



Rental Loan Program

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

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

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I Introduction

MaineHousing (Maine State Housing Authority) is pleased to offer the Rental Loan Program (*Program*). The purpose of this Program is to provide funding for the creation and preservation of affordable multi-family residential rental housing in the State of Maine.

The sources of funding under this Program will vary from time to time and are usually limited. Section III describes some of these sources. MaineHousing's primary goal when providing the funding is to maximize the use of the available sources to create the most public benefit. To achieve this goal, MaineHousing may combine sources of funding under the Program, offer funding in conjunction with other MaineHousing resources such as the Low Income Housing Tax Credit (*LIHTC*), and encourage the use of other non-MaineHousing resources to supplement the funding available under the Program.

Funding under the Program may be in the form of amortizing loans, interest only loans, and/or deferred payment loans depending on the source of funding. Some funding is available on a walk-in basis, but most funding will be made available on a competitive basis. Amortizing loans funded with taxable bond or tax-exempt bond proceeds are usually available on a walk-in basis. However, tax-exempt bond financing is more limited and may not always be available. If used in conjunction with LIHTC, all competitive LIHTC and "automatic" LIHTC generated from tax-exempt bond financing are allocated separately under and subject to the requirements of Maine's Qualified Allocation Plan (*QAP*). Other sources of funding under the Program are typically made available through separate funding announcements, but are subject to the requirements of this Program unless otherwise specified in the funding announcement.

Projects funded under the Program must use general contractors that agree to (i) make a good faith effort to promote workforce diversity, including diversity with regard to race and gender and (ii) comply with Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992, if required by the project's funding sources.

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

II. Process

- A. Developer receives Rental Loan Program Guide and Application from MaineHousing.
- B. Developers without prior experience with MaineHousing must schedule a meeting with MaineHousing staff. At that time, the Rental Loan Program features and process, as well as project specifics, will be discussed in detail. Developers new to MaineHousing may be required to work with a consultant.
- C. Developer submits a complete application and the nonrefundable \$1,000 application fee, to MaineHousing. For non-competitive applications, developers will be notified of deficiencies and allowed to cure and resubmit. Applications under competitive funding rounds must be complete as part of threshold criteria.
- D. MaineHousing will notify officials of the community in which the proposed development will be located of MaineHousing's receipt of a complete application.
- E. MaineHousing will send the developer a notice of acceptance for further processing (*Notice to Proceed*) or application rejection. The Notice to Proceed sets forth the requirements and information required by MaineHousing to fully process the application, such as completion of plans and specifications, final pricing, appraisal and environmental reports, and other funding commitments, etc., and identifies certain timeframes for satisfying the requirements.
- F. Developer and its development team (design professionals, etc.) will meet with MaineHousing Construction Services staff to review the proposed development.
- G. Developer may be required to submit additional documentation at any time during the processing of the application.
- H. Upon receipt of all required information and documentation, MaineHousing staff finishes processing the application and develops a funding recommendation. The funding recommendation is reviewed by MaineHousing's loan committee which makes a final recommendation to MaineHousing's Director. MaineHousing's Director makes the final decision about the funding recommendation.
- I. If funding is approved, MaineHousing will issue a term sheet. If funding is rejected, Developer will be notified in writing specifically identifying the reason(s) the application was rejected.
- J. If the financing terms and conditions in the term sheet are acceptable to the developer, MaineHousing will prepare for loan closing.
- K. Any extension of the deadlines included in the Notice to Proceed or term sheet may result in an adjustment of the note rate to the then current program rate.
- L. After loan closing, MaineHousing will authorize commencement of construction of the development. Some of MaineHousing's funds may be disbursed at loan closing and during construction in accordance with the loan documents.

- M. During construction of the development, MaineHousing will conduct regular inspections and attend requisition meetings. MaineHousing must approve all changes to the construction budget and the design and construction of the development.
- N. After the construction of the development is completed, the development is ready for occupancy and developer satisfies all conditions and requirements of the loan documents, MaineHousing may disburse additional funds in accordance with the loan documents.
- O. MaineHousing staff will monitor the development during the term of the MaineHousing financing and restrictive covenants.

III Sources of Funding

A. Combination of Available Resources

MaineHousing attempts to maximize the benefit of the limited resources it has available by combining resources and encouraging applicants to seek other non-MaineHousing sources of funding. Each of the available funding sources may be subject to different regulatory requirements which apply to the projects awarded the funding.

B. Tax-exempt Bond Financing

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

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

a. TEFRA. Prior to issuing tax-exempt bonds under Section 142(d) of the Code, MaineHousing must provide public notice of the projects proposed to be financed with the tax exempt bonds, hold a public hearing, and obtain the Governor's approval. This process is commonly referred to as "TEFRA."

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

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

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

A development that is financed with the proceeds of bonds issued under Section 142(d) of the Code may also be eligible for “automatic” low-income housing tax credits pursuant to Section 42(h)(4) of the Code if 50% or more of the aggregate basis of the development, including land, is financed with tax-exempt bonds and is in compliance with the Qualified Allocation Plan in effect at the time. Only the portion of the project that qualifies for low income housing tax credits is eligible for 4% automatic low income housing tax credits.

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

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

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

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

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

If a project is located on scattered or non-contiguous sites, each parcel of land with the building(s) situated thereon is considered a separate project and must comply with the applicable affordability and other requirements of the Code.

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

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

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

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

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

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

3. Governmental Bonds – Section 145 of the Code

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

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

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

4. Inducement Resolution

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

By submitting the electronic application, the developer authorizes MaineHousing to issue the inducement resolution, if one may be needed. MaineHousing will use the information in the application to prepare the Inducement Resolution.

It is important that the information provided in the inducement be as accurate as possible regarding the site and the proposed ownership structure. To provide the greatest future flexibility, all current

or potential partners (corporate or individual), parent corporations, subsidiary corporations, etc. that may potentially participate in the ownership entity should be included in the application. The applicant must notify MaineHousing immediately if there are any changes in the information contained in the inducement resolution.

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

5. Owner's Tax Certification

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

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

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

C. Taxable Bonds

Proceeds from taxable bonds are used mostly in conjunction with an allocation of competitive 9% low income housing tax credits under the QAP. MaineHousing may also use taxable bond proceeds to finance a development if MaineHousing determines that the development does not satisfy the requirements for tax-exempt financing or if MaineHousing, in its sole discretion, wants to conserve its tax-exempt bonding authority.

