



Rental Loan Program

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

In carrying out this mission, MaineHousing will provide leadership, maximize resources, and promote partnerships to develop and implement sound housing policy.

October, 2007

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I. Introduction

MaineHousing (Maine State Housing Authority) is pleased to offer the Rental Loan Program (*Program*). The primary goal of this Program is to create and preserve multi-family residential rental housing in the State of Maine to benefit persons.

MaineHousing also actively seeks to preserve federally-assisted housing, such as HUD 202, HUD 811 and Rural Development 515 properties, that is at risk of being lost due to the expiration of federal rental assistance contracts, physical or financial deterioration, and/or owners opting out of federal housing programs.

To achieve the goals of this Program, MaineHousing will make various resources available under this Program or in conjunction with the Program from time to time, including without limitation, the following resources:

- taxable bond proceeds;
- private activity tax-exempt bond proceeds with or without “automatic” low income housing tax credits;
- 501(c)(3) or governmental unit tax-exempt bond proceeds;
- low income housing tax credits; and
- subsidy resources.

MaineHousing attempts to maximize the benefit of these limited resources by combining the resources and encouraging applicants to seek other non-MaineHousing resources.

Amortizing loans, funded with the proceeds of taxable or tax-exempt bond proceeds, for developments that do not need MaineHousing subsidy are available on a walk-in basis.

MaineHousing allocates competitive low income housing tax credits separately under MaineHousing’s Low Income Housing Tax Credit Program. All applicants who are awarded low income housing tax credits on a competitive basis or are eligible for “automatic” low income housing tax credits must comply with the applicable Qualified Allocation Plan in addition to any applicable requirements described in this program guide.

MaineHousing may make various discretionary subsidy resources available from time to time to be used in conjunction with other resources available under this Program and/or the Low Income Housing Tax Credit Program. These subsidy resources will be offered under separate requests for proposals. Unless otherwise specified in the request for proposals, all developments are subject to the requirements and guidelines in this Program.

Please call (207) 626-4600 and ask for the Development Division if you have any questions about the Program.

II. Process

- A. Developer receives Rental Loan Program Guide and Application from MaineHousing.
- B. Developers without prior experience with MaineHousing must schedule a meeting with MaineHousing staff. At that time, the Rental Loan Program features and process, as well as project specifics, will be discussed in detail.
- C. Developer submits a complete application, including an environmental assessment questionnaire and the nonrefundable \$1,000 application fee, to MaineHousing. An incomplete application will be returned to developer with a written explanation of the deficiencies.
- D. MaineHousing will notify officials of the community in which the proposed development will be located of MaineHousing's receipt of a complete application.
- E. MaineHousing will send developer a notice of acceptance for further processing (*Notice to Proceed*) within 45 days of receipt of a complete application. The Notice to Proceed sets forth the requirements and information required by MaineHousing to fully process the application, such as completion of plans and specifications, final pricing, appraisal and environmental reports, and other funding commitments, etc., and identifies certain timeframes for satisfying the requirements.
- F. Developer and its development team (design professionals, etc.) will meet with MaineHousing Construction Services staff to review the proposed development.
- G. Developer may be required to submit additional documentation at any time during the processing of the application.
- H. Upon receipt of all required information and documentation, MaineHousing staff finishes processing the application and develops a funding recommendation. The funding recommendation is reviewed by MaineHousing's finance committee which makes a final recommendation to MaineHousing's Director. MaineHousing's Director makes the final decision about the funding recommendation.
- I. If funding is approved, MaineHousing will issue a commitment for funding. If funding is rejected, Developer will be notified in writing specifically identifying the reason(s) the application was rejected.
- J. Upon MaineHousing's receipt of the commitment letter as accepted by developer and payment of the \$2,000 nonrefundable commitment fee, MaineHousing will prepare for construction loan closing or loan closing if MaineHousing is providing construction and permanent financing (so-called one-write financing) for the acquisition and rehabilitation of existing housing.
- K. Any extension of the deadlines included in the commitment letter may result in an adjustment of the note rate to the then current program rate.

- L. After developer satisfies all conditions and requirements of the commitment letter to be satisfied as of construction loan closing, MaineHousing will authorize commencement of construction of the development.
- M. If MaineHousing is providing one-write financing, MaineHousing will advance funds for the rehabilitation of the development pursuant to a rehabilitation escrow agreement.
- N. During construction of the development, MaineHousing will conduct regular inspections and attend requisition meetings. MaineHousing must approve all changes to the construction budget and the design and construction of the development.
- O. After the construction of the development is completed, the development is ready for occupancy and developer satisfies all conditions and requirements of the MaineHousing commitment letter, a permanent loan closing will occur.
- P. If MaineHousing is providing one-write financing, MaineHousing will close out the rehabilitation escrow and disburse any unspent funds in the escrow in accordance with the terms of the rehabilitation escrow agreement after construction of the development is completed and the developer satisfies all of the conditions and requirements of the rehabilitation escrow agreement
- Q. MaineHousing staff will monitor the development during the term of the MaineHousing financing and restrictive covenants.

III. Sources of Funding

A. Combination of Available Resources

MaineHousing attempts to maximize the impact of the limited resources it has available by combining resources and encouraging applicants to seek other non-MaineHousing sources of funding.

B. Tax-exempt Bond Financing

MaineHousing may issue tax-exempt bonds under Section 142(d) or Section 145 of the Internal Revenue Code (*Code*) as a source of funding under the Program. The Code imposes certain requirements and limitations on the use of tax-exempt bond proceeds. There may be additional requirements under the Program.

1. Exempt Facility Bonds - Section 142(d) of Code

a. Use of proceeds. The Code imposes certain restrictions on the use of the proceeds of bonds issued under Section 142(d) of the Code including, without limitation, the following restrictions. Proceeds may be used for new construction, acquisition and rehabilitation, and rehabilitation of qualified residential rental projects. Refinancing and acquisition of existing buildings without rehabilitation are not eligible.

At least 95% of bond proceeds must be used for qualified costs. Qualified costs generally include costs that are chargeable to the project's capital account for federal income tax purposes and are incurred no earlier than 60 days prior to the date of official action, described in Section B.4. below. Qualified costs also include preliminary expenditures (such as architectural, engineering, surveying and soil testing), provided that no more than 20% of proceeds can be used for preliminary expenditures incurred more than 60 days prior to the date of official action. Costs associated with commercial space (i.e. space that is not functionally related and subordinate to the residential use) are not qualified costs.

The acquisition of land and existing property is also limited by the Code. Less than 25% of bond proceeds can be used for the acquisition of land. The acquisition of existing buildings and related equipment is eligible, provided that qualified rehabilitation expenditures equal to at least 15% of the portion of the cost of acquisition of the building(s) and related equipment financed with proceeds are incurred within 2 years of the later of the date of acquisition or the date of issuance of the bonds. Qualified rehabilitation expenses generally include costs chargeable to the project's capital account in connection with the rehabilitation of the building(s) or related equipment that is an integral part of the project.

A development that is financed with the proceeds of bonds issued under Section 142(d) of the Code may also be eligible for "automatic" low-income housing tax credits, provided that more than 50% of the aggregate basis of the development, including land, is financed with tax-exempt bonds and is in compliance with the Qualified Allocation Plan in effect at the time. Only the portion of the project that qualifies for low income housing tax credits is eligible for 4% automatic low income housing tax credits.

b. Qualified Residential Rental Project. The proceeds of bonds issued under Section 142(d) of the Code may only be used for qualified costs in connection with qualified residential rental projects.

A qualified residential rental project may contain one or more buildings. All of the buildings must be owned by the same person or entity for federal tax purposes and financed pursuant to a common plan of finance.

All of the units in the building(s) must be of similar quality and type of construction. Each unit in the building(s) must be a complete living unit, that is the unit contains separate (from other units) and complete facilities for living, sleeping, eating, cooking and sanitation which may be served by centrally located equipment such as air conditioning and heating.

The building(s) may contain other facilities, provided the facilities are functionally related and subordinate to the project. Functionally related and subordinate facilities must be of a character and size commensurate with the size and character of the overall project and must be used exclusively by the residents for which no charge in excess of the actual cost of operation is assessed. They include without limitation parking, laundry, community space, heating and cooling systems, trash disposal equipment and units for a resident manager and maintenance personnel.

The building(s) and related facilities must be located on a single tract of land, which is any contiguous tract or parcel of land which may be separated by a road, stream or street. If the buildings constituting the project are located on non-contiguous parcels of land, each parcel of land with the building(s) situated thereon is considered a separate project which must comply with the requirements of the Code.

c. Occupancy requirements. Section 142(d) of the Code contains certain minimum occupancy requirements. At a minimum, at least 40% of the units in the project must be occupied by persons with income at or below 60% of area median income or at least 20% of units in the project must be occupied by persons with income at or below 50% of area median income, except deep-rent skewed projects as described in the Code, during the qualified project period. The qualified project period ends on the later of the term of the tax-exempt bonds, the term of any project-based rental assistance for the project and 15 years. Area median income and income determinations are determined in accordance with Section 8 of the United States Housing Act of 1937, as amended. The Program requires deeper affordability for a longer period of time than Section 142(d) of the Code.

If a project includes more than one building, the owner shall satisfy the applicable affordability requirements (including the Program requirements if more restrictive) with respect to each building during lease-up until the project as a whole satisfies the applicable affordability requirements.

If a project is located on scattered or non-contiguous sites, each site is considered a separate project and must comply with the applicable affordability requirements.

Residents of low income units whose household was income-eligible at the time of initial occupancy but whose household income has risen above the applicable income limit at

recertification continue to be treated as a low-income household until such time as their actual household income exceeds 140% of the applicable income limit. If the actual household income exceeds the current year's applicable income limit for that household size by greater than 140%, the over-income unit continues to be counted as a low-income unit provided it remains rent-restricted and the owner leases the next available unit of comparable or smaller size in the project to a qualifying low income household (known as the Next Available Unit Rule). The Next Available Unit Rule for low income housing tax credit projects is similar except that it is applied on a building-by-building basis rather than on a project-wide basis.

All units in the project must be rented or available for rental on a continuous basis and must be available to the general public. All units in the project must be used on other than a transient basis, that is the units have an initial lease term of 6 months or greater.

2. Qualified 501(c)(3) Bonds – Section 145 of the Code

The proceeds of tax-exempt bonds issued under Section 145 of the Code and made available under this Program are subject to the same limitations as the proceeds of bonds issued under Section 142(d) of the Code, except that the 25% limitation on land acquisition costs and the limitations on the acquisition of existing properties (including the 15% rehabilitation requirement) do not apply.

The owner of the project must be a non-profit organization that is tax-exempt under Section 501(c)(3) and is not a private foundation under Section 509(a). The owner must be organized or operated exclusively for purposes that are charitable and have as one of its charitable purposes the provision of affordable housing for low income persons.

Section 145 of the Code limits the total amount of all outstanding 501(c)(3) bonds from which a test-period beneficiary (an owner or a principal user or a related person, i.e. persons under common management or control) can benefit to \$150,000,000 during a 3 year period, beginning on the later of the date of issuance of the bonds or the date the project is placed-in-service.

The project and the bond proceeds cannot be used directly or indirectly in or for any unrelated trade or business. The owner of the project shall not be a party to any management or service contracts with a non-Section 501(c)(3) organization or nongovernmental person with respect to the project, except contracts which comply with the safe harbor requirements in Revenue Procedures 97-13 and 2001-39.

3. Governmental Bonds – Section 145 of the Code

The proceeds of tax-exempt bonds issued under Section 145 of the Code and made available under this program are subject to the same limitations as the proceeds of bonds issued under Section 142(d) of the Code, except that the 25% limitation on land acquisition costs and the limitations on the acquisition of existing properties (including the 15% rehabilitation requirement) do not apply.

The owner of the project must be a governmental unit (a state or local government and political subdivisions thereof) or own, use and operate the project “on behalf of” a governmental unit (includes public housing authorities). The owner must have as one of its governmental purposes the provision of affordable housing for low income persons.

