



# Low Income Housing Tax Credit

**This document is currently being revised to correct an error.  
Please check back next week (11/27-12/1) for a new version.**

## 2018 Qualified Allocation Plan



## CHAPTER 16 LOW-INCOME HOUSING TAX CREDIT RULE

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## 99-346 MAINE STATE HOUSING AUTHORITY

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

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#### SECTION 1: INTRODUCTION

The federal low-income housing tax credit (LIHTC) was created by the Tax Reform Act of 1986 to encourage private capital investment in the development of affordable rental housing. It is governed by Section 42 of the Internal Revenue Code of 1986, as amended, and associated regulations and is administered through designated housing credit agencies. As the designated housing credit agency for the State of Maine, MaineHousing is required by Section 42 of the Code and 30-A MRSA §§4741(1) and (14) to adopt a qualified allocation plan for allocating and administering LIHTC in the State of Maine. This rule is the State's qualified allocation plan.

This rule repeals and replaces in its entirety the prior Chapter 16, *Low Income Housing Tax Credit Rule*, except that the allocation provisions continue to apply to projects that were awarded LIHTC under the prior rule, or a program subject to the prior rule.

Capitalized terms used in this rule are defined in **Appendix A**, unless the context otherwise indicates, or if not defined therein, have the same meaning as set forth in Section 42 of the Code at <https://www.law.cornell.edu/uscode/text/26/42>

#### SECTION 2: HOUSING NEEDS AND PRIORITIES

MaineHousing annually completes a statewide needs assessment as part of the Consolidated Housing and Community Development Plan submitted by MaineHousing and the State's Department of Economic and Community Development to HUD. Based on the current needs assessment and the priorities set forth in the *Maine Consolidated Plan (2015-2019)*, MaineHousing has established the following housing priorities in the State for allocating the Credit:

- A. Efficient use of the Credit and other MaineHousing resources to maximize the development of affordable rental housing;
- B. Provide affordable rental housing for households with the lowest income to the extent possible with available resources;
- C. Provide affordable rental housing in areas with the highest need and access to services, employment, education, health care, public transportation and other opportunities important to the tenants;
- D. Provide housing that offers services, amenities and other assistance appropriate for the needs of the tenants to increase housing quality and stability; and

- E. Preservation of existing affordable rental housing that is at risk of being lost due to deterioration or market conditions.

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

- A. **Amount of State Ceiling.** The State Ceiling for each calendar year will be the sum of (i) the per-capita dollar amount established pursuant to Section 42(h)(3) of the Code multiplied by the State population, using the most recent estimate of the State's population released by the United States Bureau of Census before the beginning of such calendar year or determined by any other method as may be authorized or required by the Code; (ii) the unused amount of the State's housing credit ceiling, if any, for the preceding calendar year; (iii) the amount of the State's housing credit ceiling returned in the calendar year; and (iv) the amount, if any, allocated to MaineHousing by the United States Secretary of the Treasury from the re-pooling of other states' unused housing credit allocations.
- B. **Non-Profit Set-aside.** Ten percent (10%) of the annual State Ceiling will be set aside for Projects in which a Qualified Nonprofit Organization owns an interest and materially participates in the development and operation of the Project throughout the Compliance Period in accordance with Section 42 (h)(5)(B) of the Code. If the amount of Credit under this set-aside is not sufficient to complete the Project proposed in the highest-scoring eligible Application, additional Credit will be allocated for the Project regardless of the score of the Application relative to the scores of the other Applications.

An Applicant will qualify if the general partner or the manager/managing member of the Applicant that controls and is responsible for the development and day-to-day operation of the Project is (i) a Qualified Nonprofit Organization or (ii) a business corporation in which one or more Qualified Nonprofit Organization(s) owns 100% of the stock of the corporation in accordance with Section 42(h)(5)(C) of the Code.

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

- C. **Preservation Set-aside.** Up to \$300,000 of the annual State Ceiling will be set aside for the preservation and rehabilitation of existing multifamily rental housing with 5 or more units that meets the minimum rehabilitation requirements set forth in Section 5.C.2. and one of the following: (i) at least 25% of its units are assisted under a Rural Development program, or (ii) it has a Related Development of existing multifamily rental housing with 5 or more units and at least 25% of the units assisted under a Rural Development program, or (iii) at least 25% of its units will be assisted under HUD's Rental Assistance Demonstration (RAD) Program. Demolition and reconstruction of housing on the same site or another site will be treated as new construction and is not eligible for this set-aside.

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

- D. **Maximum Credit Amount.** The maximum amount of Credit that will be allocated for each Project is the lesser of (i) \$20,000 per Credit Unit in the Project, (ii) 25% of the 2018 State Ceiling, and (iii) the amount MaineHousing determines is necessary to ensure the Project's financial feasibility and long-term viability pursuant to Section 42 of the Code.

#### SECTION 4: ALLOCATION PROCESS

- A. **Pre-application Submission.** Each Project must undergo a pre-application review by MaineHousing to assess its suitability for housing, feasibility and eligibility for Credit. Applicants must submit the information and documents set forth in **Appendix B** with the pre-application fee specified in Section 4.C. to MaineHousing at least 60 calendar days before the Application is due. The deadline for the 2018 State Ceiling is Friday, December 1, 2017.

MaineHousing will meet with an Applicant at least 30 calendar days before the deadline for Applications to discuss its Project, including any concerns MaineHousing has with the suitability, feasibility or eligibility of the Project.

A pre-application submission and review is mandatory for all Projects, even those that were submitted in any prior competition for Credit. An Applicant will not be eligible for Credit if (i) the Applicant fails to provide a complete pre-application submission for its Project in accordance with this subsection, or (ii) there is any material change in the Project between the pre-application submission and the Application unless required by MaineHousing.

- B. **Application.** Applications are subject to the following limitations, conditions and requirements.
1. **Limits on Applications.** Applications for the State Ceiling are subject to the following limitations.
    - a. **Number of Applications.** An Applicant and any Principal thereof or any of their Affiliates cannot submit more than two (2) Applications in the aggregate. A development consultant cannot be involved, either as a consultant, a Principal of an Applicant or an Affiliate of any of them, in more than three (3) Applications.

- b. **Maximum Number of Projects.** An Applicant may not submit an Application if the Applicant, any Principal thereof and any of their Affiliates have more than four (4) LIHTC Projects in the aggregate that were awarded Credit under any State Ceiling and have not been completed. A development consultant cannot be involved, either as a consultant or a Principal of an Applicant or an Affiliate of any of them, in more than four (4) LIHTC Projects that were awarded Credit under any State Ceiling and have not been completed. For purposes hereof, complete means the issuance of an unconditional Certificate(s) of Occupancy or equivalent approval of the governing municipal authority, sign-off by MaineHousing's Construction Services Department and the closing and full funding of all permanent financing sources for the Project.
  - c. **Acquisition and Rehabilitation Projects.** Applications for Projects that involve the acquisition and rehabilitation of Affordable Housing, except Projects that include the addition of at least 20 new units, are only eligible for the Preservation Set-aside in Section 3.C.
  - d. **Reconstruction of Existing Housing.** The demolition and reconstruction of existing housing that has not been condemned or declared blight by the municipality in which it is located is not eligible unless approved by MaineHousing.
  - e. **TDC Re-scoring.** An Applicant may not submit an Application if any Application submitted by the Applicant, any Principal thereof, or any of their Affiliates in the last round of competition for the State Ceiling was re-scored under the TDC scoring criteria for the State Ceiling and the total score of the Application after re-scoring was lower than the highest scoring Application on the waiting list on the initial date the Notice to Proceed issued in connection with such Application.
- 2. **Application Deadline.** The deadline for submitting Applications for the 2018 State Ceiling is 5:00 PM on Thursday, February 8, 2018.
  - 3. **Form of Application.** The Application must be completed and submitted electronically to MaineHousing in the form and manner prescribed by MaineHousing by the applicable deadline set forth above. MaineHousing will provide the Application and set-up information to Applicants during the preliminary review.

If an Applicant fails to complete any of the prescribed forms or schedules in the Application or submit any of the information or documentation required in the Application, the Application will be rejected. MaineHousing reserves the right to require additional information it deems necessary in order to process an Application.



C. **Fees.** Applicants must pay the following fees when due. All fees are non-refundable.

Type of Fee	Amount	Due Date
Pre-application Fee	\$2,000	By Pre-application deadline in Section 4.A.
Application Fee	\$2,500	Postmarked for delivery by Application deadline in Section 4.B.2
Allocation Fee	7.5% of Credit	Earlier of Carryover Allocation (Section 8.B.) or Final Allocation (Section 8.A.)
Monitoring Fee*	\$800 per Credit Unit	Final Allocation (Section 8.A.)

\*MaineHousing reserves the right to charge an additional monitoring fee to cover any increased costs due to unforeseen changes in monitoring requirements during the Compliance Period.

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

1. The Applicant, any Principal thereof or any of their Affiliates (a) has an uncorrected IRS Form 8823 in connection with any LIHTC Project to the extent it is correctable unless previously waived by MaineHousing; (b) has been declared in default or has been 60 days or more delinquent on any loan with MaineHousing, unless the default or delinquency has been cured or there is an approved payment or workout plan in place and in good standing prior to the applicable deadline for submitting an Application; (c) has ever been the owner of any MaineHousing-financed project in which MaineHousing has foreclosed a mortgage interest or received a deed-in-lieu of foreclosure of a mortgage interest unless previously waived by MaineHousing; (d) is presently debarred, suspended, proposed for debarment, or excluded from participation in any federal or state programs; or (e) has in the last 10 years had any proceeding in or for bankruptcy, receivership, reorganization or any other arrangement for relief from creditors commenced against it that affected a MaineHousing-funded project and was not dismissed within 90 days of commencement, or commenced any proceeding in or for bankruptcy, receivership, reorganization or any other arrangement for relief from creditors that affects a MaineHousing-funded project.
  
2. The tax credit syndicator or investor or any Affiliate thereof with a controlling interest in any partner or member of the Owner of the Project (a) transferred its interest in any LIHTC Project after March 25, 2014 in violation of the Ownership Transfer Rule or (b) failed to make any required capital contributions with respect to any LIHTC Project, and has not corrected such actions prior to the applicable deadline for submitting the Application.

- E. **Notice to Local Jurisdiction.** Upon receipt of an Application, MaineHousing will notify the chief executive officer of the municipality and the public housing authority with jurisdiction over the location of the proposed Project. The notice will provide for a 15-day period in which to comment on the proposed Project. Any comments received will become part of the Application and will be considered by MaineHousing.
- F. **Selection Process.** Applications for the State Ceiling with the highest self-scores will be selected for scoring as set forth below, and of the Applications that are scored, the Applications with the highest actual scores will be awarded Credit until the applicable State Ceiling is fully awarded.
1. Applications for each of the set-asides in Section 3 will be reviewed first. If there is only one Application for a set-aside, the Application will be awarded the Credit under the set-aside if it meets the applicable set-aside requirements and the threshold requirements in Section 5. If there is more than one Application for a set-aside, MaineHousing will review the Application with the highest self-score. If it meets the applicable set-aside requirements and the threshold requirements, it will be scored under the criteria in Section 6. The Application will be awarded the Credit under the set-aside if its actual score is higher than the next highest self-scored Application for the set-aside. If its actual score is less than the next highest self-scored Application, then the Application will be re-ranked relative to the other Applications, whether scored or unscored, and the next highest self-scored Application for the set-aside will be scored if it meets the threshold and applicable set-aside requirements. MaineHousing will continue this process until the Credit under each of the set-asides is awarded to an eligible Application, if any. Applications that are limited to the Preservation Set-aside only will be placed on the waiting list and all other Applications will remain on the list of Applications to be scored.
  2. MaineHousing will use the same process to select all other Applications. The Application with the highest self-score, if not previously scored for Credit under a set-aside, will be scored if it meets the threshold requirements. If the actual score of an Application is different than its self-score, then it will be re-ranked relative to the other Applications, whether scored or unscored. MaineHousing will then score the next unscored Application with the highest self-score if it meets the threshold requirements, and rank it based on its actual score. MaineHousing will continue this process until the applicable State Ceiling has been fully awarded. If the last Application selected for an award of Credit, based on its actual score, needs more Credit than remains under the applicable State Ceiling, MaineHousing may, in its sole discretion, (a) not award the Credit to any Application, or (b) award Credit under the next annual State Ceiling to the Application.
  3. If two or more Applications selected for scoring have the same self-score and they meet the threshold requirements and any applicable set-aside requirements, they will be scored to determine their actual score and ranked accordingly. The tie breaker mechanism in Section 6.X. will be used to prioritize Applications with the same

actual score for purposes of awarding Credit.