D. Other Resources

Sources of funding that are made available through separate funding announcements may include:

- Federal Home Investment Partnerships Program (*FedHOME*) funding allocated to MaineHousing annually pursuant to the Cranston-Gonzalez National Affordable Housing Act of 1990, 42 U.S.C. §12701 *et seq.*, the HOME Investment Partnership Program Rule, 24 C.F.R. Part 92, and HUD guidelines and interpretations regarding Federal HOME, all as may be modified from time to time, including the portion of the allocation that MaineHousing is required to set aside for projects that are owned, sponsored or developed by Community Housing Development Organizations (*CHDO*);

- State Housing Opportunities for Maine Program (*State HOME*) funding allocated to MaineHousing pursuant to 30-A M.R.S.A. Chapter 201, Subchapter 7;
- Maine Energy, Housing and Economic Recovery (*MEHER*) funds pursuant to 30-A M.R.S.A. Chapter 201, Subchapter 7-A;
- Proceeds of General Obligation Bonds; and
- Other sources available from time to time.

The funding announcement will identify the source(s) of funding and the criteria for awarding the funding and will often limit the amount of funding that will be awarded per unit and/or per project. In addition to any specific funding limits and to provide for the most efficient use of the available sources, the amount of funding awarded to each project will depend on other available funding sources for the project (such as capital from the syndication of low-income housing tax credits) and the amount of interest-bearing amortizing debt the project can support underwritten pursuant to this Program, and will not be more than is necessary to make the project financially feasible. The funding is typically interest free with payment deferred until the earlier of default, sale or transfer of the project, repayment of any MaineHousing amortizing loan made in connection with the development, or 30 years.

E. FedHOME Match

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

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

These requirements are more specifically set forth in the HOME Investment Partnership Program Rule, 24 C.F.R. Part 92 and applicable HUD guidance and interpretations, all as may be modified from time to time.

IV. Basic Requirements

A. Program Eligibility

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

1. Rental Housing.

General

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

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

Preservation

Preservation includes any existing affordable housing, including housing in MaineHousing's multifamily portfolio and federally-assisted housing, such as HUD Section 8 project-based rental assistance, HUD 202, HUD 811 and Rural Development 515 properties, at risk of being lost due to the expiration of federal rental assistance contracts, physical or financial deterioration, and/or owners opting out of federal housing programs.

Adaptive Re-use and New Construction

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

Displacement and Relocation

The permanent displacement of households in Section 8 project-based rental assistance or any other federally-assisted units is prohibited. MaineHousing strongly discourages the displacement of other households and will require that any unavoidable displacement or temporary relocation be addressed in accordance with the MaineHousing's Relocation/Displacement Policy. A summary of the policy is set forth in **Exhibit A** to this Guide. Developers should discuss proposals that may have

displacement or relocation issues with MaineHousing staff as early in the development process as possible in order to minimize displacement and unnecessary relocation costs.

2. **Affordability.**

The applicant must comply with the affordability requirements associated with the funding source, this Program and any other MaineHousing program under which the applicant has applied, for example, the QAP and/or a funding announcement made under this Program. Units that are subject to affordability requirements and units which are voluntarily income and rent restricted by the owner may be referred to as the affordable units for purposes of this guide.

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

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

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

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

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

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

If a development receives project-based rental assistance from Rural Development or HUD or other entity providing project-based assistance, the owner must comply with the associated affordability and rent limitations under the rental assistance or housing assistance payments agreement. MaineHousing will require the owner to accept any extensions and renewals of the assistance and any comparable replacement assistance or subsidy program offered.

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

3. Rent Levels.

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

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

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

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

4. Compliance with Laws.

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

The development must comply with the requirements of the Maine Housing Authorities Act, 30-A M.R.S.A. § 4701, *et seq.*, MaineHousing Rule Chapter 29, *Multi-family Development and Supportive Housing Loans and Grants* and MaineHousing Rule Chapter 27, *Transfers of Ownership Interests*, all as same may be amended from time to time. The development must also meet the requirements of the particular funding source(s) used to finance the development.

B. Developer Eligibility

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

Management The management agent must be able to demonstrate successful experience

Agent

in managing similar types of affordable properties. Experience with MaineHousing-financed properties or other federally-assisted properties is desirable. The applicant is encouraged to meet with a MaineHousing Asset Management Department representative during the development process. A written management plan, management agreement, management agent entity profile, marketing plan, resident selection policy, RSC agreement, model lease and any addenda, and lease-up schedule for the property are subject to review and approval by MaineHousing's Asset Management **Department** prior to Construction Loan Closing.

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

Agency organizational leadership

- Partnership history
- Professional relationships with contract service providers

Resident relations

Documentation of resident files

- Rent records
- Lease records

Rent collections

- Timeliness

Maintenance

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

History of meeting project expenses

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

Project accounting

- System capacity

MaineHousing will review corporate and personal financial statements of applicant entities, guarantors, partners or members and principals. MaineHousing reserves the right to require and review tax returns from each of the foregoing. In making its credit determination, MaineHousing will consider such factors as the adequacy of working capital and the liquidity, net worth, financial and operational strength of any real estate portfolio/holdings, and credit history of the ownership entity, its affiliates and principals. For non-profit organizations, the history of audit findings will be considered. State Form 990 may also be required.

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

An Application will not be accepted, processed, or approved by MaineHousing if an applicant or any principal or affiliate of either (i) has been declared in default or has been 60 days or more delinquent on any loan with MaineHousing, unless the default or delinquency has been cured or there is an approved payment or workout plan in place and in good standing prior to the applicable deadline for submitting an application; or (ii) has ever been the owner of any MaineHousing-financed project in which MaineHousing has foreclosed a mortgage interest or received a deed-in-lieu of foreclosure of a mortgage interest unless previously waived by MaineHousing; or (iii) is presently debarred, suspended, proposed for debarment, or excluded from participation in any federal or state programs; or (iv) has in the last 10 years had any proceeding in or for bankruptcy, receivership, reorganization or any other arrangement for relief from creditors commenced against it that affects a MaineHousing-funded project and was not dismissed within 90 days of commencement, or commenced any proceeding in or for bankruptcy, receivership, reorganization or any other arrangement for relief from creditors that affects a MaineHousing-funded project.

For purposes of this provision, a principal includes any entity with an ownership interest in the owner of the project that controls the development and day-to-day operation of the project, such as the general partner(s) if the owner is a limited partnership and the manager(s) or member(s) invested with the management authority if the owner is a limited liability company, and all persons and entities with an ownership interest in or control of said entity. An affiliate includes with respect to any person or entity, another entity that said person or entity directly or indirectly controls, is controlled by or is under common control with.