As with 501(c)(3) bond proceeds, the project and the proceeds cannot be used directly or indirectly in or for any unrelated trade or business. Also, the owner of the project shall not be a party to any management or service contracts with a non-Section 501(c)(3) organization or nongovernmental person with respect to the project, except contracts which comply with the safe harbor requirements in Revenue Procedures 97-13 and 2001-39.

4. Inducement Resolution

MaineHousing issues an inducement resolution as its “official action” under the Code. Costs incurred by the developer prior to the issuance of the inducement resolution may not be qualified costs that can be funded with tax-exempt bond proceeds.

The application contains a request for inducement, which must be completed by the applicant so that MaineHousing can issue the inducement resolution. It is important that the information provided in the request for inducement be as accurate as possible regarding the site and the proposed ownership structure. To provide the greatest future flexibility, all current or potential partners (corporate or individual), parent corporations, subsidiary corporations, etc. that may potentially participate in the ownership entity should be named in the request for inducement. After submitting the request for inducement, the applicant must notify MaineHousing immediately if there are any changes in the information contained in the inducement resolution.

The inducement resolution should be issued early in the development process to qualify expenditures made during the development process. The inducement resolution is not a commitment to process an application or provide funding.

5. Owner’s Tax Certification

A developer must complete an owner's tax certification in a form acceptable to MaineHousing. The appropriate form varies with the type of tax-exempt bond proceeds, i.e. exempt facility bonds issued under Section 142(d) of the Code or 501(c)(3) or governmental bonds issued under Section 145 of the Code. MaineHousing will provide the appropriate form in the developer’s application materials.

The developer must complete a portion of the tax certification by construction loan closing which requires certain information about the development, including the eligibility of the development as a qualified residential rental project, the expected use of bond proceeds and other information required by MaineHousing in connection with the issuance of the bonds. At permanent loan closing, the developer must complete and submit an update to the tax certification which provides certain information about the completed development and the actual use of bond proceeds.

To avoid delays in completing the owner's tax certification, applicants should be aware that portions of the certification are completed by the developer's accountant and architect at the time of construction loan closing and after completion of the development.

C. Taxable Bonds

Proceeds from taxable bond are used mostly in conjunction with an allocation of low income housing tax credits under the competitive Low Income Housing Tax Credit Program. MaineHousing may also use taxable bond proceeds to finance a development if MaineHousing determines that the development does not satisfy the requirements for tax-exempt financing or if MaineHousing, in its sole discretion, wants to conserve its tax-exempt bonding authority.

D. Subsidy Resources

Any project receiving subsidy is subject to the regulatory requirements associated with the subsidy resource.

1. Federal HOME Funds

Maine Housing may make Federal HOME funds available under or in conjunction with the Program. A development funded with Federal HOME funds must comply with the applicable requirements set forth in the Cranston-Gonzalez National Affordable Housing Act of 1990, 42 U.S.C. §12701 *et seq.*, the HOME Investment Partnership Program Rule, 24 C.F.R. Part 92, and HUD guidelines and interpretations regarding Federal HOME, all as may be modified from time to time. A summary of current Federal HOME requirements is set forth in Exhibit A to this guide.

MaineHousing is required to set aside a certain portion of its annual Federal HOME allocation for projects that are owned, sponsored or developed by Community Housing Development Organizations (*CHDO*). If the owner is a qualified CHDO, MaineHousing may fund the development with Federal HOME funds that MaineHousing has set aside for CHDOs in accordance with this requirement. The developer must agree to maintain its status as a certified CHDO during the term of any financing funded with Federal HOME funds and comply with any additional requirements under Federal HOME applicable to CHDOs.

2. Other Subsidy Funds

Other subsidy sources include, but are not limited to:

- State HOME Funds;
- Proceeds of General Obligation Bonds; and
- MaineHousing-generated subsidies.

When MaineHousing makes subsidy available under or in conjunction with the Program, it will identify the source of subsidy in an announcement of funding availability.

MaineHousing will also identify the source of subsidy used in connection with a specific development in the Notice to Proceed and any financing commitment.

When subsidy is offered, the amount of subsidy available to each development may be subject to per unit and/or per project limitations which will be outlined in the specific subsidy offering. Regardless of any per unit and/or per project limitations, the amount of subsidy awarded to a development will not exceed the amount necessary to achieve financial feasibility. Subsidy loans will be structured as 0% deferred payment loans with payment due at the earlier of default, sale or transfer of the development, repayment of any MaineHousing amortizing loan made in connection with the development, or 30 years.

Subsidy will be allocated to projects in the most efficient manner possible. To that end, MaineHousing staff will consider equity from the sale of low income housing tax credits, interest-bearing amortizing debt structured in accordance with this Program, and the need for subsidy in the approval process. MaineHousing reserves the right to adjust the financing structure of any proposal to achieve the most efficient use of subsidy.

3. Federal HOME Match

Certain sources of funding available under this Program and other non-MaineHousing sources of funds are eligible as match under Federal HOME. In order to satisfy MaineHousing's match requirements under Federal HOME, MaineHousing reserves the right to claim match in projects with funding sources that are eligible as match under Federal HOME. If MaineHousing declares a project as Federal HOME match eligible, the development must comply with the following Federal HOME requirements:

- Determination of resident income eligibility in accordance with Federal HOME;
- Affordability requirements and rent limitations as determined in accordance with Federal HOME;
- One year lease with terms for resident protection;
- Property inspection standards in accordance with Federal HOME; and
- Annual reporting requirements and monitoring procedures to ensure Federal HOME program compliance.

These requirements are more specifically set forth in the HOME Investment Partnership Program Rule, 24 C.F.R. Part 92 and applicable HUD guidance and interpretations, all as may be modified from time to time. See Sections A, B, E and J in Exhibit A for a summary of the applicable Federal HOME requirements.

IV. Basic Requirements

A. Program Eligibility

Funding made available under the Program may be used for the acquisition, rehabilitation, construction and refinancing of multi-family residential rental housing in the State of Maine subject to the requirements set forth in this guide and any regulatory restrictions associated with the particular funding sources. For example, refinancing is not an eligible use of tax-exempt bond proceeds.

1. Rental Housing.

General

Developments funded under this Program must be residential rental housing which is located in the State of Maine and contains 5 or more units and at least one parking space for each unit. The development must be maintained as rental housing, be for year-round, non-transient occupancy and be available to the general public during the applicable affordability period.

Mobile home parks are not eligible for financing under the Rental Loan Program.

Adaptive Re-use and New Construction

MaineHousing will consider the addition of new units through conversion of non-residential property on a case-by-case basis and only when warranted by community revitalization or historic preservation opportunities. New construction will be considered when there is a clear and demonstrated need for new units as evidenced by a market study. Leveraging community resources, the likelihood of an adverse impact on the existing market for similar units and the overall benefit to potential residents are important factors in MaineHousing's decision to finance the conversion of non-residential property and new construction.

Heat Conversions in Existing Housing

MaineHousing generally requires developers of existing housing that includes electrically-heated (electric resistance heat) residential rental units to convert the heating system to one that utilizes fuels other than electricity. MaineHousing strongly encourages the exploration of alternative heating sources. MaineHousing understands that there may be circumstances in which MaineHousing may, for the overall good of the population served, consider alternatives other than a complete heat conversion. MaineHousing will consider alternatives on a case-by-case basis upon written request from the developer, which request shall include, at a minimum, factual information and analysis related to the existing system(s) conditions and performance, competing needs of the proposed development and the circumstances warranting an alternative approach. Such circumstances might include (i) inferior existing thermal or structural conditions to such a degree that failure to correct such conditions first, would render any conversion minimally effective, or (ii) evidence that a heat conversion

would not provide significant environmentally sound results and/or reasonable financial returns.

Displacement and Relocation

MaineHousing strongly discourages the displacement of households and will require that any unavoidable displacement or temporary relocation be addressed in accordance with the MaineHousing's Relocation/Displacement Policy. A summary of the policy is set forth in **Exhibit B** to this Guide. Developers should discuss proposals that may have relocation issues with MaineHousing staff as early in the development process as possible in order to minimize displacement and unnecessary relocation costs.

2. Affordability.

The applicant must comply with the affordability requirements associated with the funding source, this Program and any other MaineHousing program under which the applicant has applied, for example, the Low Income Housing Tax Credit Program and/or a subsidy offering made in conjunction with this Program. Units that are subject to affordability requirements and units which are voluntarily income and rent restricted by the owner may be referred to as the assisted units for purposes of this guide.

Minimum Affordability

Unless otherwise stated in specific requests for proposals, the minimum requirements are as follows:

- **For properties currently assisted with project-based rental assistance: 50% of the units at 50% AMI, and the balance at 60% AMI and Market.**
- **For all other residential rental properties: 20% of the units at 50% of AMI and the balance at 60% AMI and market.**

In calculating the required number of affordable units, calculations are rounded upwards to the next whole number.

If units are currently subject to affordability restrictions, the level of affordability and the number of low-income units will not be reduced.

The affordability mix and initial rent levels of a project proposing market rate units will be determined based upon the information contained in a market study meeting the guidelines described in Section IV. E. below. MaineHousing will consider greater affordability if it is required or supported by non-MaineHousing sources of leveraged funds or will result in a more efficient use of subsidy.

The owner must comply with the affordability requirements for at least thirty (30) years, or as otherwise specified in special program offerings made in conjunction with this Program.

If a development is subject to project-based rental assistance from Rural Development or HUD or other entity providing project-based assistance, the owner must comply with the associated affordability and rent limitations under the rental assistance or housing assistance

payments agreement. MaineHousing will require the owner to accept any extensions and renewals of the assistance and any comparable replacement assistance or subsidy program offered.

MaineHousing will enforce compliance with the affordability requirements and the rent restrictions in the following section through restrictive covenants, which will be recorded in the appropriate registry of deeds, run with the real estate and bind all subsequent owners.

3. Rent Levels.

All assisted units must be rent-restricted. A unit is rent-restricted if the gross rent paid by the resident is at or below the applicable rent level specified in MaineHousing's published Rent Schedule (See MaineHousing website www.mainehousing.org for current schedules) for the geographic area where the project will be located. The Rent Schedule also includes the income limits, adjusted for household size, published by HUD annually, which are used to determine income eligibility. The maximum rents are adjusted by the number of bedrooms in the unit.

Maximum rents will be reduced by an estimate of any resident-paid utilities. The cost of resident-paid utilities must be consistent with the calculation of utility allowances published annually under the HUD Section 8 Existing Program.

Rents for units in existing rental housing must be approved by MaineHousing. Unless authorized by MaineHousing, applicants should not increase the rent for units currently occupied by income eligible residents. The initially approved rents must remain in effect for a period of 12 months after the date of permanent loan closing or completion of rehabilitation.

Future maximum rent levels for assisted units will be calculated in this same manner, based upon median income figures published by HUD. All rent adjustments must be approved by MaineHousing prior to implementation. The developer must provide prior written notice of all rent increases to residents in accordance with applicable state and federal laws.

In the event a property is receiving rental subsidy through project-based vouchers, the rent shall not exceed the applicable maximum Low Income Housing Tax Credit rent.

4. Compliance with Laws.

The development must comply with all applicable federal, state and local laws, regulations, ordinances and codes, including without limitation, those relating to environmental matters, land-use and zoning, labor, civil rights, fair housing, accessibility, relocation, building and habitability.

The development must comply with the requirements of the Maine Housing Authorities Act, 30-A M.R.S.A. § 4701, *et seq.* and MaineHousing Rule Chapter 29, *Multi-family Development and Supportive Housing Loans and Grants*, all as same may be amended from time to time. The development must also meet the requirements of the particular funding source(s) used to finance the development.

B. Developer Eligibility

Owner Developer The applicant must demonstrate previous successful experience in the development of projects of similar scale and complexity. In addition, the applicant must possess a satisfactory credit history and demonstrate adequate financial capacity to own and operate the project.

