Maine State Housing Authority

2003

Qualified Allocation Plan

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

In carrying out this mission, the Maine State Housing Authority will provide leadership, maximize resources, and promote partnerships to develop and implement sound housing policy.

099 **INDEPENDENT AGENCIES - NOT PART OF STATE GOVERNMENT**

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CHAPTER 16 Allocation of State Ceiling for Low-Income Housing Tax Credit

Summary: The Tax Reform Act of 1986 created the low-income housing tax credit for use by qualifying developers of housing projects which satisfy applicable tenant income and rental targeting requirements. The Maine State Housing Authority has been designated as the housing credit agency for the State responsible for allocation of the annual credit ceiling. This rule establishes the policies and procedures for the allocation process.

1. Definitions

A. "Accredited Investor" means an investor with adequate capacity as determined by Maine State Housing Authority.

B. "Act" means the Maine Housing Authorities Act, 30-A M.R.S.A. §4701 et seq., as amended.

C. "Applicable Fraction" means the fraction defined in Section 42(c)(1)(B) of the Code.

D. "Applicable Percentage" means the percentage defined in Section 42(b) of the Code.

E. "Authority" means the Maine State Housing Authority.

F. "Binding Agreement" means an agreement and irrevocable election executed by the Authority and the Developer which is binding under Section 42 of the Code.

G. "Code" means the Internal Revenue Code of 1986, as amended, including applicable rules and regulations proposed or promulgated thereunder.

H. "Compliance Period" means the period described in Section 42(i)(1) of the Code.

I. "Credit" means the low-income housing tax credit established by Section 42 of the Code.

J. "Credit Period" means the period described in Section 42(f)(1) of the Code.

K. "Developer Fee" means the compensation to the individual(s) or entity(ies) responsible for the work, costs and risks associated with the development of a Project, including amounts paid to consultants to perform tasks on behalf of such individuals or entities, but does not include compensation for professional services such as environmental assessments, rental market studies, soil tests, and water tests.

L. "Difficult To Develop Area" means areas of the State which satisfy the requirements of Section 42(d)(5)(C)(iii)(I).

M. "Eligible Basis" means eligible basis as defined in Section 42(d) of the Code.

N. "Enterprise Community" means any community that has received a federal designation as an Enterprise Community or empowerment zone as defined by HUD or the United States Department of Agriculture.

O. “Extended Low-income Housing Commitment” means an agreement between Credit recipients and the Authority satisfying the requirements of Section 42(h)(6)(B) of the Code.

P. “Extended Use Period” means the period described in Section 42(h)(6)(D) of the Code.

Q. “Housing Development Costs” means the total of all direct and indirect costs incurred in financing, creating, purchasing or rehabilitating Qualified Low-income Housing Projects except the costs attributable to the acquisition of the land and/or buildings.

R. “HUD” means the United States Department of Housing and Urban Development.

S. “Intermediary Costs” means all Housing Development Costs except the actual construction or Rehabilitation Costs attributable to the development of the units.

T. “Metropolitan Statistical Area” means an area defined as such by the United States Office of Management and Budget.

U. “Need Market Area” means the analysis of labor markets ranked as very high, high, medium or low. Analysis based upon review of specific populations of Very Low Income households and total subsidized housing units.

V. “Project” means a Qualified Low-income Housing Project.

W. “Qualified Allocation Plan” or “Plan” means the plan for allocation of the annual State Ceiling on the Credit adopted by the housing credit agency pursuant Section 42(m)(1)(B) of the Code.

X. “Qualified Basis” means qualified basis as defined in Section 42(c) of the Code.

Y. “Qualified Census Tract” means areas of the State which meet the requirements of Section 42(d)(5)(C)(ii)(I) of the Code.

Z. “Qualified Low-income Building” means a building defined in Section 42(c)(2) of the Code.

AA. “Qualified Low-income Housing Project” means a project defined in Section 42(g) of the Code.

BB. “Qualified Non-profit Organization” means an organization defined in Section 42(h)(5)(C) of the Code.

CC. “Rehabilitation Costs” means the expenses incurred or to be incurred which qualify as rehabilitation expenditures under Section 42(e) of the Code.

DD. “RHS” means the United States Department of Agriculture – Rural Housing Services.

EE. “SRO Housing” means Single-Room Occupancy housing as defined in Section 42 of the Code.

FF. “State” means the State of Maine.

GG. "State Ceiling" means the State housing credit ceiling established in Section 42(h)(3)(C) of the Code.

HH. "Total Construction Cost" means the sum of site costs, structures costs, general requirements, bond premiums, and contractor overhead and profit.

II. "Total Development Cost" means the sum of Total Construction Costs; soft costs such as permits, engineering, legal; costs associated with obtaining and carrying financing package; acquisition costs.

JJ. "Very Low Income" means individuals or families whose income is at or below 50% of the area median income as defined by HUD.

2. <u>Overview</u>

The low-income housing tax credit is established pursuant to Section 42 of the Code. As the housing credit agency for the State of Maine, the Maine State Housing Authority is responsible for allocating the annual State Ceiling. Each year the Authority must adopt a Qualified Allocation Plan pursuant to which all allocations of Credit will be made. The plan must set forth selection criteria and establish certain preferences and priorities for the allocation process.

This rule comprises the Authority's Qualified Allocation Plan for the allocation of the annual State Ceiling on the low-income housing tax credit. The purpose of this plan is to establish criteria for low-income rental housing projects to which the Credit will be allocated. A process has been established to select those Projects which address the most pressing housing needs of the State. These needs have been assessed and priorities for the allocation of the Credit established. These needs and priorities are summarized below and have been incorporated into the selection criteria to be used in the selection process. Projects selected under this plan must be evaluated as outlined herein to determine the amount of Credit to be allocated.

3. <u>Housing Needs/Priorities</u>

A. The Authority annually completes a statewide needs assessment as part of its Consolidated Plan. Based on that annual needs assessment, the Authority determines priorities in its housing delivery program. The allocation of Credit resources shall be found, by the Authority, to be consistent with the needs assessment and priorities annually approved through the Consolidated Plan. The following needs are identified:

1. Creation and maintenance of an adequate supply of decent, safe and sanitary rental housing affordable to Very Low Income persons.

2. Rehabilitation of existing housing stock, which does not result in displacement or substantially increased housing costs.

3. Increased availability of housing with services for persons with special needs including, without limitation, the homeless, persons with mental and physical disabilities and the elderly.

B. In consideration of the housing needs identified above, the Authority has established the following housing priorities for allocation of the Credit:

1. Newly constructed rental Projects for larger families which reflect the greatest affordability, i.e. rental Projects offering the lowest total monthly housing costs and are rent restricted to the lowest income households.

2. Projects involving acquisition and/or rehabilitation, which add to or significantly rehabilitate the existing rental housing stock, and are rent restricted to the lowest income households.

3. Projects which attract new federal rental subsidies where the Credit is needed to make the Project feasible, including Projects with RHS funding.

4. Projects which meet the housing and service needs of distinct populations of a community including SRO Housing and newly constructed assisted living facilities.

5. Projects which provide housing for persons with Very Low Income.

6. Projects located in rural areas of the State.

4. State Ceiling

A. The State Ceiling for the Credit for each calendar year will be the sum of:

1. $1.75 multiplied by (a) the cost-of-living adjustment determined in accordance with Section 1(f)(3) of the Code and (b) the State population as determined by the most recent estimate of the State's population released by the United States Bureau of Census before the beginning of such calendar year, or by such other method as may be authorized or required by the Code;

2. The unused State Ceiling for the State, if any, for the preceding calendar year;

3. The amount of the State Ceiling returned in the calendar year; and

4. The amount, if any, allocated to the Authority by the United States Secretary of the Treasury from the repooling of other states' unused housing credit allocations.

B. Non Profit Set-aside. Twenty percent (20%) of the annual State Ceiling shall be reserved each year for applications involving Qualified Low-income Housing Projects where a Qualified Non-profit Organization is to own an interest in the Project (directly or through a partnership), in accordance with Section 42 (h)(5)(C) of the Code and materially participate in the development and operation of the Project throughout the Compliance Period, in accordance with Section 42 (h)(5)(B) of the Code. Applications with eligible applicants will be reviewed and ranked with all other applications but, if selected, will be funded first out of this set-aside.

C. Rural housing Set-aside. $250,000 of the annual available Credit will be set aside for Projects that are located in a municipality outside of a Metropolitan Statistical Area and are included in a Qualified Census Tract or Difficult to Develop Area. Applicants must indicate their desire to compete in this set-aside in their application and will be required to maximize points in Section 7.C (Extending Low-Income Use for Longest Period) and Section 7.D (Creation of Affordability for Lowest Income Tenants).

D. Assisted Living Set-aside. $300,000 of the annual available Credit will be set aside. Only proposals that include a commitment of assisted living service funds from the Maine Department of Human Services' awarded in an RFP in the current year, or a commitment of federal assisted living service funds for a minimum of fifteen years, will be deemed eligible for this set-aside. Applicants must indicate their desire to compete in this set-aside in their application and will be required to maximize points in Section 7.C (Extending Low-Income Use for Longest Period) and Section 7.D (Creation of Affordability for Lowest Income Tenants). Projects competing in this set-aside must comply with the State's regulations defining assisted living, Section 42 of the Code and applicable revenue rulings on assisted living, including Revenue Ruling 98-47.

Successful applicants under the assisted living set-aside in the current year are eligible to receive, if MSHA makes the resource available, project-based Section 8 rental subsidy through MSHA for at least 25% of the total units in the Project.

E. SRO Housing Set-aside. $300,000 of the annual available Credit will be set aside. Only proposals that include the following criteria will be considered:

1. The Project must be SRO Housing and contain living units which include both cooking and bathroom facilities, and may qualify as zero bedroom units under HUD guidelines;

2. The Project may be situated on scattered sites;

3. The proposal must include a service plan for the tenants, acceptable to the Authority, and a commitment by a qualified service provider(s) to provide the services described in the plan; and

4. Applicants must indicate their desire to compete in this set-aside in their application and will be required to maximize points in Section 7.C (Extending Low-Income Use for Longest Period) and Section 7.D (Creation of Affordability for Lowest Income Tenants).

Successful applicants under the SRO set-aside in the current year are eligible to receive, if MSHA makes the resource available, project-based Section 8 rental subsidy through MSHA for at least 25% of the total units in the Project.

F. Maximum Credit Restriction. The maximum amount of Credits that any single Project may receive is $450,000.

If, at the close of a calendar year, after all current year allocations and carryover allocations have been made, there is a portion of the current per capita State Ceiling remaining, it will automatically be carried over and added to the State Ceiling for the following year to be allocated as part of the State Ceiling for that year.

5. <u>Allocation Process</u>

A. Applications for reservation will be accepted by the Authority on an on-going basis in accordance with the reservation cycles identified in subsection D. The Authority may reject any and all applications.

B. Upon receipt of an application satisfying the requirements of Section 6, the Authority will provide notice of the proposed Project to the chief executive officer of the local jurisdiction within which the Project is to be located. Such notice will provide for a fifteen day period in which to comment on the proposed Project. Any comments received will become part of the application and will be considered by the Authority in the selection process.

C. All applications which meet the requirements of Section 6 will be reviewed and ranked according to the selection criteria set forth in Section 7.

D. Once ranked, the Authority will determine those applications to be selected for reservation of Credits. These reservation cycles will occur on the first Friday in March and the last Friday in July. The March round is open to all applicants, except applicants under the assisted living set-aside. The July round is open for applicants under the assisted living set-aside and applicants under the SRO set-aside if not previously selected in the March round. Applicants to the assisted living set-aside must have a commitment of assisted living service funds from the Department of Human Services' awarded in an RFP in the current year or a commitment of federal assisted living service funds for a minimum of fifteen years. A waiting list will be developed for Projects not selected in any round. Credits unused from the March and July rounds will be made available to applicants on the waiting list in rank order of priority. Credits awarded after completion of the July round will not be subject to set-asides described in Section 4, except as required by the Code, if no qualified applications have been received. Applications on the waiting list in a particular cycle of the current credit year will be considered, if eligible, in the next cycle unless the applicant chooses to amend the application for resubmission.

E. Once a Project has been selected for a reservation of Credit, the Authority will determine the amount of Credit to be reserved based on the evaluation procedure set forth in Section 8. Under Section 42 of the Code an applicant may apply for a Credit reservation based on 130% of Eligible Basis for Projects in high cost areas, subject to the overall limitation on Credit allocation described in Section 8. These areas are defined as Qualified Census Tracts and Difficult To Develop Areas which must be so designated by the United States Department of Housing and Urban Development.

F. Once the Authority has determined the amount of Credit to be reserved for a Project, the reservation document will be issued pursuant to Section 9.

G. Projects holding a valid Credit reservation may receive allocations pursuant to either Section 10 or Section 11.

H. An amendment to or assignment of a completed application or reservation, or any changes in the Project design or financing which in the determination of the Authority, would substantially affect the selection criteria on which the applicant was selected or result in a substantial increase in Credit dollars or any assignment or other change of applicant, occurring after application or after issuance of a reservation will be considered a withdrawal of the application or cancellation of the reservation. To receive any further consideration, the revised proposal must be resubmitted as a new application.

Projects experiencing development cost increases resulting in less than a substantial increase in Credit dollars may request additional Credit and will not be subject to funding rounds.

However, such requests are subject to Credit availability and any decision to favor such requests will be at the sole discretion of the Authority.

I. An application for reservation of Credit from the State Ceiling for a particular calendar year which is pending on December 31st of that calendar year may, at the discretion of the Authority, be carried over to the succeeding calendar year and, if carried over, shall be processed and evaluated in accordance with the Plan then in effect. The Authority reserves the right to request a new application in the succeeding calendar year if necessitated by changes in the rule or the Code.

J. Applications requesting reservation or allocation of Credit from the State Ceiling for calendar years after 2003 will not be accepted until the Authority adopts such further amendments to this rule as it determines necessary in response to the continuation of the Credit program. The Authority may issue a binding commitment to allocate Credit ceiling available in the subsequent year for any Project placed in service in the current year. Credit from the subsequent year's Credit ceiling may only be committed upon the Authority's determination that the amount of Credit that remains in the current year's State Ceiling is insufficient to ensure the viability or feasibility of the Credit applicant's Project. Any binding commitment to allocate subsequent year's Credit authorized pursuant to this section shall be processed and evaluated in accordance with the standards effective in the current year and shall be subject to the continuation of the Credit program and applicable law.

6. Threshold Application Requirements

A. Applications for reservation of the Credit in connection with Qualified Low-income Housing Projects will be accepted by the Authority only on such form established by the Authority. Only the person or entity to whom or which the Credit will be allocated is eligible to apply.

B. Applicants who receive a reservation of Credit are required to enter into an Extended Low-income Housing Commitment with the Authority which will obligate the applicant, its successors and assigns, to comply with the specific commitments made by the applicant in its application for Credit for which the applicant was awarded points during the selection process, including without limitation, the minimum low-income set-aside during the Compliance Period, additional low-income targeting during the Extended Use Period pledged by the applicant, preference for persons with special needs and preference for persons whose names appear on a public housing or Section 8 waiting list.

Successful applicants who were awarded points during the selection process for a commitment to provide physical plant amenities and services at the Project must enter into a separate written agreement, which obligates the applicant to provide the amenities and services during the Extended Use Period pledged by the applicant in its application.

The Extended Low-income Housing Commitment and the agreement to provide physical plant amenities and services will contain restrictive covenants which run with the land, are binding on the applicant and its successors and assigns, and are enforceable by the low-income tenants in the Project. The Extended Low-income Housing Commitment and the agreement to provide physical plant amenities and services shall be recorded in the appropriate registry of deeds prior to all mortgage liens and encumbrances on the Project and before the Authority issues an IRS Form 8609. The Extended Low-income Housing Commitment will terminate upon a foreclosure or transfer of the Project in lieu of foreclosure as provided in Section 42(h)(6)(E); provided however, that low-income tenants may not be evicted or suffer an increase in gross rent during the three-year period following termination.

C. An application for reservation of the Credit must be complete in the determination of the Authority and must meet the following threshold requirements:

1. Must be for a Qualified Low-income Housing Project.

2. Must have a complete development team consisting of a legally existing development entity with a taxpayer identification number, a management company and a tax advisor/consultant.

3. Must include a partnership agreement, articles of incorporation or other evidence of legal existence of the applicant. If a Qualified Non-profit Organization is to own an interest in the Project and materially participate in the development and operation of the Project, the application must provide documentation sufficient for the Authority to determine that such organization is a qualified non-profit organization.

4. Must have satisfactory site control consisting of ownership, option, purchase and sale contract, long-term land lease or other evidence acceptable to the Authority.

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

6. Must demonstrate the financial ability to proceed with the Project by providing current status of applications for construction and permanent loan commitments, or other proof of ability to proceed from existing resources. Providers which deliver services to special needs populations must provide documentation from an identified source of funding.

7. Must include a proposal from an Accredited Investor or experienced tax credit syndicator. Net proceeds made available to the Project should be identified and expressed as a "factor" of the annual Credit dollar amount anticipated.