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

C. Mortgage Security.

Projects receiving 0% interest deferred payment funding from MaineHousing will be required to finance any interest only or amortizing debt with MaineHousing, with the exception of projects which receive funding from the Federal Home Loan Bank's Affordable Housing Program (AHP) or who receive a loan from the U.S. Department of Agriculture, Rural Development (RD).

Generally, MaineHousing financing must be secured by a first lien mortgage and security interest in the land and improvements, a general assignment of leases, rents and contracts, a UCC security interest in all fixtures and personal property of the development, a collateral assignment of capital contributions, a security interest in all accounts, reserves and escrows established in connection with the development, indemnifications and other collateral required by MaineHousing in its sole discretion. If the development is or will be located on leased land, MaineHousing will require a first lien leasehold interest and a subordination of the owner's fee interest in the land. The security for any 0% interest deferred payment from MaineHousing may be in a junior position to the security for

any amortizing debt.

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

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

If MaineHousing is not the primary mortgage lender, MaineHousing may agree to a junior security position with respect to its 0% interest deferred payment funding, but all MaineHousing interest bearing loans must be in a first lien security position. If MaineHousing has a junior security position, MaineHousing will require an intercreditor agreement with the senior lender which gives MaineHousing at least a 60-days written notice of and opportunity to cure any default of the senior loan and prior written approval of all future advances under the senior loan.

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

D. Construction Period Lending and Equity Bridge Financing:

MaineHousing can provide construction-period financing in some cases and may require an applicant to accept it as a condition of its funding. In other cases, applicants must secure construction period financing from a financial institution with the legal authority to lend in the State of Maine and otherwise acceptable to MaineHousing. An applicant should determine whether MaineHousing will provide construction-period financing prior to submitting its application to the Program. If construction period funding is provided by another lender, the applicant must submit a letter of interest, confirming the lender's receipt of an active application and including the proposed rate and terms of the construction loan, with the application to the Program.

Acquisition and Rehabilitation

MaineHousing will provide construction-period financing for the acquisition and rehabilitation of existing affordable housing, unless otherwise approved by MaineHousing. Factors involved in MaineHousing's determination include, but are not limited to:

- requirements of other funding sources;
- total cost of planned improvements;
- total cost of improvements as percentage of total development cost;
- scope of work;
- scope of design professional involvement;

- number of trades involved in the project;
- safety of residents;
- potential disruption to rental income; and
- proposed project delivery method (bid, construction management, etc.)

Construction Loans

MaineHousing will make construction loans to public bodies and other State instrumentalities and non-profit organizations, unless otherwise approved by MaineHousing.

When MaineHousing is providing construction financing to for-profit entities such as using tax-exempt bond proceeds during construction to qualify projects for “automatic” low-income housing tax credits pursuant to Section 42(h)(4) of the Code, Maine law may require MaineHousing to involve a financial institution in the State, at least to the extent of acting as an escrow agent. However, if a project’s financing structure requires MaineHousing to provide more than 60% of the construction financing, this requirement is not necessary and MaineHousing will make the whole construction loan except in certain cases allowed by MaineHousing (such as satisfying AHP lender participation requirements). For construction loans in which MaineHousing purchases a participation, the lead financial institution may not sell any additional participation interests in a construction loan without MaineHousing’s prior written consent.

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

Limitation on Interest: The interest rate imposed by a financial institution making or participating in a construction loan in which MaineHousing has purchased a participation may not exceed the Wall Street Journal Prime Rate plus two percent (2%). MaineHousing will establish the rate for its construction financing or participation in a construction loan provided by another lender at the time MaineHousing issues its term sheet.

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

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

Funding Availability: Bond financing is generally only available on the first (1st) and the fifteenth (15th) day of each calendar month (or the next business day immediately following the first or the 15th day of the calendar month, respectively, if the 1st or 15th day is a Saturday, Sunday or holiday recognized by MaineHousing). Only one requisition will be funded each month. The approved requisition and all supporting documentation required by MaineHousing must be submitted to MaineHousing no later than 10 business days before the funding date. If a requisition meeting is held on or before the 15th calendar day of the month, the requisition will be funded no earlier than the first (1st) day of the following month. If a requisition meeting is held after the 15th calendar day of the month, the requisition will be funded no earlier than the 15th day of the following month.

Equity Bridge Financing

All applicants are responsible for arranging for their own investors. However, MaineHousing may provide short term loans in cases where the timing of capital contributions by the investor requires bridge financing.

E. Underwriting Criteria:

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

Maximum Loan to Value (LTV)

MaineHousing loans should not be greater than 85% of the lesser of the appraised value or the total development cost.

The total (secured and unsecured) debt approved for any project, exclusive of subsidy, should not exceed 100% of the appraised value.

Mortgage Insurance

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

Appraisal

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

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

Interest Rate

Unless otherwise stated in a specific offering, the interest rate will be set when the term sheet is issued.

Developments that are currently MaineHousing-financed will use the rate applicable to the project under MaineHousing's current loan modification programs.

Contact a Multifamily Loan Officer for current rates.

Loan Terms

30 years with full amortization or a 40-year amortization with a balloon payment due at the end of year 30.

MaineHousing reserves the right to offer (i) interest only payments for 30 years, (ii) interest only payments for the first 15 years with a 30-year or 40-year amortization beginning in year 16 and a balloon payment due at the end of year 30, or (iii) other repayment terms as may be specified in a funding announcement.

Debt Service Coverage (DSC)

In the first year of stabilized operations, MaineHousing requires 1.10 DSC for projects with project-based rental assistance and 1.15 DSC for all other projects. MaineHousing may adjust this ratio to reflect the inherent characteristics of the project and the market involved. The DSC will include any subordinate amortizing debt.

Cash Flow

Cash flow should be at least \$500 per unit in the first year of stabilized operations and should not drop below \$200 per unit in any subsequent year based on MaineHousing expense trending.

Distribution

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

MaineHousing Loan Fees

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

- Application fee of \$1,000 due with any application for financing
- Payment for third party appraisal and/or environmental reports, if applicable, is due when reports are commissioned.
- Commitment Fee of \$2,000 due at loan closing

- Additional financing fee equal to two percent (2%) of any MaineHousing interest bearing permanent loan or one and three quarter percent (1.75%) for any interest bearing construction loan due at loan closing

Additional fees associated with the low income housing tax credit are set forth in the applicable QAP.

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

*Developer Fee
& Overhead*

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

*Operating Deficit
Escrow*

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

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

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

The ODE shall be held for as long as MaineHousing maintains a mortgage interest in the property. If the account balance drops below the initial funding amount, the owner shall be required to use any surplus cash in the year in which the deficit occurs and in subsequent years as necessary to bring the balance back to its original balance. The ODE will be administered in accordance with the loan agreement.

