



## Rental Loan Program

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

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

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## *I. Introduction*

MaineHousing (Maine State Housing Authority) is pleased to offer the Rental Loan Program (*Program*). The primary goal of this Program is to create and preserve affordable multi-family residential rental housing in the State of Maine.

Preservation may include federally-assisted housing, such as HUD 202, HUD 811 and Rural Development 515 properties at risk of being lost due to the expiration of federal rental assistance contracts, physical or financial deterioration, and/or owners opting out of federal housing programs.

To achieve the goals of this Program, MaineHousing will make various resources available in the form of amortizing loans, deferred payment loans and/or grants under this Program or in conjunction with the Program from time to time, including without limitation, the following resources:

- taxable bond proceeds;
- private activity tax-exempt bond;
- 501(c)(3) or governmental unit tax-exempt bond proceeds; and
- subsidy resources.

These resources are usually combined with equity generated from the syndication of Low Income Housing Tax Credits (LIHTC). Competitive credits and “automatic” credits are awarded in accordance with Maine’s Qualified Allocation Plan.

MaineHousing attempts to maximize the benefit of these limited resources by combining the resources and encouraging applicants to seek other non-MaineHousing resources.

Amortizing loans, funded with the proceeds of taxable or tax-exempt bond proceeds, for developments that do not need MaineHousing subsidy are available typically on a walk-in basis.

MaineHousing allocates competitive low income housing tax credits separately under MaineHousing’s Low Income Housing Tax Credit Program. All applicants who are awarded low income housing tax credits on a competitive basis or are eligible for “automatic” low income housing tax credits must comply with the applicable Qualified Allocation Plan in addition to any applicable requirements described in this program guide.

MaineHousing may make various discretionary subsidy resources available from time to time to be used in conjunction with other resources available under this Program and/or the Low Income Housing Tax Credit Program. These subsidy resources will be offered under separate requests for proposals. Unless otherwise specified in the request for proposals, all developments are subject to the requirements and guidelines in this Program.

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

## *II. Process*

- A. Developer receives Rental Loan Program Guide and Application from MaineHousing.
- B. Developers without prior experience with MaineHousing must schedule a meeting with MaineHousing staff. At that time, the Rental Loan Program features and process, as well as project specifics, will be discussed in detail.
- C. Developer submits a complete application and the nonrefundable \$1,000 application fee, to MaineHousing. For non-competitive applications, developers will be notified of deficiencies and allowed to cure and resubmit... Applications under competitive funding rounds must be complete as part of threshold criteria.
- D. MaineHousing will notify officials of the community in which the proposed development will be located of MaineHousing's receipt of a complete application.
- E. MaineHousing will send developer a notice of acceptance for further processing (*Notice to Proceed*) or application rejection within 45 days of receipt of a complete application. The Notice to Proceed sets forth the requirements and information required by MaineHousing to fully process the application, such as completion of plans and specifications, final pricing, appraisal and environmental reports, and other funding commitments, etc., and identifies certain timeframes for satisfying the requirements.
- F. Developer and its development team (design professionals, etc.) will meet with MaineHousing Construction Services staff to review the proposed development.
- G. Developer may be required to submit additional documentation at any time during the processing of the application.
- H. Upon receipt of all required information and documentation, MaineHousing staff finishes processing the application and develops a funding recommendation. The funding recommendation is reviewed by MaineHousing's loan committee which makes a final recommendation to MaineHousing's Director. MaineHousing's Director makes the final decision about the funding recommendation.
- I. If funding is approved, MaineHousing will issue a commitment for funding. If funding is rejected, Developer will be notified in writing specifically identifying the reason(s) the application was rejected.
- J. Upon MaineHousing's receipt of the commitment letter as accepted by developer and payment of the \$2,000 nonrefundable commitment fee, MaineHousing will prepare for loan closing.
- K. Any extension of the deadlines included in the commitment letter may result in an adjustment of the note rate to the then current program rate.
- L. After developer satisfies all conditions and requirements of the commitment letter to be satisfied as of loan closing, MaineHousing will authorize commencement of construction of the development. Some of MaineHousing's funds may be disbursed at loan closing and during construction in accordance with the loan documents.

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

### *III. Sources of Funding*

#### **A. Combination of Available Resources**

MaineHousing attempts to maximize the impact of the limited resources it has available by combining resources and encouraging applicants to seek other non-MaineHousing sources of funding.

#### **B. Tax-exempt Bond Financing**

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

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

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

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

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

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

A development that is financed with the proceeds of bonds issued under Section 142(d) of the Code may also be eligible for "automatic" low-income housing tax credits, provided that more than 50% of the aggregate basis of the development, including land, is financed with tax-exempt bonds and is

in compliance with the Qualified Allocation Plan in effect at the time. Only the portion of the project that qualifies for low income housing tax credits is eligible for 4% automatic low income housing tax credits.

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

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

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

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

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

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

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

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

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

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



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

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

### **3. Governmental Bonds – Section 145 of the Code**

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

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

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

### **4. Inducement Resolution**

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

The application contains a request for inducement, which must be completed by the applicant so that MaineHousing can issue the inducement resolution. It is important that the information provided in the request for inducement be as accurate as possible regarding the site and the proposed ownership structure. To provide the greatest future flexibility, all current or potential partners (corporate or individual), parent corporations, subsidiary corporations, etc. that may potentially participate in the ownership entity should be named in the request for inducement. After submitting the request for inducement, the applicant must notify MaineHousing immediately if there are any changes in the information contained in the inducement resolution.

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

## **5. Owner's Tax Certification**

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

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

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

### **C. Taxable Bonds**

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

### **D. Subsidy Resources**

Any project receiving subsidy is subject to the regulatory requirements associated with the subsidy resource.