8. Must provide an acceptable disclosure and certification of the total financing planned for the Project, any proceeds or receipts expected to be generated by reason of the Credit or other tax benefits, the total sources and uses of Project funds and the full extent of all Federal, state and local subsidies which apply or for which the applicant expects to apply with respect to the Project. This disclosure and

certification must include income, operating and development cost projections and methods for satisfying any deficits.

9. Must provide a fifteen year pro forma Project operating statement. In the event the proposed Project has an existing contract for federal assistance which may end or which may terminate within the irrevocable benefit period being pledged by the applicant, two additional items are required: (a) supplemental written explanation of the impact on the Project's continued operation of such termination or non-renewal, and (b) a pro forma operating statement running five years beyond the anticipated expiration.

10. Payment of a non-refundable application fee as follows:

Applications for Projects of up to 11 units	$ 250
Applications for Projects of 11 to 23 units	$ 500
Applications for Projects of 24 or more units	$1,000

The non-refundable application fee must be paid for any application re-submitted or carried over from one tax credit year to the next tax credit year. This subparagraph does not apply to tax-exempt bond financed properties described in Section 12.

D. The Authority reserves the right to require additional information it deems necessary in order to process an application.

E. An applicant may withdraw an application at any time by written notice to the Authority, however, the application fee will not be refunded.

7. Selection Criteria

The following criteria have been chosen to establish a framework for the allocation process. Each category has been assigned a maximum point total in order to weigh the selection process towards addressing the highest housing needs. The factors or characteristics the Authority will consider are listed under each category.

A. Project Characteristics (maximum of 16 points).

1. Projects involving rehabilitation of existing housing stock that also provide protection against displacement and substantial increases in housing costs attributable to the rehabilitation will receive 3 points.

2. Projects that include physical plant amenities with a related service contract appropriate to the population served by the Project and funding will receive up to 3 points as follows:

Physical plant amenity developed as part of the Project — 1 point

Service contract, memorandum of understanding or other commitment by a qualified service provider to provide the services at the Project site. Services provided off-site will not receive points. 1 point

Identification and commitment of funding for the services . Services paid by the tenant (except where a tenant co-pay is required by a State agency which is funding services) will not receive points. 1 point

Projects must provide a physical plant amenity in order to receive any points under this category. Projects that offer services at the Project but do not have a related physical plant amenity will not receive any points.

Examples of a physical plant amenity with related services include the development of a day care facility or a computer laboratory with computer training on-site in family housing.

3. Projects that give preference in at least 20% of the units in a Project to persons who are homeless or displaced, persons with mental or developmental disabilities, or other persons with special needs will receive 3 points. Applications must include a commitment to maintain a waiting list for the persons for which the preference is given and to provide services appropriate to such persons, and identification of the source of funding for the services appropriate to the particular special needs population.

4. Family Projects with a minimum of 50% of the low income units as 3 bedroom apartments or larger will receive 6 points.

5. Projects that provide for low-income tenant ownership upon expiration of the Extended Use Period pledged by the applicant in its application for Credit will receive 1 point. An applicant shall not transfer ownership of the Project to the tenants until the Extended Use Period has expired.

B. Leveraged Funds (maximum of 9 points).

Projects that propose to leverage funds from a source other than the Authority will receive up to 9 points.

1. Up to 6 points will be awarded to Projects that demonstrate a below market funding commitment or other non tax credit equity commitment from a source other than the Authority. The commitment must include the terms of the below market funding, including without limitation, the interest rate, the amortization period, the loan term and security required, if any. Commitments of service, operating and rental funds are ineligible under this category. Evidence of the commitment and its value must be submitted at the time of application. The value of a commitment of property to a Project will be determined based on independent evidence provided by the applicant in the application, e.g. an appraisal or purchase and sale agreement, and in the absence of such evidence, the applicable municipality's tax assessed value of the property included in the application. If only a portion of the property is attributed to the Project, the value of the commitment will be prorated based upon the square footage of the property attributed to the Project. Points will be awarded based on the total amount of funding committed to a Project compared to that of competing applications.

2. Up to 3 points will be awarded based on the percentage of Developer Fee left as a source of funds for the Project:

No Developer Fee loan will receive 0 points

≤ 25% Developer Fee loan will receive 1 point

> 25% Developer Fee loan will receive 3 points
Alternatively, the maximum 3 points will be awarded if the Developer Fee recognized and charged to the Project is ≤ 75% of the maximum allowable Developer Fee as described in Section 8.E.

C. Extending Low-Income Use for Longest Period (maximum of 15 points). Projects which extend the guaranteed period of low income benefit 30 years or more from the placed-in-service date and agree not to request the Authority to find a buyer to acquire the low income portion of the Project during the extended period. No points will be given to Projects which pledge 30 years or less of irrevocable low income benefit. 1 point will be added for each additional four year period pledged beyond 30 years. Applicants requesting funds under a set-aside must maximize points in this category to be eligible for the set-aside.

D. Creation of Affordability for Lowest Income Tenants (maximum of 30 points).

1. 30 points will be awarded for a pledge of 60% or more of the total units in a Project to persons with income at or below 50% of Area Median Income.

2. Assisted living applications under the assisted living set-aside should restrict rent in all units in an assisted living Project at 60% Area Median Income. Assisted living proposals which have a commitment of assisted living service funds from the Department of Human Services awarded in a request for proposals in the current year, or a commitment of Federal assisted living service funds for a minimum of fifteen years, will be awarded 30 points.

3. Applicants that are also applying for financing for the Project from RHS will receive 30 points in this category for meeting the affordability of the applicable RHS program.

Applicants requesting funds under any set-aside must maximize points in this category to be eligible for the set-aside.

E. Project Location (maximum of 20 points).

1. Projects proposed in the VERY HIGH Need Market Area as determined by the Authority will be awarded 15 points, projects proposed in the HIGH Need Market Area as determined by the Authority will be awarded 10 points, and projects proposed in the MEDIUM Need Market Area as determined by the Authority will be awarded 5 points.

a. Statewide Subsidized Housing Ranks for Applicants <u>Not</u> Applying under the Assisted Living or SRO Set-asides:

Labor Markets	Seniors Statewide Ranking	Families Statewide Ranking
Augusta	high	high
Bangor	very high	very high
Bath-Brunswick	very high	high
Belfast	high	very high
Biddeford	very high	very high
Boothbay Harbor	medium	medium
Bucksport	medium	low
Calais	low	low
Dexter-Pittsfield	medium	medium
Dover-Foxcroft	low	low
Ellsworth-Bar Harbor	high	very high
Farmington	medium	high
Fort Kent	low	low
Greenville	low	low
Houlton	low	low
Jonesport-Milbridge	low	medium
Kittery-York	very high	very high
Lewiston-Auburn	very high	high
Lincoln-Howland	medium	medium
Machias-Eastport	low	medium
Madawaska	low	low
Millinocket-East Millinocket	low	low
Norway-Paris	medium	medium
Outer-Bangor	medium	medium
Patten-Island Falls	low	low
Portland	very high	very high
Presque Isle-Caribou	medium	low
Rockland	high	very high
Rumford	medium	medium
Sanford	very high	medium
Sebago Lakes	high	high
Skowhegan	medium	medium
Stonington	medium	medium
Van Buren	low	low
Waterville	high	high

b. Assisted Living Set-aside Subsidized Housing Ranks:

Region	Ranking
Augusta	low
Bangor	medium
Bar Harbor	very high
Bath-Boothbay	very high
Belfast	very high

Biddeford	medium
Blue Hill	high
Bridgton	high
Brunswick	high
Calais	high
Caribou	medium
Damariscotta	high
Dover-Foxcroft	high
Ellsworth	medium
Farmington	medium
Fort Kent	low
Houlton	medium
Lewiston	low
Lincoln	high
Machias	medium
Millinocket	low
Norway	high
Pittsfield	very high
Portland	low
Presque Isle	high
Rockland	low
Rumford	very high
Sanford	low
Skowhegan	high
Waterville	medium
York	medium

c. Single Room Occupancy Set-Aside Housing Ranks:

Region	Ranking
Augusta	high
Bangor	very high
Bath-Brunswick	high
Belfast	medium
Biddeford	high
Boothbay Harbor	low
Bucksport	low
Calais	low
Dexter-Pittsfield	low
Dover-Foxcroft	low
Ellsworth-Bar Harbor	medium
Farmington	low
Fort Kent	low
Greenville	low
Houlton	low
Jonesport-Milbridge	low
Kittery-York	high
Lewiston-Auburn	high
Lincoln -Howland	low
Machias-Eastport	medium

Madawaska	low
Millinocket-East Millinocket	low
Norway -Paris	low
Outer-Bangor	low
Patten-Island Falls	low
Portland	very high
Presque Isle-Caribou	medium
Rockland	medium
Rumford	medium
Sanford	high
Sebago Lakes	low
Skowhegan	medium
Stonington	low
Van Buren	low
Waterville	medium

d. Projects proposed on Native American tribal lands will be considered a Very High Need Market Area regardless of the targeted population or participation in a set-aside.

e. Applicants who wish to contest a housing rank may submit data relative to housing needs from the area in which the Project is proposed. The Authority will then determine, in its sole discretion, whether this data affects the housing rank of the jurisdiction.

2. Projects that are part of a community revitalization plan will be awarded 3 points. To receive points, applicants must submit either (a) evidence of being an Enterprise Community or (b) documentation of a local legislative body vote or official designation as a community revitalization area. Projects that are part of a community revitalization plan <u>and</u> are located in a Qualified Census Tract will be given preference over such Projects that are not located in a Qualified Census Tract.

3. Projects that demonstrate preferential treatment for low income tenants whose names are on a public housing or Section 8 waiting list will be awarded 2 points.

F. Sponsor Characteristics (maximum of 10 points).

1. For applicants that have had prior experience with the Authority and have no history of defaults, or have successfully developed Qualified Low-Income Housing Projects in other states, 5 points will be awarded.

2. If no principal of the managing general partner has been a principal of any other Project ownership entity that has been issued an IRS Form 8823 by MSHA in the last three years, 2 points will be awarded.

3. Applicants will receive 3 points if a qualified nonprofit organization, as defined in Section 42(h)(5)(C) of the Code, has an ownership interest in the applicant and the nonprofit organization satisfies the following criteria:

a. The Internal Revenue Service has determined that the nonprofit organization is an organization described in Section 501(c)(3) or 501(c)(4) of the Code and is exempt from taxation under Section 501(a) of the Code;

b. The nonprofit organization must be duly organized and existing or authorized to do business under the laws of the State of Maine and must be in good standing in its state of incorporation (if not the State of Maine) and the State of Maine;

c. The nonprofit organization must be engaged in and have as one of its charitable purposes the fostering and development of low-income housing;

d. The nonprofit organization is not affiliated with or controlled by any for-profit entity;

e. No individual or entity involved with or related to any potential for-profit participant in the Project may be involved with the creation or management of the nonprofit organization;

f. The nonprofit organization must have a general partner interest in the owner of the Project and be a managing general partner of the Project;

g. A subsidiary of a qualified nonprofit organization shall be deemed a qualified nonprofit organization for purposes of this category, provided that 100% of the stock of the subsidiary is held by one or more qualified nonprofit organizations at all times during the subsidiary's existence in accordance with Section 42(h)(5)(D).

8. Project Evaluation

A. Once a project is selected, the Authority will determine the amount of Credit to be reserved. The amount requested in the application will be the basis on which the Authority will determine the actual reservation, but the amount reserved will not necessarily equal the amount requested. The calculation of the amount of Credit will be based on the Applicable Percentage for the month in which the calculation is made unless there has been a qualified irrevocable election of the Applicable Percentage for a prior month.

B. The amount of housing credit dollars reserved for a Project cannot exceed the lesser of the amount the Project is eligible for under the Code or the amount the Authority determines is necessary for the financial feasibility of the Project and its viability as a Qualified Low-income Housing Project throughout the Credit Period. The evaluation process will be extensive and will require applicants to provide significant amounts of financial information and Project detail. In making this determination, the Authority will consider:

1. The sources and use of funds and the total financing planned for the Project, including the reasonableness of development costs and operating expenditures;

2. Any proceeds or receipts expected to be generated by reason of tax benefits; and

3. The percentage of the housing credit dollar amount used for Project costs other than Intermediary Costs.

These factors will not be applied so as to impede the development of Projects in hard-to-develop areas.

C. In order to arrive at the amount of Credit dollars to be reserved for a Project, the Authority must identify the equity gap between development sources and uses which the Credit is designed to fill. In order to fulfill its statutory responsibility to allocate only the amount of Credit necessary for the financial feasibility of a Project and its viability throughout the Credit Period, the Authority reserves the right to limit recognition of Intermediary Costs, re-characterize Project sources and uses and make reasonable assumptions on projected revenues and expenses in the process of calculating the amount of Credit to be reserved or allocated to a Project. When applicable, the Authority will also take into consideration any restrictions imposed by federal laws and regulations imposing limitations on the combining of the Credit with other federal subsidies ("subsidy layering" guidelines).

D. In order to fully evaluate the proposal's need for Credit, the expectation exists that availability of the Credit is a necessary incentive for the developer to undertake completion of the Project. Extreme caution should be taken to avoid incurring construction costs prior to the receipt of a reservation of Credit authority. The Authority reserves the right to cease processing any application which has incurred construction costs prior to applying for tax Credit.

In cases providing significant public purpose, when construction costs have been incurred prior to the Authority's decision to select any application for Credit, developers should be prepared to demonstrate why the absence of Credit presents a serious risk to the overall viability and operation of the Project.

E. The Authority will limit recognition of Developer Fees. The standard fee, regardless of whether costs used to calculate the fee include compensation paid to consultants, will be based on all aspects of Project development including, without limitation, creation of the Project concept, identification and acquisition of the Project site, obtaining construction and permanent financing, obtaining necessary subsidies, negotiation of syndication of investment interests in the Project, obtaining all necessary regulatory approvals, construction and marketing. Fees paid to consultants do not include fees for professional services such as those for environmental assessments, rental market studies, soil tests, and water tests. Reserves, in the form of cash, expected to return to the Developer from the Project in two or fewer years will be included in the Developer Fee calculation.

The standard Developer Fee to be recognized for purposes of calculating the Credit must separately identify two components: (1) Overhead and (2) Profit. Together these two components will not exceed an amount equal to 15% of the Housing Development Costs, plus 10% of the costs of acquisition of land, existing buildings and equipment, all determined without regard to Developer Fees.

The level of risk associated with developing the Project will be considered when determining whether the recognized fee should exceed the standard. In extenuating circumstances as determined by MSHA, the maximum recognized fee may equal up to 20% of the Housing Development Costs plus 15% of the costs of acquisition of land, existing buildings and equipment, all determined without regard to Developer Fees and without regard to Section 42(d)(5)(C) of the Code. Extenuating circumstances might include a difficult local approval process, the overall size of a Project to be undertaken, renovations qualifying for historic tax credits, contribution of Developer Fees to the Project in the form of reserves or equity loans or demonstration that other sources of subsidy are not available.

F. In reviewing Intermediary Costs, the Authority will limit recognition of certain general contractor costs. Regardless of the geographic location of the Project, the standards for general contractor overhead, general requirements and profit will be an amount not greater than 16% of the Total Construction Cost, within the following ranges:

Overhead	up to 2% of Total Construction Cost
General Requirements	up to 8% of Total Construction Cost
Profit	up to 6% of Total Construction Cost

G. In reviewing Project costs the Authority will consider the reasonableness of the per unit Total Development Cost. However, the following standards will not automatically be used as a limit when calculating the amount of Credit for which the Project is eligible. Each Project will first be compared with historical data for similar Projects, i.e. size, location, funding source, etc. Costs will be evaluated against industry cost standards. Consideration will be allowed for costs associated with tenant service and common area spaces. Otherwise, the per unit cost recognized for Credit allocations should not exceed the HUD 221(d)(3) per unit limits established for the State. The Authority will require additional documentation if the Authority feels the proposed costs are not comparable or reasonable.

H. The evaluation of each Project to determine the amount of Credit dollars for which it is eligible will be performed as of each of the following dates:

1. The application for Credit.

2. The allocation of Credit.

3. The date each Qualified Low-income Building is placed in service.

Prior to each determination, the applicant shall certify to the Authority the full extent of all Federal, State and local subsidies which apply with respect to the Qualified Low-income Housing Project and provide such other information the Authority deems necessary in order to complete its evaluation.

I. PURSUANT TO FEDERAL LAW, ANY DETERMINATION MADE BY THE AUTHORITY HEREUNDER SHALL NOT BE CONSTRUED TO BE A REPRESENTATION OR WARRANTY AS TO THE FEASIBILITY OR VIABILITY OF ANY PROJECT AND MAY NOT BE RELIED UPON AS A REPRESENTATION OR WARRANTY BY ANY PARTY.

9. <u>Reservation of Credit</u>

A. Applicants will receive a Notice to Proceed indicating that an evaluation pursuant to Section 8 of the QAP will be undertaken. At the completion of the evaluation, the Authority will issue conditional reservations of Credit. The amount of Credit dollars reserved for a Project shall be the amount determined by the Authority pursuant to Section 8 of this Qualified Allocation Plan.