Working Capital

An initial funding for working capital may be included in the development budget for new construction and acquisition and rehab of vacant properties to cover operating shortfalls during the lease-up period of the project. This amount shall not exceed the lesser of \$1,000 per unit or \$50,000.

*Tax & Insurance
Escrow (T&I)*

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

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

A tax and insurance escrow is required. The escrow account will be established and funded at construction loan closing for existing housing with Section 8 project-based rental assistance or refinanced by MaineHousing. For all other properties, the escrow account will be established and funded at construction completion. MaineHousing will determine the initial funding amount of the escrow. MaineHousing may require a pro-rata portion of the annual tax liability be funded at construction completion depending on the municipality's tax period and the date of completion.

Replacement Reserve

A replacement reserve account is required. The account will be established and funded at construction loan closing for existing housing with Section 8 project-based rental assistance or refinanced by MaineHousing. For all other properties, the account will be established and funded at the time of construction completion. Additional reserve funding will be required from project revenues on a monthly basis.

The initial and on-going levels of funding will be determined on a case-by-case basis. In general, the initial funding will be:

- \$2,000 per unit for senior housing and \$3,000 per unit for other units in existing housing with Section 8 project-based rental assistance or refinanced by MaineHousing plus any additional funding necessary to cover any required scope of work that cannot be completed as part of the rehabilitation of the housing.
- 1% of cost of structures for all other housing.

Annual replacement reserve funding will be initially calculated at \$500 per unit per year.

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

Project Reserve Accounts

All MaineHousing-required project accounts other than the project's operating account will be established and maintained by MaineHousing or its designated depository institution during the term of MaineHousing's

financing. MaineHousing will be a sole signatory on all MaineHousing-required project accounts. MaineHousing-required project accounts include the ODE account, the replacement reserve account and tax and insurance escrow account described above and any other special escrow or reserves required by MaineHousing with respect to a project. The project's operating account will be established and maintained at a financial institution acceptable to MaineHousing. At any time during the term of MaineHousing's financing, MaineHousing may require that it be added as a signatory to the project's operating account based on its review of troubled project performance or in the event of loan default.

All project reserves for existing housing with Section 8 project-based rental assistance or refinanced by MaineHousing must be transferred to the new owner at the time of acquisition and will be applied to the new project reserves or to fund the rehabilitation of the project, as determined by MaineHousing and, if required, approved by HUD.

Operating Expenses

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

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

Vacancy Rates

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

Trending Rates

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

*Sustainable
Operating
Performance*

A 15 year pro forma must be submitted at the time of application. MaineHousing will use its own financial assumptions including expenses, reserves, rent levels and occupancy when determining project feasibility. MaineHousing will use the lower of market rents as determined by an independent market study or maximum allowable rents. The loan amount will be based upon a project's ability to support debt using MaineHousing's assumptions and the need for debt financing.

Management Costs

MaineHousing will review the proposed management cost of a property including management fees, administrative expenses, site management costs,

and the cost of other management activities charged directly to the project. In general, MaineHousing will underwrite a management cost of no more than 14% of the maximum LIHTC 60% AMI rents for a project of its size and unit configuration in the area in which it is located, which will be converted to the relative percentage of the project's actual effective income for compliance purposes. MaineHousing may allow an incentive fee to be paid out of surplus cash after fiscal year-end. Actual management cost will be reviewed and endorsed on a case-by-case basis by MaineHousing's Asset Management Department.

Management costs established at project underwriting will be memorialized in a Management Agreement executed between the owner and management and endorsed by MaineHousing.

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

*Construction
Contingency*

A construction contingency shall be established for each project by MaineHousing Construction Services staff. As a percent of the total construction costs, the minimum amount shall be 5% for New Construction and 10% for Acquisition/Rehabilitation and Adaptive Reuse projects.

The use of this contingency shall be managed solely by the Developer for uses determined by the Developer. MaineHousing shall offer guidance and input to the Developer, but the final decision on the use of the contingency will be made by the Developer. Any contingency remaining at the end of the project shall be used: (1) to repay any amounts owed to the Developer from the Developer Fee in excess of the amount required, if any; (2) to reduce any related party loans made to project to create financial feasibility; and (3) to cover any soft cost overruns.

Cost Savings

Any balance remaining from the construction contingency together with any soft cost savings, at MaineHousing's discretion, shall then be shared equally between the Developer as an incentive developer fee up to the maximum gross Developer Fee allowable and MaineHousing, which will either reduce the amount of cash subsidy or the amount of Low Income Housing Tax Credits.

F. Other Criteria:

Site Control

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

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

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

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

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

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

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

Market Feasibility

If an application is selected for further processing, applicants must provide a comprehensive market study of the housing needs in the area to be served by the project. The study must be conducted at the applicant's expense by a qualified professional acceptable to MaineHousing and be completed prior to MaineHousing's financing approval.

The National Council of Housing Market Analysts (NCHMA) has adopted standards for definitions and content in an affordable housing market study. These standards can be found at <https://www.housingonline.com/wp-content/uploads/2014/09/Final-Model-Content-V3.0.pdf>

MaineHousing strongly encourages applicants to direct their market analyst to produce a market study consistent with the NCHMA standards. Any deviation from the standards must be explained in a cover letter submitted by the market analyst with the study.

If, during the course of its review using data available to MaineHousing including portfolio experience, MaineHousing determines the market study submitted is inadequate, MaineHousing will require the applicant to submit a new or revised market study. MaineHousing reserves the right to commission its own market study.

G. Design and Construction

All projects shall be designed and constructed in accordance with the guidelines set forth in the MaineHousing Construction Services' *Quality Standards and Procedures Manual*. The manual is available on the MaineHousing web-site (<https://www.mainehousing.org/programs-services/housing-development/construction-services>).

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

1. Design Professional.

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

2. Surety.

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

3. Contractors.

Applicants must use an experienced general contractor or construction manager. Procurement can be done through: (1) competitive bid; (2) a select bid process with MaineHousing's prior approval of the selected bidders list; and (3) construction management with MaineHousing's prior approval, in its sole determination on a case-by-case basis. See MaineHousing's *Quality Standards and Procedures Manual* for guidance on when and under what circumstances MaineHousing will approve the construction management approach.

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

SECTION 3 REQUIREMENTS: Applicants receiving Federal funding from the FedHOME, National Housing Trust Fund, HOME-ARP, ESG-CV, CDBG-CV, and/or Recovery Housing Programs must comply with HUD Section 3 requirements. Projects will not be allowed to participate in a Permanent Loan Closing before meeting these requirements.