4. All Applications that are not selected will be placed on a waiting list prioritized by actual score, if scored, or self-score from the highest to the lowest scoring Application. Any Credit that is returned or is otherwise unused will be made available to the Application with the highest actual score on the waiting list that can achieve feasibility with the available Credit and any MaineHousing funding that was returned with the Credit or is otherwise available in connection with the Credit. If there is an unscored Application with a higher self-score than the Application with the highest actual score on the waiting list that can use the returned resources, then the unscored Application with the highest self-score will be scored to determine its actual score if it meets the threshold requirements.
- G. **Notice to Proceed.** MaineHousing will meet with each Applicant selected for a Credit award before issuing a Notice to Proceed to discuss the Applicant's score, the timeline for developing the Project, special considerations identified during the selection process, and other obligations of the Applicant. If the conditions of the Credit award are acceptable to the Applicant, MaineHousing will issue a Notice to Proceed, which must be executed and returned by the Applicant to MaineHousing within the time period specified therein.
- H. **Credit Allocation.** Upon receipt of the fully executed Notice to Proceed, MaineHousing will evaluate the Application pursuant to Section 7 to determine the amount of Credit, if any, to be allocated. Credit will be allocated in accordance with Section 8.
- I. **Termination of Application or Notice to Proceed.** MaineHousing will deem an Application withdrawn and any Notice to Proceed, if issued, cancelled if one or more of the following occur without MaineHousing's written approval after the Application is submitted.
1. The Application or the Notice to Proceed is assigned or the Applicant or any Principal thereof changes.
  2. The location of the Project changes from the location identified in the Application.
  3. There is any change in the commitments made in the Application which results in a net reduction in the score that the Application received pursuant to the scoring criteria set forth in Section 6, except as provided in Section 6.H.
  4. There is a change in the design of the Project or the financing for the Project from the design or the financing described in the Application which MaineHousing determines, in its sole discretion, will result in a substantial increase in the amount of Credit or other MaineHousing funding that MaineHousing has determined the Applicant is eligible to receive.

5. The Project's TDC exceeds the TDC Cap or any other failure to meet the threshold requirements in Section 7.
6. There is any other material or substantive amendment or change to the Application.
7. Any event in Section 4.C. occurs and is not cured within any applicable cure period.
8. A notice of funding award for the acquisition, rehabilitation and/or construction of the Project is issued under another MaineHousing program.

**SECTION 5: THRESHOLD REQUIREMENTS**

Applications must meet the following threshold requirements to be eligible for Credit.

- A. **Affordability.** An Applicant must agree for a minimum period of 45 years to maintain the Project as residential rental housing, keep at least 40% of the total Credit Units in a Project occupied by persons with Very Low Income and keep the Credit Units in the Project rent-restricted in accordance with Section 42 of the Code.
- B. **Total Development Cost (TDC) Cap.** The TDC of the Project may not exceed the below TDC Cap for a project of its type at any time prior to the later of the construction loan closing or an allocation of Credit for the Project.

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

Demolition and reconstruction of all housing on the same site or another site will be treated as new construction. If a Project involves more than one project type, the TDC Cap for the Project is the sum of the pro rata share of the TDC Cap allocable to each type based on the number of units in each type.

- C. **Acquisition and Rehabilitation of Existing Housing.** Projects that involve the acquisition and rehabilitation of existing multi-family housing are subject to the following limitations and requirements.
  1. **Capital Needs Assessment.** The Application must include a capital needs assessment acceptable to MaineHousing. The capital needs assessment must be performed by a qualified independent third party, such as a licensed architect or

engineer, must satisfy the requirements set forth in **Appendix C**, and must be completed within one (1) year before the deadline for submitting Applications.

2. **Minimum Rehabilitation Requirements.** The Project must satisfy the minimum rehabilitation requirements in Section 42(e)(3) of the Code. In addition, the Rehabilitation Costs per unit of existing housing that is part of any Project awarded Credit from the State Ceiling must be at least \$50,000.
3. **Relocation/Displacement.** The Project must comply with MaineHousing's *Temporary Relocation and Permanent Displacement Policies* and, if the Project is federally-assisted, all applicable federal requirements, such as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §4201 *et seq.* and 49 C.F.R. Part 24 and Section 104(d) of the Housing and Community Development Act of 1970, as amended, and 24 C.F.R. §42, which may require that assistance be provided to permanently or temporarily displaced tenants. The Applicant must take reasonable steps to minimize the displacement of existing tenants of the Project. The Application must identify any tenants who will be permanently displaced and the reason for the displacement, and all costs associated with the permanent and temporary displacement or relocation of tenants must be included in the Project's TDC. A relocation plan that complies with all applicable requirements must be submitted to MaineHousing before Credit will be allocated to the Project.

- D. **Development and Management Experience and Capacity.** The Applicant must have sufficient experience and capacity to develop, complete, maintain and operate the Project, including a team of qualified professionals with (i) experience successfully developing, designing, completing and managing LIHTC Projects and providing related services, such as accounting, tax and legal advice, and resident service coordination, and (ii) sufficient capacity to develop, design, complete and manage the Project. If MaineHousing determines that the Principal(s) of the Applicant or any member of its team lacks sufficient knowledge, experience or capacity, MaineHousing may require the Applicant to correct the deficiencies, such as hiring a qualified consultant acceptable to MaineHousing, hiring additional qualified staff, replacing the team member or requiring the team member to hire additional qualified staff, or may reject the Application if the deficiencies are not addressed to MaineHousing's satisfaction. MaineHousing may also require financial statements from the Applicant, any Principal or any Affiliate of either.
- E. **Site Control.** The Applicant must have site control of the Project throughout the Application process. Site control may include an option, a purchase and sale contract, ownership or a long-term lease. The Applicant, its agents, and MaineHousing must have access to the Project site, and if the Project is an existing occupied property, access to records and other information about the existing tenants, such as current rent and income information.

- F. **Growth Management Limitations.** A Project that involves the new construction or acquisition of newly-constructed multi-family residential rental property or the conversion of existing buildings to multi-family residential rental property must comply with the State’s Growth Management Law, 30-A M.R.S.A. § 4349-A, as may be amended.

If the municipality in which the Project is located has adopted a comprehensive plan or growth management plan that is consistent with applicable State law, then the Project must be located in a designated growth area as identified in the comprehensive plan or growth management plan of the municipality to be eligible for Credit. If the municipality in which the Project is located has not adopted a comprehensive plan or a growth management plan or the comprehensive or growth management plan adopted by the municipality is not consistent with applicable State law, the Project must be located in (1) an area that is served by a public sewer system with existing capacity for the Project, (2) an area identified as a census-designated place in the latest Federal Decennial Census, or (3) a compact area of an urban compact municipality as defined under 23 M.R.S.A. § 754.

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

- G. **Project Feasibility.** The Applicant must have the financial ability to develop and complete the Project and to operate the Project throughout the Compliance Period.
1. **Development Budget.** The Applicant must identify (a) all sources of funding for the development and completion of the Project, including the amount, timing, terms and conditions of the funding and the status of the funding (e.g. applied for or committed) as of the date of the Application, and (b) all uses of the funding based on the projected costs of and schedule for developing and completing the Project. All sources and uses of funding for the Project, whether direct or indirect and whether they are included in the development budget for the Project, must be disclosed. All sources of funding must be acceptable to MaineHousing.
  2. **Operating Budget.** The Applicant must identify (a) all sources of income for the Project projected over the Compliance Period, such as income from the residential units and any commercial or non-residential space in the Project and any rental or operating assistance, and the amount, terms and conditions of such income, and (b) all costs of operating the Project projected over the Compliance Period for the Project. The Applicant must identify all forms of property tax relief (such as a PILOT, tax abatement or exemption or Tax Increment Financing) and other assistance that reduces the operating costs of the Project.
  3. **Related Development.** Any Related Development must be completed prior to or concurrently with the completion of the Project, and there must be sufficient capacity and funding to complete and operate the Related Development.

4. **Financial Re-characterization.** MaineHousing may re-characterize any information about the sources and uses for the development and operation of a Project and any Related Development that MaineHousing determines necessary, such as information that is inconsistent with the Application or the requirements of a funding source or is unreasonable based on comparable LIHTC Projects, industry standards and market conditions. The Applicant must address all development and operating deficits identified by MaineHousing.
  
- H. **Market Study.** The Application must include a comprehensive market study prepared by a qualified professional acceptable to MaineHousing in accordance with the *National Council of Affordable Housing Market Analysts Model Standards for Market Studies for Rental Housing* in effect 120 days prior to the deadline for Applications for the applicable Credit round.  
  
If MaineHousing determines that the market study submitted is inadequate, MaineHousing will require the Applicant to correct the inadequacies or submit a new market study. MaineHousing reserves the right to commission its own market study.
  
- I. **Project Design.** The design and construction or rehabilitation of the Project must comply with MaineHousing's Construction Standards and all applicable local, state and federal codes, regulations, statutes and ordinances.
  
- J. **Project Amenities.** The Project must have the following amenities and services.
  1. **Community Room.** The Project must include an on-site community room with sufficient capacity to serve the needs of the tenants of the Project. For a scattered-site Project, only one community room is required and should be centrally located to the greatest extent possible to best serve all of the tenants of the Project.
  
  2. **Laundry Facilities.** The Project must include a washer/dryer hook-up in each unit or a fully accessible laundry facilities centrally located within the Project with sufficient capacity to serve the needs of the tenants of the Project.
  
  3. **Telemedicine Facilities.** A Project with 20 or more units must include an on-site telemedicine room and related facilities designated and used exclusively to offer telemedicine services to the tenants of the Project, unless otherwise approved by MaineHousing. The services may include counseling, home health services, diagnostic and monitoring activities, rehabilitation services (including assessment and therapy) and education, and must be provided by qualified medical providers in a private and confidential manner. The design and construction of the room and associated facilities must comply with the specifications and requirements set forth in MaineHousing's Construction Standards. The providers and the tenants may not be charged for the use of the room or the internet or wireless and telephone services provided to the room.

4. **Shared Facilities.** Having access to the amenities required in this subsection at a multi-family housing project located on an adjoining site to the Project will meet the requirements if the amenity (a) is fully accessible and located on an accessible path to the Project, (b) has sufficient capacity to serve the tenants of the Project and the existing multifamily housing project, and (c) will be available to the tenants of the Project during the Compliance Period on the same terms as the residents of the existing multi-family housing project. Tenants of the Project cannot be charged to use shared amenities, except that tenants of the Project can be charged a reasonable fee that does not exceed the amount charged to any other others for the use of washing machines/dryers in shared laundry facilities.
  5. **Recreational Activities.** An area(s) of recreational activity must be located on the Project site or within a Safe Walking Distance of ½ mile of the Project. The area(s) and activities must be free of charge to the tenants of the Project and not require membership to use the facilities or equipment. Projects with single-family detached style units satisfy this requirement if each unit has a private lawn with sufficient room for a swing set or other playground equipment, gardening or other activities acceptable to MaineHousing.
  6. **Exceptions.** The requirements of this subsection do not apply to existing multifamily housing projects if the Applicant cannot comply with the requirements because of the nature of the site, structural limitations, zoning restrictions or other land use limitations.
- K. **Resident Service Coordination.** The Applicant must make a resident service coordinator available to the tenants of the Project to evaluate service needs and refer tenants to appropriate services, and must maintain funding for the resident service coordinator throughout the Compliance Period. The resident service coordinator must be available to the tenants on-site at the Project a minimum of one (1) hour per week for every five (5) Credit Units in the Project over an appropriate number of days each week acceptable to MaineHousing. The resident service coordinator shall meet with tenants in a private and confidential manner to evaluate individual service needs and refer tenants to appropriate services. The services provided by the resident service coordinator must be free of charge to the tenants.
- L. **Smoke-free Housing.** The Applicant must implement a written occupancy policy that prohibits smoking in the units and the common areas of the Project, include a non-smoking clause in the lease for every household, and make educational materials on tobacco treatment programs, including the phone number for the statewide Maine Tobacco HelpLine, available to all tenants of the Project through the resident service coordinator.
- M. **Waiting List Preference.** The Applicant must give a preference to eligible persons whose names are on a public housing or Section 8 waiting list, except for a Project that is financed by Rural Development or receives rental assistance under the Section 8 Project-Based Rental Assistance Program.



## SECTION 6: SCORING CRITERIA

The Applicant must complete all information and submit all documentation required in the Application with respect to a scoring criteria to be eligible for the points under the scoring criteria.

### Project Characteristics (maximum of 32 points)

**A. Rehabilitation or Reuse of Existing Housing, Structure or Site. 3 Points**

The Project or the site on which the Project will be developed has one or more of the following characteristics.

1. Rehabilitation of existing multi-family rental housing containing 5 or more units without displacing any existing tenants and without increasing any tenant's housing costs (including rent and all other charges paid by the tenant) by more than 10%.
2. Rehabilitation, remediation or reuse of an existing substantial building or structure other than multi-family rental housing.
3. Site on which one or more substantial buildings or structures, used for other than residential housing with 4 or fewer dwelling units or agriculture purposes, have been or will be demolished or removed for purposes of redeveloping the site.
4. Site that was left vacant or nearly vacant in the development of downtown or other city or town center, such as a vacant lot or a parking lot between or surrounded by abutting commercial buildings, multi-family rental housing with more than 4 units and other substantial buildings.
5. Site, including any buildings, specifically designated by a municipality for redevelopment to renew a blighted area or remediate environmental risks to the occupants.

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

**B. Historic Rehabilitation. 3 points**

The Project includes the rehabilitation of a certified historic structure and capital contributions generated from the federal historic rehabilitation tax credit under

Section 47 of the Code and the State historic rehabilitation tax credit under 36 M.R.S.A. § 5219-BB will be used for the development of the Project.

