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# Low Income Housing Tax Credit. Qualified Allocation Plan, 2017

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# Low Income Housing Tax Credit

## Qualified Allocation Plan

2017



## CHAPTER 16 LOW-INCOME HOUSING TAX CREDIT RULE

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## 99-346 MAINE STATE HOUSING AUTHORITY

### Chapter 16: LOW-INCOME HOUSING TAX CREDIT RULE

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**Summary:** The Tax Reform Act of 1986 created the federal low-income housing tax credit to encourage private capital investment in the development of qualified affordable residential rental housing. Section 42 of the Internal Revenue Code of 1986, as amended, and associated regulations and guidance govern the federal low-income housing tax credit. Section 42 of the Code requires housing credit agencies to adopt a qualified allocation plan for allocating and administering the federal low-income housing tax credit, including the annual ceiling of federal low-income housing tax credits allocated to housing credit agencies. Maine State Housing Authority is the designated housing credit agency for the State of Maine. This rule is the qualified allocation plan for the State of Maine. It establishes the policies, selection criteria and procedures for allocating and administering the federal low-income housing tax credit in the State of Maine. This rule repeals and replaces in its entirety the prior Chapter 16, *Low Income Housing Tax Credit Rule*.

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#### SECTION 1: DEFINITIONS

- A. “Act” means the Maine Housing Authorities Act, 30-A M.R.S.A. §4701 et seq., as may be amended.
- B. “Adaptive Reuse” means the conversion of an existing non-housing building or structure to multi-family residential rental housing or the reconstruction of existing housing that has become functionally obsolete, as determined by MaineHousing in its sole discretion.
- C. “Affiliate” means with respect to any person or entity, another entity that said person or entity directly or indirectly controls, is controlled by or is under common control with.
- D. “Affordable Housing” means multi-family rental housing that has five or more units and is assisted under a HUD or Rural Development program or is subject to a restrictive covenant requiring units in the housing to be restricted to households with income at or below 60% of area median income, as determined by HUD.
- E. “Affordable Housing TIF” means an affordable housing development district and development program approved by MaineHousing pursuant to MaineHousing’s Affordable Housing Tax Increment Financing Program, 30-A M.R.S.A., Chapter 206, Subchapter 3 and the Act, as may be amended.

- F. “Applicable Fraction” has the same meaning as set forth in Section 42(c)(1)(B) of the Code.
- G. “Applicable Percentage” has the same meaning as set forth in Section 42(b) of the Code.
- H. “Applicant” means the entity applying for Credit, its successors and assigns.
- I. “Application” means an application to MaineHousing for an allocation of Credit.
- J. “Benchmark Total Development Cost” means the benchmark Total Development Cost by housing type set forth in Section 6.B.1. established by MaineHousing based on reasonable costs of completing the respective types of housing.
- K. “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)(1) of the Code.
- L. “Capitalized Lease Value” means the net present value of all lease payments under a lease calculated over the term of the lease using the 10-year Treasury note rate on September 12, 2016 (45 days prior to the deadline for Applications) plus 300 basis points.
- M. “Census Tract” means a geographic region that is defined for purposes of taking the census pursuant to the United States Bureau of the Census Participant Statistical Areas Program.
- N. “Certified Business-Friendly Community” means a municipality certified as a Certified Business-Friendly Community by the State’s Department of Economic and Community Development.
- O. “Code” means the Internal Revenue Code, Title 26 of the United States Code, and applicable regulations promulgated pursuant thereto, as may be amended.
- P. “Community Revitalization Plan” means (1) a community that has been designated by HUD or RD as an Empowerment Zone, a Renewal Community or Enterprise Community, or a Neighborhood Revitalization Strategy Area; or (2) a written plan that is formally adopted by the governing body of a municipality following a concerted planning process and public input, specifically targets a neighborhood or area in the community (not a single building or site or the entire municipality) for redevelopment or revitalization, and includes (a) an assessment of the existing physical structures and infrastructure of the area, (b) detailed policy goals with respect to economic redevelopment, the rehabilitation or development of housing (including multi-family rental housing) and the improvement or expansion of infrastructure, and (c) proposed activities and a timetable for implementing the



policy goals. Comprehensive plans, zoning and land use plans and other plans about the growth or use of areas within a municipality, plans for a single development and plans formulated by or on behalf of the Applicant are not Community Revitalization Plans.

- Q. “Compliance Period” has the same meaning as set forth in Section 42(i)(1) of the Code.
- R. “Consolidated Plan” means the current version of the *Maine Consolidated Plan* prepared by MaineHousing and the State’s Department of Economic and Community Development.
- S. “Credit” means the low-income housing tax credit established pursuant to Section 42 of the Code and allocated pursuant to this rule.
- T. “Credit Period” has the same meaning as set forth in Section 42(f)(1) of the Code.
- U. “Demand Response Transportation” means on-call transportation services that operate at least 3 days per week and provide service throughout the day.
- V. “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.
- W. “Difficult-to-Develop Area” or “DDA” means an area of the State that is designated by HUD as a difficult development area pursuant to Section 42(d)(5)(B)(iii) of the Code or an area of the State that is designated by MaineHousing as a difficult-to-develop area in Section 7.A.3 pursuant to Section 42(d)(5)(B)(v) of the Code.
- X. “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 (such as residential, commercial and office with a strong pedestrian orientation), 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., as may be amended.
- Y. “Eligible Basis” has the same meaning as set forth in Section 42(d) of the Code.
- Z. “Eligible Rehabilitation Costs” means the expenses incurred or to be incurred which qualify as rehabilitation expenditures under Section 42(e) of the Code.

- AA. “Extended Use Agreement” means an agreement that satisfies the requirements of Section 42(h)(6)(B) of the Code.
- BB. “Extended Use Period” means the period of time specified by MaineHousing in the Extended Use Agreement executed or to be executed in connection with a LIHTC Project pursuant to Section 42(h)(6)(D) of the Code, which is the period set forth in Section 5.B. for Projects allocated Credit under the 2017 State Ceiling.
- CC. “Extremely Low Income” means income that is at or below 30% of the area median income as determined pursuant to the regulations and guidance governing the National Housing Trust Fund.
- DD. “Family Housing” means housing for families that qualifies for points under the Family Housing scoring criteria set forth in Section 6.A.3.
- EE. “Fiscal Year” means the fiscal year for a LIHTC Project as defined in the owner’s organizational documents.
- FF. “Fixed-route Public Transportation” means year-round, regularly scheduled public transportation that operates at least 5 days per week and provides regular service throughout the day.
- GG. “Housing Development Costs” means the total of all direct and indirect costs incurred in financing, creating, purchasing or rehabilitating a LIHTC Project except the costs attributable to the acquisition of the land and any existing buildings as determined by MaineHousing.
- HH. “HUD” means the United States of America acting through the United States Department of Housing and Urban Development.
- II. “Intermediary Costs” means all Housing Development Costs except the actual construction or Eligible Rehabilitation Costs attributable to the development of the units.
- JJ. “IRS” means the United States Department of Treasury, Bureau of Internal Revenue Service.
- KK. “LIHTC Project” means a qualified low-income housing project as defined in and governed by Section 42(g) of the Code.
- LL. “MaineHousing” means Maine State Housing Authority.
- MM. “MaineHousing’s Construction Standards” means MaineHousing’s *Quality Standards and Procedures Manual* in effect 60 days prior to the applicable deadline for an Application for Credit.

- NN. “Maximum Total Development Cost” means the maximum amount of Total Development Cost by housing type in Section 5.C. that a Project can have and be eligible for Credit under this rule.
- OO. “Maximum Credit Amount” means the maximum amount of Credit a Project is eligible to receive pursuant to Section 3.D.
- PP. “National Housing Trust Fund” means the Housing Trust Fund established under Title I of the Housing and Economic Recovery Act of 2008, 12 U.S.C. §4568, together with associated regulations and guidance now or hereafter promulgated pursuant thereto.
- QQ. “Net Developer Fee” means the Developer Fee with respect to a Project that does not exceed the applicable limit set forth in Sections 7.B.1. or 7.B.2., including any portion thereof that is deferred or loaned to pay for costs associated with the Project. Net Developer Fee does not include additional Developer Fee allowed under Section 7.B.3.
- RR. “Notice to Proceed” means the notice to the Applicant that a Project has been selected for further evaluation to determine the Project’s eligibility for Credit and the amount of Credit to be allocated for the Project.
- SS. “Owner” means the legal owner of a LIHTC Project or Qualified Building for which an Application has been submitted to MaineHousing or which has received an allocation of Credit from MaineHousing pursuant to this Qualified Allocation Plan or a prior Qualified Allocation Plan for the State.
- TT. “Ownership Transfer Rule” means Chapter 27 of MaineHousing’s rules, *Transfers of Ownership Interests*, and the policies and procedures related thereto, all as may be amended.
- UU. “Placed in Service” means the date on which a Qualified Building is suitable and available for occupancy as determined in accordance with Section 42 of the Code.
- VV. “Principal” means any person or entity with a controlling interest in another entity, including without limitation a person or entity with an ownership interest in an Applicant that controls the development and day-to-day operation of a Project, such as the general partner(s) if an Applicant is a limited partnership or the manager(s) or member(s) invested with the management authority if the Applicant is a limited liability company, and all persons and entities with an ownership interest in or control of said entity.
- WW. “Project” means the multi-family housing described in the Application.

- XX. “Project Report” means the audited financial report (AFR), the annual project budget or the Tax Credit Certification as may be required for each LIHTC Project.
- YY. “Qualified Allocation Plan” or “Plan” means the plan for allocating and administering the Credit adopted by the housing credit agency pursuant Section 42(m)(1)(B) of the Code.
- ZZ. “Qualified Basis” has the same meaning as set forth in Section 42(c)(1) of the Code.
- AAA. “Qualified Building” means a qualified low-income building as defined in and governed by Section 42(c)(2) of the Code.
- BBB. “Qualified Census Tract” means an area of the State designated by HUD as a qualified census tract pursuant to Section 42(d)(5)(B)(ii) of the Code.
- CCC. “Qualified Nonprofit Organization” has the same meaning as set forth in Section 42(h)(5)(C) of the Code.
- DDD. “Related Development” means any development of which the Project is a part or is related and the Project cannot be completed without the completion of the development.
- EEE. “RD” or “Rural Development” means the United States of America acting through the United States Department of Agriculture, Rural Housing Services.
- FFF. “Safe Walking Distance” means a pedestrian route appropriate to the area, as determined by MaineHousing, with sidewalks or paved wide shoulders suitable for walking, crosswalks and traffic signals at busy roads or intersections and year-round walkability, which includes being plowed during the winter.
- GGG. “Section” or “subsection” mean or refer to sections and subsections of this rule.
- HHH. “Section 8” means Section 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437f, as may be amended.
- III. “Senior Housing” means a Project that is designated as elderly or senior housing and receives funding and project-based rental assistance under a RD or HUD multi-family elderly housing program (such as RD’s Section 515 Rural Rental Housing Program and HUD’s Section 202 Supportive Housing for the Elderly Program) or that meets the definition of “housing for older persons” under the federal Fair Housing Act, 42 U.S.C. § 3607(b)(2) and the Maine Human Rights Act, 5 M.R.S.A. § 4581 et seq. and all associated regulations, as may be amended.
- JJJ. “Service Center Community” means an entire municipality that provides jobs and retail to surrounding areas and is a center for education, health care, cultural,

recreational and social services, as designated pursuant to the Municipal Planning Assistance Program of the State's Department of Agriculture, Conservation and Forestry as a Regional Service Center as of January 2013.

- KKK. "Significant Place of Employment" means an industrial, business or office park with at least 5 separate employers; a shopping mall that is anchored by one or more big box or large department stores and has at least 10 or more stores or establishments; or a single non-seasonal place of employment with at least 100 employees.
- LLL. "State" means the State of Maine.
- MMM. "State Ceiling" means the State's housing credit ceiling established pursuant to Section 42(h)(3)(C) of the Code.
- NNN. "State's Growth Management Law" means the provisions set forth in 30-A M.R.S.A. § 4349-A, as may be amended.
- OOO. "Tax Credit Certification" means the annual certification and tenant data that the Owner is required to submit pursuant to Section 10.B.
- PPP. "Tax Increment Financing" means any type of tax increment financing, including without limitation an Affordable Housing TIF, a development district and development program approved by a municipality or a tax increment financing district approved by the State's Department of Economic and Community Development pursuant to 30-A M.R.S.A., Chapter 206, as may be amended.
- QQQ. "Total Construction Cost" means the sum of site costs, costs of constructing or rehabilitating structures, systems, facilities, units and components, general requirements, bond premiums, and contractor overhead and profit as determined by MaineHousing.
- RRR. "Total Development Cost" means the sum of all costs associated with the development, construction and rehabilitation of a Project, as determined by MaineHousing. Total Development Cost includes, without limitation, acquisition costs, the Capitalized Lease Value of all leases of land or land and building(s), demolition costs, Total Construction Costs, construction contingency, costs associated with community service facilities included in the Eligible Basis of the Project, soft costs (such as permits, design and engineering fees, environmental reports, appraisals, market studies and legal fees), syndication costs, Net Developer Fee, costs associated with obtaining and carrying a financing package and project reserves except as follows. Total Development Cost does not include fees required by MaineHousing in connection with the Credit, the Project's operating deficit account to the extent required by MaineHousing, the costs associated with any commercial space developed in connection with the Project. Community service facilities are not considered commercial space for purposes of Total Development

Cost.

- SSS. “Total Development Cost Per Unit” means the quotient of the Total Development Cost divided by the total number of all units in the Project. A resident manager’s unit that is not included in the Applicable Fraction will not be included in the total number of units for purposes of calculating the Total Development Cost Per Unit.
- TTT. “UPCS” means the Uniform Physical Conditions Standards established by HUD pursuant to 24 CFR § 5.703, as may be amended.
- UUU. “VAWA” means Title VI of the Violence Against Women Reauthorization Act of 2013, 42 USC Chapter 136, Subchapter III, Part M, and all associated regulations and guidance, as may be amended.
- VVV. “Very Low Income” means income that is at or below 50% of the area median income as determined in accordance with Section 42(g) of the Code.

## SECTION 2: HOUSING NEEDS AND PRIORITIES

- A. **Consolidated Plan.** MaineHousing annually completes a statewide needs assessment as part of the 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. Increase the supply of affordable rental housing in the State;
  2. Improve the quality of rental housing in the State;
  3. Preserve and improve the quality of existing housing in the State; and
  4. Help people in the State to attain housing stability.
- B. **Housing Priorities.** In consideration of the housing needs identified above, MaineHousing has established the following housing priorities for allocation of the Credit:
1. Efficient use of the Credit and other MaineHousing resources, including Projects with the lowest Total Development Cost, to maximize the development of affordable rental housing in the State;
  2. Increase the supply of affordable housing in the State, including housing for households with the lowest incomes;

3. Preservation of existing affordable rental housing in the State that is at risk of being lost due to deterioration or market conditions;
4. Development and preservation of housing in the State with project-based rental assistance and other funding that increases or maintains the availability and affordability of housing for households with the lowest incomes such as Very Low Income and Extremely Low Income households;
5. Development of housing in the State that offers services, amenities and other assistance to increase housing stability for populations with special needs, such as persons who are homeless or displaced, persons who are seniors, persons with disabilities and persons who are victims of domestic violence; and
6. Development and preservation of housing in the State with the highest need and access to areas of opportunity and community assets, such as public transportation, employment, education and services.

### **SECTION 3: STATE CEILING, SET-ASIDES AND MAXIMUM CREDIT AMOUNT**

A. **Amount of State Ceiling.** The State Ceiling 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, using 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 determined by any other method as may be authorized or required by the Code;
2. The unused State Ceiling, 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.

All of the current per-capita State Ceiling remaining at the end of a calendar year, after all current year allocations and carryover allocations have been made and less any State Ceiling that is or will be returned to the national pool of federal low-income housing tax credits, 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.

B. **Non-Profit Set-aside.** Ten percent (10%) of the annual State Ceiling will be set aside for Projects in which a Qualified Nonprofit Organization will own an interest

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. If the amount of Credit under this set-aside is not sufficient to complete the Project proposed in the highest-scoring eligible Application, additional Credit will be allocated for the Project regardless of the score of the Application relative to the scores of the other Applications.

