



# 2023-2024 Low Income Housing Tax Credit Qualified Allocation Plan

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## CHAPTER 16 LOW-INCOME HOUSING TAX CREDIT RULE

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## SECTION 1: INTRODUCTION

The federal Low-Income Housing Tax Credit (LIHTC) was created by the Tax Reform Act of 1986 to encourage private capital investment in the development of affordable rental housing. It is governed by [Section 42](#) of the Internal Revenue Code of 1986, as amended, and associated regulations. As the designated housing credit agency for the State of Maine, MaineHousing is required by [Section 42](#) of the Code and [30-A MRSA §§4741\(1\) and \(14\)](#) to adopt a Qualified Allocation Plan (QAP) for allocating and administering LIHTC; this rule is the State's QAP.

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

Capitalized terms used in this rule are defined in **Appendix A**, unless the context otherwise indicates, or if not defined therein, have the same meaning as set forth in [Section 42](#) of the Code.

## SECTION 2: HOUSING NEEDS AND PRIORITIES

MaineHousing and the Department of Economic and Community Development annually complete a statewide needs assessment as part of the Consolidated Housing and Community Development Plan. *Maine Consolidated Plan (2020-2024)* establishes the following housing priorities:

- A. expand affordable housing opportunities;
- B. improve and preserve the quality of housing; and
- C. help Maine people attain housing stability.

## SECTION 3: SET-ASIDES AND MAXIMUM CREDIT AMOUNT

- A. Nonprofit Set-Aside. MaineHousing will set aside ten percent (10%) of the annual State Ceiling for Projects in which a Qualified Nonprofit Organization owns an interest and materially participates in the development and operation throughout the Compliance Period in accordance with [Section 42\(h\)\(5\)\(B\)](#) of the Code. An Applicant will qualify if it is owned by either a Qualified Nonprofit Organization, or a business corporation which is 100% owned by one or more Qualified Nonprofit Organization(s), and (in accordance with [Section 42\(h\)\(5\)\(C\)](#) of the Code) it is the general partner or manager/managing member and controls the Project's development and day-to-day operation.

- B. Preservation Set-Aside. MaineHousing will set aside up to \$300,000 of the annual State Ceiling for the preservation and rehabilitation of one existing multifamily rental housing project if the scope of rehabilitation meets the minimum requirements set forth in Section 5.D.2. and one of the following:
1. at least 25% of its units, or those in a Related Development, are assisted under a Rural Development program; or
  2. at least 25% of its units will be converted to Section 8 under HUD's Rental Assistance Demonstration (RAD) Program, Section 18 Demolition/Disposition Program or other HUD conversion programs.

Demolition and reconstruction on an existing housing site will be treated as new construction and is not eligible for this set-aside.

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

#### **SECTION 4: ALLOCATION PROCESS**

- A. Pre-Application Submission. Each Project must undergo a mandatory Pre-Application review by MaineHousing to assess its feasibility, suitability for housing, and eligibility for Credit. Applicants must submit the information and documents set forth in **Appendix B** with the pre-application fee specified in Section 4.C. to MaineHousing by Thursday, July 7, 2022 for the 2023 round and by Thursday, July 6, 2023 for the 2024 round. An Applicant will not be eligible for Credit if
1. it fails to provide a complete Pre-Application submission in accordance with this subsection, or
  2. there is any material change in the Project between the Pre-Application submission and the Application unless required by MaineHousing.
- B. Application. Applications are subject to the following limitations, conditions and requirements:
1. Existing Housing.
    - a) Acquisition and Rehabilitation Projects. Projects that involve the acquisition and rehabilitation of Affordable Housing must include the addition of at least 20 new units, or meet the requirements of the Preservation Set-Aside in Section 3.B.

- b) Demolition of Existing Housing. Demolition of existing housing that has not been condemned or declared blight by a municipality is not eligible unless approved by MaineHousing.
2. Deadline. The deadlines for submitting Applications are Thursday, September 22, 2022 for the 2023 State Ceiling and Thursday, September 21, 2023 for the 2024 State Ceiling.
  3. Format. The Application must be completed and submitted electronically in the form and manner prescribed by MaineHousing. MaineHousing may require the Applicant to submit additional information.
- C. Fees. Applicants must pay the following fees when due. All fees are non-refundable.

Type of Fee	Amount	Due Date
Pre-application Fee	\$2,000	By Pre-application deadline in Section 4.A.
Application Fee	\$2,500	Postmarked for delivery by Application deadline in Section 4.B.2
Allocation Fee	7.5% of Credit	Earlier of Carryover Allocation (Section 8.B.) or Final Allocation (Section 8.A.)
Monitoring Fee*	\$1,000 per Credit Unit	Final Allocation (Section 8.A.)

\*MaineHousing may charge an additional monitoring fee to cover any increased costs due to income averaging or other extraordinary monitoring requirements during the Compliance Period.

- D. Ineligible Applicants. An Application will be deemed ineligible if one or more of the following has occurred:
1. The Applicant, any Principal thereof, or Affiliates of either
    - a) has an uncorrected IRS Form 8823 in connection with any LIHTC Project to the extent it is correctable unless previously waived by MaineHousing;
    - b) has been declared in default or has been 60 calendar 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 good standing prior to the Application deadline;
    - c) has ever been the owner of any project in which MaineHousing has foreclosed a mortgage interest or received a deed-in-lieu of foreclosure of a mortgage interest unless previously waived by MaineHousing;

- d) is presently debarred, suspended, proposed for debarment, or excluded from participation in any federal or state programs;
  - e) has sought to achieve early termination of an Extended Use Agreement through the written request to a housing credit agency to present a Qualified Contract;
  - f) has in the last 10 years either commenced or had commenced against it any proceeding in or for bankruptcy, receivership, reorganization or any other arrangement for relief from creditors commenced against it that affected a MaineHousing-funded project that was not dismissed within 90 calendar days; or
2. The tax credit syndicator, investor, or Affiliates of either
- a) transferred its interest in any LIHTC Project after March 25, 2014 in violation of the Ownership Transfer Rule;
  - b) failed to make any required capital contributions with respect to any LIHTC Project, and has not corrected such actions prior to the Application deadline;
  - c) has sought to achieve early termination of an Extended Use Agreement through the written request to a housing credit agency to present a Qualified Contract; or
  - d) has sought to undermine the exercise of a right of first refusal or purchase option with respect to any LIHTC Project by: (i) refusing to honor a right of first refusal or purchase option; or (ii) involvement in a lawsuit challenging the exercise of a right of first refusal or purchase option.

MaineHousing may reject the Application if it determines the deficiencies are not addressed. MaineHousing may also require financial statements from the Applicant, Principal thereof, or Affiliates of either.

- E. Notice to Local Jurisdiction. Upon receipt of an Application, MaineHousing will notify the Chief Executive Officer of the municipality with jurisdiction over the location of the proposed Project. The notice will provide for a 15-day comment period. MaineHousing will consider any comments received.
- F. Selection Process. Applications for the State Ceiling with the highest scores will be awarded Credit until the applicable State Ceiling is fully awarded.
  - 1. The preservation set-aside is limited to one Project. If the set-aside is not sufficient to complete the Project proposed in the highest scoring eligible Application, MaineHousing may allocate additional Credit, allocate the Credit under the set-aside to the next highest-scoring eligible Application that does not need more than the set aside, or not allocate any Credit under the preservation set-aside. All Applications that participate in the preservation set-aside and do not win will be placed on a waiting list.

2. The highest scoring Qualified Nonprofit Organization will be the winner of the nonprofit set-aside regardless of its ranking among other Applicants. If the set-aside is not fully awarded to the highest scoring eligible Applicant, MaineHousing may allocate additional Credit to the next highest scoring eligible Applicant for the set-aside, not fully allocate Credit under the set-aside, or require an Applicant that has not indicated that it is participating in the set-aside to participate in the set-aside. MaineHousing may, if necessary, require the Applicant to change its ownership structure. All Applications that participate in the nonprofit set-aside and do not win will be scored with the other Applications.
  3. Except as set forth above, MaineHousing will make awards in score order to select threshold-eligible Applications. If the last Application selected for an award of Credit needs more Credit than remains under the applicable State Ceiling, MaineHousing may elect to either (a) not award the remaining Credit to any Application, or (b) award additional Credit under the next annual State Ceiling to the Application. All threshold-eligible Applications that are not selected will be placed on a waiting list. Any Credit that is returned or is otherwise unused will be made available to waiting list Applications using this process.
- G. Notice to Proceed. MaineHousing will meet with each Applicant selected for a Credit award. If the Applicant accepts the Credit award conditions, MaineHousing will issue a Notice to Proceed. Applicants must execute and return the Notice within the time period specified.
- H. Credit Allocation. Upon receipt of the fully executed Notice to Proceed, MaineHousing will evaluate the Application pursuant to Section 7 to determine the amount of Credit, if any, to be allocated.
- I. Termination of Application or Notice to Proceed. MaineHousing will deem an Application withdrawn and any Notice to Proceed cancelled if one or more of the following occur without MaineHousing's written approval after the Application is submitted:
1. The Application or the Notice to Proceed is assigned or the Applicant or any Principal thereof changes;
  2. The location of the Project changes from the location identified in the Application;
  3. There is any change which would result in a net reduction in the Application's score except as provided in Section 6.H;
  4. There is a change in the Project's design or financing from what was in the Application which MaineHousing determines would result in a substantial increase in the amount of Credit or other MaineHousing funding;

5. The Project's TDC Index exceeds the TDC Index Cap, or any other failure to meet the threshold requirements in Section 5;
6. There is any other material or substantive amendment or change to the Application; or
7. Any event in Section 4.D. occurs and is not cured within any applicable cure period

## **SECTION 5: THRESHOLD REQUIREMENTS**

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

### **A. Affordability.**

1. The Project will comply with [Section 42](#) of the Code and this QAP for a minimum period of 45 years to maintain the Project as residential rental housing, keep at least 60% of the total Credit Units in a Project occupied by persons with 50% area median income and keep the Credit Units in the Project rent-restricted in accordance with [Section 42](#) of the Code.
2. The Applicant waives the right to request MaineHousing to present a Qualified Contract under [Section 42\(h\)\(6\)](#) of the Code.
3. The Applicant must submit a letter of intent from an investor (and, in the event of any change in investor, the replacement investor) in which the investor agrees to the granting of an option to purchase: (i) the Project; and (ii) the partnership interest of the limited partner(s) or membership interest of the non-managing member(s) of the Project owner ("Purchase Options"), to one or more of the general partner, managing member, developer or sponsor on terms that at a minimum satisfy the threshold requirements set forth in **Appendix E**. The investor must also agree in the letter of intent that the Purchase Options complying at a minimum with the threshold requirements in **Appendix E** will be included in the Project owner's limited partnership agreement or limited liability company operating agreement.
4. If the Applicant, general partner, managing member, developer, or sponsor of the Project is a Qualified Nonprofit Organization, the Applicant must submit a letter of intent from an investor (and, in the event of any change in investor, the replacement investor) in which the investor agrees to the granting of a right of first refusal ("ROFR") to the Qualified Nonprofit Organization on terms that at a minimum satisfy the threshold requirements set forth in **Appendix E**. The investor must also agree in the letter of intent that the ROFR complying at a minimum with the threshold requirements in **Appendix E** will be included in the Project owner's limited partnership agreement or limited liability company operating agreement.