**C. Populations with Special Needs. Up to 3 points**

1. Preference is given in at least 20% of the units, but not less than 4 units, in the Project to persons who are homeless or displaced, have disabilities, are victims of domestic violence or have other special housing needs. **2 points**

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

2. For a family Project, the Applicant agrees to apply for (if required) and accept project-based rental assistance under HUD’s Section 811 Project Rental Assistance (PRA) Program if made available by MaineHousing for the Project and to set-aside units for tenants who qualify under the Section 811 PRA Program to the extent of the project-based rental assistance made available. Awarding points is not a commitment of funding under the Section 811 PRA Program. **1 point**

**D. National Housing Trust Fund. 1 point**

The Applicant agrees to apply for and use any funding from MaineHousing’s National Housing Trust Fund program for the Project. Any funding award will require a certain number of units in the Project to be occupied by Extremely Low Income households. Awarding points is not a commitment of funding from the National Housing Trust Fund.

**E. Family Housing. Up to 6 points**

The Project is for families and a minimum percentage of the Credit Units in the Project are two- and/or three or more bedroom units as follows.

<b>Project for Families with Minimum Percentage of Credit Units by Bedroom Size</b>	<b>Points</b>
At least 50% of the Credit Units are two or more bedroom units and at least 20% of the Credit Units are three or more bedroom units	<b>6 points</b>

At least 70% of the Credit Units are two or more bedroom units	<b>2 points</b>
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**F. Readiness. 5 points**

The Project has all municipal land use approvals (except a building permit and other permits customarily issued during construction such as electrical and plumbing permits) and all State land use approvals (such as site plan, subdivision, stormwater or wetlands approvals) required to proceed with and complete the Project, and any Related Development has all municipal land use approvals (except a building permit and other permits customarily issued during construction) and all State land use approvals required to proceed with and complete the Related Development, and the timeframe to appeal all such approvals has expired as of the date of the Application with no appellate action being taken or all appeals have been resolved as of the date of the Application.

The design of the Project submitted to and approved by the municipality and the State must be acceptable to MaineHousing. The Applicant must meet with MaineHousing’s Construction Services Manager concerning the design of the Project before submitting the design to the municipality and the State for approval. Notwithstanding MaineHousing’s approval of the level of design of the Project approved by the municipality and the State, the final design of the Project, including all plans, details and specifications, must be approved by MaineHousing.

**G. Accessibility. Up to 11 points**

One (1) point for each accessible unit for persons with mobility impairments in the Project that exceeds the minimum number of such units required by applicable federal and state accessibility laws and meets the requirements for a Type A unit under ANSI Standard A117.1-2009 up to the maximum points by project type below.

<b>Type of Project</b>	<b>Maximum Points</b>
Senior Housing Projects	<b>11 points</b>
Other Projects	<b>5 points</b>

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

**H. Total Development Cost (TDC). -8 to 10 points**

Points are based on the percentage by which the Project’s TDC is less than or greater than the Benchmark TDC for a project of its type, the following lower limit of the range being \$5,000 more than the applicable Benchmark TDC and the upper limit of the range being

\$5,000 less than the applicable Benchmark TDC.

Type of Project	Lower Limit of Range (per unit cost)	Upper Limit of Range (per unit cost )
Adaptive Reuse	\$220,000	\$230,000
New Construction (Family Housing)	\$200,000	\$210,000
New Construction (Other Housing)	\$180,000	\$190,000
Acquisition and Rehabilitation of Existing Housing	\$105,000	\$115,000

If the Project involves more than one project type, the Benchmark TDC is the sum of the pro rata share of TDC allocable to each project type, based on the number of units in each project type as applied to the Benchmark TDC for the respective project type, the lower limit of the associated range is \$5,000 less than the Benchmark TDC, and the upper limit of the associated range is \$5,000 more than the Benchmark TDC.

Percentage of Project's TDC to Lower/Upper Limit of Range for Project type	Points
>10% less than Lower Limit	<b>10 points</b>
8% to 10% less than Lower Limit	<b>8 points</b>
5% to <8% less than Lower Limit	<b>6 points</b>
2.5% to <5% less than Lower Limit	<b>4 points</b>
Lower Limit to <2.5 % less than Lower Limit	<b>2 points</b>
Upper Limit to <3.5% more than Upper Limit	<b>-2 points</b>
3.5% to <7% more than Upper Limit	<b>-4 points</b>
7% to 10% more than Upper Limit	<b>-6 points</b>
>10% more than Upper Limit	<b>-8 points</b>

If the Project's TDC increases between its initial Notice to Proceed and its final tax credit cost certification for any reason, except market conditions or other circumstances beyond the Applicant's control as determined by MaineHousing in its sole discretion, the Application will be re-scored under this criteria and Section 6.I. based on the higher TDC and any change in Below Market Capital. There will be negative consequences in future competitive State Ceiling round(s) for any net reduction in the total score of the Application as follows. If the reduced score is still higher than the score of the highest scoring Application on the waiting list on the initial date of the Project's Notice to Proceed, then all Applications that are submitted by the Applicant, any Principal thereof and their Affiliates in the following round of competition for the State Ceiling in which they submit an eligible Application will lose 5 points. If the reduced score is less than the score of the highest scoring Application

on the waiting list on the initial date of the Project’s Notice to Proceed, then (i) the Applicant, any Principal thereof and their Affiliates may not submit an application in the next round of competition for the State Ceiling, and (ii) all applications that are submitted by the Applicant, any Principal thereof and their Affiliates in the following round of competition for the State Ceiling in which they submit an eligible Application will lose 5 points. If the total score of the Application after re-scoring is equal to the score of one or more other Applications, MaineHousing will use the tie breaker mechanism in Section 6.X. to prioritize the Applications.

**I. Below Market Capital. Up to 6 points**

Points are based on Below Market Capital, less the amount by which the Project’s TDC exceeds the Benchmark TDC applicable to the Project, relative to the Total Project Cost of the Project as follows.

<b>Percentage of Below Market Capital to the Project’s Total Project Cost</b>	<b>Points</b>
\$100,000 (minimum amount) to 3%	<b>1 point</b>
>3% up to 6%	<b>2 points</b>
>6% up to 9%	<b>3 points</b>
>9% up to 12%	<b>4 points</b>
>12% up to 15%	<b>5 points</b>
>15%	<b>6 points</b>

If any Below Market Capital for which an Applicant was awarded points is reduced or terminated and the Project becomes infeasible, the Applicant must find alternative funding with similar terms within 90 days of the date MaineHousing notifies the Applicant or MaineHousing will re-score the Application. If the total score of the Application after re-scoring is less than the total score of the highest scoring Application on the waiting list, the Project’s Notice to Proceed will be terminated and the Application will be placed on the waiting list in the order of its score relative to other Applications. If the total score of an Application is equal to the score of one or more other Applications, MaineHousing will use the tie breaker mechanism in Section 6.X. to prioritize the Applications.

**J. Developer Fee Contribution. 2 points**

At least 25% of the maximum Net Developer Fee is deferred, loaned or foregone for the benefit of the Project.

**K. Acquisition Cost. Up to 4 points**

Points are based on the percentage by which the acquisition costs of the Project

are less than the average acquisition costs for a project of its type as follows.

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

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

For purposes of this subsection, the acquisition costs of the Project include (a) the purchase price for all of the land and any existing building(s) that are part of the Project even if donated or leased to the Applicant at below market value, (b) the cost of razing or demolishing any building(s) and structure(s), or any part thereof, on the Project site, and (c) the Capitalized Lease Value of all leases of land or land and building(s) that are part of the Project. The value of any project reserves that are transferred to the Project as part of the acquisition and are included in the purchase price will not be included in the acquisition costs for purposes of this subsection.

Percentage of Project's Acquisition Cost to Average Acquisition Cost	Points
0% to 1% (nominal)	<b>4 points</b>
>1% to <25%	<b>3 points</b>
25% to 50%	<b>2 points</b>
>50% to 75%	<b>1 point</b>

**L. New Project-based Rental Assistance. Up to 6 points**

Points are based on the number of assisted units relative to the number of Credit Units in a Project with a commitment of new eligible project-based rental assistance.

Percentage of Assisted Units to Credit Units in the Project	Points
15% to < 25% (but not less than 4 units)	<b>2 points</b>
25% to < 50%	<b>3 points</b>
50% to < 75%	<b>4 points</b>
75% to <100%	<b>5 points</b>
100%	<b>6 points</b>

The project-based rental assistance must have similar terms to RD or HUD project-based rental assistance, or provide the minimum amount of \$200 per month for each assisted unit in the Project to be eligible. Section 8 Project-based Vouchers (24 CFR Part 983) are only eligible if the vouchers were awarded pursuant to a competitive process prior to the date of the Application. Project-based rental assistance made available, either directly or indirectly, by MaineHousing is not eligible.

**M. Property Tax Relief. Up to 4 points**

Points are based on the percentage of the Project’s annual incremental property tax revenue returned to the Applicant or foregone by the municipality in which the Project is located through Tax Increment Financing, a payment in lieu of taxes arrangement, abatement or other form of property tax relief that directly benefits the Project and the duration of the benefit as follows.

<b>Percentage and Duration of Tax Benefit or Relief</b>	<b>Points</b>
50% to 75% for at least 15 years from Project completion	<b>1 point</b>
50% to 75% for at least 20 years from Project completion	<b>2 points</b>
50% to 75% for at least 30 years	<b>3 points</b>
> 75% for at least 15 years from Project completion	<b>2 points</b>
> 75% for at least 20 years from Project completion	<b>3 points</b>
> 75% for 30 or more years	<b>4 points</b>

Only Tax Increment Financing, payment in lieu of taxes, abatement or other property tax relief arrangement that has been approved by the municipality in which the Project is located and all other applicable governing entities is eligible. A Project that is located in a municipality or area of the State that does not assess or collect property taxes or is exempt from property taxes will be awarded one (1) point.

Funding made possible by an Affordable Housing TIF will not be eligible unless a complete application for the Affordable Housing TIF that complies with the requirements for Affordable Housing TIFs is submitted to MaineHousing at least 45 calendar days before the applicable Application deadline (by Friday, December 22, 2017 for the 2018 State Ceiling).

**Project Location (maximum of 28 points)**

**N. Housing Need. Up to 5 points**

Points are based on the need for the type of housing in the area where it is located as follows.

1. Senior Housing Projects located in the following Service Center Communities.

<b>Senior Housing Projects</b>			
<b>Service Center Community</b>			<b>Points</b>
Auburn	Falmouth	Saco	<b>5 points</b>
Augusta	Freeport	Sanford	
Bangor	Kittery	Scarborough	
Bath	Lewiston	South Portland	
Biddeford	Portland	Waterville	
Brunswick	Old Orchard Beach	Westbrook	
Brewer	Ellsworth	Rumford	<b>3 points</b>
Bridgton	Kennebunk	Skowhegan	
Camden	Madawaska	Topsham	
Caribou	Presque Isle	Van Buren	
Ellsworth	Rockland	Windham	
Bar Harbor	Gardiner	Norway	<b>1 point</b>
Belfast	Hermon	Oxford	
Bethel	Houlton	Pittsfield	
Blue Hill	Lincoln	Rangeley	
Damariscotta	Mexico	Rockport	
Dexter	Millinocket	Wiscasset	
Farmington	Mount Desert		

2. Non-Senior Housing Projects located in the following Service Center Communities.

<b>Non-Senior Housing Projects</b>			
<b>Service Center Community</b>			<b>Points</b>
Auburn	Brunswick	Rumford	<b>5 points</b>
Augusta	Caribou	Sanford	
Bangor	Ellsworth	Skowhegan	
Bath	Lewiston	South Portland	
Biddeford	Old Orchard Beach	Waterville	
Brewer	Portland	Westbrook	



Bar Harbor Belfast Calais Falmouth Farmington Gardiner	Houlton Kittery Madawaska Mexico Orono Presque Isle	Rockland Saco Scarborough Topsham Windham	<b>3 points</b>
Bridgton Camden Dover-Foxcroft Fort Kent Greenville	Hermon Lincoln Millinocket Newport Norway	Rockport Thomaston Wiscasset	<b>1 point</b>

3. Projects located on Native American tribal lands will be awarded **5 points**.

**O. Tax Credit/Market Rent Differential. Up to 3 points**

Points are based on the percentage by which the average market rent for comparable multi-family rental housing in the area where the Project is located is greater than the average maximum tax credit rent for housing occupied by individuals and families with income at or below 60% of area median income, determined in accordance with Section 42 of the Code, as follows.

<b>Percentage that Average Market Rent Exceeds Average Maximum Tax Credit Rent</b>	<b>Points</b>
10% or higher	<b>1 point</b>
15% or higher	<b>2 points</b>
20% or higher	<b>3 points</b>

Comparable means located in the same geographical area and not subsidized under any state or federal housing program. MaineHousing will rely on the market rent information in the market study submitted with the Application, as reviewed and approved by MaineHousing, to determine the average market rent for the area. For housing with units of varying bedroom size, the average rents will be determined using a weighted average based on the number of units of each bedroom size in the housing.

**P. Community Revitalization. Up to 3 points**

The Project is located within the boundaries of a clearly defined area targeted for revitalization in a Community Revitalization Plan and is part of or contributes to the

revitalization goals and efforts identified in the Community Revitalization Plan. **2 points**

**One (1) extra point** if the Project also (1) involves the preservation of existing Affordable Housing, or (2) is located in a QCT and at least 20% of the units in the Project are market rate units.

**Q. Smart Growth. Up to 10 points**

The Project incorporates principles of smart growth as follows.