Management Agent The management agent must be able to demonstrate successful experience in managing similar types of affordable properties. Experience with MaineHousing-financed properties or other federally-assisted properties is desirable. The applicant is encouraged to meet with a MaineHousing Asset Management Division representative during the development process. A written management plan, management agreement, management agent entity profile, marketing plan, resident selection policy and lease-up schedule for the property are subject to review and approval by MaineHousing's Asset Management Division prior to closing.

MaineHousing reserves the right to require a professional development and/or management consultant to assure completion and operation of the project as proposed. When a newly-formed entity is the proposed applicant, MaineHousing will review the history of each individual, partner or member and principal in the entity. MaineHousing may require the following information.

Agency organizational leadership

- Partnership history
- Professional relationships with contract service providers

Resident relations

Documentation of resident files

- Rent records
- Lease records

Rent collections

- Timeliness

Maintenance

- Physical appearance of structure/units
- Use of capital improvement schedules
- Timeliness of response to resident complaints

History of meeting project expenses

- Timeliness of meeting payments
- Use of escrows for larger expenditures

Project accounting

- System capacity

MaineHousing will review corporate and personal financial statements of applicant entities, guarantors, partners or members and principals. MaineHousing reserves the right to require and review tax returns from each of the foregoing. In making its credit determination, MaineHousing will consider such factors as the adequacy of working capital, and the

liquidity, net worth and credit history of the ownership entity, its affiliates and principals. For non-profit organizations, the history of audit findings will be considered. State Form 990 may also be required.

Ownership entities must be duly organized, validly existing and in good standing under the laws of the jurisdiction in which they are organized and, if different from the State of Maine, be authorized to do business and in good standing under the laws of the State of Maine.

No applicant will be accepted, processed, or approved by MaineHousing if the applicant or any affiliate or principal of the applicant, or any entity controlled by the applicant or affiliate or principal, (i) in the last six months has been declared in default or has been 60 days or more delinquent on any loan with MaineHousing unless an approved payment or workout plan is in place and in good standing or (ii) has ever been the owner of a MaineHousing-financed project upon which MaineHousing has foreclosed a mortgage interest.

Developers and contractors must not be presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in federal and state housing programs and may not have had a professional license to provide the nature of the services they will provide for the project suspended or revoked.

State and federal law and MaineHousing's policy on conflicts of interest prohibit current employees or commissioners from working on certain transactions with applicants with whom they have a financial or personal relationship, prohibit past MaineHousing employees from working on certain transactions, and prohibit persons who exercised responsibilities in connection with certain federal funds from benefiting from those funds. Accordingly, applicants for funding under MaineHousing's programs must complete a Conflict of Interest Disclosure Form and comply with the law and policy and any requests by MaineHousing to ameliorate potential or perceived conflicts of interest.

C. Mortgage Security.

Generally, MaineHousing financing must be secured by a first lien mortgage and security interest in the land and improvements, a general assignment of leases, rents and contracts, a UCC security interest in all fixtures and personal property of the development, a collateral assignment of capital contributions, a security interest in all accounts, reserves and escrows established in connection with the development, indemnifications and other collateral required by MaineHousing in its sole discretion. If the development is or will be located on leased land, MaineHousing will require a first lien leasehold interest and a subordination of the owner's fee interest in the land. If MaineHousing is providing amortizing debt and certain sources of subsidy, such as Federal HOME funds, the security for the subsidy maybe in a junior position to the security for the amortizing debt.

MaineHousing may cross-default and cross-collateralize funding under this Program with other existing or future financing from MaineHousing to the developer or a related entity. Also, MaineHousing may require guaranty(s) acceptable to MaineHousing to securing funding made in connection with developments, for example if a project is owned by a corporation.

No other encumbrances, liens, security interests or mortgages will be permitted on the development and any related personal property without the prior written consent of MaineHousing. Any person or entity making a loan in connection with the development, whether secured or unsecured, must enter into a subordination and standby agreement on terms and conditions acceptable to MaineHousing.

If MaineHousing is not the primary mortgage lender, MaineHousing may agree to a junior security position with respect to its subsidy, but all MaineHousing amortizing loans must be in a first lien security position. If MaineHousing has a junior security position, MaineHousing will require an intercreditor agreement with the senior lender which gives MaineHousing at least a 60-days written notice of and opportunity to cure any default of the senior loan and prior written approval of all future advances under the senior loan.

Funding under this Program will be recourse debt unless non-recourse debt is required in connection with the low income housing tax credit. MaineHousing debt and subsidy may not be prepaid and is not freely assumable. A 3% prepayment penalty applies to any involuntary prepayments.

D. Construction Period Lending:

All applicants must secure construction period financing from a private lender with the legal authority to lend in the State of Maine, except as authorized by MaineHousing. An applicant must submit a letter of interest, indicating the bank's receipt of an active application and estimating the rate and terms of the construction loan, with the application to the Program.

In all cases, developers of new construction projects must obtain construction financing from a private lender. However, proposals for acquisition with little or no rehabilitation may, at MaineHousing's discretion, be financed directly by MaineHousing. Factors involved in MaineHousing's determination whether to offer combined construction/permanent financing (referred to herein as one-write loans) include:

- total cost of planned improvements;
- total cost of improvements as percentage of total development cost;
- scope of work;
- scope of design professional involvement;
- number of trades involved in the project;
- safety of residents;
- potential disruption to rental income; and
- proposed project delivery method (bid, construction management, etc.)

The developer should determine whether MaineHousing will provide construction period financing prior to submitting its application to the Program. MaineHousing will administer and advance one-write loan proceeds through a rehabilitation escrow agreement.

MaineHousing, in its sole discretion, may use the proceeds of tax-exempt bonds issued pursuant to Section 142(d) of the Code to purchase a participation in construction loans made by financial institutions in the State for the development of projects that are eligible

for low-income housing tax credits pursuant to Section 42(m) of the Code and the Low Income Housing Tax Credit Program. A lead financial institution may not sell any additional participation interests in a construction loan in which MaineHousing has purchased a participation interest without MaineHousing's prior written consent.

MaineHousing's statute requires MaineHousing to, at a minimum, use a financial institution as an escrow agent in connection with construction loans to for-profit entities.

MaineHousing's use of tax-exempt bond proceeds to provide construction financing, including purchasing a participation interest in a construction loan, is subject to the following limitations.

Limitation on Interest: The interest rate imposed by a financial institution making or participating in a construction loan in which MaineHousing has purchased a participation may not exceed the Wall Street Journal Prime Rate plus two percent (2%).

Limitation on Fees and Charges: Any financial institution making or participating in a construction loan in which MaineHousing is participating may impose fees in connection with the construction loan or its participation provided that such fees do not exceed the usual and customary fees and charges imposed by financial institutions in the state.

MaineHousing may require that the following fees be imposed in connection with its participation in a construction loan:

Application Fee:	\$1,000
Commitment Fee:	\$2,000
Financing Fee:	not to exceed 3%
Late Fee:	6%

Financial institutions making or participating in a construction loan in which MaineHousing is purchasing a participation may charge application fees, commitment fees, origination or financing fees, document preparation fees, legal fees, construction review fees and construction management or escrow fees, late charges, and prepayment charges. The aggregate of all fees charged by the lead and all participating financial institutions may not exceed 3% of the total construction loan, unless approved by MaineHousing in writing. MaineHousing will review the reasonableness of all fees charged in connection with each development.

E. Underwriting Criteria:

MaineHousing generally uses the following underwriting criteria. Standards may vary to account for specific market conditions or the unique characteristics of a project.

<i>Maximum Loan to Value (LTV)</i>	MaineHousing amortizing loans may not be greater than 85% of the lesser of the appraised value or the total development cost.
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The total (secured and unsecured) debt approved for any project, exclusive of subsidy, shall not exceed 100% of the appraised value.

Mortgage Insurance

MaineHousing may require mortgage insurance or other credit enhancement when a loan exceeds 70% LTV. MaineHousing's judgment will be based in part on an assessment of the project and local market conditions.

Appraisal

Appraisals must conform to MaineHousing's appraisal guidelines and name MaineHousing as an intended user. Generally, once a project receives a notice to proceed, MaineHousing commissions an appraisal. The selected appraiser will provide an estimate of cost for the appraisal. This amount, which will vary based on the size and complexity of the proposal, will be collected from the developer as an appraisal fee deposit. The appraiser will not begin the appraisal process until MaineHousing has received the deposit from the developer. Upon completion of the appraisal report and the receipt of the final invoice, any balance due will be collected from the developer prior to the issuance of a financing commitment. In the event that the appraisal fee deposit is greater than the final invoice, an immediate refund will be made to the developer.

MaineHousing will accept an appraisal commissioned by a construction lender if it names MaineHousing as an intended user and conforms to MaineHousing's appraisal guidelines.

Interest Rate

Unless otherwise stated in a specific offering, the interest rate will be set when the commitment letter is issued, using the following guidelines:

- "The Bond Buyer" Revenue Bond Index plus 225 basis points for taxable loans and 125 basis points for tax-exempt loans.
- Developments that are currently MaineHousing-financed will use the rate applicable to the project under MaineHousing's current loan modification programs.

Contact a Multifamily Loan Officer for current rates.

Loan Term

30 years with full amortization

Amortization

MaineHousing may consider a 40-year amortization with a balloon payment due at the end of year 30 or interest only payments for the first 15 years with a 30-year or 40-year amortization beginning in year 16 and a balloon payment due at the end of year 30.

Debt Service Coverage (DSC)

MaineHousing requires 1.10 DSC for projects with project-based rental assistance and 1.15 DSC for all other projects. MaineHousing may adjust this ratio to reflect the inherent characteristics of the

project and the market involved. The DSC will include any subordinate amortizing debt.

Cash Flow

Projects with amortizing debt should demonstrate cash flow of at least \$450 per unit.

Distribution

Distributions are subject to MaineHousing's determination of surplus cash, that any available surplus cash is not needed for immediate or future operating and capital needs of the project and that the developer is in compliance with all loan documents. Distributions are made after the end of the fiscal year.

Distributions to non-profits are subject to MaineHousing's policy on distributions to non-profits.

*MaineHousing
Loan Fees*

All fees are mortgageable items and may be included in the development budget as project costs. Fees are non-refundable and include:

- Application fee of \$1,000 due with application
- Commitment fee of \$2,000 due upon the applicant's acceptance of MaineHousing's financing commitment
- Financing fee equal to two percent (2%) of MaineHousing's bond funded mortgage due at construction loan closing
- Additional fees if MaineHousing is participating in a construction loan (see Section IV. D, above for details)

Additional fees associated with the low income housing tax credit are set forth in the Low Income Housing Tax Credit Program.

MaineHousing may waive the application fee when an application is modified and resubmitted provided the site is the same.

*Developer Fee
& Overhead*

A developer will be allowed a fee of up to 10% of acquisition costs plus 15% of the housing development costs, excluding developer fees. MaineHousing may require the developer to loan a portion of the fee to or a defer payment of a portion of the fee for the benefit of the project.

*Operating Deficit
Escrow*

MaineHousing will require an initial operating deficit escrow account (ODE) based on the project absorption rate and market factors. The ODE will be included in the development budget and funded out of equity.

The ODE will be held by MaineHousing, or its designated depository. MaineHousing will be the sole signatory on and have sole control of the account.

MaineHousing will determine the amount of the ODE. The initial funding amount for acquisition and rehab projects with stable occupancy will be no less than 3 months of debt service, reserve funding, and operating expenses. The initial funding amount for new construction and conversion of non-residential property will be no less than 6 months of debt service, reserve funding, and operating expenses.

MaineHousing will determine the length of time it will be held. For projects receiving low income housing tax credits, the ODE shall be held for a minimum of 15 years, at the end of which period the balance in the ODE shall be transferred to the replacement reserve account. The ODE will be administered in accordance with an operating deficit escrow account agreement executed at permanent loan closing.

At MaineHousing's discretion, a portion of the ODE may be dedicated to a rent-up reserve account to cover operating shortfalls during the lease-up period. Any balance remaining in the lease-up reserve after the project achieves 95% occupancy will be transferred to the ODE.