To qualify for the Non-profit Set-aside, a Qualified Nonprofit Organization must own an interest in the Project and materially participate in the development and operation of the Project in accordance with Section 42(h)(5)(B) of the Code. An Application will qualify for this set-aside if the general partner or manager (or managing member) of the Applicant is a Qualified Nonprofit Organization or a business corporation in which one or more Qualified Nonprofit Organization(s) owns 100% of the stock of the corporation in accordance with Section 42(h)(5)(C) of the Code.

MaineHousing, in its sole discretion, may award the Non-profit Set-aside to an Applicant with a Principal or an Affiliate of either that is a Qualified Nonprofit Organization even if the Applicant has not indicated in the Application that the Applicant is participating in the set-aside, and if necessary, may require the Applicant to change the ownership structure of the Applicant to qualify for the Non-profit set-aside.

- C. **Preservation Set-aside.** Up to \$300,000 of the annual State Ceiling will be set aside for the preservation and rehabilitation of existing Affordable Housing that satisfies the minimum rehabilitation requirements set forth in Section 5.D.2. Demolition and reconstruction of housing on the same site or another site will be treated as new construction and is not eligible for this set-aside.

The amount of Credit under this set-aside is limited to one Project. If the amount of Credit under this set-aside is not sufficient to complete the Project proposed in the highest-scoring eligible Application, MaineHousing may, in its sole discretion, (1) allocate additional Credit to the highest-scoring eligible Application regardless of the score of the Application relative to the scores of all other Applications, (2) allocate the Credit under this set-aside to the next highest-scoring eligible Application that does not need more than the amount of the Credit available under the set-aside, or (3) not allocate any Credit under this set-aside.

- D. **Maximum Credit Amount.** The maximum amount of Credit that will be allocated for each Project is the lesser of (i) \$20,000 per Credit-eligible unit for a Project or (ii) 25% of the annual State Ceiling from which the Applicant applied for Credit.



## SECTION 4: ALLOCATION PROCESS

- A. **Pre-application Review.** All prospective Projects must undergo a preliminary review by MaineHousing pursuant to this subsection to determine if and under what conditions, if any, an Application may be submitted. All Applicants must submit a request for preliminary review in form prescribed by MaineHousing and a non-refundable fee in the amount of \$1,000. The deadline to submit a request for preliminary review with respect to the 2017 State Ceiling is August 23, 2016.

The purpose of the preliminary review is for MaineHousing to determine, in its sole discretion, the suitability of the Project for housing, the feasibility of the Project and the Project's eligibility for Credit. Applicants must submit certain information and documentation, in form and substance acceptable to MaineHousing, with the request for preliminary review, including without limitation, the following.

1. A description of the Project and any Related Development, including without limitation, the location, type of housing, total number of units and units by bedroom size, total number of income-restricted units and said units by bedroom size, proposed affordability, any existing affordability restrictions, any existing or proposed use restrictions, common areas and amenities at the Project, any community service facilities, any commercial space and other unique features of the Project and the status of applicable federal, State and local land use approvals for the Project and any Related Development.
2. Diagrammatic site plan for the Project and any Related Development and floor plans and building elevations for the Project in accordance with the specifications and requirements set forth in MaineHousing's Construction Standards.
3. Any site, subdivision and other plans for the Project and any Related Development that have been prepared for submission or have been submitted to applicable municipal, state and federal governmental entities.
4. Details about the parking for the Project, including the number, type and location of all on-site parking and off-site parking and the terms and conditions thereof, and if the Project will have less than one parking space for each unit in the Project, a written waiver request in accordance with the requirements set forth in MaineHousing's Construction Standards.
5. An explanation and all supporting documentation for any exceptions from the requirements to provide the project amenities set forth in Section 5.M.
6. All available information about any known or suspected environmental conditions on the Project site and any Related Development or adjacent sites

that may impact the Project site or any Related Development, including any available environmental reports.

7. A capital needs assessment for any existing housing that satisfies the requirements in Section 5.D.1.
8. A conceptual construction estimate(s) prepared by a qualified general contractor or third-party estimator for the Project and any Related Development, including trade breakdowns in the form of a schedule of values and a reasonable estimating contingency, if applicable, with sufficient detail to demonstrate expected construction-related costs. All exclusions and qualifications, if any, must be clearly stated in the estimate.
9. A projected development and operating budget(s) for the Project and any Related Development that satisfies the requirements of Section 5.I.

MaineHousing will notify an Applicant in writing within 45 days of receiving a complete request for preliminary review if MaineHousing determines that a prospective Project is unsuitable, infeasible or otherwise ineligible or that certain conditions must be satisfied to submit an Application for the Project. The notice will include an explanation of MaineHousing's determination. Applicants who do not receive notice from MaineHousing that the Applicant's Project is unsuitable, infeasible or otherwise ineligible may submit an Application.

An Applicant may appeal MaineHousing's determination to MaineHousing's Director within 10 days of the date of the notice from MaineHousing. The appeal must be in writing and must 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 MaineHousing's determination about the unsuitability, infeasibility or ineligibility 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 preliminary review process described in this subsection.

An Applicant will not be eligible for Credit if (1) the Applicant fails to submit a complete request for preliminary review of its Project in accordance with this subsection, (2) MaineHousing determines that the Applicant's Project is unsuitable, infeasible or otherwise ineligible based on the preliminary review, subject to the appeal rights set forth herein, or (3) the Applicant fails to satisfy any conditions that are imposed by MaineHousing based on the preliminary review in the Application for the Project.

- B. **Application.** Applications are subject to the following limitations, conditions and requirements. Applications that fail to satisfy the following limitations, conditions and requirements are not eligible for Credit.
1. **Limits on Applications.** Applications for the 2017 State Ceiling are subject to the following limitations.
    - a. **Number of Applications.** An Applicant, any Principal thereof and any of their Affiliates may not submit more than two (2) Applications.
    - b. **Maximum Number of Projects.** An Applicant may not submit an Application if the Applicant, any Principal thereof or any of their Affiliates have more than four (4) LIHTC Projects that have been awarded Credit under any State Ceiling and have not been completed. For purposes hereof, complete means the issuance of an unconditional Certificate(s) of Occupancy or equivalent approval of the governing municipal authority, sign-off by MaineHousing's Construction Services Department and the closing and full funding of all permanent financing sources for the Project.
    - c. **Acquisition and Rehabilitation Projects.** Applications for Projects that involve the acquisition and rehabilitation of existing Affordable Housing, except Projects that also involve the addition of at least 20 new units, are only eligible for the Preservation Set-aside in Section 3.C.
    - d. **Reconstruction of Existing Housing.** The demolition and reconstruction of existing housing that has not been condemned or declared blight by the municipality in which it is located is not eligible unless authorized in writing by MaineHousing.
  2. **Application Deadline.** The deadline for submitting all Applications for the 2017 State Ceiling, including the set-asides of the 2017 State Ceiling in Section 3, is 5:00 PM on Thursday, October 27, 2016.
  3. **Form of Application.** The Application must be in the form prescribed by MaineHousing. The Applicant must complete the Application and submit it electronically to MaineHousing in the manner prescribed by MaineHousing by the deadline set forth above. The Application must be complete. If an Applicant fails to complete any of the prescribed forms or schedules in the Application or submit any of the information or documentation required in the Application, the Application will be rejected.

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

4. **Application Fee.** The Application must include a non-refundable application fee in the amount of \$1,500. The application fee must be postmarked for delivery to MaineHousing no later than the applicable deadline for Applications.

An Applicant may withdraw an Application at any time by written notice to MaineHousing, but the application fee will not be refunded.

- C. **Ineligible Applicants.** An Application will not be accepted, processed, or approved by MaineHousing if one or more of the following has occurred.

1. The Applicant, any Principal thereof or any of their Affiliates (i) has an uncorrected IRS Form 8823 in connection with any LIHTC Project to the extent it is correctable unless previously waived by MaineHousing, or (ii) has been declared in default or has been 60 days or more delinquent on any loan with MaineHousing, unless the default or delinquency has been cured or there is an approved payment or workout plan in place and in good standing prior to the applicable deadline for submitting an Application; or (iii) 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 previously waived by MaineHousing; or (iv) is presently debarred, suspended, proposed for debarment, or excluded from participation in any federal or state programs; or (v) has in the last 10 years had any proceeding in or for bankruptcy, receivership, reorganization or any other arrangement for relief from creditors commenced against it that affects a MaineHousing-funded project and was not dismissed within 90 days of commencement, or commenced any proceeding in or for bankruptcy, receivership, reorganization or any other arrangement for relief from creditors that affects a MaineHousing-funded project.
2. Any Principal or Affiliate thereof, or any tax credit syndicator or investor or any Affiliate thereof that will have a controlling interest in any limited partner or member of the Owner of the Project has transferred its interest in any LIHTC Project or Qualified Building after March 25, 2014 in violation of the Ownership Transfer Rule, unless the violation has been cured prior to the applicable deadline for submitting an Application.

- D. **Notice to Local Jurisdiction.** Upon receipt of an Application, MaineHousing will provide notice of the proposed Project to the chief executive officer of the municipality and the public housing authority with jurisdiction over the proposed location of the Project. Such notice will provide for a 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.

- E. **Selection Process.** Applications that are received and accepted by MaineHousing and meet the threshold requirements set forth in Section 5 will be reviewed and scored according to the scoring criteria set forth in Section 6. Applications will be ranked and selected based on score, from the highest scoring to the lowest scoring Application. The tie breaker mechanism in Section 6.E. will be used to prioritize Applications with the same score.

MaineHousing will meet with each Applicant selected to receive an award of Credit prior to issuing a Notice to Proceed to review the Applicant's score and the timeline for developing and completing the Project and to discuss any special requirements identified during the selection process or regarding the funding sources and other obligations of the Project.

- F. **Notice to Proceed.** MaineHousing will issue a Notice to Proceed to Applicants selected to receive an award of Credit. An Applicant who receives a Notice to Proceed must accept it by executing and returning the original of the Notice to Proceed to MaineHousing within the time period specified in the Notice to Proceed. Failure to return the Notice to Proceed in a timely manner will result in a termination of the award of Credit.

The Notice to Proceed will require the submission of all information necessary for MaineHousing to evaluate the Project pursuant to Section 7 and determine the amount of Credit, if any, to be allocated to the Project, will obligate the Applicant to fulfill all commitments made in the Application (including, without limitation, those for which the Application was awarded points under any scoring criteria) and will require the Applicant to promptly and diligently develop and complete the Project according to the deadlines specified in the Notice to Proceed.

- G. **Waiting List.** All Applications that are accepted and scored, but not selected, will be placed on a waiting list prioritized by score, from the highest to the lowest scoring Application. Any Credit that is returned or is otherwise unused will be made available to the next Application(s) on the waiting list that can achieve feasibility with the available Credit and any MaineHousing funding that was returned with the Credit or is otherwise available in connection with the Credit. An Application for a Project on the waiting list will be deemed withdrawn if the Project is given an award notice under another MaineHousing program.

- H. **Credit Allocation.** Once the Applicant accepts the Notice to Proceed by executing and returning the Notice to Proceed to MaineHousing, MaineHousing will determine the amount of Credit to be allocated for the Project based on the evaluation procedure set forth in Section 7. The amount of Credit will not exceed the

Maximum Credit Amount and will be subject to other limitations set forth in Section 7. Credit will be allocated in accordance with Section 8 of this rule.

- I. **Termination of Application or Notice to Proceed.** MaineHousing will deem an Application withdrawn and any Notice to Proceed, if issued, cancelled if one or more of the following occur after the Application is submitted.
1. The Application or the Notice to Proceed is assigned or there is a change of Applicant without MaineHousing's prior written consent.
  2. There is a change in the location of the Project from the location identified in the Application.
  3. There is any change in the commitments made in the Application which results in a net reduction in the score that the Application received pursuant to the scoring criteria set forth in Section 6, except as provided in Section 6.B.2.
  4. 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 MaineHousing determined the Applicant was eligible to receive.
  5. The Total Development Cost of the Project exceeds the Maximum Total Development Cost.
  6. Any event in Section 4.C. occurs and is not cured within any applicable cure period.
  7. There is any other material or substantive amendment or change to the Application without MaineHousing's prior written consent.

## **SECTION 5: THRESHOLD REQUIREMENTS**

The threshold requirements set forth in this Section 5 must be satisfied to be eligible for Credit. The Applicant must demonstrate satisfaction of the following threshold requirements by completing all required information and submitting all required documentation with respect to the threshold requirements in the Application. Certain information and documentation may also be required earlier as part of the pre-application review of the Project pursuant to Section 4.A.

- A. **Eligible Projects.** The Project described in the Application must be a LIHTC Project.

- B. **Affordability.** An Applicant must agree for a minimum period of 45 years to maintain the Project as residential rental housing, keep at least 40% of the total Credit-eligible units in a Project occupied by persons with Very Low Income and keep the Credit-eligible units in the Project rent-restricted in accordance with Section 42 of the Code.
- C. **Maximum Total Development Cost.** An Application will not be accepted, processed or approved by MaineHousing if, at any time prior to the later of the construction loan closing for the Project or an allocation of Credit for the Project, the Total Development Cost of the Project exceeds the maximum Total Development Cost for a project of its type as follows.

Type of Project	Maximum Total Development Cost
Adaptive Reuse	\$265,000 per unit
New Construction (Family Housing)	\$240,000 per unit
New Construction (Other Housing)	\$215,000 per unit
Acquisition and Rehabilitation of Existing Housing	\$150,000 per unit

Demolition and reconstruction of all housing on the same site or another site will be treated as new construction. If a Project involves more than one of these project types, the Maximum Total Development Cost of the Project is the sum of the percentage of Total Development Cost allocable to each type, based on the number of units in each type, as applied to the Maximum Total Development Cost for the respective type. For example, the Maximum Total Development Cost of a Family Housing Project that involves the conversion of an existing historic school into 10 units plus the construction of a new addition containing 10 units is \$252,500 per unit, which is 50% of the \$265,000 Maximum Total Development Cost for Adaptive Reuse plus 50% of the \$240,000 Maximum Total Development Cost for the new construction of Family Housing.

- D. **Acquisition and Rehabilitation of Existing Housing.** Projects that involve the acquisition and rehabilitation of existing multi-family housing are subject to the following limitations and requirements.
1. **Capital Needs Assessment.** The Application must include a capital needs assessment of the existing housing that will be rehabilitated as part of the Project. The capital needs assessment must be performed by a qualified independent third party acceptable to MaineHousing, such as a licensed architect or engineer, must be completed within one (1) year before the deadline for submitting Applications, and must satisfy the following

requirements.

- a. The assessment must include a site visit, an interview with the on-site property manager and maintenance personnel concerning prior and pending repairs and improvements and existing or chronic physical deficiencies, and a physical inspection of the interior and exterior of at least 20% of the units and all other structures, facilities, systems and components that will be part of the Project, including the following.
  - i. Site, including without limitation topography, drainage, pavement, curbing, walkways, sidewalks, parking, accessible parking, accessible routes, landscaping, amenities, water, sewer, storm drainage, and all utility lines;
  - ii. Structural systems and components, both substructure and superstructure, including without limitation foundations, exterior walls, balconies, porches, and stairways, exterior doors and windows, chimneys and roofing;
  - iii. Interiors, including without limitation unit and common area finishes and substrata (e.g. flooring, underlayment, carpeting, plaster or drywall, wall coverings and paint condition), and unit and common area kitchen finishes, cabinets, countertops and appliances, and unit and common area bathroom finishes, fixtures and accessories, laundry facilities, and common area lobbies and corridors; and
  - iv. Building systems, including without limitation plumbing supplies and drainage, domestic hot water production, heating, ventilating and air-conditioning production and distributions systems, fuel storage and delivery systems, electrical power distribution and metering systems, lighting controls and fixtures, smoke, fire and any other alarm systems, fire protection systems, security systems, and elevators.

The capital needs assessment must specifically identify all structures, systems, facilities, units and components that were inspected and must include a concise overview of the physical and operational condition of the existing housing and a detailed assessment of the expected useful life and the remaining useful life of each structure, system, facility, unit and component inspected. The assessment must also consider the presence of environmental and other hazards,



including without limitation, asbestos, lead paint, mold, water damage and insect infestations.