B. Conditions contained in a conditional reservation will be performance-based, taking into consideration the specific circumstances of each Project and may include, without limitation:

1. Payment of a Credit reservation fee equal to 3% of the amount of the reservation at the time of reservation.

2. Deadline for final working drawings and specifications.

3. Deadline for loan closing(s).

4. Deadline for receipt of information necessary for the Authority to make its determination on allocation or carryover allocation of Credit.

5. Prohibition against amendments or changes as set forth in Section 5, subsection I.

6. Termination date.

C. When reservations of the Credit have been issued in an amount equal to the applicable State Ceiling, standby reservations may be issued in the same manner as described in subsection A, above. Applicants receiving standby reservations will only be allowed to proceed if a sufficient amount of the applicable State Ceiling becomes available through lapsed or withdrawn reservations, the return of Credits or receipt of Credits from the national repooling of unused housing Credit allocations.

D. An applicant may cancel or withdraw a reservation by submitting written notice thereof to the Authority.

E. Reservations and standby reservations of Credit from the State Ceiling for a particular calendar year which are in effect on December 31st of that calendar year may be converted to reservations of Credit from the State Ceiling for the following year upon mutual agreement of the parties.

F. At the time of issuance of a reservation, and to the extent authorized by the Code, the Authority and the applicant may enter into a Binding Agreement to fix the maximum Credit dollar amount to be allocated to each Qualified Low-income Building for which Credit has been requested. Any such Binding Agreement must satisfy the requirements of the Code and will contain the same performance-based conditions set forth in applicant's conditional reservation. An applicant may also choose either to fix the Applicable Percentage for each Qualified Low-income Building in the Project by irrevocably electing the percentage for the month in which applicant and the Authority enter into such Binding Agreement or to select the applicable percentage for the month the building is placed in service.

G. Proposals facing increased Project development costs and, therefore, potentially qualifying for less than a substantial amount of additional Credit, may request additional Credit and not be subject to funding rounds. However, such requests will be subject to Credit availability and any decision to favor such requests will be at the sole discretion of the Authority.

H. Prior to a reservation of Credit, an applicant must demonstrate proficiency in the area of Credit compliance monitoring by completing a Credit compliance monitoring training approved by the Authority or receiving certification from a Credit trainer approved by the Authority.

10. Allocation of Credit

A. Provided that the applicant's Project is placed in service, within the meaning of the Code, in the calendar year for which a reservation of Credit has been issued and such reservation is still in effect, the Authority will allocate Credit to an applicant, by issuance of IRS Form 8609 or such other form required by the IRS, after receipt of the following:

1. A complete Application for Allocation of Credit. A complete application must include an audit report on the schedule of project costs prepared by an independent, third party certified public accountant.

2. Certification of the total financing planned for the Project, all proceeds or receipts expected to be generated by reason of the Credit or other tax benefits, the total sources and uses of Project funds and the full extent of all Federal, state and local subsidies which apply or which the applicant expects to apply with respect to the Project. In addition, the sponsor must identify all costs associated with the sale (i.e. commissions, due diligence, legal, accounting, reserves, etc.). This certification must include income, operating and development cost projections and methods for satisfying any deficits.

3. An allocation fee as follows:

Applications for Projects of up to 10 units	$ 250
Applications for Projects of 11 to 23 units	$ 500
Applications for Projects of 24 or more units	$1,000

This paragraph does not apply to tax-exempt bond financed properties described in Section 12.

4. A monitoring fee as follows:

An amount equal to $250.00 per Credit eligible unit in the Project, not to exceed $25,000 per Project.

5. A comprehensive market study of the housing needs of low-income persons in the area to be served by the Project. The study must be conducted at the applicant's expense by a disinterested party acceptable to the Authority. The study must demonstrate the need and demand for the Project, including evaluation of the anticipated impact on similar housing opportunities in the area.

B. The amount of Credit allocated on behalf of each Qualified Low-income Building shall be the lesser of:

1. The maximum amount for which the Project is eligible under the Code, as determined by the Authority based on information provided by the applicant;

2. The amount determined by the Authority as the minimum amount necessary for the financial feasibility of the Project and its viability as a Qualified Low-income Housing Project throughout the Credit Period; and

3. The amount stated in the conditional reservation.

C. An allocation made by the Authority will be effective only with respect to a qualified building placed in service during the calendar year in which the allocation is made and only to the extent that the Internal Revenue Service gives effect to such allocation. CREDIT RECIPIENTS ARE RESPONSIBLE FOR TAKING ONLY THE AMOUNT OF CREDIT AUTHORIZED UNDER THE CODE AND RECOGNIZED BY THE INTERNAL REVENUE SERVICE AND NO RELIANCE MAY BE PLACED ON THE AUTHORITY BY ANY PARTY FOR THIS DETERMINATION.

11. Carryover Allocation

A. If applicant's Qualified Low-income Housing Project, or individual Qualified Low-income Building within the Project will not be placed in service, within the meaning of the Code, in the calendar year for which a reservation of Credit has been issued, the Authority may issue a carryover allocation to qualifying applicants or choose to carry over the balance of the State Ceiling as provided in Section 4, subsection A. In order to be considered for a carryover allocation, an applicant must provide:

1. A complete Application for Carryover Allocation of Credit. A complete application must include an audit report on the schedule of project costs prepared by an independent, third party certified public accountant.

2. Certification of the total financing planned for the Project, all proceeds or receipts expected to be generated by reason of the Credit or other tax benefits, the total sources and uses of Project funds and the full extent of all Federal, State and local subsidies which apply or which the applicant expects to apply with respect to the Project. This certification must include income, operating and development cost projections and methods for satisfying any deficits.

3. Satisfactory evidence that applicant's basis in the Project at the end of the calendar year will exceed ten percent of applicant's reasonably expected basis in the Project at the end of the second calendar year following the calendar year in which the carryover allocation is made. Projects receiving a carryover allocation after June 30th of the credit year will have six months from the date of the allocation to provide evidence that the applicant's basis in the Project will exceed ten percent of the applicant's reasonably expected basis in the Project at the end of the second calendar year following the calendar year in which the carryover allocation is made.

4. Status report on the progress of development of the Project and the likelihood of the Project proceeding to completion.

5. An allocation fee as follows:

Applications for Projects up to 10 units	$ 250
Applications for Projects with 11 to 23 units	$ 500
Applications for Projects with 24 or more units	$1,000

6. A comprehensive market study of the housing needs of low-income persons in the area to be served by the Project. The study must be conducted at the applicant's expense by a disinterested party acceptable to the Authority. The study must

demonstrate the need and demand for the Project, including evaluation of the anticipated impact on similar housing opportunities in the area.

B. The amount of the carryover allocation for each qualifying low-income building shall be the lesser of:

1. The maximum amount for which the Project is eligible under the Code, as determined by the Authority based on information provided by applicant;

2. The amount determined by the Authority as the minimum amount necessary for the financial feasibility of the Project and its viability as a Qualified Low-income Housing Project throughout the Credit Period; and

3. The amount stated in the conditional reservation.

C. A carryover allocation made by the Authority will be effective only if the 10% basis test referred to in subsection A, paragraph 3, above, was satisfied, the Qualified Low-income Building is placed in service within two years following the calendar year in which the allocation is made and only to the extent that the Internal Revenue Service gives effect to such allocation. CREDIT RECIPIENTS ARE RESPONSIBLE FOR TAKING ONLY THE AMOUNT OF CREDIT AUTHORIZED UNDER THE CODE AND RECOGNIZED BY THE INTERNAL REVENUE SERVICE AND NO RELIANCE MAY BE PLACED ON THE AUTHORITY BY ANY PARTY FOR THIS DETERMINATION.

D. In order to ensure maximum utilization of the Credit, the Authority may impose performance conditions on developers receiving carryover allocations and may terminate or cancel the allocation for failure to comply with such conditions. Credits returned to the Authority as a result of the termination or cancellation of a carryover allocation shall be added to the State Ceiling for the calendar year in which they are returned.

E. The Authority may carry over the entire unallocated portion of the State Ceiling and deny all requests for Project-specific carryover allocations.

12. <u>Tax-Exempt Bond Financed Projects</u>

A. A Qualified Low-income Building which is financed with the proceeds of tax-exempt bonds subject to the State volume cap on such bonds qualifies for the Credit on the portion of the Eligible Basis of the building financed with such bond proceeds without an allocation from the State Ceiling. If 50% or more of the Eligible Basis of a Qualified Low-income Building is financed with the proceeds of tax-exempt bonds subject to the state volume cap on such bonds, all of the Eligible Basis of the building qualifies for the Credit without an allocation from the State Ceiling.

B. Except as otherwise provided in the Code, Qualified Low-income Buildings financed with the proceeds of tax-exempt bonds subject to the state volume cap on such bonds which are placed in service after 1989, in order to qualify for the Credit without an allocation from the State Ceiling, must satisfy the requirements for application and allocation set forth in Sections 6 and 10 of this rule (other than the requirement for issuance of a conditional reservation) and be evaluated by the issuer of the bonds according to the evaluation procedures set forth in Section 8 of this rule to determine the proper amount of the Credit.

C. Developers of properties financed with tax-exempt bonds and seeking Credit without an allocation from the State Ceiling may, to the extent the Project is not yet placed in service and is otherwise authorized by the Code, elect to fix the Applicable Percentage for each Qualified Low-income Building in the Project by irrevocably electing the percentage for the month in which the bonds are sold, as opposed to the Applicable Percentage for the month the building is placed in service. Such an election must be made on forms provided by the Authority and must be made by the 5th day of the month following the month in which the bonds are sold.

D. Developers of properties seeking Credit without an allocation from the State Ceiling must request the issuance of an IRS Form 8609 for each Qualified Low-income Building in the year the Project is placed in service. Such request must be made on forms provided by the Authority. This request must also include an audit report on the schedule of project costs prepared by an independent, third party certified public accountant.

E. The Authority will make tax-exempt financing available to Projects that are financed under the RHS 515 Program to enable the Projects to receive 4% Low-Income Housing Tax Credits without an allocation from the State Ceiling.

F. Once the Authority has reviewed the Project in accordance with this section and deemed the Project eligible to receive Credit, a determination letter will be issued.

13. <u>Monitoring and Notification of Noncompliance</u>

The Authority is required by Federal law to monitor Projects for noncompliance with the provisions of Section 42 of the Code and to notify the Internal Revenue Service when it becomes aware of any such noncompliance. Compliance by Credit recipients with the monitoring procedures will be a requirement of the Extended Low-income Housing Commitment. The Authority reserves the right to impose a reasonable fee for the administrative burden resulting from this on-going monitoring requirement. Owners of Qualified Low-income Buildings placed in service for which the Credit is, or has been, allowable AT ANY TIME must comply with the following requirements:

A. Recordkeeping and record retention. Project owners must keep on file and available to the Authority upon request, records for each Qualified Low-income Building in the Project showing:

1. The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit).

2. The number of residential rental units in the building that are designated low-income units.

3. The rent charged on each residential rental unit in the building (including any utility allowances).

4. The number of occupants in each low-income unit).

5. The low-income unit vacancies in the building and information that shows when, and to whom, the next available units were rented.

6. The annual income certification of each low-income tenant per unit or a copy of the waiver from the annual income certification requirement which is available to 100% Credit eligible properties.

7. Documentation to support each low-income tenant's income certification (for example, a copy of the tenant's federal income tax return, Forms W-2, or verifications of income from third parties such as employers or State agencies paying unemployment compensation). Tenant income is calculated in a manner consistent with the determination of annual income under section 8 of the United States Housing Act of 1937 ("Section 8"), not in accordance with the determination of gross income for federal income tax liability. In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant's income does not exceed the applicable income limit under section 42(g) of the Code.

8. The Eligible Basis and Qualified Basis of the building at the end of the first year of the Credit Period.

9. The character and use of the nonresidential portion of the building included in the building's Eligible Basis (for example, tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities or facilities reasonably required by the Project).

   These records shall be maintained for each Qualified Low-income Building in the Project throughout the building's Extended Use Period. These records shall be retained for at least six years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the Credit Period, however, shall be retained until the later of the end of the building's Extended Use Period or six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period of the building. First year quarterly reports shall be filed with MSHA.

10. A determination of the student status of the resident household.

B. Certification and review. Project owners must certify compliance with the requirements of Section 42 of the Code as follows:

1. All Project owners must certify to the Authority annually throughout the Extended Use Period of the Project for the twelve-month period preceding certification that:

   a. The Project met the minimum low-income set-aside test applicable to the Project and complies with the additional low-income targeting pledged in the application on which the allocation was based, (e.g. 40% AMI and 50% AMI);

   b. There was no change in the Applicable Fraction of any building in the Project or that there was a change and a description of the change;

   c. The owner has received an annual income certification from each low-income tenant and documentation to support that certification or in the case of a tenant receiving Section 8 housing assistance payments, the statement from a public housing authority described in subsection A, paragraph 7, above;

d. Each qualified low-income unit in the Project was rent-restricted under section 42(g)(2) of the Code;

e. All units in the Project were for use by the general public and used on a nontransient basis except for transitional housing for the homeless provided under section 42(i)(3)(B)(iii) of the Code;

f. Each building in the Project was suitable for occupancy under applicable health, safety and building codes;

g. There was no change in the Eligible Basis of any building in the Project or if there was a change, the nature of the change (for example, a common area has become commercial space, or a fee is now charged for a tenant facility formerly provided without charge);

h. All tenant facilities included in the Eligible Basis of any building in the Project, such as swimming pools, other recreational facilities and parking areas, were provided on a comparable basis without charge to all tenants in the building;

i. If a low-income unit in the Project became vacant during the year, that 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 in the Project were or will be rented to tenants not having a qualifying income;

j. If the income of tenants of a low-income unit in the Project increased above the limit allowed under section 42 of the Code, the next available unit of comparable or smaller size in the Project was or will be rented to tenants having a qualifying income;

k. The Project complies with the Extended Low-income Housing Commitment for buildings subject to section 7108(c)(1) of the Revenue Reconciliation Act of 1989;

l. The Project complies with the requirements of all applicable Federal and State housing programs (e.g. RHS, Federal HOME, HUD Section 8, or Tax-Exempt Bonds);

m. The Project has not received notice of any violation of applicable building codes. In the event a violation occurs the owner must report all violations to the Authority including a summary of or copies of violations issued. The owner must indicate whether the violations have been corrected and must retain all original reports of violation;

n. No findings of discrimination under 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.*) or the Maine Human Rights Act (5 M.R.S.A., Chapter 337, Subchapter IV) have occurred at the Project. A finding of discrimination includes an adverse final decision by HUD, an adverse final decision by a substantially equivalent State or local fair housing agency, or an adverse judgment from a Federal or State court;

o. No applicant for tenancy in possession of a Section 8 voucher was refused housing solely because of their status as a Section 8 voucher-holder;

p. If the owner received its Credit allocation from a portion of the State Ceiling set-aside for a project involving a Qualified Non-Profit Organization under Section 42(h)(5), then its non-profit entity materially participated in the operation of the development within the meaning of Section 469(h) of the Code; and

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

2. Annually throughout the Extended Use Period, all Project owners must complete and submit to the Authority an tenant status report on a form prescribed by the Authority. The tenant status report shall accurately reflect tenant income, rent data and other occupancy information required by the Authority for each Qualified Low-income Building in a Project for the prior calendar year.

3. The Authority will review the tenant files of at least 20% of the low income units in each Project at least once every three (3) years. For new Projects placed in service, the Authority will complete a review of tenant records of 20% of the low income units at the Project within two (2) years following the year the last building is placed in service. The tenant records to be reviewed, will be selected randomly by the Authority. Notice of Project selection, as well as the required timeframe for submission of details, will be provided by the Authority to the owner of the Project in writing.

4. Owners of Qualified Low-income Buildings financed under the RHS 515 program or Qualified Low-income Buildings of which 50 percent or more of the aggregate basis is financed with the proceeds of tax-exempt bonds are not required to submit, and the Authority is not required to review, the tenant income certifications, supporting documentation and rent records if RHS or the bond issuer, as applicable, has entered into an agreement with the Authority to provide information concerning the income and rent of the tenants in the building to the Authority. If the information provided by RHS or the bond issuer is not sufficient for the Authority to make the required determinations, the Authority shall request the necessary additional income or rent information from the owner of the building(s).

5. The Authority shall review all certifications and supporting documentation submitted hereunder for compliance with the requirements of section 42 of the Code.

6. The annual owner certifications with attachments and the tenant status report required hereunder must be submitted to the Authority on or before a date established by the Authority, but in no event, later than May 1 of each year. The certification must cover the preceding twelve-month period and must be made as of

December 31st of the prior year. The certifications shall be made only on such forms established by the Authority and must be made under penalty of perjury.

C. Inspections. The Authority will perform property inspections on a 1-3 year cycle , and shall have the right, at any time upon 30 days notice to the Project owner, to review all records referred to in Section 13.

D. Monitoring Fee. All applications shall be required to remit a one-time monitoring fee equal to $250.00 for each Credit eligible unit in the Project, not to exceed $25,000 per Project. This fee must be paid prior to the issuance of the IRS Form 8609.

The Authority reserves the right to waive all or part of the fee in the event the partnership enters in a compliance monitoring agreement acceptable to the Authority, and agrees to provide sufficient annual documentation to enable the Authority to perform its required oversight.