Rent-Up Reserve

A rent-up reserve may be required for new construction and acquisition and rehab of vacant properties to cover operating shortfalls during the lease-up period of the project.

*Tax & Insurance
Escrow (T&I)*

All properties will be underwritten reflecting the full tax liability based upon the local valuation and mil rate.

Prior to permanent loan closing, developer must submit evidence of payment of a full year's property insurance. The cost of this insurance should be included as a development budget cost. The terms and scope of coverage must be acceptable to MaineHousing and conform to MaineHousing's Insurance Standards attached as **Exhibit C**. This cost is not reimbursable from the operating revenue of the project. In addition, any outstanding tax liability must be paid in full prior to the permanent loan closing.

A tax and insurance escrow will be established prior to the permanent loan closing. MaineHousing will determine the initial funding amount of the escrow. MaineHousing may require a pro-rata portion of the annual tax liability be funded at the loan closing depending on the municipality's tax period and the date of the loan closing.

Replacement Reserve

A replacement reserve account will be established and funded at the time of loan closing. Additional reserve funding will be required from project revenues on a monthly basis.

The initial and on-going levels of funding will be determined on a case-by-case basis. In general, the initial funding will be equal to 1% of cost of structures.

Annual replacement reserve funding will be initially calculated at \$300 per unit per year for new construction and \$400 per unit per year for rehabilitation projects.

Reserve funding will increase annually in subsequent years by 3% per year on the first day of the project's fiscal year. MaineHousing reserves the right to adjust the per unit reserve contribution at any time during the term of the loan.

Project Reserve Accounts All project reserve accounts (including the tax and insurance, rent-up and replacement reserve) will be established and maintained at a financial institution acceptable to MaineHousing. Typically, MaineHousing will be an either/or signatory on the accounts, but may require sole signatory status on these accounts. At any time during the term of the loan, MaineHousing may become a sole signatory on one or more of the accounts based on its review of the project or in the event of loan default. MaineHousing will require the developer and any depository or financial institution holding the accounts to enter into a deposit account control agreement.

Operating Expenses MaineHousing has established minimum underwriting standards and compares prospective projects to MaineHousing's existing portfolio of projects. To establish operating expenses a comparison will be made to management and operating data available from MaineHousing's management database of comparable projects.

Operating expenses will be determined on a case-by-case basis in relation to each project's unit mix, building type, systems and components, location, expected vacancy and turnover rates, management agent and management plan.

Vacancy Rates In general, MaineHousing will underwrite at a 5% vacancy rate. MaineHousing will base its vacancy rate assumptions on local market conditions and demographic data. MaineHousing encourages the submission of market vacancy data with the loan application.

Trending Rates MaineHousing will use trending of income and expenses that it deems appropriate to project characteristics and local market conditions.

Sustainable Operating A 15 year pro forma must be submitted at the time of application. MaineHousing will use its own financial assumptions

Performance

including expenses, reserves, rent levels and occupancy when determining project feasibility. MaineHousing will use the lower of market rents as determined by an independent market study or maximum allowable rents. The loan amount will be based upon a project's ability to support debt using MaineHousing's assumptions and the need for debt financing.

Management costs

MaineHousing will review the proposed management cost of a property including management fees, administrative expenses, site management costs, and the cost of other management activities charged directly to the project. In general, MaineHousing will underwrite a management cost of no more than 11% of the project's effective income. MaineHousing may allow an incentive fee to be paid out of surplus cash after fiscal year-end. Actual management costs will be reviewed and endorsed on a case-by-case basis by MaineHousing's Asset Management Division.

MaineHousing requires a proposal with the total cost of management services from a qualified management company acceptable to MaineHousing. MaineHousing reserves the right to require additional bids for management services.

F. Other Criteria:

Site Control

Evidence of site control must be submitted with the application. If site control is less than ownership of the property, site control must remain in effect through the owner's acquisition of the project.

Site control must be for no less than 120 days following application submission with the unilateral right for the buyer to extend for an additional 120 days (or any combination of extension terms adding up to 120 days). The purpose of this requirement is to ensure buyer's control of the property for the estimated period of time necessary to process the application, close the loan, and acquire the property.

The preferred form of site control is evidence that the applicant entity has a valid purchase and sale agreement or option to purchase the property. Beginning on the date that MaineHousing receives an application for financing, the applicant is not permitted to acquire the property until HUD environmental clearance of the project is obtained after an environmental review by MaineHousing.

While ownership is acceptable control of the site, the cost to purchase a property may not be eligible for MaineHousing financing if it is incurred before MaineHousing issues an inducement resolution.

Any purchase and sale agreement or option should specifically allow entry to the site for the purposes of conducting an environmental assessment, including at a minimum a Phase I Environmental Survey, and for other reasonable purposes.

Any purchase and sale agreement or option for the acquisition of an existing structure must identify, separately, the acquisition price for the land and the acquisition price for the structure(s).

Any purchase and sale agreement or option for the acquisition of an existing occupied property should specifically allow access to records and other information relating to the residents for the purpose of complying with MaineHousing's Relocation Policy.

Market Feasibility

At the time of application, applicants must provide a comprehensive market study of the housing needs in the area to be served by the project. The study must be conducted at the applicant's expense by a qualified professional acceptable to MaineHousing.

The National Council of Affordable Housing Market Analysts (NCAHMA) has adopted standards for definitions and content in an affordable housing market study. These standards are attached as **Exhibit D**. MaineHousing strongly encourages applicants to direct their market analyst to produce a market study consistent with the NCAHMA standards. Any deviation from the standards must be explained in a cover letter submitted by the market analyst with the study.

If, during the course of its review, MaineHousing determines the market study submitted with the application is inadequate, MaineHousing will require the applicant to submit a new or revised market study. MaineHousing reserves the right to commission its own market study.

G. Design and Construction

All projects shall be designed and constructed in accordance with the guidelines set forth in the MaineHousing Construction Services' *Design & Construction Manual*. The manual is available on the MaineHousing web-site (www.mainehousing.org).

Please call (207) 626-4600 and ask for Construction Services if you have any questions about the manual.

1. Design Professional.

Developer must use an architect or engineer registered in the State of Maine for design services and for regular on-site construction monitoring services. The developer and its design professional are responsible for ensuring the project design and construction comply with the *Design and Construction Manual* and all applicable local, state and federal codes, regulations, statutes and ordinances.

2. Surety.

MaineHousing requires performance and payment bonds in an amount equal to 100% of the construction contract if the cost of construction is over \$300,000. The form and substance of the performance and payment bonds shall be acceptable to MaineHousing. MaineHousing shall be named as a multiple obligee on both the performance and payment bonds.

3. Contractors.

Applicants must use an experienced general contractor and comply with MaineHousing's Contractor Standards in **Exhibit E**. The preferred method of contractor procurement is through competitive bid. Developers may use a select bid process to procure the general contractor with MaineHousing's prior approval of the selected bidders list. Construction management may be an acceptable project delivery method with MaineHousing's prior approval, in its sole determination on a case-by-case basis. See MaineHousing's *Design & Construction Manual* for guidance on when and under what circumstances MaineHousing will approve the construction management approach.

MaineHousing is committed to ensuring that women and minorities have equal access to the economic benefits of projects financed with state and federal dollars. To that end, all developers and contractors must comply with MaineHousing's *Equal Opportunity and Affirmative Action Plan for Multi-Family Housing Finance Programs* in **Exhibit F**.

4. Design and Construction Standards.

All projects shall be designed and constructed in accordance with all applicable federal, state and local codes, standards and requirements, including without limitation, building codes, habitability standards and accessibility requirements, and MaineHousing's *Design & Construction Manual*. MaineHousing will act as the final authority when interpreting any codes or standards for MaineHousing-financed properties. Any deviation from the *Design & Construction Manual* must be approved in advance by MaineHousing.

For existing structures, MaineHousing will conduct an initial site visit to compare the proposed scope of work to current site/unit conditions. A successful applicant must undertake all maintenance, capital improvements, and code compliance work that is required by MaineHousing. The proposed scope of rehabilitation must address the project's current capital needs. MaineHousing may require a capital needs assessment from a professional consultant. MaineHousing's Construction Services Division may decide, in its sole discretion, to work with the development team to identify immediate capital needs and forecast future capital needs in lieu of requiring a formal capital needs assessment. In

evaluating a project's current capital needs, MaineHousing will consider the long-term needs in relationship to the level of replacement reserve funding.

In addition, MaineHousing will review applications for cost reasonableness. Applicants are required to submit professionally prepared cost estimates with the application. MaineHousing may reject any proposals with unreasonably high total development costs or unreasonably high specific costs.

5. Lead and Asbestos.

Owners must notify all occupants of housing built before 1978 of the hazards of lead poisoning and address any lead-based paint and asbestos hazards according to federal and state requirements. MaineHousing may impose additional requirements relative to the abatement or removal of lead-based paint and asbestos for the purpose of protecting residents and MaineHousing's security interest in the project. In general, all projects must be certified "lead safe" at the time of final completion.

6. Site Standards.

MaineHousing provides detailed instructions on the preparation of boundary and topographical surveys in its *Design & Construction Manual*. A site will not be approved if the surroundings will detract excessively from the development.

Developments shall comply with the State's growth management laws. Under 30-A M.R.S.A. § 4349-A, developments which involve new construction, the acquisition of newly-constructed units or the creation of multi-family residential rental property, must be located in a locally designated growth area as identified in the applicable municipality's comprehensive plan. If a municipality has not designated growth areas in its comprehensive plan, the project must be located in an area that is served by a public sewer system with the existing capacity for the project, an area identified as a census-designated place in the latest federal Decennial Census, or a compact area of an urban compact municipality as defined under 23 M.R.S.A. § 754. Developments that serve persons identified in 30-A M.R.S.A. § 4349-A(1)(C)(7), including without limitation, persons with disabilities, persons who are homeless and persons who are wards of the state, are excluded from the requirements of 30-A M.R.S.A. § 4349-A.

The State of Maine Coastal Management Policy Guidelines issued pursuant to 38 MRSA §1801, et seq., impact project selection when proposed in any area covered by the policy.

Applicants should be aware that siting a project in wetlands or a floodplain, or otherwise impacting wetlands or a floodplain, will require additional review under HUD's environmental review rules. The purpose of this additional review is to ensure that there are no alternatives to locating the project in wetlands or a floodplain that can be carried out within existing constraints, and, if no such alternative exists, to mitigate the impacts of locating the project in wetlands or a floodplain.

7. Difficult to Develop Sites:

Difficult to develop sites should be avoided. Sites which have inadequate drainage, unstable soil, contaminated soils, excessive ledge, steep topography, lack of utility service, or other characteristics which increase the costs of development are difficult to develop. Sites including land within a designated flood plain or within a designated wetland, or which have been determined by the Department of Environmental Protection to contain an endangered species of wildlife, are also difficult to develop.

8. Environmental Assessments:

MaineHousing requires a Phase I Environmental Site Assessment conducted by a qualified professional in accordance with the EPA All Appropriate Inquiry Standards finding that the development and the areas adjacent to the development are free from environmental hazards or conditions. MaineHousing cannot advise a prospective developer of potential environmental liabilities. MaineHousing will, however, require satisfactory responses to any environmental concerns that MaineHousing identifies in connection with a development. Generally a Phase I Environmental Site Assessment involves a site visit, review of ownership records, review of site development history, and contact with local officials and environmental regulatory agencies. This initial analysis may result in the need for additional investigation and testing. Environmental site assessment costs can be included as project development costs and may be mortgageable, subject to the underwriting criteria and inducement resolution requirements outlined in this guide.