<b>Smart Growth Feature</b>	<b>Points</b>
<p>1. <b>Access to Public Transportation</b></p> <p>The Project is located within a Safe Walking Distance of not more than ½ mile of a designated pick-up location for existing Fixed-route Public Transportation;</p> <p><b>OR</b></p> <p>Demand Response Transportation is available to all of the tenants of the Project. Demand Response Transportation services with eligibility criteria that limit or deny service to any tenants of the Project are not eligible.</p>	<p><b>4 points</b></p> <p><b>OR</b></p> <p><b>1 point</b></p>
<p>2. <b>Proximity to Activities Important to Daily Living</b></p> <p>The Project is located within a Safe Walking Distance of not more than ½ mile of at least 3 Activities Important to Daily Living.</p>	<p><b>3 points</b></p>
<p>3. <b>Proximity to Significant Place of Employment</b></p> <p>The Project is located within 5 miles of a Significant Place of Employment.</p>	<p><b>3 points</b></p>

**R. High Opportunity Areas. Up to 6 points**

The Project is located in a Census Tract with the following area median income as determined under the most current American Community Survey.

<b>Area Median Income of Census Tract</b>	<b>Points</b>
\$40,000 to \$55,000	<b>4 points</b>
More than \$55,000	<b>6 points</b>

**S. Certified Business-Friendly Community. 1 point**

The Project is located in a municipality that is certified by the State’s Department of Economic and Community Development as a Certified Business-Friendly Community.

**Sponsor Characteristics (maximum of 8 points)**

**T. Developer Capacity. Up to 4 points**

Points are based on the development experience of the Applicant, any Principal thereof or any of their Affiliates as follows.

1. Completed one or more multi-family rental housing projects with MaineHousing funding or (ii) completed one or more LIHTC Projects in any other state(s).	<b>4 points</b>
2. Experience developing and operating multi-family rental housing or experience managing Affordable Housing, <b>and</b> the Applicant has a contract with a qualified consultant with experience successfully developing and completing LIHTC Projects to develop the Project.	<b>3 points</b>
3. Experience developing and operating multi-family rental housing.	<b>2 points</b>

**U. Owner Performance. Loss of Points**

Points are based on the performance of the Applicant, any Principal thereof or Affiliate of either as follows.

1. In the last 5 years (since February 8, 2013 for the 2018 State Ceiling), any of them was 60 days or more delinquent in the payment of any MaineHousing loan (except delinquencies resulting from the delay or loss of Section 8 housing assistance payments), has been declared in default by MaineHousing, or has failed to pay taxes or municipal assessments resulting in a lien on any housing funded by MaineHousing.	<b>-2 points</b>
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2. Failed to meet a deadline in the last Notice to Proceed issued to any of them for a LIHTC Project in the State, unless the failure was the direct result of circumstances beyond its control, as determined by MaineHousing in its sole discretion.	<b>-1 point</b>
3. Number of LIHTC Projects still in their Compliance Period that had a year-end operating deficit, as determined by MaineHousing, in the last full Fiscal Year, unless the operating deficit was fully funded by the Application deadline.	<b>-1 point for each LIHTC Project</b>
4. In the last 3 years (since February 8, 2015 for the 2018 State Ceiling), any of them (i) was issued an IRS Form 8823 for any reason other than a violation of UPCS or local inspection standards (box 11c of IRS Form 8823) that was subsequently reported as “noncompliance corrected” within the specified time period for correction, or (ii) had an IRS audit finding resulting in a recapture event.	<b>-2 points</b>
5. Any of them had an Application in the last round of competition for the State Ceiling in which any of them applied that was re-scored under the TDC scoring criteria for the State Ceiling and the re-scoring resulted in a net reduction in the total score of the Application.	<b>-5 points</b>

V. **Management Experience.** **4 points**

The company that will manage the Project has at least one (1) staff person with a minimum of 3 years of experience successfully managing at least one (1) LIHTC Project, and the management company has at least one (1) additional staff person with low-income housing tax credit training in the last 3 years for every 150 LIHTC units the management company plans to manage.

W. **Management Performance.** **Loss of up to 7 points**

Points are based on MaineHousing’s review of the management of LIHTC Projects still in their Compliance Period by the company that will manage the Project as follows.

1. Number of LIHTC Project(s) with a below average or unsatisfactory score on the last two physical plant inspections:	
a. One LIHTC Project	<b>-1 point</b>
b. Two or more LIHTC Projects	<b>-2 points</b>

<p>2. Number of Project Reports that were submitted after the applicable deadline in the last reporting period:</p> <p>a. 1-4 late Project Reports  b. 5-10 late Project Reports  c. More than 10 late Project Reports</p>	<p><b>-1 points</b>  <b>-2 points</b>  <b>-3 points</b></p>
<p>3. Number of LIHTC Project(s) with a below average or unsatisfactory score on the last two management and occupancy reviews:</p> <p>a. One LIHTC Project  b. Two or more LIHTC Projects</p>	<p><b>-1 point</b>  <b>-2 points</b></p>

X. **Tie Breaker.** If more than one Application has the same self-score, the Application for the least amount of Credit and 0% deferred debt from MaineHousing per unit will have priority over the other Application(s). If any of the Applications use the same amount of these resources, the Application that includes a commitment and an acceptable plan to convert the Project to affordable homeownership for the residents after the Extended Use Period will have priority over the other Application(s). The plan must describe the process for transferring ownership to the residents, the purchase price or process for determining it, any financial assistance available for residents (including any reserves), and how the affordability will be maintained, and must provide for homebuyer counseling and professional representation of the residents at the time of the conversion.

**SECTION 7: PROJECT EVALUATION**

The Credit, if any, to be allocated for a Project will be determined by MaineHousing in accordance with this Section.

- A. **Amount of Credit.** The amount of Credit allocated to the Project will be determined as follows.
1. MaineHousing will use the amount of Credit requested in the Application as the basis for its determination, but the amount MaineHousing determines the Project is eligible to receive may not equal the amount requested in the Application.
  2. The Applicable Percentage for the month in which the calculation is made will be used to determine the amount of Credit, unless the Applicant has made a qualified irrevocable election of the Applicable Percentage for a prior month.
  3. The calculation of the amount of Credit will be based on 130% of Eligible Basis for Projects located in a QCT or a DDA. For purposes of the 2018 State Ceiling,

MaineHousing has designated the entire State as a DDA for purposes of Section 42(d)(5)(B)(v) of the Code because of the high cost of developing housing in the State, the low median income of the State's population and the high annual operating costs for housing in the State relative to other states.

4. MaineHousing will use the lesser of (i) the market rent, based on the market study in the Application as reviewed and approved by MaineHousing, and (ii) the maximum Credit rent in determining the amount of Credit, except that for three or more bedroom units, MaineHousing will use the maximum Credit rent for two-bedroom units plus \$50.00.
5. The amount of Credit allocated for a Project will not exceed the lesser (a) the amount the Project is eligible to receive under Section 42 of the Code as determined by MaineHousing, (b) the amount MaineHousing determines is necessary for the financial feasibility of the Project and its viability as a LIHTC Project throughout the Credit Period, and (c) the Maximum Credit Amount.
6. The Applicant must submit financial and all other information about the Project required by MaineHousing. MaineHousing will evaluate the need for Credit based on (a) all sources of funding for the Project, including the terms and conditions of the funding, (b) the uses of funds, including the reasonableness of development costs and operating expenditures, and (c) any proceeds or receipts expected to be generated by reason of tax benefits.
7. In order to determine the amount of Credit a Project is eligible to receive, MaineHousing must identify the gap between development sources and uses which the Credit is designed to fill. MaineHousing may limit recognition of Intermediary Costs, re-characterize Project sources and uses and make reasonable assumptions with respect to projected revenues and expenses in the process of calculating the amount of Credit to be allocated to a Project. MaineHousing will also take into consideration any limitations imposed by federal laws and regulations when combining the Credit with other federal assistance, i.e. "subsidy layering" guidelines.
8. MaineHousing will evaluate the reasonableness of the Project's TDC. Proposed costs will be compared to historical data for similar LIHTC Projects (i.e. size, location, funding source, etc.) and industry cost standards. Consideration will be given to costs associated with tenant services and common area spaces. Additional information and documentation may be required if MaineHousing determines any of the proposed costs are not comparable or reasonable.
9. The Credit must be necessary for the Applicant to develop the Project. Applicants should not incur construction costs before MaineHousing determines the amount of Credit a Project is eligible to receive. MaineHousing may reject or cease processing an Application if construction costs are incurred prior to applying for Credit, unless the Applicant can demonstrate that the lack of Credit is a serious risk to the overall

viability and operation of the Project.

B. **Developer Fee.** Developer Fee will be determined in accordance with Section 42 of the Code and will be limited as follows.

1. **Maximum Developer Fee.** The total Developer Fee may not exceed the sum of 15% of the Housing Development Costs plus 10% of the costs of acquisition of land, existing buildings and equipment of the Project, determined without regard to the Developer Fee.
2. **Net Developer Fee.** The Developer Fee due and payable from the total funding for the Project's development budget, including without limitation investor capital, may not exceed the lesser of:
  - a. The sum of (i) \$10,000 per unit for the first 20 existing housing units and \$5,000 for each additional existing housing unit if the Project involves the rehabilitation of existing housing, and (ii) \$17,500 per unit for the first 20 new housing units and \$15,000 for each additional new housing unit in the Project;
  - b. \$750,000 plus any unused construction contingency returned to the Applicant after completion of the Project; and
  - c. the Maximum Developer Fee set forth in Section 7.B.1. above.

An Applicant will be allowed to keep any unused construction contingency returned to the Applicant after completion of the Project, even if such amount combined with the Net Developer Fee exceeds the limits under subsections a. and b. above.

3. **Additional Developer Fee.** An Applicant is eligible for Developer Fee in excess of the Net Developer Fee calculated under Section 7.B.2.a. and b. above only if (a) the Applicant agrees that any such additional Developer Fee will be used as a funding source for the development, acquisition and construction or rehabilitation of the Project, either by deferring payment or making a loan of the additional Developer Fee to be repaid from the surplus cash of the Project, (b) the Applicant can demonstrate there is a reasonable certainty that any additional Developer Fee will be fully repaid from the surplus cash of the Project, as determined by MaineHousing pursuant to its underwriting criteria, during the Credit Period or such longer period allowed by the investor or syndicator for the Project, and (c) the total Developer Fee, including the additional Developer Fee under this subsection, does not exceed the Maximum Developer Fee set forth in Section 7.B.1. above.

C. **General Contractor Intermediary Costs.** The Project's development budget must show the general contractor's Intermediary Costs separately from the actual construction and rehabilitation costs of the Project, and these Intermediary Costs must be broken down by

general conditions and overhead and profit. These Intermediary Costs may not exceed 14% of the Total Construction Cost, within the following ranges:

Overhead and Profit	up to 8% of Total Construction Cost
General Requirements	up to 6% of Total Construction Cost

- D. **Time of Credit Determination.** MaineHousing will determine the amount of Credit, if any, to be allocated to each Project pursuant to Section 42(m) of the Code at the time of (i) Application, which will be evidenced by the Notice to Proceed, (ii) the allocation of Credit, including any carryover allocation, (iii) the date each Qualified Building is Placed in Service, and (iv) if a Qualified Building is allocated Credit pursuant to Section 9, the date of issuance of the tax-exempt bonds used to finance the Qualified Building. Prior to each determination, the Applicant must certify to MaineHousing the full extent of all sources of funding for the Project and provide any other information required by MaineHousing to make the determination.
- E. **Binding Agreement; Rate Lock.** The Applicable Percentage for each Qualified Building in a Project will be the appropriate percentage for the month in which the Qualified Building is Placed in Service, unless the Applicant elects to fix the Applicable Percentage before then pursuant to Section 42(b)(1) of the Code as follows. For Qualified Buildings allocated Credit from the State Ceiling, an Applicant can elect the Applicable Percentage in the month which the Applicant enters into a binding agreement with MaineHousing to fix (i) the amount of Credit to be allocated for the Project and (ii) the Applicable Percentage. The agreement will include the conditions in the Notice to Proceed and any other performance-based conditions required by MaineHousing. For Qualified Buildings allocated Credit pursuant to Section 9, the Applicant may elect the Applicable Percentage in the month in which the tax-exempt bonds used to finance the Qualified Buildings are issued by entering into a binding agreement with MaineHousing no later than the fifth (5<sup>th</sup>) day of the month following the month in which the bonds are issued. The binding agreements must be in a form prescribed by MaineHousing, must comply with Section 42 of the Code, and are irrevocable.
- F. **Gross Rent Floor.** The gross rent floor for each Qualified Building in the Project pursuant to Section 42(g)(2)(A) will be maximum LIHTC rent applicable to the Project on (i) the date of the first allocation of the Credit to the Qualified Building (which may be the date of the first carryover allocation) if allocated Credit from the State Ceiling, and (ii) the date the Notice to Proceed is first issued to the Applicant if the Project is allocated Credit pursuant to Section 9, unless the Applicant elects to use the applicable maximum LIHTC rent on the date each Qualified Building in the Project is Placed In Service by completing and submitting the form attached as **Appendix D** before then.
- G. **Construction Cost Increases.** MaineHousing may, in its sole discretion, allocate additional Credit if the construction costs of the Project increase after the date of the Application and the increase is the result of market conditions or other circumstances beyond the control of the Applicant as determined by MaineHousing in its sole discretion.



