

Notice of Agency Rule-making Proposal

AGENCY: 99-346 Maine State Housing Authority

CHAPTER NUMBER AND TITLE: Chapter 16, Allocation of State Ceiling of Low Income Housing Tax Credit Rule

PROPOSED RULE NUMBER (*leave blank; assigned by Secretary of State*):

CONTACT PERSON FOR THIS FILING: Jodie Stevens, Counsel, Maine State Housing Authority, State House Station #89, 353 Water Street, Augusta, Maine, 04330-4633, (207) 626-4600 (telephone), (800) 452-4603 (TTY), jstevens@mainehousing.org (e-mail)

Upon sufficient notice, this notice and the proposed rule will be made available in alternative formats for persons with disabilities and in alternative languages for persons with limited English proficiency.

CONTACT PERSON FOR SMALL BUSINESS INFORMATION (if different): Same as Contact Person

PUBLIC HEARING (if any): A public hearing will be held on Tuesday, August 16, 2011 at 9:30 AM at Maine State Housing Authority, State House Station #89, 353 Water Street, Augusta, Maine, 04330-4633.

Maine State Housing Authority's office and the hearing room are accessible to persons with disabilities and, upon sufficient notice, appropriate communication auxiliary aids and services will be provided to persons with disabilities and persons with limited English proficiency.

COMMENT DEADLINE: Friday, August 26, 2011 at 5:00 PM

BRIEF SUMMARY: The proposed rule, as amended, is the qualified allocation plan for allocating and administering the federal low income housing tax credit in the State of Maine, including the 2012 state ceiling of low income housing tax credits for the State of Maine.

IMPACT ON MUNICIPALITIES OR COUNTIES (if any) None

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

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (if different): Same as above

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: luhl@mainehousing.org

The above summary is for use in both the newspaper and website notices.

The above summary is for the newspaper notice only. A more detailed summary / basis statement is attached.

Please approve bottom portion of this form and assign appropriate AdvantageME number.

APPROVED FOR PAYMENT _____ DATE: _____
(authorized signature)

FUND	AGENCY	ORG	APP	JOB	OBJT	AMOUNT
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DETAILED BASIS STATEMENT / SUMMARY: Maine State Housing Authority (commonly referred to as MaineHousing), the housing credit agency for the State of Maine, is required to adopt a qualified allocation plan pursuant to Section 42 of the Internal Revenue Code of 1986, as amended. The rule, as amended, is the qualified allocation plan (the “QAP”) for allocating and administering federal low income housing tax credits in the State of Maine, including the 2012 state ceiling of low income housing tax credits for the State of Maine. Proposed amendments to the rule including the following.

1. The structure of the developer fee has been modified. 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, so –called net developer fee; 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. Because of criticism that the developer fee is too low, the amount of the net developer fee has been increased from \$15,000 per unit to \$17,500 per unit for the first 20 units and from \$12,500 to \$15,000 per unit for additional units above 20 units. The net fee is 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.
2. Project-based rental assistance has become the only resource available to serve persons with lower incomes in tax credit projects. The total points for new project-based rental assistance have increased and been further staggered to incent developers to secure new project-based rental assistance, at any level, to serve persons with lower incomes.
3. The former project amenities and services scoring criteria, including community space, laundry facilities, internet access and proximity to recreational activities, have become threshold requirements for all projects except existing multi-family housing projects if it is impracticable to incorporate these amenities.
4. On-call bus service will be eligible for 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.
5. 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 the 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.
6. The families with children housing scoring criteria have been clarified. 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 under the criteria. As previously worded, certain projects, depending on the total number of units in the project, had to pledge more than half of the units in order to qualify.

7. The land use approval criteria have been clarified. Except for building permits and other permits typically issued during construction, all land use approvals, including municipal and state approvals, if applicable, are required 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 criteria. Most projects do not require state approvals, but state approvals have been specifically added because a recent project, which is part of a larger subdivision requiring state approvals, did.

8. The service center community scoring criteria have been modified based on the updated housing needs analysis. Since the last qualified allocation plan, internal and external data changes have led to a better estimate of need. 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. The result of this improved data is that the number of qualifying households in Maine has decreased by nearly 2,000 from the data used in the last QAP. 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, Auburn and Augusta are included in the service center communities with the greatest need for housing for the homeless.

9. The amount of the RD Set-aside has increased to assure sufficient credit is available for the highest-scoring eligible project.

10. The TCAP Set-aside has been removed because the Tax Credit Assistance Program funding under the American Recovery and Reinvestment Act of 2009 (ARRA) has been exhausted.

11. Some scoring and threshold criteria have been modified to clarify the submission requirements to receive points under criteria, such as requiring accessible units be shown on the plans submitted with the application under the greater accessibility scoring criteria.

12. The existing application requirements have been tightened to make the tax-credit scoring process more efficient and timely. All applications must be on MaineHousing forms and must be complete. If the forms are not used or completed, the application will be rejected. 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. Not completing the required forms causes inefficiencies in a process that is already time-consuming, and is unfair to the applicants who complete the forms.

13. Similarly, the carryover allocation process has been tightened. Section 42 of the Code prescribes deadlines for completing carryover allocations. Applicants who do not submit requests for carryover allocations with the requisite information on time or pay the allocation fee on time will risk forfeiting their credit award.

14. MaineHousing's practice in its multifamily funding programs of not accepting or processing applications from individuals and entities that are in default, have had an ownership interest in a project in which a MaineHousing mortgage has been foreclosed, or have been debarred or suspended has been added. The companion subsidy program to the QAP, the Rental Loan Program, 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 have been added to the QAP.

15. 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.

16. The Housing and Economic Recovery Act of 2008 (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. Owners will be required to 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.

17. The monitoring fee has increased to cover MaineHousing's cost of monitoring tax credit projects, including the additional costs in connection with new software requirements under HERA.

18. Other changes including minor clarifications to better effectuate the intent of the criteria or provisions and grammatical changes.

In accordance with Executive Order 09 FY 11/12 dated January 10, 2011, MaineHousing submitted the above-described 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.