- B. Section 811. For Family Housing, the Applicant agrees to accept HUD Section 811 Project Rental Assistance (PRA) and comply with the program requirements, if made available by MaineHousing. This does not necessarily constitute a commitment of PRA funding.
- C. Total Development Cost (TDC). 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 will be rejected if the TDC Index exceeds the TDC Index Cap below for a project of its type at any time prior to the later of the construction loan closing or carryover allocation.

Type of Project	TDC Index Cap
Adaptive Reuse	\$337,500 per unit
New construction	\$318,750 per unit
Acquisition and rehabilitation of existing housing	\$206,250 per unit

Demolition and reconstruction of all housing on the same site or another site will be treated as new construction. If a Project involves more than one project type, the TDC Index Cap for the Project is the average of the TDC Index Caps allocable to each type, weighted by the number of units of each type. TDC Index Caps are increased by 3% for Projects that receive Passive House Certification.

- D. Acquisition and Rehabilitation of Existing Housing. Projects that involve the acquisition and rehabilitation of existing multifamily housing are subject to the following:
  1. Capital Needs Assessment. The Application must include a capital needs assessment satisfying the requirements set forth in **Appendix C**.
  2. Minimum Rehabilitation Requirements. The Rehabilitation Costs per unit of existing housing must be at least \$50,000.
  3. Relocation/Displacement. The Project must comply with MaineHousing’s *Temporary Relocation and Permanent Displacement Policies* and, if the Project is federally-assisted, all applicable federal requirements, including the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. The Applicant must take reasonable steps to minimize the displacement of existing tenants of the Project. The Application must identify any tenants who will be permanently displaced and the reason for the displacement. The Project’s TDC must include all costs associated with permanent

and temporary displacement or relocation. MaineHousing will not allocate Credit until it has approved a project's relocation plan.

- E. Development and Management Experience and Capacity. Applicant teams must have sufficient knowledge, experience and capacity to adequately design, develop, complete, maintain, manage, and operate LIHTC Projects and to provide related services, such as accounting, tax and legal advice, and resident service coordination. If the Project will involve multiple subsidy sources in addition to LIHTC which results in overlapping targeting and rental restrictions, the Applicant team must have sufficient knowledge, experience and capacity to handle the increased complexity. If MaineHousing determines the Applicant's team lacks sufficient qualifications, the team may be required to
1. hire a qualified consultant,
  2. hire additional qualified staff, or
  3. replace a team member.
- F. Site Control. The Applicant must have site control of the Project throughout the Application process in the form of an option, a purchase and sale contract, ownership, or long-term lease. The Applicant, its agents, and MaineHousing must have access to the Project site, and if the Project is an existing occupied property, access to records and other information about the existing tenants, including current rent and income information.
- G. Growth Management Limitations. A Project that involves the new construction or acquisition of newly-constructed residential rental property or the conversion of existing buildings to residential rental property must comply with the State's Growth Management Law, [30-A M.R.S.A. §4349-A](#), as amended. Projects must meet one of the following two sets of criteria to be eligible for a Credit allocation:
1. If the municipality in which the Project is located has adopted a comprehensive plan or growth management plan that is consistent with applicable State law, then the Project must be in a designated growth area as identified in such plan; or
  2. Otherwise the Project must be located in an area
    - a) served by a public sewer system with existing capacity for the Project,
    - b) identified as a census-designated place in the latest Federal Decennial Census, or
    - c) in an urban municipality and defined under [23 M.R.S.A. §754](#) as compact.

The law exempts projects that exclusively serve certain populations, such as persons with disabilities, who are homeless, or are wards of the State.

H. Project Feasibility. The Applicant must have the financial ability to develop and complete the Project and to operate it throughout the Compliance Period.

1. Development Budget. The Applicant must identify

- a) all sources of funding for development and completion, whether direct or indirect, including the amount, timing, terms, conditions, and status (e.g. “applied for” or “committed”) as of the date of the Application and uses of the funding based on the projected costs of and schedule for developing and completing the Project; and
- b) all sources and uses of funding for the Project, whether direct or indirect and whether they are included in the development budget for the Project.

2. Operating Budget. The Applicant must identify all

- a) sources of income, including rent from the residential units, any income from commercial or non-residential space, and the amount, terms and conditions of rental or operating assistance; and
- b) costs of operating the Project as projected over the Compliance Period. The Applicant also must identify all forms of property tax relief (such as a PILOT, tax abatement or exemption, or Tax Increment Financing) and other assistance that reduces operating costs.

3. Related Development. Any Related Development must be completed prior to or concurrently with the completion of the Project, and there must be sufficient funding to operate the Related Development.

4. Financial Re-Characterization. MaineHousing may re-characterize any information about the sources and uses for a Project and any Related Development, such as information that is inconsistent with the requirements of a funding source or is unreasonable based on comparable LIHTC Projects, industry standards, or market conditions. The Applicant must address all development and operating deficits identified by MaineHousing.

I. Project Design. The design and construction or rehabilitation of the Project must comply with MaineHousing’s Construction Standards and all applicable local, state and federal codes, regulations, statutes and ordinances. In addition, all Projects must include:

1. Electrical raceways/conduits from the electrical panel to terminal units at the parking area for the future installation of Level 2 electric vehicle charger(s) and have an electrical panel that is adequately sized to provide for the future installation of Level 2 electric vehicle charger(s); and

2. Electrical raceways/conduits from the electrical panel to terminal units at the roof for the future installation of PV solar panels and have an electrical panel that is adequately sized to provide for the future installation of PV solar panels.

J. Project Amenities. The Project must have the following amenities and services:

1. Community Room. The Project must include an on-site community room with sufficient capacity to serve tenants' needs. For a scattered-site Project, only one community room is required and should be centrally located to the greatest extent possible to best serve all tenants.
2. Laundry Facilities. The Project must include either a washer/dryer hook-up in each unit or a fully accessible, centrally located laundry facility with sufficient capacity to serve all tenants.
3. Broadband Capabilities. The Project must include broadband infrastructure which includes cables, fiber optics, CAT5e (or greater) interior wiring, or other permanent (integral to the structure) infrastructure, including wireless infrastructure, as long as the installation results in broadband infrastructure in each dwelling unit sufficient for the build-to standard of The Maine Connectivity Authority and ConnectMaine.

If the broadband capabilities are used for telemedicine services, the healthcare service providers and the tenants may not be charged for the use of the internet or wireless and telephone services provided for telemedicine services.

4. Shared Facilities. An amenity will meet the requirements if the amenity:
  - a) is fully accessible and located on an accessible path to the Project,
  - b) is within an existing multifamily housing project adjacent to the subject site,
  - c) has sufficient capacity to serve both the Project's tenants and the existing project,
  - d) will be available to the Project's tenants during the Compliance Period on the same terms as the residents of the existing multifamily project, and
  - e) will not charge the tenants to use the shared amenity other than a reasonable fee that does not exceed the amount charged to any others for the same use.
5. Recreational Activities. An area(s) of recreational activity must be located on the Project site or within a ½ mile. The area(s) and activities must be free of charge to the tenants and not require membership. Projects with single-family detached style units satisfy this requirement if each unit has a private lawn with sufficient room for playground equipment, gardening or other activities acceptable to MaineHousing.

- 6. Exceptions. The requirements of this subsection do not apply to existing multifamily housing projects if the Applicant cannot comply with the requirements because of the nature of the site, structural limitations, zoning restrictions or other land use limitations.
  
- K. Resident Service Coordination. The Applicant must make a resident service coordinator available to the tenants on-site a minimum of one (1) hour per week for every five (5) Credit Units over an appropriate number of days each week acceptable to MaineHousing. The coordinator shall meet with tenants in a private and confidential manner to evaluate individual needs and make appropriate referrals. The services provided must be free of charge to the tenants. The Applicant must maintain adequate funding throughout the Compliance Period.
  
- L. Smoke-free Housing. The Applicant must
  - 1. implement a written occupancy policy prohibiting smoking in the units and common areas,
  - 2. include a non-smoking clause in the lease for every household, and
  - 3. make educational materials on tobacco treatment programs (including the phone number for the statewide Maine Tobacco HelpLine) available to all tenants through the resident service coordinator.
  
- M. Waiting List Preference. The Applicant must give an occupancy preference to eligible persons whose names are on a public housing or Section 8 waiting list, except for Projects: (i) financed by Rural Development, or (ii) with Section 8 Project-Based Rental Assistance (preference will apply to any Credit Unit without project-based rental assistance).

**SECTION 6: SCORING CRITERIA**

The Applicant must complete all information and submit all documentation required to be eligible for points.

**Project Characteristics**

- A. Rehabilitation or Reuse of Existing Housing, Structure or Site. **4 Points**

The Project site exhibits one or more of the following characteristics:

- 1. Replacement or rehabilitation of existing rental housing containing 5 or more units without permanently displacing any existing tenants or increasing their housing costs (including rent and all other charges paid by the tenant) by more than 10%;
- 2. Rehabilitation, remediation, or reuse of an existing building or structure that has a current use other than multifamily rental housing;

3. One or more buildings or structures used for purposes other than single family residential housing or agriculture purposes, have been or will be demolished or removed for purposes of redeveloping the site;
4. Left vacant or nearly vacant in the development of a downtown or other city or town center, such as vacant lots or parking lots abutting commercial buildings and/or multifamily rental housing; or
5. Specifically designated by a municipality for redevelopment to renew a blighted area or remediate environmental risks to the occupants.

Vacant lots in single-family residential areas are not eligible for points under this subsection. Undeveloped portions of existing sites are not eligible for points unless the existing project on the site previously satisfied one of the above criteria.

**B. Historic Rehabilitation. 4 points**

The Project includes the rehabilitation of a certified historic structure using capital contributions generated from federal and state historic rehabilitation tax credits.

