Notice of Agency Rule-making Proposal

AGENCY: 99-346 Maine State Housing Authority

CHAPTER NUMBER AND TITLE: Chapter 16, Low-Income Housing Tax Credit Rule

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

CONTACT PERSON FOR THIS FILING: Jodie Stevens, Counsel, Maine State Housing Authority, State House Station #89, 353 Water Street, Augusta, Maine, 04330-4633, (207) 626-4600 (telephone), Maine Relay 711, jstevens@mainehousing.org (e-mail)

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

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

PUBLIC HEARING (if any): A public hearing will be held on Tuesday, October 17, 2017 at 9:30AM at Maine State Housing Authority, State House Station #89, 353 Water Street, Augusta, Maine, 04330-4633.

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

COMMENT DEADLINE: Friday, October 27, 2017 at 5:00 PM

BRIEF SUMMARY: The rule repeals and replaces the current Chapter 16, *Low-Income Housing Tax Credit Rule*. The rule is the qualified allocation plan for allocating and administering the federal low-income housing tax credit in the State of Maine, including without limitation the State's housing credit ceiling for calendar year 2018, as required pursuant to Section 42 of the Internal Revenue Code.

IMPACT ON MUNICIPALITIES OR COUNTIES (if any) None

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

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

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

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** Check one of the following two boxes.*
□ *The above summary is for use in both the newspaper and website notices.*
x *The above summary is for the newspaper notice only. A more detailed summary / basis statement is attached.*

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

APPROVED FOR PAYMENT______________________ DATE:_____________________________
(*authorized signature)*

FUND	AGENCY	ORG	APP	JOB	OBJT
	AMOUNT				

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DETAILED BASIS STATEMENT / SUMMARY: 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 selfscores 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.