousing's Qualified Allocation Plan.

The Maine Affordable Housing Coalition and Avesta Housing commented that there should be an exception or waiver for special populations. The Smoke-Free Housing Coalition of Maine and the Partnership for a Tobacco Free Maine commented that there is no correlation between smoking and mental illness, but smoking can exacerbate mental illness. The Smoke-Free Housing Coalition of Maine provided an article from the New England Journal of Medicine supporting these comments. The Smoke-Free Housing Coalition of Maine and the Partnership for a Tobacco Free Maine further commented that smoke-free housing policies do not require persons to quit smoking. The Smoke-Free Housing Coalition of Maine also followed up with information about a special needs low income housing tax credit project that did not pledge smoke-free housing under MaineHousing's

qualified allocation plan. According to the Smoke-Free Housing Coalition of Maine, the owner wishes it had adopted a smoke-free housing policy at the project and is considering converting the project to smoke-free housing.

Response: Based on the overwhelming supporting comments and information, smoke-free housing should become a threshold requirement, particularly in the energy efficient housing developed under MaineHousing's Green Building Standards. One issue preventing us from making the change at this time is whether to include an exemption or waiver for special needs housing. MaineHousing's staff will convene a working group of interested parties, including representatives of the special needs population, to establish a threshold requirement that works for all interested parties and will recommend the agreed-upon requirement be included in the next qualified allocation plan. Nearly all applicants have pledged the point since the scoring criteria's inception, and we expect most, if not all, applicants will pledge the point under this qualified allocation plan.

Section 7.C.3. Tax Credit Rent/Market Rent Differential

Comment: Avesta Housing commented that all projects should be in markets where the tax credit rent is at least \$100 less than the market rent, because scarce subsidy should not be used to create affordable housing in markets where the tax credit rent is more than the market rent.

Response: MaineHousing agrees that the rents in tax credit projects should not be more than the market rents in the area in which the project is located. The purpose of the scoring criteria is to incent development in markets with a greater percentage difference between the maximum tax credit rent and the market rent in the area in which the project is located. However, to make this 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. In areas where the maximum tax credit rent exceeds the market rent, MaineHousing underwrites the project rents at 95% of the tax credit rent to preserve some level of affordability.

Section 7.C.5. Smart Growth

Comment: Avesta Housing commented that meeting the criteria is difficult in many suburban areas that do not have defined downtowns, such as Windham and Scarborough. Avesta Housing further commented that the current definition of downtown limits the number of communities in Maine that qualify as downtown, and suggested broadening the definition so more than one central business district or neighborhood in a municipality can qualify as a downtown.

Response: 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. MaineHousing recognizes that not all municipalities have a downtown, but many have areas where rental housing makes sense because of the development that has occurred in the area and the proximity and availability of employment, services and other activities important to the course of daily living of the residents. The smart growth selection criteria

include a 6 point category for projects that are located in these areas.

Former Section 7.D.3. Non-profit Participation

Comments: Avesta Housing and Travois, Inc. opposed the elimination of the scoring criteria. Avesta Housing commented that non-profit developers, unlike for-profit developers, invest all of their profits in the organization's mission, so subsidy awarded to projects with non-profit developers is reinvested to create more affordable housing and to provide a long-term benefit to the housing sector. Travois, Inc. commented that the low-income housing tax credit program is critical to nonprofits with limited financial resources, and the scoring criteria helps ensure that nonprofits are awarded credits.

Response: The scoring criteria was established at a time when there was minimal development of low income housing tax credit projects by nonprofits. The original purpose of the criteria was to incent nonprofit participation in the development of low income housing tax credit projects to build nonprofit capacity. Over the years, nonprofit involvement in the development of low income housing tax credit projects has grown significantly. Under the last several programs, most of the low-income housing tax credit projects have been developed by nonprofit entities. The need for the category no longer appears to exist. Under Section 42 of the Code, MaineHousing still sets aside at least 10% of the State ceiling for projects with nonprofit participation.

New Section 7.D.3. (formerly Section 7.D.4.) Management Company Experience

Comment: Travois, Inc. commented that the integration of a management consultant with tax credit experience in the management of a project achieves the purpose of ensuring compliance with the tax credit requirements, and should be eligible for the points under the management company experience scoring criteria. Travois, Inc. commented that it doesn't make sense for tribal housing authorities to hire a full service management company because they have vast experience managing low-income housing and administering unique funds, such as NAHASDA (Native American Housing and Self Determination Act) funds. Travois suggested adopting Oklahoma's approach which awards points based on the number of successful projects that are operated in compliance with the tax credit requirements regardless of whether they use a full service management company, co-management or a consulting company.

Response: The low income housing tax credit regulations are complicated and distinct from other affordable housing programs. In MaineHousing's experience, projects managed by experienced full service management companies are less likely to have compliance issues than projects that use a co-management approach or hire a consultant. So, through the scoring criteria, MaineHousing encourages developers to use management companies that are experience in managing tax credit projects. Tax credit consultants and co-management arrangements are not prohibited, but they are not eligible under the scoring criteria. As tribal housing authorities obtain the necessary training and certification and gain experience, they will become eligible for the points under the scoring criteria.

General

Comment: Preble Street Homeless Voices for Justice commented that MaineHousing should require deeper targeting in the affordable housing developed under its programs.

Response: As explained in the basis statement, the federal low income housing tax credit program is designed to serve households with income at or below 50% and 60% of area median income. In order to serve households with lower incomes, additional subsidy is necessary to reduce debt or provide operating or rental assistance. Subsidy is scarce at this time. The only resource available to serve households with lower incomes in tax credit projects is project-based rental assistance. To achieve deeper affordability to the greatest extent possible with available resources, MaineHousing increased the number of points available under the project-based rental assistance scoring criteria in Section 7.B.3. of the Rule and staggered the points to encourage developers to secure new project-based rental assistance at any level.

Comment: Wishcamper Companies commented that the Rule does not have a strong focus on preservation.

Response: Preservation efforts focus on two types of loss; loss due to deterioration or physical condition and loss of affordability through conversion to market at the expiration of a rental assistance contract or restrictive covenant. The Rule addresses the first type of preservation through a 3-point scoring criteria for the rehabilitation of existing multifamily rental housing and a set-aside for existing multifamily housing with Rural Development financing and rental assistance. As stated earlier, MaineHousing addresses existing Section 8 project-based rental assistance projects using tax-exempt financing and “automatic” low income housing tax credits.

Comment: Avesta Housing commented that the total number of points for Section 7.D., Sponsor Characteristics, is incorrect.

Response: This has been corrected.

Comment: Northern New England Housing Investment Fund commented that the Rule should include a table of contents.

Response: We have added a table of contents to the Rule based on the existing format of the Rule.

Supporting Comments: Travois, Inc. supports the addition of on-call bus service to the smart growth criteria. Avesta Housing supports the increased developer fees and changes to the new project-based rental assistance scoring criteria. AGC supports the removal of MaineHousing’s contractor standards and the group health insurance scoring criteria.

Response: See the basis statement for an explanation of these changes. No further response is required.

FISCAL IMPACT OF THE RULE: The 2012 State ceiling of low income housing tax credits is projected to raise approximately \$21,918,000 in equity. The equity generated by the low income housing tax credits will be used to develop affordable housing for low-income persons. The proposed amendments will not impose any costs on municipalities or counties for implementation or compliance.

EFFECTIVE DATE: October 25, 2011