**C. Populations with Special Needs. 6 points**

The Project provides a set-aside for at least 20%, but not less than 4 of the units, for Persons Experiencing Homelessness or persons who have disabilities, are victims of domestic violence, or have other special housing needs, to create permanent supportive housing for persons who require that level of intervention within the special needs populations.

The Applicant must set aside units for the specific population(s) that qualify for the set-aside, maintain a separate waiting list for these units and make appropriate, voluntary services available through a qualified third-party provider other than the resident service coordinator required under Section 5.L. Additional funding from the Housing Trust Fund and/or Project-based Vouchers will be made available as necessary.

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

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

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

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

<b>Project for Families with Minimum Percentage of Credit Units by Bedroom Size</b>	<b>Points</b>
At least 50% of the Credit Units are two or more bedroom units and at least 20% of the Credit Units are three or more bedroom units	<b>6 points</b>
At least 70% of the Credit Units are two or more bedroom units	<b>3 points</b>

F. Readiness. **8 points**

MaineHousing must approve both the design to be submitted to the municipality and the State and the final design, including all plans, details and specifications. The Project and any Related Developments must have all

1. municipal land use approvals (except building and other permits customarily issued during construction), and
2. State land use approvals (such as site plan, subdivision, storm water, or wetlands approvals) required to proceed with and complete construction.

As of the Application date, the timeframe to appeal all such approvals must have expired with no appellate action being taken, or all appeals have been resolved.

G. Accessibility. **Up to 12 points**

One (1) point for each unit that

1. exceeds the minimum number of such units required by applicable federal and state accessibility laws, and
2. meets the requirements for a Type A unit under ANSI Standard A117.1-2009, up to the maximum points by project type below.

<b>Type of Project</b>	<b>Maximum Points</b>
Projects providing Housing for Older Adults	<b>12 points</b>
Other Projects	<b>6 points</b>

**Financial Characteristics**

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

Points are based on the percentage by which the acquisition costs are less than the average acquisition costs for a project of its type as follows:

<b>Type of Project</b>	<b>Average Acquisition Cost</b>
Acquisition and rehabilitation of existing housing	\$47,000 per unit
New construction	\$14,000 per unit
Adaptive Reuse	\$12,000 per unit

For purposes of this subsection, acquisition costs include

1. the purchase price for all of the land and any existing building(s) even if donated or leased to the Applicant at below market value,
2. the cost of razing or demolishing any building(s) and structure(s), or any part thereof, on the Project site, and
3. the Capitalized Lease Value of all leases of land or land and building(s) that are part of the Project, with the exception of parking spaces.

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

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

I. Property Tax Relief. **Up to 3 points**

Points are based on the percentage of the Project's annual incremental property tax revenue returned to the Applicant or foregone by the taxing authority as follows:

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

Only Tax Increment Financing, payment in lieu of taxes, abatement, or other property tax relief arrangement approved by the taxing authority and all other applicable governing entities is eligible. A Project that is either a) located in a jurisdiction that does not assess property taxes or b) exempt from property taxes will be awarded one (1) point.

Funding made possible by an Affordable Housing TIF will not be eligible unless the Applicant submits a complete application for the TIF at least 30 calendar days before the



applicable Application deadline (Tuesday, August 23, 2022 for the 2023 State Ceiling and Tuesday, August 22, 2023 for the 2024 State Ceiling).

**Project Location**

J. Housing Need. **Up to 10 points**

Points are based on the need for the type of housing in an area as follows:

1. Projects providing Housing for Older Adults located in the following Service Center Communities:

<b>Projects providing Housing for Older Adults</b>			
<b>Service Center Community</b>			<b>Points</b>
Auburn	Madawaska	Topsham	<b>10 points</b>
Augusta	Old Orchard Beach	Waterville	
Bangor	Portland	Windham	
Biddeford	Rumford		
Brunswick	Saco		
Caribou	Sanford		
Falmouth	Scarborough		
Freeport	Skowhegan		
Kennebunk	South Portland		
Kittery			
Lewiston			
Bar Harbor	Gardiner	Presque Isle	<b>8 points</b>
Bath	Hermon	Rockland	
Belfast	Houlton	Rockport	
Brewer	Lincoln	Van Buren	
Bridgton	Mexico	Westbrook	
Camden	Millinocket	Wiscasset	
Ellsworth	Norway		
Farmington	Oxford		
Bethel	Eastport	Mount Desert	<b>6 points</b>
Bingham	Fort Kent	Newport	
Blue Hill	Guilford	Orono	
Boothbay Harbor	Jackman	Pittsfield	
Cornish	Limestone	Rangeley	
Damariscotta	Mars Hill	Southwest Harbor	
Dexter	Millbridge	Thomaston	
Dover-Foxcroft			

2. Other Housing Projects in the following Service Center Communities:

<b>Other Housing Projects (not specifically for Older Adults)</b>			
<b>Service Center Community</b>			<b>Points</b>
Auburn	Farmington	Saco	<b>10 points</b>
Augusta	Kittery	Sanford	
Bangor	Lewiston	Skowhegan	
Bath	Old Orchard Beach	South Portland	
Biddeford	Orono	Waterville	
Brewer	Portland	Westbrook	
Brunswick	Rumford	Windham	
Bar Harbor	Hermon	Oxford	
Calais	Houlton	Presque Isle	
Caribou	Limestone	Rockland	
Ellsworth	Lincoln	Scarborough	
Falmouth	Madawaska	Topsham	
Fort Kent	Mexico	Wiscasset	
Gardiner	Norway		
Ashland	Dexter	Pittsfield	<b>6 points</b>
Bethel	Dover-Foxcroft	Rangeley	
Blue Hill	Greenville	Rockport	
Boothbay Harbor	Kennebunk	Southwest Harbor	
Bridgton	Millinocket	Thomaston	
Cornish	Mount Desert	Van Buren	
Damariscotta	Newport		

3. Projects located on Native American tribal lands will be awarded **10 points**.

For each QAP round, municipalities receive their Housing Need score from the immediately preceding QAP if that score was higher.

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

**Two (2) points** if the Project is located within the boundaries of and contributes to the revitalization goals and efforts identified in a Community Revitalization Plan.

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

L. Smart Growth. **Up to 15 points**

<b>Smart Growth Feature</b>	<b>Points</b>
Access to Public Transportation. The Project is located within a Safe Walking Distance (½ mile or less) of a designated pick-up location for existing Fixed-route Public Transportation.	<b>5 points</b>

Demand Response Transportation. Demand Response Transportation is available to all tenants with no eligibility criteria that would limit or deny service.	<b>5 points</b>
Proximity to Activities Important to Daily Living. The Project is located within not more than a ½ mile of at least 3 Activities Important to Daily Living.	<b>5 points</b>

### Sponsor Characteristics

M. Developer Capacity. **Up to 5 points**

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

Successfully completed at least one multifamily rental housing project with MaineHousing funding or completed at least one LIHTC Project in another state(s).	<b>5 points</b>
Experience developing and operating multifamily rental housing or experience managing Affordable Housing, <i>and</i> the Applicant has a contract with a qualified LIHTC consultant to develop the Project.	<b>4 points</b>
Experience developing and operating multifamily rental housing.	<b>3 points</b>

N. Owner Performance. **Up to 5 Points**

Points are based on the recent performance of the Applicant. MaineHousing may reject the Application if it determines outstanding deficiencies are not addressed, or require financial statements from the Applicant, Principals thereof, or Affiliates.

Has not been 60 calendar days or more delinquent in the payment of any MaineHousing loan since September 22, 2014 (except delinquencies resulting from the delay or loss of Section 8 housing assistance payments), declared in default by MaineHousing, nor had a municipal tax lien placed on any housing funded by MaineHousing.	<b>2 points</b>
No LIHTC Projects still in their Compliance Period had a year-end operating deficit, in the last full Fiscal Year, unless the operating deficit was fully funded by the Application deadline.	<b>2 point</b>
Was not (a) issued an IRS Form 8823 for any reason other than a violation of UPCS or local inspection standards (box 11c) that was subsequently reported as “noncompliance corrected” within the correction period, nor (b) had an IRS audit finding resulting in a recapture event, since September 22, 2016.	<b>1 point</b>

O. Management Experience. **Up to 5 points**

The company that will manage the Project has at least

one (1) staff person with a minimum of three (3) years of experience successfully managing at least one (1) LIHTC Project.	<b>3 points</b>
one (1) staff person with LIHTC training for every 150 units in LIHTC Project(s) the company plans to manage.	<b>2 points</b>

P. Management Performance. **Up to 3 points**

Management Companies which have shown exceptional performance in their management of LIHTC Projects still in their Compliance Period are eligible for points as follows.

The average of the most recent physical plant inspection scores as of June 30 before the Application deadline is equal to Above Average or better.	<b>1 point</b>
The average of Project Reports submission scores for the last reporting period as of June 30 before the Application deadline is equal to Above Average or better.	<b>1 point</b>
The average of the most recent Management and Occupancy Review scores as of June 30 before the Application deadline is equal to Above Average or better.	<b>1 point</b>

Q. Tie Breaker.

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

R. Review Process.

MaineHousing will notify each Applicant of its initial score in writing. If MaineHousing assigns a score in a scoring category which is lower than the score the Applicant assigned itself in the scoring category, the Applicant will have five business days from such written notice to demonstrate to MaineHousing that the Application as submitted should receive the higher score. MaineHousing will then make a final determination of scores and the ranking of Applications.

## SECTION 7: PROJECT EVALUATION

- A. Amount of Credit. The amount of Credit allocated will be determined as follows:
1. The calculation of the amount of Credit will be based on 130% of Eligible Basis. MaineHousing has designated the entire State as a DDA under [Section 42\(d\)\(5\)\(B\)\(v\)](#) of the Code because of the high cost of developing housing, the low median income, and the high annual operating costs for housing relative to other states;
  2. To determine the amount of Credit, MaineHousing will use the lesser of (a) the market rent, based on the Application market study as approved by MaineHousing, and (b) the maximum Credit rent. For three or more bedroom units MaineHousing will use the maximum Credit rent for two-bedroom units plus \$50.00;
  3. The amount of Credit allocated for a Project will not exceed the least of
    - a) the amount the Project is eligible to receive under [Section 42](#) of the Code,
    - b) the amount MaineHousing determines is necessary for financial feasibility and viability throughout the Credit Period, and
    - c) the Maximum Credit Amount;
  4. The Applicant must submit financial and all other required information. MaineHousing will evaluate the need for Credit based on
    - a) all sources of financing, including the terms and conditions,
    - b) equity expected to be generated by reason of tax benefits, and
    - c) the uses of funds, including the reasonableness of development costs and operating expenditures; and
  5. In order to determine the amount of Credit, MaineHousing must identify a gap between development sources and uses absent a Credit allocation. MaineHousing may limit recognition of Intermediary Costs, re-characterize Project sources and uses and make reasonable assumptions with respect to projected revenues and expenses. MaineHousing will also take into consideration any federal limitations when combining the Credit with other federal assistance (i.e. “subsidy layering” guidelines).
- B. Developer Fee. Developer Fee will be determined as follows:
1. Maximum Developer Fee. The total Developer Fee may not exceed the sum of 15% of the Housing Development Costs, plus 10% of the costs of acquisition of land, existing buildings and equipment, determined without regard to the Developer Fee.
  2. Net Developer Fee. The amount of Developer Fee not deferred may not exceed \$750,000 plus any unused construction contingency returned to the Applicant after completion.