#### **1. Federal HOME Funds**

Maine Housing may make Federal HOME funds available under or in conjunction with the Program. A development funded with Federal HOME funds must comply with the applicable requirements set forth in the Cranston-Gonzalez National Affordable Housing Act of 1990, 42 U.S.C. §12701 *et seq.*, the HOME Investment Partnership Program Rule, 24 C.F.R. Part 92, and HUD guidelines and interpretations regarding Federal HOME, all as may be modified from time to time.

MaineHousing is required to set aside a certain portion of its annual Federal HOME allocation for projects that are owned, sponsored or developed by Community Housing Development Organizations (*CHDO*). If the owner is a qualified CHDO, MaineHousing may fund the development with Federal HOME funds that MaineHousing has set aside for CHDOs in accordance with this requirement. The developer must agree to maintain its status as a certified CHDO during the term of any financing funded with Federal HOME funds and comply with any additional requirements under Federal HOME applicable to CHDOs.

## **2. Other Subsidy Funds**

Other subsidy sources include, but are not limited to:

- State HOME Funds;
- Maine Energy, Housing and Economic Recovery (MEHER) funds;
- Proceeds of General Obligation Bonds; and
- MaineHousing-generated subsidies.

When MaineHousing makes subsidy available under or in conjunction with the Program, it will identify the source of subsidy in an announcement of funding availability. MaineHousing will also identify the source of subsidy used in connection with a specific development in the Notice to Proceed and any financing commitment.

When subsidy is offered, the amount of subsidy available to each development may be subject to per unit and/or per project limitations which will be outlined in the specific subsidy offering. Regardless of any per unit and/or per project limitations, the amount of subsidy awarded to a development will not exceed the amount necessary to achieve financial feasibility. Subsidy loans are typically structured as deferred payment loans with payment due at the earlier of default, sale or transfer of the development, repayment of any MaineHousing amortizing loan made in connection with the development, or 30 years.

Subsidy will be allocated to projects in the most efficient manner possible. To that end, MaineHousing staff will consider equity from the sale of low income housing tax credits, interest-bearing amortizing debt structured in accordance with this Program, and the need for subsidy in the approval process. MaineHousing reserves the right to adjust the financing structure of any proposal to achieve the most efficient use of subsidy.

## **3. Federal HOME Match**

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

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

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

## *IV. Basic Requirements*

### **A. Program Eligibility**

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

#### **1. Rental Housing.**

##### *General*

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

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

##### *Adaptive Re-use and New Construction*

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

##### *Displacement and Relocation*

MaineHousing strongly discourages the displacement of households and will require that any unavoidable displacement or temporary relocation be addressed in accordance with the MaineHousing's Relocation/Displacement Policy. A summary of the policy is set forth in **Exhibit A** to this Guide. Developers should discuss proposals that may have relocation issues with MaineHousing staff as early in the development process as possible in order to minimize displacement and unnecessary relocation costs.

#### **2. Affordability.**

The applicant must comply with the affordability requirements associated with the funding source, this Program and any other MaineHousing program under which the applicant has applied, for example, the Low Income Housing Tax Credit Program and/or a subsidy offering made in conjunction with this Program. Units that are subject to affordability requirements and units which

are voluntarily income and rent restricted by the owner may be referred to as the affordable units for purposes of this guide.

***Minimum  
Affordability***

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

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

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

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

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

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

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

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

### **3. Rent Levels.**

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

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

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

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

#### **4. Compliance with Laws.**

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

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

#### **B. Developer Eligibility**

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

*Management Agent* The management agent must be able to demonstrate successful experience in managing similar types of affordable properties. Experience with MaineHousing-financed properties or other federally-assisted properties is desirable. The applicant is encouraged to meet with a MaineHousing Asset Management Division representative during the development process. A written management plan, management agreement, management agent entity profile, marketing plan, resident selection policy and lease-up schedule for the property are subject to review and approval by MaineHousing's Asset Management Division.

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

Agency organizational leadership

- Partnership history
- Professional relationships with contract service providers

Resident relations

Documentation of resident files

- Rent records
- Lease records

Rent collections

- Timeliness

Maintenance

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

History of meeting project expenses

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

Project accounting

- System capacity

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

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

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

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



owner of the project has transferred its interest in any project after March 25, 2014 in violation of MaineHousing's Transfers of Ownership Interests Rule and associated policies and procedures as in effect from time to time, unless the violation has been cured prior to the applicable deadline for submitting an application.

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

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

### **C. Mortgage Security.**

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

Generally, MaineHousing financing must be secured by a first lien mortgage and security interest in the land and improvements, a general assignment of leases, rents and contracts, a UCC security interest in all fixtures and personal property of the development, a collateral assignment of capital contributions, a security interest in all accounts, reserves and escrows established in connection with the development, indemnifications and other collateral required by MaineHousing in its sole discretion. If the development is or will be located on leased land, MaineHousing will require a first lien leasehold interest and a subordination of the owner's fee interest in the land. If MaineHousing is providing amortizing debt and certain sources of subsidy, such as Federal HOME funds, the security for the subsidy may be in a junior position to the security for the amortizing debt.

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

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

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

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

**D. Construction Period Lending and Equity Bridge Financing:**

Applicants must secure construction period financing from a private lender with the legal authority to lend in the State of Maine, except as authorized by MaineHousing. An applicant must submit a letter of interest, indicating the bank's receipt of an active application and estimating the rate and terms of the construction loan, with the application to the Program.

In some cases, proposals for acquisition with rehabilitation may, at MaineHousing's discretion, be financed directly by MaineHousing. Factors involved in MaineHousing's determination whether to offer rehabilitation financing include, but are not limited to:

- total cost of planned improvements;
- total cost of improvements as percentage of total development cost;
- scope of work;
- scope of design professional involvement;
- number of trades involved in the project;
- safety of residents;
- potential disruption to rental income; and
- proposed project delivery method (bid, construction management, etc.)