All projects receiving Federal HOME funds must undergo an environmental review by MaineHousing pursuant to HUD's environmental review regulations at 24 CFR Part 58. MaineHousing reserves the right to engage a qualified professional to perform all or certain parts of this review. In the event that MaineHousing is not the only provider of Federal HOME resources to the project, a review meeting these requirements may be performed by a qualified party not directly engaged by MaineHousing. However, MaineHousing reserves the right to engage a qualified professional to perform a review of the work to ensure its compliance with HUD's regulations. All costs incurred by MaineHousing for satisfaction of these regulations will be paid by the borrower and may be included as project development costs. An environmental review includes a review of historic values, floodplain and wetlands protection, coastal zone management, endangered and threatened species, water and air quality, farmlands protection, fire and explosive hazards, noise, proximity to airports, toxic sites, and impacts to or on the project from land development and socioeconomic factors, community facilities and services, and other matters. A Phase I Environmental Site Assessment will be conducted by a qualified professional in addressing the toxic sites provision of environmental reviews.

HUD's environmental regulations provide that until the completion of the environmental review and HUD approval of the release of the FedHOME funds, the applicant and any other participant in the development process (including individuals, public or private nonprofit or for-profit entities, or any of their contractors) may not commit or expend *any* funds (regardless whether they are from federal, state, local, commercial or private sources) on any activities that are deemed to limit the choice of reasonable alternatives with respect to the site ("choice-limiting actions"). Choice-limiting actions include, without limitation, entering into a purchase and sale agreement, acquisition, leasing, demolition, rehabilitation, disposition, construction, or

site improvements relating to the project. If the applicant or any participant in the development process takes a choice-limiting action after applying to MaineHousing for financing, the applicant will be denied any FedHOME funds for the project.

H. Property Management and Reporting Requirements

MaineHousing will regularly review the financial, physical, occupancy, and administrative management of projects developed through this program while financing is outstanding or affordability requirements are in effect. MaineHousing's documents are intended to ensure the property serves the intended resident populations, attains the desired public benefit, secures MaineHousing's investment, and complies with funding source requirements.

Property management requirements include the following:

- *Property Management Plan and Management Agreement.* The property management plan and management agreement are subject to the review and approval of MaineHousing. Management agreements must be endorsed by MaineHousing. Any management agreements between non-profit owners and for-profit project managers for properties funded with 501(c)(3) bond proceeds must comply with applicable bond regulations.
- *Property Marketing and Advertising.* Marketing and outreach efforts must comply with MaineHousing's Affirmative Marketing Guide. Federal and state laws prohibit discrimination on the grounds of race, color, national origin, religion, sex, physical or mental handicap, sexual orientation and familial status. The owner will be responsible for selecting residents in a non-discriminatory manner and maintaining a written waiting list of applicants in accordance with the project's resident selection policies and criteria. The MaineHousing Affirmative Marketing Guide and sample resident selection policies and criteria are available upon request.
- *Rents.* Rents for targeted affordable units may not exceed the rent schedule published annually by MaineHousing. Rents and utility allowances must be approved by MaineHousing and remain in effect for the first full year of occupancy. Rents, including any utility allowance, for all units are reviewed during the annual budget review process, well in advance of the upcoming fiscal year. The owner must inform MaineHousing of proposed rental or utility adjustments. MaineHousing must approve annually the maximum monthly rent to be charged for each unit or to each resident, and the monthly allowance for utilities and services to be paid by the resident prior to implementation. MaineHousing will consider development operating costs and occupancy rates, the surplus cash position of the property, applicable state or federal regulations and other factors when approving rent and utility adjustments.
- *Income Eligibility.* All households initially occupying an affordable unit must be determined income eligible in compliance with the project's affordability targeting requirements. If at the time of annual household income recertification the household income exceeds 140% of the applicable household income limit, adjusted for family size, the developer must rent the next available market rate unit of equal or

lesser size to an income eligible household. Verification of resident income eligibility for affordable units is required for all properties.

- *Leases and Security Deposits.* All residents residing in affordable units must sign a MaineHousing-approved lease. The initial term of the lease should be one year but cannot be less than 6 months. Leases and the collection of security deposits must comply with state law and applicable program and funding source requirements. See Exhibit A and Federal HOME regulations relating to leases on units assisted with Federal HOME funds.
- *Inspections.* MaineHousing will inspect units annually to ensure compliance with applicable building and habitability standards.
- *Annual Report Submissions.* MaineHousing requires owners to submit development budgets, audited financial statements and certifications of continuing program compliance to MaineHousing on an annual basis. Annual development budgets are due 60 days before the beginning of the owner's fiscal year and subject to MaineHousing's review and approval. Audited financial statements are due within 60 days after the end of the owner's fiscal year.
- *Management Review and Assessment.* Periodically MaineHousing will review owner compliance with the loan requirements. MaineHousing will review occupancy and leasing, tenant files, financials, restricted reserve activity, physical plant condition and resident services.

MaineHousing's on-line resource library contains forms, guidance, rent and income charts, notices and other information for owners and managers. This library is available at:

address: *www.dms.mainehousing.org*
user name: *assetmanagement*
password: *information.*

Please call (207) 626-4600 and ask for the Asset Management Division if you have any questions.

MaineHousing's Non-Discrimination Policy

MaineHousing does not discriminate on the basis of race, color, religion, sex, sexual orientation, national origin, ancestry, age, physical or mental disability, or familial status in the admission or access to, or treatment or employment in, its programs, and activities. MaineHousing will provide appropriate communication auxiliary aids and services upon sufficient notice. MaineHousing will also provide this document in alternative formats upon sufficient notice. MaineHousing has designated the following person responsible for coordinating compliance with applicable federal and state nondiscrimination requirements and addressing grievances: Jodie Stevens, Maine State Housing Authority, 353 Water Street, Augusta, Maine 04330-4633, Telephone Number (207) 626-4600 or 1-800-452-4668 (voice), or 1-800-452-4603 (TTY).

Exhibit A

Summary of Federal HOME Requirements

THIS IS A SUMMARY OF FEDERAL HOME REGULATIONS FOR YOUR CONVENIENCE. IT IS NOT INTENDED TO BE A THOROUGH AND COMPLETE REPRESENTATION OF THE FEDERAL HOME REQUIREMENTS. PLEASE REFER TO THE CRANSTON-GONZALEZ NATIONAL AFFORDABLE HOUSING ACT OF 1990, 42 U.S.C. §12701 *et seq.*, THE HOME INVESTMENT PARTNERSHIP PROGRAM RULE, 24 C.F.R. PART 92, AND HUD GUIDELINES AND INTERPRETATIONS REGARDING FEDERAL HOME, ALL AS MAY BE MODIFIED FROM TIME TO TIME.

If the subsidy for a project is Federal HOME funds, MaineHousing will require the applicant to comply with all applicable Federal HOME requirements, including without limitation, the following requirements for a period of 30 years.

A. Affordability Requirements – 24 CFR § 92.252

1. Designation of FedHOME units. If Federal HOME funds are used in combination with other funds to develop rental housing, the Federal HOME funds may be allocated to one or more units in the projects. The minimum number of units in a project that must be designated Federal HOME-assisted is based on the number of units in the project, the number of bedrooms in the units, and the total amount of Federal HOME funds invested in the project. The applicant must determine whether the Federal HOME-assisted units will be fixed or will float among the comparable units in the project.
2. Income Targeting. All Federal HOME-assisted units in residential rental projects must be occupied by individuals or families with income at or below 60% of area median income (“High HOME Units”). For residential rental projects containing five or more Federal HOME-assisted units, at least 20% of the units must be occupied by individuals and families with income at or below 50% of the area median income (“Low HOME Units”).

Area median income is established annually by HUD and is adjusted for family size, except that HUD may establish income ceilings higher or lower than the applicable percentage of the median income for the area on the basis of HUD’s findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

3. Rent. The maximum rent for the Low HOME Units shall not exceed the greater of (i) 30% of the family’s actual monthly adjusted income, or (ii) 30% of the annual income of a family whose income equals 50% of the area median income, as determined by HUD, with adjustments for the number of bedrooms in the unit (the “Low HOME Rent”). The maximum rent for the High HOME Units shall be the

lesser of (i) the fair market rent for existing housing for comparable units in the area established pursuant to 24 CFR § 888.111, as same may be amended, or (ii) 30% of the annual income of a family whose income equals 65% of the area median income, as determined by HUD, with adjustments for the number of bedrooms in the unit (the “High HOME Rent”). If the Low HOME Rent is higher than the High HOME Rent, then the maximum rent for the Low HOME Units shall be the High HOME Rent.

Income eligibility and rent will be determined in accordance with FedHOME. If the project receives project-based rental assistance under a State or federal program, the Low HOME Rent shall be the maximum rent allowed under the State or federal program, provided that the tenants pay no more than 30% of their adjusted income toward rent.

The maximum rent for residents paying utilities and services shall not exceed the applicable maximum rent above less a monthly utility allowance, as determined by MaineHousing.

For properties with units designated as “fixed” HOME assisted or HOME match, an initially eligible resident whose income at the time of re-certification exceeds 80% of the area median income must be charged an amount for rent and utilities calculated at 30% of their adjusted income (except for units subject to the low income housing tax credit program where it reverts to the 140% methodology). While this requirement also applies to properties with “floating” HOME units the rent calculation may not exceed the market rent for comparable unassisted units in the area.

Regulations issued under the Federal HOME program require a limitation on the amount of resident-based subsidy provided through the Section 8 Existing Program. In order for the Rental Loan Program to qualify as Federal HOME match eligible, if any of a project's current residents are assisted through the Section 8 Existing Program and the unit will be receiving funding from the subsidy pool, the amount of rent that can be collected under the Section 8 Housing Assistance Payment (HAP) Contract must be limited to the maximum allowable Federal HOME rent. If the current Section 8 Contract Rent exceeds the allowable Federal HOME Rent, the Section 8 Contract Rent will be reduced at the next anniversary date of the contract or upon any interim resident income re-determination. Future residents with Section 8 Vouchers occupying assisted units will fall under the same restriction.

All rent increases are subject to MaineHousing’s review and approval and shall not exceed the maximum rent limitation in 24 C.F.R. § 92.252. The project owner must provide prior written notice to a tenant before increasing the rent in accordance with applicable state and federal laws (which is currently 45 days prior written notice).

4. Income Determinations. The applicant shall determine the income of tenants upon initial occupancy and annually thereafter. The applicant shall furnish income certifications and/or verification to MaineHousing in accordance with procedures

prescribed by MaineHousing and 24 CFR § 92.203. If the income of an initially eligible tenant exceeds the applicable income limit during the tenant's occupancy of the applicable unit, the initially eligible tenant will be treated as continuing to meet the applicable income limit, provided that the project owner rents the *next available comparable unit* in the project to a tenant whose income does not exceed the applicable income limit. The rent must be adjusted for an initially income-eligible tenant whose income increases above 80% of area median income in accordance with 24 CFR § 92.252.

This Federal HOME Next Available Unit Rule conflicts with tax-exempt bond and low income housing tax credit requirements. Typically, developments with multiple funding sources must comply with the most restrictive requirement. However, Federal HOME regulations defer to the Next Available Unit Rule under the tax credit program.

The project owner will be required to enter into restrictive covenants, which will be recorded in the appropriate registry of deeds and obligate the owner, its successors and assigns, to comply with the affordability requirements for a period of 30 years.

B. Property Standards and Accessibility Requirements – 24 CFR § 92.251

1. Property Standards. The project shall meet state and local housing quality/building standards and codes, or in the absence thereof, the National Building Code (BOCA) and NFPA 101. In addition, new construction must comply with the Model Energy Code and the Site and Neighborhood Standards set forth in 24 CFR § 983.6(b).

2. Accessibility Requirements. The applicant shall comply with applicable Federal and State accessibility laws and implementing regulations, including, without limitation, 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.*, 24 CFR Part 100.205), Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794 *et seq.*, 24 CFR Part 8), Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12131, 47 U.S.C. §§ 155, 201, 218 and 225), and Maine Human Rights Act (5 M.R.S.A. Chapter 337, Subchapters IV and V).