Any additional Credit will not exceed an amount that will generate investor capital contributions in an amount equal to 5% of the Total Construction Cost for the Project estimated at the time construction bids on the Project are requested and is subject to Credit availability.

## **SECTION 8: ALLOCATION OF CREDIT**

- A. **Allocation.** MaineHousing will allocate Credit for the Project through the issuance of IRS Form 8609 or such other form prescribed by the IRS in the year the Project is Placed in Service after receipt of the following:
1. A complete request for allocation of Credit, which must be in a form prescribed by MaineHousing and must include an audit report on the schedule of project costs prepared by an independent, third party certified public accountant.
  2. Certification of the total financing planned for the Project, all proceeds or receipts expected to be generated by reason of the Credit or other tax benefits, the total sources and uses of Project funds and the full extent of all federal, state and local subsidies which apply or which the Applicant expects to apply with respect to the Project. In addition, the Applicant must identify all costs associated with the sale (such as commissions, due diligence, legal, accounting, reserves, etc.). This certification must include income, operating and development cost projections and methods for satisfying any deficits.
  3. The allocation fee and monitoring fee for the Project required under Section 4.C., less the amount of any allocation fee paid pursuant to Section 8.B. in connection with the issuance of a carryover allocation for the Project.
- B. **Carryover Allocation.** If a Project or any Qualified Building that is part of the Project will not be Placed in Service in the calendar year for which a Project is awarded Credit from the State Ceiling, MaineHousing may issue a carryover allocation for the Project.
1. The Applicant must submit the following to receive a carryover allocation.
    - a. A complete request for carryover allocation in the form prescribed by MaineHousing must be submitted to MaineHousing no later than the first day of December of the year in which the carryover allocation is made.
    - b. Certification of the total financing planned for the Project, all proceeds or receipts expected to be generated by reason of the Credit or other tax benefits, the total sources and uses of Project funds, and the full extent of all federal, state and local funding for the Project. This certification must include income, operating and development cost projections and methods for satisfying any deficits.

- c. Status report on the progress of development of the Project and the likelihood of the Project being completed.
2. A carryover allocation must be executed by the Applicant and returned to MaineHousing, together with the allocation fee for the Project required under Section 4.C, no later than December 31 of the year in which the carryover allocation is made.
3. A carryover allocation will be subject to the following conditions:
  - a. MaineHousing receives satisfactory evidence that more than 10% of the reasonably expected basis in the Project, determined as of the second calendar year following the calendar year in which the carryover allocation is made, is incurred within 12 months of the date the carryover allocation is made, including an audit report on the schedule of project costs prepared by an independent, certified public accountant in form and substance acceptable to MaineHousing;
  - b. The Project is Placed in Service within 2 years following the calendar year in which the carryover allocation is made and only to the extent that the IRS gives effect to such carryover allocation; and
  - c. Any performance conditions MaineHousing may require to ensure maximum utilization of Credit.

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

4. After all Qualified Buildings in the Project are Placed in Service, the Owner must submit a request for issuance of Form 8609 or such other form prescribed by the IRS in accordance with Section 8.A. The entity making the request must be the same entity that received the carryover allocation.
  5. MaineHousing may carry over any unallocated portion of the State Ceiling and deny any or all requests for Project-specific carryover allocations.
- C. **Tax Credit Compliance Experience.** Prior to an allocation of Credit, the Applicant must demonstrate that the entity managing the Project has sufficient Credit compliance experience and training. The entity must complete a Credit compliance training approved by MaineHousing or receive a certification from a Credit trainer approved by MaineHousing.
- D. **Extended Use Agreement.** Prior to an allocation of Credit, the Owner must enter into an Extended Use Agreement with MaineHousing containing restrictive covenants that run with the land, are binding on the Owner and its successors and assigns, and are enforceable by

MaineHousing and the low-income tenants of the Project. The Extended Use Agreement will obligate the Owner to comply with Section 42 of the Code, the affordability restriction and other threshold requirements in Section 5, and commitments made by the Applicant for which the Application was awarded points under the scoring criteria in Section 6.

The Extended Use Agreement must be recorded in the appropriate registry of deeds prior to all mortgage liens and encumbrances on the Project and before MaineHousing issues any IRS Form 8609 for the Project. The Extended Use Period may terminate on the date the Project is acquired by foreclosure or transfer of the Project in lieu of foreclosure, in MaineHousing's sole determination, provided that (i) all indebtedness owed to MaineHousing in connection with the Project is satisfied in full, (ii) the acquisition is not part of an arrangement to terminate the Extended Use Period pursuant to Section 42(h)(6)(E) of the Code, and (iii) during the 3-year period following termination, the tenancy of any existing tenant may not be terminated, through eviction, nonrenewal or otherwise, for other than good cause and the gross rent of any existing low-income tenant may not increase other than is permitted under Section 42 of the Code.

- E. **Converting a Carryover Allocation.** MaineHousing may, in its sole determination, convert a carryover allocation of Credit from the State Ceiling for a particular calendar year to a carryover allocation of Credit from the State Ceiling for the year in which the carryover allocation is terminated or the following year. The carryover allocation must be rescinded by the mutual consent of MaineHousing and the Applicant. There can be no change in the Project design or financing that would render the Application withdrawn under Section 4.I. A carryover allocation will not be converted unless there are extenuating circumstances beyond the control of the Applicant, as determined by MaineHousing in its sole discretion, that result in the Applicant's likely failure to meet the requirements in Section 8.B.3. The Project will be subject to the Qualified Allocation Plan in effect at the time the Project received the original allocation of Credit and the Applicable Percentage elected in any binding agreement pursuant to Section 7.E.
- F. **Cancellation of Carryover Allocation.** Credit from the State Ceiling returned to MaineHousing as a result of the termination or cancellation of a carryover allocation prior to September 30 in a particular calendar year will be added to the State Ceiling for the calendar year in which it is returned. Credit returned as a result of a termination or cancellation of a carryover allocation after September 30 will be added to the State Ceiling for the calendar year in which it is returned or the following year in MaineHousing's sole determination.
- G. **Forward Allocation of Credit.** MaineHousing may issue a binding commitment to allocate State Ceiling available in the subsequent year for any Project Placed in Service in the current year. Credit from the subsequent year's State Ceiling may only be committed upon MaineHousing's determination that the amount of Credit that remains in the current year's State Ceiling is insufficient to ensure the viability or feasibility of the Project. Any binding commitment to allocate subsequent year's State Ceiling authorized pursuant to this section shall be processed and evaluated in accordance with this Qualified Allocation Plan and shall be subject to MaineHousing authority to allocate Credit and applicable law.

## SECTION 9: TAX-EXEMPT BOND FINANCED PROJECTS

Certain Projects financed with tax-exempt bond proceeds may be eligible for Credit without an allocation from the State Ceiling pursuant to Section 42(h)(4) of the Code, subject to the following.

- A. **Eligible Buildings.** A Qualified Building which is financed with the proceeds of tax-exempt bonds subject to the State volume cap on such bonds qualifies for the Credit on the portion of the Eligible Basis of the building financed with such bond proceeds without an allocation from the State Ceiling. If 50% or more of the Eligible Basis of a Qualified Building is financed with the proceeds of tax-exempt bonds subject to the State volume cap on such bonds, all of the Eligible Basis of the Qualified Building qualifies for the Credit without an allocation from the State Ceiling.
- B. **Requirements.** The Project must satisfy all requirements under this Qualified Allocation Plan except (i) the Maximum Credit Amount limitation in Section 3.D., (ii) the application limits in Section 4.B.1., (iii) the application deadline in Section 4.B.2., (iv) the selection process described in Sections 4.F., (v) the affordability threshold requirement set forth in Section 5.A., (vi) the requirement of a minimum \$50,000 per unit of Rehabilitation Costs for Projects involving the acquisition and rehabilitation of existing housing in Section 5.C.2., (vii) the scoring criteria in Section 6, and (viii) the Developer Fee limits in Section 7.B.2 and 7.B.3. if the Applicant applies for interest-bearing debt financing and Credit only.

## SECTION 10: MONITORING

MaineHousing must monitor LIHTC Projects for compliance with Section 42 of the Code and notify the IRS of any noncompliance. The IRS “Guide for Completing Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition” provides standardized operational definitions for the noncompliance categories listed on Form 8823. The Extended Use Agreement requires Owners to comply with the following monitoring procedures and requirements.

- A. **Compliance with Applicable Laws.** Owners must comply with all local, state and federal laws and regulations governing the Project, including without limitation, (i) Section 42 of the Code and associated regulations and guidance; (ii) UPCS and all other local, state and federal health, safety and building codes applicable to the Project; (iii) the Federal Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. § 3601 *et seq.*), Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*), and the Maine Human Rights Act (5 M.R.S.A., Chapter 337, Subchapter IV) and all other applicable federal, state and local fair housing and accessibility requirements, and the regulations, guidance and standards associated with all of the foregoing; and (iv) Title VI of the Violence Against Women Reauthorization Act of 2013, 42 USC Chapter 136, Subchapter III, Part M, and all associated regulations and guidance, as may be amended, (VAWA).

B. **Recordkeeping and Record Retention.** Each Owner must keep on file and available to MaineHousing upon request, the following records for each Qualified Building in its LIHTC Project(s) for each year in the Extended Use Period.

1. The total number of residential rental units in each Qualified Building (including the number of bedrooms and the square footage of each residential rental unit).
2. The number of residential rental units in each Qualified Building that are designated low-income units.
3. The rent charged on each residential rental unit in each Qualified Building (including any utility allowances).
4. The number of occupants in each low-income unit.
5. The low-income unit vacancies in each Qualified Building and information that shows when, and to whom, the next available units were rented.
6. An income certification for each household occupying a Credit Unit in the LIHTC Project at the time of initial occupancy and source documents verifying the income of the household, including for example, a copy of federal income tax returns, W-2 forms or verifications of income from third parties such as employers or state agencies paying unemployment compensation. Tenant income is calculated in a manner consistent with the determination of annual income in accordance with Section 8 of the United States Housing Act of 1937, not in accordance with the determination of gross income for federal income tax liability. In the case of a tenant receiving Section 8 housing assistance payments, the documentation requirement is satisfied if the public housing authority provides a statement to the Owner declaring that the tenant's income does not exceed the applicable income limit under Section 42(g) of the Code.
7. An income certification for each new member added to the household of a Credit Unit after initial occupancy and third party verification of the new member's income as described in Section 10.A.6.
8. Annual income certifications for each household occupying a Credit Unit in the LIHTC Project, except that (a) no annual income certification is required for a LIHTC Project in which 100% of the units are subject to the applicable income limit elected pursuant to Section 42(g)(1) of the Code for the LIHTC Project (i.e. either 100% of the units at 60% AMI or 100% of the units at 50% AMI), and (b) for a LIHTC Project in which 100% of the units are Credit Units but the LIHTC Project is subject to multiple income targeting requirements, annual income certifications are only required for households in units subject to the lower income targeting requirements (e.g. in LIHTC Project in which 100% of the units are Credit Units with 60% AMI, 50% and 40% AMI units, annual income certifications are required

for the 50% AMI and 40% AMI units). For a LIHTC Project financed or assisted under a state or federal program that requires annual income certifications, the Owner must provide annual income certifications for each household occupying a Credit Unit in the LIHTC Project.

For a LIHTC Project in which 100% of the units are Credit Units, MaineHousing will allow a self-certification from each household for which an annual income certification is required under this subsection, except a third party verification of the household's income shall be required every 6 years during the affordability period, commencing on the date on which the first Qualified Building in the LIHTC Project is Placed in Service, and otherwise upon request by MaineHousing. The self-certification must be in writing, must include the size of the household and annual household income, must contain a representation that the information is complete and accurate, must indicate that third-party source documentation will be provided if requested by the Owner or MaineHousing, and must be witnessed.

9. The Eligible Basis and Qualified Basis of each Qualified Building at the end of the first year of the Credit Period.
10. The character and use of the nonresidential portion of a Qualified Building included in the Qualified Building's Eligible Basis (for example, tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities or facilities reasonably required by the LIHTC Project).
11. A determination of the student status of the resident household.
12. The tenant occupancy policies and procedures and lease in form and content acceptable to MaineHousing that comply with Section 42 of the Code, State landlord/tenant laws, VAWA and all other applicable federal, state and local laws, and the regulations and guidance associated with all of the foregoing.
13. All other disclosures to tenants, certifications and other records required by applicable local, state and federal laws and associated regulations and guidance.

These records must be retained by the Owner throughout the Extended Use Period for at least 6 years after the due date (with extensions) for filing the federal income tax return for that year, except that the records for the first year of the Credit Period must be retained at least 6 years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period.

- C. **Annual Reports.** Each Owner must submit the following to MaineHousing by March 1 of each year throughout the Extended Use Period.