The developer should determine whether MaineHousing will provide construction period financing prior to submitting its application to the Program...

MaineHousing, in its sole discretion, may use the proceeds of tax-exempt bonds issued pursuant to Section 142(d) of the Code to purchase a participation in construction loans made by financial institutions in the State for the development of projects that are eligible for low-income housing tax credits pursuant to Section 42(m) of the Code and the Low Income Housing Tax Credit Program. A lead financial institution may not sell any additional participation interests in a construction loan in which MaineHousing has purchased a participation interest without MaineHousing's prior written consent.

MaineHousing's statute requires MaineHousing to, at a minimum, use a financial institution as an escrow agent in connection with construction loans to for-profit entities.

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

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

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

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

All applicants are responsible for arranging for their own equity partners. However, MaineHousing, at its own discretion, may provide short term loans in cases where the timing of capital contributions by the limited partners requires bridge financing.

#### **E. Underwriting Criteria:**

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

*Maximum Loan to Value (LTV)* MaineHousing loans should not be greater than 85% of the lesser of the appraised value or the total development cost.

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

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

*Appraisal* Appraisals must conform to MaineHousing's appraisal guidelines and name MaineHousing as an intended user. Generally, once a project receives a notice to proceed, MaineHousing commissions an appraisal. The selected appraiser will provide an estimate of cost for the appraisal. This amount, which will vary based on the size and complexity of the proposal, will be collected from the developer as an appraisal fee deposit. The appraiser will not begin the appraisal process until MaineHousing has received the deposit from the developer. Upon completion of the appraisal report and the receipt

of the final invoice, any balance due will be collected from the developer prior to the issuance of a financing commitment. In the event that the appraisal fee deposit is greater than the final invoice, an immediate refund will be made to the developer.

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

*Interest Rate*

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

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

Contact a Multifamily Loan Officer for current rates.

*Loan Terms*

30 years with full amortization

MaineHousing reserves the right to offer a 40-year amortization with a balloon payment due at the end of year 30 or interest only payments for the first 15 years with a 30-year or 40-year amortization beginning in year 16 and a balloon payment due at the end of year 30.

*Debt Service Coverage (DSC)*

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

*Cash Flow*

Projects should demonstrate cash flow of at least \$500 per unit in the first year of stabilized operations.

*Distribution*

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

*MaineHousing Loan Fees*

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

- Application fee of \$1,000 due with any application for financing
- Deposits for third party appraisal and environmental reports, if applicable, are due upon the applicant's acceptance of the Notice to Proceed

- Commitment fee of \$2,000 due upon the applicant’s acceptance of MaineHousing’s financing commitment
- Financing fee equal to two percent (2%) of MaineHousing’s bond funded proceeds (construction participation and/or permanent) due at loan closing

Additional fees associated with the low income housing tax credit are set forth in the Low Income Housing Tax Credit Program.

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

*Developer Fee  
& Overhead*

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

*Operating Deficit  
Escrow*

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

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

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

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

*Working Capital*

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

*Tax & Insurance  
Escrow (T&I)*

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

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

A tax and insurance escrow will be established at construction completion. MaineHousing will determine the initial funding amount of the escrow. MaineHousing may require a pro-rata portion of the annual tax liability be funded at construction completion depending on the municipality's tax period and the date of completion.

*Replacement Reserve*

A replacement reserve account will be established and funded at the time of construction completion. Additional reserve funding will be required from project revenues on a monthly basis.

The initial and on-going levels of funding will be determined on a case-by-case basis. In general, the initial funding will be equal to 1% of cost of structures.

Annual replacement reserve funding will be initially calculated at \$450 per unit per year.

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

*Project Reserve Accounts*

All project reserve accounts (including the tax and insurance, rent-up and replacement reserve) will be established and maintained at a financial institution acceptable to MaineHousing. Typically, MaineHousing will be an either/or signatory on the accounts, but may require sole signatory status on these accounts. At any time during the term of the loan, MaineHousing may require that one or more of the accounts be held in a MaineHousing-controlled account based on its review of troubled project performance or in the event of loan default. MaineHousing will require the developer and any depository or financial institution holding the accounts to enter into a deposit account control agreement.

*Operating Expenses*

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

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

*Vacancy Rates*

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

*Trending Rates*

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

*Sustainable  
Operating  
Performance*

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

*Management Costs*

MaineHousing will review the proposed management cost of a property including management fees, administrative expenses, site management costs, and the cost of other management activities charged directly to the project. In general, MaineHousing will underwrite a management cost of no more than 12% of the project's effective income. MaineHousing may allow an incentive fee to be paid out of surplus cash after fiscal year-end. Actual management costs will be reviewed and endorsed on a case-by-case basis by MaineHousing's Asset Management Division.

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

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

*Construction  
Contingency*

A construction contingency shall be established for each project by MaineHousing Construction Services staff. The amount will be consistent with industry standards such as 5% for New Construction and 10% for Acquisition/Rehabilitation and Adaptive Reuse projects.

The use of this contingency shall be managed solely by the Developer for uses determined by the Developer. MaineHousing shall offer guidance and input to the Developer, but the final decision on the use of the contingency will be made by the Developer. Any contingency remaining at the end of the

project shall be used to repay any amounts owed to the Developer from the Developer Fee in excess of the amount required, if any. Any balance shall then be shared equally between the Developer as an incentive developer fee up to the maximum gross Developer Fee allowable and MaineHousing, which will either reduce the amount of cash subsidy or the amount of Low Income Housing Tax Credits.

**F. Other Criteria:**

*Site Control*

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

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

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

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

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

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

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

*Market Feasibility*

At the time of application, applicants must provide a comprehensive market study of the housing needs in the area to be served by the project. The study



must be conducted at the applicant's expense by a qualified professional acceptable to MaineHousing.