- b. The capital needs assessment must include a recommended scope of work and a cost estimate to complete the scope of work that addresses the following capital needs of the Project, without consideration of financial feasibility:
  - i. Correction of all violations of applicable federal, state and local building, health and life safety codes and correction of all deferred maintenance;
  - ii. Rehabilitation or replacement of all structures, systems, facilities, units and components that have reached or exceeded their useful lives or will reach their useful lives within 5 years;
  - iii. Rehabilitation of all units and common areas and facilities to bring them into compliance with MaineHousing's Construction Standards to the maximum extent feasible;
  - iv. Rehabilitation of the minimum number of units and all common areas and facilities that are necessary to comply with the most current requirements for new construction projects under applicable federal, state and local accessibility laws, regulations, standards and guidance (which include without limitation, Section 504 of the Rehabilitation Act of 1973, HUD's housing regulations at 24 C.F.R. Part 8 and any accessibility standard designated by HUD; Title II and Title III of the Americans with Disabilities Act of 1990 and the 2010 Standards of Accessible Design; and if the Project involves substantial rehabilitation, the Maine Human Rights Act, the Maine Human Rights Commission's Chapter 8, Housing Regulations, and ANSI Standard A117.1-2009); and
  - v. Remediation and disposal of any environmental or other hazards identified in the assessment.
- c. The capital needs assessment must also identify any structures, systems, facilities, units and components with a remaining useful life of less than 30 years. The Application must include a plan for future rehabilitation or replacement of any identified structure, system, facility, unit and component with a useful life of less than 30 years that is not included in the scope of work for the Project, including

possible funding sources, which will be considered in establishing the appropriate funding amounts for the Project's reserve accounts.

If MaineHousing determines that the capital needs assessment is inadequate, MaineHousing may, in its sole discretion, (a) reject the capital needs assessment (resulting in a withdrawal of the Application), (b) require the Applicant to correct the deficiencies or submit a new capital needs assessment, or (c) commission a capital needs assessment for the Project at the expense of the Applicant.

2. **Minimum Rehabilitation Requirement.** The Project must need at least \$60,000 of hard rehabilitation costs per unit of existing housing. For purposes of this subsection, hard rehabilitation costs include site costs, the costs identified in the capital needs assessment pursuant to Section 5.D.1.b., the costs of complying with any construction requirements of other funding sources for the Project (excluding those required by the Applicant, any Principal thereof or Affiliate of either), contractor profit and overhead, and general conditions incurred in connection with the rehabilitation of the existing housing. Hard Rehabilitation Costs do not include construction contingency, relocation costs or soft costs. The Project must satisfy the minimum rehabilitation requirements in Section 42(e)(3) of the Code if greater than the minimum rehabilitation requirement set forth in this subsection. MaineHousing will rely on the capital needs assessment, as reviewed and approved by MaineHousing, to determine whether the Project satisfies the requirements of this subsection. The Applicant must agree to complete the rehabilitation recommended in the capital needs assessment and include the above-described hard rehabilitation costs associated with the proposed rehabilitation in the Total Development Cost of the Project to the maximum extent feasible, as determined by MaineHousing, even if the proposed rehabilitation exceeds the minimum rehabilitation requirements of this subsection and Section 42(e)(3) of the Code.
3. **Existing Project Reserves.** The Application must identify all existing project accounts and reserves that will be transferred with the purchase of the Project and indicate whether any of the accounts or reserves will be used as a source of funding for the rehabilitation of the Project.
4. **Relocation/Displacement.** The Project must comply with MaineHousing's *Temporary Relocation and Permanent Displacement Policies* and, if the Project is federally-assisted, all applicable federal requirements, including without limitation, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §4201 *et seq.* and 49 C.F.R. Part 24 and Section 104(d) of the Housing and Community Development Act of 1970, as amended, and 24 C.F.R. §42, which may require that assistance be provided to permanently or temporarily displaced

tenants. The Applicant must take all reasonable steps to minimize the displacement of existing tenants at the Project site. The Application must identify any tenants who will be permanently displaced in connection with the acquisition and rehabilitation of the Project and the reason for the displacement. An estimate of all costs associated with the permanent and temporary displacement or relocation of tenants must be included in the Total Development Cost of the Project. A relocation plan that complies with all applicable requirements must be submitted to MaineHousing before an allocation of Credit will be made for the Project.

- E. **Applicant.** The Applicant must be the entity that will be the legal owner of the Project, and may be the entity that will be the lessee for Projects located on leased sites. The Applicant must be duly organized, validly existing and in good standing under the laws of the state in which it is formed, and if not formed in this State, must be duly authorized to conduct business in and must be in good standing under the laws of this State.
- F. **Development and Management Capacity.** The Applicant must demonstrate sufficient capacity to develop, complete, maintain and operate the Project, including without limitation, a development team consisting of a tax credit developer, a design professional, a management company, a resident service coordinator, a tax advisor (accountant or other tax professional) and an attorney for real estate, financing, tax credits, organizational and land use purposes. The Applicant must demonstrate that all members of the development team are qualified and have sufficient experience and capacity to perform their respective roles. If the tax credit developer or the management company does not have sufficient knowledge or experience with respect to federal low-income housing tax credits, the Applicant must hire a qualified tax credit consultant with sufficient federal low-income housing tax credit experience and capacity to assist the tax credit developer or the management company, as applicable. The Application does not require financial statements as part of the initial submission; however, MaineHousing may, in its sole discretion, require financial statements from the tax credit developer and any Principal or any Affiliate of either with respect to any Application that is selected to receive a Notice to Proceed.
- G. **Site Control.** The Applicant must have site control of the Project as of the date of the Application. Evidence of satisfactory site control includes ownership, an option, a purchase and sale contract, a long-term lease or other evidence acceptable to MaineHousing.

The term of the site control must be for no less than 120 days following the last date on which the Application is due with the unilateral right of the Applicant to extend the term for an additional 120 days or any combination of extension terms that adds up to 120 days. The purpose of this requirement is to ensure that the Applicant has control of the Project site for the estimated period of time necessary to process the

Application, have a construction loan closing and acquire the Project site.

Any purchase and sale agreement or option should specifically allow entry to the Project site for inspection purposes, such as conducting an environmental site assessment, a capital needs assessment or other reasonable purpose. Any purchase and sale agreement or option for an existing occupied property should also specifically allow access to records and other information regarding the existing tenants (including without limitation current rent and income information, to the extent available) for relocation and displacement purposes.

- H. **Growth Management Limitations.** A Project that involves the new construction of or the acquisition of newly-constructed multi-family residential rental property or the conversion of existing buildings to multi-family residential rental property must comply with the State's Growth Management Law. If the municipality in which the Project is located has adopted a comprehensive plan or growth management plan that is consistent with applicable State law, then the Project must be located in a designated growth area as identified in the comprehensive plan or growth management plan of the municipality to be eligible for Credit. If the Project is not located in a designated growth area in said comprehensive or growth management plan of the municipality, then 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 (1) an area that is served by a public sewer system with existing capacity for the Project, (2) an area identified as a census-designated place in the latest Federal Decennial Census, or (3) a compact area of an urban compact municipality as defined under 23 M.R.S.A. § 754.

Projects that exclusively serve certain populations, including persons with disabilities, persons who are homeless and persons who are wards of the State, are excluded from the requirements of the State's Growth Management Law.

- I. **Project Feasibility.** The Applicant must demonstrate the financial ability to develop and complete the Project and the financial viability of operating the Project throughout the Compliance Period for the Project.
1. **Development Budget.** The Applicant must identify (a) all sources of funding for the development and completion of the Project, including the amount, timing, terms and conditions of the funding and the status of the funding (e.g. applied for or committed) as of the date of the Application, and (b) all uses of the funding based on the projected costs of developing and completing the Project and the projected schedule for completing the Project.

The sources of funding must be sufficient to pay for all projected costs of developing, acquiring, constructing and/or rehabilitating and completing the Project, including without limitation all lease-up costs and funding of required project accounts and reserves. The sources of funding must include, at a minimum, construction financing; permanent financing; capital generated from the Credit from a tax credit investor with adequate capacity, as determined by MaineHousing, or an experienced tax credit syndicator; capital generated from any federal or state historic rehabilitation tax credits if the Project is eligible for the credits from a tax credit investor with adequate capacity as determined by MaineHousing or an experienced tax credit syndicator; all project reserves transferred to the Project and available to be used as funding for the development and completion of the Project; and any income to the Project. All investor capital should be identified and expressed as a “factor” of the credit or benefit dollar amount anticipated.

The Applicant must disclose all sources and uses of funding for the development and completion of the Project, whether they are direct or indirect and whether they are part of the development budget for the Project. All costs of developing and completing the Project will be included in the Total Development Cost of the Project.

2. **Operating Budget.** The Applicant must identify (a) all sources of income for the Project projected over the Compliance Period, including without limitation all rental income from the residential units in the Project, income from any commercial or non-residential space, and any rental or operating assistance, and the amount, terms and conditions of such income, and (b) all costs of operating the Project projected over the Compliance Period for the Project. The Applicant must identify all forms of property tax relief (such as a PILOT, tax abatement or exemption or Tax Increment Financing) that reduce the operating costs for the Project.

If any rental or operating assistance or reduction may expire or terminate during the Compliance Period, the Applicant must explain the impact on the Project’s continued operation after such expiration or termination, including a separate pro forma operating statement for a minimum period of 5 years after the date of expiration or termination showing the transition from the rental assistance or operating assistance or reduction.

3. **Related Development.** If the Project is part of, or related to, another development and cannot be completed without the completion of the other development, either structurally or financially, then the Applicant must also demonstrate that the Related Development will be completed prior to or concurrently with the completion of the Project and that there is sufficient capacity and funding to complete the Related Development. If the Applicant will own or otherwise be responsible for the development and completion of

the Related Development, the Applicant must fully disclose all sources of funding and all costs of developing and completing the Related Development, whether direct or indirect, as part of the development budget for the Project. Otherwise, the Applicant must provide a separate development budget for the Related Development. If the operation of the Related Development is necessary for the feasibility of the Project, the Applicant must submit an acceptable operating budget for the Related Development fully disclosing all of the projected income costs of operating the Related Development during the Compliance Period.

4. **Right to Re-characterize.** MaineHousing may re-characterize any information about the sources and uses submitted by the Applicant in connection with the development and operation of the Project and any Related Development that MaineHousing determines is not consistent with the supporting documentation submitted by the Applicant or the requirements of a funding source, or is unreasonable based on historical data for comparable LIHTC Projects, industry standards and market conditions, or otherwise as may be reasonably determined to be necessary by MaineHousing. The Applicant must address all development and operating deficits that arise or are identified after the Application is submitted to MaineHousing's satisfaction.

- J. **Market Study.** The Application must include a comprehensive market study 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.

The market study must evaluate the housing needs of low-income persons in the area to be served by the Project, the need and demand for the Project (including the number of units, the population served and the bedroom configuration) and how the Project will address the identified need and demand, and the anticipated impact on similar housing opportunities that are currently available or are under construction or planned in the area the Project will serve, and must otherwise be acceptable to MaineHousing.

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.

- K. **Environmental Reports.** The Applicant must disclose all known or suspected environmental hazards or conditions that may affect the Project. The Application must include a Phase I environmental site assessment of the Project and all areas adjacent to the Project that is prepared by a qualified professional in accordance with the EPA All Appropriate Inquiry Standards and is dated or updated no more than 90

days before the applicable deadline for submitting an Application (which date is June 29, 2016 for Applications for the 2017 State Ceiling). If the Project involves the demolition or rehabilitation of an existing building(s), the Application must also include an asbestos inspection report and, for building(s) that were constructed prior to 1978, a lead-based paint inspection report prepared by a qualified professional(s) in accordance with applicable state and federal laws.

MaineHousing may require a third-party review by its designated environmental consultant of the Phase I environmental site assessment and any other environmental reports submitted by the Applicant.

The Applicant must undertake any further investigation or action required by MaineHousing pursuant to the environmental site assessment, any other environmental reports and any third-party review thereof. The Applicant must implement all recommendations, if any, in the environmental site assessment, any other environmental reports and any additional investigations or resulting from any third-party review thereof, as may be required by MaineHousing, which may include going through the Maine Department of Environmental Protection's Voluntary Response Action Program, commonly referred to as "VRAP" and remediation of the Project site during the development, construction and rehabilitation of the Project pursuant to applicable state and federal environmental laws.

- L. **Project Design.** The design and construction or rehabilitation of the Project must comply with MaineHousing's Construction Standards and all applicable local, state and federal codes, regulations, statutes and ordinances.
- M. **Project Amenities.** The Project must include or provide for the following amenities and services, except as provided below.
  - 1. **Community Room.** 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. 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 tenants of the Project.
  - 2. **Laundry Facilities.** 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 *Quality Standards and Procedures 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.

3. **Telemedicine Room.** The Project must include a room that is designated for the sole purpose of offering telemedicine services to the tenants of the Project, including counseling, home health services, diagnostic and monitoring activities, rehabilitation services (including assessment and therapy) and education. The services must be provided by qualified medical professionals in a private and confidential manner.

The design and construction of the room must comply with the specifications and requirements set forth in MaineHousing's Construction Standards. The Applicant must provide and pay for dedicated internet or wireless service with band width capacity to support live videoconferencing in real time between persons on-site and off-site using telecommunication technology (i.e. minimum of FCC Speed Tier 3 with a download speed of 10 Mbps or greater) and dedicated telephone service.

The room must be used exclusively by the qualified medical providers offering the services and by the tenants of the Project accessing the services. The providers and the tenants may not be charged for the use of the room or the internet or wireless and telephone services.

4. **Area Activities.** An area(s) of activity must be located on the Project site or within a Safe Walking Distance of ½ 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.



5. **Exceptions.** The requirements of this subsection 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, zoning restrictions or other land use limitations.

N. **Resident Service Coordination.** The Applicant must make a resident service coordinator available to the tenants of the Project to evaluate service needs and refer tenants to appropriate services, and must maintain funding for the resident service coordinator throughout the Compliance Period. The resident service coordinator must be present on-site at the Project and available to the tenants a minimum of one (1) hour per week for every five (5) Credit-eligible units in the Project over an appropriate number of days each week acceptable to MaineHousing. The resident service coordinator shall meet with tenants in an on-site office or other appropriate private setting to evaluate individual service needs and refer tenants to appropriate services. The services provided by the resident service coordinator shall be free of charge to the tenants.

If MaineHousing determines that the service plan or the capacity of the service provider is inadequate, MaineHousing will identify any deficiencies in the Notice to Proceed and specify the time period in which the Applicant must correct the identified deficiencies. 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 must enter into a service contract with the service provider on terms and conditions acceptable to MaineHousing before the construction loan closing for the Project.

O. **Smoke-free Housing.** The Applicant must establish and implement a policy prohibiting smoking in all units and common areas of the Project. 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 tenants of the Project through the resident service coordinator.

P. **Waiting List Preference.** 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, except for a Project that is financed by Rural Development or receives rental assistance under the Section 8 Project-Based Rental Assistance Program.

## SECTION 6: SCORING CRITERIA

Applications that are accepted by MaineHousing and meet the threshold requirements in Section 5 will be reviewed and scored according to the scoring criteria set forth in this Section. The scoring criteria are weighted based on the housing priorities set forth in Section 2. The factors or characteristics that MaineHousing will consider are set forth in the scoring criteria. The Applicant must complete all information and submit all documentation required in the Application with respect to a scoring criteria to be eligible for the points under the scoring criteria.

### A. **Project Characteristics (maximum of 24 points).**

1. **Rehabilitation or Reuse of Existing Housing, Structure or Site.** An Application will be awarded 3 points if the Project or the site on which the Project will be developed has one or more of the following characteristics.
  - a. Rehabilitation of existing multi-family rental housing containing 5 or more units without displacing any existing tenants and without increasing any tenant's housing costs (including rent and all other charges paid by the tenant) by more than 10%.
  - b. Rehabilitation, remediation or reuse of an existing substantial building or structure other than multi-family rental housing.
  - c. Site on which one or more substantial buildings or structures, used for other than residential housing with 4 or fewer dwelling units or agriculture purposes, have been or will be demolished or removed for purposes of redeveloping the site.
  - d. Site that was left vacant or nearly vacant in the development of the Downtown or other city or town center, such as a vacant lot or a parking lot between or surrounded by abutting commercial buildings, multi-family rental housing with more than 4 units and other substantial buildings.
  - e. Site specifically designated by a municipality for redevelopment to renew a blighted area.

The undeveloped portion of an existing site, regardless of the use of the existing site, or a vacant lot in a single-family residential area or area with a mix of single-family and multi-family housing with 4 or fewer units are not eligible for points under this subsection.