Please see MaineHousing’s [Section 3 Policies & Procedures](#) and [Section 3 - Contractor, Subcontractor and Subrecipient Package](#) for more information.

4. Design and Construction Standards.

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

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

In addition, MaineHousing will review applications for cost reasonableness. Applicants are required to submit professionally prepared cost estimates with the application. MaineHousing may reject any proposals with unreasonably high total development costs or unreasonably high specific costs. Specific cost limits will be noted in each program offering. For a project not subject to a specific program offering that is received on a walk-in basis, MaineHousing might consider the Total Development Cost (TDC) for a project unreasonable if it is greater than the following:

Cost reasonableness will be evaluated using an index, which is the weighted average of the TDC per unit and the TDC per bedroom. For mixed-use projects, the TDC for only the residential portion of the project, including common areas, will be used for this calculation. The weighted average will be calculated as follows:

$$([2 \times \text{TDC/unit}] + [\text{TDC/bedroom}]) \text{ divided by } 3.$$

The product of this calculation will be referred to throughout this document as the “TDC Index”. An Application may be rejected if the TDC Index exceeds the TDC Index below for a project of its type at any time prior to the later of the construction loan closing.

New Construction:	\$318,750 per unit
Conversion of existing non-housing Structure into housing	\$337,500 per unit
Acquisition/Rehabilitation of existing housing:	\$206,250 per unit

If a project involves more than one of these project types, the TDC per unit is the sum of the percentage of the TDC allocable to each type, based on the number of residential units in each type, as applied to the TDC per unit for the respective type. For example, the TDC per unit of an housing project that involves the conversion of an existing historic school into 10 housing units plus the construction of an addition with 10 additional housing units is \$240,000 per unit, which is 50% of the TDC per unit for Conversion and 50% of the TDC per unit for New Construction.

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 Index for the Project is the average of the TDC Index allocable to each type, weighted by the number of units of each type.

These costs for walk-in projects are not intended to be caps, but to provide guidance to developers in assessing the viability of their project. An Applicant should provide an explanation and documentation regarding the high cost. If MaineHousing agrees that the explanation is reasonable, an application will be accepted for further processing, however, cost overruns on a project outside these guidelines may be cause for termination of a Notice to Proceed and reallocation of the MaineHousing resources to another project.

5. Site Standards.

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

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

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

Applicants should be aware that siting a project in wetlands or a floodplain, or otherwise impacting

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

6. Difficult to Develop Sites.

Difficult to develop sites should be avoided. Sites which have no reasonably accessible public access, inadequate drainage, unstable soils, contaminated soils, excessive ledge, steep topography, lack of utility services, or other characteristics which increase the costs of development are all considered difficult to develop. Sites including land within a designated flood plain or within a designated wetland, or which have been determined by the Department of Environmental Protection to contain an endangered species of wildlife, are also considered difficult to develop.

7. Environmental Assessments.

Applicants must disclose all known or suspected environmental hazards or conditions that may affect the project. MaineHousing requires a Phase I Environmental Site Assessment conducted by a qualified professional in accordance with the EPA All Appropriate Inquiry Rule and then-effective ASTM Standard Practice for performing environmental assessments finding that the project and the areas adjacent to the development are free from environmental hazards or conditions. Generally a Phase I Environmental Site Assessment involves a site visit, review of ownership records, review of site project history, and contact with local officials and environmental regulatory agencies. This initial assessment may result in the need for additional investigation and testing, such as a Phase II Environmental Site Assessment. If the project involves the demolition or rehabilitation of an existing building(s), MaineHousing also requires an assessment of lead for building(s) constructed before 1978, asbestos, radon, mold and other hazardous materials performed by a qualified professional(s) in accordance with applicable state and federal laws. MaineHousing may require a third-party review by its designated environmental consultant of any environmental assessments submitted by the Applicant.

MaineHousing cannot advise a prospective developer of potential environmental liabilities. MaineHousing will, however, require all recommendations, if any, in the environmental assessments to be implemented and any other environmental concerns that MaineHousing identifies in connection with a project to be remediated or addressed to MaineHousing's satisfaction. Environmental site assessment and remediation costs may be included as project development costs.

All projects receiving FedHOME or National Housing Trust Fund (HTF) funds must undergo an environmental review by MaineHousing pursuant to HUD's environmental review regulations at 24 CFR Part 58 or 24 CFR Part 93, as applicable. MaineHousing reserves the right to engage a qualified professional to perform all or certain parts of this review. In the event that MaineHousing is not the only provider of FedHOME resources to the project, this review may be performed by a qualified party not directly engaged by MaineHousing. However, MaineHousing reserves the right to engage a qualified professional to perform a third-party review of the work to ensure its compliance with HUD's regulations. All costs incurred by MaineHousing for satisfaction of these regulations will be paid by the borrower and may be included as project development costs. If it is determined that MaineHousing will commission the environmental assessments, the selected firm

will provide an estimate of cost for the assessment. This amount, which will vary based on the size and complexity of the proposal, will be collected from the developer as an environmental fee deposit. Upon completion of the report and the receipt of the final invoice, any balance due will be collected from the developer prior to the issuance of a term sheet. In the event that the fee deposit is greater than the final invoice, an immediate refund will be made to the developer. The fee deposit shall be due upon acceptance of the Notice to Proceed. An environmental review includes a review of historic values, floodplain and wetlands protection, coastal zone management, endangered and threatened species, water and air quality, farmlands protection, fire and explosive hazards, noise, proximity to airports, toxic sites, and impacts to or on the project from land development and socioeconomic factors, community facilities and services, and other matters. A Phase I Environmental Site Assessment, and if necessary, a Phase II Environmental Site Assessment, must be conducted by a qualified professional in addressing the toxic sites provision of environmental reviews.

HUD's environmental regulations provide that from the date that MaineHousing receives an application for financing for a project until the completion of the environmental review and HUD approval of the release of the FedHOME and HTF funds, the applicant and any other participant in the development process (including individuals, public or private nonprofit, for-profit entities or governmental entities, or any of their contractors) may not commit or expend *any* funds (regardless whether they are from federal, state, local, commercial or private sources) on any activities that are deemed to limit the choice of reasonable alternatives with respect to the project ("choice-limiting actions"). Choice-limiting actions include, without limitation, entering into a purchase and sale agreement, acquisition, leasing, demolition, rehabilitation, disposition, construction, environmental remediation, site improvements relating to the project, or any off-site activities that are part of the project. If the applicant or any participant in the development process takes a choice-limiting action after applying to MaineHousing for financing, the applicant will be denied any FedHOME and HTF funds for the project.