C. Lead Hazard Requirements – 24 CFR § 92.355

All projects constructed prior to 1978 are subject to applicable federal lead-based paint requirements set forth in the Lead-Based Paint Poisoning Prevention Act of 1971, as amended, 42 U.S.C. § 4821 *et seq.*, the Residential Lead-Based Paint Hazard Reduction Act of 1992, as amended (Title X), 42 U.S.C. § 4851 *et seq.*, and 24 CFR Part 35. The requirements under Title X and 24 C.F.R. Part 35 depend on the type of activity and if rehabilitation is involved, the amount of rehabilitation.

D. Employment and Contracting – 24 CFR §§ 92.350, 92.354, 24 CFR Part 5

The applicant shall comply with applicable labor, equal employment opportunity, minority outreach and contracting requirements as follows.

1. Labor Standards. If the project contains 12 or more Federal HOME-assisted units, the applicant shall comply with the Davis-Bacon Act (40 U.S.C. §276a), the Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §327-333), the Copeland Anti-Kickback Act (40 U.S.C. §276c), the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §201 *et seq.*) and 24 CFR Part 70 (concerning volunteers).

2. Equal Opportunity, Affirmative Action and Minority Outreach. The applicant shall comply with all applicable equal employment opportunity, economic opportunity, minority/women outreach and affirmative action laws and implementing regulations: Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086 and 12107 (Equal Employment Opportunity Programs, 41 CFR Part 60), Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u, 24 CFR Part 135), Executive Order 11625, as amended by Executive Order 12007, (Minority Business Enterprises), Executive Order 12432 (Minority Business Enterprise Development), Executive Order 12138, as amended by Executive Order 12608 (Woman's Business Enterprise), the Maine Human Rights Act (5 M.R.S.A., Chapter 337, Subchapter III) and the Code of Fair Practices and Affirmative Action (5 M.R.S.A. Chapter 65).

3. Debarred, Suspended or Ineligible Contractors. The applicant shall not employ or award contracts to or otherwise engage the services of any contractor or subcontractor who has been debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in federal and State housing programs.

E. Fair Housing and Equal Access – 24 CFR § 92.350, 24 CFR Part 5, Subpart A

The applicant shall comply with applicable Federal and State laws and implementing regulations pertaining to fair housing and equal housing opportunity, including without limitation, Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d *et seq.*, 24 CFR Part 1), The Fair Housing Act, as amended (42 U.S.C. § 3601 *et seq.*, 24 CFR Part 100 *et seq.*), Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794 *et seq.*, 24 CFR Part 8), Equal Opportunity in Housing Programs (Executive Order 11063, as amended by Executive Order 12259), Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*, 24 CFR Part 146) and the Maine Human Rights Act (5 M.R.S.A. § 4581 *et seq.*).

F. Conflict of Interest – 24 CFR § 92.356

The applicant shall comply with the applicable Federal HOME conflict of interest provisions set forth in 24 CFR § 92.356, including without limitation, that no employee, officer, board member or agent of the applicant may occupy a unit in the project.

G. Affirmative Marketing – 24 CFR § 92.351

If the project contains 5 or more Federal HOME-assisted units, the applicant shall comply with the affirmative marketing and minority outreach requirements pursuant to 24 CFR § 92.351.

H. Environmental Review and Flood Requirements – 24 CFR § 92.352

1. Environmental Review. All projects must undergo an environmental review by MaineHousing pursuant to 24 CFR § 92.352, the National Environmental Policy Act of 1969 and regulations promulgated pursuant thereto in 24 CFR Parts 50 and 58. HUD’s environmental regulations provide that until the completion of the environmental review and HUD approval of the release of the FedHOME funds, the applicant and any other participant in the development process (including individuals, public or private nonprofit or for-profit entities, or any of their contractors) may not commit or expend *any* funds (regardless whether they are from federal, state, local, commercial or private sources) on any activities that are deemed to limit the choice of reasonable alternatives with respect to the site (“choice-limiting actions”). Choice-limiting actions include, without limitation, entering into a purchase and sale agreement, acquisition, leasing, demolition, rehabilitation, disposition, construction, or site improvements relating to the project. If the applicant or any participant in the development process takes a choice-limiting action after applying to MaineHousing for financing, the applicant will be denied any FedHOME funds for the project. Applicants are encouraged to discuss the federal regulation with their counsel.

2. Flood Zone. The applicant shall comply with Section 202 of the Flood Disaster Protection Act of 1973 (42 U.S.C. §4106). Any project located in a special flood hazard area must be insured by flood insurance available under the National Flood Insurance Program. Special flood hazard areas are identified by the Federal Emergency Management Agency.

I. Faith-based Activities

The applicant shall not be engaged in inherently religious activities, such as worship, religious instruction or proselytization, as part of the activities funded with Federal HOME funds. The applicant shall not discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief. Federal HOME funds shall not be used for the acquisition, construction or rehabilitation of structures to the extent that those structures are used for inherently religious activities.

J. Tenant Protections – 24 CFR § 92.253

The applicant shall comply with certain tenant protection provisions set forth in 24 CFR § 92.253, including without limitation the following:

1. The applicant shall enter into a written lease with tenants for a period of not less than one year. The lease shall not contain certain prohibited provisions set forth in 24 CFR § 92.253(b).

2. The applicant may not terminate the tenancy or refuse to renew the lease of a tenant except for good cause. The applicant must provide 30 days written notice for any termination or refusal to renew.
3. The applicant shall not refuse to rent to an otherwise eligible holder of a certificate or voucher under 24 C.F.R. part 982, Section 8 Tenant-based Assistance: Unified Rule for Tenant-based Assistance under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program, as amended from time to time, or to the holder of a comparable document evidencing participation in a tenant-based assistance program.
4. The applicant shall adopt a written tenant selection policy consistent with the requirements of 24 CFR § 92.253(d).

K. Displacement, Relocation and Acquisition – 24 CFR § 92.353

The applicant must take all reasonable steps to minimize the displacement of existing residents of the project. To the extent feasible, existing residents must be provided a reasonable opportunity to lease and occupy a unit in the project upon completion. The applicant shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 USC § 4201 *et seq.* and 49 CFR Part 24, Section 104(d) of the Housing and Community Development Act and 24 CFR Part 42 (subpart B). The applicant may be obligated to provide assistance to temporarily relocated or permanently displaced residents.

3. One-for-one Replacement. The applicant shall not use Federal HOME funds to reduce the supply of low and moderate housing. Section 104(d) of the Housing and Community Development Act (the Barney Frank Amendments) requires that each unit that is lost must be replaced with another unit.

L. Subsidy Layering Review – 24 CFR § 92.250

MaineHousing will perform a subsidy layering evaluation to ensure that the subsidy does not exceed the amount necessary to develop the project pursuant to MaineHousing’s subsidy layering policy and Federal HOME.

Applicants must complete a formal certification detailing all governmental assistance provided or to be provided to a project. The applicant must notify MaineHousing promptly if other governmental assistance is sought or provided in the future.

Federal HOME Match Requirements

If the applicant is subject to Federal HOME Match requirements, the applicant shall comply with the requirements set forth in subparagraphs A, B, E and J.

Exhibit B

MAINE STATE HOUSING AUTHORITY

Summary of Policy on Displacement/Relocation

Part I (**General Policy**) states the fundamental principles of the policy: that applicants for financing take all reasonable steps to minimize displacement; but that in certain cases it cannot be avoided. Where it cannot, we impose financial obligations upon the developer to assist those displaced. These obligations are project costs eligible for MaineHousing financing.

Part II (**Temporary Tenant Relocation**) covers tenants not required to move permanently but who must relocate temporarily because of rehabilitation to a MaineHousing-assisted project. The policy simply requires keeping such tenants informed, and paying their out-of-pocket moving costs.

Part III (**Benefits and Procedures for Persons (permanently) Displaced From Projects Receiving Federal Funds**) explains who federal law defines as a displaced person, with examples, and what that law requires a developer to do for them. In summary, they are:

Notice	90 days.
Advisory Services	1) explanation of relocation assistance available; 2) location of up to three comparable units for the tenant to choose from; and 3) offer of transportation to inspect the comparable units.
Moving Expenses	Either a) actual and reasonable out-of-pocket moving and related expenses; or b) if the tenant chooses, a moving expense allowance, based on a schedule reflecting the number of rooms to be moved.
Replacement Housing Assistance	In most cases, 42 months' rental assistance, i.e. 42 times the difference, if any, between: the cost of a comparable unit and <u>either</u> the cost of the original unit <u>or</u> 30% of the person's gross monthly income, whichever is less.

The one part of this section which goes beyond simply presenting and explaining federal requirements concerns "**economic displacement**": tenants forced to move after a project is complete because of rents rising to recoup the past costs of a project. HUD defines this as displacement--triggering all the benefits to the displaced renter--yet gives no guidance as to when rent increases may be justified. Trying to balance tenants' interest not to be displaced as a direct result of rising rents caused by MaineHousing-financed projects, with developers' need for guidance as to what will (and will not) expose them to liability, we arrive at the following formulation:

<u>Time Frame</u>	<u>Rent Increase Allowed</u>
Closing to completion of rehab	Any, as long as below Section 8 tenant payment (low-income persons) or 30% of income (non-low income)
1st year after rehab completion	No rent increases
Next 2 and 1/2 years	Rent increases only in proportion to documentable increases in operating costs
After 3 and 1/2 years	Rebuttable presumption that rent increases not a result of the acquisition/rehab financed by MaineHousing

Of course, "targeted" units are further restricted by the terms of MaineHousing's Financial Assistance Agreement with the developer.

Part IV (**Benefits and Procedures for Persons** (permanently) **Displaced From Projects Not Receiving Federal Funds**) is crafted by MaineHousing to strike a balance between the protection of the tenants and the lack of funds to pay for the level of protection provided by federal funding. These protections are:

Notice	Supportive housing projects: 60 days . Projects involving density reduction: 60 days . Projects requiring displacement to meet MaineHousing tenant income targets: 90 days .
Advisory Services	For persons below 80% of median income, same as that required for all income levels in federally assisted projects, i.e.: a) explanation of relocation assistance available; b) location of up to 3 comparable units for the tenant to choose from; and c) offer of transportation to inspect the comparable units.
Moving Expenses	For persons below 80% of median income, either a) actual and reasonable out-of-pocket moving and related expenses; or b) if the tenant chooses, a one-time \$300 payment in lieu of moving and related expenses.
Replacement Housing Assistance	For persons below 60% of median income, 12 months' rental assistance (i.e. the difference, if any, between the cost of the unit from which they were displaced and either the unit to which they moved or a comparable unit, whichever is less).

Any relocation and displacement benefits that are determined to be due to a displaced tenant are the financial responsibility of the developer.

Exhibit C

MAINE STATE HOUSING AUTHORITY

Multi-Family Insurance Requirements

Property: Must be insured at replacement cost value or MaineHousing loan amount, whichever is greater.

Liability: Broad form comprehensive general liability at a minimum of \$1 million per occurrence.

Rental Income: Limit must be equal to 100 % gross annual income at full occupancy level.

Deductible: Shall not exceed \$1,000 for any one loss.

Mortgagee: MaineHousing shall be named Mortgagee and loss payee.

Boiler and Machinery Insurance: Required if development has fired pressure vessels for heating and/or hot water service:

Direct damage limit: \$100,000 minimum any one accident
Deductible - maximum of \$1,000 per loss
Use and Occupancy Deductible: 24 hours

Flood

Insurance: As required by the National Flood Insurance Program.

Insurers must hold a certificate of Authority to do business in the State of Maine, issued pursuant to Chapter 5 of the Maine Insurance Code (Title 24A, MRS A) and must be acceptable to the Authority.

An original or certified copy of the insurance policy shall be furnished to the Authority.

An endorsement stating that the Authority will be notified in writing at 353 Water Street, Augusta, Maine 04330-4663, at least 120 days in advance of a policy being canceled, materially changed or not renewed.

The Developer must agree to do all the things reasonable and prudent to minimize exposure of the property and occupants thereon from all known hazards and perils, promptly notify the insurer and the Authority of the occurrence of any loss or injury and in the event of any loss or injury, protect the property and occupants from any further damage or harm.