2. **Populations with Special Needs.** An Application will be awarded 2 points if preference is given in at least 20% of the units in the Project to persons who are homeless or displaced, have disabilities, are victims of

domestic violence or have other special housing needs.

An Application will be awarded one (1) additional point if the Applicant agrees to apply for (if required) and accept project-based rental assistance under HUD's Section 811 Project Rental Assistance (PRA) Program if made available by MaineHousing for the Project and to convert all or a portion of the preference for which the Applicant was awarded points under this criteria to a set-aside to the extent of the project-based rental assistance made available. This scoring criterion is in no way intended to be a commitment of the funding contemplated in the scoring criteria, any such funding to be made available by MaineHousing in its sole determination.

The Applicant must specify and commit to maintain a waiting list for the specific population(s) that qualify for the preference or the set-aside, and must offer services that are appropriate to the needs of said population(s) through a qualified third-party provider other than the resident service coordinator required pursuant to Section 5.N.

3. **Family Housing.** An Application for a Project for families will be awarded 6 points if a minimum of 50% of the total Credit-eligible units in the Project are two or more bedroom units and a minimum of 20% of the total Credit-eligible units in the Project are three or more bedroom units. An Application for a family housing Project will be awarded 2 points if a minimum of 70% of the total Credit-eligible units in the Project are two or more bedroom units.
4. **National Housing Trust Fund.** An Application will be awarded one (1) point if the Applicant agrees to accept funding from MaineHousing under the National Housing Trust Fund as may be required by MaineHousing. Any award under the National Housing Trust Fund would require the Applicant to provide deeper affordability by limiting occupancy in a certain number of units in the Project to Extremely Low Income households. This scoring criterion is in no way intended to be a commitment of the funding contemplated in the scoring criteria, any such funding to be made available by MaineHousing in its sole determination.
5. **Readiness.** An Application will be awarded 4 points if (a) the Project has all municipal land use approvals (except a building permit and other permits customarily issued during construction such as electrical and plumbing permits) and all State land use approvals (such as site plan, subdivision, stormwater or wetlands approvals) required to proceed with and complete the Project, (b) any Related Development has all municipal land use approvals (except a building permit and other permits customarily issued during construction) and all State land use approvals required to proceed with and complete the Related Development, and (c) the timeframe to appeal

all such approvals has expired as of the date of the Application with no appellate action being taken or all appeals have been resolved as of the date of the Application. The design of the Project submitted to and approved by the municipality and the State 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 and the State for approval. Notwithstanding MaineHousing’s approval of the level of design of the Project approved by the municipality and the State, the final design of the Project, including all plans, details and specifications, must be approved by MaineHousing.

6. **Historic Rehabilitation.** An Application will be awarded 2 points if the Project includes the rehabilitation of a certified historic structure and uses capital contributions generated from both the federal historic preservation tax credit under Section 47 of the Code and the State historic preservation tax credit under 36 M.R.S.A. § 5219-BB for the development of the Project.
7. **Accessibility.** An Application will be awarded 1 point, up to a maximum of 5 points, for each accessible unit for persons with mobility impairments in the Project that exceeds the minimum number of such units required by applicable federal and state accessibility laws and associated regulations. At a minimum, the additional unit(s) must meet the requirements for a Type A unit under ANSI Standard A117.1-2009.

**B. Financial Characteristics (maximum of 32 points).**

1. **Total Development Cost.** An Application will be awarded points or lose points based on the Total Development Cost of the Project relative to the following benchmark and range of Total Development Cost for a project of its type.

Type of Project	Benchmark Total Development Cost (per unit cost)	Lower Limit of Range (per unit cost)	Upper Limit of Range (per unit cost)
Adaptive Reuse	\$225,000	\$220,000	\$230,000
New Construction (Family Housing)	\$205,000	\$200,000	\$210,000
New Construction (Other Housing)	\$180,000	\$175,000	\$185,000
Acquisition and Rehabilitation of Existing Housing	\$110,000	\$105,000	\$115,000

If a Project involves more than one project type, the Benchmark Total Development Cost and the lower limit and upper limit of the associated range of Total Development Cost will be determined as follows. The Benchmark Total Development Cost is the sum of the percentage of Total Development Cost allocable to each project type, based on the number of units in each project type, as applied to the Benchmark Total Development Cost for the respective project type. The lower limit of the associated range of Total Development Cost is \$5,000 less than the Benchmark Total Development Cost and the upper limit of the associated range is \$5,000 more than the Benchmark Total Development Cost. For example, the Benchmark Total Development Cost for an Family Housing Project that involves the conversion of an existing historic school into 10 units plus the construction of a new addition containing 10 units is \$215,000 per unit, which is 50% of the \$225,000 Benchmark Total Development Cost for Adaptive Reuse plus 50% of the \$205,000 Benchmark Total Development Cost for the new construction of Family Housing. The lower and upper limits of the associated range of Total Development Cost for the Project are \$210,000 and \$220,000, respectively.

- a. An Application will be awarded up to 10 points based on the percentage by which the Total Development Cost of the Project is less than the lower limit of the range of Total Development Cost for that type of project as follows.

<u>Percentage of Total Development Cost to Lower Limit of Range</u>	<u>Points</u>
>15% less	10 points
10% - 15% less	6 points
<10% less	4 points

- b. An Application will lose up to 8 points based on the percentage by which the Total Development Cost of the Project is higher than the upper limit of the range of Total Development Cost for that type of project as follows.

<u>Percentage of Total Development Cost to Upper Limit of Range</u>	<u>Points</u>
<10% higher	-3 points
10% - 13% higher	-5 points
>13% higher	-8 points

2. **Below Market Capital.** An Application for a Project with eligible below market capital funding from a source other than MaineHousing will be awarded up to 6 points based on the present value or net present value, as applicable, of the below market funding relative to the Total Development Cost of the Project as follows.

<u>Percentage of Below Market Capital to Total Development Cost</u>	<u>Point(s)</u>
\$100,000 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

MaineHousing will only give consideration to below market capital that has been committed. Construction-period financing, donations or below market purchases of land and buildings, investor capital from tax credits, any funding made possible by Tax Increment Financing, any Developer Fee that is loaned, deferred or foregone for the benefit of the Project, service funding, operating funds, and rental assistance are not eligible sources of below market capital under this subsection. Any resources made available, either directly or indirectly, by MaineHousing are also not eligible sources of below market capital under this subsection.

The total amount of eligible below market capital for the Project will be reduced by the amount the Total Development Cost of the Project exceeds the Benchmark Total Development Cost. If a Project involves more than one of the project types, the Benchmark Total Development Cost for the Project will be determined in accordance with Section 6.B.1.

Eligible below market capital will be evaluated based on a present value or net present value basis, as applicable, using the 10-year Treasury note rate as September 12, 2016 plus 300 basis points to determine the amount of below market capital. Examples of the calculation of the amount of below market capital for different loan types based on a market rate of 5.25% (10- year Treasury rate for a comparable loan plus 300 basis points) follow.

- a. Example 1 - The value of a \$500,000 loan @ 3% amortized over 30 years is calculated as follows: The difference between the monthly payments at 5.25% (\$2,761.02) and the monthly payments at 3% (\$2,108.02) is \$653.00. The net present value of this cost savings over 30 years is \$118,253.16.

- b. Example 2 - The value of a \$500,000 loan with interest accruing at 3% for 30 years is calculated as follows: The difference between the future value of the loan at 5.25% (\$2,230,776) and the future value at 3% (\$1,213,631) is \$1,107,144. The present value of this lump sum payment savings due in 30 years is \$238,528.95.
- c. Example 3: The value of a \$500,000 loan at 0% for 30 years is the difference between the future value of the loan (\$500,000) and the present value of the loan at 5.25% (\$107,723), which is \$392,227.

If a below market capital source that an Applicant was awarded points for under this subsection is terminated and the Project is not feasible, the Applicant has 90 days from the date MaineHousing notifies the Applicant that the Project is no longer feasible to find alternative funding 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 score of the Application after re-scoring is less than the total score of the highest scoring Application on the waiting list, 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 6.E. to prioritize the Applications.

- 3. **Developer Fee Contribution.** An Application will be awarded one (1) point if at least 25% of the maximum Net Developer Fee allowed pursuant to Section 7.B.1. or 7.B.2. in connection with the Project is deferred, loaned or foregone for the benefit of the Project. Any Developer Fee allowed pursuant to Section 7.B.3. is not eligible for points under this scoring criterion.
- 4. **Acquisition Cost.** An Application will be awarded up to 4 points based on the acquisition costs of the Project relative to the average acquisition costs for a project of its type as follows.

Type of Project	Average Acquisition Cost
Acquisition and Rehabilitation of Existing Housing	\$47,000 per unit
New Construction	\$14,000 per unit
Adaptive Reuse	\$12,000 per unit

<u>Acquisition Cost Relative to Average Acquisition Cost</u>	<u>Points</u>
0% to 1% (nominal)	4 points
>1% to <25%	3 points
25% to 50%	2 points
>50% to 75%	1 point

A Project that involves the acquisition and complete demolition of all existing structures on the site will be treated as a new construction project.

For purposes of this subsection, the acquisition costs of the Project include (a) the purchase price for all of the land and any existing building(s) that are part of the Project, including without limitation, any amount funded under MaineHousing’s Land Acquisition Program even if donated or leased to the Applicant at below market value, (b) the cost of razing or demolishing any building(s) and structure(s), or any part thereof, on the Project site, and (c) the Capitalized Lease Value of all leases of land or land and building(s) that are part of the Project.

The value of any project reserves that are transferred to the Project as part of the acquisition and are included in the purchase price will not be included in the acquisition costs for purposes of this subsection.

5. **New Project-based Rental Assistance.** An Application will be awarded up to 5 points based on the percentage of Credit-eligible units in the Project for which new project-based rental assistance has been committed as follows.

<u>Percentage of Credit-eligible Units</u>	<u>Points</u>
15% to < 25% (but not less than 4 units)	1 point
25% to < 50%	2 points
50% to < 75%	3 points
75% to <100%	4 points
100%	5 points

Assistance provided under the Project-Based Voucher Program pursuant to 24 CFR Part 983 is eligible for points under this subsection only if the Project has been awarded assistance pursuant to a competitive process prior to the date of the Application. Project-based rental assistance made available, either directly or indirectly, by MaineHousing is not eligible for points under this subsection. To be eligible, the terms of the project-based rental assistance must be similar to the terms of RD or HUD project-based rental assistance or provide rental assistance in the minimum amount of \$200



per month for each assisted unit.

6. **Property Tax Relief.** An Application for a Project that is directly benefited by operating assistance or a reduction in operating costs through any Tax Increment Financing, a payment in lieu of taxes arrangement, abatement or other form of property tax relief will be awarded up to 6 points based on (a) the percentage of the Project's annual incremental property tax revenue that will be returned to the Applicant or foregone by the municipality and (b) the number of years the Applicant receives such benefit or relief as follows.

<u>Percentage and Number of Years of Tax Benefit or Relief</u>	<u>Points</u>
50% to 75% for at least 15 years from Project completion	3 points
50% to 75% for at least 20 years from Project completion	4 points
50% to 75% for at least 30 years	5 points
> 75% for at least 15 years from Project completion	4 points
> 75% for at least 20 years from Project completion	5 points
> 75% for 30 or more years	6 points

The Tax Increment Financing, payment in lieu of taxes, abatement or other property tax relief arrangement must be approved by the municipality in which the Project is located and all other applicable governing entities to be eligible for points under this criteria.

Notwithstanding the foregoing, Projects that are located in municipalities or areas of the State that do not assess or collect property taxes and Projects that are exempt from property taxes are limited to no more than 3 points.

Funding made possible by an Affordable Housing TIF will not be eligible for consideration under this subsection unless a complete application for the Affordable Housing TIF that complies with the laws governing Affordable Housing TIFs is submitted to MaineHousing by September 12, 2016.

C. **Project Location (maximum of 26 points).**

1. **Service Center Community Need.** An Application for a Project located in a Service Center Community will be awarded up to 5 points based on the need for the type of affordable housing in the Service Center Community as determined by MaineHousing and set forth below.
  - a. Applications for Senior Housing Projects located in the following Service Center Communities will be awarded the following points.

Service Center Community	Points
Auburn	5
Augusta	5
Bangor	5
Biddeford	5
Brunswick	5
Falmouth	5
Kittery	5
Lewiston	5
Portland	5
Saco	5
Sanford	5
Scarborough	5
South Portland	5
Topsham	5
Waterville	5
Westbrook	5
Bar Harbor	3
Bath	3
Belfast	3
Brewer	3
Bridgton	3
Caribou	3
Ellsworth	3
Freeport	3
Kennebunk	3
Madawaska	3
Old Orchard Beach	3
Presque Isle	3
Rockland	3
Rumford	3
Skowhegan	3
Van Buren	3
Windham	3
Bethel	1
Blue Hill	1
Camden	1
Damariscotta	1
Dexter	1
Dover-Foxcroft	1

Farmington	1
Fort Kent	1
Gardiner	1
Hermon	1
Houlton	1
Lincoln	1
Mexico	1
Millinocket	1
Mount Desert	1
Norway	1
Oxford	1
Pittsfield	1
Rangeley	1
Rockport	1
Southwest Harbor	1
Wiscasset	1

- b. Applications for other Projects located in the following Service Center Communities will be awarded the following points.

Service Center Community	Points
Auburn	5
Augusta	5
Bangor	5
Bath	5
Biddeford	5
Brunswick	5
Ellsworth	5
Lewiston	5
Portland	5
Sanford	5
South Portland	5
Waterville	5
Westbrook	5
Bar Harbor	3
Brewer	3
Caribou	3
Farmington	3
Kittery	3
Old Orchard Beach	3
Orono	3

Rockland	3
Rumford	3
Skowhegan	3
Topsham	3
Windham	3
Calais	1
Falmouth	1
Fort Kent	1
Gardiner	1
Houlton	1
Madawaska	1
Mexico	1
Norway	1
Presque Isle	1
Saco	1
Scarborough	1

c. Notwithstanding the foregoing, Applications for Projects located on Native American tribal lands will be awarded 5 points.

2. **Tax Credit/Market Rent Differential.** An Application for a Project located in an area in which the average market rent for comparable multi-family rental housing is at least 5% higher than the average maximum tax credit rent for housing occupied by individuals and families with income at or below 60% of area median income, as determined in accordance with Section 42 of the Code, will be awarded one (1) point. An Application for a Project located in an area in which the average market rent for comparable multi-family rental housing is at least 10% higher than the average maximum tax credit rent for housing occupied by individuals and families with income at or below 60% of area median income, as determined in accordance with Section 42 of the Code, will be awarded 2 points. For housing 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 housing. MaineHousing will rely on the market rent information in the market study submitted with the Application, as reviewed and approved by MaineHousing, to determine eligibility for the points under this subsection. For purposes of this subsection, comparable housing is housing that is located in the same geographical area and is not subsidized under any state or federal housing program.
  
3. **Community Revitalization.** An Application will be awarded 2 points if the Project is located within the boundaries of a clearly defined area targeted for revitalization in a Community Revitalization Plan and the Project is part of or

contributes to the revitalization goals and efforts specified in the Community Revitalization Plan concerning the rehabilitation or development of housing in the targeted area. One (1) additional point will be awarded if the Project (a) involves the preservation of existing Affordable Housing or (b) is located in a Qualified Census Tract and at least 20% of the units in the Project are market rate units.

4. **Smart Growth.** An Application for a Project that incorporates the following principles of smart growth will be awarded up to 10 points.
  - a. An Application will be awarded up to 4 points if the Project has or provides access to public transportation as follows:
    - i. An Application for a Project that is located within a Safe Walking Distance of not more than ½ mile of a designated pick-up location for existing Fixed-route Public Transportation will be awarded 4 points; or
    - ii. An Application will be awarded one (1) point if Demand Response Transportation is available to all of the tenants of the Project. Demand Response Transportation services with eligibility criteria that limit or deny service to any tenants of the Project are not eligible for the points.
  - b. An Application for a Project that is located within a Safe Walking Distance of not more than one mile of a Downtown will be awarded 2 points.
  - c. An Application for a Project that is located within a Safe Walking Distance of not more than ½ mile of at least 3 destinations important to the course of daily living appropriate for the population served by the Project will be awarded 2 points. An eligible destination important to the course of daily living includes a grocery store, a public school only if the Project is housing for families, a daycare only if the Project is housing for families, a senior center only if the Project is Senior Housing, 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 or a hospital. 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 subsection. If there is more than one destination important to the course of daily living within a single establishment, each destination will be counted separately for purposes of this subsection (e.g. a retail store that also includes a

pharmacy and a bank branch will be treated as 3 destinations important to the course of daily living).

d. An Application for a Project that is located within 5 miles of a Significant Place of Employment will be awarded 2 points.