H. Property Management and Reporting Requirements

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

Property management requirements include the following:

- *Property Management Plan and Management Agreement.* The property management plan and management agreement are subject to the review and approval of MaineHousing. Management agreements must be endorsed by MaineHousing. Any management agreement between a non-profit owner and a for-profit project manager for properties funded with 501(c)(3) bond proceeds must comply with applicable bond regulations.
- *Property Marketing and Resident Selection.* Federal and state laws prohibit housing discrimination on the basis of race, color, national origin, religion, sex, disability, sexual orientation, gender identity or expression, marital status, familial status, ancestry and receipt of public assistance.

The owner is responsible for marketing the projects and selecting residents in a non-discriminatory manner and maintaining a written waiting list of applicants in accordance with the project's resident selection policies and criteria. The marketing plan and selection policies and criteria must comply with the *Marketing and Resident Selection Guidance* attached as **Exhibit D**.

All projects must be listed on MaineHousingSearch.org by prior to permanent loan closing for new construction/adaptive reuse and after construction loan closing for rehab of existing housing, and the owner must update the listing to reflect any changes and vacancies throughout the term of MaineHousing's funding.

- *Rents.* Rents for targeted affordable units may not exceed the rent schedule published annually by MaineHousing. Rents and utility allowances must be approved by MaineHousing and remain in effect for the first full year of occupancy. Rents, including any utility allowance, for all units are reviewed during the annual budget review process, well in advance of the upcoming fiscal year. The owner must inform MaineHousing of proposed rental or utility adjustments. MaineHousing must approve annually the maximum monthly rent to be charged for each unit or to each resident, and the monthly allowance for utilities and services to be paid by the resident prior to implementation. MaineHousing will consider development operating costs and occupancy rates, the surplus cash position of the property, applicable state or federal regulations and other factors when approving rent and utility adjustments.
- *Income Eligibility.* All households initially occupying an affordable unit must be determined income eligible in compliance with the project's affordability targeting requirements. If at the time of annual household income recertification the household income exceeds 140% of the applicable household income limit, adjusted for family size, the developer must rent the next available market rate unit of equal or lesser size to an income eligible household. Verification of resident income eligibility for affordable units is required for all properties.
- *Leases and Security Deposits.* All residents residing in affordable units must sign a MaineHousing-approved lease. The initial term of the lease should be one year but cannot be less than 6 months. Leases and the collection of security deposits must comply with state law and applicable program and funding source requirements. See FedHOME and HTF regulations relating to leases on units assisted with FedHOME and HTF funds.
- *Inspections.* MaineHousing will inspect units periodically to ensure compliance with applicable building and habitability standards and reserves the right to inspect more frequently if deemed necessary.
- *Annual Report Submissions.* MaineHousing requires owners to submit development budgets, audited financial statements and certifications of continuing program compliance to MaineHousing on an annual basis. Annual development budgets are due 60 days before the beginning of the owner's fiscal year and subject to MaineHousing's review and approval. Audited financial statements are due within 60 days after the end of the owner's fiscal year.

- *Management Review and Assessment.* Periodically MaineHousing will review owner compliance with the loan requirements. MaineHousing will review occupancy and leasing, tenant files, financials, restricted reserve activity, physical plant condition and resident services.

Forms, guidance, rent and income charts, notices and other information for owners and managers can be found at <http://www.mainehousing.org/partners/partner-type/asset-management> on MaineHousing's website.

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

I. Fair Housing and Equal Opportunity

The project must comply with all federal, state and local fair housing and accessibility laws, executive orders, regulations and associated guidance, as same may be amended, applicable to the design, construction and/or rehabilitation and operation of the housing funded under this program, including without limitation, Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.* and 24 C.F.R. Part 1 - *Nondiscrimination in Federally Assisted Programs*); 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.* and 24 C.F.R. Part 100-115 - *Federal Fair Housing Act*); Executive Order 11063, as amended by Executive Order 12259 (*Equal Opportunity in Housing*); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794 and 24 C.F.R. Part 8); Age Discrimination Act of 1975 (42 U.S.C. §6101 *et seq.* and 24 C.F.R. Part 146); Title II and Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.* and 28 C.F.R. Parts 35 and 36); and the Maine Human Rights Act (5 M.R.S.A. §4581 *et seq.*).

Requirements for the design and construction and/or rehabilitation of housing funded under the program are set forth in *Maine State Housing Authority's Accessibility Policy and Procedures for the Design and Construction of Multi-family and Supportive Housing Projects* which is included in the *Quality Standards and Procedures Manual*.

The above requirements also govern the operation of the project, including without limitation, marketing the project, resident selection, occupancy conditions and restrictions and the termination of tenancies. See **Exhibit D** for guidance on marketing and resident selection requirements.

Housing providers must make reasonable accommodations with respect to rules, policies and procedures concerning the operation of the housing and must make reasonable modifications to housing if necessary to ensure a person with disabilities has equal access to the housing.

Projects must also comply with applicable state and federal laws providing protections for victims of domestic violence, dating violence, sexual assault, and stalking. State law, 14 M.R.S.A §6001, as same may be amended, applies to all housing in the State. The Violence Against Women Act (*VAWA*) and associated regulations and guidance apply to housing assisted under the Section 8 Housing Choice Voucher Program, Section 8 Project-based Rental Assistance Programs, FedHOME, the Low Income Housing Tax Credit Program, the HUD Section 202 and Section 811 Programs, Rural Development Section 515 Program, and certain other federal programs. Generally, applicants and residents cannot be denied housing because they are victims or because of criminal activity directly related to domestic violence, dating violence, sexual assault, and stalking pursuant to these laws. A summary of the protections are set forth in **Exhibit E**. More information, including

guidance and forms, can be found at <http://www.mainehousing.org/partners/partner-type/asset-management> on MaineHousing's website.

J. MaineHousing's Non-Discrimination Policy

Maine State Housing Authority ("MaineHousing") does not discriminate on the basis of race, color, religion, sex, sexual orientation, gender identity or expression, marital status, national origin, ancestry, disability, age, familial status or receipt of public assistance in the admission or access to or treatment in its programs and activities. In employment, MaineHousing does not discriminate on the basis of race, color, religion, sex, sexual orientation, gender identity or expression, marital status, national origin, ancestry, age, disability or genetic information. MaineHousing will provide appropriate communication auxiliary aids and services upon sufficient notice. MaineHousing will also provide this document in alternative formats upon sufficient notice. MaineHousing has designated the following person responsible for coordinating compliance with applicable federal and state nondiscrimination requirements and addressing grievances: Lauren Bustard, Maine State Housing Authority, 26 Edison Drive Augusta, Maine 04330-6046, Telephone Number 1-800-452-4668 (voice in state only), (207) 626-4600 (voice) or 711 (Maine Relay).