1. Certification for the prior calendar year that the Owner's LIHTC Project(s) comply with the requirements set forth in IRS Treasury Regulation § 1.42-5(c)(1) and other obligations set forth in *MaineHousing's Low Income Housing Tax Credit Program Owner's Certificate of Continuing Program Compliance* attached hereto as **Appendix E**. A completed and executed IRS Form 8609 for each Qualified Building must be submitted with the first certification.
2. Certain information and data about the tenants in Credit Units in each Qualified Building for the prior calendar year required under Section 42 of the Code, including household income; monthly rental payments; family composition; use of rental assistance under Section 8 and other similar assistance; the race, ethnicity, age and disability status of the members of the households; and all other occupancy information required by MaineHousing. The information and data shall be submitted to MaineHousing electronically and in the format required by MaineHousing to efficiently transmit the data to HUD.

D. **Review.** MaineHousing will review the tenant files of at least 20% of the Credit Units in each LIHTC Project at least once every 3 years. For new LIHTC Projects Placed in Service, MaineHousing will complete a review of tenant records of at least 20% of the Credit Units at the LIHTC Project within 2 years following the year the last Qualified Building is Placed in Service. The tenant records to be reviewed will be selected randomly by MaineHousing. Prior written notice of a review will be given to the Owner of the LIHTC Project, including information required by MaineHousing to complete the review, but no more than 30 days before the review.

Owners of Qualified Buildings financed under the RD Section 515 Rural Rental Housing Program or Qualified Buildings of which 50% or more of the aggregate basis is financed with the proceeds of tax-exempt bonds are not required to submit, and MaineHousing is not required to review, the tenant income certifications, supporting documentation and rent records if RD or the bond issuer, as applicable, has entered into an agreement with MaineHousing to provide information concerning the income and rent of the tenants in the Qualified Building to MaineHousing. If MaineHousing determines that the information provided by RD or the bond issuer is not sufficient for MaineHousing to meet its obligations, an Owner must provide the income and rent information required by MaineHousing upon request.

E. **Inspections.** Every one to three years after a Project is Placed in Service, MaineHousing will inspect LIHTC Projects, including at least 20% of the Credit Units in the LIHTC Project, to determine if they are suitable for occupancy under applicable local and state health, safety and building codes and they comply with UPCS. The frequency of inspections will depend on applicable funding requirements and the LIHTC Project's financial viability, program compliance and physical plant. For new LIHTC Projects, MaineHousing will inspect at least 20% of the Credit Units at the LIHTC Project by the end of the second calendar year following the year the last Qualified Building is Placed in Service. MaineHousing reserves the right at any time, upon reasonable prior written notice, to inspect

a LIHTC Project or any Credit Unit.

- F. **Notification of Noncompliance.** MaineHousing will notify an Owner of any failure by or on the part of the Owner to (i) submit any certification or information required by MaineHousing when due, or the certification or information submitted is incomplete or insufficient, (ii) allow MaineHousing to perform any review or inspection required under this Section, or (iii) comply with Section 42 of the Code or any others requirements under this Plan. The Owner will have a reasonable period of time to correct the noncompliance identified in the notice, typically 24 hours to 10 days for violations of health and safety codes and 30 days for other violations. If MaineHousing determines there is good cause, it may extend the correction period for up to 6 months. Within 45 days after the end of the correction period, including any permitted extensions, MaineHousing must file the required Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance, with the IRS regardless of whether the noncompliance has been corrected. MaineHousing will file Form 8823 with the IRS reporting any correction of noncompliance that occurs within 3 years after the end of the applicable correction period.

## SECTION 11: GENERAL

- A. **Conflicts.** If this rule conflicts with Section 42 of the Code or any other provision of federal or State law, the federal or State law shall control.
- B. **Not an Entitlement.** This rule establishes a pool of eligible Applicants but does not preclude additional reasonable criteria and does not confer any automatic right or entitlement to Credit on any person or entity eligible hereunder. MaineHousing may reject any and all Applications and may refuse to award any or all of the Credit in its sole discretion.
- C. **Final Agency Action.** The Director of MaineHousing, individually or by exercise of the delegation of powers contained in the Act, shall make all decisions and take all action necessary to implement this rule. Such action of the Director shall constitute final agency action.
- D. **Waiver.** Upon a determination of good cause, the Director of MaineHousing or the Director's designee may, subject to statutory limitations, waive any provision of this rule. The waiver must be in writing and must be supported by documentation of the pertinent facts and grounds.
- E. **Freedom of Access Act.** MaineHousing is subject to the Freedom of Access Act, 1 M.R.S.A. §401 *et seq.*, which requires the disclosure of all information provided to MaineHousing that is not specifically excluded, such as confidential information under the Act. MaineHousing shall not be liable for the disclosure of any information that MaineHousing determines must be disclosed under the Freedom of Access Act.



- F. **Liability.** Compliance with Section 42 of the Code is the responsibility of the Owner. MaineHousing is in no way responsible for an Owner’s compliance or liable for an Owner’s noncompliance. Any allocation, review or inspection by MaineHousing and any determination made by MaineHousing pursuant to this Qualified Allocation Plan is for the sole purpose of satisfying MaineHousing’s obligation to allocate Credit and to monitor for compliance with Section 42 of the Code and is for the sole benefit of MaineHousing. No liability or responsibility for Owner compliance with Section 42 of the Code or other applicable requirements and no representation or warranty of a Project’s feasibility or viability, eligibility for Credit, or compliance shall be implied or construed from any such actions and determinations by MaineHousing
- G. **Headings/Context.** The headings in this rule are for convenience only and do not define or limit the scope of the provisions of this rule. The use of Section, Subsection or Appendix without a reference to another document or source refers to a section, subsection and Appendix of this rule.

**STATUTORY AUTHORITY:** 30-A MRSA §§4741(1) and 4741(14), Section 42 of the Internal Revenue Code of 1986, as amended

**BASIS STATEMENT:** This rule is the qualified allocation plan for allocating and administering federal low income housing tax credits (“LIHTC”) in the State of Maine, which MaineHousing, as the State’s designated housing credit agency, is required to adopt pursuant to Section 42 of the Internal Revenue Code and the above-referenced sections of the Maine Housing Authorities Act. This rule replaces the prior rule and includes the following changes.

- The rule has been overhauled and reformatted to make it simpler and easier to use.
- The rule includes the process for allocating the 2018 state ceiling of federal low-income housing tax credits for the State of Maine (the “State Ceiling”). The scoring criteria points are normalized to a total score of 100.
- The Preservation Set-aside is reserved for existing affordable housing assisted under a Rural Development program or HUD’s Rental Assistance Demonstration (RAD) Program and the minimum rehabilitation requirement for the set-aside is reduced to \$50,000 per unit to ensure the preservation of affordable housing that is difficult, if not impossible, to preserve under other MaineHousing programs.
- The pre-application process is more interactive and informative. The pre-application review is still mandatory, but applications will not be rejected at the pre-application stage. MaineHousing will meet with each applicant at least 30 days before the full application is due to provide feedback on eligibility and scoring issues. An application may be rejected at the full application stage if eligibility issues raised by MaineHousing during the meeting are not addressed.

- The State Ceiling application limits extend to consultants because of capacity concerns in the last round. Consultants cannot be a consultant or a principal in more than 3 applications in each round or in more than 4 outstanding projects at any time.

- The application, allocation and monitoring fees increased to cover the cost of administering the program.

- Investors that fail to make required capital contributions are barred from the program. Uncertainty about the federal corporate tax rate caused a significant drop in LIHTC pricing in the last round, and for the first time in Maine, an investor failed to meet its funding obligations. With the support of MaineHousing and the construction lender, the developer was able to find another investor and make the project work financially, but the default increased project costs and reduced the capital investment in the project because of lower LIHTC pricing available in the market.

- The State Ceiling selection process is streamlined to reduce the number of applications that are scored in an effort to expedite the selection process. Only applications with the highest self-scores will be selected for scoring until the LIHTC is fully awarded to the applications with the highest actual scores.

- Smaller projects (less than 20 units) with limited financial capacity and projects that abut and have access to other projects with telemedicine facilities are excluded from the obligation to provide telemedicine facilities. Alternative methods for delivering telemedicine services and additional uses of the telemedicine room may be approved on a case-by-case basis to allow flexibility with changes in the technology.

- The scoring criteria provide greater balance between family and senior housing. Only one senior housing project was awarded State Ceiling in the last round. The TDC benchmark for new non-family housing is slightly increased from \$180,000 to \$185,000 per unit and 5 additional points are available under the accessibility scoring criteria for senior projects to incent more new senior housing.

- New scoring bands have been added to the TDC scoring category which narrow the scoring differential between bands to minimize any incentive for developers to submit artificially low budgets to maximize their TDC score. Higher point values are awarded at levels closer to the caps than previously.

- The weight of the property tax relief scoring criteria is less because certain municipalities have expressed that they do not want to feel pressured to provide tax increment financing to have affordable housing developed in their communities.

- The housing need scoring criteria uses the same formula, but is updated with the latest data. Changes in the senior housing criteria reflect population shifts. There are significant shifts in the non-senior housing criteria; 14 communities moved into higher point categories and 12 new

communities were added. These changes reflect population shifts and an increase in the number of households in the State that qualify for LIHTC housing.

- The rent differential scoring criteria include a new 3 point category for areas where the difference between the market rent and the tax credit is 20% or more to incent the development of new affordable housing in tightening rental markets in the State.
- Proximity to downtown is removed from the smart growth scoring criteria because the other criteria are indicative of downtown areas. The definition of “safe walking distance” in the smart growth criteria no longer includes paved wide shoulders because they are not a safe and suitable means for walking to the destinations addressed in the smart growth criteria.
- The LIHTC training requirement in the management experience scoring criteria is limited to LIHTC units, to which the training relates, rather than total units in projects.
- The rule includes new performance scoring criteria. One replaces the negative point for failing to start construction within 15 months of an award notice with a negative point for failing to develop projects in accordance with the progress timelines in the award notice. The other criteria builds on the management performance criteria and includes a loss of up to 2 points based on the number of projects with two consecutive below average or unsatisfactory management reviews.
- The reuse of existing sites scoring criteria is expanded to include buildings that are municipally-designated for renewal because of environmental hazards to the occupants, such as lead-based paint, asbestos and radon.
- The most efficient use of MaineHousing’s scarce resources, i.e. LIHTC and 0% deferred debt, replaces total development cost (TDC) per unit as the first tie breaker for prioritizing applications with the same score to incent developers to use less of these resources.
- The net developer fee for projects that involve the rehabilitation of existing housing and new construction will be pro-rated based on the relative number of new and existing units to better reflect the complexity of developing the projects.
- The limits on general contractor intermediary costs reflect the National Council of State Housing Authority’s best practices for the LIHTC Program.
- The rule clarifies MaineHousing’s administration of the gross rent floor (i.e. the lowest tax credit rent limit for a project) under Section 42 of the Code. Unless an owner elects the project’s placed-in-service date using the new form attached to the rule, the gross rent floor will be established on the date of the first LIHTC allocation (often a carryover allocation) for State Ceiling projects, and the date of the LIHTC award notice, which is the first eligibility determination under Section 42(m) of the Code, for automatic LIHTC projects.

- MaineHousing is reserving the right to determine whether the extended use agreement will be terminated in the event of a foreclosure based on the facts and circumstances at the time, such as the need for affordable housing in the market in which the project is located.

- The deadline for submitting the annual LIHTC certification and tenant data is moved up to March 1 to give MaineHousing more time to process the information, follow-up and collect late information and submit its report to the IRS.

**FISCAL IMPACT OF THE RULE:** The 2018 State of Maine ceiling of federal low-income housing tax credits is projected to raise approximately \$29,500,000 of private investor capital. The private investor capital generated by the federal low-income housing tax credits will be used to develop affordable housing for low-income persons. The rule will not impose any costs on municipalities or counties for implementation or compliance.

**EFFECTIVE DATE:**

## APPENDIX A

### Definitions

“Act” means the Maine Housing Authorities Act, 30-A M.R.S.A. §4701 et seq., as may be amended from time to time.

“Activities Important to Daily Living” means activities or destinations that are important to course of daily living of the population served by the Project, which include a grocery store, a public school only if the Project is housing for families, a daycare only if the Project is housing for families, a senior center only if the Project is Senior Housing, a pharmacy, a bank or credit union, a post office, a retail store, a general health care practitioner’s office (not a specialist), a public library, a hospital and other activities or destinations approved by MaineHousing. Convenience stores, gas stations, restaurants and other food service establishments are not eligible destinations for purposes of this subsection. If there is more than one activity or destination important to the course of daily living within a single establishment, each activity or destination will be counted separately for purposes of this subsection (e.g. a retail store that also includes a pharmacy and a bank branch will be treated as 3 destinations important to the course of daily living).

“Adaptive Reuse” means the conversion of an existing non-housing building or structure to multi-family residential rental housing or the reconstruction of existing housing that has become functionally obsolete, as determined by MaineHousing in its sole discretion.

“Affiliate” means any person or entity directly or indirectly controlling, controlled by, or under common control with another person or entity

“Affordable Housing” means multi-family rental housing that has five or more units and is assisted under a HUD or Rural Development program or is subject to a restrictive covenant requiring units in the housing to be restricted to households with income at or below 60% of area median income, as determined by HUD.

“Affordable Housing TIF” means an affordable housing development district and development program approved by MaineHousing pursuant to MaineHousing’s Affordable Housing Tax Increment Financing Program, 30-A M.R.S.A., Chapter 206, Subchapter 3 and the Act, as may be amended.

“Applicant” means the entity applying for Credit, its successors and assigns, which must be the entity that will be the owner of the Project for tax purposes; must be duly organized and validly existing under the laws of the state in which it is formed, and if not formed in this State, must be duly authorized to conduct business in this State; and must be in good standing under the laws of this State and its state of formation, if not this State.