The National Council of Housing Market Analysts (NCHMA) has adopted standards for definitions and content in an affordable housing market study. These standards can be found at [www.housingonline.com/Resources.aspx](http://www.housingonline.com/Resources.aspx).

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

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

## **G. Design and Construction**

All projects shall be designed and constructed in accordance with the guidelines set forth in the MaineHousing Construction Services' *Quality Standards and Procedures Manual*. The manual is available on the MaineHousing web-site ([www.mainehousing.org](http://www.mainehousing.org)).

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

### **1. Design Professional.**

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

### **2. Surety.**

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

### **3. Contractors.**

Applicants must use an experienced general contractor. The preferred method of contractor procurement is through competitive bid. Developers may use a select bid process to procure the

general contractor with MaineHousing’s prior approval of the selected bidders list. Construction management may be an acceptable project delivery method with MaineHousing’s prior approval, in its sole determination on a case-by-case basis. See MaineHousing’s *Quality Standards and Procedures Manual* for guidance on when and under what circumstances MaineHousing will approve the construction management approach.

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

#### **4. Design and Construction Standards.**

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

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

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

New Construction (Elderly):	\$215,000 per unit
New Construction (Family):	\$240,000 per unit
Acquisition/Rehabilitation:	\$150,000 per unit
Conversion of existing non-housing Structure into housing	\$265,000 per unit

If a project involves more than one of these project types, the Total Development Cost per unit is the sum of the percentage of the Total Development Cost allocable to each type, based on the number of residential units in each type, as applied to the Total Development Cost per unit for the respective type. For example, the Total Development Cost per unit of an elderly housing project

that involves the conversion of an existing historic school into 10 housing units plus the construction of an addition with 10 additional housing units is \$240,000 per unit, which is 50% of the Total Development Cost per unit for Adaptive Reuse and 50% of the Total Development Cost per unit for New Construction (Elderly).

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

## **5. Lead and Asbestos.**

Owners must notify all occupants of housing built before 1978 of the hazards of lead poisoning and address any lead-based paint and asbestos hazards according to federal and state requirements. MaineHousing may impose additional requirements relative to the abatement or removal of lead-based paint and asbestos for the purpose of protecting residents and MaineHousing's security interest in the project. In general, all projects must be certified "lead safe" at the time of final completion.

## **6. Site Standards.**

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

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

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

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

## **7. Difficult to Develop Sites:**

Difficult to develop sites should be avoided. Sites which have inadequate drainage, unstable soil, contaminated soils, excessive ledge, steep topography, lack of utility service, or other characteristics which increase the costs of development are difficult to develop. Sites including land within a designated flood plain or within a designated wetland, or which have been determined by the Department of Environmental Protection to contain an endangered species of wildlife, are also difficult to develop.

## **8. Environmental Assessments:**

MaineHousing requires a Phase I Environmental Site Assessment conducted by a qualified professional in accordance with the EPA All Appropriate Inquiry Standards finding that the development and the areas adjacent to the development are free from environmental hazards or conditions. MaineHousing cannot advise a prospective developer of potential environmental liabilities. MaineHousing will, however, require satisfactory responses to any environmental concerns that MaineHousing identifies in connection with a development. Generally a Phase I Environmental Site Assessment involves a site visit, review of ownership records, review of site development history, and contact with local officials and environmental regulatory agencies. This initial analysis may result in the need for additional investigation and testing. Environmental site assessment costs can be included as project development costs and may be mortgageable, subject to the underwriting criteria and inducement resolution requirements outlined in this guide.

All projects receiving Federal HOME funds must undergo an environmental review by MaineHousing pursuant to HUD's environmental review regulations at 24 CFR Part 58. MaineHousing reserves the right to engage a qualified professional to perform all or certain parts of this review. In the event that MaineHousing is not the only provider of Federal HOME resources to the project, a review meeting these requirements may be performed by a qualified party not directly engaged by MaineHousing. However, MaineHousing reserves the right to engage a qualified professional to perform a review of the work to ensure its compliance with HUD's regulations. All costs incurred by MaineHousing for satisfaction of these regulations will be paid by the borrower and may be included as project development costs. If it is determined that MaineHousing will commission the environmental assessments, the selected firm will provide an estimate of cost for the assessment. This amount, which will vary based on the size and complexity of the proposal, will be collected from the developer as an environmental fee deposit. Upon completion of the report and the receipt of the final invoice, any balance due will be collected from the developer prior to the issuance of a financing commitment. In the event that the fee deposit is greater than the final invoice, an immediate refund will be made to the developer. The fee deposit shall be due upon acceptance of the Notice to Proceed. An environmental review includes a review of historic values, floodplain and wetlands protection, coastal zone management, endangered and threatened species, water and air quality, farmlands protection, fire and explosive hazards, noise, proximity to airports, toxic sites, and impacts to or on the project from land development and socioeconomic factors, community facilities and services, and other matters. A Phase I Environmental Site Assessment will be conducted by a qualified professional in addressing the toxic sites provision of environmental reviews.

HUD's environmental regulations provide that until the completion of the environmental review and HUD approval of the release of the FedHOME funds, the applicant and any other participant in the

development process (including individuals, public or private nonprofit or for-profit entities, or any of their contractors) may not commit or expend *any* funds (regardless whether they are from federal, state, local, commercial or private sources) on any activities that are deemed to limit the choice of reasonable alternatives with respect to the site (“choice-limiting actions”). Choice-limiting actions include, without limitation, entering into a purchase and sale agreement, acquisition, leasing, demolition, rehabilitation, disposition, construction, or site improvements relating to the project. If the applicant or any participant in the development process takes a choice-limiting action after applying to MaineHousing for financing, the applicant will be denied any FedHOME funds for the project.