Exhibit A

MAINE STATE HOUSING AUTHORITY

Summary of Policy on Displacement/Relocation

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

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

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

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

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

<u>Time Frame</u>	<u>Rent Increase Allowed</u>
Closing to completion of rehab	Any, as long as below Section 8 tenant payment (low-income persons) or 30% of income (non-low income)
1st year after rehab completion	No rent increases
Next 2 and 1/2 years	Rent increases only in proportion to documentable increases in operating costs
After 3 and 1/2 years	It is presumed that rent increases are no longer a result of the acquisition/rehab financed by MaineHousing

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

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

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

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

Exhibit B

MAINE STATE HOUSING AUTHORITY INSURANCE REQUIREMENTS FOR MULTI-FAMILY AND SUPPORTIVE HOUSING

All multifamily residential rental projects must comply with MaineHousing's insurance requirements, as may be amended from time to time. These insurance requirements can be found at: [insurance-checklist.pdf \(mainehousing.org\)](#)

Exhibit C

MAINE STATE HOUSING AUTHORITY

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

Introduction

This document is the affirmative action plan for Maine State Housing Authority (*MaineHousing*) programs which make financing available for the acquisition, rehabilitation and construction of affordable multi-family housing in Maine. This plan identifies the equal opportunity and affirmative action policies and goals for the applicants, developers, project owners, contractors, subcontractors and other persons or entities that benefit from MaineHousing's programs.

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

Equal Opportunity Policy

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

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

Contract Requirements

All contracts and subcontracts entered into by MaineHousing, applicants, developers, project owners, agents, contractors (including construction managers) and subcontractors in connection

with MaineHousing's programs shall contain the following provisions.

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

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

Outreach Efforts to Women and Minority-Owned Businesses

Certain federal equal access and affirmative action laws require recipients of federal funding to provide job training, employment and contracting opportunities to women- and minority-owned businesses to the greatest extent possible. Accordingly, all developers, applicants and contractors shall solicit construction bids from women and minority-owned businesses involved in the construction of multi-family housing in Maine. All bid packages for the construction and rehabilitation of multi-family housing must include these requirements.

Section 3 - Outreach Efforts to Low Income Persons

Section 3 requires recipients of federal funding to provide job training, employment and contracting opportunities to Section 3 residents and Section 3 businesses to the greatest extent possible. Section 3 residents are residents of public or federally-assisted housing and persons with low income (defined as persons with income at or below 80% of area median income as determined by HUD). A Section 3 business is a business in which 51% or more of the business is owned by persons with low income or a business that employs a substantial number of persons with low income, i.e. at least 30% of its full-time, permanent employees are persons with low income. Ideally, the Section 3

residents should be from the area in which the multi-family housing is being constructed. In accordance with the goals of Section 3, at least 10% of the contracts for building trades and at least 3% of all other contracts associated with the construction or rehabilitation of a multi-family housing project should be directed to Section 3 businesses.

All bid packages for the construction and rehabilitation of federally-assisted multi-family housing financed must include these requirements.

Exhibit D

MAINE STATE HOUSING AUTHORITY

Marketing Plan and Resident Selection Guidance

MaineHousing's policy is to provide for fair and open access to housing funded by MaineHousing in compliance with state and federal civil rights obligations. At a minimum, all projects must develop a marketing strategy and resident selection criteria that ensures the housing is provided to qualified individuals without discrimination based on race, color, national origin, religion, disability, sex, sexual orientation, gender identity or expression, marital status, familial status, ancestry, or source of income.

Owners of projects MaineHousing-funded projects must follow affirmative fair housing marketing procedures both for newly created and for vacant units which is aimed to target/attract residents who are least likely to apply for housing without special outreach such as minorities, families with children, persons with disabilities, or other persons protected by fair housing laws.

Project Owner's Marketing Requirements

Owners are responsible for carrying out affirmative marketing activities for their properties. Owners can delegate affirmative marketing activities to a property manager, but the owner remains responsible for compliance.

When developing the Marketing Plan for a property, the plan must specify where, when and how unit availability will be marketed and advertised based on the target population and geographic region. The marketing plan is not a one size fits all and required actions may vary by project, depending on location, population served, preferences/set asides, etc.

To affirmatively further fair housing, the Marketing Plan must include:

- ✓ The target population of the property (i.e. elderly, family) and any special preferences/set-asides
- ✓ Identify the population least likely to apply for housing at the project
- ✓ Where, when and how unit availability will be marketed/advertised
- ✓ How it targets those least likely to apply
- ✓ A description of outreach activities that will be utilized by the owner/manager in marketing vacant units
- ✓ For accessible units, procedures to ensure that information regarding the availability of accessible units reaches eligible persons with disabilities. Reasonable, nondiscriminatory

steps must be taken to ensure that accessible units are available for persons with disabilities who need the accessibility features, such as:

During the initial lease-up of projects, accessible units must be marketed to the disability community and must first be offered to otherwise qualified persons with a disability who need the features of the units. An accessible unit can only be offered to a non-disabled person if the owner/manager is unable to identify a person who needs the accessibility features within a reasonable period of time.

For occupied projects, when an accessible unit becomes vacant, owner/managers must take the following steps:

- **First**, the unit must be offered to a current occupant of the project who need the accessibility features of the unit;
- **Second**, the unit must be offered to a qualified applicant on the waiting list who needs the accessibility features of the unit
- **Third**, market the accessible unit to the disabled community
- **Lastly**, the unit can be offered to a non-disabled person on the waiting list if a person with a disability who needs the accessibility features is not identified during the first three steps.

If an owner/manager rents an accessible unit to a tenant who doesn't need the accessibility features of the unit, the tenant's lease **must** include a provision that requires the tenant to move to a comparable non-accessible unit if an applicant or other tenant in the property needs the accessibility features of the tenant's unit.

The Marketing Plan must remain in effect throughout the term of the project mortgage and/or period for which HUD subsidy is provided.