5. **High Opportunity Areas.** An Application will be awarded up to 5 points if the Project is located in a Census Tract with a higher area median income pursuant to the American Community Survey as follows.

<u>Area Median Income of Census Tract</u>	<u>Points</u>
\$40,000 or more	3 points
\$55,000 or more	5 points

6. **Certified Business-Friendly Community.** An Application for a Project that is located in a Certified Business-Friendly Community will be awarded one (1) point.

**D. Sponsor Characteristics (maximum of 6 points).**

1. **Developer Capacity.** An Application will be awarded up to 3 points based on the development experience of any Principal of the Applicant or Affiliate thereof as follows.

a. An Application will be awarded 3 points if any Principal of the Applicant or Affiliate thereof (i) has completed the development of one or more multi-family rental housing projects with MaineHousing funding or (ii) has completed the development of one or more LIHTC Projects in any other state(s); or

b. An Application will be awarded 2 points if any Principal of the Applicant or Affiliate thereof has experience developing and operating any multi-family rental housing or has experience managing any Affordable Housing, and the Application will be awarded one (1) additional point if the Applicant contracts with a qualified consultant with experience successfully developing and completing LIHTC Projects to develop the Project.

2. **Owner Performance.** An Application will lose points based on the performance of the Applicant, any Principal thereof or any of their Affiliates as follows.

a. An Application will lose 2 points if at any time since October 1, 2011, any Principal of the Applicant or Affiliate thereof has been 60 days or

more delinquent in the payment of any MaineHousing loan (except delinquencies resulting from the delay or loss of Section 8 housing assistance payments), has been declared in default by MaineHousing or has failed to pay taxes or municipal assessments resulting in a lien on any housing funded by MaineHousing.

- b. An Application will lose one (1) point if any LIHTC Project developed by the Applicant, any Principal or their Affiliates that was issued a Notice to Proceed after November 1, 2013 does not have a construction loan closing within 15 months of the date a Notice to Proceed was first issued to the LIHTC Project, unless the delay was the direct result of circumstances beyond the control of said Applicant, Principal or Affiliate, as determined by MaineHousing in its sole discretion.
- c. An Application will lose one (1) point for each LIHTC Project that was Placed in Service in the State since October 1, 2006 by any Principal of the Applicant or Affiliate thereof and had a year-end operating deficit, as determined by MaineHousing, in the last full Fiscal Year, unless the operating deficit was fully funded by the Application deadline.
- d. An Application will lose 2 points if at any time since October 1, 2013, any Principal of the Applicant or Affiliate thereof (i) was issued an IRS Form 8823 for any reason other than a violation of UPCS or local inspection standards (box 11c of IRS Form 8823) that was subsequently reported as “noncompliance corrected” within the specified time period for correction, or (ii) had an IRS audit finding resulting in a recapture event.
- e. If the Total Development Cost of a Project increases between the date the Notice to Proceed is first issued for the Project and the construction loan closing or final tax credit cost certification for the Project for any reason other than market conditions or circumstances beyond the control of the Applicant, as determined by MaineHousing in its sole discretion, then MaineHousing will re-score the Application based on the higher Total Development Cost under the total development cost scoring criteria in Section 6.B.1. and any changes in below market funding for the Project under Section 6.B.2. If re-scoring the Application results in a net reduction in the total score of the Application but the reduced score is still higher than the total score of the highest scoring Application on the waiting list on the date the Notice to Proceed is first issued to the Project, then all applications that are submitted by the Applicant, any Principal thereof or any of their Affiliates in the next round of competition for

the State Ceiling in which they submit an eligible Application after the Application is re-scored will lose 5 points. If the total score of the Application after re-scoring is lower than the total score of the highest scoring Application on the waiting list on the date the Notice to Proceed is first issued to the Project, then (i) the Applicant, any Principal thereof and any of their Affiliates may not submit an application for the State Ceiling in the next round of competition for the State Ceiling after the re-scoring, and (ii) all applications that are submitted by the Applicant, any Principal thereof or any of their Affiliates in the following round of competition for the State Ceiling in which they submit an eligible Application will lose 5 points. 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 6.E. to prioritize the Applications.

3. **Management Capacity.** An Application will be awarded up to 3 points based on the experience of the entity that will manage the Project as follows.
  - a. An Application will be awarded 3 points if the Project will be managed by a management company with at least 3 years of experience successfully managing at least one LIHTC Project.
  - b. An Application will be awarded 2 points if the Project will be managed by a management company that has at least one staff person with a minimum of 3 years of experience successfully managing at least one LIHTC Project, and will be awarded one (1) additional point if the management company has at least one additional staff person with low-income housing tax credit training in the last 3 years for every 150 units in LIHTC Project(s) the management company plans to manage.
4. **Management Performance.** An Application will lose points based on the performance of the management company that will manage the Project as follows.
  - a. An Application will lose one (1) point if the last 2 consecutive physical plant inspections by MaineHousing of any LIHTC Project that is managed by the management company and is still in the Compliance Period had a below average or unsatisfactory rating. An Application will lose 2 points if the last 2 consecutive physical plant inspections by MaineHousing of 2 or more LIHTC Projects that are managed by the management company and are still in the Compliance Period had a below average or unsatisfactory rating.



- b. An Application will lose points based on the number of Project Reports that were submitted after the applicable deadline for submission since October 1, 2015 for LIHTC Project(s) that are managed by the management company and are still in the Compliance Period as follows.

<u>Number of Late Project Reports</u>	<u>Points</u>
1-4 late Project Reports	-1 point
5-10 late Project Reports	-2 points
> 10 late Project Reports	-3 points

- 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 the Applications with the same score, the Application for the Project with the lowest Total Development Cost Per Unit will be selected.

If there are two or more Applications with the same Total Development Cost Per Unit, the Application that includes a commitment and an acceptable plan to convert the Project to affordable homeownership for the low-income residents and their successors after the Extended Use Period will be selected. The plan must describe how the transfer of ownership to the residents will occur, the price or process for determining the purchase price, what financial assistance will be available for residents (including any reserves) and how the affordability will be maintained, and must provide for homebuyer counseling and professional representation of the residents at the time of the conversion.

An Application that is not selected under this tie-breaker process will be placed on the waiting list in the order of the Application’s score relative to the other Applications on the waiting list.

## **SECTION 7: PROJECT EVALUATION**

After an Applicant executes and returns the Notice to Proceed to MaineHousing, MaineHousing will evaluate the Total Development Cost of the Project to determine the amount of Credit, if any, to be allocated to the Project in accordance with this Section.

- A. **Amount of Credit.** The amount of Credit allocated to the Project will be determined in accordance with the following.
  - 1. The amount requested in the Application will be the basis on which MaineHousing will make its determination, but the amount MaineHousing determines the Project is eligible to receive may not equal the amount requested in the Application.

2. 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.
3. The calculation of the amount of Credit will be based on 130% of Eligible Basis for Projects located in Qualified Census Tracts, HUD-designated 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 2017 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.
4. MaineHousing will use the maximum Credit rent in determining the amount of Credit, except that for three or more bedroom units, MaineHousing will use the maximum Credit rent for two-bedroom units plus \$50.00.
5. The amount of Credit allocated for a Project will not exceed the lesser of the following:
  - a. the amount the Project is eligible to receive under Section 42 of the Code as determined by MaineHousing;
  - b. the amount MaineHousing determines is necessary for the financial feasibility of the Project and its viability as a LIHTC Project throughout the Credit Period; or
  - c. the Maximum Credit Amount.
6. The Applicant must submit financial and all other information about the Project required by MaineHousing. MaineHousing will evaluate the need for Credit based on the following.
  - a. All sources of funding for the Project, including the terms and conditions of the funding;
  - b. The uses of funds, including the reasonableness of development costs and operating expenditures; and
  - c. Any proceeds or receipts expected to be generated by reason of tax benefits.

7. In order to determine the amount of Credit a Project is eligible to receive, MaineHousing must identify the gap between development sources and uses which the Credit is designed to fill. MaineHousing reserves the right to limit recognition of Intermediary Costs, re-characterize Project sources and uses and make reasonable assumptions with respect to projected revenues and expenses in the process of calculating the amount of Credit to be allocated to a Project. MaineHousing will also take into consideration any limitations imposed by federal laws and regulations when combining the Credit with other federal assistance (“subsidy layering” guidelines).
8. MaineHousing will evaluate the reasonableness of the Total Development Cost of the Project. MaineHousing will compare the proposed costs associated with the Project to historical data for similar LIHTC Projects (i.e. size, location, funding source, etc.) and industry cost standards. Consideration will be given to costs associated with tenant services and common area spaces. MaineHousing will require additional information and documentation if MaineHousing feels any of the proposed costs are not comparable or reasonable.
9. In evaluating the Project’s need for Credit, the expectation is that availability of the Credit is a necessary incentive for the Applicant to complete the Project. Applicants should not incur 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. If construction costs are incurred prior to the selection of an Application, the Applicant must demonstrate why the absence of Credit presents a serious risk to the overall viability and operation of the Project.

- B. **Developer Fee.** 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 developing a Project, including, without limitation, creating the Project concept, identifying and acquiring the Project site, obtaining construction and permanent financing, obtaining necessary subsidies, negotiating the syndication of investment interests in the Project, obtaining all necessary regulatory approvals, constructing and/or rehabilitating the Project 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 tax credit 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 additional limitations.

1. **Acquisition and Rehabilitation Projects.** For Projects that only involve the rehabilitation of existing housing, the Developer Fee due and payable from the total funding for the Project's development budget, including without limitation investor capital contributions, shall not exceed an amount equal to the lesser of (a) \$10,000 per unit for the first 20 units in the Project and \$5,000 for each additional unit above 20 units in the Project plus any unused construction contingency returned to the Applicant after completion of the Project, (b) \$750,000 plus any unused construction contingency returned to the Applicant after completion of the Project, and (c) the maximum Developer Fee set forth above; and
2. **Other Projects.** For Projects other than those described in subsection (1) above, the Developer Fee due and payable from the total funding for the Project's development budget, including without limitation investor capital 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 plus any unused construction contingency returned to the Applicant after completion of the Project, (b) \$750,000 plus any unused construction contingency returned to the Applicant after completion of the Project, and (c) the maximum Developer Fee set forth above; and
3. **Additional Developer Fee.** 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 allowed by the investor or syndicator for the Project.

- C. **General Contractor Intermediary Costs.** 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 and Profit	up to 8% of Total Construction Cost
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General Requirements up to 8% of Total Construction Cost

D. **Time of Credit Determination.** The evaluation of each Project to determine the amount of Credit to be allocated to the Project 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, and as applicable the carryover allocation.
3. The date each Qualified 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 Project and provide such other information MaineHousing deems necessary in order to complete its evaluation.

E. **Binding Agreement.** 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 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 Building in the Project by irrevocably electing the Applicable 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 Qualified Building is Placed in Service.

F. **Construction Cost Increases.** MaineHousing may, in its sole discretion, allocate additional Credit if the construction costs of the Project increase after the date of the Application and the increase is the result of market conditions or other reasons beyond the control of the Applicant as determined by MaineHousing in its sole discretion, provided that the additional Credit amount will not exceed an amount that will generate investor 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.

G. **Disclaimer.** 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.

## SECTION 8: ALLOCATION OF CREDIT

- A. **Allocation.** MaineHousing will allocate Credit for the Project by issuance of IRS Form 8609 or such other form prescribed by the IRS in the year the Project is Placed in Service 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 5% of the amount of Credit allocated to the Project less the amount of any allocation fee paid pursuant to Section 8.B. 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. **Carryover Allocation.** If a Project or any Qualified Building that is part of the Project will not be Placed in Service in the calendar year for which a Project is awarded Credit, MaineHousing may issue a carryover allocation for the Project.
1. In order to be considered for a carryover allocation, an Applicant must submit the following.
    - a. A complete request for carryover allocation of Credit in a form prescribed by MaineHousing shall be submitted to MaineHousing no later than the first day of December of the year in which the carryover allocation is made.
    - b. 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.

- c. Status report on the progress of development of the Project and the likelihood of the Project proceeding to completion.
2. 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.
  3. A carryover allocation will be subject to the following conditions:
    - a. MaineHousing receives satisfactory evidence that more than 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 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;
    - b. The Project is Placed in Service within 2 years following the calendar year in which the carryover allocation is made and only to the extent that the IRS gives effect to such carryover allocation; and
    - c. Any performance conditions MaineHousing may require to ensure maximum utilization of Credit.

Failure to comply with these conditions may result in a termination or cancellation of the carryover allocation.

4. After all Qualified Buildings in the Project are Placed in Service, the Owner shall submit a request for issuance of Form 8609 or such other form prescribed by the IRS in accordance with Section 8.A. The entity making the request must be the same entity that received the carryover allocation.
5. MaineHousing may carry over any unallocated portion of the State Ceiling and deny any or all requests for Project-specific carryover allocations.

- C. **Tax Credit Compliance Experience.** Prior to an allocation of Credit, the Applicant must demonstrate proficiency of the entity managing the Project in the area of Credit compliance monitoring. The entity must complete a Credit

compliance monitoring training approved by MaineHousing or receive a certification from a Credit trainer approved by MaineHousing.

- D. **Extended Use Agreement.** Prior to an allocation of Credit, the Owner must enter into an Extended Use Agreement with MaineHousing which contains restrictive covenants that run with the land, are binding on the Owner and its successors and assigns and are enforceable by MaineHousing and the low-income tenants of the Project. The Extended Use Agreement will obligate the Owner to comply with the Code, the affordability requirements and certain other threshold requirements set forth in Section 5, and certain commitments made by the Applicant for which the Application was awarded points under the scoring criteria set forth in Section 6.

The Extended Use Agreement must be recorded in the appropriate registry of deeds prior to all mortgage liens and encumbrances on the Project and before MaineHousing issues any IRS Form 8609 for the Project. The Extended Use Period will terminate on the date the Project is acquired by foreclosure or transfer of the Project in lieu of foreclosure so long as any indebtedness owed to MaineHousing in connection with the Project is satisfied in full and the acquisition is not part of an arrangement, a purpose of which is to terminate the Extended Use Period pursuant to Section 42(h)(6)(E) of the Code; provided however, that low-income tenants may not be evicted or suffer an increase in gross rent during the 3-year period following termination.

- E. **Converting a Carryover Allocation.** 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 scoring criteria or result in a cost increase which would render the Project withdrawn pursuant to Section 4.I. There must be extenuating circumstances, which result in the Applicant's likely failure to meet the 10% basis test in Section 8.B.3.a. or the likely failure of the Project to be Placed in Service within 2 years following the year in which the allocation was made. The Project will only be required to meet the requirements of the Qualified Allocation Plan in effect at the time the Project received the original allocation of Credit. If the Applicant has entered into a Binding Agreement and elected to lock the Applicable Percentage, then the Applicant is bound by the Applicable Percentage elected under the original Binding Agreement.
- F. **Cancellation of Carryover Allocation.** 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 will 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 will be added to the State Ceiling for the calendar year in which it is returned or the following year.

- G. **Forward Allocation of Credit.** MaineHousing may issue a binding commitment to allocate State Ceiling available in the subsequent year for any Project Placed in Service in the current year. Credit from the subsequent year's State 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 State Ceiling authorized pursuant to this section shall be processed and evaluated in accordance with this Qualified Allocation Plan and shall be subject to MaineHousing authority to allocate Credit and applicable law.
- H. **Disclaimers.** An allocation made by MaineHousing will be effective only with respect to a Qualified Building Placed in Service during the calendar year in which the allocation is made and only to the extent that the IRS gives effect to such allocation. CREDIT RECIPIENTS ARE RESPONSIBLE FOR TAKING ONLY THE AMOUNT OF CREDIT AUTHORIZED UNDER THE CODE AND RECOGNIZED BY THE IRS AND NO RELIANCE MAY BE PLACED ON MAINEHOUSING BY ANY PARTY FOR THIS DETERMINATION.