3. Additional Developer Fee. An Applicant is eligible for Developer Fee in excess of the Net Developer Fee calculated above only if it is deferred and used to increase the tax credit basis.
- C. General Contractor Intermediary Costs. The general contractor's Intermediary Costs must be:
1. separated from other construction and rehabilitation costs,
  2. with general conditions and overhead and profit parsed out, and
  3. no more than 14% of the Total Construction Cost, within the following ranges:
    - a) General conditions up to 6% of Total Construction Cost, and
    - b) Overhead and profit up to 8% of Total Construction Cost
- D. Time of Credit Determination. MaineHousing will determine the amount of Credit at the time of
1. Application, which will be evidenced by the Notice to Proceed;
  2. the allocation of Credit, including any carryover allocation;
  3. the date each Qualified Building is Placed in Service; and
  4. if a Qualified Building is allocated Credit pursuant to Section 9, the date of issuance of the tax-exempt bonds.
- Prior to each determination, the Applicant must certify the full amounts of all funding sources and provide any other information required by MaineHousing.
- E. Market Study. The applicant must submit a comprehensive market study prepared by a qualified professional in accordance with the *National Council of Housing Market Analysis Model Standards for Market Studies for Rental Housing*. MaineHousing may require the Applicant to either correct any inadequacies it identifies or submit a new market study. MaineHousing also may elect to commission its own market study.
- F. Construction Cost Increases. MaineHousing may allocate additional Credit to a Project if its construction costs increase after the Application date and the increase is the result of market conditions or other circumstances beyond the Applicant's control. Any additional Credit will not exceed an amount necessary to generate equity equal to 5% of the Total Construction Cost based on construction bids.

## SECTION 8: ALLOCATION OF CREDIT

- A. Allocation. MaineHousing will issue one or more IRS Form(s) 8609 after receipt of the following:
1. A complete request for allocation of Credit in a form prescribed by MaineHousing.
  2. An audit report on the schedule of project costs prepared by an independent, third party certified public accountant including all associated costs (such as commissions, due diligence, legal, accounting, reserves, and other similar items).
  3. Certification of the Project's sources, including all federal, state and local subsidies in any stage of commitment. This certification must include income, operating and development cost projections and methods for satisfying any deficits.
  4. The allocation fee and monitoring fee less the amount of any allocation fee paid in connection with the issuance of a carryover allocation.
- B. Carryover Allocation.
1. The Applicant must submit the following to receive a carryover allocation:
    - a) A complete request for carryover allocation in the form prescribed by MaineHousing no later than the first day of December of the year in which the carryover allocation is made.
    - b) Certification of the Project's sources, including all federal, state and local funding. This certification must include income, operating and development cost projections and methods for satisfying any deficits.
    - c) Development progress report, including completion likelihood.
  2. The applicant must execute a carryover allocation and return it to MaineHousing, together with the allocation fee, no later than December 31 of the year in which the carryover allocation is made.
  3. A carryover allocation will be subject to the following conditions:
    - a) satisfactory evidence that more than 10% of the Project's reasonably expected basis is incurred within 12 months of the carryover allocation, including an audit report prepared by an independent, certified public accountant; and
    - b) any performance conditions MaineHousing may require.

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

- C. Tax Credit Compliance Experience. Prior to an allocation the Applicant must demonstrate that the entity managing the Project has sufficient Credit compliance experience and training. The entity must complete a Credit compliance training or receive a certification from a MaineHousing-approved trainer.
- D. Extended Use Agreement. Prior to an allocation of Credit, the Owner must enter into an Extended Use Agreement with MaineHousing obligating the Owner to comply with [Section 42](#) of the Code, the threshold requirements in Section 5, and commitments for which the Application was awarded points. The Extended Use Agreement must be recorded in the appropriate registry of deeds prior to all mortgage liens and encumbrances on the Project and before MaineHousing issues any IRS Form 8609 for the Project.
- E. Converting a Carryover Allocation. MaineHousing may convert a carryover allocation to the year in which it is terminated or the following year if there are extenuating circumstances beyond the Applicant's control. The carryover allocation must be rescinded by the mutual consent of MaineHousing and the Applicant. There can be no change in the design or financing that would render the Application withdrawn under Section 4.I. The Project will be subject to the QAP in effect at the time of the original allocation.
- F. Forward Allocation of Credit. MaineHousing may issue a binding commitment to allocate State Ceiling available in the subsequent year upon determining that the amount of Credit in the current year's State Ceiling is insufficient.

## **SECTION 9: TAX-EXEMPT BOND FINANCED PROJECTS**

Projects financed with tax-exempt bond proceeds must satisfy all QAP requirements except

- A. the Maximum Credit Amount limitation in Section 3.C.,
- B. the application limits in Section 4.B.1.,
- C. the application deadlines in Section 4.B.2.,
- D. the selection process described in Sections 4.F.,
- E. the affordability threshold requirement set forth in Section 5.A.,
- F. the requirement of a minimum \$50,000 per unit of Rehabilitation Costs for Projects involving the acquisition and rehabilitation of existing housing in Section 5.D.2.,
- G. the scoring criteria in Section 6, and



H. the Developer Fee limits in Section 7.B.

## **SECTION 10: MONITORING**

A. Compliance with Applicable Laws. Owners must comply with all local, state and federal laws and regulations, including without limitation:

1. [Section 42](#) of the Code and associated regulations and guidance;
2. UPCS and all other local, state and federal health, safety and building codes applicable to the Project;
3. the [Federal Fair Housing Act, Title VIII of the Civil Rights Act of 1968](#), as amended by the Fair Housing Amendments Act of 1988 ([42 U.S.C. §3601 et seq.](#)), Title II of the Americans with Disabilities Act of 1990 ([42 U.S.C. §12101 et seq.](#)), and the Maine Human Rights Act ([5 M.R.S.A., Chapter 337, Subchapter IV](#)) and all other applicable federal, state and local fair housing and accessibility requirements, and the regulations, guidance and standards associated with all of the foregoing; and
4. Title VI of the Violence Against Women Reauthorization Act of 2013, [42 USC Chapter 136, Subchapter III, Part M](#), and all associated regulations and guidance, as may be amended (VAWA).

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

1. The total number of residential rental units including the number of bedrooms and the square footage of each unit;
2. The number of low-income units;
3. The rent charged for each unit including any utility allowances;
4. The number of occupants in each low-income unit;
5. The number of low-income unit vacancies and information showing when, and to whom, the next available units were rented;
6. Income certification and third-party documentation verifying the income of each household occupying a Credit Unit at the time of initial occupancy and for each new person added to the household after initial occupancy;
7. Annual income certifications and third-party documentation verifying the income of each household occupying a Credit Unit in a LIHTC Project are required if not all of the units

in the LIHTC Project are Credit Units, or the LIHTC Project is financed or assisted under a state or federal program that requires annual certifications.

For a LIHTC Project with 100% Credit Units that are subject to more than one income limit, annual income certifications are only required for the households occupying the Credit Units subject to the lower income limits. The annual certification may be a self-certification, except that third-party documentation verifying the income of the household is required every 6 years from the date the LIHTC Project is Placed in Service and otherwise upon request by MaineHousing. The self-certification must be

- a) in writing,
- b) include the size of the household and annual household income,
- c) state that the information is complete and accurate,
- d) indicate that third-party source documentation will be provided if requested by the Owner or MaineHousing, and
- e) witnessed.

Annual income certifications are not required for a LIHTC Project with 100% Credit Units subject to the same income limit.

8. The Eligible Basis and Qualified Basis of each Qualified Building at the end of the first year of the Credit Period;
9. The character and use of the nonresidential portion of a Qualified Building included in its Eligible Basis;
10. A determination of the student status of the resident household;
11. The tenant occupancy policies and procedures and lease. The lease form and content must be acceptable to MaineHousing and comply with all applicable federal, state and local laws (including VAWA); and
12. All other disclosures to tenants, certifications and other records required by applicable local, state and federal laws.

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

- C. Annual Reports. Each Owner must submit the following to MaineHousing by March 1<sup>st</sup> of each year throughout the Extended Use Period:
1. Certification for the prior calendar year that the Owner's LIHTC Project(s) comply with IRS Treasury Regulation §1.42-5(c)(1) and *MaineHousing's Low Income Housing Tax Credit Program Owner's Certificate of Continuing Program Compliance* attached hereto as **Appendix D**. A completed and executed IRS Form 8609 for each Qualified Building must be submitted with the first certification; and
  2. Certain information and data about the tenants in Credit Units for the prior calendar year, including household income; monthly rental payments; family composition; use of Section 8 rental assistance and other similar assistance; the race, ethnicity, age and disability status of the members of the households; and all other occupancy information required by MaineHousing.
- D. Review. For new LIHTC Projects, MaineHousing will complete a review of tenant records within two (2) years following the year the last Qualified Building is Placed in Service. MaineHousing will give owners reasonable prior written notice of a review. To the extent required by the Internal Revenue Service (IRS), MaineHousing will inspect low income certifications and tenant records in accordance with IRS Treasury Regulation §1.42 5(c)(2)(iii)(A) through (D) and §1.42 5(d) and will give no more than 15 calendar days prior notice.
- E. Inspections. Every one to three years after a Project is Placed in Service, MaineHousing will inspect LIHTC Projects. For new LIHTC Projects, MaineHousing will inspect Credit Units by the end of the second calendar year following the year the last Qualified Building is Placed in Service. MaineHousing will give reasonable prior written notice. To the extent required by the Internal Revenue Service, MaineHousing will inspect the LIHTC Projects in accordance with IRS Treasury Regulation §1.42 5(c)(2)(iii)(A) through (D) and §1.42 5(d) and will give no more than 15 calendar days prior notice.
- F. Notification of Noncompliance. MaineHousing will notify an Owner in writing of any failure to
1. submit any complete certifications or information required by MaineHousing when due,
  2. allow MaineHousing to perform any review or inspection required under this Section, or
  3. comply with [Section 42](#) of the Code or any others requirements under this QAP.