Other responsibilities of the owner/manager to ensure they are affirmatively furthering fair housing:

1. Include in all advertising the Equal Housing Opportunity logotype or slogan (e.g. "it is illegal to discriminate against any person because of race, color, national origin, sex, sexual orientation, gender identity or expression, religion, familial status, ancestry, source of income, marital status or disability")
2. Display a Fair Housing poster in the office or common space
3. Provide existing and potential tenants information regarding fair housing laws
4. Utilize MaineHousingSearch.org to list property and vacant unit information
5. Maintain records of advertising, telephone contacts, and other efforts used to affirmatively market units
6. Maintain records of the race, gender and ethnicity of potential tenants (Note: Supplying this information is voluntary and refusal to provide the data cannot affect a tenant's application. In the event a potential tenant refuses to supply this information, the owner/manager must supply the information to the best of his/her ability through observation).

7. Develop and maintain a list of agencies, advocacy groups, advertising media, etc. that will be used to market vacant units to people of different genders, race and ethnicity.
8. Use the waiting list to fill vacancies in units
9. Provide outreach literature in other languages or formats to prospective tenants with Limited English Proficiency or disabilities if needed.

Available Resources

The following resources are available to assist owner/managers in being able to affirmatively further fair housing for persons with limited English proficiency or disabilities:

Communications Access Guide: MaineHousing guide that contains contact information/list of resources for communication with persons who have Limited English Proficiency or are hearing-impaired or vision-impaired which is available on the MaineHousing's website at <http://www.mainehousing.org/partners/partner-type/asset-management/equal> access.

I Speak Card: Language identification flashcard that will allow the owner/manager to identify language of choice which is available on the MaineHousing's website at <http://www.mainehousing.org/partners/partner-type/asset-management/equal> access.

Fair Housing Posters: Translated into 13 different languages available on the MaineHousing's website at <http://www.mainehousing.org/partners/partner-type/asset-management/equal> access.

HUD's website: HUD has created some outreach tools in multiple languages which are available at https://www.hud.gov/program_offices/fair_housing_equal_opp/marketing.

Owner/managers are encouraged to check the HUD website for other translated materials. If you are unable to locate a particular language, please contact MaineHousing first to see if it is something we can readily access for you.

Recordkeeping Requirements

MaineHousing will review and evaluate the owner's actions taken to affirmatively further fair housing in properties funded by MaineHousing. Owner/managers must maintain the following records which can be reviewed by MaineHousing at any time:

- All marketing for units including where the info was advertised
- Active waiting list
- Copy of Resident Selection Procedures
- Records of individuals denied tenancy with support for the denial
- Copy of the Marketing Plan along with list of outreach organizations used

MaineHousing will review the owner's affirmative fair housing marketing efforts in conjunction with the periodic scheduled management and occupancy reviews, but does reserve the right to be able to request any documentation at any time.

Exhibit E

Summary of Laws Protecting Victims of Domestic Violence, Dating Violence, Sexual Assault and Stalking

Below is a brief summary of state and federal laws protecting victims of domestic violence, dating violence, sexual assault and stalking. Please see the referenced laws and any associated regulations and guidance for all requirements.

State Law – 14 M.R.S.A. §6001

- Victims are tenants (including all family or household members) subject to domestic violence by family or household member, sexual assault or stalking.
- Victims cannot be evicted for incidents of actual or threatened domestic violence, sexual assault or stalking or for reporting such incidents.
- Landlords can bifurcate a lease or tenancy to remove the perpetrator regardless of whether the victim signed the lease.
- Victims cannot be held liable for property damage beyond the victim's security deposit if the perpetrator is also a tenant and the victim provides written notice of the damage and proper documentation of the domestic violence, sexual assault or stalking within 30 days of the incident.
- Victims can terminate a lease early with proper notice (at least 7 days if lease term is less than one year and at least 30 days if lease term is one year or more) and proper documentation, and are not responsible for any unpaid rent.
- Proper documentation includes, but is not limited to, a statement from a Maine-based sexual assault counselor, advocate, victim witness advocate, health care provider, mental health care provider, or law enforcement officer, or a copy of a protection from abuse or harassment complaint or order, police report, or criminal indictment or conviction.

Violence Against Women Act (VAWA)

- Victims are applicants, tenants and affiliated persons (i.e. all family and household members) subject to domestic violence, dating violence, sexual assault or stalking.
- Victims cannot be denied housing (through rejection, eviction or nonrenewal) on the basis or as a direct result of the fact they are or have been victims of domestic violence, dating violence, sexual assault or stalking.
- Victims cannot be denied housing because of criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking by a family or household member of the victim, any guest, or other person under the tenant's control.

- Notice must be given to applicants and tenants. HUD *Notice of Occupancy Rights under the Violence Against Women Act* (HUD-5380) and *Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternative Documentation* (HUD-5382) must be given to rejected applicants and to tenants upon move-in, at annual recertification or lease renewal, and with notice of eviction or nonrenewal.
- Leases must incorporate HUD's VAWA Lease Addendum (HUD-91067).
- Owner/managers are not required to ask for documentation; a verbal statement that an applicant, tenant or affiliated person is a victim is acceptable. Any request for documentation must be in writing and give the applicant or tenant at least 14 business days after receipt to provide any one of the forms of proper documentation. Proper documentation includes the *Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternative Documentation* (HUD-5382); third-party certification from a victim service provider, attorney, medical professional or mental health professional; or a police report or other official law enforcement or court record.
- Leases may be bifurcated to remove the perpetrator and protect the victim. If a lease is bifurcated and the person removed was the only person eligible for the housing or assistance, the remaining tenants must be given a reasonable period of time (typically 90 days, with extensions up to 60 days, or lease expiration if sooner) to demonstrate eligibility for the housing or assistance or to relocate to alternative housing.
- Owner/managers must adopt an emergency transfer plan based on HUD's *Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking* to allow a victim, who makes a request (see HUD *Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking*) and reasonably believes there is a threat of imminent harm from further violence if the victim stays in the same unit (or in the case of sexual assault, it occurred at the property), to make an internal emergency transfer when a unit that the victim feels is safe is immediately available at the property or to make an external emergency transfer to another property. MaineHousing must be promptly notified of all emergency transfer requests and should be involved in handling the request, particularly for an external emergency transfer, because MaineHousing's portfolio can provide for more alternative housing choices for the victim.
- There are recordkeeping requirements, and all records must be kept confidential. Records should be kept in a secure location that is separate from other tenant files and may not be disclosed unless the victim consents, the information is needed in an eviction or termination of assistance proceeding, or disclosure is otherwise required by law.

See HUD Notice HUD Notice H 2017-05 (multifamily) and HUD Notice PIH-2017-08 (HA) (Section 8 vouchers) for more detailed information. These notices, HUD regulations and the above-referenced notices can be found at <http://www.mainehousing.org/partners/partner-type/asset-management> on MaineHousing's website. Any IRS guidance will be posted there when it becomes available.