The Owner's eligibility for the Credit after allocation of the Credit is conditioned on the Owner's continued compliance with certain tenant income and rental restrictions. Failure to comply with such restrictions can result in forfeiture of Credit and recapture penalties imposed by the IRS. 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.

## SECTION 9: TAX-EXEMPT BOND FINANCED PROJECTS

Certain Projects financed with tax-exempt bond proceeds may be eligible for Credit without an allocation from the State Ceiling, subject to the following.

- A. **Eligible Buildings.** A Qualified 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 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 Qualified Building qualifies for the Credit without an allocation from the State Ceiling.

- B. **Requirements.** The Project must satisfy the requirements set forth in Section 4, except the pre-application review request deadline in Section 4.A., the application deadline in Section 4.B.2., the selection process and the waiting list described in Sections 4.E. and 4.G., and the Maximum Credit Amount limitation referred to in Section 4.H. The Project must also satisfy the requirements set forth in Section 5, except the affordability threshold requirement set forth in Section 5.B. and the threshold requirements for projects involving the acquisition and rehabilitation of existing housing set forth in Section 5.D.2. The Project will be evaluated in accordance with the procedures set forth in Section 7 to determine the amount of Credit to be allocated to the Project, except that the Project will not be subject to the Maximum Credit Amount referred to in Section 7. An Applicant will not be subject to the developer fee limits in Section 7.B.1, 7.B.2 and 7.B.3. the Applicant applies for debt and Credit only. The Project must comply with the requirements for an allocation pursuant to Section 8.A. and is subject to the monitoring requirements set forth in Section 10.
- C. **Applicable Percentage.** The Owner of a Project that is not yet Placed in Service may, subject to Section 42 of the Code, elect to fix the Applicable Percentage for each Qualified Building in the Project by irrevocably electing the Applicable Percentage for the month in which the tax-exempt bonds are issued. Such an election must be made on forms provided by MaineHousing and must be made by the fifth (5<sup>th</sup>) day of the month following the month in which the tax-exempt bonds are issued. If the Project does not elect to fix the Applicable Percentage in the month in which the tax-exempt bonds are issued, the Applicable Percentage will be the Applicable Percentage for the month in which each Qualified Building is Placed in Service.
- D. **Credit Determination.** Once MaineHousing has reviewed the Project in accordance with this Section and deemed the Project eligible to receive Credit, a determination letter will be issued pursuant to Section 42(m) of the Code.
- E. **Allocation.** The Owner of a Project must request the issuance of an IRS Form 8609 for each Qualified Building in the year the Project is Placed in Service. The request must satisfy the requirements of Section 8.A.

## SECTION 10: MONITORING

MaineHousing is required by Federal law to monitor LIHTC Projects for noncompliance with the provisions of Section 42 of the Code and to notify the IRS 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 Use Agreement. 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 Building in the LIHTC Project, including without limitation, the following information.
1. The total number of residential rental units in each Qualified Building (including the number of bedrooms and the square footage of each residential rental unit).
  2. The number of residential rental units in each Qualified Building that are designated low-income units.
  3. The rent charged on each residential rental unit in each Qualified Building (including any utility allowances).
  4. The number of occupants in each low-income unit.
  5. The low-income unit vacancies in each Qualified 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 LIHTC 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 10.A.6.
  8. Annual income certifications for each household occupying a Credit-eligible unit in the LIHTC Project, except (a) no annual income certifications are required for a LIHTC Project in which 100% of the units are subject to the applicable income limit elected pursuant to Section 42(g)(1) of the Code for the LIHTC Project (i.e. either 100% of the units at 60% AMI or 100% of the

units at 50% AMI), and (b) for a LIHTC Project in which 100% of the units are Credit-eligible units but the LIHTC 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 LIHTC Project in which 100% of the units are Credit-eligible 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 a LIHTC Project 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 LIHTC Project.

For a LIHTC 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 6 years during the affordability period, commencing on the date on which the first Qualified Building in the LIHTC 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 Building at the end of the first year of the Credit Period.
10. The character and use of the nonresidential portion of a Qualified Building included in the Qualified 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 LIHTC Project).
11. A determination of the student status of the resident household.
12. The tenant occupancy policies and procedures and lease in form and content acceptable to MaineHousing that comply with all applicable federal, State and local laws, including without limitation, Section 42 of the Code, federal and State fair housing and accessibility laws and VAWA, and all associated regulations and guidance.
13. All other disclosures to tenants, certifications and other records required by applicable local, State and federal laws and associated regulations and guidance.

These records shall be maintained for each Qualified Building throughout the Extended Use Period. These records shall be retained for at least 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 Extended Use Period or 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 Building. First year quarterly reports shall be filed with MaineHousing.

- 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 for the calendar year preceding certification that:
    - a. The LIHTC Project met the minimum low-income set-aside test applicable to the LIHTC Project and complies with the additional low-income targeting pledged by the Owner as set forth in the Extended Use Agreement on which the allocation was based;
    - b. There was no change in the Applicable Fraction of any Qualified 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 10.A.;
    - d. Each Credit-eligible unit in the LIHTC Project was rent-restricted under Section 42(g)(2) of the Code;
    - e. All units in the LIHTC 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 Building was suitable for occupancy under UPCS and applicable health, safety and building codes;
    - g. There was no change in the Eligible Basis of any Qualified 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 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 Building;

- i. If a Credit-eligible unit in the Qualified 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 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 Building increased above the limit allowed under Section 42 of the Code, the next available unit of comparable or smaller size in the Qualified Building was or will be rented to tenants having a qualifying income;
- k. Qualified Buildings subject to Section 7108(c)(1) of the Revenue Reconciliation Act of 1989 comply with the requirements thereof and the Extended Use Agreement;
- l. The LIHTC 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 LIHTC 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. Compliance with 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.*), Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*) and the Maine Human Rights Act (5 M.R.S.A., Chapter 337, Subchapter IV) and all other applicable federal, State and local fair housing and accessibility laws and associated regulations and standards, including without limitation, no findings of discrimination under any of the foregoing have occurred at the LIHTC Project. A finding of discrimination includes an adverse final decision by HUD or the Department of Justice, an adverse final decision by a substantially equivalent State or local fair housing agency, including the Maine Human Rights Commission, 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. Compliance with VAWA, including without limitation, no applicant for tenancy or tenant was denied admission to or assistance under, terminated from participation in or evicted from the housing on the basis of being a victim of domestic violence, dating violence, sexual assault or stalking and no person was denied assistance, tenancy or occupancy rights to housing on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault or stalking engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, if the tenant or any affiliated person of the tenant is a victim or threatened victim of such domestic violence, dating violence, sexual assault or stalking pursuant to VAWA.
  - q. If the Owner received its Credit allocation from a portion of the State Ceiling set-aside for a LIHTC Project involving a Qualified Nonprofit Organization under Section 42(h)(5) of the Code, then a Qualified Nonprofit Organization materially participated in the operation of the LIHTC Project within the meaning of Section 469(h) of the Code; and
  - r. There has been no change in the ownership or management of the LIHTC Project.
2. Annually throughout the Extended Use Period, Owners must submit to MaineHousing certain information and data about the tenants in Credit-eligible units in each Qualified Building required by Section 42 of the Code for the prior calendar year, including household income; monthly rental payments; family composition; use of rental assistance under Section 8 and other similar assistance; the race, ethnicity, age and disability status of the members of the households; and all other occupancy information required by MaineHousing. The information and data shall be submitted to MaineHousing electronically and in the format required by MaineHousing to transmit data to HUD.
  3. MaineHousing will review the tenant files of at least 20% of the Credit-eligible units in each LIHTC Project at least once every 3 years. For new LIHTC Projects Placed in Service, MaineHousing will complete a review of tenant records of 20% of the low income units at the LIHTC Project within 2 years following the year the last Qualified 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 Buildings financed under the RD Section 515 Rural Rental Housing Program or Qualified 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 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 Tax Credit Certification 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 Tax Credit Certification must include information and data for the period of January 1 through December 31 of the preceding calendar year. A completed and executed Form 8609 must be submitted with and at the time the first Tax Credit Certification is due. The form and content of the Tax Credit Certification is prescribed by MaineHousing and must be submitted in the format required by MaineHousing under penalty of perjury.
- C. **Inspections.** MaineHousing will perform property inspections consistent with UPCS on a one-to-three year cycle, and shall have the right, at any time upon at least 30 days' notice to the Owner, to review all records referred to in this Section.
- D. **Notification of Noncompliance.** In the event MaineHousing does not receive the certifications required hereunder when due or they are incomplete or insufficient, MaineHousing will 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 LIHTC Project is not in compliance with the provisions of Section 42 of the Code, MaineHousing will notify the Owner in writing of the nature of such noncompliance. In either case, such notice will provide the Owner with a reasonable correction period, not to exceed 90 days, in which the Owner must supply the completed certifications and/or bring the LIHTC 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 6 months. Within 45 days after the end of the correction period, including any permitted extensions, MaineHousing will file the required Form 8823, Low-Income



Housing Credit Agencies Report of Noncompliance, with the IRS regardless of whether the noncompliance or failure to certify has been corrected.

- E. **Liability.** COMPLIANCE WITH THE REQUIREMENTS OF SECTION 42 OF THE CODE IS THE RESPONSIBILITY OF THE OWNER OF THE QUALIFIED BUILDING FOR WHICH THE CREDIT IS ALLOCATED. 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.

## SECTION 11: GENERAL

- A. **Other Requirements.** Section 42 of the Code, related provisions of the Code and all associated regulations and guidance, as amended from time to time, contain additional requirements with respect to the Credit. Applicants and Owners are subject to and must comply with all such requirements.
- B. **Conflicts.** If this rule conflicts with any provision of federal or State law, the federal or State law shall control.
- C. **Not an Entitlement.** 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. MaineHousing may reject any and all Applications and may refuse to award any or all of the Credit in its sole discretion.
- D. **Final Agency Action.** The Director of MaineHousing, individually or by exercise of the delegation of 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.
- E. **Waiver.** Upon a determination of good cause, the Director of MaineHousing or the Director's designee may, subject to statutory limitations, waive any provision of this rule. The waiver must be in writing and must be supported by documentation of the pertinent facts and grounds.
- F. **Headings.** The headings in this rule are for convenience only and do not define or limit the scope of the provisions of this rule.

**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") and the Maine Housing Authorities Act require Maine State Housing Authority ("MaineHousing"), as the designated housing credit agency for the State of Maine, to adopt a qualified allocation plan for

allocating and administering federal low income housing tax credits (“Credit”), including without limitation the state ceiling of federal low-income housing tax credits allocated to the State of Maine annually (the “State Ceiling”).

Chapter 16 of MaineHousing’s rules, the *Low Income Housing Tax Credit Rule*, is the State’s qualified allocation plan for allocating and administering the Credit. This rule, sometimes referred to herein as the plan, repeals and replaces in its entirety the prior Chapter 16, referred to herein as the prior plan. This rule provides for a one-year qualified allocation plan and includes the scoring criteria for the 2017 State Ceiling. The differences between this plan and the prior plan are set forth below.

Cost containment continues to be a priority under this plan. The cost containment selection criteria, including the total development cost (TDC) caps, benchmarks and scoring criteria, in this plan are the same as the prior plan with the following modifications.

- a. The term “family housing” as used in the criteria is defined as housing that is eligible for points under the family housing scoring criteria to clarify what MaineHousing intended when it established the TDC criteria for family housing. Housing that is eligible for points under the family housing scoring criteria is housing with at least 70% affordable two or more bedroom units or housing with at least 50% affordable two or more bedroom units of which at least 20% are affordable three or more bedroom units. The TDC caps and benchmarks for family housing are based on historical data for typical family housing with two and three-bedroom units. The prior plan did not define family housing and some developers are developing so-called family housing with mostly one-bedroom units and efficiencies to maximize their score under the TDC scoring criteria. Similarly, MaineHousing has added minimum room sizes to ensure that developers do not create unreasonably small units and rooms to maximize their score under the TDC scoring criteria.
- b. The plan also clarifies that all costs of developing and completing the housing, even costs that are funded outside of the development budget, will be included in the calculation of total development cost for purposes of the TDC caps and scoring criteria. Developers may not reduce the total development costs of a project by funding normal and customary project costs outside of a project’s development budget for the purpose of avoiding re-scoring under the TDC scoring criteria when costs increase after application.
- c. The definition of total development cost (TDC) is modified to exclude certain costs that were previously included. TDC will exclude any developer fee that exceeds the net developer fee and is loaned as a source of funding for the project. TDC will also exclude MaineHousing’s tax credit fees and the operating deficit reserve to the extent required by MaineHousing. These fees and the operating deficit reserve are necessary to cover MaineHousing’s cost of administering the tax credits and to protect MaineHousing’s security interest in projects, but they increase project costs and are not directly related to designing and completing projects.

The following changes have been made to the pre-application, application and award processes in an effort to improve the quality of the applications and to ensure more efficient and timely delivery of projects that are awarded tax credits.

a. The scope of the pre-application review, which previously focused on the suitability of a project for housing, is expanded to include the feasibility and eligibility of the proposed project for tax credits. More information and documentation will be required with the pre-application, such as development and operating budgets, construction estimates, site plans and floor plans, land use and zoning conditions, parking arrangements, known environmental conditions, project amenities, any community service facilities, any commercial space, any related developments and other unique features of the project. Applicants will also be required to submit a Phase I Environmental Site Assessment, and if the project involves the rehabilitation of an existing building, lead-based paint and asbestos reports, with the application or earlier, if available at the time of the pre-application review, to identify environmental conditions, which can add substantial costs to the development budget. These changes to the pre-application and application processes will allow MaineHousing to identify and address potential issues with projects before the tax credits are awarded. Issues that arise during the development phase of a project awarded credit cause delays and can be costly for an applicant. The period of time for completing the pre-application review has been increased and the application deadline is later than under the prior plan to reflect that reviewing the eligibility and feasibility of a proposed project has shifted from the application to the pre-application review phase.

b. The plan includes new limits on the number of applications for the 2017 State Ceiling that may be submitted by any one developer. Each developer is limited to two applications for the 2017 State Ceiling and a developer with more than four tax credit projects that have been awarded tax credits under the State Ceiling and are not completed may not submit an application for the 2017 State Ceiling. These limits are intended to discourage the submission of applications that are not ready or are not likely to score well and to foster more timely development and completion of projects that are awarded tax credits. MaineHousing receives three times the number of applications that are awarded tax credits under the State Ceiling. Some developers submit more than one application, sometimes as many as three or four applications in a single round, and may be awarded tax credits for more than one of the applications submitted. There have been significant delays in the development and completion of projects by developers with multiple projects in development or under construction. Requiring developers to complete projects in development or under construction before applying for more projects should result in more timely production of projects that are awarded tax credits.

c. Applicants that are selected to receive an award of credit must meet with MaineHousing to discuss their score, any issues and special requirements identified during the pre-application review and selection process, and an acceptable timeline for developing and completing their projects before MaineHousing will issue a notice to proceed. MaineHousing will terminate an award if an applicant fails to meet the requirements in the notice to proceed or to diligently develop the applicant's project in a timely manner. **Note:**

MaineHousing intends to add scoring criteria in the next qualified allocation plan that penalizes developers for missing any deadline set forth in any notice to proceed issued for tax credits subject to this plan, including without limitation tax credits awarded under the 2017 State Ceiling.

Changes to certain scoring criteria in this plan are the result of recent developments in fair housing compliance. HUD has increased its fair housing enforcement efforts, including without limitation, issuing new regulations concerning the obligation of recipients of federal funding to affirmatively further fair housing and disparate impact discrimination. The obligation to affirmatively further fair housing applies to all of MaineHousing's programs and activities, including the federal Low Income Housing Tax Credit Program. Additionally, there are a growing number of lawsuits filed by fair housing advocates against housing agencies with programs that produce most affordable family housing in racially or ethnically concentrated areas of poverty (usually qualified census tracts with substandard schools, inadequate employment opportunities, and unsafe and unhealthy conditions such as environmental hazards and high crime) and not enough (and in some cases no) affordable family housing in predominantly white, high-income neighborhoods. These practices make it more difficult for minorities to find affordable housing in areas with better opportunities for education, employment, transportation and other services. In a case filed against the Texas Department of Housing and Community Affairs, the tax credit allocating agency for the State of Texas, the United States Supreme Court in 2015, upheld the decisions in the lower courts that disparate impact discrimination is a violation of the Federal Fair Housing Act. Disparate impact discrimination is a policy or practice that, even though it may appear to be neutral and there is no intent to discriminate, has an adverse disproportionate effect on members of a protected class. To satisfy the obligation to affirmatively further fair housing and avoid claims of disparate impact discrimination, agencies must take "meaningful actions" to overcome segregation and foster inclusive communities that are free from discrimination and barriers that restrict access to opportunities, specifically actions that reduce segregation, promote integrated communities and fair housing choice, increase access to opportunities, transform racially and ethnically concentrated areas of poverty into areas of opportunity, and foster compliance with civil rights and fair housing laws. In other words, agencies must develop policies and programs that address these fair housing issues in their communities. MaineHousing recently conducted a fair housing assessment and made the following changes to certain criteria based on the assessment.