“Application” means an application to MaineHousing for an allocation of Credit.

“Below Market Capital” means the face value of a grant and the net present value of the savings produced by other funding with an effective rate that is less than the market rate. For this calculation, the market rate is the 10-year Treasury note rate 60 calendar days before the Application deadline (Friday, December 1, 2017 for the 2018 State Ceiling) plus 300 based points. Such grants

and funding must be committed to the Applicant for the Project no later than the Application deadline and do not include construction-period financing, donations or below market purchases of land and buildings, investor capital from tax credits, funding made possible by Tax Increment Financing, any Developer Fee that is loaned, deferred or foregone for the benefit of the Project, service funding, operating funds, rental assistance and any resources made available, either directly or indirectly, by MaineHousing.

“Benchmark TDC” means the benchmark TDC by housing type established by MaineHousing based on reasonable costs of completing the respective types of housing, which is \$225,000 for Adaptive Reuse, \$205,000 for new construction of Family Housing, \$185,000 for new construction of housing other than Family Housing, and \$110,000 for the acquisition and rehabilitation of existing housing.

“Capitalized Lease Value” means the net present value of all lease payments under a lease calculated over the term of the lease using the 10-year Treasury note rate 60 calendar days before the Application deadline (Friday, December 1, 2017 for the 2018 State Ceiling) plus 300 basis points.

“Census Tract” means a geographic region that is defined for purposes of taking the census pursuant to the United States Bureau of the Census Participant Statistical Areas Program.

“Code” means the Internal Revenue Code, Title 26 of the United States Code, and applicable regulations promulgated pursuant thereto, as may be amended.

“Community Revitalization Plan” means (1) a community that has been designated by HUD or RD as an Empowerment Zone, a Renewal Community or Enterprise Community, or a Neighborhood Revitalization Strategy Area; or (2) a written plan that is formally adopted by the governing body of a municipality following a concerted planning process and public input, specifically targets a neighborhood or area in the community (not a single building or site or the entire municipality) for redevelopment or revitalization, and includes (a) an assessment of the existing physical structures and infrastructure of the area, (b) detailed policy goals with respect to economic redevelopment, the rehabilitation or development of housing (including multi-family rental housing) and the improvement or expansion of infrastructure, and (c) proposed activities and a timetable for implementing the policy goals. Comprehensive plans, zoning and land use plans and other plans about the growth or use of areas within a municipality, plans for a single development and plans formulated by or on behalf of the Applicant are not Community Revitalization Plans.

“Credit” or “LIHTC” means the low-income housing tax credit established pursuant to Section 42 of the Code and allocated pursuant to this rule.

“Credit Units” means units in a Project that are eligible for Credit.

“Demand Response Transportation” means on-call transportation services that operate at least 3 days per week and provide service throughout the day.

“Developer Fee” means the total compensation for the work, costs and risks associated with developing a Project, including without limitation, creating the Project concept, identifying and acquiring the Project site, obtaining construction and permanent financing, obtaining necessary subsidies, negotiating the syndication of investment interests in the Project, obtaining all necessary

regulatory approvals, constructing and/or rehabilitating the Project and marketing, and includes all amounts paid to consultants to perform this work, except fees for professional services such as environmental assessments, rental market studies, soil tests, and water tests, and includes all reserves, in the form of cash, expected to be paid to the tax credit developer from the Project.

“DDA” means an area of the State that is designated by HUD as a difficult development area pursuant to Section 42(d)(5)(B)(iii) of the Code or an area of the State that is designated by MaineHousing as a difficult-to-develop area in Section 7.A.3 pursuant to Section 42(d)(5)(B)(v) of the Code.

“Extended Use Agreement” means an agreement that satisfies the requirements of Section 42(h)(6)(B) of the Code.

“Extended Use Period” means the period of time specified by MaineHousing in the Extended Use Agreement executed in connection with a Project pursuant to Section 42(h)(6)(D) of the Code, which is the period set forth in Section 5.A. for Projects allocated Credit under the State Ceiling.

“Extremely Low Income” means income that is at or below 30% of the area median income as determined pursuant to the regulations and guidance governing the National Housing Trust Fund.

“Family Housing” means housing for families that qualifies for points under the Family Housing scoring criteria set forth in Section 6.E.

“Fiscal Year” means the fiscal year for a LIHTC Project as defined in the Owner’s organizational documents.

“Fixed-route Public Transportation” means year-round, regularly scheduled public transportation that operates at least 5 days per week and provides regular service throughout the day.

“High Opportunity Areas” mean those municipalities in the State designated by MaineHousing as areas of opportunity for low-income persons based primarily on population and access to employment, education and healthcare. Specific factors considered include population, proximity to major employers, proximity to colleges and universities, proximity to hospitals, availability of public transportation and geographic diversity.

“Housing Development Costs” means the total of all direct and indirect costs incurred in financing, creating, purchasing or rehabilitating a LIHTC Project except the costs attributable to the acquisition of the land and any existing buildings as determined by MaineHousing.

“HUD” means the United States of America acting through the United States Department of Housing and Urban Development.

“Intermediary Costs” means all Housing Development Costs except the actual construction costs or eligible rehabilitation costs under Section 42(e) of the Code attributable to the development of the units.

“IRS” means the United States Department of Treasury, Bureau of Internal Revenue Service.

“LIHTC Project” means a qualified low-income housing project as defined in and governed by Section 42(g) of the Code.

“MaineHousing” means Maine State Housing Authority.

“MaineHousing’s Construction Standards” means MaineHousing’s *Quality Standards and Procedures Manual* in effect 60 days prior to the applicable deadline for an Application for Credit which include without limitation certain energy efficiency standards and UPCS.

“Maximum Credit Amount” means the maximum amount of Credit a Project is eligible to receive pursuant to Section 3.D.

“National Housing Trust Fund” means the Housing Trust Fund established under Title I of the Housing and Economic Recovery Act of 2008, 12 U.S.C. §4568, together with associated regulations and guidance now or hereafter promulgated pursuant thereto.

“Net Developer Fee” means the Developer Fee with respect to a Project that does not exceed the applicable limit set forth in Section 7.B.2., including any portion thereof that is deferred or loaned to pay for costs associated with the Project (and does not include any additional Developer Fee allowed under Section 7.B.3).

“Notice to Proceed” means the notice that a Project has been selected for further evaluation to determine the Project’s eligibility for Credit and the amount of Credit to be allocated for the Project. The Notice to Proceed will require the submission of all information necessary for MaineHousing to determine the amount of Credit, if any, to be allocated to the Project, obligate the Applicant to fulfill all commitments made in the Application, and require the Applicant to promptly and diligently develop and complete the Project according to the deadlines specified in the notice.

“Owner” means the legal owner of a LIHTC Project or Qualified Building for which an Application has been submitted to MaineHousing or which has received an allocation of Credit from MaineHousing pursuant to this Qualified Allocation Plan or a prior Qualified Allocation Plan for the State.

“Ownership Transfer Rule” means Chapter 27 of MaineHousing’s rules, *Transfers of Ownership Interests*, and the policies and procedures related thereto, all as may be amended.

“Placed in Service” means the date on which a Qualified Building is suitable and available for occupancy as determined in accordance with Section 42 of the Code.

“Principal” means any person or entity with a controlling interest in another entity, including without limitation, a person or entity with an ownership interest in an Applicant that controls the development and day-to-day operation of a Project, such as the general partner(s) of a limited partnership or the manager(s) or member(s) invested with the management authority of a limited liability company, and all persons and entities with an ownership interest in or control of said entity.

“Project” means the property described in the Application, which must be a qualified low-income housing project as defined in and governed by Section 42(g) of the Code.



“Project Report” means the annual certification and tenant data required under Section 10.C., and if required for the LIHTC Project, the audited financial report (AFR) and the annual project budget.

“QCT” means an area of the State designated by HUD as a qualified census tract pursuant to Section 42(d)(5)(B)(ii) of the Code.

“Qualified Allocation Plan” or “Plan” means the plan for allocating and administering the Credit adopted by the housing credit agency pursuant Section 42(m)(1)(B) of the Code.

“Qualified Building” means a qualified low-income building as defined in and governed by Section 42(c)(2) of the Code.

“Rehabilitation Costs” means with respect to a Project, (1) the site costs, (2) the costs of complying with the construction requirements of other funding sources except those required by the Applicant, any Principal thereof or Affiliate of either, (3) contractor profit, overhead and general conditions, and (4) certain costs identified in the capital needs assessment required under Section 5.C.1. of the QAP, including (a) the cost of correcting all violations of applicable federal, state and local health, safety and building codes and correcting deferred maintenance, (b) the rehabilitation or replacement of all structures, systems, facilities and components that have reached or exceed their useful life or will reach their useful life within 5 years, (c) the cost of complying with MaineHousing’s Construction Standards, (d) the cost of complying with the most current accessibility requirements for new construction projects under applicable federal, state and local accessibility laws, regulations, standards and guidance, and (e) the remediation and disposal of any environmental or other hazards identified in environmental reports. Rehabilitation Costs do not include construction contingency, relocation costs or other soft costs.

“Related Development” means any development of which the Project is a part or is related and the Project cannot be completed, either structurally or financially, without the completion of the development.

“RD” or “Rural Development” means the United States of America acting through the United States Department of Agriculture, Rural Housing Services.

“Safe Walking Distance” means a pedestrian route appropriate to the area, as determined by MaineHousing, with sidewalks, crosswalks and traffic signals at busy roads or intersections and year-round walkability, which includes being plowed during the winter.

“Section 8” means Section 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437f, as may be amended.

“Senior Housing” means a Project that is designated as elderly or senior housing and receives funding and project-based rental assistance under a RD or HUD multi-family elderly housing program (such as RD’s Section 515 Rural Rental Housing Program and HUD’s Section 202 Supportive Housing for the Elderly Program) or that meets the definition of “housing for older persons” under the federal Fair Housing Act, 42 U.S.C. § 3607(b)(2) and the Maine Human Rights Act, 5 M.R.S.A. § 4581 et seq. and all associated regulations, as may be amended.

“Service Center Community” means an entire municipality that provides jobs and retail to surrounding areas and is a center for education, health care, cultural, recreational and social services, designated pursuant to the Municipal Planning Assistance Program of the State’s Department of Agriculture, Conservation and Forestry as a Regional Service Center as of January 2013.

“Significant Place of Employment” means an industrial, business or office park with at least 5 separate employers; a shopping mall that is anchored by one or more big box or large department stores and has at least 10 or more stores or establishments; or a single non-seasonal place of employment with at least 100 employees.

“State” means the State of Maine.

“State Ceiling” means the State’s housing credit ceiling established pursuant to Section 42(h)(3)(C) of the Code.

“Tax Increment Financing” means any type of tax increment financing, including without limitation an Affordable Housing TIF, a development district and development program approved by a municipality or a tax increment financing district approved by the State’s Department of Economic and Community Development pursuant to 30-A M.R.S.A., Chapter 206, as may be amended.

“Total Construction Cost” means the sum of site costs, costs of constructing or rehabilitating structures, systems, facilities, units and components, general requirements, bond premiums, and contractor overhead and profit as determined by MaineHousing.

“Total Development Cost” or “TDC” means Total Project Cost less (1) the fees required by MaineHousing in connection with the Credit, (2) the Project’s operating deficit account to the extent required by MaineHousing and (3) the costs associated with any commercial space developed in connection with the Project.

“TDC Cap” means the limit on Total Development Cost by housing type set forth in Section 5.B.

“Total Project Cost” means the sum of all costs associated with the development, construction and rehabilitation of a Project, as determined by MaineHousing. Total Project Cost includes, without limitation, acquisition costs, the Capitalized Lease Value of all leases of land and building(s), demolition costs, Total Construction Costs, construction contingency, costs associated with community service facilities included in the Eligible Basis of the Project, soft costs (such as permits, design and engineering fees, environmental reports, appraisals, market studies and legal fees), syndication costs, Net Developer Fee, financing costs and project reserves. Community service facilities are not considered commercial space for purposes of Total Project Cost.

“UPCS” means the Uniform Physical Conditions Standards established by HUD pursuant to 24 CFR § 5.703, as may be amended.

“Very Low Income” means income that is at or below 50% of the area median income as determined in accordance with Section 42(g) of the Code.

## APPENDIX B

### Pre-Application Submission Requirements

Applicants must submit a request for pre-application review and the following information to MaineHousing **at least 60 calendar days before the applicable Application deadline** (Friday, December 1, 2017 for the 2018 State Ceiling).