Exhibit D

National Council of Affordable Housing Market Analysts Model Content Standards for Market Studies for Rental Housing

I. Purpose

The purpose of these standards is to provide standardized terminology and content for Market Studies of affordable rental housing prepared for developers, governmental agencies, lenders, or investors, of rental housing, which is to be financed in whole or in part by State Housing Finance Agencies and other public funding or regulatory agencies. The standards outline the content, data, analysis and conclusions to be included in Market Studies for rental housing. These standards do not establish the format or presentation for the report.

The **Market Study Terminology** is an integral part of these standards. Defined terms are capitalized. State Housing Finance Agencies and other industry members are welcome to incorporate the information below in their own standards. NCAHMA only requests **written notification of use**. **Note:** Effective January 2004, NCAHMA members are to include these standards, as well as the market study terminology, index and certification.

II. Content

A. Executive Summary. Each market study should include a concise summary of the data, analysis and conclusions, including the following:

1. A concise description of the site and the immediately surrounding area.
2. A brief summary of the project including the proposed population to be served.
3. Precise statement of key conclusions reached by the analyst.
4. Precise statement of analyst's opinion of Market Feasibility including the prospect for long term performance of the property given housing and demographic trends and economic factors.
5. Provide recommendations and/or suggest modifications to the proposed project.
6. Provide a summary of market related strengths and/or weaknesses which may influence the subject development's Marketability, including compatibility with surrounding uses, the appropriateness of the subject property's location, unit sizes and configuration, and number of units.
7. A summary of positive and negative attributes and issues that will affect the property's performance and lease-up and points that will mitigate or reduce any negative attributes.

B. Project Description. The market study should include a project description to show the analyst's understanding of the project at the point in time the market study is undertaken. The project description should include:

1. Proposed number of units by: number of bedrooms and baths, income limit as a percent of AMI, unit size in square feet, and utility allowances for Tenant Paid Utilities, proposed rents, and Target Population, including income restrictions and any special needs set-asides.

2. The utilities expected to be paid by tenants and energy sources for tenant paid hot water, heat, cooking;
3. For rehabilitation projects, identification of any existing assisted housing program at the property such as Section 8, Section 202, Section 811, BMIR, Section 236, etc, as well as current occupancy levels, current rents and proposed rents.
4. Developer's projected dates for construction start and completion, and start of pre-leasing.
5. Description of: the number of buildings, design (walk-up, elevator, etc.), and number of stories, unit and common amenities, site amenities and parking. For rehabilitation projects provide a description of the methodology for the rehabilitation and the scope of work. The status or date of architectural plans and name of the architect should be referenced. A copy of the floor plans and elevations should be included as an attachment to the report.

C. Location and Market Area Definition

1. Define the Primary (PMA) and Secondary (SMA) Market Areas including a map that clearly delineates the areas and an explanation of the basis for the boundaries of the PMA and SMA. Identify PMA and SMA boundaries by census tracts, jurisdictions, street names, or other geography forming the boundaries. Also define the larger geographic area in which the PMA is located (i.e. city, county, MSA, etc.).
2. Provide a description of the site characteristics including its size, shape, general topography and vegetation and proximity to adverse conditions.
3. Provide photographs of the site and neighborhood, and a map clearly identifying the location of the project and the closest transportation linkages, shopping, schools, medical services, public transportation, places of worship, and other services such as libraries, community centers, banks, etc. In situations where it is not feasible to show all the categories on a map, the categories may be addressed in the narrative.
4. Describe the Marketability of the proposed development.
5. Describe and evaluate the visibility and accessibility of the site.
6. Provide information or statistics on crime in the Primary Market Area relative to data for the overall area. Address any local perceptions of crime or problems in the Primary Market Area.

D. Population and Households

1. Provide total population, age and income target data for the Primary Market Area using the 1990 Census, 2000 Census, current year estimates, and a five year projection. Data from other legitimate studies, such as Claritas, CACI and similar demographic information companies, with detail on Household size, tenure, age and other relevant categories may be provided. Provide the same information for the Secondary Market Area, if one has been defined. Indicate the source for all data, provide a methodology for estimates and provide an analysis of trends indicated by the data.
2. Provide a breakdown of Households by tenure for 1990 Census, 2000 Census, current year and five year projection.
3. Provide an analysis of trends indicated by the data and include reference sources for the data and methodology for analyzing the data.

4. Provide a breakdown of households by incomes in \$5,000-\$10,000 increments, by household size and by tenure for 1990 and 2000 Census, current year, and five year projection.

E. Employment and Economy. Provide data and analysis on the employment and economy of the Primary Market Area to give an understanding of the overall economic health of the community in which the Primary Market Area is located. List sources for the data and methodology for the analysis.

1. Provide a description of employment by industry sector for the Primary Market Area or smallest geographic area available that includes the Primary Market Area and compare the data to the larger geographic area, e.g. the city, county, labor market area, or MSA.
2. List major employers in the PMA, the type of business and the number employed and compare the data to the larger geographic area (i.e. MSA, County, Secondary Market Area, etc.).
3. Show the historical unemployment rate for the last ten years (or other appropriate period) for the PMA and compare to the larger geographic area (i.e. MSA, County, Secondary Market Area, etc.).
4. Show employment growth over the same period or a more recent, shorter period (last 5 years). Compare to the larger geographic area.
5. Comment on trends for employment in the PMA in relation to the subject.
6. If relevant, comment on the availability of affordable housing for employees of businesses and industries that draw from the Primary Market Area.
7. Provide a breakdown of typical wages by occupation.
8. Provide commuting patterns for workers such as how many workers in the PMA commute from surrounding areas outside the PMA.

F. Existing Rental Housing Stock. Provide information on other multifamily rental housing in the Primary Market Area and any rental housing proposed to be developed in the Primary Market Area. This section of the Market Study should include:

1. If relevant in the market, a 10-year, or other appropriate period, history of building permits, if available, by housing type and comments on building trends in relation to household trends.
2. Identify a list of existing Comparable Properties, including: name, location, population served, type of design, age and condition, number of units by bedroom type, rent levels, number of bedrooms and baths for each unit type, size in square footage of units, kitchen equipment, type of utilities (state whether paid by tenant or owner and energy sources for hot water, heat and cooking), unit and site amenities included, site staffing, occupancy rate, absorption history (if recently completed), name, address and phone number of property contact. Attach photos of each Comparable Property. Include a map identifying the location of each Comparable Property in relation to the subject.
3. Describe the size of the overall rental market in the PMA, including the percentage of Market Rate and Affordable Housing properties.
4. Provide a narrative evaluation of the subject property in relation to the Comparable Properties, and identify the Competitive Properties, which are most similar to the proposed development. The analyst should state why the comparables referenced

- have been selected, which are the most directly comparable, and explain why certain projects have not been referenced.
5. For each Comparable Property comparisons to the subject rents based on the Comparable Property Amenities, Tenant Paid Utilities, location, parking, concessions and rent increase or decrease trends.
 6. Discuss the availability of affordable housing options, including purchase or sale of homes.
 7. When relevant, include a list of LIHTC projects with allocations in or near the market area that are not placed in service, giving as much known detail as possible on estimated Placed-In-Service dates, unit mix and Income Levels to be served. As noted in Section III the Housing Finance Agency is expected to provide this information to the analyst.
 8. Discuss the impact of the subject development on the existing housing stock.
 9. The Market Vacancy Rate for the Primary Market Area rental housing stock by population served (i.e. market rate, Low Income Housing Tax Credit, and Project Based Rent Assistance) and type of occupancy (i.e. family, seniors, special populations) and unit size.
 10. Identify the number of people on waiting lists for each project.

G. Local Perspective of Rental Housing Market and Housing Alternatives. The Market Study should include a summary of the perspective on the rental market, need for the proposed housing and Unmet Housing Need in the market. The local perspective should consider:

1. Interviews with local planners, housing and community development officials and market participants to estimate proposed additions to the supply of housing that would compete with the subject and to evaluate the local perception of need for additional housing.
2. Interview local Public Housing Authority (PHA) officials and seek comment on need for housing and possible impact of the proposed development on their housing inventory and waiting lists for assisted housing. Include a statement on the number and availability of Housing Choice Vouchers and the number and types of households on the waiting lists for Housing Choice Vouchers. Compare subject's proposed rents to local payments standards or median rents.
3. The cost and availability of home ownership and mobile home living, if applicable.

H. Analysis.

1. Provide a detailed analysis of the income levels of the potential tenants for the proposed units. State and support the minimum household income used for total housing expenses to set the lower limit of the targeted household income range. If required, provide an analysis based on the regulating agency's requirements.
2. Derive a Market Rent and an achievable rent and then compare them to the developer's proposed rent. Quantify and discuss Market Advantage of the subject and impact on Marketability.
3. Calculate the Capture Rate for each Income Limit in the subject property incorporating any Housing Finance Agency or other regulating agency restrictions such as age, income, living in Substandard Conditions, renters versus home owners, household sizes, etc.
4. Calculate the Penetration Rate.

5. Define and justify the Absorption Period and Absorption Rate for the subject property.
6. Project and explain any future changes in the housing stock within the market area.
7. Identify risks (i.e. Competitive Properties which may come on line at the same time as the subject property; declining population in the PMA, etc.), unusual conditions and mitigating circumstances. Evaluate need for voucher support or HUD contracts.
8. Provide documentation and descriptions that show the methodology for calculations in the analysis section and relate the conclusions to the data.

I. Other Requirements

1. Date report was prepared, date of inspection and name and telephone number of analyst preparing study;
2. Certification of no identity of interest between the analyst and the entity for whom the report is prepared;
3. Certification that recommendations and conclusions are based solely on professional opinion and best efforts;
4. Statement of qualifications;
5. List of sources for data in the Market Study;
6. Append current utility allowance schedule (or utility company provider letters).

III. Information to be Provided by Housing Finance Agency or Other Regulatory Agency

The Housing Finance Agency or other regulatory agency to which the Market Study will be provided will be expected to cooperate in the completion of the Market Study and provide the documentation listed below. If data relative to the Housing Finance Agency or other regulatory agency financed properties is not provided by the agency, then the analysts should not be required to include this data in the Market Study.

1. Average operating costs for other agency financed housing similar in size, design, and target population in the Primary Market Area or region
2. Average and maximum management fees permitted based on type and size of project or a statement that the agency does not in have the data or does not limit management fees
3. Data on rental housing inventory in the Primary Market Area financed or assisted by the agency or which has received preliminary approval or reservations of funding of Low Income Housing Tax Credits and is expected to become available in the market. This data should include property address, number and type of units, rents by unit type, Income Limits, and other relevant information.

IV. Additional Work

The documentation and analysis outlined previously in section II constitutes the entire content for a Market Study. A Housing Finance Agency, other regulatory agency or developer may desire a market analyst to provide additional information beyond the basic scope of the Market Study. Any additional documentation or analysis beyond the scope of

the Market Study will be performed for additional compensation above the cost of the Market Study. Such additional work may include:

1. Preparation of estimates of the annual operating expenses for the operation of the subject property, upon achieving a Stabilized Level of Occupancy;
2. Report on the zoning designation of the property and comments on conformance of the subject property's conformance with zoning. This additional work also may include a zoning map, zoning ordinance or letter from the local zoning official;
3. Report on the flood zone for the property and a copy of the flood zone map; Census of all rental property in an area.
4. Evaluation of special needs set aside, including:
 - demands for target population, and its
 - impact on the rents the property can attain.