The Owner will have a reasonable period of time to correct the noncompliance identified in the notice. MaineHousing will file a Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance" with the Internal Revenue Service within 45 calendar days of the end of the correction period.

## SECTION 11: GENERAL

- A. Conflicts. If this rule conflicts with [Section 42](#) of the Code or any other provision of federal or State law, the federal or State law shall control.
- B. Full Discretion. MaineHousing is entitled to the full discretion allowed by law in making all decisions and interpretations under this rule.
- C. Not an Entitlement. This rule establishes a pool of eligible Applicants but does not preclude additional reasonable criteria and does not confer any automatic right or entitlement to Credit on any person or entity eligible hereunder. MaineHousing may reject any and all Applications and may refuse to award any or all of the Credit.
- D. Final Agency Action. The director of MaineHousing, individually or by exercise of the delegation of powers contained in the Act, shall make all decisions and take all action necessary to implement this rule. Such action of the director shall constitute final agency action.
- E. Waiver. Upon a determination of good cause, the director of MaineHousing or the director's designee may, subject to statutory limitations, waive any provision of this rule. The waiver must be in writing and must be supported by documentation of the pertinent facts and grounds.
- F. Freedom of Access Act. MaineHousing is subject to the Freedom of Access Act, [1 M.R.S.A. §401 et seq.](#), which requires the disclosure of all information provided to MaineHousing that is not specifically excluded, such as confidential information under the Act. MaineHousing shall not be liable for the disclosure of any information that it determines must be disclosed under the Freedom of Access Act.
- G. Liability. Compliance with [Section 42](#) of the Code is the responsibility of the Owner. MaineHousing is in no way responsible for an Owner's compliance or liable for an Owner's noncompliance. Any allocation, review or inspection by MaineHousing and any determination made by MaineHousing pursuant to this QAP is for the sole benefit of MaineHousing. No liability or responsibility for Owner compliance with [Section 42](#) of the Code or other applicable requirements and no representation or warranty of a Project's feasibility or viability, eligibility for Credit, or compliance shall be implied or construed from any such actions and determinations by MaineHousing.
- H. Headings/Context. The headings in this rule are for convenience only and do not define or limit the scope of the provisions of this rule. The use of Section, Subsection or Appendix without a reference to another document or source refers to a section, subsection and Appendix of this rule.

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

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

**PUBLIC COMMENT:**

*Process:*

Notice of Agency Rule-making Proposal (MAPA-3) was submitted to the Secretary of State for publication in the April 27, 2022 edition of the appropriate newspapers. Additionally, MaineHousing sent the proposed rule to Interested Parties on April 27, 2022, and published the proposed rule on its website on April 27, 2022. MaineHousing held a public hearing on May 17, 2022. The comment period was held open until May 27, 2022 at 5:00 PM.

*Summary of Comments and Responses to Comments:*

*Comment:* Beth Boutin, Vice President of Community Investments for Evernorth, Inc., and Laura Mitchell, Executive Director of the Maine Affordable Housing Coalition, submitted written comments sharing the HFA Toolkit for addressing Year 15 Issues put together by the National Housing Trust and recommended that the provisions required for Rights of First Refusal in Appendix E of the Qualified Allocation Plan (QAP) be based on the approach of other states described in the Toolkit.

*Response:* The language proposed in Appendix E was based almost exclusively on the summary of provisions in the Toolkit which had been previously provided to MaineHousing.

*Comment:* Ms. Boutin also recommended that the QAP include provisions similar to that adopted in other states requiring credit applicants to use equity providers who have not been involved in “aggregator” activity, sought to achieve early termination of LIHTC extended use agreements through the qualified contract process or sought to undermine the exercise of a right of first refusal or option to purchase.

*Response:* The proposed QAP includes such language in the Ineligible Applicant provisions of Section 4, subsection D.

*Comment:* Ms. Boutin and Ms. Mitchell also recommended that MaineHousing should require approval for any transfer of investor interests in existing projects to protect against aggregators replacing original investors.

*Response:* Chapter 27 of MaineHousing’s rules deals with Transfers of Ownership Interests. MaineHousing is in the process of reviewing that rule and anticipates future rulemaking to address the concerns raised by this comment. Changes to the Transfer of Ownership Interests rule will go through a similar public process to that of the QAP.

*Comment:* Ms. Mitchell also recommended that MaineHousing create greater flexibility in the program funding limits to address the escalating cost of construction.

*Response:* The TDC Index Caps in the Section 5 Threshold Requirements have been increased by 25% over the prior QAP to address the reality of increased construction costs. Additionally, MaineHousing will continue to entertain waivers of the TDC Index caps on a project-by-project basis.

*Comment:* Nathan S. Szanton of The Szanton Company and Maine Workforce Housing, LLC provided testimony at the public hearing and submitted written comments making several recommendations. He first requested a clarification that the specific Year 15 provisions in Appendix E be minimum threshold requirements leaving open the option for project developers to be able to negotiate terms more beneficial for the project's long term affordability.

*Response:* MaineHousing agrees with this request and has added clarifying language to that effect in Appendix E and in Section 5, subsection A., paragraphs 3 and 4 which incorporate the provisions of Appendix E.

*Comment:* Mr. Szanton also requested that the reference in Appendix E to the "as encumbered" fair market value be extended to all applicable restrictions of record and not be limited to the Extended Use Agreement.

*Response:* MaineHousing agrees with this request and has added language to Appendix E expanding the scope of "as encumbered".

*Comment:* Mr. Szanton also requested that the provision in Appendix E defining the price to be paid pursuant to an option to purchase the investor's interest in the ownership entity be revised to add an option for the fair market value of such interest.

*Response:* Since clarification has been added to Section 5 and Appendix E that the requirements set forth in Appendix E are merely minimum threshold requirements, developers will have the option of negotiating the requested option if they feel it is more beneficial. If they can negotiate something more favorable, they may do so. MaineHousing does not feel at this time that this language should be added as a required minimum threshold.

*Comment:* Susan Lea Riggs, Senior Director of Housing Policy at the American Society for the Prevention of Cruelty to Animals, provided testimony at the public hearing and submitted written comments along with Bill Ketzer, Senior Director of State Legislation, asking that a pet-friendly preference or requirement be added to the QAP.

*Response:* MaineHousing does not prohibit pets in projects it finances. Requiring a project to allow pets raises issues involving security deposits, "house pet rules" and addressing tenants with pet allergies. Such decisions will be left to the discretion of the project ownership and management.

*Comment:* Rebecca Price, State Advocacy Specialist for the U.S. Green Building Council, provided testimony at the public hearing and submitted written comments requesting that a scoring criteria be added awarding points for achieving third-party certification of high-performing building standards such as Leadership in Environmental and Energy Design (LEED). Ms. Price pointed to the just enacted Maine PL2021, chapter 718, An Act to Promote Energy-efficient Affordable Housing in support of this request.

*Response:* MaineHousing's current Construction Standards already require projects to be built to high standards, including maximizing energy efficiency. The referenced Act takes effect on August 8, 2022. It requires MaineHousing to collaborate with Efficiency Maine Trust and to promulgate rules by January 1, 2024. MaineHousing will be proceeding in accordance with the new statute to assess the building standards required under the QAP and declines to make any changes to the Construction Standards in advance of that process.

*Comment:* Dana Totman, President of Avesta Housing Development Corporation, provided testimony at the public hearing and submitted written comments recommending several revisions to the QAP. The first recommendation was to eliminate the current Preservation set-aside or expand the eligible projects beyond Rural Development/HUD's RAD program and establish a minimum score to qualify for the set-aside.

*Response:* MaineHousing continues to believe that preserving existing housing is important and warrants a set-aside of a small portion of the annual credit ceiling. The proposed QAP already included an expansion of eligible projects to include HUD's Section 18 Demolition/Disposition program and any other HUD conversion program. Since the set-aside is not mandatory, MaineHousing can reject all set-aside applications in a particular funding round if none meet threshold acceptability so MaineHousing does not believe a minimum qualifying score is needed.

*Comment:* Mr. Totman also recommended that the requirement for projects to include broadband capability be dropped since it is tied to the provision of telemedicine which should not be a goal of the tax credit program.

*Response:* MaineHousing feels that the recent pandemic has shown how critically important broadband capability is for any number of reasons, telemedicine being only one among many. Some revisions have been made to Section 5, subsection J, paragraph 3 to retain the broadband infrastructure requirement but to remove the sole emphasis on telemedicine.

*Comment:* Mr. Totman also requested that the requirement for an occupancy preference for eligible persons on a public housing or Section 8 waiting list be dropped because the waiting period is so long eligible people do not add their names and it creates a bias against asylum seekers who are not eligible.

*Response:* While the length of time on waiting lists and inability of asylum seekers to be added are clearly legitimate issues, public housing waiting lists is a required selection criterion for QAPs under Section 42 of the Internal Revenue Code which governs the tax credit program.

*Comment:* Mr. Totman also recommended that a scoring category be included for an applicant's financial contributions beyond just the current criteria for low priced land and tax relief.

*Response:* The decision to drop two scoring criteria from the Financial Characteristics section of the QAP, Below Market Capital and New Project Based Rental Assistance, has created greater emphasis on the two remaining criteria, Acquisition Cost and Property Tax Relief. The Below Market Capital criteria incentivized applicants to seek funding sources that in many cases added significant complexities and obstacles to the transaction with decreasing benefits as interest rates have risen above the rates offered by MaineHousing. Project-based rental assistance disproportionately favored applicants with access to their own project-based vouchers. While MaineHousing agrees that additional resources/contributions can be beneficial to a project, it has been difficult to develop a

quantifiable measurement for such resources like those for Acquisition Cost and Property Tax Relief. MaineHousing will continue to work to consider additional financial criteria for future QAPs.

*Comment:* Mr. Totman also recommended that the list of municipalities under the Housing Need criteria be revised or, in the alternative, the point totals be reduced from 10/8/6 to 3/2/1 to lessen the disadvantage to communities that are not on the list.

*Response:* Housing Need is a required selection criteria under Section 42 of the Internal Revenue Code. MaineHousing has tried several different approaches over the years, with the assistance of consultants and industry partners, to come up with the best methodology. The current list of municipalities is taken from the list of Service Centers put together by the Municipal Planning Assistance Program within the Maine Department of Agriculture, Conservation and Forestry. While certainly not perfect, MaineHousing feels it is the best available standard at this time and continues to warrant the assigned scoring points.