1. A description of the Project and any Related Development, including, the location, type of housing, total number of units by bedroom size, total number of income-restricted units by bedroom size, proposed affordability, any existing affordability restrictions, any existing or proposed use restrictions, common areas and amenities at the Project, any community service facilities, any commercial space and other unique features of the Project.
2. Conceptual, Diagrammatic Site Plan and Conceptual Floor Plans and Conceptual Building Elevations in accordance with the requirements set forth in the 2016 Edition of MaineHousing's *Quality Standards and Procedures Manual*
3. The status of applicable federal, State and local land use approvals for the Project and any Related Development, and any site, subdivision and other plans for the Project and any Related Development that have been prepared for submission or have been submitted to applicable municipal, state and federal governmental entities.
4. Details about the parking for the Project, including the number, type and location of all on-site parking and off-site parking and the terms and conditions thereof. If the Project will have less than one parking space for each unit in the Project, a written waiver request in accordance with the requirements set forth in 2016 Edition of MaineHousing's *Quality Standards and Procedures Manual* must be provided.
5. An explanation and all supporting documentation for any exceptions from the requirement to provide a community room, laundry facilities, telemedicine facilities or area activities in accordance with Section 5.J of the QAP.
6. All available information about any known or suspected environmental conditions on the Project site and any Related Development or adjacent sites that may impact the Project site or any Related Development, including any environmental reports. To the extent feasible, identify any and all visible (both on and off-site) fuel oil and propane tanks and include them on the Site Plan.
7. A capital needs assessment for any existing housing that meets the requirements in Section 5.C. and Appendix C.
8. A conceptual construction estimate(s) prepared by a qualified general contractor or third-party estimator for the Project and any Related Development, including trade breakdowns in the form of a schedule of values and a reasonable estimating contingency, if applicable, with sufficient detail to demonstrate expected construction-related costs. All exclusions and qualifications, if any, must be clearly stated in the estimate. The estimate is to be the basis of the hard cost line items contained in the project underwriting without exception.

9. A projected development and operating budget(s) for the Project and any Related Development which must be submitted electronically in the format prescribed by MaineHousing.

## **APPENDIX C**

### **Capital Needs Assessment Requirements**

1. The assessment must include a site visit, an interview with the on-site property manager and maintenance personnel concerning prior and pending repairs and improvements and existing or chronic physical deficiencies, and a physical inspection of the interior and exterior of at least 20% of the units and all other structures, facilities, systems and components that will be part of the Project, including the following.

- a. Site, including without limitation topography, drainage, pavement, curbing, walkways, sidewalks, parking, accessible parking, accessible routes, landscaping, amenities, water, sewer, storm drainage, and all utility lines;
- b. Structural systems and components, both substructure and superstructure, including without limitation foundations, exterior walls, balconies, porches, and stairways, exterior doors and windows, chimneys and roofing;
- c. Interiors, including without limitation unit and common area finishes and substrata (e.g. flooring, underlayment, carpeting, plaster or drywall, wall coverings and paint condition), and unit and common area kitchen finishes, cabinets, countertops and appliances, and unit and common area bathroom finishes, fixtures and accessories, laundry facilities, and common area lobbies and corridors; and
- d. Building systems, including without limitation plumbing supplies and drainage, domestic hot water production, heating, ventilating and air-conditioning production and distributions systems, fuel storage and delivery systems, electrical power distribution and metering systems, lighting controls and fixtures, smoke, fire and any other alarm systems, fire protection systems, security systems, and elevators.

The capital needs assessment must specifically identify all structures, systems, facilities, units and components that were inspected and must include a concise overview of the physical and operational condition of the existing housing and a detailed assessment of the expected useful life and the remaining useful life of each structure, system, facility, unit and component inspected. The assessment must also consider the presence of environmental and other hazards, including without limitation, asbestos, lead paint, mold, water damage and insect infestations.

2. The capital needs assessment must include a recommended scope of work and a cost estimate to complete the scope of work that addresses the following capital needs of the Project, without consideration of financial feasibility:

- a. Correction of all violations of applicable federal, state and local building, health and life safety codes and correction of all deferred maintenance;
- b. Rehabilitation or replacement of all structures, systems, facilities, units and components that have reached or exceeded their useful lives or will reach their useful lives within 5 years;

- c. Rehabilitation of all units and common areas and facilities to bring them into compliance with MaineHousing's Construction Standards to the maximum extent feasible;
  - d. Rehabilitation of the minimum number of units and all common areas and facilities that are necessary to comply with the most current requirements for new construction projects under applicable federal, state and local accessibility laws, regulations, standards and guidance (which include without limitation, Section 504 of the Rehabilitation Act of 1973, HUD's housing regulations at 24 C.F.R. Part 8 and any accessibility standard designated by HUD; Title II and Title III of the Americans with Disabilities Act of 1990 and the 2010 Standards of Accessible Design; and if the Project involves substantial rehabilitation, the Maine Human Rights Act, the Maine Human Rights Commission's Chapter 8, Housing Regulations, and ANSI Standard A117.1-2009); and
  - e. Remediation and disposal of any environmental or other hazards identified in the assessment.
3. The capital needs assessment must also identify any structures, systems, facilities, units and components with a remaining useful life of less than 30 years. The Application must include a plan for future rehabilitation or replacement of any identified structure, system, facility, unit and component with a useful life of less than 30 years that is not included in the scope of work for the Project, including possible funding sources, which will be considered in establishing the appropriate funding amounts for the Project's reserve accounts.

**APPENDIX D**  
**Gross Rent Floor Election Form**

**Note: This form only has to be completed if the Applicant wants to use the placed in service date to establish the gross rent floor for its Project.**

Pursuant to Section 42(g)(2)(A) of the Code and the State of Maine 2018 Qualified Allocation Plan, the gross rent floor for each Qualified Building that is part of \_\_\_\_\_ [NAME AND ADDRESS OF PROJECT] (the "Project") will be the maximum LIHTC rent applicable to the Project on (i) the date of the first allocation of tax credits to the Qualified Building (which may be the date of the first carryover allocation) if allocated tax credits from the State Ceiling, and (ii) the date the Notice to Proceed was first issued for the Project if LIHTC are allocated pursuant to Section 42(h)(4) of the Code, unless the Applicant completes and signs this form and returns it to Maine State Housing Authority before the first Qualified Building that is part of the Project is Placed in Service.

Terms used but not defined herein have the same meaning as set forth in the 2018 Qualified Allocation Plan.

\_\_\_\_\_ [check box] the undersigned elects to use the applicable maximum LIHTC rent on the date each Qualified Building in the Project is Placed in Service as the gross rent floor for the Qualified Building(s).

[INSERT NAME OF OWNER]  
By: [INSERT NAME OF GENERAL  
PARTNER/MEMBER/MANAGER]

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

## APPENDIX E

### LOW INCOME HOUSING TAX CREDIT PROGRAM OWNER'S CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

To: *MaineHousing*  
353 Water Street  
Augusta, ME 04330-4633

<b>Certification Dates:</b>	<b>From:</b> January 1, 20_____	<b>To:</b> December 31, 20_____	
<b>Project Name:</b>			<b>Project No:</b>
<b>Project Address:</b>		<b>City:</b>	<b>County:</b>
<b>Tax ID # of Ownership Entity:</b>			
<b>Building Identification Number(s):</b>	(1)	(2)	(3)
	(4)	(5)	(6)
	(7)	(8)	(9)
	(10)	(11)	(12)

- No buildings have been Placed in Service  
 At least one building has been placed in Service but owner elects to begin credit period in the following year.  
 If either of the above applies, please check the appropriate box, and proceed to page 2 to sign and date this form.

The undersigned \_\_\_\_\_ on behalf of \_\_\_\_\_  
 \_\_\_\_\_ (the "Owner"), hereby certifies that:

1. The project meets the minimum requirements of: (check one)
  - 20 - 50 test under Section 42(g)(1)(A) of the Code
  - 40 - 60 test under Section 42(g)(1)(B) of the Code
  - 15 - 40 test for "deep rent-skewed" projects under Section 42(g)(4) and 142(d)(4)(B) of the Code
  
2. There has been **no change in the applicable fraction** (as defined in Section 42(c)(1)(B) of the Code) for any building in the project:
  - NO CHANGE**                       **CHANGE**

If "**Change**", list the applicable fraction to be reported to the IRS for each building in the project for the certification year on page 4:
  
3. The owner has received an annual Tenant Income Certification from each low-income resident and documentation to support that certification, or the owner has a re-certification waiver letter from the IRS in good standing, has received an annual Tenant Income Certification from each low-income resident, and documentation to support the certification at their initial occupancy.
  - YES**                                       **NO**
  
4. Each low-income unit in the project has been rent-restricted under Section 42(g)(2) of the Code:
  - YES**                                       **NO**
  
5. All low-income units in the project are and have been for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under Section 42 (i)(3)(B)(iii) of the Code):
  - YES**                                       **NO**                                       **HOMELESS**



6. There has been no finding of discrimination under the Fair Housing Act, 42 U.S.C 3601-3619 with respect to this project. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C 3616a(a)(1), or an adverse judgment from a federal court:

**FINDING**                       **NO FINDING**

If "**Finding**", please explain the nature of the violation and attach a copy of the decision or judgment.

7. There has been no finding of discrimination under any other applicable local, State or federal equal access or nondiscrimination law with respect to this project. A finding of discrimination includes an adverse final decision by the governmental agency responsible for administering such law, or an adverse judgment from a court with jurisdiction over such law:

**FINDING**                       **NO FINDING**

If "**Finding**", please explain the nature of the violation and attach a copy of the decision or judgment.

8. Each building in the project is and has been suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low income unit in the project:

**YES**                                       **NO**

If "**No**", explain the nature of violation on page 4 and attach a copy of the violation report as required by 26 CFR 1.42-5 and any documentation of correction.

8. Each building and all FedHome (HOME) assisted units are suitable for occupancy, taking into account State and local health, safety, and other applicable codes, ordinances, and requirements, and the ongoing property standards established by the participating jurisdiction (MaineHousing) to meet the requirements of 24 CFR, Part 92, HOME Investment Partnership Program, Section 92.251.

**YES**                       **NO**                       **N/A**

9. There has been **no change in the eligible basis** (as defined in Section 42(d) of the Code) of any building in the project since last certification submission:

**NO CHANGE**                       **CHANGE**

If "**Change**", state nature of change (e.g., a common area has become commercial space, a fee is now charged for a tenant facility formerly provided without charge, or the project owner has received federal subsidies with respect to the project which had not been disclosed to the allocating authority in writing) on page 4:

10. All tenant facilities included in the eligible basis under Section 42(d) of the Code of any building in the project, such as swimming pools, other recreational facilities, parking areas, washer/dryer hookups, and appliances were provided on a comparable basis without charge to all tenants in the buildings:

**YES**                                       **NO**

11. If a low-income unit in the project has been vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units were or will be rented to tenants not having a qualifying income:

**YES**                                       **NO**

12. If the income of tenants of a low-income unit in any building increased above the limit allowed in Section 42(g)(2)(D)(ii) of the Code, the next available unit of comparable or smaller size in that building was or will be rented to residents having a qualifying income:

**YES**                                       **NO**

13. Project complies with an extended low-income housing commitment as described in section 42(h)(6) (not applicable to buildings with tax credits from years 1987-1989):

**YES**                                       **NO**                       **N/A**

14. In the prior 12 month period, the owner has:

- a) terminated the tenancy of a tenant in a low income unit, including without limitation, non-renewal of the lease of an existing tenant in a low income unit, for other than good cause;
- b) increased the gross rent of a tenant with respect to a low income unit not otherwise permitted under Section 42 of the Code and any other applicable program (e.g. HOME, HUD Section 8);
- c) denied tenancy to any applicant or terminated the tenancy of any tenant solely because the applicant or tenant had a Section 8 voucher or certificate; or
- d) denied tenancy to any applicant, terminated the tenancy of any tenant or failed to assist a tenant in finding

YES

NO

If "Yes", please explain the nature of the violation on page 4.

15. The project complies with the requirements of all applicable Federal and State Housing Programs included in the development (e.g., Rural Housing Services, HOME, HUD Section 8, or Tax-Exempt Bonds).

YES

NO

If "No", please explain the nature of the violation on page 4.

16. The owner received its credit allocation from the portion of the state ceiling set-aside for a project involving "qualified non-profit organizations" under Section 42(h)(5) of the code and its non-profit entity materially participated in the operation of the development within the meaning of Section 469(h) of the Code.

YES

NO

N/A

17. There has been no change in the ownership or management of the project:

NO CHANGE

CHANGE

If "Change", complete page 4 detailing the changes in ownership or management of the project.

**Note: Failure to complete this form in its entirety will result in noncompliance with program requirements. In addition, any individual other than an owner or general partner of the project is not permitted to sign this form, unless permitted by the state agency.**

The project is otherwise in compliance with the Code, including any Treasury Regulations, the applicable State Allocation Plan, and all other applicable laws, rules and regulations. This Certification and any attachments are made UNDER PENALTY OF PERJURY.

\_\_\_\_\_  
(Ownership Entity)

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**PLEASE PROVIDE ANY CHANGES OR EXPLANATIONS  
REQUIRED UNDER QUESTIONS 1-17.**

Question #	Explanation

**CHANGE IN MANAGEMENT CONTACT**

Date of Change:	
Management Co. Name:	
Management Address:	
Management city, state, zip:	
Management Contact:	
Management Contact Phone:	
Management Contact Fax:	
Management Contact Email:	

**CHANGES IN OWNERSHIP OR MANAGEMENT**  
(to be completed **ONLY** if “CHANGE” marked for question 17 above)

**TRANSFER OF OWNERSHIP**

Date of Change:	
Taxpayer ID Number:	
Legal Owner Name:	
Address:	
Phone:	
General Partnership:	
Status of Partnership (LLC, etc):	

**CHANGE IN OWNER CONTACT**

Date of Change:	
Owner Contact:	
Owner Contact Phone:	
Owner Contact Fax:	
Owner Contact Email:	