January 2004

Exhibit E

**CONTRACTOR STANDARDS
FOR MAINEHOUSING FINANCED
MULTIFAMILY HOUSING**

Prevailing Wages and Benefits	
	Contractors (including construction managers) and subcontractors working on MaineHousing-funded multi-family housing projects, that are not subject to 40 USC § 276(A) and associated regulations (the Davis-Bacon Act), shall pay workers employed in the construction of these projects wages at least equal to the wage rates (not including the benefit rates) established annually by the Maine Department of Labor pursuant to 26 MRSA § 1304 et seq. and associated regulations (the State Minimum Wage Rates on State Construction Projects).
Proper Classification of Employees	
	Contractors (including construction managers) and subcontractors shall provide evidence to MaineHousing that they have properly classified workers employed in the construction of MaineHousing-funded multi-family projects as employees or independent contractors for purposes of workers compensation insurance coverage, unemployment taxes, income tax withholding, prevailing wage and benefit rates and overtime wage rates in accordance with applicable State and Federal laws and associated regulations.
On-the-job Training	
	For construction contracts equal to or greater than \$1,000,000, contractors (including construction managers) and subcontractors shall provide on-the-job training for women and minorities. Contractors and subcontractors shall provide a minimum of 700 hours of on-the-job training (OJT) for each \$1,000,000 increment of the total construction contract. See MaineHousing's Equal Opportunity and Affirmative Action Plan established pursuant to 5 MRSA § 781 et seq. and 24 CFR §§ 85.36 (e) and 92.351(b) for more details. Contractors and subcontractors that satisfy or exceed MaineHousing's affirmative action goal set forth in the Plan are exempt from this requirement.
Job Listings	
	Contractors (including construction managers) and subcontractors shall post all job openings within their organizations with Maine Career Centers and Women Unlimited, or any successor organization designated by MaineHousing, in accordance with MaineHousing's Equal Opportunity and Affirmative Action Plan established pursuant to 5 MRSA § 781 et seq. and 24 CFR §§ 85.36 (e) and 92.351(b).
Workers Compensation	
	Contractors (including construction managers) and subcontractors shall provided evidence to MaineHousing that they maintain appropriate industrial accident insurance coverage for all workers employed in the construction of MaineHousing-financed multifamily housing in accordance with 39-A MRSA § 101 et seq.

Exhibit F

MAINE STATE HOUSING AUTHORITY

EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION PLAN FOR MULTI-FAMILY HOUSING FINANCE PROGRAMS

Introduction

This document is the affirmative action plan for Maine State Housing Authority (*MaineHousing*) programs which make financing available for the acquisition, rehabilitation and construction of affordable multi-family housing in Maine. This plan identifies the equal opportunity and affirmative action policies and goals for the applicants, developers, project owners, contractors, subcontractors and other persons or entities that benefit from MaineHousing's programs. This plan includes affirmative outreach and recruitment procedures designed to provide equal access for women, minorities and persons with disabilities to the economic benefits of MaineHousing's programs.

This plan is established pursuant to the following applicable Federal and State equal employment opportunity and affirmative action laws: Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086 and 12107 and 40 C.F.R. Part 60 (*Equal Employment Opportunity Programs*), Section 3 of the Housing and Urban Development Act of 1968 (24 C.F.R. Part 135), Executive Order 11625, as amended by Executive Order 12007 (*Minority Business Enterprises*), Executive Order 12432, Executive Order 12138, as amended by Executive Order 12608 (*Women's Business Enterprise*), the Maine Human Rights Act (5 M.R.S.A. Chapter 337, Subchapter III) and the Code of Fair Practices and Affirmative Action (5 M.R.S.A. Chapter 65), and regulations promulgated pursuant thereto).

Equal Opportunity Policy

MaineHousing does not discriminate in any manner against any employee, applicant for employment or contractor or in engaging the services of any contractor on the basis of race, color, religion, national origin, ancestry, age, sex, sexual orientation, or physical or mental disability. Employment activities in which MaineHousing does not discriminate include, without limitation, employment, upgrading, promotions, demotions, transfers, recruitment or recruitment advertising, disciplinary action, layoffs, terminations, rates of pay, benefits or other forms of compensation and selection for training.

As an equal opportunity employer, MaineHousing requires all applicants, developers, project owners, contractors (including construction managers), subcontractors and agents of MaineHousing and all other persons and entities that benefit from MaineHousing's programs to provide equal opportunity in employment and contracting and comply with all State and Federal statutes, regulations and directives governing equal opportunity.

Contract Requirements

All contracts and subcontracts entered into by MaineHousing, applicants, developers, project owners, agents, contractors (including construction managers) and subcontractors in connection with MaineHousing's programs shall contain the following provisions.

"During the performance of this contract, the contractor agrees as follows:

- a. The contractor will not discriminate in any manner against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, sexual orientation, or physical or mental disability. Such action shall include, without limitation, employment, upgrading, promotions, demotions, transfers, recruitment or recruitment advertising, layoffs or terminations, rates of pay or other forms of compensation and selection for training.
- b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex, sexual orientation, or physical or mental disability.
- c. The contractor will send to each labor union or representative of the workers with which the contractor has a collective bargaining agreement or other contract or understanding whereby the contractor is furnished with labor for the performance of this contract, a notice advising such labor union or workers' representative of the contractor's obligations under this section and shall post copies of the notice in conspicuous places available to employees and to applicants for employment.
- d. The contractor will cause the foregoing provisions to be inserted in all contracts for any work covered by this Agreement so that such provisions will be binding upon each agent or subcontractor."

Affirmative Action Goal

It is MaineHousing's goal to foster the development of a well-qualified diverse workforce in all segments and at all levels of the industries that benefit from MaineHousing's programs. In particular, there is a manifest imbalance in the construction industry's employee profile. Traditionally, there have been few, if any, women, minorities and persons with disabilities employed in the segment of the construction industry that rehabilitates and constructs MaineHousing-financed multi-family housing.

Initially, MaineHousing's goal is to achieve the minimum level of participation by women and minorities in the housing construction industry required by Federal law. At least 6.9% of all hours worked by employees of a contractor or subcontractor during the prior calendar year must be worked by women. In addition, at least 0.5% of all hours worked by employees of a contractor or subcontractor during the prior calendar year must be worked by other minorities.

In furtherance of this goal, MaineHousing is establishing the following procedures to actively recruit women, minorities and persons with disabilities in the housing construction industry.

On-the-Job Training Requirement

All construction contracts between a project owner and a contractor (including a construction manager) for the construction or rehabilitation of multi-family housing funded by MaineHousing in an amount equal to \$1,000,000 shall provide for on-the-job training in a skilled trade or technical area for women and minorities in accordance with this plan.

Contractors or subcontractors shall provide a minimum of 700 hours of on-the-job training (OJT) for each \$1,000,000 increment of the total construction contract. For example, if the construction contract amount is \$3,500,000, the contractor and/or subcontractor(s) must provide at least 2100 hours of the on-the-job training to persons who are women or minorities. The OJT hours may be performed in connection with a MaineHousing-funded multi-family housing project or other construction project, provided that the project is located in the State of Maine. The general contractor (or construction manager) and MaineHousing, including any consultant retained by MaineHousing to monitor OJT and the construction analyst assigned to the MaineHousing-funded project, will collectively determine how the requisite OJT hours will be performed. The general contractor and MaineHousing, including the consultant and the construction analyst, will enter into a written agreement which describes the plan for satisfying the requisite OJT hours to be performed.

A person receiving on-the-job training shall be paid wages equal to 75% of the wage rate for the trade in which the person is receiving the training as established annually by the Maine Department of Labor pursuant to the *State Minimum Wage Rates on State Construction Projects*, 26 MRSA § 1304 et seq. and associated regulations. Up to five dollars (\$5.00) per hour of the wages paid to the person receiving on-the-job training can be included as an allowance in the project construction budget to be financed by MaineHousing and the contractor or subcontractor training the person will pay the difference.

A contractor (including construction managers and subcontractors) will be exempt from the above OJT requirement if the percentage of all hours worked by its employees during the prior calendar year is 6.9% for women and 0.5% for minorities.

Maine Department of Transportation Disadvantaged Business Enterprise Program

All developers, applicants and contractors shall solicit construction (including construction management) and other bids from the businesses certified by the Maine Department of Transportation for participation in the Disadvantaged Business Enterprise Program. To obtain a copy of the Disadvantaged Business Enterprise Program directory, contact the Maine Department of Transportation at (207) 287-3551 (phone), (207) 287-2083 (fax) or (207) 287-3392 (TTY). To access a current list via the Internet, go to www.state.me.us/mdot/, click on Doing Business, then click on Contract Info, then click Disadvantaged Business Enterprise and select D/WBE Directory of Businesses. MaineHousing will require all developers and applicants to provide evidence of their outreach efforts prior to issuing a financing commitment under MaineHousing's programs.

Additional Outreach Efforts

All applicants, developers, contractors and subcontractors shall post all employment opportunities within their businesses or organizations with Maine Career Centers and Women Unlimited or any successor organization designated by MaineHousing. MaineHousing will require all developers and applicants to provide evidence of their outreach efforts prior to issuing a financing commitment under MaineHousing's programs.

Bid Requirements

All bid packages for the construction and rehabilitation of multi-family housing financed by MaineHousing must set forth the above requirements. MaineHousing is flexible with respect to how the on-the-job training requirements are set forth in the bid package. Contractors (including construction managers) shall consult with the MaineHousing construction analyst assigned to the project to determine whether to include the general requirements or specify how the OJT training requirements will be satisfied in the bid package.

Exhibit G

MAINE STATE HOUSING AUTHORITY

Policy for the Use of Contingency Funds

A Construction Contingency is factored into every project being constructed or rehabilitated which is financed by MaineHousing. The use of all contingency funds must be approved, in writing at MaineHousing's sole discretion prior to expenditure by the Developer.

MaineHousing will consider the use of Construction Contingency funds on a case-by-case basis generally in order of preference, as follows:

1. *Unforeseen Conditions.* As projects proceed through the construction process, generally risk of the unknowns is minimized. Therefore, the first and most important use of contingency funds is to cover unforeseen conditions. Examples of such conditions would include the discovery of previously unidentified ledge within foundation areas; discovering unsuitable soils during excavation; or in the case of a renovation project, discovering hidden conditions within walls such as rotten wood in bearing walls.
2. *Additive Alternates and/or Value Engineered items.* The second category of potential use of contingency is for adding, or adding back, alternates or previously deducted items, that would benefit the tenants and/or the project.

Additive Alternates are items that were identified and priced as part of the original bidding process. Oftentimes these are scopes of work that, had the bids come in below the projected construction budget at bid time, would have been added to the base bid as part of the construction contract prior to starting construction. The prices for the identified scopes of work are "fixed" and held for an agreed upon period of time by the contractor, usually well into the construction period. These items are always agreed upon by all parties prior to assembling the final solicitation of bids and, therefore, if contingency funds are available as the work progresses and the risk of the unknowns has been minimized, the additive alternates can then be reconsidered for inclusion back into the project scope.

Value Engineered items occur as a result of the initial bids plus any deductive alternates exceeding the budgeted construction funds available at the conclusion of the bidding process. By working closely with the designers of record and the apparent low bidder, the Owner presents scopes of work and their costs to MaineHousing for consideration in reducing the construction bid amount. As with the additive alternates, the values for the individual items are "fixed" by the contractor and usually considered valid for an agreed upon period of time, usually well into the construction period. Similar to the procedure outlined for the Additive Alternates, if contingency funds are still remaining as the work progresses and the risk of the unknowns has been minimized, the previously deducted value engineered items can then be reconsidered for inclusion back into the project scope.

3. *Betterments.* Lastly, there is a category of scopes of work considered as Betterments to the project, that would also benefit the tenants and/or the project. These might include

items that would provide better durability, such as an upgrade to the quality of the siding or roofing, or providing products with longer life expectancies or ones requiring less maintenance. These items are presented and priced as the construction proceeds only if all parties agree that they are indeed warranted, their value is justified, and that there are sufficient funds for their incorporation into the project.

Upon Construction/Rehab completion

Any funds remaining in Construction Contingency upon the completion of the construction or rehabilitation may be used as follows, as determined by MaineHousing, at its sole discretion, in the following order of priority.

1. *Repayment of Developer Fee loan.* Any amounts loaned to the project by the Developer from Developer Fee in excess of the amount required, if any, may be recovered by the Developer.
2. *Reduction of MaineHousing subsidy sources.* MaineHousing may reduce either the amount of the cash subsidy or the amount of Low Income Housing Tax Credits delivered to the Developer.
3. *Increase Replacement Reserve funding.*