*Comment:* Mr. Totman also recommended that the criteria for projects in a community revitalization plan be eliminated as an outdated concept.

*Response:* Per Section 42 of the Internal Revenue Code, QAPs must give a preference for properties located in qualified census tracts (QCTs), the development of which contributes to a concerted community revitalization plan (CCRP).

*Comment:* Mr. Totman also recommended that, given the broad scope of his comments, this QAP be limited to one year, rather than the proposed two, to allow more time to consider implementation of his recommendations.

*Response:* MaineHousing, in response to comments from various members of the development community over the years, feels the adoption of a two-year QAP provides the development community with greater continuity in the project planning process, allowing them to better anticipate how they might best address housing needs in future competitive funding rounds. The fact that the QAP is initially adopted for two years does not prevent MaineHousing from continuing to assess its provisions and propose revisions next year as necessary or warranted.

*Comment:* Cheryl A. Sessions, Executive Director of Portland Housing Authority, submitted written comments making several recommendations. The first recommendation was to make the provisions of Appendix E a minimum set of protections and guidelines rather than prescriptive.

*Response:* As stated in earlier responses, that was the intent of the new provisions and clarifying language has been added in Section 5 and Appendix E which will permit negotiation of more favorable terms.

*Comment:* Ms. Sessions also expressed agreement with the previous comments from Ms. Boutin of Evernorth, Inc., that policies similar to those in other states to restrict or eliminate “aggregator” activities be added.

*Response:* As stated in earlier responses, the recommended language was already included in the eligible applicant provisions of Section 4.



*Comment:* Ms. Sessions also recommended revising the project cost caps to a methodology that is more immediately reflective of the current cost environment and which permits waivers.

*Response:* The proposed QAP has increased the TDC caps by 25% over the previous QAP to address project cost increases being experienced in the marketplace. Additionally, MaineHousing will continue to entertain waivers of the TDC Index caps on a project-by-project basis. MaineHousing believes the current proposal will provide the necessary flexibility to address fluctuations in the market as it continues to monitor the situation.

*Comment:* Ms. Sessions also recommended retaining the preservation set-aside and public housing waiting list preference.

*Response:* MaineHousing appreciates these recommendations and has stated in earlier responses its decision to retain these provisions.

*Comment:* Cullen Ryan, Executive Director of Community Housing of Maine, submitted written comments expressing support for shifting the Populations with Special Needs criteria from a preference to a set-aside.

*Response:* MaineHousing appreciates the support for that change.

*Comment:* Mr. Ryan also expressed support for Ms. Boutin's earlier comments regarding the provisions in Appendix E.

*Response:* MaineHousing has responded to Ms. Boutin's comments in earlier responses.

*Comment:* Emily Flinkstrom, Executive Director of Fair Tide, submitted written comments supporting shifting the Populations with Special Needs criteria from a preference to a set-aside.

*Response:* MaineHousing appreciates the support for that change.

*Comment:* Bill Shanahan, Co-President of Evernorth, Inc., provided testimony at the public hearing expressing concern over the prescriptive nature of the new Appendix E provisions.

*Response:* As stated in earlier responses, language has been added in Section 5 and Appendix E clarifying that the provisions set forth in the Appendix are minimum threshold requirements which will permit negotiation of more favorable terms.

*Comment:* Jeff Levine of the Maine Affordable Housing Coalition, provided testimony at the public hearing on various aspects of the QAP. First, he seconded the comments made by Dana Totman concerning the limited scoring options under the Financial Characteristics section and the need to add additional options.

*Response:* As stated in earlier responses, MaineHousing will continue to evaluate additional scoring criteria that can be added to this category and welcomes suggestions from development partners.

*Comment:* Mr. Levine also expressed concern about the provisions in Appendix E being too prescriptive and not offering negotiating flexibility.

*Response:* As stated in earlier responses, language has been added in Section 5 and Appendix E clarifying that the provisions set forth in the Appendix are minimum threshold requirements which will permit further negotiation of more favorable terms.

*Comment:* Mr. Levine also expressed support for the recommendation from Evernorth that the QAP include language that “bad actors” not be eligible to work on QAP projects.

*Response:* As stated in earlier responses, the recommended language was already included in the eligible applicant provisions of Section 4.

*Comment:* Mr. Levine also commented on the need for flexibility on cost caps to avoid the unintended consequence of driving affordable housing out of places where costs are high but the need is also high.

*Response:* As stated in earlier responses, MaineHousing feels the proposed 25% increase in the TDC caps and the on-going ability to issue project-specific waivers, offers sufficient flexibility on cost caps.

*Comment:* Gary Vogel, attorney with Drummond Woodsum, provided testimony at the public hearing expressing concern about the provisions in Appendix E being too prescriptive and not offering negotiating flexibility.

*Response:* As stated in earlier responses, language has been added in Section 5 and Appendix E clarifying that the provisions set forth in the Appendix are minimum threshold requirements which will permit further negotiation of more favorable terms.

*Comment:* Norman E. Maze, Jr., Deputy Director/Housing Director of Shalom House, Inc., submitted written comments expressing support for shifting the Populations with Special Needs criteria from a preference to a set-aside but recommended that scoring priority be given for persons being released from jail or prison.

*Response:* The set-aside in the scoring criteria for Populations with Special Needs, in addition to Persons Experiencing Homelessness, persons who have disabilities, or are victims of domestic violence, can be for persons that “have other special housing needs”. The definition of Persons Experiencing Homelessness includes persons exiting an institution where they have resided for 90 days or less. MaineHousing feels that this scoring criteria already captures a broad spectrum of populations with special needs.

*Comment:* Beth Boutin, Vice President of Community Investments for Evernorth, Inc., supplemented her earlier written comments by submitting a series of specific requested edits to Appendix E. The first edit is to replace the purchase price formula in paragraphs 1) and 2) of Part I with “an agreed upon amount (or if no agreement than by a fair market value (FMV) appraisal)”.

*Response:* MaineHousing declines to make this change because the fair market value calculation needs to take into account the impact of any current encumbrances on the property and any agreement to sell the project for less than fair market value to other than qualified entities under the provisions of Section 42 can create tax issues.

*Comment:* Ms. Boutin’s next edit is in paragraph 3) of Part I which requires that a purchase option be exercisable beginning at the earlier of the expiration of the Compliance Period or the exit of or

change of controlling interest in the investor occurring after the expiration of the Credit Period. Her recommendation is to remove “after the expiration of the Credit Period”.

*Response:* Extending the start of the option period from year 15 back to year 10 is already a significant extension from current practice. MaineHousing does not feel that extending it further is warranted. Given that these requirements are only minimum thresholds, parties to a transaction are free to negotiate a further extension.

*Comment:* Ms. Boutin’s next edit is to paragraph 5) of Part I which would insert a prescriptive outside period (18 months) in which to close on the purchase of the project after exercising the option.

*Response:* MaineHousing feels a minimum of 12 months or such longer period as is necessary to obtain the required consent of any lenders or other parties whose consent is required is a reasonable standard to provide for a smooth ownership transfer and therefore declines to make this change.

*Comment:* Ms. Boutin’s next edit is to insert in paragraph 1) of Part II other eligible recipients of a ROFR authorized under Section 42 of the Internal Revenue Code.

*Response:* At this time, MaineHousing is only requiring the granting of a ROFR if the Applicant or any affiliate is a Qualified Nonprofit Organization. Tenant organizations and government agencies are eligible recipients of a ROFR under Section 42 of the Internal Revenue Code. Applicants that do not include a Qualified Nonprofit Organization are permitted to grant a ROFR to any eligible recipient. However, including these eligible recipients under the threshold ROFR requirements might imply that all applicants have to grant a ROFR to such recipients which is not intended.

*Comment:* Ms. Boutin’s next edit is to insert in paragraph 1) of Part II the specific indebtedness exclusion to the Minimum Purchase Price set forth in Section 42(i)(7) of the Internal Revenue Code.

*Response:* MaineHousing agrees with this suggestion and has added the specific indebtedness exclusion language.

*Comment:* Ms. Boutin’s next edit is to paragraph 3) of Part II to delete the “later of the public offer of the project for sale” option and limit the expiration of the ROFR to 36 months after the expiration of the Compliance Period.

*Response:* To the extent that the ROFR is triggered by receipt of a bona fide third party offer, MaineHousing feels that the ROFR should not expire 36 months from the end of the Compliance Period if the Project has not been publicly offered for sale and therefore declines to make this change.

*Comment:* Ms. Boutin’s next edit is to paragraph 4) of Part II to insert the same prescriptive outside period in which to close on the purchase of the Project after exercising the ROFR.

*Response:* As stated in the earlier response, MaineHousing feels a minimum of 12 months or such longer period as is necessary to obtain the required consent of any lenders or other parties whose consent is required is a reasonable standard to provide for a smooth ownership transfer and therefore declines to make this change.

*Comment:* Ms. Boutin next made a comment that the provisions in Appendix E should be able to be implemented in a standalone agreement rather than required to be in the governing document of the ownership entity.

*Response:* As long as the rights are incorporated in the organizational document, MaineHousing does not feel that there is anything in the QAP prohibiting the implementation through a standalone document.

*Comment:* Ms. Boutin's next edit is in paragraph 1) of Part III to insert a limitation on the ability to assign the ROFR that the holder not be in default under the terms of the organizational documents or ROFR.

*Response:* One of the ways that investors are restricting or inhibiting the exercise of these options and rights of refusal in other states is to raise questionable claims of defaults and thereby refusing to honor the terms as written. A successor holder of a ROFR is going to be bound by the terms of the ROFR so any default by the original holder should not prevent their being able to assign the rights to another qualified entity. MaineHousing declines to make this change.

*Comment:* Ms. Boutin next made a comment that paragraph 2, subparagraph a., of Part III should be deleted because it will cause tax issues under Section 42.

*Response:* This provision was taken directly from language in the National Housing Trust HFA Toolkit provided to MaineHousing by Evernorth. MaineHousing does not believe this language will cause tax issues and declines to delete it.

*Comment:* Ms. Boutin's next edits are some minor clarification revisions to paragraph 4) of Part III.

*Response:* MaineHousing has no objection to these revisions and has included the changes.

*Comment:* Ms. Boutin's next edit is to insert in paragraph 5) of Part III the additional eligible holders of a ROFR and to make revisions to the purchase price language in that paragraph

*Response:* MaineHousing has explained in an earlier response why the other eligible holders of a ROFR are not being included. The other revisions are not necessary because the defined term "ROFR Price" is already tied to Section 42(i)(7) of the Code.