E. Notification of noncompliance. In the event the Authority does not receive the certifications required hereunder when due or they are incomplete or insufficient, the Authority shall notify the Project owner in writing of the missing, incomplete or insufficient certification. In the event the Authority discovers through audit, inspection, review or some other manner that the Project is not in compliance with the provisions of Section 42 of the Code, the Authority shall notify the Project owner in writing of the nature of such noncompliance. In either case, such notice shall provide owner with a reasonable correction period, not to exceed ninety days, in which owner must supply the completed certifications and/or bring the Project into compliance with Section 42 of the Code. If the Authority determines there is good cause, it may extend the correction period for up to six months. Within forty-five days after the end of the correction period, including any permitted extensions, the Authority shall file the required Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance, with the Internal Revenue Service regardless of whether the noncompliance or failure to certify has been corrected.

F. LIABILITY. COMPLIANCE WITH THE REQUIREMENTS OF SECTION 42 OF THE CODE IS THE RESPONSIBILITY OF THE OWNER OF THE BUILDING FOR WHICH THE CREDIT IS ALLOWABLE. THE AUTHORITY'S OBLIGATION TO MONITOR FOR COMPLIANCE WITH THE REQUIREMENTS OF SECTION 42 OF THE CODE DOES NOT MAKE THE AUTHORITY LIABLE FOR AN OWNER'S NONCOMPLIANCE.

14. <u>Additional Requirements</u>

A. Applicant's eligibility for use of the Credit after allocation of the Credit is conditioned on applicant's continued compliance with certain tenant income and rental restrictions. Failure to comply with such restrictions can result in forfeiture and recapture penalties being imposed upon applicant by the Internal Revenue Service. THE AUTHORITY ACCEPTS NO RESPONSIBILITY AND NO RESPONSIBILITY SHALL BE IMPLIED BY THE ISSUANCE OF A RESERVATION, ALLOCATION OR CARRYOVER ALLOCATION OF CREDIT ON BEHALF OF A PARTICULAR PROJECT, FOR ENFORCEMENT OF, OR COMPLIANCE WITH, ANY OF THESE RESTRICTIONS NOW OR HEREAFTER IMPOSED.

B. Any provision of applicable Federal or State law, including without limitation, the Code and the Act, shall take precedence over this rule in the event of any inconsistency.

C. This rule does not preclude such additional or alternative requirements as may be necessary to comply with the Code or the Act.

D. 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.

E. The Director of the Authority, individually or by exercise of the delegation 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.

F. Upon determination of good cause, the Director of the Authority or the Director's designee may, subject to statutory limitations, waive any provision of this rule. Each waiver shall be in writing and shall be supported by documentation of the pertinent facts and grounds.

FISCAL IMPACT NOTE: The proposed rule will not impose any cost on municipalities or counties for implementation or compliance.

BASIS STATEMENT: The Tax Reform Act of 1986 created the low-income housing tax credit for use by qualifying developers of housing projects which satisfy applicable tenant income and rental requirements. The Maine State Housing Authority has been designated as the credit allocation agency for the State. This rule establishes the policies and procedures for the allocation process. Since most other tax incentives for the development of low-income housing have been repealed from the tax code and since the allocation process is immediately necessary for the effective use of the credit in 1987, the rule is being adopted by an emergency rule. No comments were received during the comment period.

STATUTORY AUTHORITY: 30 MRSA §§4651(1), 4651(15)
EFFECTIVE DATE: May 25, 1987

BASIS STATEMENT: The rule is being amended to conform the Authority's allocation process to recent changes in federal law and to make certain procedural changes to facilitate the allocation process. One comment was received during the comment period requesting that the application fee stay at $500. Increased administrative costs of the allocation process dictate that the fee be raised. In addition, the increased fee will be an increased incentive for filing only meritorious application. The Authority has also decided to wait until May 1, 1989 to enforce the new provisions in order to facilitate the transition.

STATUTORY AUTHORITY; 30 MRSA §§4651(1), 4651(15)
EFFECTIVE DATE: April 4, 1989

BASIS STATEMENT: The rule is being repealed and replaced due to substantial changes made to the Credit program by the Omnibus Budget Reconciliation Act of 1989. A public hearing was held on May 21, 1990 at which six people testified. In addition, the Authority received five written comments during the comment period. A summary of these comments and the Authority's responses follows.

A question was raised concerning the past application requirement of an accountants opinion and whether this requirement would be continued. The Authority has the responsibility to properly allocate the credit ceiling to ensured that credit dollars are not wasted. The past requirement has simply been that an accountant review the schedule of development costs and give an opinion, not on the accuracy of these figures, rather as to whether they represent a proper allocation of costs to project basis under the Code. The revised application package has not been finalized, but the Authority has not determined at this time to delete this application requirement.

A concern has been raised that projects which have already begun construction will not be allowed to apply or will somehow be penalized in the review process. The Authority does not believe that anything in the rule can be interpreted to prevent such a project from applying and since projects with a significant likelihood of placing in service in the current calendar year are given priority under Section 7(A)(1), they certainly will not be penalized in the selection process.

A question was raised about the municipal notification requirement in Section 5(B). This is a requirement directly imposed by the revised federal law and cannot be changed.

A question was raised about the determination of difficult development areas. These designations have to be made by HUD and the Authority has no indication as to when HUD intends to move forward on this issue.

A question was raised about the Authority's ability to reject any and all applications received in any application cycle. This is standard language included in any request for proposals and is included to indicate that there is no requirement for the Authority to select a minimum number of proposals in each cycle if the Authority determines that none of the proposals merit selection.

A request was made to include an appeals process in the event an applicant was not satisfied with the amount of credit awarded. Section 14(E) provides that the awarding of credits will be done by the Director and that any such actions taken by the Director shall constitute final agency action. There is no one within the statutory make-up of the Authority to which an appeal can be taken. The Administrative Procedures Act, pursuant to which this rule has been adopted, provides for an appellate procedure of all final agency action. No separate appeals procedure is necessary.

A question was raised about the meaning of Section 3(B)(2). The Authority is simply identifying as a housing priority projects which leverage subsidies in addition to the credit.

A question was raised as to whether an applicant whose application has lapsed pursuant to Section 5(F) would have to reapply. Subject to the provisions of Section 5(G), the answer is yes.

Concern was expressed about the ability of the Authority to require additional information in order to process an application as it relates to the determination of when an application is complete. Applications, in order to be considered, must be complete. Obviously, if time permits prior to an application deadline, the Authority will notify applicants concerning deficiencies in their submissions that must be corrected in order to be considered complete. Section 6(D) is dealing with the Authority's right to require follow-up or explanatory information in order to properly process the "completed" application and to determine whether or not it will be selected.

A question was raised about the correlation between the selection criteria referenced in Section 7(A)(6) and 7(D)(1). This confusion has been addressed by deleting the latter item and modifying the former.

A question was raised concerning what level of documentation of need would be "acceptable" to satisfy Section 7(F)(4). There is no minimum acceptability standard, all documentation of need will be considered. However, applications will be judged on a comparative basis so the more comprehensive and definitive the documentation of need, the greater comparative weight to be given.

Numerous comments addressed the issue of the processing and selection elements of this rule matching up with the Farmers' Home Administration's 515 Program. While the Authority has certainly attempted to ensure that no projects or program participants are inhibited in their ability to qualify for credits, the low income housing tax credit program cannot be tailored to any particular program or plan of financing. Farmers' Home 515 Program participants have successfully accessed the credit program in the past and the Authority firmly believes that no impediments have been created to prevent their continued access in the future.

A question was raised concerning the evaluation of the equity gap to be filled by the credit pursuant to Section 8(C) in those cases where the credit will be used by the individual owner and not syndicated for upfront capital. The project evaluation is done to determine the amount of credit necessary for the feasibility of the project and the viability of the project throughout the credit period. In the situation described, there would still have to be an identified gap or need for the credits for on-going project viability in order for the project to qualify under the new federal requirements and if so the process as set forth would allow for credits to be allocated.

Section 9(B) sets forth the performance conditions which will be contained in conditional reservations of credit. Subsection (B)(2) includes a deadline for completion of final drawings and specifications as one of these performance conditions. A question was raised as to whether the Authority would be substantively reviewing the drawings and specs for approval. The answer is no, this is simply a performance goal that must be met to maintain the reservation.

A question was raised as to whether applicants who did not receive a full allocation of credit because the ceiling ran out would have to reapply next year in order to receive the balance of the credits. Pursuant to Section 5, this rule only covers applications for the 1990 ceiling. Any issues involving applications for 1991 ceiling and thereafter will have to be addressed in subsequent rulemaking.

Some confusion was expressed concerning the application of the new credit rules to projects financed with the proceeds of tax-exempt bonds. Section 12 has been amended to clarify that such projects not qualifying for transition relief must satisfy the requirements contained herein relating to eligibility and selection for an allocation, even though they will not actually receive an allocation from the state ceiling, and they must be evaluated by the issuer of the bonds according to the evaluation process outlined herein to determine the amount of credit they will receive.

A number of comments were received concerning the fees the Authority will charge for applications, reservations and allocations. As to the timing of payment of the reservation fee, Section 9 has been amended to clarify that this fee must be paid at the time the reservation is offered. As to the amount of the various fees, the Authority has done a survey of the proposed fees of over half of the state credit agencies and the fees to be charged by the Authority are definitely in line with national standards. Increased fees over past practice are required by the significant increase in processing and review responsibilities which have been imposed by the new federal requirements. The administrative cost of the program to date, as well as the anticipated increase in that cost caused by the new requirements, has been thoroughly examined in determining the fee structure.

One comment urged that the Authority limit the amount of the ceiling that could be reserved in any one round and to limit the amount of the ceiling any one applicant could receive. The Authority is sensitive to the fact that deserving applications may come in later in the year and will be reluctant to reserve the entire ceiling early in the year. However, the Authority does not want to impose arbitrary limitations on itself in the event that quality applications in excess of the self-imposed limit are received. On the second point, most applicants for the credit are project-specific limited partnerships. In order to impose a limit on the amount of credit that any individual could receive we would have to dig behind the partnership entity to ensure that individuals were not slipping in under a partnership or corporate name. Since the emphasis here is on the housing being created and not who is developing it, the Authority does not feel that such a limitation would accomplish any worthwhile goal.

Numerous comments spoke to what was perceived to be inconsistency between conflicting selection criteria. There is apparently some confusion about how the point system works and how the listed selection criteria are applied. The Authority will potentially be receiving applications involving a wide spectrum of housing projects, no two of which will be alike. All types of housing which have low-income benefit are intended to be encouraged under this allocation scheme. Obviously, no project will be able to address each item listed in the selection criteria. Some will score high in one category and low in other categories. The point totals assigned to each category are a sliding scale to be awarded on a comparative basis among the applications received, not to be awarded on a prorata fraction for each item addressed in the application. Some of the comments appeared to be assuming that there was a single type of project with a single type of unit configuration and a single desired client population to be served that would be able to check off all the items and get a predetermined number of points necessary to get selected. This is not the goal of the process. This plan, when looked at comprehensively, simply sets forth the various goals and priorities that will be looked to when reviewing the applications in order to select the best projects from the universe of those we receive, not an attempt to meet some predetermined concept of the "ideal" project.

Numerous comments also expressed the concern that the rule somehow favored rehabilitation projects over new construction, specifically, Sections 3(A), 3(B) and 7(A). Rehab projects will apply for credit and the Authority wanted to address aspects of the selection process to such projects. The Housing Needs Assessment undertaken by the Authority as a prerequisite to adopting this allocation plan indicated a strong need for rehab in some areas of the State. However, there is no intent on the part of the Authority to favor one type of project over another based on that factor alone. Rehab is only one need of four referenced in Section 3(A), only one priority of five listed in Section 3(B) and only referred to separately in one item of the sixteen listed in Section 7(A). This same response would apply to any concern about any other specific project type such as preservation, transfers, etc. No categorical favoritism is intended or will be interpreted by the Authority.

Concern was expressed over the provision in Section 5(E) that changes to the application will result in an applicant having to start the process over. The threshold application requirements are designed to have projects far along in their development process so that this should not be a large factor. The language has been amended, however, to clarify that only changes which affect the integrity of the selection process or the credit dollars will result in termination.

One comment recommended that the threshold application requirements be lessened so that the projects would not have to be so far along in the development process in order to apply. Two comments expressed the opinion that the application requirements should be retained and were a significant improvement over past practice which allowed "phantom" projects to tie up the availability of the credit. The new federal requirements force the Authority in the direction it has moved in order to properly evaluate firm proposals. Tougher threshold application requirements have become the rule rather than the exception. The Authority has decided to retain the proposed threshold requirements but will monitor the process closely to assess any negative impact they have on the allocation process.

Concern was expressed over the right of the Authority, as part of the evaluation process, to recharacterize sources and uses and to limit recognition of intermediary costs. First, this will not be done as part of the selection process, only in determining the amount of credit to be awarded in order to meet the federal requirements. Second, there is nothing in the federal law that says that credit agencies cannot undertake this analysis and are limited to what the applicant submits unless it is unreasonable. The federal law states that the Authority can only allocate the amount of credit necessary for project feasibility and viability. In order to fulfill this responsibility the Authority cannot be limited to unrealistic projections on sources and uses designed to enhance the need for the credit. The Authority does not intend to substantially rewrite proformas, etc. Rather, it will be a process of reaching a consensus on projections which will form the basis for the ultimate allocation.

Numerous comments suggested that the Authority formerly establish a guaranteed developer's fee of 20% both for ranking under non-intermediary costs and for the evaluation process. The Authority does not feel it is the role of the credit agency to establish a statewide standard for all housing developers on the issue of development fees. The Authority also does not have sufficient data at this time on fees to determine if 20% in all cases is reasonable. As currently structured, fees will be competitive under the selection criteria and the recognition of fees in the evaluation process will depend on the circumstances of the particular project and the explanation of need for those at the higher end of the scale.

Several comments suggested that the July 31st application deadline be moved to an earlier date to facilitate projects starting construction this summer. The final rules for applications will not become effective until approximately June 20th at the earliest. The required application package will not be finalized until around that same date. The threshold application requirements are comprehensive and cannot be satisfied quickly. Moving the date up too far will simply eliminate the ability of most applicants to meet the deadline and force them into the next round virtually guaranteeing a 1991 construction start. Therefore, the Authority has decided to move the first deadline back to July 18th and the second deadline back to August 31st.

Concern was raised about the automatic expiration of reservations at the end of the year and the lack of a guaranteed carryover allocation. The Authority has the responsibility to ensure that the credit is allocated so as to maximize its impact and so that it is not wasted. Carryover allocations made to projects which are only 10% completed, as required in order to qualify, are at substantial risk of being lost if the project does not ultimately get completed. For the first time the Authority has the ability to carryover the ceiling for one year in order to prevent its loss. The Authority must have the discretion to assess the relative likelihood of projects going forward at year-end in order to make determinations on project-specific carryforward allocations, to carryforward the ceiling or, in appropriate circumstances, to extend reservations.

Numerous questions were raised concerning the determination of intermediary costs. First, one comment suggested that the law required a different standard be applied depending on the quality of the housing. The Authority has concluded that no such requirement exists or is implied in the law. Second, there was a question concerning the approach taken in the rule versus the language of the law dealing with the allocation of credit dollars to non-intermediary costs. For purposes of its evaluation, the Authority is assuming that the percentage of credit dollars allocated to intermediary and non-intermediary costs will bear the same ratio as all other dollars financing the project. The Authority will not make "paper allocations" of credit dollars to only portions of the development costs. The Authority feels there is ample justification for this approach in the law. Finally, there was a question about two particular costs as to whether they were meant to be included in the definition: acquisition costs and land costs. Both are currently included in the definition of housing development costs. Since the cost of land is not part of eligible basis it has been deleted from the definition and thus the calculation under Section 7(B). The acquisition cost of an existing qualified low-income housing project is clearly an intermediary cost and has not been changed.

STATUTORY AUTHORITY: 30-A MRSA §§4741(1) and 4741(14), Section 42 of the Code.
EFFECTIVE DATE: June 25, 1990

BASIS STATEMENT: The rule is being amended to conform the Authority's allocation process to recent changes in federal law made by the Omnibus Budget Reconciliation Act of 1990 and to make certain procedural changes to facilitate the allocation process. Four people attended the public hearing on the amendments. Two people testified to ask questions about the program. No comments or suggested changes were made. No written comments were received during the comment period.

STATUTORY AUTHORITY: 30-A MRSA §§4741(1) and 4741(14), Section 42 of the Code.
EFFECTIVE DATE: March 6, 1991

BASIS STATEMENT: The rule is being amended to make certain procedural changes in the allocation process consistent with the extension of the program into 1992. Two people testified at the public hearing and three written comments were received during the comment period all addressing the same issue regarding the timing of the reservation cycles for 1992. In response to the comments and the special problems associated with the pending program expiration date on June 30, 1992, the Authority has amended the allocation process section by returning to four cycles per year and providing for three reservation cycles before June 30th for 1992 only.