#### **H. Property Management and Reporting Requirements**

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

Property management requirements include the following:

- *Property Management Plan and Management Agreement.* The property management plan and management agreement are subject to the review and approval of MaineHousing. Management agreements must be endorsed by MaineHousing. Any management agreements between non-profit owners and for-profit project managers for properties funded with 501(c)(3) bond proceeds must comply with applicable bond regulations.
- *Property Marketing and Advertising.* Federal and state laws prohibit discrimination on the grounds of race, color, national origin, religion, sex, physical or mental handicap, sexual orientation, familial status, ancestry and receipt of public assistance. The owner will be responsible for selecting residents in a non-discriminatory manner and maintaining a written waiting list of applicants in accordance with the project’s resident selection policies and criteria.
- *Rents.* Rents for targeted affordable units may not exceed the rent schedule published annually by MaineHousing. Rents and utility allowances must be approved by MaineHousing and remain in effect for the first full year of occupancy. Rents, including any utility allowance, for all units are reviewed during the annual budget review process, well in advance of the upcoming fiscal year. The owner must inform MaineHousing of proposed rental or utility adjustments. MaineHousing must approve annually the maximum monthly rent to be charged for each unit or to each resident, and the monthly allowance for utilities and services to be paid by the resident prior to implementation. MaineHousing will consider development operating costs and occupancy rates, the surplus cash position of the property, applicable state or federal regulations and other factors when approving rent and utility adjustments.
- *Income Eligibility.* All households initially occupying an affordable unit must be determined income eligible in compliance with the project’s affordability targeting requirements. If at the time of annual household income recertification the household income exceeds 140% of

the applicable household income limit, adjusted for family size, the developer must rent the next available market rate unit of equal or lesser size to an income eligible household. Verification of resident income eligibility for affordable units is required for all properties.

- *Leases and Security Deposits.* All residents residing in affordable units must sign a MaineHousing-approved lease. The initial term of the lease should be one year but cannot be less than 6 months. Leases and the collection of security deposits must comply with state law and applicable program and funding source requirements. See Federal HOME regulations relating to leases on units assisted with Federal HOME funds.
- *Inspections.* MaineHousing will inspect units periodically to ensure compliance with applicable building and habitability standards and reserves the right to inspect more frequently if deemed necessary.
- *Annual Report Submissions.* MaineHousing requires owners to submit development budgets, audited financial statements and certifications of continuing program compliance to MaineHousing on an annual basis. Annual development budgets are due 60 days before the beginning of the owner's fiscal year and subject to MaineHousing's review and approval. Audited financial statements are due within 60 days after the end of the owner's fiscal year.
- *Management Review and Assessment.* Periodically MaineHousing will review owner compliance with the loan requirements. MaineHousing will review occupancy and leasing, tenant files, financials, restricted reserve activity, physical plant condition and resident services.

MaineHousing's website contains forms, guidance, rent and income charts, notices and other information for owners and managers. This information can be found on the Business Partners page: <http://www.mainehousing.org/partners>.

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

## **I. Fair Housing and Equal Opportunity**

The applicant shall comply with all federal, state and local fair housing and accessibility laws, executive orders, regulations and associated guidance, as same may be amended, applicable to the design, construction and/or rehabilitation and operation of the housing funded under this program, including without limitation, Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.* and 24 C.F.R. Part 1 - *Nondiscrimination in Federally Assisted Programs*); Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, (42 U.S.C. §3601 *et seq.* and 24 C.F.R. Part 100-115 - *Federal Fair Housing Act*); Executive Order 11063, as amended by Executive Order 12259 (*Equal Opportunity in Housing*); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794 and 24 C.F.R. Part 8); Age Discrimination Act of 1975 (42 U.S.C. §6101 *et seq.* and 24 C.F.R. Part 146); Title II and Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.* and 28 C.F.R. Parts 35 and 36); and the Maine Human Rights Act (5 M.R.S.A. §4581 *et seq.*).

Requirements for the design and construction and/or rehabilitation of housing funded under the program are set forth in *Maine State Housing Authority's Accessibility Policy and Procedures for the Design and*

*Construction of Multi-family and Supportive Housing Projects* which is included in the *Quality Standards and Procedures Manual*.

The above requirements also govern the operation of housing funded under the program, including without limitation, the selection of residents, occupancy conditions and restrictions and the termination of tenancies. Housing providers must make reasonable accommodations with respect to rules, policies and procedures concerning the operation of the housing and must make reasonable modifications to housing if necessary to allow an individual with disabilities to have equal access to the housing.

#### **J. MaineHousing's Non-Discrimination Policy**

Maine State Housing Authority ("MaineHousing") does not discriminate on the basis of race, color, religion, sex, sexual orientation, national origin, ancestry, physical or mental disability, age, familial status or receipt of public assistance in the admission or access to or treatment in its programs and activities. In employment, MaineHousing does not discriminate on the basis of race, color, religion, sex, sexual orientation, national origin, ancestry, age, physical or mental disability or genetic information. MaineHousing will provide appropriate communication auxiliary aids and services upon sufficient notice. MaineHousing will also provide this document in alternative formats upon sufficient notice. MaineHousing has designated the following person responsible for coordinating compliance with applicable federal and state nondiscrimination requirements and addressing grievances: Louise Patenaude, Maine State Housing Authority, 353 Water Street, Augusta, Maine 04330-4633, Telephone Number 1-800-452-4668 (voice in state only), (207) 626-4600 (voice) or 711 (Maine Relay).

Exhibit A

MAINE STATE HOUSING AUTHORITY

Summary of Policy on Displacement/Relocation

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

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

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

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

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



<u>Time Frame</u>	<u>Rent Increase Allowed</u>
Closing to completion of rehab	Any, as long as below Section 8 tenant payment (low-income persons) or 30% of income (non-low income)
1st year after rehab completion	No rent increases
Next 2 and 1/2 years	Rent increases only in proportion to documentable increases in operating costs
After 3 and 1/2 years	Rebuttable presumption that rent increases not a result of the acquisition/rehab financed by MaineHousing

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

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

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

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

## **Exhibit B**

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

The following insurance requirements apply to all multi-family residential rental projects and supportive housing projects that are or will be financed by Maine State Housing Authority.