- a. The points for family housing with two and three or more bedroom units in the family housing scoring criteria is increased to address the lack of affordable multifamily rental housing in the State where needed. The City of Portland and other communities have recently expressed the need for family housing with more bedrooms, including three-bedroom units. Family housing is more difficult to develop, particularly housing with three or more bedrooms and particularly in higher-income areas, because of community resistance and increased costs. Increasing the weight of the family housing with three or more bedroom units scoring criteria, together with the new definition for family housing under the TDC selection criteria, is necessary to overcome these challenges and to increase fair housing choice and access to higher opportunities for families.

b. The accessibility scoring criteria is modified to incent the development of up to five more accessible units in a project than is required by applicable state and federal laws to address the lack of available accessible housing in the State. There is a growing need for accessible housing, particularly as the State's senior population continues to increase significantly. It is less expensive to create an accessible unit in the construction or rehabilitation of a project than it is to retrofit a unit to make it accessible in response to a reasonable modification request.

c. The former economic diversity scoring criteria and the community revitalization plan scoring criteria is modified (i) to promote the development of housing in census tracts where there are likely to be higher opportunities, such as better education, employment opportunities and community services and less crime, because of higher average incomes and (ii) to encourage the development of new housing in qualified census tracts only if it is part of a community revitalization plan and is mixed-income in an effort to transform areas of concentrated poverty into areas of new opportunity.

d. The plan maintains the smart growth criteria and service center community needs scoring criteria from the prior plan, which promote the development of housing in areas with access to community assets and opportunities, such as public transportation, employment, education, health care and services. The only change to the smart growth criteria is to expand the allowable distance to a downtown to one mile based on input that one mile is considered walkable in terms of living near a downtown and finding available sites in or near downtown has become extremely difficult. The service center community needs rankings have been updated with the latest data. Changes in the needs rankings reflect population shifts and new affordable housing production since the last plan was adopted.

The only set-asides of the State Ceiling under this plan are the non-profit set-aside and a set-aside for the preservation of existing affordable housing. The other set-asides under the prior plan have been eliminated. The Lewiston Replacement Housing set-aside is no longer needed because the housing contemplated by the set-aside is currently under construction. The Housing for Homeless set-aside has been eliminated because of the lack of sufficient service funding and project-based rental assistance necessary for the success of this type of housing. The plan maintains the minimum non-profit set-aside required by Section 42 of the Code, but gives MaineHousing the right to award credit under the set-aside to an applicant who could qualify for the non-profit set-aside, even if the applicant does not seek to participate in the set-aside, to ensure that the set-aside is awarded to the highest scoring eligible application. This plan also maintains the \$300,000 set-aside for the preservation of one existing affordable housing project and continues to restrict projects that involve the acquisition and rehabilitation of existing affordable housing, other than housing with 20 or more new units, to the preservation set-aside. The minimum rehabilitation amount for preservation projects and all other projects involving the acquisition and rehabilitation of housing is increased to \$60,000. Limiting existing affordable housing to the preservation set-aside and requiring a minimum amount of rehabilitation maximize the use of the State Ceiling for the creation of new affordable housing and for the rehabilitation of existing housing that is most at risk. The credit rate for construction and rehabilitation of housing is 9%, but only 4% for acquisition, so using the State Ceiling for acquisition, particularly in related-party transactions, is a less efficient use of the

State Ceiling. Many projects involving the acquisition and rehabilitation of existing affordable housing can be funded with 4% “automatic” tax credits generated from tax-exempt bond financing from the State’s bond cap. However, not all existing affordable housing can be preserved with tax-exempt bond financing and automatic tax credits, including most existing Rural Development housing. The preservation set-aside makes a limited amount of the State ceiling available for these projects to ensure the most efficient use of the State ceiling.

The prior plan included significant changes to the sponsor characteristics scoring category, including new capacity and performance criteria that are intended to penalize poor performance by developers and management companies with tax credit experience without discouraging new participants in the tax credit program. The criteria in this plan build on the criteria added to the prior plan as follows.

- a. The criteria added to the prior plan to encourage participation by developers who are new to the tax credit program but have successfully developed other multifamily housing and hire an experienced tax credit consultant is expanded to include new developers who have successfully managed other affordable multifamily housing and hire an experienced tax credit consultant.
- b. Similar to the changes made to the developer capacity selection criteria in the last plan, the management capacity scoring criteria has been modified to recognize successful management companies with experience, but to also encourage participation by new management companies that can demonstrate capacity by hiring staff with tax credit experience to work with staff, who may not have experience, but have recent tax credit training.
- c. The positive points under the tax credit noncompliance scoring criteria have been converted to negative points in this plan to penalize poor performance by applicants with tax credit experience without discouraging new participants in the tax credit program. Also, developers must correct any outstanding tax credit violations in their other tax credit projects in order to qualify for more tax credits under this plan.
- d. This plan includes tougher penalties for repeated poor performance. In the prior plan, an applicant was penalized one point for one or more tax credit projects with an unfunded operating deficit in the last fiscal year. This plan increases that penalty to one point for each tax credit project with an unfunded operating deficit in the last fiscal year. The prior plan penalized an applicant one point for using a management company that failed to meet any reporting deadlines in the prior year. This plan increases the penalty up to 3 points based on the number of late reports.
- e. New performance criteria will replace the mechanism in the prior plan for addressing increases in project development budgets after application that affect scoring under the TDC scoring criteria. The new criteria penalize developers in future rounds for any budget increase during the development and construction of a project that results in a lower score under the TDC scoring criteria if that lower score is not offset by additional points under the below market capital scoring criteria. The

penalties apply to budget increases at the time of construction loan closing and at the time of construction completion, and there is a penalty even if the lower score is still higher than the score of the first application on the waiting list. Under the prior plan, a developer would lose its tax credit award if rescoring resulted in a lower score than the score of the first application on the waiting list, but there was no penalty if the developer maintained a higher score than the first application on the waiting list. The purpose of the new criteria is (i) to discourage developers from submitting artificially low budgets to maximize their score under the TDC scoring criteria, (ii) to minimize development delays caused by budget increases that may have resulted in a loss of tax credits under the prior plan, and (iii) to discourage developers from adding projects costs after selection if they can maintain a higher score than the score of the first application on the waiting list. Under this plan, if there is any net reduction in an application's score resulting from budget increases at the time of construction loan closing or upon project completion, all of the developer's applications in the next tax credit round in which the developer competes will be penalized 5 points. If rescoring results in a lower score than the score of the first application on the waiting list (i.e. the developer would not have been awarded tax credits based on the lower score during the selection process), then the developer will not be able to compete in the next tax credit round and all of the developer's applications in the following round in which the developer competes will be penalized 5 points.

Applicants can earn up to 6 points under the sponsor characteristics scoring category, but can potentially lose far more than 6 points if they are poor performers or hire tax credit developers or management companies that are poor performers in MaineHousing's rental housing portfolio.

Changes were made to the below market capital criteria and the former operating subsidy scoring criteria with respect to the treatment of tax increment financing and other property tax relief. Prior plans have made a distinction between tax increment financing that can be used for project capital costs and tax increment financing that can be used for project operating costs, the former being eligible for points under the below market capital scoring criteria and the latter being eligible under an operating subsidy scoring criteria. This plan eliminates this distinction by removing capital generated from tax increment financing as an eligible source of capital under the below market capital scoring criteria and making all tax increment financing, regardless of its use, eligible under a new property tax relief scoring criteria that replaces the former operating subsidy scoring criteria. Tax increment financing used for capital costs is not really below market capital; it is property tax relief that allows a project to borrow additional capital. Tax increment financing (TIF) loans typically do not have a below market interest rate, and recognizing tax increment financing as below market capital has discouraged developers from borrowing TIF loans from MaineHousing because any source of funding from MaineHousing is not eligible under the below market capital scoring criteria. The points under the new property tax relief scoring criteria are awarded on a scale based on the percentage of the annual incremental property tax revenue that will be returned to the owner or foregone by the municipality and the number of years the owner receives the property tax relief, with a minimum threshold of 50% of the annual incremental property tax revenue that is returned or foregone for 15 years and a maximum of 6 points for more than 75% of the annual incremental

property tax revenue returned or foregone for 30 or more years. The prior plan excluded projects that are categorically exempt from taxes, such as projects located on tribal land or federal land, from eligibility under the former operating subsidy scoring criteria. This exclusion has been eliminated, but these projects will be limited to 3 points under the new property tax relief scoring criteria to provide a reasonable balance between the value of the tax exemption for the project and the amount of effort that is necessary to negotiate property tax relief in areas subject to property taxes.

The plan includes other changes to the below market funding capital scoring criteria and a new developer fee contribution scoring criteria. Net developer fee that is deferred or loaned has been moved from the below market capital scoring criteria to a new category that also recognizes the benefit of not collecting the full amount of the allowable net developer fee to reduce a project's total development cost. One point will be awarded if 25% or more of the maximum allowable net developer fee is deferred, loaned or foregone by the developer for the benefit of the project. Any additional developer fee that exceeds the net developer fee, which must be deferred or loaned for the benefit of the project under the plan, is not eligible for points under the new criteria and continues to be excluded from the below market capital scoring criteria. Also, below market capital that has been applied for is no longer eligible under the below market capital scoring criteria. Funding that has been applied for but not awarded usually isn't sufficient to qualify for points because it is only valued at 10% of its net present value, but when it is significant enough to qualify for points and is not awarded, then replacing the funding causes delays and can result in the withdrawal of an application if the funding cannot be replaced. This change encourages developers to have all funding in place to mitigate development delays due to funding gaps.

The plan includes certain other new selection criteria. First, all projects must have a telemedicine room equipped with certain features and wireless service appropriate for offering tenants the opportunity to access telemedicine services from qualified medical providers at the project. The plan also contains two new one-point scoring criteria to give MaineHousing flexibility to award certain funding, that is not currently available, to successful projects that MaineHousing determines are suitable for the funding, if and when it is available. One of the new scoring criteria builds on the populations with special needs scoring criteria carried over from the prior plan to this plan. Applicants that agree to give a 20% preference for populations with special needs will be given an extra point if they agree to accept service-enriched project-based vouchers under HUD's Section 811 Project Rental Assistance Program and convert the preference to a set-aside with respect to the units with vouchers. The other new scoring criteria awards one point to applicants who agree to accept funding under the National Housing Trust Fund, which requires deeper income targeting to persons with income at or below 30% of area median income, if funding becomes available and the project is selected by MaineHousing to receive the funding. Not all applicants who are awarded points under these new criteria will receive the funding contemplated in the criteria. If and when the funding becomes available, MaineHousing, in its sole discretion, will determine which projects among those who were awarded points under the criteria will receive an award of funding and the amount of the award.

Other changes and clarifications to requirements and selection criteria from the prior plan include (1) increasing the pre-application fee, application fee (to which the pre-application fee is applied when an application is submitted) and tax credit allocation fees to cover costs of administering the



program which have historically been subsidized by other sources that have been diminishing over time, including income from taxable bond debt made available for tax credit projects; (2) reducing the maximum percentage of the annual State ceiling that can be awarded to any one application from 30% to 25% to ensure at least four projects are awarded tax credits under the 2017 State Ceiling; (3) the maximum net developer fee allowed under the plan is capped at \$750,000; (4) applying the project-based rental assistance scoring criteria to low-income units rather than all units in the project and establishing a minimum number of assisted units (not less than 4 units) that is required to qualify for points under the criteria to discourage developers from pledging one or two units of project-based rental assistance; (5) clarifying the resident service coordination requirement to reflect the current practice of requiring one hour for every five low-income units in the project and being more flexible about the number of days the resident service coordinator should be on site based on the needs of the tenant population; (6) defining the term “affordable housing” to clarify what is intended when the term is used throughout the selection criteria; (7) requiring the entity that will be the owner of the project to be legally formed at the time of application to avoid assignment of site control documents and funding commitments during the development; there is little cost associated with forming the owner and most applicants have been doing it before application; (8) requiring projects to comply with the applicable requirements of the Violence Against Women Act which was expanded to cover the federal Low Income Housing Tax Credit Program; (9) updating the housing priorities under the plan to reflect the priorities in the current consolidated plan; (10) clarifying that projects involving the gut rehabilitation of existing housing that has become functionally obsolete will be treated as adaptive reuse for purposes of the TDC cap, benchmark and scoring criteria; (11) clarifying that any land financed under any MaineHousing program, such as the Land Acquisition Program, and donated or transferred to an applicant for less than fair market value will not be eligible for points under the acquisition cost scoring criteria; and (12) other minor changes, clarifications, grammatical changes and formatting improvements.

## **Process**

MaineHousing held public meetings in the course of developing the proposed rule. In accordance with Executive Order 20 FY 11/12 dated August 24, 2011, MaineHousing submitted the proposed rule to the Office of the Governor for review and authorization to publish the proposed rule for public comment. The Governor’s Office approved the proposed rule on May 26, 2016.

MaineHousing notified interested parties of the public hearing on the proposed rule on May 27, 2016 and published a public hearing notice in the State of Maine’s rulemaking notices ad in the major newspapers in the State on June 1, 2016. A public hearing was held on June 21, 2016. Mr. Joby Thoyalil, representing Maine Equal Justice Partners, testified at the public hearing. MaineHousing continued to receive written comments through July 1, 2016. Written comments were received from Mr. Thoyalil for Maine Equal Justice Partners, Mr. Scott Joslin for Laconia House, LLC, Mr. Mark Adelson for Portland Housing Authority and Portland Housing Development Corporation, Mr. Matthew Peters for Avesta Housing and Mr. Eli Gilbert for Surety & Fidelity Association of America. A summary of all comments received and MaineHousing’s response to the comments follows.

## Summary of Comments and MaineHousing's Response

### Section 4.B.1. – Limits on Number of Applications and Projects

Comment: Mr. Peters of Avesta Housing commented that the new limits on the number of applications that can be submitted for the State Ceiling and the number of projects awarded tax credits under the State Ceiling that any developer can have under development are unnecessary, and that MaineHousing has not demonstrated that there is a correlation between these new limits and the ability of projects to score well or to be completed in a timely manner. The commenter is concerned that the new limits restrict market activity, will lead to an insufficient number of applications to meet the State's needs and the housing developers' interest and capacity to develop affordable housing in the State. The commenter also suggested that developers with multiple developments bring the most external funding to supplement the tax credit. The commenter recommended more training or changes to the readiness scoring criteria to address any concerns with quality of applications or development delays.

Response: The new limits are the latest measure MaineHousing has taken to address development delays, in part due to what MaineHousing perceives to be issues with developer capacity. In the last qualified allocation plan, MaineHousing added a performance scoring criteria that penalized developers for failing to reach construction loan closing within 15 months of award, a generous amount of time to achieve construction loan closing. One developer in particular, who had two projects under development, took almost 3 years to complete the second project, but there were others. Since the adoption of the performance criteria, one developer has failed to meet the 15-month benchmark in the criteria by choice to change the design of the developer's project to passive housing and Avesta Housing came within days of failing to meet the 15-month benchmark with respect to a project awarded credit from the 2015 State Ceiling. On average, all tax credit applications in 2014 and 2015 that involve developers other than Avesta Housing, excluding projects with extenuating circumstances such as NIMBY challenges or delayed HUD approval, have taken 376 days from application to construction loan closing. The average for the 8 projects developed by Avesta Housing during this time period was 406 days. While this is only 8% higher than the average, 3 of those projects took more than 450 days, with a high of 537 days, to reach construction loan closing, which is 20% to 43% above the average. Avesta Housing submitted 4 applications for the 2016 State Ceiling, one of which was withdrawn and two of which were awarded credit, increasing the total number of Avesta Housing's tax credit projects in development or under construction to 9 projects. For the first time, MaineHousing included a development schedule with deadlines in the award notices for the selected projects. Three of the tax credit projects that were awarded credit from the 2016 State Ceiling have land use approvals (the focus of the readiness scoring criteria under the plan), one of which is being developed by Avesta Housing. The two projects that were not developed by Avesta Housing are expected to have construction loan closings by the end of July and in mid-August. The Avesta Housing project is not expected to close until the end of September, at the earliest, and is at least one month behind the projected construction schedule in the award notice issued by MaineHousing which included additional time in consideration of the developer's concerns that there may be delays due to the project architect having multiple projects. The other Avesta Housing project awarded credit under the 2016 State Ceiling waited several months to start the land use approval process and is not expected to reach

construction loan closing until the end of the year, which will be one to two months behind the projected construction schedule in the award notice issued by MaineHousing which included additional time in consideration of the developer's concerns about the land use approval process for the project.