STATUTORY AUTHORITY: 30-A MRSA §§4741(1) and 4741(14), Section 42 of the Code.
EFFECTIVE DATE: February 12, 1992

BASIS STATEMENT: The rule is being amended to allow applications for the portion of the 1993 state ceiling carried over from 1992 to be made in the last two 1992 reservation cycles rather than having to wait until 1993. The tax credit has become an integral component in the development of low-income housing in the State. The federal authorizing legislation dealing with the credit expired on June 30, 1992 resulting in a significant portion of the 1992 state ceiling shifting to the 1993 state ceiling. Congress has failed to date to re-enact the credit authorizing legislation which would reinstate the full 1992 state ceiling. All of the remaining 1992 state ceiling has been reserved for projects in the development pipeline and the Authority currently has several pending projects which propose significant low-income benefit but which need a reservation of tax credits now in order to proceed. The development of housing projects is extremely sensitive to delays in the development process and these pending projects have already been delayed by the lack of an extension of the credit. The Authority has determined that if tax credits from the 1993 state ceiling cannot be accessed immediately the pending projects will most likely fail resulting in the loss of low-income units and the loss of significant economic activity which would result from the construction of these projects. The Authority determines that this would result in an immediate threat to the public health, safety and general welfare. Therefore, these amendments are being adopted immediately by emergency adoption.

STATUTORY AUTHORITY: 30-A MRSA §§4741(1) and 4741(14), Section 42 of the Code.
EFFECTIVE DATE: September 24, 1992

BASIS STATEMENT: The rule is being amended to make changes in the application process, changes in the selection criteria, changes to the monitoring requirements necessitated by changes in federal law and to impose a limitation on the recognition of developer fees. No testimony was received at the public hearing and no written comments were received during the comment period.

STATUTORY AUTHORITY: 30-A MRSA §§4741(1) and 4741(14), Section 42 of the Code.
EFFECTIVE DATE: January 30, 1993

BASIS STATEMENT: The rule is being amended to reflect Congress' permanent extension of the low income housing tax credit program, add definitions for "total construction cost" and "total development cost", introduce new low income housing priorities identified in the Authority's Comprehensive Housing Affordability Strategies study, make changes by which potential tax credit projects are selected, and incorporate different standards to ascertain the reasonableness of developer fees and related costs. The Authority received one written comment on the amendments, submitted by Realty Resources Chartered ("RRC"). RRC generally believes that the amendments are drafted in such a way as to serve "as a catalyst for the construction of...much needed low income housing stock necessary in the State of Maine."

RRC also notes that, in its view, the Authority should collect a $1,000.00 fee either at the time of tax credit allocation or at the time of carryover allocation, but not at both. The Authority incurs considerable expense in connection with its administration of the tax credit program for the State of Maine. It believes that the fees are reasonable and justified in light of the unique functions administered at the time of initial credit allocation and at the time of carryover allocation. No change to the rule amendments are therefore, made.

During the public hearing, RRC expressed concern over whether the Section 8(D) of the amended Rule applies only to "Difficult development areas" or to all tax credit projects. The Authority intends to apply the fee and cost limitation standards enumerated in Section 8(D) to all tax credit projects, and not merely those constructed in Difficult to develop areas. Therefore, an appropriate modification is made to Section 8(D).

Other minor changes are incorporated for stylistic or grammatical reasons.

STATUTORY AUTHORITY: 30-A MRSA §§4741(1) and 4741(14), Section 42 of the Code.
EFFECTIVE DATE: February 5, 1994

BASIS STATEMENT: The rule is being amended to make the definition of Developer's fee more precise; create a new definition for "extremely low income" persons; allow for the carry forward of applications for the reservation of Credit when necessary; allow for the reservation of 1996 Credit in 1995 to maximize Project feasibility and viability; allow for the inclusion of developer fee in the calculation of Credit amount for projects to be located in certain high cost areas described in the Code; and provide for different scoring criteria for project selection.

The Authority received three written comments on the Rule amendments and several comments at the public hearing on the Rule amendments. A summary of the comments follows.

1. Comments from the representative of the Community Company, Augusta, Maine. First, the commentator requests that the per project limitation set forth in Section 8(B) be expanded to not only cover the current year's project allocation, but also cover the amount of Tax Credit for the subsequent year that is allocated to projects in the current year. The Authority must balance the allocation of a scarce resource with the need to maximize project feasibility and viability. The Authority feels that the limitation as currently expressed strikes the appropriate balance. Therefore, no change to the proposal is made at this time.

The commentator next requests that the Authority identify a new housing priority as Section 3(B)(4) that "empowers residents and creates a setting to prevent family violence through...participation of residents in... project-based and local networks of formal and informal social and economic support." The Authority believes that the type of housing the commentator identifies is already contemplated in Sections 3(A)(4) and 3(B)(5). The commentator suggests that this type of housing is specifically exemplified by "co-housing" arrangements and limited equity cooperative developments. Therefore, it is urged that the Authority give priority to these development vehicles in the scoring criteria set forth in Sections 7(G) and 7(H). The Authority believes that these development vehicles may qualify under the Rule as currently drafted so long as they satisfy all legal requirements for their formation and operation and so long as federal tax law allows them to utilize the Tax Credit.

The commentator next questions the need for Section 7(I). He argues that the Section unduly favors public housing authorities. The Section does not favor PHA's but instead, awards points to developers who serve <u>tenants</u> on PHA waiting lists, and not the PHAs themselves. Therefore, no change is made to the Rule.

2. Comments from the representative of the Wardwell Home for the Aging, Saco, Maine and comments from Mr. William Pierce of Augusta, Maine, an activist for persons with mental illness and disabilities. The Wardwell Home representative supports the Authority's proposal to reward developers who create housing for extremely low income residents. He also supports the Authority's proposal to extend the period of time to serve low income residents. The commentator specifically would like to see the non-profit set aside identified in Section 4(B) increased from 10% to at least 20%. The Authority. The Authority anticipates increased participation by qualified non-profit organizations in the Tax Credit program. The Authority will therefore, increase the set-aside for them to 20%.

The Wardwell Home representative would also prefer that applicable life / safety unit requirements be specifically included as an extraordinary project cost in Section 8(F). The Authority believes that the Section currently allows the Authority to include life / safety compliance costs so long as they are reasonable in amount for the type of proposed housing.

Lastly, Mr. Pierce and the Wardwell Home representative would like the Authority to include "respite centers" in the priority scheme set forth in Sections 3(A)(4) and 3(B)(5). Mr. Pierce is of the additional view that respite centers should be available to not only residents but also to others within the community to control street violence and offer "linkage" to the community. The Authority is of the view that the Rule allows almost any type of affordable housing development, including respite centers, if the organizational and operational requirements for the particular development vehicle are satisfied and so long as tax law authorizes the allocation of Credit for the intended purpose. Mr. Pierce's added concern is not intended to be addressed in the Rule.

3. Comments from the representative of the Housing Authority of the City of Westbrook, Westbrook, Maine. The commentator requests that the Authority defer a non-profit developer's payment of the Credit reservation fee so that 25% of the fee is payable at the time of Credit reservation and the balance is paid at the time of project loan closing. Federal tax law requires Credit applicants with projects placed in service in the current calendar year to access the current year's Credit. Tax Credits are allocated on a competitive basis. Given this, the applicant's payment of a non-refundable reservation fee is an incentive for the Credit applicant to move a project along so that Credit allocation takes place in the current calendar year.

The commentator next proposes a change in the proposed reservation cycles set forth in Section 5(D) to address year end workload problems at the Authority. The Authority agrees with the recommendation and therefore, changes the start date of the last reservation cycle from November 15 to October 1. No change is made to the 1995 reservation cycles.

Lastly, the commentator would like to see the 25% per project limitation set forth in Section 8(B) increased to 33% of the State ceiling. The Authority agrees with this recommendation since it optimizes the feasibility and viability for certain types of projects that, in the Authority's determination, attract a variety of funding sources, meet pressing housing priorities, and utilize a variety of affordable housing programs.

4. Comments from Mr. William Pierce. Mr. Pierce generally comments that he is entirely satisfied with the Rule as drafted. He inquires whether the Rule amendments impose minimum per unit size limitations. The Rule does not specify unit size limitations, but other building codes and requirements do. It should be noted that the Credit may only be used to develop Qualified Residential Rental Projects, which by federal tax law definition, must consist of complete living facilities inclusive of kitchen facilities and bathroom facilities.

STATUTORY AUTHORITY: 30-A MRSA §§ 4741(1) and 4741(14), Section 42 of the Code.

EFFECTIVE DATE: April 26, 1995

FISCAL IMPACT NOTE: The proposed amendments to the Rule will not impose any cost on municipalities or counties for implementation or compliance.

BASIS STATEMENT: The rule is being amended to eliminate the August funding cycle, to move the November funding cycle to October, to remove any limitation on the amount of the state ceiling eligible for reservation in any funding cycle, to delete the restriction that a single reservation cannot exceed 33% of the state ceiling and to delete or correct outdated language. A public hearing was held on March 19, 1996 at which no one attended. One written comment was received from Genie Nakell of York-Cumberland Housing Development Corporation advocating for the retention of a limitation on the portion of the annual ceiling which can be reserved in any given application cycle. The Authority continues to feel that placing an arbitrary limit on the amount of credits which can be reserved in any given cycle can unfairly delay quality projects while they wait for a subsequent cycle and possibly miss an entire construction season. Having the right to reserve the entire ceiling in any given cycle does not mean that is what will routinely occur. It simply provides reasonable discretion in prudently managing this scarce resource.

STATUTORY AUTHORITY: 30-A MRSA §§ 4741(1) and 4741(14), Section 42 of the Code.

EFFECTIVE DATE: April 24, 1996

BASIS STATEMENT: The rule is being amended to move the May funding cycle to June to make priorities and needs consistent with the Consolidated Plan, to simplify selection criteria language. A public hearing for comment on proposed amendments to the rule was held on December 17, 1996 at which four people attended. The Authority received two written comments on the Rule amendments and several comments at the public hearing. A summary of the comments and of the Authority's responses to these comments follows:

Section: 1 - A comment was made from Bill Shanahan of Realty Resources asking for a definition of a Binding Agreement. Response: A definition was included referencing a Section of the code.

Section: 3,A,B - A comment was made from Peter Roche, President of Maine Housing Investment Fund, suggesting we reconsider the need for continuing to distinguish between rehab and new construction in our assessment of housing priorities. Response: The Authority revisited the proposed language and found it consistent with the Consolidated Plan. Maine's housing stock is 7th oldest in the nation and it is more cost effective, in many cases to use subsidy for acquisition/rehab.

Section 5,D - A written comment was received from Bill Shanahan regarding the lateness of the information on the Rule and our funding programs. Response: The first round funding date was moved from Feb. 15 to Mar 1.

Section: 5, H - A comment was made at the public hearing from Marcia Brown of Liberty Group and written comment was received from Bill Shanahan of Realty Resources in regard to the change proposed for projects seeking tax exempt bond financing. They objected to the proposed language categorizing any project using tax exempt bond as federally assisted, and that more flexibility be granted in establishing a qualified basis and not preempting 9% credit. Response: The proposed amendments were deleted, with the intention that what is allowed under Section 42 will be our guide. Under Section 42 (i)2, the Code indicates that a project is treated as federally subsidized if the loan proceeds were used indirectly or directly with respect to the building, unless; a) the principal amount of the loan is deducted from the eligible basis, or b) in the case of a tax exempt obligation, the proceeds of the obligation is subtracted from the eligible basis.

Section: 6 C7 - Written comments were received from Bill Shanahan and Peter Roche, and a public hearing comment was made by Marcia Brown objecting to the specificity of an "experienced tax credit syndicator", and the requirement of "identifying all costs" at time of application. Response: Suggested language of an "Accredited investor" was defined and included. The requirement for "identifying all costs" was deleted in this section and added in the allocation section.

Section 6 C9 - Written comment was received from Bill Shanahan objecting to the requirement of providing a support letter at time of application from a community. Response: The language was changed to require a notification be sent to the community, a copy to be included in the application packet.

Section 7 A-J - Written comments were received from Bill Shanahan and Peter Roche and a public hearing comment was made by Marcia Brown requesting more definition to the Selection Criteria. Response: More definition was added.

Section 8 E - Written comment was received from Bill Shanahan and Peter Roche and a public hearing comment from Marcia Brown was made objecting to the restriction of the identity of interest between the Owner and Contractor, and the changing of the percentage of recognized general contractor costs. Response: The proposed language regarding the identify of interest was deleted. The percentage of recognized contractor costs remains unchanged.

Section 11 A,3 - Written comment was received from Bill Shanahan, and a public hearing comment was made by Marcia Brown objecting to the requirement of a recorded deed to meet the carryover requirement. Response: The proposed language was deleted and the requirements of Section 42 will be our guide.

Section 13,D - Written comment was received from Bill Shanahan and Peter Roche, along with public hearing comments from Marcia Brown objecting to the requirement of a monitoring fee. Response: Language was included that allows for the Authority to waive all or part of the fee in the event the partnership enters into a compliance monitoring agreement acceptable to the Authority.

STATUTORY AUTHORITY: 30-A MRSA §§4741(1) and 4741(14), Section 42 of the Code.

EFFECTIVE DATE: February 16, 1997

BASIS STATEMENT: The rule is being revised to establish a set-aside for proposals with a commitment for funding from Rural Housing Services; to establish a set-aside for proposals with a service commitment from the Maine Department of Human Services' 1999 Assisted Living Funds; to establish the maximum amount of tax credit that may be allocated to a single project; to give priority to projects serving persons with special needs; to give priority to projects in higher need areas; to add to the reporting and inspection requirements; and to make clarifications, updates, and grammatical changes.

Matthew Smith of Community Concepts, Inc., opposed the awarding of points for neighborhood revitalization due to a concern that rural towns often do not have a town center and would, therefore be penalized by this criteria. Mayor Lee Young of the city of Auburn supported the awarding of these points for neighborhood revitalization. Under Section 7.E.3., rural projects may secure points by including "without limitation, plans to attract commercial development to the area, to increase employment opportunities for residents, to implement social services for residents, or to improve schools in the area" and would, therefore, not be penalized by this criterion.

Two comments, one from Matthew Smith of CCI and another from Joanne Troy of the Maine Housing Investment Fund, suggest that awarding points for physical plant amenities in Section 7.A.2. may penalize small rural projects due to a small project's inability to support these costs, particularly the cost of daycare facilities. A daycare facility is cited solely to provide an example of a physical plant amenity that is appropriate to a population. There is no requirement that a small scattered site project provide this amenity. Rather, sponsors are encouraged to look at amenities that are appropriate to their specific project. For the purpose of illustration, an amenity for a small, scattered site rural family project might be a computer room or play structures for children.

The Maine Housing Investment Fund ("MHIF") supports the points assigned to creating family projects with a minimum of 50% of the units as 3 bedroom apartments in Section 7.A.4. The MHIF suggests this could be further improved by setting an implicit ceiling on the number of family units being added to a community by a project. We agree. This concern is addressed through the creation of a maximum amount of tax credits that a single project may receive.

The Maine Housing Investment Fund supports the priority given to projects that benefit persons with special needs. The sponsor recommends that this criteria require that applicants demonstrate an identifiable source of funding for the provision of services appropriate to the particular special needs population. As a matter of practice, in the course of underwriting, we do require this source be identified. For the purpose of clarification, we added language under threshold requirements Section 6 C.6. to ensure projects can achieve feasibility.

Three comments were received on the issue of "maximum tax credit reservation." Matthew Smith of CCI recommended lowering the maximum to $250,000; the MHIF recommended lowering the maximum to $350,000; and the Sanford Housing Authority recommended going no lower than $400,000. This is the first year that we have proposed a maximum tax credit reservation. A lower limit will encourage more projects of smaller scale. The establishment of a maximum tax credit reservation means the credit is likely to benefit more communities. Setting the cap too low, however, could make moderate sized family or Assisted Living projects infeasible, especially if interest rates increase. After reviewing these comments, given the desire to create more projects of smaller scale and the need to balance this with allowing good projects to remain feasible, we amended the plan to include a maximum tax credit reservation of $400,000 in Section 4.E.

Two comments were submitted regarding nonprofit sponsorships of applications. The first comment, from Matthew Smith of CCI, states that the plan should give more weight to non-profit applications. The second comment, from the MHIF, suggests the plan should distinguish between different categories of nonprofit participation. The plan explicitly provides priority for nonprofits in two areas First, any applicant that has a tax exempt organization as part of its ownership receives points that a for-profit organization cannot receive. Second, under Section 4.B., 20% of the annual state ceiling is set aside for non-profits. Additionally, nonprofits historically are more likely to serve special needs populations, which is a priority within the plan that receives points. Skewing the plan unreasonably toward nonprofits could have an adverse impact on the low income citizens of the state. In the event for-profit entities discerned a bias toward non-profits with a resulting decrease in their probability of being funded, the number of applications would like decrease. Lower numbers of applications will result in diminished quality of projects selected. For this reason, there is not additional weighting toward non-profit applications. As for distinguishing between categories of non-profit participation, the authority looks to the controlling regulatory authority, the Internal Revenue Service, to provide guidance as to what constitutes bonafide participation by a non-profit organization.