The requirements contained herein are the minimum requirements of MaineHousing and are for the sole benefit of MaineHousing as lender. MaineHousing is in no way representing or warranting that the minimum coverage required herein is adequate. The Developer is solely responsible for providing and determining the adequacy of insurance coverage for the Developer and the project.

Maine Housing reserves the right, at any time, to modify the insurance requirements, including without limitation, requiring additional insurance coverage of such types and in such amounts and form as MaineHousing determines is necessary or in MaineHousing's best interest, as conditions warrant.

#### **COMPLIANCE CHECKLIST**

A MaineHousing Insurance Compliance Checklist(s), in form and substance prescribed by MaineHousing, must be completed by the insurance agent(s) providing insurance coverage for a project. The completed MaineHousing Insurance Checklist(s) must be submitted to MaineHousing for review prior to any loan closing.

#### **GENERAL**

All required insurance coverage shall:

- Be in form acceptable to MaineHousing;
- Be provided at the sole cost and expense of the developer, including without limitation, any deductible or self-insured retention, and coverage shall apply for the benefit of MaineHousing as if no such deductible or self-insured retention applies;
- Be in effect prior to the policy inception date and prior to the commencement of any activities covered by such insurance and shall remain valid and in effect during the term of the financing, except any insurance coverage during the course of construction of projects shall remain valid and in effect during the term of the construction contract and any extended warranty period or such longer period as set forth below;
- Be issued by an insurer licensed to do business in the State of Maine, or if not so licensed, approved by the Maine Superintendent of Insurance, and currently rated "A VIII" or better by AM Best;

- Provide at least 30 days written notice to MaineHousing prior to the effective date of any assignment, cancellation, non-renewal or modification, except for non-payment of premium in which case at least 10 days written notice to MaineHousing prior to the effective date of cancellation or non-renewal shall be provided; and
- During construction without any MaineHousing financing (either directly or through a participation in the construction loan), include “*Maine State Housing Authority, its successors and assigns*” with a mailing address of 353 Water Street, Augusta, Maine, 04330, or such other address as MaineHousing may designate from time to time as “Certificate Holder”; and
- During the term of any MaineHousing financing (either directly or through a participation in the construction loan), include “*Maine State Housing Authority, its successors and assigns*” with a mailing address of 353 Water Street, Augusta, Maine, 04330, or such other address as MaineHousing may designate from time to time, as “Mortgagee” and “Loss Payee” on all builder’s risk coverage, property coverage, boiler and machinery coverage and flood coverage (as applicable) and as “Additional Insured” on all general liability and umbrella liability coverage. The additional insured endorsement shall state “*Maine State Housing Authority, its successors and assigns*, is an additional insured for both ongoing and completed operations and should provide the same coverage as ISO CG 20 10 (11-85 version). Endorsements with coverage no less broad than ISO CG 20 26 (07-04 version) with ISO CG 20 37 (07-04 version) shall also be provided.

Developers shall submit certificates of insurance evidencing in-force coverage to MaineHousing for review and approval and evidence of payment of premiums for all required insurance coverage prior to loan closing. Developers shall submit renewal certificates to MaineHousing for review and approval at least 15 days prior to the expiration of the existing coverage. Each certificate of insurance shall be accompanied by a checklist in form prescribed by MaineHousing analyzing whether the insurance coverage evidenced by the certificate complies with these requirements. The checklist shall be completed and signed by the insurance agent issuing the certificate of insurance.

MaineHousing may, at any time, request a copy, certified copy or original of the policy and any endorsements for any or all of the required insurance coverage. Upon request, a developer shall promptly deliver all requested insurance policies and endorsements to MaineHousing in the form requested.

MaineHousing’s acceptance of any certificate or policy of insurance does not ensure compliance with the requirements set forth herein or waive any right of MaineHousing to determine that the coverage does not comply with the requirements.

## **REQUIREMENTS DURING CONSTRUCTION**

The following insurance shall be obtained and maintained during the construction of the project or such longer period as set forth below.

## A. Builder's Risk Insurance

Builder's risk insurance can be provided by the owner or the general contractor of the project, provided if the general contractor provides the coverage, the owner, its successors and assigns, must be named as an additional insured on the policy.

Amount/ Valuation	<p>100% of the completed value of all structures (existing and to be constructed) and all materials, equipment, supplies and temporary structures being built or stored at or near the construction site. Completed value will be determined by MaineHousing in its sole discretion. Completed value will not include any site or land costs other than demolition.</p> <p>Loss recoveries must be valued at completed value without deduction for depreciation. For rehabilitation projects, building shells and other salvageable components shall be insured for replacement cost. Replacement cost for historic structures or structures located in an historic district will depend on historic preservation requirements for replacing the structure.</p>
Coverage	<p>No less broad than ISO Form CP 10 30 (<i>Special Cause of Loss</i>), but does not have to be on the ISO form</p> <p>No exclusions for scaffolding</p> <p>No exclusions for testing</p> <p>No coinsurance provision shall apply. An Agreed Value Endorsement is required if the policy includes a coinsurance provision.</p> <p>Coverage must include the interest of the owner, all contractors, subcontractors and suppliers as their interests may appear. Rights of subrogation against MaineHousing must be waived.</p>
Additional Coverage/ Endorsements	<p>Earthquake – 100% of completed value</p> <p>Flood if located in a designated special flood hazard area (<i>Zone A or Zone V or any zone with an A prefix</i>) – maximum coverage available under the Standard National Flood Insurance Program. MaineHousing may require additional coverage in an amount up to 100% of completed value as determined by MaineHousing based on the location of the project within the designated special flood hazard area and the history of flooding.</p> <p>Flood if not located in a designated special flood hazard area, but is otherwise required by MaineHousing based on the property's</p>

proximity to a designated special flood hazard area and history of flooding – 100% of completed value