MaineHousing is not concerned that these new limits will unduly restrict market activity, because the program has been over-subscribed by at least 3:1 for years. MaineHousing received 15 applications for the 2014 and 2015 State Ceilings and 16 applications for the 2016 State Ceiling, but only made awards to 6 projects from the 2014 and 2015 State Ceilings and 5 projects from the 2016 State Ceiling.

With respect to training, MaineHousing has and will continue to provide tax credit and related training and guidance, but developers are expected, as required under the qualified allocation plan, to have the capacity to develop the projects for which they are submitting applications.

As indicated above, readiness (i.e. having land use approvals) does not appear to be the issue. Not all developers want to invest the time and cost involved in going through the land use approval process unless they know they will be awarded tax credits. However, if an application without land use approvals is selected for an award of credits, MaineHousing expects the developer to begin the process of getting approvals immediately upon notice of the award, because getting land use approvals can be a lengthy process.

#### **Section 5.L. – Project Design (incorporating MaineHousing's Quality Standards and Procedures Manual)**

Comment: Mr. Gilbert of the Surety & Fidelity Association of America commented that Section 7(g) in Part 2 of MaineHousing's *Quality Standards and Procedures Manual*, which allows MaineHousing to accept a letter of credit equal to 20% of the construction contract in lieu of a 100% payment and performance bond, may create an unfair competitive advantage and does not protect the public interest. The commenter recommended that the letter of credit should equal 100% of the construction contract.

Response: As a general rule, MaineHousing requires a payment and performance bond equal to 100% of the construction contract for all tax credit projects. Only in unique circumstances and only with MaineHousing's approval, in its sole discretion, is a letter of credit allowed in lieu of a payment and performance bond. This has been MaineHousing's policy for many years, and in keeping with that policy MaineHousing rarely allows letters of credit in lieu of payment and performance bonds. The only time it has been allowed has been when a contractor cannot get bonding, usually because the contractor is a housing developer-related small contractor. The 20% letter of credit is a guideline, not a rule, so MaineHousing will determine what is appropriate based on the experience and financial capacity of the contractor and developer in making its decision. A 100% letter of credit would be excessive and cost prohibitive for any contractor. Most banks providing letters of credit require security in the form of cash or collateral equal to the value of the letter of credit. A 20% letter of credit is sufficient to cover any additional cost of completing the project, which would

typically be the premium charged by a new contractor to assume the obligations under the contract.

### **Section 5.M.3. – Telemedicine Rooms**

Comment: Mr. Peters of Avesta Housing commented that (1) requiring telemedicine rooms is premature because the design features and resources that will be required by the health industry are still evolving, (2) the total development cost caps should be increased to allow for the additional cost of developing telemedicine rooms if MaineHousing is requiring them, and (3) restricting the use of the room for telemedicine services doesn't allow project owners to maximize the use of the building for residents.

Response: The requirement for telemedicine rooms is an initiative of the Governor's office to provide for in-place health services to reduce the costs in the State's health care programs and to provide better health care for the low-income population of the State. The standards were established in conjunction with the leading health care organizations in the State, including the Maine Primary Care Association, the Maine Hospital Association and the Maine Medical Association and are consistent with the guidelines published by the American Telemedicine Association. MaineHousing will continue to work with these organizations to update the specifications and standards to reflect changes in technology and health delivery systems in the industry. These standards require the room to be used exclusively for offering telemedicine rooms to protect privacy and to ensure that it is available when needed to provide telemedicine services. Allowing owners to use the room for other purposes could compromise privacy and erode its use for telemedicine services over time. The cost associated with developing telemedicine rooms is not significant, and the definition of Total Development Cost has been modified to exclude certain costs previously included for purposes of the caps and benchmarks which in total should more than cover the additional costs associated with telemedicine rooms.

### **Section 6.A.4. – National Housing Trust Fund**

Comment: Mr. Thoyalil of Maine Equal Justice Partners commented that MaineHousing should incentivize deeper affordability for persons with extremely low income (i.e. income at or below 30% of area median income) in the qualified allocation plan. The commenter cited that there are more than 45,000 households with extremely low income in Maine, but there are only 40 affordable rental units for every 100 of these households. The commenter suggested providing a greater incentive than one point to accept funding under the National Housing Trust Fund and exploring other ways to incentivize deeper affordability in future qualified allocation plans.

Response: MaineHousing agrees that there is a significant need for affordable housing for households with extremely low income in the State. However, as the commenter acknowledged, the Low Income Housing Tax Credit Program is not designed to serve households with extremely low income. Providing deeper affordability requires no-interest deferred funding or project-based rental assistance to support the deeper affordability, and these resources are scarce.

This qualified allocation plan requires deeper affordability for a longer period of time than the federal regulations governing the Low Income Housing Tax Credit Program require. The plan

requires 40% of the units be targeted to households with very low income (i.e. 50% of area median income), which is more than the minimum 40% of units at 60% of area median income (low income households) or 20% of units at 50% of area median income, and requires 45 years of affordability rather than the minimum 30 years. MaineHousing offers no-interest deferred funding to support the deeper affordability required under the plan, but that level of funding alone is not sufficient to support households with extremely low income.

The National Housing Trust Fund is a new source of funding that may allow for deeper affordability in certain tax credit projects with strong operating budgets that can support debt, but as acknowledged by the commenter, there was too much uncertainty about the funding to adequately address it in the plan this year. MaineHousing included a one-point incentive in this year's plan to developers to accept funding and target extremely low income households if MaineHousing makes it available for tax credit projects. MaineHousing will more fully explore using the National Housing Trust Fund to provide deeper affordability in next year's plan.

### **Section 6.A.3 – Family Housing**

Comment: Mr. Joslin of Laconia House, LLC expressed concern that the qualified allocation plan gives too much weight to family housing and housing in higher income and more suburban areas. The commenter is developing a senior housing project in Biddeford where the commenter said there is sufficient family housing and not enough senior housing. The commenter is concerned that the qualified allocation encourages the development of more family housing in Biddeford rather than the senior housing that is needed in the market.

Response: The qualified allocation plan addresses housing needs across the State of Maine. MaineHousing made changes to the plan this year to encourage the development of family housing with three or more bedroom units where it is needed in the State, because no new family housing that qualifies for family housing points under the plan were selected under the prior two plans and the only family housing project that was selected was existing and was selected under a special set-aside not related to family housing. MaineHousing made a change in this year's plan to address an unintended disincentive within the total development cost scoring category. Other changes are meant to make family housing more competitive to encourage developers to overcome the usual barriers, such as additional costs and lack of local support, particularly in communities with a higher average income, and develop family housing where needed in the State. The changes to the plan are not intended, and because of these barriers are unlikely, to result in the development of family housing in communities where it is not needed or only family housing projects being selected under the plan.

Comment: Mr. Joslin expressed that he is discouraged changes were made to the plan to prevent other applicants from “gaming the system” because the senior housing project he is developing in Biddeford is first on the waiting list under the prior plan and maybe should have been selected, and commented that, although it is not MaineHousing's intent, the changes will penalize the project. Mr. Joslin commented that he hopes to be more competitive under the tax-exempt bond financing with automatic low-income housing tax credit program and suggested giving significant points for

readiness and utilization of historic tax credits in the program, similar to this qualified allocation plan.

Response: It is unclear how the changes to the total development cost category, to which we understand the commenter to be referring, would penalize the commenter's application. If anything, the changes should make the commenter's application more competitive in the next tax credit round because they address unintended inequities under the prior plan. The tax-exempt bond financing with automatic low-income housing tax credit program to which the commenter referred has been issued. The program is limited to senior housing projects and includes incentives for readiness and utilization of historic tax credits similar to the scoring criteria under the qualified allocation plan.

### **Section 6.C.1. Service Center Communities**

Comment: Mr. Peters of Avesta Housing commented that the methodology for determining need in service center communities is flawed because municipalities with declining populations score higher under this category and municipalities with growing populations score lower under this category. Relying on a May 19, 2016 Portland Press Herald article for statistics, the commenter questioned why the four fastest growing communities in Maine between 2010 and 2015 (Windham, Falmouth, Gorham and Scarborough) score 3, 1, 0 and 1 points respectively under this category and the four communities with the greatest population losses during that same time period (Augusta, Bangor, Presque Isle and Lewiston) score 5, 5, 1 and 5 points respectively under the category. The commenter specifically questioned why Scarborough scores 1 point under this category when Portland is facing a rental housing crisis and the neighboring communities of South Portland and Westbrook each score 5 points under the category. As a result, the commenter feels there is a discrepancy between this category and the housing priority to develop housing in communities in the State with the highest need and access to transportation, employment, education and services. The commenter requested the supporting data for the needs rankings.

Response: MaineHousing understands the comment to be that the methodology is flawed because it doesn't measure where people in the State want to live. The methodology that has been used for many years in the plan measures the need for affordable housing in communities across the State based on the current population in those communities that qualify for the housing that can be developed under the Low Income Housing Tax Credit Program. The measure itself is reliable and accurate because of continuing refinement of the factors in the analysis and improved data sources over time. The inconsistencies between the population shifts cited from the Portland Press Herald article and the needs rankings are likely because the shifts reflect losses or growth of the total population rather than the segment of the population that can actually be served by the Low Income Housing Tax Credit Program with available resources, i.e. households with income between 40% and 60% of area median income. For example, Scarborough may have been one of the fastest growing communities between 2010 and 2015, but Scarborough has lost 52 family households with income between 40% and 60% of area median income since 2014 (228 households in 2014 to 176 households based on the most current Claritis data). This was a significant enough shift in the targeted population to reduce the score under the needs scoring category from 3 points to 1 point for family housing. The 5 point score for senior housing has not changed. We do not know the reason for the loss of the qualifying family households in Scarborough. It may be that these

households could no longer afford to live in the community, but they may have moved for other reasons. If it is a matter of affordability, Scarborough is considered a high opportunity area under the plan and would be eligible for 5 points because all of the census tracts in Scarborough have an average median income greater than \$55,000. Without more information, it is difficult to consider a change to the methodology at this time. We will explore this more in developing next year's qualified allocation plan. Using service center communities to rank need addresses the housing priority identified by the commenter, because service center communities by definition are the areas in the State with the greatest access to jobs, education, health care, retail, and cultural, recreational and social services.

### **Section 6.C.2. Tax Credit/Market Rate Differential**

Comment: Mr. Peters of Avesta Housing commented that the weight of this category should be higher, because developing tax credit projects in communities where there is a significant difference between the tax credit rents and the market rents improves the housing affordability in the community. The commenter recommended increasing the 1 and 2 point categories to 5 and 10 points. The commenter also recommended changing the benchmark for the affordable rents to the weighted average rent of the tax credit-eligible units in the project rather than the maximum tax credit rents to more accurately reflect the differential.

Response: MaineHousing is not opposed to the commenter's suggestions and will consider them in developing next year's qualified allocation plan. At this point, any of the changes recommended by the commenter would be a substantive change to the qualified allocation plan and would cause a significant delay in the implementation of the plan.

### **Section 6.C.5. High Opportunity Areas**

Comment: Mr. Adelson of the Portland Housing Authority and Portland Housing Development Corporation commented that the theory and methodology underlying the scoria criteria is invalid and will not accomplish the intended result. Mr. Adelson commented that Maine is dominated by rural and smaller communities with low population census tracts, not the segregated communities contemplated HUD's fair housing initiatives, and the criteria will seriously diminish the ability to develop affordable housing in most of the State. The commenter is particularly concerned about the impact of the criteria on the development of housing on the peninsula in Portland, because 7 of the 9 census tracts on the peninsula have an average income below \$40,000 of area median income but all of the students in the lower and higher income neighborhoods in these census tracts attend the same schools and the 7 census tracts contain one of the largest labor centers in the State in which residents of higher income neighborhoods in Portland and surrounding communities work. The commenter said that Portland Housing Authority must address the same issues in allocating project-based vouchers in Portland and that the consultant it hired to analyze the appropriateness of allocating project-based vouchers in these census tracts determined that they met four of the seven exceptions in HUD's voucher site selection standards requiring the de-concentration of poverty and the expansion of housing and economic opportunities. The commenter is concerned that MaineHousing's scoring criteria will exacerbate the segregation of income groups on the Peninsula because gentrification and high-end development in these neighborhoods will force low-income

persons and the working class to move from these neighborhoods unless affordable housing is available. The commenter suggested eliminating the high opportunity scoring criteria from the plan until a better approach can be formulated or reducing the points under the criteria to one point for housing in census tracts with area median incomes of \$55,000 or more.

Response: MaineHousing acknowledges the commenter's concerns, but doesn't have enough information to warrant a change to the plan at this point in the process, and any change to the criteria would delay implementation of the plan. We will work with the commenter and other interested parties to explore this issue further in developing next year's plan.

In the last plan, MaineHousing added economic diversity scoring criteria, which awarded points for mixed-income housing in QCTs and housing in higher-income communities, i.e. communities with average incomes of \$40,000 or more. The criteria was developed in response to a concern by the consultant MaineHousing hired to review the needs scoring criteria that there were certain neighborhoods within the State's urban centers, including the QCTS on the peninsula in Portland, that have high concentrations of low-income persons and affordable housing and that certain criteria in the qualified allocation plan may be contributing to this.

In developing this plan, MaineHousing reviewed the economic diversity criteria and made changes to adjust the weight of the points for projects located in QCTs. Under the prior plan, mixed-income projects in qualified census tracts (QCTs) that were also undergoing community revitalization scored 3 more points than projects located in higher-income communities. This greater weight for projects in QCTs, even if mixed-income and part of a revitalization effort, is inconsistent with HUD's fair housing initiatives. We eliminated this inequity by (1) giving points for the development of new housing in QCTs only if it is part of a community revitalization plan and is mixed-income in an effort to diversify and transform areas of concentrated poverty into areas of new opportunity, and (2) giving equal points to communities with average incomes of \$40,000 or more. At the same time, we decided to include a greater incentive for developing affordable housing in even higher-income communities across the State, i.e. communities with average area median income of \$55,000. Developers are unlikely to develop affordable housing, particularly family housing, in these communities without an incentive even if there is an identified need for the housing in the community, mostly because of local opposition. These communities are more likely to have higher opportunities than other communities in the State, such as better education, employment opportunities and community services and less crime, because of higher average incomes.

There are 96 census tracts in the State that would qualify for 5 points under the new criteria and 139 census tracts in the State that would qualify for 3 points under the criteria. Five census tracts in Portland would qualify for 5 points and 6 census tracts in Portland would qualify for 3 points. As mentioned above, all of the census tracts in Scarborough would qualify for 5 points.

New mixed-income housing and the preservation of existing housing as part of revitalization efforts in the 7 census tracts on the Peninsula (which are QCTs) would qualify for 3 points, an outcome that seems consistent with certain criteria in the HUD exceptions to which the commenter referred. Even new housing on the Peninsula that doesn't qualify for these points would likely score well under the smart growth criteria under the plan, in part because the Peninsula is considered



downtown and because of its proximity to employment opportunities and other amenities important to daily living on the Peninsula, whereas housing in certain higher-income communities may not score as well.

**FISCAL IMPACT OF THE RULE:** The 2017 State ceiling of low-income housing tax credits is projected to raise approximately \$29,500,000 of private investor capital. The private investor capital generated by the low-income housing tax credits will be used to develop affordable housing for low-income persons. The rule will not impose any costs on municipalities or counties for implementation or compliance.

**EFFECTIVE DATE:** August 7, 2016