Two comments, one from Matthew Smith of CCI and the other from the MHIF, support the priority for rehabilitation in Section 7.A.1. Matthew Smith of CCI made a comment that the Authority needs to recognize that some communities have limited housing stock suitable for multi-family development and that new construction can be a more effective alternative. The Authority recognizes that there are many needs. However, Maine has the fifth oldest housing stock in the country. Given this need, the priority for rehabilitation is warranted.

The MHIF proposed that rather than give points for tax credit training, we should eliminate the scoring criterion and instead require sponsors with successful applications either to demonstrate tax credit training or to complete a required training course. As this recommendation would allow us to accomplish the policy objective of improving the compliance skills of tax credit operators, the plan reflects this change in Section 9.H.

Two comments, from the MHIF and Matthew Smith of CCI, were received on the category of Lowest Intermediary Costs in Section 7.B., suggesting that the definition of total housing development costs exclude reserves, contingencies and developer fee loaned back. Excluding developer fees loaned back would be redundant to Part 2 of this criterion which already provides points for fee loaned back. Excluding contingencies from total costs would create incentives to shift the balance from hard costs to contingencies without changing total hard costs plus contingencies, thereby providing no public benefit nor mitigating credit risk. Exclusion of appropriate levels of reserves from total housing development costs, however, provides developers with the ability to fund reserves that improve credit quality without penalizing applicants in this competitive process. The Authority made this change.

We received comments from Gail Walker of the City of Auburn; Mayor Lee Young of the City of Auburn; Matthew Smith of CCI; Gregory Mitchell of the City of Lewiston; William Shanahan of Realty Resources, Joseph Cloutier of Realty Resources; and the Maine Housing Investment Fund responding to the Project

Location criterion in Section 7.E. The comments suggest considering three options: elimination of the category, substitution of an independent market study to determine the level of need, or reduction of the relative weight of the category. Additionally, the City of Lewiston stated that cities may sometimes have more accurate and current data than we are able to access. Federal regulations require the inclusion of a provision that allows for prioritizing this resource to areas with housing needs. Good public policy and our obligation to comply with federal regulations suggest that targeting this resource to the areas of greatest need makes sense and that this category should not be eliminated. The intent of providing an index is to allow the public a single standard that it can look to for assessing the relative housing needs of communities. With this approach, developers can look at an individual community in the context of the entire State rather than rely solely upon an independent study that focuses on an individual market. We would encourage all applicants to obtain the best market data that they can, but suggest that the best method for ranking the relative housing needs of markets is to provide a single standard. That said, given the compelling argument demonstrated through comments that, at a minimum, the weighting of project location is too severe, we are making a reduction in the total points for this category. Finally, to ensure that our data is not inaccurate as was stated in the comment of Gregory Mitchell of the City of Lewiston, we added language that allows cities and towns to make available data that would be pertinent to housing needs.

A comment was received from Robert Taylor, Jr., of Crockett, Taylor & Company stating that assisted living projects with a creative approach to funding should be allowed to compete in all rounds. This same comment suggests confusion exists about which assisted living projects might be eligible for the "Assisted Living set-aside." There is no prohibition against an assisted living project submitting an application in any round. Clarifying language has been added to Section 6D that applicants competing for the setaside will be ineligible unless they have received a commitment from DHS.

Two comments from Michael Eisensmith of the Sanford Housing Authority and the MHIF supported reducing the income targeting for Assisted Living Projects that use funding from the Department of Human Services in Section 4.D. Such an income targeting reduction requires a significant amount of subsidy that would be needed to subsidize rents. The Authority is not making this subsidy available. Applicants are not prohibited from securing additional non-Authority subsidy sources that may be used to buy down rents.

Three comments were received in support of the income targeting from Michael Eisensmith of the Sanford Housing Authority, Matthew Smith of CCI, and the MHIF. The Sanford Housing Authority offered that they like to serve people at 30% AMI, 40% AMI and 50% AMI. The comment from the MHIF also suggests allowing 40% AMI units be rented to tenants at 45% AMI. One of the principal benefits of the Low Income Housing Tax Credits is to provide subsidy that buys rents down for Maine's low income tenants. This plan eliminates the targeting of extremely low income persons, those at 30% AMI. This change is offset somewhat by allowing an increase in the number of units targeted to persons at 40% AMI in Section 7.D. Further increasing the eligible income allowed to occupy a unit would mean that these apartments would not benefit the intended beneficiaries, Maine's lowest income citizens.

Comments from Michael Eisensmith of the Sanford Housing Authority and Joanne Troy of the MHIF recommended that the extended low income use period be lengthened to either 99 years or perpetuity. This is the period for which the developer pledges irrevocable low income benefit. We amended the plan to extend this period to 90 years in Section 7.C.

STATUTORY AUTHORITY: 30-A MRSA §§4741(1) and 4741(14), Section 42 of the IRC

FISCAL IMPACT OF THE RULE:
The sale of the low income housing tax credits will raise approximately $10 million, which must be used to develop apartments for low income people. The proposed amendments will not impose any costs on municipalities or counties for implementation or compliance.

EFFECTIVE DATE: January 12, 1999

BASIS STATEMENT: The rule is being revised to reduce the set-aside for Assisted Living from $500,000 to $300,000; to allow for re-allocation of set-asides if no qualified applications are received; to update the section of the rule concerning high, medium, and low need areas; and to make clarifications, updates and grammatical changes.

MSHA received no comments on the amendment.

STATUTORY AUTHORITY: 30-A MRSA §§4741(1) and 4741(14), Section 42 of the IRC

EFFECTIVE DATE: January 9, 2000

BASIS STATEMENT. The Rule is being amended as follows: to add single-room occupancy housing as a housing priority; to establish a set-aside for single-room occupancy housing; to clarify that extended low income housing commitments will obligate owners to comply with the commitments made by the owners in their tax credit applications for which they were awarded points in the selection process; to require tax credit projects to comply with the State's growth management law; to clarify that priority is given to projects that demonstrate a preference, rather than a set-aside, for persons with special needs; to clarify that priority is given to projects with 3-bedroom low income units; to establish leveraged funds as an independent scoring criteria separate from lowest intermediary costs and to give priority to below market financing commitments within the leveraged funds criteria; to establish a separate market need ranking for assisted living proposals; to establish minimum requirements for proposals to receive priority for nonprofit participation; to increase the tax credit monitoring fee; to make the reporting and inspection requirements consistent with recent changes to federal law; and to make updates, clarifications and grammatical changes.

A public hearing was held on November 21, 2000 to receive comments on the proposed changes to the Rule. Seven members of the public testified at the public hearing, six of which provided written copies of their testimony. The Authority also received four written comments on the Rule. A summary of the testimony and comments and the Authority's responses follow.

Section 3.B. Mark Adelson of the City of Portland ("City of Portland") suggested listing SRO Housing as a housing priority under the Rule.

Response: The Authority added SRO Housing as a housing priority under Section 3.B. of the Rule.

Section 4.D. The Authority received comments from Larry Gross of Southern Maine Area Agency on Aging ("SMAAA") and Dana Totman of York-Cumberland Housing Development Corporation ("YCHDC") supporting the set-aside for assisted living projects. William Caselden of Great Bridge Properties ("Great Bridge") suggested that the Authority should use the assisted living set-aside for senior housing if the Department of Human Services does not provide service funds for assisted living projects in 2001.

Response: If the assisted living set-aside is not used, in whole or in part, the unused tax credits will be made available for all housing priorities identified in the qualified allocation plan, which includes, but is not limited to, senior housing.

Section 4.E. The Authority received several comments concerning the SRO Housing set-aside. John Anton of the Maine Housing Investment Fund ("MHIF"), the City of Portland and YCHDC support the set-aside. The City of Portland suggested changing 4.E.6. to require a capital subsidy from any municipality, not just the City of Portland. YCHDC and MHIF suggested eliminating the capital subsidy requirement. John Gallagher of the Westbrook Housing Authority ("WHA") and SMAAA suggested that the development of SRO Housing be allowed in municipalities outside the City of Portland. YCHDC, MHIF and WHA also urged the Authority to secure service funds for SRO Housing. YCHDC suggested eliminating Section 4.E.4. of the Rule, which requires SRO Housing to be located in a QCT or DDA.

Response: The Authority eliminated section 4.E.6. of the Rule, which requires a capital subsidy from the City of Portland. We recognize the limitations of requiring 50% of a project to be in a QCT or DDA. However, in an effort to make efficient use of scarce subsidy, it is necessary to have the additional tax credits provided by a basis boost from locating the project in a QCT or DDA. The Authority does not have a resource for service subsidy for SRO Housing within its control. We have and will continue to discuss the need for service subsidy for SRO Housing with the Department of Human Services.

Section 6.B. Two comments were received concerning the requirement that recipients of tax credits enter into an extended low income housing commitment agreement. MHIF supports the changes made by the Authority to clarify that the extended low income housing commitment agreement will obligate a tax credit recipient to comply with the commitments made in its application for low-income housing tax credits. John Hodge of Brunswick Housing Authority ("BHA") suggested that applicants should receive a draft of the extended low-income housing commitment agreement prior to submitting an application for low-income housing tax credits.

Response: The Authority is happy to provide the form extended low-income housing commitment agreement to anyone upon request; however, the specific obligations of a recipient of tax credits under the extended low income housing commitment agreement will depend in large part on the commitments made in its application for low-income housing tax credits, e.g. the low-income targeting and extended use period.

Section 6.C.3. A comment was received from Great Bridge suggesting that the Authority should permit an applicant for low-income housing tax credits to form a limited partnership after the applicant is awarded tax credits to avoid the expense and time incurred by unsuccessful applicants in establishing limited partnerships.

Response: The current qualified allocation plan does not require applicants to form limited partnerships prior to submitting an application for low-income housing tax credits. The limited partnership must be established prior to a reservation of low-income housing tax credits.

Section 7.A.1. and Section 7.B. A comment was received from YCHDC suggesting that new construction projects, rather than projects involving rehabilitation, should receive priority under the Rule and, consistent with this proposed change in priority, the Lowest Intermediary Costs criteria should consider new construction costs only and not rehabilitation costs.

Response: The priority given to rehabilitation in the selection criteria is consistent with MSHA's consolidated plan. Maine has the seventh oldest housing stock in the nation and it is more cost effective, in many cases, to use subsidy for acquisition and rehabilitation than new construction.

Section 7.A.2. Three comments were received concerning the priority given to Projects that provide physical plant amenities. Matthew Smith of Community Concepts, Inc. ("CCI") urged the Authority to remove section 7.A.2. of the Rule because the selection criterion may penalize smaller, scattered site rural projects. MHIF recommended making physical plant amenities a threshold criterion based on the scale of the project. WHA commented that offering amenities in an application may lead to problems when finalizing the deal if not clearly articulated and funded at the time of application.

Response: Sponsors are encouraged to offer physical plant amenities that are appropriate to a Project with regard to size, location and population. The Authority revised Section 7.A.2 of the Rule to describe the methodology applied when scoring applications based on this criterion.

Section 7.A.3. Two comments were received concerning the priority given to applications that set aside 20% of the units in Projects for persons with special needs. CCI and MHIF suggested that section 7.A.3. of the Rule be revised to provide a clear definition of what is meant by "reserve" and "set-aside". MHIF strongly encouraged a definition that reflects a marketing priority rather than an absolute restriction.

Response: We agree and have revised section 7.A.3 of the Rule to more accurately reflect our intention that applications are only required to provide a preference, rather than a set-aside, for persons with special needs.

Section 7.A.4. and 7.E. The City of Portland commented that the Rule does not allow mixed income family housing to be competitive.

Response: The Authority awards points for family housing under Sections 7.A.4. and does not require that any family project be 100% low-income. Family and mixed income projects have been successful in recent years, including 2000.

Section 7.C.1. A comment was received from Great Bridges that the Leveraged Funds selection criteria is unclear about how leveraged funds are compared among competing projects.

Response: The Authority compares Projects based on the total amount of leveraged funds committed to each Project. See changes to Section 7.C.1. of the Rule clarifying this issue.

Section 7.C.2. Three comments were received concerning the priority given to applications that contribute 50% or more of the developer fee to a Project. CCI recommended that the Authority eliminate the selection criteria under section 7.C.2. because it is counter productive to the goal of increasing capacity of nonprofit developers in the State. WHA commented that leaving most of the fee on the table with no expectation of being able to pay it back in the 10-year period required by the IRS causes problems for the developer. SMAAA supports encouraging the use of the developer fee as a source of funding for Projects.

Response: The Authority encourages leaving the developer fee in a deal in order to make more efficient use of the Authority's scarce subsidy resources. For example, the contribution of $250,000 of a $500,000 developer fee to a Project means the Authority will use $250,000 less in subsidy to fund the Project. This practice allows the Authority to extend its subsidy and help more Maine citizens. The Authority is pursuing efforts to enhance nonprofit capacity with strategically invested resources in 2001.

Section 7.D. YCHDC recommended changing section 7.D. to give one point for each year beyond 30 years which would preserve the low income units for 45 years, noting that a 90-year commitment is costly to monitor and leads to the deterioration of the physical condition of Projects.

Response: The 90-year targeting assists future administrations in keeping the units available for low-income citizens of the State. The Authority understands that there may be demand to re-capitalize these deals in the future and has established preservation programs to address those demands.

Section 7.E. Seven comments were received concerning the low-income targeting. CCI and WHA support targeting the lowest income renters, but believe that a different methodology should be used. Tom MacDonald of Realty Resources ("Realty Resources"), YCHDC, MHIF and Ted Wilkinson of The Housing Partnership ("THP") commented that the low-income targeting is too restrictive and causes marketing difficulties, vacancies and operational deficiencies. YCHDC and WHA suggested allowing persons with incomes at or below 45% of area median income ("AMI") to rent 40% AMI units. BHA wants to be able to rent to any person with income at or below 50% AMI. YCHDC suggested changing the selection criteria to award 15 points to projects that target 100% of the units to persons at or below 60% of AMI and to award 30 points to projects that target 50% of the units to persons at or below 50% AMI and 50% of the units to persons at or below 60% of AMI. Realty Resources and CCI suggested a method of indexing or averaging to allow greater flexibility in the targeting. MHIF, CCI and THP suggested providing project-based rental subsidy for the 40% AMI and 50% AMI units.

Response: We reviewed occupancy and financial records of all low income housing tax credit projects placed in service since the Authority established the low-income targeting criteria in the Rule in 1996. The projects show an average vacancy rate of less than one percent as of September 30, 2000. Seven of the nine projects have been occupied for one full fiscal year. All but one are operating at a near breakeven cash position or better, and all but one have adequate reserves to cover any operating deficits. Based on the review, the Authority is not compelled to make any changes to the income targeting at this time. The Authority will convene a working group in 2001 to evaluate the effect of the income targeting on the operational viability of low income housing tax credit projects and indexing.

The Authority has not had the resources necessary to establish and maintain a State rental assistance program. The Section 8 Housing Choice Voucher Program provides rental assistance to over 3,300 households in areas not served by local housing authorities. Over 1,000 households are on the Authority's waiting list for vouchers. The primary purpose of the program is to allow people to choose where they want to live. Until recently in southern Maine, participants in the program have not experienced any difficulty locating units. So, there is no benefit to program participants to provide project-based rental assistance. In addition, federal regulations require any project-based rental assistance to be made available on a competitive basis. Limiting project-based rental assistance to certain projects would be difficult.

Section 7.E. The Authority received comments from Realty Resources concerning the inconsistency between MSHA's underwriting criteria for assisted living projects and the tiered income strata used by the Department of Human Services Bureau of Elderly and Adults Services ("BEAS") to determine funding for service providers at assisted living projects. The Authority requires 100% of the units in assisted living projects to occupied by individuals with income at 60% AMI. BEAS requires 10% of the units to be occupied by individuals with income at or below 30% AMI and 30% of the units be occupied by individuals at or below 40% AMI. According to Realty Resources, this inconsistency affects the financial viability of assisted living projects. Realty Resources urges MSHA to work closer with BEAS to keep assisted living projects viable.

Response: The issue is that assisted living projects receive a sufficient amount of subsidy to operate the projects and provide support services to the residents. The Authority is working with BEAS to address this issue. The Authority and BEAS have convened a working group to evaluate the operational viability of assisted living projects.

Section 7.F. Great Bridges commented that it is impossible to score 15 points under the Project Location selection criteria because projects cannot be awarded points for both senior housing and family housing.

Response: The Project Location selection criteria includes more than the need criteria set forth in Section 7.F. The selection criteria also includes 3 points for projects that are part of a neighborhood revitalization plan and 2 points for projects that demonstrate preferential treatment for persons on public housing and Section 8 waiting lists. The total number of points for which a project can possibly score under the Project Location criteria is 15 points. See changes to Section 7.F. of the Rule clarifying this issue.

Section 7.F.1. Three comments were received concerning the assisted living set-aside subsidized housing ranks. SMAAA supports the new assisted living housing ranks. YCHDC testified that the rankings are flawed and suggests that the Authority rely on the need for an assisted living project demonstrated in the tax credit application. BHA testified that the rankings should be based on the need for assisted living units only, not all subsidized units in hospital catchment areas, including without limitation, residential care units.

Response: The Authority and BEAS evaluated the need for assisted living, as defined in 22 M.R.S.A. Chapter 1165 and regulations promulgated pursuant thereto (which include residential care beds), in hospital catchment areas and ranked said areas based on this analysis.