Delay of Opening (loss of income) equal to 100% of anticipated gross annual rents

Soft Cost Endorsement (indemnification of finance charges)

Permission to Occupy Endorsement (permission is granted for occupancy of the insured project for the purpose it was intended)

Deductible Up to \$2,500 unless a higher limit is approved by MaineHousing

Term Builders risk insurance coverage shall remain valid and in effect until a permanent property policy acceptable to MaineHousing is in place

Insured Owner or General Contractor

Additional Insured Owner, its successors and assigns, if coverage is provided by the General Contractor

## **B. Owner Insurance Coverage**

### Commercial General Liability

Minimum Amount \$2,000,000 General Aggregate  
\$2,000,000 Products and Completed Operations Aggregate  
\$1,000,000 Personal and Advertising Injury  
\$1,000,000 Each Occurrence

Aggregate limits shall apply on a “per location” or “per project” basis.

MaineHousing may require higher limits

Coverage No less broad than latest ISO form CG 00 01, but does not have to be on the ISO form

Coverage may exclude War, Abuse and Molestation, Fungus, Nuclear Energy, Employment-related Practices, Asbestos and Terrorism. All other exclusions must be reviewed and approved by MaineHousing.

Form Occurrence basis form

Workers' Compensation/Employer's Liability Insurance

If the owner of the project is a limited partnership or limited liability company and does not have any employees, these requirements apply to the general partner(s) or member(s)/manager(s).

Minimum Amount	\$500,000 Each Accident \$500,000 Disease – Each Employee \$500,000 Disease – Policy Limit or amounts required by statute, whichever is greater
Coverage	Insurance or an approved self-insurance program with coverage required under Maine Workers' Compensation Act

Automobile Liability Insurance

Minimum Amount	\$1,000,000 Each Accident
Coverage	Owned, hired and non-owned vehicles
Form	ISO form CA 00 01 or equivalent

Umbrella Liability Insurance

Minimum Amount	\$1,000,000 for structures with up to 3 floors \$3,000,000 to \$10,000,000 as determined by MaineHousing, for structures with 4 or more floors
Coverage	Excess of General Liability, Automobile Liability and Employer's Liability  No less broad than General Liability, Automobile Liability and Employer's Liability
Form	Occurrence basis form

**C. Contractor Insurance Coverage (includes general contractors, construction managers and major subcontractors)**

Commercial General Liability

Minimum Amount	\$2,000,000 General Aggregate \$2,000,000 Products and Completed Operations Aggregate \$1,000,000 Personal and Advertising Injury \$1,000,000 Each Occurrence
	Aggregate limits shall apply on a "per location" or

“per project” basis.

MaineHousing may require higher limits

Coverage No less broad than latest ISO form CG 00 01, but does not have to be on the ISO form

Coverage may exclude War, Abuse and Molestation, Fungus, Nuclear Energy, Employment-related Practices, Asbestos and Terrorism. All other exclusions must be reviewed and approved by MaineHousing.

Form Occurrence basis form

#### Workers’ Compensation/Employer’s Liability Insurance

Minimum Amount \$500,000 Each Accident  
\$500,000 Disease – Each Employee  
\$500,000 Disease – Policy Limit  
or amounts required by statute, whichever is greater

Coverage Insurance or an approved self-insurance program with coverage required under Maine Workers’ Compensation Act

#### Automobile Liability Insurance

Minimum Amount \$1,000,000 Each Accident

Coverage Owned, hired and non-owned vehicles

Form ISO form CA 00 01 or equivalent

#### Umbrella Liability Insurance

Minimum Amount \$1,000,000 for structures with up to 3 floors  
\$3,000,000 to \$10,000,000 as determined by MaineHousing, for structures with 4 or more floors

Coverage Excess of General Liability, Automobile Liability and Employer’s Liability

No less broad than General Liability, Automobile Liability and Employer’s Liability

Form Occurrence basis form

**D. Design Professional Coverage (including architects and engineers)**

Professional Errors and Omissions Insurance

Minimum Amount                    \$1,000,000 Each Occurrence  
   \$1,000,000 Aggregate

For projects with total construction costs less than \$1,500,000, MaineHousing may consider lower coverage amounts, but in no case, less than \$500,000 Each Occurrence and \$500,000 Aggregate

Coverage                            If coverage is on claims made basis, the retroactive date must predate the work being performed.

Term                                    Coverage must remain in place for 3 years after project completion

**E. Environmental Remediation Contractor's Coverage (only projects contaminated with hazardous substances, lead, asbestos and other pollutants)**

Pollution Liability Coverage

Minimum Amount                    \$1,000,000

Coverage                            Cleanup, property damage and bodily injury

The retroactive date must pre-date the remediation work start date



## REQUIREMENTS FOR COMPLETED PROJECTS

The following insurance shall be obtained and maintained by the owner of the project during the term of MaineHousing's financing.

### Property Insurance Coverage

Amount/Valuation	<p>100% of the replacement cost of all structures, improvements and contents. Replacement value shall be determined by MaineHousing and shall be a minimum of \$150 per square foot. Replacement cost for historic structures or structures located in an historic district will depend on historic preservation requirements for replacing the structure.</p> <p>Loss recoveries must be valued at replacement cost without deduction for depreciation.</p> <p>No coinsurance provision shall apply. An Agreed Value Endorsement is required if the policy includes a coinsurance provision.</p> <p>Coverage must include the interest of the owner and all other interests as they may appear. Rights of subrogation against MaineHousing must be waived.</p>
Coverage/ Endorsements	<p>No less broad than ISO Form CP 10 30 (<i>Special Cause of Loss</i>), but does not have to be on the ISO form</p> <p>Earthquake – 100% of the replacement cost</p> <p>Wind – 100% of the replacement cost</p> <p>Flood if located in a designated special flood hazard area (<i>Zone A or Zone V or any zone with an A prefix</i>) – maximum coverage available under the Standard National Flood Insurance Program. MaineHousing may require additional coverage in an amount up to 100% of the replacement cost as determined by MaineHousing based on the location of the project within the designated special flood hazard area and the history of flooding.</p> <p>Flood if not located in a designated special flood hazard area, but is otherwise required by MaineHousing based on the property's proximity to a designated special flood hazard area and history of flooding – 100% of the replacement cost</p> <p>Loss of Rental Income coverage equal to 100% of anticipated gross annual rents</p>

Ordinance and Law coverage at no less than 10% of the value of all structures and improvements for demolition and increased cost of construction

Deductible Up to \$2,500 unless a higher limit is approved by MaineHousing

Form ISO Form CP 10 30 (*Special Cause of Loss*) or equivalent

Evidence of coverage must be on *Accord Form 28* indicating compliance with the property insurance requirements set forth herein.

If written on a Business Owner's Policy, ISO Form BP 04 83 is required.

Standard National Flood Insurance Program form for flood, if required

Boiler and Machinery Insurance Coverage (if not included in property insurance coverage)

Amount/  
Valuation 100% of the replacement cost of all structures, improvements and contents. Replacement value shall be determined by MaineHousing and shall be a minimum of \$150 per square foot. Replacement cost for historic structures or structures located in an historic district will depend on historic preservation requirements for replacing the structure.

Loss recoveries must be valued at replacement cost without deduction for depreciation.

No coinsurance provision shall apply. An Agreed Value Endorsement is required if the policy includes a coinsurance provision.

Coverage must include the interest of the owner and all other interests as they may appear. Rights of subrogation against MaineHousing must be waived.

Coverage/  
Endorsements Loss of Rental Income coverage equal to 100% of anticipated gross annual rents

Ordinance and Law coverage at no less than 10% of the value of all structures and improvements for demolition and increased cost of construction

Deductible Up to \$2,500 unless a higher limit is approved by MaineHousing  
24 hour maximum deductible on Use and Occupancy

Form *Accord Form 28* indicating compliance with these requirements

### Crime Coverage

If the property manager has custody of the owner's funds, both the owner and the property manager must obtain and maintain this coverage.

Amount 25% of anticipated gross annual rents

Coverage Employee Dishonesty, Forgery and Alteration

### Commercial General Liability

Minimum Amount \$2,000,000 General Aggregate  
\$2,000,000 Products and Completed Operations Aggregate  
\$1,000,000 Personal and Advertising Injury  
\$1,000,000 Each Occurrence

Aggregate limits shall apply on a "per location" or "per project" basis.

MaineHousing may require higher limits

Coverage No less broad than latest ISO form CG 00 01, but does not have to be on the ISO form

Coverage may exclude War, Abuse and Molestation, Fungus, Nuclear Energy, Employment-related Practices, Asbestos and Terrorism. All other exclusions must be reviewed and approved by MaineHousing.

Form Occurrence basis form

Workers' Compensation/Employer's Liability Insurance

If the owner is a limited partnership or limited liability company and does not have any employees, these requirements apply to the general partner(s) or member(s)/manager(s).

Minimum Amount           \$500,000 Each Accident  
                                  \$500,000 Disease – Each Employee  
                                  \$500,000 Disease – Policy Limit  
                                  or amounts required by statute, whichever is greater

Coverage                    Insurance or an approved self-insurance program with coverage required under Maine Workers' Compensation Act

Automobile Liability Insurance

Minimum Amount           \$1,000,000 Each Accident

Coverage                   Owned, hired and non-owned vehicles

Form                         ISO Form CA 00 01 or equivalent

Garagekeepers Liability Insurance (if owner provides for-fee parking to public)

Minimum Amount           \$25,000 per vehicle

Umbrella Liability Insurance

Minimum Amount           \$5,000,000

Coverage                   Excess of General Liability, Automobile Liability and Employer's Liability

No less broad than General Liability, Automobile Liability and Employer's Liability

Form                         Occurrence basis form

Pollution Liability Coverage (only projects contaminated with hazardous substances, lead, asbestos and other pollutants)

Minimum Amount           \$1,000,000

Coverage                   Cleanup, property damage and bodily injury

The retroactive date must pre-date the remediation work start date

## Exhibit C

# MAINE STATE HOUSING AUTHORITY

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

### Introduction

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

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

### Equal Opportunity Policy

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

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

## **Contract Requirements**

All contracts and subcontracts entered into by MaineHousing, applicants, developers, project owners, agents, contractors (including construction managers) and subcontractors in connection with MaineHousing's programs shall contain the following provisions.

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

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

## **Outreach Efforts to Women and Minority-Owned Businesses**

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

## **Section 3 - Outreach Efforts to Low Income Persons**

Section 3 requires recipients of federal funding to provide job training, employment and contracting opportunities to Section 3 residents and Section 3 businesses to the greatest extent possible. Section 3 residents are residents of public or federally-assisted housing and persons with low income (defined as persons with income at or below 80% of area median income as determined by HUD).

A Section 3 business is a business in which 51% or more of the business is owned by persons with low income or a business that employs a substantial number of persons with low income, i.e. at least 30% of its full-time, permanent employees are persons with low income. Ideally, the Section 3 residents should be from the area in which the multi-family housing is being constructed. In accordance with the goals of Section 3, at least 10% of the contracts for building trades and at least 3% of all other contracts associated with the construction or rehabilitation of a multi-family housing project should be directed to Section 3 businesses.

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