*Comment:* Ms. Boutin's last edit is to insert language in paragraph 7) of Part III indicating that only amendments to a ROFR or Purchase Option that are inconsistent with the requirements of the QAP will require the prior written consent of MaineHousing.

*Response:* Whether an amendment will cause the ROFR or Purchase Option to no longer comply with the requirements of the QAP can be a matter of opinion. MaineHousing prefers that all amendments be submitted to MaineHousing so it can determine if the modification is acceptable and therefore declines to make this change.

*Comment:* Frank D'Alessandro, Legal Service Director of Maine Equal Justice, submitted written comments supporting some aspects of the QAP and recommending some revisions. The first item was the increase in points for projects involving rehabilitation or reuse of existing housing from 3

points to 4 points. Mr. D'Alessandro expressed strong support for this increase but recommended that the points for this category be increased even further.

*Response:* MaineHousing believes that the proposed point value for this category is appropriate and declines to increase it any further.

*Comment:* Mr. D'Alessandro also noted the increase in points for projects involving rehabilitation of certified historic structures from 3 points to 4 points and recommended that this category be eliminated due to the expense of historic rehabilitation.

*Response:* Section 42 of the Internal Revenue Code requires that projects of an historic nature be addressed in the QAP. The state historic tax credit for affordable housing and the federal historic tax credit provide significant additional resources to offset the increase costs of historic rehabilitation projects.

*Comment:* Mr. D'Alessandro expressed strong support for shifting the Populations with Special Needs criteria from a preference to a set-aside and increasing the points from 3 to 6.

*Response:* MaineHousing appreciates the support for that change.

*Comment:* Mr. D'Alessandro also noted the scoring criteria for family housing containing units with two or more bedrooms and three or more bedrooms and recommended a separate category for single room occupancies designed to provide housing for persons experiencing homelessness.

*Response:* The scoring criteria for family housing projects is designed to address a shortage of affordable family units. The QAP now includes a scoring criteria for projects setting aside at least 20% of the units for Persons Experiencing Homelessness or persons with other special housing needs. MaineHousing believes this is a better way to utilize the tax credit program to address homelessness than creating SRO projects designed exclusively for persons experiencing homelessness.

*Comment:* Mr. D'Alessandro expressed strong opposition to removing the scoring category for New Project-Based Rental Assistance and recommended it be reinstated.

*Response:* Project-based rental assistance has disproportionately favored applicants with access to their own project-based vouchers. Removing the category is designed to level the playing field. There is still a significant financial incentive to obtaining project-based rental assistance for a Project. MaineHousing does not anticipate the amount project-based rental assistance will be reduced because the scoring criteria is being eliminated.

*Comment:* Mr. D'Alessandro pointed out that the initial tiebreaker in the QAP gives priority to the applicants requesting the least amount of Credit and 0% deferred debt. He recommended that the tiebreaker criteria be revised to first, the number of units provided to serve families and individuals who experience long-term homelessness, and secondly, to low- and very-low income families and individuals.

*Response:* MaineHousing has incorporated the financial resources tiebreaker in order to create the greatest number of overall housing units by prioritizing projects requesting fewer scarce resources. The scoring criteria already provide incentives for applicants to serve Persons Experiencing

Homelessness, and yet must still address the needs of individuals up to 60% of Area Median Income (AMI). MaineHousing offers other funding resources to more specifically address the needs of Persons Experiencing Homelessness.

*Comment:* Claude Rwaganje, Executive Director of ProsperityME, submitted written comments recommending the elimination of the preference for persons on Section 8 waiting lists because it creates a hardship for asylum seekers who are ineligible to get on the waiting lists.

*Response:* While the inability of asylum seekers to be added to the waiting lists is clearly a legitimate issue, public housing waiting lists is a required selection criterion for QAPs under Section 42 of the Internal Revenue Code. MaineHousing is working with other available resources to address people experiencing homelessness, including asylum seekers.

**FISCAL IMPACT OF THE RULE:** The 2023 State of Maine ceiling of federal low-income housing tax credits is projected to raise approximately \$30,500,000 of private investor capital, and the 2024 State of Maine ceiling of federal low-income housing tax credits is projected to raise approximately \$31,000,000 of private investor capital. The private investor capital generated by the federal low-income housing tax credits will be used to develop affordable housing for low-income persons. Additionally, it is estimated that 1,400 jobs a year will be created with this investment. The rule will not impose any costs on municipalities or counties for implementation or compliance.

**EFFECTIVE DATE: JULY 13, 2022**

## APPENDIX A

### Definitions

“Above Average” means an average overall score of 4 in the rating category - Physical plant inspections, Project Reports submissions, or Management and Occupancy Reviews. Physical plant inspections, and Management Occupancy Reviews are scored on the following scale: 1- Unsatisfactory, 2 – Below Average, 3 – Average, 4 – Above Average, and 5 – Superior. Project Reports submissions are scored as 5-Timely Submission and 1-Late Submission for each required submission report – Audited Financial Review (AFR), Budget, and Owner Certification of Continued Compliance.

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

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

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

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

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

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

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

duly authorized to conduct business in this State; and must be in good standing under the laws of this State and its state of formation, if not this State.

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

“Capitalized Lease Value” means the net present value of all lease payments under a lease calculated over the term of the lease using the 10-year Treasury note rate 60 calendar days before the Application deadline plus 300 basis points.

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

“Community Revitalization Plan” means (1) a community that has been designated by HUD or RD as an Empowerment Zone, a Renewal Community or Enterprise Community, or a Neighborhood Revitalization Strategy Area; or (2) a written plan that was formally adopted by the governing body of a municipality no more than twelve (12) years prior to the Application deadline following a concerted planning process and public input, specifically targets a neighborhood or area in the community (not a single building or site or the entire municipality) for redevelopment or revitalization, and includes (a) an assessment of the existing physical structures and infrastructure of the area, (b) detailed policy goals with respect to economic redevelopment, the rehabilitation or development of housing (including multi-family rental housing) and the improvement or expansion of infrastructure, and (c) proposed activities and a timetable for implementing the policy goals. Plans for a single development and plans formulated by or on behalf of the Applicant are not Community Revitalization Plans. A comprehensive plan that meets all of the requirements in (2) may qualify.

“Compliance Period” means the period defined in Section 42(i)(1) of the Code.

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

“Credit Period” means the period defined in Section 42(f)(1) of the Code.

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

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

“Developer Fee” means the total compensation for the work, costs and risks associated with developing a Project, including without limitation, creating the Project concept, identifying and acquiring the Project site, obtaining construction and permanent financing, obtaining necessary subsidies, negotiating the syndication of investment interests in the Project, obtaining all necessary regulatory approvals, constructing and/or rehabilitating the Project and marketing, and includes all amounts paid to consultants to perform this work, except fees for professional services such as environmental assessments, rental market studies, soil tests, and water tests, and includes all reserves, in the form of cash, expected to be paid to the tax credit developer from the Project.

“DDA” means an area of the State that is designated by HUD as a difficult development area



pursuant to [Section 42\(d\)\(5\)\(B\)\(iii\)](#) of the Code or an area of the State that is designated by MaineHousing as a difficult-to-develop area in Section 7.A.3 pursuant to [Section 42\(d\)\(5\)\(B\)\(v\)](#) of the Code.

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

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

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

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

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

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

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

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

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

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

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

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

“MaineHousing” means Maine State Housing Authority.

“MaineHousing’s Construction Standards” means MaineHousing’s [Quality Standards and Procedures Manual](#) in effect 60 calendar days prior to the applicable deadline for an Application for Credit which include without limitation certain energy efficiency standards and UPCS and incorporate MaineHousing’s accessibility policy and procedures.

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

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

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

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

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

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

“Passive House Certification” means certification from Passive House Institute US, Inc. (PHIUS) or Passive House Institute (PHI) prior to MaineHousing’s issuance of IRS Form 8609.

“Persons Experiencing Homelessness” means persons sleeping in a place not meant for human habitation, in an Emergency Shelter, or in other emergency housing; persons exiting an institution where they resided for 90 days or less and who had resided in an Emergency Shelter, other emergency housing, or place not meant for human habitation before entering that institution; and persons fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions in the individual’s or family’s current housing situation, including where the health and safety of children are jeopardized, and who have no other residence and lack the resources or support networks to obtain other permanent housing.

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

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

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

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

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

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

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

“Qualified Contract” means a contract as defined in Section 42(h)(6)(F) of the Code.

“Qualified Nonprofit Organization” means a qualified nonprofit organization as defined in Section 42(h)(5)(C) of the Code.

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

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

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

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

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

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

“State” means the State of Maine.

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

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

“TDC Index” means the calculation described in Section 5.C.

“TDC Index Cap” means the limit on Total Development Cost set forth in Section 5.C.

"Telehealth" means the use of interactive real-time visual and audio or other electronic media for the purpose of consultation and education concerning and diagnosis, treatment, care management, and self-management of a patient's physical and mental health and includes real-time interaction between the patient and the telehealth provider, synchronous encounters, asynchronous encounters, store and forward transfers and remote patient monitoring. Telehealth includes telephonic services when interactive telehealth services are unavailable or when a telephonic service is medically appropriate for the underlying covered service.

"Telemonitoring," means the use of information technology to remotely monitor a patient's health status via electronic means through the use of clinical data while the patient remains in a residential setting, allowing the provider to track the patient's health data over time. Telemonitoring may or may not take place in real time.

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

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

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

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

## APPENDIX B

### Pre-Application Submission Requirements

Applicants must submit a request for pre-application review and the following information to MaineHousing **at least 60 calendar days before the applicable Application deadline.**

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

## APPENDIX C

### Capital Needs Assessment Requirements

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

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

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

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

- a) Correction of all violations of applicable federal, state and local building, health and life safety codes and correction of all deferred maintenance;
- b) Rehabilitation or replacement of all structures, systems, facilities, units and components that have reached or exceeded their useful lives or will reach their useful lives within 5 years;
- c) Rehabilitation of all units and common areas and facilities to bring them into compliance with MaineHousing's Construction Standards to the maximum extent feasible;
- d) Rehabilitation of the minimum number of units and all common areas and facilities that are necessary to comply with the most current requirements for new construction projects under applicable federal, state and local accessibility laws, regulations, standards and guidance (which include without limitation, [Section 504 of the Rehabilitation Act of 1973](#), HUD's housing regulations at [24 C.F.R. Part 8](#) and any accessibility standard designated by HUD; Title II and Title III of the Americans with Disabilities Act of 1990 and the 2010 Standards of Accessible Design; and if the Project involves substantial rehabilitation, the Maine Human Rights Act, the Maine Human Rights Commission's Chapter 8, Housing Regulations, and ANSI Standard A117.1-2009); and

e) Remediation and disposal of any environmental or other hazards identified in the assessment.

3. The capital needs assessment must also identify any structures, systems, facilities, units and components with a remaining useful life of less than 30 years. The Application must include a plan for future rehabilitation or replacement of any identified structure, system, facility, unit and component with a useful life of less than 30 years that is not included in the scope of work for the Project, including possible funding sources, which will be considered in establishing the appropriate funding amounts for the Project's reserve accounts.



**APPENDIX D  
LOW INCOME HOUSING TAX CREDIT PROGRAM  
OWNER'S CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE**

To: *MaineHousing*  
*26 Edison Drive*  
*Augusta, ME 04330*

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

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

The undersigned \_\_\_\_\_ on behalf of \_\_\_\_\_

\_\_\_\_\_ (the "Owner"), hereby certifies that:

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

If **"Change"**, list the applicable fraction to be reported to the IRS for each building in the project for the certification year on page 4:
  
3. There have been no changes in the building's eligible basis under Section 42(d) of any building in the project.
  - NO CHANGE**      **CHANGE**

If **"Change"**, list the changes on page 4:
  
4. The owner has received an annual Tenant Income Certification from each low-income resident and documentation to support that certification, or the owner has a re-certification waiver letter from the IRS in good standing, has received an annual Tenant Income Certification from each low-income resident, and

documentation to support the certification at their initial occupancy.

YES  NO

5. Each low-income unit in the project has been rent-restricted under Section 42(g)(2) of the Code:

YES  NO

6. All low-income units in the project are and have been for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under Section 42 (i)(3)(B)(iii) of the Code):

YES  NO  HOMELESS

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

FINDING  NO FINDING

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

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

FINDING  NO FINDING

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

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

YES  NO

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

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

YES  NO  N/A

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

NO CHANGE  CHANGE

If "**Change**", state nature of change (e.g., a common area has become commercial space, a fee is now charged for a tenant facility formerly provided without charge, or the project owner has received federal

subsidies with respect to the project which had not been disclosed to the allocating authority in writing) on page 4:

12. All tenant facilities included in the eligible basis under Section 42(d) of the Code of any building in the project, such as swimming pools, other recreational facilities, parking areas, washer/dryer hookups, and appliances were provided on a comparable basis without charge to all tenants in the buildings:  
 YES                       NO
13. If a low-income unit in the project has been vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units were or will be rented to tenants not having a qualifying income:  
 YES                       NO
14. If the income of tenants of a low-income unit in any building increased above the limit allowed in Section 42(g)(2)(D)(ii) of the Code, the next available unit of comparable or smaller size in that building was or will be rented to residents having a qualifying income:  
 YES                       NO
15. Project complies with an extended low-income housing commitment as described in section 42(h)(6) (not applicable to buildings with tax credits from years 1987-1989):  
 YES                       NO                       N/A
16. In the prior 12 month period, the owner has:
- a) terminated the tenancy of a tenant in a low income unit, including without limitation, non-renewal of the lease of an existing tenant in a low income unit, for other than good cause;
  - b) increased the gross rent of a tenant with respect to a low income unit not otherwise permitted under Section 42 of the Code and any other applicable program (e.g. HOME, HUD Section 8);
  - c) denied tenancy to any applicant or terminated the tenancy of any tenant solely because the applicant or tenant had a Section 8 voucher or certificate; or
  - d) denied tenancy to any applicant, terminated the tenancy of any tenant, or failed to assist a tenant in finding alternative appropriate housing in violation of Title VI of the Violence Against Women Reauthorization Act of 2013, 34 USC Subpart 2 – housing rights Chapter 121 and applicable regulations (VAWA), as amended.
- YES                       NO

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

17. The project complies with the requirements of all applicable Federal and State Housing Programs included in the development (e.g., Rural Housing Services, HOME, HUD Section 8, or Tax-Exempt Bonds).  
 YES                       NO

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

18. The owner received its credit allocation from the portion of the state ceiling set-aside for a project involving "qualified non-profit organizations" under Section 42(h)(5) of the code and its non-profit entity materially participated in the operation of the development within the meaning of Section 469(h) of the Code.  
 YES                       NO                       N/A

19. The property has not suffered a casualty loss resulting in the displacement of residents.  
 YES                       NO

If “Yes”, please explain the nature of the loss on page 4.

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

NO CHANGE     CHANGE

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

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

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

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

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

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

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

**PLEASE PROVIDE ANY CHANGES OR EXPLANATIONS REQUIRED UNDER QUESTIONS 1-19.**

Question #	Explanation

**CHANGE IN MANAGEMENT CONTACT**

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

**1. CHANGES IN OWNERSHIP OR MANAGEMENT**

(to be completed **ONLY** if “CHANGE” marked for question 20 above)

**2. TRANSFER OF OWNERSHIP**

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

**CHANGE IN OWNER CONTACT**

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

## APPENDIX E

### THRESHOLD REQUIREMENTS FOR PURCHASE OPTIONS/RIGHTS OF FIRST REFUSAL

#### I. The Purchase Options must:

- 1) grant to one or more of the general partner, managing member, developer or sponsor an irrevocable option to purchase the Project at a purchase price not more than the greater of: (a) its fair market value as encumbered by the Extended Use Agreement and any other restrictions of record; and (b) the sum of: (i) the outstanding debt secured by the Project, (ii) the amount of the limited partner's or non-managing member's federal, state and local tax liability resulting from the sale of the Project, and (iii) all amounts owed to the limited partner or non-managing member under the limited partnership agreement or limited liability company operating agreement (the "Project Option Price");
- 2) grant to one or more of the general partner, managing member, developer or sponsor an irrevocable option to purchase the interest of the limited partner(s) or non-managing member(s) in the Project ownership entity ("Ownership Interest") at a purchase price not more than the amount the limited partner(s) or non-managing member(s) would have received on an after-tax basis if the Project had been sold at the Project Option Price and the proceeds distributed pursuant to the terms of the limited partnership agreement or limited liability company operating agreement;
- 3) be exercisable beginning at the earlier of: (a) the expiration of the Compliance Period; or (b) the exit of or change of controlling interest in the limited partner or non-managing member occurring after the expiration of the Credit Period;
- 4) expire no earlier than 36 months after the expiration of the Compliance Period; and
- 5) give the holder of the option a minimum of 12 months to close on the purchase of the Project or the Ownership Interest after exercise of the option or such longer period required by any lender(s) or other party whose consent to the transfer is required.

#### II. The right of first refusal (ROFR) must:

- 1) grant to a Qualified Nonprofit Organization an irrevocable and exclusive ROFR to purchase the Project at the lesser of: (a) its fair market value as encumbered by the Extended Use Agreement and any other restrictions of record; and (b) the Minimum Purchase Price as defined in Section 42(i)(7) of the Code but in no event less than the outstanding debt secured by the Project, excluding any indebtedness incurred within the 5-year period ending on the date of the sale pursuant to the ROFR (the "ROFR Price");
- 2) be exercisable beginning at the expiration of the Compliance Period;
- 3) expire no earlier than 36 months after the later of: (i) the public offer of the Project for sale by the general partner or managing member; and (ii) the expiration of the Compliance Period;

- 4) give the holder of the ROFR a minimum of 90 days to exercise its ROFR and a minimum of 12 months to close on the purchase of the Project after exercise of the ROFR or such longer period required by any lender(s) or other party whose consent to the transfer is required; and
  - 5) not require more than a nominal earnest money deposit in order to exercise the ROFR.
- III. The Project owner's limited partnership agreement or limited liability company operating agreement must provide that:
- 1) the holder of the ROFR may assign the ROFR to a governmental unit, tenant organization or resident management corporation of the Project, or another Qualified Nonprofit Organization without the consent of the limited partner(s) or non-managing member(s);
  - 2) the general partner or managing member may elect to do any of the following:
    - a) subject to the consent of the limited partner(s) or non-managing member(s), which consent shall not be unreasonably withheld, conditioned, or delayed, sell the Project to the holder of the ROFR in connection with the exercise of the ROFR (the limited partner(s) or non-managing member(s) may not withhold consent for a non-material breach of the Project owner's organizational documents);
    - b) at its discretion, without the consent of the limited partner(s) or non-managing member(s), sell the Project to the holder of the ROFR in connection with the exercise of the ROFR following the general partner's or managing member's receipt of a bona fide third party offer to purchase the Project, which offer may be solicited by the general partner/managing member or the holder of the ROFR; or
    - c) at its discretion, without the consent of the limited partner(s) or non-managing member(s), offer the Project for sale publicly at any time following the expiration of the Compliance Period and thereafter accept an offer from the highest bidder to purchase the Project, as long as the sale price is not less than the ROFR Price, and provided such acceptance is subject to the rights of the holder of the ROFR to exercise the ROFR and purchase the Project at the ROFR Price;
  - 3) the general partner or managing member is directed and authorized to execute all documents necessary to effect the sale of the Project pursuant to the ROFR or Purchase Options;
  - 4) the limited partner(s) or non-managing member(s) affirmatively agree not to challenge: (i) the sale of the Project pursuant to the terms of the ROFR by the general partner or managing member to the holder of the ROFR even if the holder of the ROFR is affiliated with the general partner or managing member; (ii) the general partner's or managing member's acceptance of an offer from the highest bidder in response to the general partner's or managing member's public offer of the Project for sale, provided the offer price is not less than the ROFR Price, and/or the exercise of the ROFR by the holder of the ROFR after any such acceptance; and (iii) the exercise of the Purchase Options by the holder(s) thereof pursuant to the terms of the Purchase Option;

- 5) in the event Section 42(i)(7) of the Code is amended to permit a Qualified Nonprofit Organization to hold a purchase option after the expiration of the Compliance Period, and only to the extent permitted under such revised Section 42(i)(7) of the Code, the holder of the ROFR shall be entitled to purchase the Project, or at its option, all of the interests in the owner, in either case at the ROFR Price, in lieu of exercising the ROFR;
- 6) neither the ROFR or Purchase Options will be adversely affected or limited by any other rights of the limited partner(s) or non-managing member(s), or any owner of any interest in any limited partner or non-managing member, such as forced sale rights, and there are no conditions to the exercise of the ROFR or Purchase Options except as explicitly identified in the limited partnership agreement or limited liability company operating agreement; and
- 7) any amendment that would modify any term or condition related to the ROFR or Purchase Options requires the prior written consent of MaineHousing.