Section 7.F.1. Comments were received from YCHDC, WHA and MHIF that the statewide subsidized housing ranks for senior and family housing are not accurate and should be based on absolute numbers rather than relative need among the areas. YCHDC suggested an alternative method for scoring senior and family housing need as follows. For senior housing, the Authority should award 10 points for areas that need greater than 1000 units, 5 points to areas that need between 500 and 1000 units and no points for areas that need less than 500 units. For family housing, the Authority should award 10 points for areas that need greater than 400 units, 5 points for areas that need between 200 and 400 units and no points for areas that need less than 200 units.

Response: The Authority does not use absolute numbers, because doing so would effectively limit the availability of the low-income housing tax credit program to Projects in the southern part of the State. The current statewide subsidized housing ranks for senior and family housing are based on census projections from 1997. In 2001, the Authority will reanalyze these rankings based on 2000 census projections and will consider using additional criteria, e.g. rents and economic development, to better reflect trends in housing need.

Section 7.G.1. Great Bridges suggested that the Authority expand the Sponsor Characteristics selection criteria to include an applicant's prior experience with developing tax credit projects in states other than the State of Maine.

Response: We agree. See changes to Section 7.G.1 of the Rule.

Section 7.G.3. The Authority received comments from CCI, SMAAA and MHIF supporting the Authority's clarification of the nonprofit participation scoring criteria. CCI suggested that the criteria should be a threshold application requirement for all nonprofits participating in the low income housing tax credit program. SMAAA suggested that the Authority give greater weight to the nonprofit participation criteria. MHIF recommended that Section 7.G.3.f. should be removed to avoid prescribing the parameters of joint ventures between for-profit and nonprofit entities. John Kaminski of Drummond, Woodsum & MacMahon suggested that wholly-owned subsidiaries of qualified nonprofit organizations should be deemed qualified nonprofit organizations in accordance with the Internal Revenue Code for purposes of the nonprofit participation selection criteria.

Response. The Authority eliminated the requirement that a nonprofit must own 50% of the general partner and receive 50% of the developer fee, but still require nonprofit ownership in the general partner(s) of a limited partnership owner and require the nonprofit to be a managing general partner. We agree with Mr. Kaminski's comment and added Section 7.G.3.g. to the Rule.

Section 8.E. Realty Resources recommended that the Authority increase the developer fee limit to 20% and eliminate the "extenuating situations" language.

Response: The Authority has adopted the recommended NCSHA standards.

Tax credit monitoring fees. Realty Resources and WHA recommended that tax credit monitoring fees should be a tax credit eligible expense.

Response: The Authority is exploring this recommendation and will consult with various tax credit professionals and representatives from other states to determine the most suitable course of action.

Development of the Rule. Two comments were received regarding the process for developing the Rule. CCI and MHIF suggested that the Authority should solicit input concerning the design of the Rule from the affordable housing development community earlier in the process. MHIF made two additional recommendations. First, the Authority should provide for longer timeframes between issuing drafts of the Rule and holding meetings to discuss the drafts. Second, the Authority should post all drafts and the final Rule, the tax credit application, the list of applicants and the list of tax credit recipients on the Authority's web site.

Response: The Authority appreciates the comments. We will hold a meeting next year before developing the Rule for 2002 to accept input from the affordable housing development community, service providers and low-income tenants and representatives. Also, we will explore adding the items MHIF suggested should be available on the Authority's web site.

STATUTORY AUTHORITY: 30-A MRSA §§4741(1) and 4741(14), Section 42 of the Code

FISCAL IMPACT OF THE RULE:
The sale of the low income housing tax credits will raise approximately $10 million in equity, which will be used to develop housing for persons of low income. The proposed amendments will not impose any costs on municipalities or counties for implementation or compliance.

EFFECTIVE DATE: January 13, 2001

BASIS STATEMENT: The Authority is amending the Rule to comply with recent changes to Section 42 of the Internal Revenue Code, which became effective January 1, 2001, as follows: (i) to modify the formula for calculating the state housing credit ceiling under Section 42 of the Code; (ii) to add a comprehensive market study of the housing needs of low-income persons in the area to be served by a tax credit project to the threshold application requirements; (iii) to establish projects that provide for tenant ownership upon the expiration of the extended use period as a new selection criteria; (iv) to give preference to tax credit projects that contribute to a community revitalization plan and are located in a qualified census tract over such projects that are not located in a qualified census tract; and (v) to make updates, clarifications and grammatical changes.

A public hearing was held on March 27, 2001 to receive comments on the proposed changes to the Rule. Two members of the public testified at the public hearing. The Authority did not receive any written comments on the Rule. A summary of the testimony and the Authority's response follows.

John Gallagher of the Westbrook Housing Authority expressed concern with the process of adopting the changes to the Rule. He did not receive notice of the changes to the Rule until three days after the tax credit applications were due. He believes that the Authority should have discussed the proposed changes with the developer community to determine whether they were material before initiating the Rule. He testified that the developer community continues to view the tax credit allocation process as a closed process and encourages MSHA to hold open meetings with the developer community to discuss any future changes to the tax credit qualified allocation plan. Tom MacDonald of Realty Resources agreed with Mr. Gallagher and encourages MSHA to convene the tax credit working groups early in 2001 to involve the developer community in the development of the 2002 tax credit qualified allocation plan.

Response: The Authority appreciates and understands the concerns of the persons who testified. Unfortunately, the timing of the federal law changes and the Authority's determining how to effect the changes in the Rule with no material affect on the allocation of 2001 tax credit did not allow for discussions with interested parties before initiating the Rule. The developer community was aware of the changes to federal law which became effective January 1, 2001 and the Authority notified the developer community that Authority would be amending the Rule in accordance with the federal law changes in the Rental Loan Program/Low Income Housing Tax Credit Program Guide. The changes did not have any material affect on the allocation of 2001 tax credit in the March round.

The Authority will be convening the working groups to discuss the tax credit qualified allocation plan in May, 2001 to receive input from all interested parties, including the developer community, on the development of the 2002 qualified allocation plan.

STATUTORY AUTHORITY: 30-A MRSA §§4741(1) and 4741(14), Section 42 of the Code

FISCAL IMPACT OF THE RULE:
The sale of the low income housing tax credits will raise approximately $15 million in equity, which will be used to develop affordable housing for low-income persons. The proposed amendments will not impose any costs on municipalities or counties for implementation or compliance.

EFFECTIVE DATE: July 7, 2001

BASIS STATEMENT: The Rule is being amended as follows: to modify the housing priorities to target very low income persons; to establish a priority for projects located in rural areas of the State; to modify the formula for calculating the state housing credit under Section 42 of the Code; to eliminate the set-aside for projects financed by Rural Housing Services; to create a set-aside for projects located in rural areas of the State; to require applicants competing for set-asides to maximize points in the long-term affordability and low-income targeting scoring criteria; to remove the obligations of an applicant to provide physical plant amenities and services committed in the applicant's low income housing tax credit application from the extended low income housing commitment agreement and to require the applicant to execute a separate written agreement obligating the applicant to provide such physical plant amenities and services; to require applicants to pay the application fee for any application re-submitted or carried over from one credit year to the next credit year; to clarify the scoring criteria for physical plant amenities and related services and to exclude services paid by tenants from eligibility for points under this criteria; to eliminate the lowest intermediary costs scoring criteria; to make service funding commitments ineligible for points under the leveraged funds scoring criteria; to specify acceptable evidence of value of property donated or pledged to a project under the leveraged funds scoring criteria; to modify the affordability criteria to target very low income persons and to provide that projects applying for financing from Rural Housing Services will receive maximum points under this criteria for complying with the affordability requirements of the applicable Rural Housing Services program; to modify the market need criteria by establishing a very high need housing rank, updating the housing need ranks to reflect absolute need rather than relative need in the labor market areas, establishing separate housing need ranks for single-room occupancy projects, and identifying Native American tribal lands as very high need market areas; to specify the evidence required to qualify for points under the community revitalization scoring criteria; to revise the sponsor characteristics scoring criteria to award points to projects in which the general partner of the project owner has not been issued a Form 8823 pursuant to Section 42 of the Code in the past three years; to require an audit report on the schedule of projects costs instead of a cost certification upon project completion; to cap tax credit monitoring fees at $25,000 per project; to give applicants who receive an allocation of credit in the second half of the tax credit year six months from the date of carryover allocation to provide evidence that the applicant's basis in a project will exceed ten percent of the applicant's reasonably expected basis in the project at the end of the second calendar year following the calendar year in which the carryover allocation is made pursuant to Section 42 of the Code (the so-called "10% test"); to make tax-exempt funding available to projects financed under the Rural Housing Services 515 Program to enable them to access 4% automatic low-income housing tax credits; and to make updates, clarifications and grammatical changes.

A public hearing was held on November 27, 2001 to receive comments on the proposed changes to the Rule. Six members of the public testified at the public hearing, one of which also provided written testimony. The comment period was held open until December 7, 2001. The Authority received four written comments on the Rule. A summary of the testimony and comments and the Authority's response follows.

General. John Anton of the Maine Housing Investment Fund ("MHIF") testified that the Authority should simplify the scoring criteria and the application process to address the rudimentary purpose of the low income housing tax credit program, which is to encourage the development of affordable rental housing. The Rule should not address other housing needs, i.e. supportive service housing, for which other programs are available.

Response: The selection criteria in the Rule is consistent with Section 42(m) of the Code and the Authority's housing priorities as set forth in the Authority's consolidated plan. Section 42(m) of the Code requires most of the selection criteria set forth in the Rule, i.e. housing for tenant populations with special needs. Below is the Authority's response to more specific MHIF comments on the assisted living set-aside in Section 4.D. of the Rule and the special needs housing selection criteria in Section 7.A.3. of the Rule.

Section 4.C. and Section 7.D.3. Mike Grondin of United States Department of Agriculture – Rural Development ("RD") expressed appreciation for the rural housing set-aside and the affordability selection criteria in Section 7.D.3., which awards the maximum points available under the criteria to projects that meet the affordability requirements of the RD programs. Federal funding is limited and projects in Maine were unlikely to receive RD funding without these provisions in the Rule.

Dana Totman of York Cumberland Housing Development Corporation ("YCHDC") suggested that the Authority should eliminate the rural housing set-aside. YCHDC believes that the tax credit is stretched thin in the State, a disproportionate number of tax credit projects are located in rural areas of the State and the greatest housing need is for new production of units in the southern part of the State.

Response: The housing market rankings in the project location selection criteria in Section 7.E.1. of the Rule, as modified this year, reflect a shift in need from the rural areas of the State to the larger metropolitan areas of the State, particularly the southern metropolitan areas. For example, the need rankings for family housing in Portland, Kittery/York and Biddeford changed to very high, whereas, the need rankings for family housing in Calais, Madawaska, Millinocket, Greenville and Patten/Island Falls changed from high to low.

Section 4.D. MHIF commented that the Authority should not use the low income housing tax credit, a scarce housing resource, to develop assisted living facilities. Additionally, MHIF is concerned that housing developers do not have the capacity to operate assisted living facilities.

YCHDC commented that the State is not likely to fund assisted living services, so the assisted living set-aside will not be used. YCHDC suggests applying the set-aside to congregate care facilities under the HUD 202 Supportive Housing for the Elderly Program or the Rural Development Section 515 Program rather than putting the unused set-aside in the general tax credit pool. YCHDC further suggests that the Authority consider creating a set-aside for congregate care facilities, because less service funding is required and tax credit investors are more comfortable with congregate care facilities being treated as a housing model rather than a medical model.

Clayton Cleaves of the Pleasant Point Passamaquoddy Reservation Housing Authority ("PPPRA") suggests that the Authority should allow projects, which are eligible for federal funding for the same purpose as the assisted living service funds made available by the Maine Department of Human Resources, to compete for the assisted living set-aside in Section 4.D. of the Rule.

Response: Current Maine demographic trends indicate that persons aged 85 and above are one of the States' fastest growing age groups. This trend is expected to increase significantly during the next 35 years. Policy makers recognize that new cost-effective solutions need to be identified to serve the growing number of low-income frail elders. In recognition, the Authority in conjunction with the State of Maine Bureau of Elder and Adult Services created an assisted living set-aside to respond to documented housing needs for housing and service programs for low-income frail elders.

The Authority agrees that assisted living projects are more complicated to develop and manage than independent apartment housing. However, 6 of the 7 tax credit assisted living projects have been constructed by developers who recognize the complexities of delivering assisted living services and have prudently contracted with experienced non-profit service providers to manage and deliver resident services. These projects while working on very limited operating budgets are successfully meeting the housing and assisted living service needs of their residents.

If the assisted living set-aside is not used, in whole or in part, the unused tax credits will be made available for all housing priorities identified in the Qualified Allocation Plan, which includes, but is not limited to, congregate care facilities. The Authority, working with HUD, has created a pool of subsidy for projects financed under the HUD 202 Supportive Housing for the Elderly Program. The Authority amended Sections 4.C. and 7.D.3. of the Rule in collaboration with RD to develop housing under the Rural Development Section 515 Program.

See revisions to Sections 4.D., 5.D. and 7.D.2 of the Rule to allow projects, which receive a commitment of federal assisted living service funds for a minimum of 15 years, to compete for the assisted living set-aside.

Section 4.F. YCHDC suggests that the Authority should increase the maximum credit restriction under Section 4.F. of the Rule to reflect the increased cost of housing development in the State and the increase in the State tax credit ceiling the Authority received this year.

Response: Traditionally, the Authority has received applications for more tax credit than is available for allocation. In order to meet the variety of housing needs around the State with this limited resource, the Authority established a cap to assure that several projects may be funded. In 2001, the Authority was able to create feasibility in 8 projects using a combination of tax credit equity, subsidy and debt with the existing $400,000 cap in place.

Section 6.B. Sarah Tracy, as a member of the general public, commented that the Authority should not remove physical plant amenities and services pledged under the project characteristics selection criteria in Section 7.A.2. of the Rule from the extended use agreement. The extended use agreement is an effective enforcement tool against noncompliance with the commitments made by a developer in its tax credit application for which the developer was awarded points during the selection process.

Response: Through the publicly-noticed working group meetings on this Qualified Allocation Plan, the Authority heard from the developers and investors that the inclusion of services and amenities in the extended use agreement threatens a project's ability to receive equity from the investor community. In response, the Authority removed amenities and services from the extended use agreement, but requires developers to agree to provide services and amenities pursuant to a separate written agreement, which will be recorded in the appropriate registry of deeds and be secured by a mortgage if the Authority provides debt or subsidy financing for the project.

Section 6.C. PPPRHA commented that projects located on tribal lands should not be required to comply with the requirements of 30-A M.R.S.A. § 4349-A pursuant to Section 6.C. of the Rule, because tribal lands are not subject to the State's comprehensive planning laws.

Response: Projects located on tribal lands are not subject to the requirements of Section 6.C. of the Rule, because, as PPPRHA pointed out, tribal lands are not subject to the State's comprehensive planning laws. Section 6.C. of the Rule is only applicable to projects that are subject to 30-A M.R.S.A. § 4349-A.

Section 7.A.1. The Authority received four comments concerning the selection criteria in Section 7.A.1., which gives priority to projects which involve the rehabilitation of existing housing. MHIF, John Gallagher of the Westbrook Housing Authority ("WHA") and Wendy Cherubini of the City of Portland ("Portland") suggested that the Authority should eliminate the scoring priority for rehabilitation of existing housing stock to create a level playing field for new construction and rehabilitation projects, because increasing the supply of rental housing, particularly in southern Maine, is a pressing housing need in the State. YCHDC suggested that the Authority should change the selection criteria to give priority to new construction projects.

Response: The Authority acknowledges the need for new rental housing in the State and, in response, has created programs to finance new construction of rental housing in Maine, e.g. the Maine State Housing Authority Rental Loan Program Workforce Housing RFP. The preservation of existing housing stock has historically and continues to be a housing priority at the Authority consistent with the Authority's consolidated plan. Maine has the seventh oldest housing stock in the nation and it is more cost effective, in many cases, to use subsidy for acquisition and rehabilitation of existing housing than new construction. In 2000 no tax credits were allocated to rehabilitation projects. In 2001 only $801,452 of the total $2,000,000 in tax credits available were allocated to rehabilitation projects.

Section 7.A.2. MHIF suggested that the Authority should eliminate the scoring priority for projects that offer physical plant amenities and services and should make physical plant amenities and services a threshold design criteria for large-scale projects.

Response: Developers are encouraged to offer physical plant amenities that are appropriate to a Project with regard to size, location and population.

Section 7.A.3. MHIF supports housing for persons with special needs, but expressed concern that the special needs housing selection criteria in Rule may not be the most appropriate vehicle.

Response: Section 42(m)(1) of the Code requires housing credit agencies to include selection criteria for special needs housing in Qualified Allocation Plans.

Section 7.B.1. Ms. Tracy suggested that the leveraged funds selection criteria in Section 7.B.1. of the Rule should include project-based subsidy.

Response: The leveraged funds selection criteria is designed to award developers who leverage below market capital funds or capital equity, not operating subsidy, e.g. service funds and rental subsidy. See further clarification to Section 7.B.1. of the Rule.

Section 7.B.2. Laurence Gross of Southern Maine Agency on Aging ("SMAA"), MHIF, WHA and YCHDC encouraged the Authority to give incentives to nonprofits to develop affordable housing. MHIF and WHA suggested that the Authority should eliminate the developer fee selection criteria under section 7.B.2. of the Rule to increase nonprofit capacity. YCHDC suggested that MSHA should award maximum points under the developer fee selection criteria to nonprofits who pledge greater than 25% of the developer fee to a project.

Response: The Authority encourages leaving a majority of the developer fee in a deal in order to make more efficient use of the Authority's scarce subsidy resources. For example, the contribution of $251,000 of a $500,000 developer fee to a Project means the Authority will use $251,000 less in subsidy to fund the Project. This practice allows the Authority to extend its subsidy and help more Maine citizens.

The Authority continues to pursue initiatives to enhance nonprofit capacity in the State. For example, the citizens of the State recently approved the issuance of a $12,000,000 general obligation bond. A portion of the proceeds of the bonds will be used to improve nonprofit capacity to develop affordable housing in the State.

Section 7.D. MHIF supports the changes that the Authority made to the affordability selection criteria set forth in Section 7.D.1. of the Rule.

Ms. Tracy commented that the percentage of units in assisted living facilities that must have rents set at 60% of area median income to receive the maximum points under the affordability selection criteria in Section 7.D.2. is unclear. Ms. Tracy further commented that developers, who pledge deeper income targeting than the targeting required to receive the maximum amount of points under the affordability selection criteria in Section 7.D., should receive additional points.

Response: See revisions to Section 7.D.2. which clarify that all units in assisted living facilities must be rent-restricted.

The Authority encourages developers to offer deeper income targeting than is required under the affordability selection criteria. Nevertheless, the income targeting set forth in the selection criteria is based upon the information that the Authority received in the working group meetings regarding this Qualified Allocation Plan and is consistent with the affordability requirements under the Federal Home Loan Bank of Boston Affordable Housing Program.

Section 7.E. MHIF and YCHDC support the Authority's assessment of need, particularly its recognition of absolute need, in the project location selection criteria in Section 7.E. of the Rule. MHIF and YCHDC encourage the Authority to further refine the needs assessment based on the 2000 census data.

Response: The 2000 census data was not available when the needs assessment, which supports the project location selection criteria for family and elderly housing, was conducted. The project location criteria is based on data from Claritas' projection of census data. The Authority intends to use the 2000 census data to update the selection criteria in the 2003 Qualified Allocation Plan.

Section 7.F. MHIF commented that the total maximum points that may be awarded under the sponsor characteristics selection criteria in Section 7.F. of the Rule should be 10 points.

Response: See a revision to Section 7.F. of the Rule which increases the maximum points that may be awarded under this Section from 8 points to 10 points.

Section 7.F.3. SMAA urged the Authority to distinguish between mission-driven nonprofits and nonprofit vehicles.

PPPRHA commented that tribal housing entities should be eligible for the points awarded under Section 7.E. of the sponsor characteristics selection criteria, because tribal housing entities serve the same role on tribal lands as qualified nonprofit corporations do in other rural areas of the State.

Response: The sponsor characteristics selection criteria in Section 7.F.3. of the Rule awards points to projects in which a nonprofit is a managing general partner of the owner of the project to prevent projects with token nonprofit involvement from receiving points.

A tribal housing authority may establish a qualified nonprofit corporation, as defined in Section 42(h)(5)(C) of the Code. The developer of a project located on tribal land that utilizes nonprofit participation in the project as contemplated in Section 7.E. of the Rule would be eligible for the points under that section.

Process for developing the Rule. MHIF, WHA, Portland, RD, YCHDC and Tom MacDonald of MacDonald & Associates expressed appreciation for the Authority's inclusive process for developing the Rule. MHIF suggested that the Authority should continue to solicit input concerning the design of the qualified allocation plan from the affordable housing development community earlier in the process, have continuous dialogue with the development community about the qualified allocation plan and share drafts of the qualified allocation plan as it is being developed, and provide for longer timeframes between issuing drafts of the Rule and holding meetings to discuss the drafts.

Response: The Authority appreciates the comments. Although not as involved as this year's process, the Authority will hold meetings next year before developing the qualified allocation plan for 2003 to accept input from the affordable housing development community, service providers and low-income tenants and representatives.

STATUTORY AUTHORITY: 30-A MRSA §§4741(1) and 4741(14) and Section 42 of the Code

FISCAL IMPACT: The sale of low-income housing tax credits will generate approximately $17,000,000 in equity, which will be used to develop affordable housing for low-income persons. The proposed amendments will not impose any costs on municipalities or counties for implementation or compliance.

EFFECTIVE DATE: January 20, 2002

BASIS STATEMENT: The Rule is being amended as follows: (i) To modify the formula for calculating the State Ceiling to include an inflation adjustment factor pursuant to the Code; (ii) to revise the SRO set-aside threshold criteria to eliminate the Project size limitation and the requirement that 50% of the units in the project be located in a Qualified Census Tract or Difficult to Developer Area; (iii) to provide that successful applicants who are awarded tax credit under the SRO set-aside will be eligible for project-based Section 8 rental subsidy if the Authority makes the resource available; (iv) to increase the maximum credit restriction; (v) to eliminate the February and October tax credit reservation cycles; (vi) to open the March tax credit reservation cycle to applications for the SRO set-aside; (vii) to allow applicants with a Binding Agreement (as defined in the Rule) who experience development cost increases resulting in an insubstantial increase in tax credits to request additional tax credit without applying in subsequent funding rounds; (viii) to require submission of the housing needs market study prior to an allocation of tax credits rather than at the time of application; (ix) to clarify that below market funding commitments must include certain financing terms (i.e. interest rate, amortization period, loan term and any security required) to be awarded points under the leveraged funds selection criteria; (x) to clarify that the value of donated property, of which only a portion will be used for the Project, will be prorated based on the square footage of the property attributed to the

Project; (xi) to reduce the percentage of the developer fee, which an applicant must pledge as a source of funds for the construction of the Project, to be awarded points under the leveraged funds selection criteria; (xii) to update the housing need ranks for assisted living projects; (xiii) to update and clarify the monitoring requirements in accordance with changes to the Code; and (xix) to make updates, clarifications and grammatical changes.

A public hearing was held on September 17, 2002 to receive comments on the proposed changes to the Rule. William E. Shanahan, Vice President of Maine Housing Investment Fund ("MHIF"), testified at the public hearing and provided his testimony in written form. The comment period was held open until September 27, 2002. The Authority received written comments on the Rule from Dana Totman, President of York Cumberland Housing Management Corporation ("YCH"), Douglas W. Bouchard, Executive Director of Shaw House ("Shaw House"), and Larry Gross, Chair of the Southern Maine Affordable Rental Housing Coalition and Executive Director of the Southern Maine Agency on Aging ("SMARHC"). A summary of the testimony and comments and the Authority's response follows.

General. MHIF and SMARHC commented that the tax credit allocation process should be streamlined and simplified to only address the development of affordable rental housing in Maine. MHIF suggested that the Authority simplify the application and exclude extraneous selection criteria not required by the Code, i.e. rehabilitation of existing housing stock, physical plant amenities, extended use period, community revitalization, and preference for persons with Section 8 vouchers. SMARHC suggested that the Authority eliminate the set-asides in Section 4.B. of the Rule and the project characteristic criteria in Section 7.A. of the Rule and amend the project location criteria in Section 7.C. of the Rule.

Response. The Authority is in the process of revising the application for tax credits. The selection criteria in the Rule are consistent with Section 42(m) of the Code and the Authority's housing priorities set forth in the Authority's consolidated plan. Section 42(m) of the Code requires most of the selection criteria set forth in the Rule, including criteria that address tenant populations with special needs (Section 7.A.3. of the Rule), public housing waiting lists (Section 7.E.3. of the Rule), tenant populations of individuals with families (Section 7.A.4. of the Rule), projects intended for eventual tenant ownership (Section 7.A.5. of the Rule) and community revitalization (Section 7.E.2. of the Rule). The Authority furthers responds to MHIF's and SMARHC's specific suggestions regarding Sections 4.B., 7.A.1, 7.A.2, and 7.C. below.

Section 4.B. SMARHC suggested that the Authority eliminate the set-asides for non-profits, rural housing, assisted living and SROs in Section 4.B. to streamline the tax credit allocation process and to allocate the tax credits to the State's highest rental housing needs.

Response. The 20% set-aside for nonprofits is mandated by Section 42 of the Code.

The housing market rankings in Section 7.E.1 of the Rule reflect a greater need for housing in the larger metropolitan areas of the State, particularly the southern metropolitan areas, rather than the rural areas of the State. For example, the need rankings for family housing in Portland, Kittery/York and Biddeford are very high, whereas, the need rankings for family housing in Calais, Madawaska, Millinocket, Greenville and Patten/Island Falls are low. However, the set-aside does recognize a need for and allows for the development of affordable housing in rural areas of the State.

Current Maine demographic trends indicate that persons aged 85 and above are one of the States' fastest growing age groups. This trend is expected to increase significantly during the next 35 years. Policy makers recognize that new cost-effective solutions need to be identified to serve the growing number of low-income frail elders. In recognition, the Authority in conjunction with the State of Maine Bureau of Elder and Adult Services created the assisted living set-aside to respond to documented housing needs for housing and service programs for low-income frail elders.

If any of the set-asides are not used, in whole or in part, the unused tax credits will be made available for all housing priorities identified in the Qualified Allocation Plan.

Section 4.E. YCH commented that, although laudable, MSHA's project basing Section 8 vouchers for SRO projects is illogical because SRO projects should be developed in larger communities where the Authority does not have authority for Section 8 vouchers.

Response. The Authority agrees that SRO projects should be developed in larger communities where needed services are available. The Authority encourages developers to work with the local public housing authority to obtain project-based vouchers in these communities. However, some local public housing authorities do not have sufficient vouchers to provide project-based vouchers in their service areas. In these circumstances, the Authority may cooperate with the local public housing authority to provide project-based vouchers in those areas.

Section 4.F. Shaw House, the developer of a SRO tax credit project that received a notice to proceed in 2002, commented that the increase in the maximum credit restriction to $450,000 in the Rule should apply retroactively to tax credit projects that receive a reservation in any year prior to 2003 and have not yet been placed in service. Additionally, MHIF suggested that a number of projects receiving credit in 2002 would benefit financially from an increased amount of credit.

Response. The Rule establishes the process and the selection criteria for allocating the 2003 State Ceiling for low-income housing tax credit projects to eligible persons who apply in the March and July reservation cycles in 2003, not prior years. Shaw House and any other applicant that received a notice to proceed in any year prior to 2003 for a tax credit project that has not been placed in service may request a waiver of the maximum credit restriction under the prior year's rules.

Section 7.A.1. MHIF, YCH and SMARHC commented that the Authority should eliminate the selection criterion in Section 7.A. 1 of the Rule that awards points for the rehabilitation of existing housing. YCH suggested that the Authority should apply the points awarded under Section 7.A.1 to new construction projects.

Response. The Authority acknowledges the need for new rental housing in the State and, in response, has created several programs to finance new construction of rental housing in Maine, e.g. the Maine State Housing Authority Rental Loan Program Workforce Housing RFP and the Rental Loan Program Family Housing Request for Proposals. Maine has the seventh oldest housing stock in the nation and it is more cost effective, in many cases, to use subsidy for acquisition and rehabilitation of existing housing than new construction. In 2002 only $400,000 of the total $2,251,672 in tax credits available were allocated to rehabilitation projects.

Section 7.A.2. MHIF and SMARHC commented that the Authority should eliminate the physical plant amenities selection criterion in Section 7.A.2 of the Rule.

Response. The Authority's mission is to provide decent, safe and affordable housing to residents of the State and services suitable for their unique housing needs. In furtherance of its mission and recognizing that services are an important component of housing, the Authority established the selection criterion in Section 7.A.2. to reward projects that provide a place on-site for the delivery of services appropriate to the needs of the resident population of the project.

Section 7.B.2. SMARHC commented that the Authority should eliminate the selection criterion that rewards proposals that use a portion of the developer fee as a source of funds for the project to encourage developers to continue developing affordable housing in the State and create a healthier development community.

Response. The Authority encourages applicants to leave a portion of the developer fee in a deal in order to make more efficient use of the Authority's scarce subsidy resources, allowing the Authority to help more Maine citizens. However, the Authority recognizes the need for increased development capacity, particularly for nonprofit corporations. The Authority amended the Rule to reduce the amount of developer fee that an applicant must pledge as a source of funds to receive points under Section 7.B.2. to address this need.

The Authority continues to pursue other initiatives to enhance nonprofit capacity, which include setting aside $1,200,000 proceeds of the $12,000,000 general obligation bond to improve nonprofit capacity.

Section 7.C. YCH commented that a pledge of 90 years to maximize points under the extended use period selection criterion is extreme and may exclude good tax credit projects, i.e. the Maine Youth Center project, which has only been able to secure a 50-year lease with the State of Maine. MHIF testified that the Authority should eliminate the extended use period selection criterion and establish a minimum extended use period as a threshold criteria.

Response. The 90-year targeting assists future administrations in keeping the units available for low-income citizens in the State of Maine. The Authority understands that there may be demand to re-capitalize these projects in the future and has established preservation programs to address these demands.

Section 7.E. SMARHC suggests that the Authority replace the current project location criteria in Section 7.E. of the Rule with the following methodology for determining housing need in the State: (i) identify absolute number of rental units needed in each housing market; (ii) calculate the ratio of affordable rental units to market rate rental units in each housing market to identify the housing markets with the largest gaps; (iii) based on the foregoing, rate the housing markets based on the gap, the markets with the largest gaps receiving the highest score to the markets with the smallest gaps receiving the lowest score; and (iv) award tax credits to those projects in markets with the highest scores.

Response. The Authority amended the methodology for determining housing need in the State last year based upon feedback from outside developers. The Authority will continue to refine this new methodology in assessing housing need.

Section 7.E.1. YCH commented that the housing needs rankings should have been updated based on current data. YCH recommended that a high or very high need housing ranking become a threshold criterion to exclude projects that are marginally needed. MHIF testified that the Authority should clarify the process for contesting a housing need ranking, because housing need defined within labor markets may not be the best indicator of actual housing need for a municipality with a greater housing need than the overall need of the labor market in which it is located.

Response. The 2000 census data necessary to update the housing rankings is currently not available. The Authority will update the housing rankings in the 2003 qualified allocation plan, provided the data is available, and will continue to update the rankings to the extent data is available.

Projects are scored based upon a wide range of criteria, including housing need. Projects located in very high or high areas of the State are given preference in scoring through higher points.

Applications are scored based upon a wide range of criteria, including housing need. The housing need criteria set forth in Section 7.E.1. of the Rule are heavily-weighted to reward projects in locations with a high or very high need ranking.

The Authority allows an applicant who wishes to contest a housing need ranking to submit data relative to the housing needs from the area in which a project is proposed. The Authority will review the data and determine whether such data affects the housing need ranking.

Section 7.F.3. SMARHC encourages the Authority to distinguish mission-driven nonprofits from for-profits and nonprofits formed by for-profits and to support mission-driven nonprofits. SMARHC suggests that the Authority increase the points awarded to mission-driven nonprofits under Section 7.F.3 of the Rule.

Response. The Authority revised the nonprofit selection criterion in Section 7.F.3 of the Rule last year to distinguish bona fide nonprofit participation from token nonprofit involvement by rewarding only those projects in which a nonprofit corporation is a managing general partner of the owner of the project.

Nonprofit Support. SMARHC encourages the Authority to support mission-driven nonprofits by increasing developer fees and easing restrictions on the distribution of operating cash flow to nonprofits so that nonprofits and for-profits are treated equally. SMARHC also suggests that the Authority establish a criterion that rewards the formation of regional or multi-jurisdictional development companies by nonprofits, because such entities create economic efficiencies by eliminating the duplication of experts and consultants.

Response. Section 8.E. of the Rule, which restricts the amount of developer fee that the Authority will recognize, does not distinguish between nonprofits and for-profits. The suggestion for easing the restrictions on distributions is outside the scope of this Rule.

A limited partnership with a nonprofit managing general partner established by a regional or multi-jurisdictional development company would be eligible for the 20% set-aside for nonprofits under Section 4.B. of the Rule and would receive points under the selection criterion in Section 7.F.3. of the Rule.

Other. SMARHC suggested that the Authority should provide annual public hearings on the allocation of federal funds received by the Authority and should identify the specific amount of federal funds allocated to each program in the Authority's Consolidated Housing Plan.

Response: The Authority holds public meetings and a public hearing on the qualified allocation plan each year. The other comments are outside the scope of this Rule.

STATUTORY AUTHORITY: 30-A MRSA §§4741(1) and 4741(14), Section 42 of the Code

FISCAL IMPACT OF THE RULE: The sale of the low income housing tax credits will raise approximately $18,000,000 in equity, which will be used to develop affordable housing for low-income persons. The proposed amendments will not impose any costs on municipalities or counties for implementation or compliance.

EFFECTIVE DATE: