

Public Hearing Comments on the QAP:

46:36 – 49:00 Susan Riggs, ASPCA

Good morning, this is Susan Riggs with the ASPCA and I appreciate the opportunity to speak to you regarding the QAP revision. It might seem a little bit unusual that an animal welfare group would be testifying today on the low income housing tax credit however, what we have found is that most relinquishments of animals or pets to shelters is as a result of housing instability and we see that the demographics that are most effected are folks that are lower income and that really has to do with the lack of access to pet friendly housing. HUD since 2000 has implemented rules on its public housing and its section 202 and 811 programs to ensure the tenants of those properties are allowed to keep pets and one reason for this is that there are numerous benefits that accrue to individuals and families that have pets. Everything from cognitive growth in children to obviously companionship and saving off loneliness for seniors and everything in between, you know physical activity, etc. etc. And you know obviously we know that among the missions of providing affordable housing is to ensure that the holistic needs of tenants are being met and as a result, we are requesting the integration of a pet friendly rule in the QAP and that could be implemented in a couple different ways. One is that you could provide some points in a competitive realm for ensuring that the property is pet friendly, or you can just make it a requirement of the property and I did want to specifically address, I heard the comments on the state tax credit about the concern about cost and I certainly empathize with that. You know we see that all over the country that the cost of affordable housing and development in general is going up and I want to assure you that we have worked in numerous states in implementing similar programs and have found that the cost of implementing pet friendly housing is really no different than just housing in general, you know. Obviously developers are very concerned with the sustainability of finishes and ensuring that there are common areas that are accessible to residents and their entire households, including pets, so I thank you for giving me the opportunity to speak today and appreciate your consideration. Thank you.

50:08 – 54:43 Nathan Szanton, The Szanton Company and Maine Workforce Housing, LLC

Chair O'Hara, Director Brennan, Counsel Janotta and members of the Board, thank you very much for this opportunity to participate in the development of the QAP. I'm Nathan Szanton, President of the Szanton Company and Maine Workforce Housing. In my capacities in these rolls, I have completed ten Maine low income housing tax credit projects and have an additional five currently under development. The changes to the scoring in this current QAP I think are excellent, very thoughtful and helpful. My testimony this morning is on a much narrower subject and that is the proposed new provisions of the QAP governing the back end of these transactions when the investor limited partner exits. I understand that you are receiving comments from Evernorth and perhaps others about this, suggesting a general change in approach, however, should you decide to continue to implement the approach contained in the new Appendix E that governs this, here are some comments: The provisions of Appendix E require LIHTC equity investors who provide letters of interest to agree to certain provisions regarding the transfer of the equity investor ownership interest after the conclusion of the LIHTC compliance period. I understand, and really appreciate MaineHousing's interest in setting standards for the transfer of investor interest after the LIHTC period. Having said that, I am concerned that the rules as proposed will have some unintended consequences and that there are some provisions that could be technically improved. Specifically first Appendix E requires particular business terms in the deal between the investor and

the development team. There is no flexibility for the development team to negotiate a better deal than the terms provided in Exhibit E. If the development team is not permitted to negotiate more favorable LPA language than the terms required by MaineHousing that may result in LIHTC investors receiving a higher back end payout than they might otherwise be willing to take. My experience has shown that we can many times negotiate back end provisions with investors that are more favorable than those which appear in Appendix E. I believe that instead of being mandated provisions a better result would be achieved by providing that the Appendix E provisions establish a floor for these back end provisions rather than mandating specifically what the provisions must be. Secondly, Appendix E in Section I 2 of Appendix E it addresses the price to be paid by the development team for the investor's limited partner interest. This provision requires that the payment to the investor be based on what the investor would receive if the entire property were sold. Many times, we've negotiated provisions that the price to be paid for the investor's interest be the fair market value of the investor's partnership interest rather than the investor's take if the entire property were sold and liquidated, using the value of the investor's partnership interest rather than the value of the investor's share of the liquidation value would likely result in a lower buy out price. This is because it would take into account other factors, including for example, that the investor does not have control over the partnership and that there in a very liquid market for investor interests, it is likely that no party would pay for the investor's interest the amount that the investor would receive if the entire property were sold and the partnership dissolved. And then third, just on a much more granular level, the fair market value of the property should not only be "as encumbered by the extended use agreement," which is how it is written in the current version, but it should also be as encumbered by all other restrictions of records such as restrictions that come with the HOME, CDBG, Maine Historic Tax Credit, Maine LIHTC, municipal requirements and all the other layers of financing, which impose various encumbrances and controls on a property. Omitting those other restrictions would likely result in an overvaluation of the property. I have sent Mark Wiesendanger and Ashley Janotta some actual proposed revised language for Appendix E that would be responsive to these comments in case that is helpful. Again, thank you very much for allowing us developers to participate in this process. I would be happy to try to answer any questions that anyone might have at any time. Thank you.

54:58 – 58:00 Rebecca Price, U.S. Green Building Council

This is Rebecca Price from the US Green Building Council. Is it okay if I launch into my schpel? So thank you so much for the opportunity to comment. My name is Rebecca Price and I am representing the US Green Building Council as well as the thousand plus lead certified professionals in Maine. Really quickly, US GBC is a nonprofit organization based in D.C. committed to transforming the way all buildings and communities are designed and built. You probably know us through our flagship green building system leadership and environmental and energy design i.e. LEED, which is a nationally and globally recognized standard that takes a holistic view to whole building performance so thinking about materials that are used, resource efficiency, proximity to transportation, as well as aspects of the building that can have a positive impact on an occupant's, health and comfort. So quickly I want to just kind of level set what we are defining a high performance building is. We consider a building to be high performance if it is built above minimum energy, health and safety requirements found in a state's building code. LEED is the most widely used high performance building rating system I believe in the world and to achieve certification projects must meet a set of rigorous criteria in a sort of like, flexible system of prerequisites and credits that when combined really set like a building project on the path to excellence in both the design phase, and then in continued operations and maintenance. So all that

said, how does this relate to affordable housing? I think there is sort of a stigma of LEED as being a sticker on a shiny downtown commercial office building. At least that is what I initially thought, but in fact, thirty state housing authorities across the country currently cite LEED in their QAP's, either through a requirement or through incentivizing it through points and that is because residents stand a lot to gain from a certified housing project. I think chiefly through energy and water savings, which is reflected in their utility bills but also benefiting from better indoor air quality, improved, occupant comfort, etc., and fundamentally like third party certification is holding a developer and a building operator accountable to the performance outcomes. So with all that said US GBC recommends that MaineHousing include points for high performance building certifications in its QAP. I will end on sort of a recent development Maine's legislature, actually just two or three weeks ago passed and Governor Mills signed a law which amends Maine's affordable housing statute to require that all housing funded by the housing authority be built to a high performance building certification so therefore, we recommend that the allocation of federal tax credits align with this amended statute. And that is it for me today, thank you. 58:02

58:13 – 1:11 Dana Totman, Avesta Housing Corporation

Yes, thank you, good morning commissioners and good morning MaineHousing staff. I am Dana Totman and I am the president of Avesta Housing. Avesta Housing is a nonprofit here in Maine and we are celebrating our 50th year of addressing some of Maine's most pressing housing issues. I have comments this morning on six areas of the proposed QAP so please just bear with me. The first area that I want to comment on is Section 3 B and Section 4 F 1, which references a preservation set aside. I think we all know that Maine now has the largest shortage of affordable rental homes arguably ever in our State's history. There are literally thousands and thousands of people that need affordable housing that do not have it. As a result we feel all 9% tax credits should be spent on new, affordable housing and that you not allocate tax credits worth two or three million dollars to existing housing developments. Existing housing developments already have people living in the units and they are already paying an affordable rent. Housing governed by RAD or RD is generally not really in any danger of losing its affordability so there is really no need to preserve it and the preservation is a bit of a misnomer in name. However, if you feel compelled to do a preservation set aside, we would suggest that you establish a minimum score of maybe 65 points or require the application to be in the top 60% of all scores. What's been happening in recent years is that many successful preservation set aside applicants, their scores are really always far and away the lowest generally among all those applications submitted and so you end up skipping over a lot of other higher scoring applications to pick out this one development to preserve and we think that is a little un-fair. Also, if you do feel compelled beyond having the idea of a minimum score, you feel compelled to keep this set aside, we would suggest that you not limit it just to RD and RAD housing. Instead that you include other tax credit developments, Section 8 developments or any other MaineHousing funded developments. Limiting the funding to RD and RAD projects appears arbitrary and puts Maine into the place really of bailing out HUD and RD for not properly investing in their own developments. My second area to comment on is the telemedicine capability identified in section 5 J 3. We feel requiring broadband capability is reasonable. I think every developer of housing would agree and we likely agree that our states need to enhance broadband connectivity is important. However, we really question whether or not the tax credit program is the right vehicle to do so. Highlighting telemedicine as desired outcome for broadband appears to be kind of a remnant from a prior administration and that administration had a priority that may be different than yours. We would argue that attending school or maintaining social contact are equally compelling reasons for broadband connection. However, ultimately, there just seems like no need

for this item. I think it is an administrative expense and confusing and that we would suggest that you eliminate it. Next comment is on Section 5 M which is the wait list preference. Giving preference to those on Section 8 waiting list is troubling for a couple of reasons.

Housing authorities have wait lists that are many years long and many individuals are discouraged from adding their names to the list because it is really somewhat hopeless. But additionally, and maybe more importantly, most asylum seekers are eligible for tax credit housing but are ineligible for Section 8 vouchers, so they can't even get on the waiting list and so the waiting list preference really eliminates them, even though they are a very important group to serve with at tax credits. So we think this really creates a bias against asylum seekers and that you should not continue with it. We note that recently a new tax credit development opened in South Portland, literally a couple hundred yards from a hotel full of asylum seekers yielded virtually no asylum seekers moving into that affordable housing because of the preference for Section 8 voucher holders. So again, we would suggest that you eliminate that preference. My next comment is on the financial characteristics, which is section H and I. This section appears to provide extra points for bringing financial resources to the proposed project and I think that is a good idea. I think we all think that other resources that are brought to the table should be valued. However, for some reason there are only two resources identified as worthy of points. One resource is low price land, Section H and the other is tax relief Section I. We feel that when applicants contribute non-MaineHousing financial resources to proposed projects this does really allow MaineHousing to spread your resources further and to ultimately create more affordable housing and so this is a really important category.

However, though to specify the discounted land is worthy of points, but private donations, other grant awards, foundation commitments or federal home loan bank awards are not worthy of points simply does not make any sense and we attended those listening sessions and we didn't hear information that we expected would yield this proposal. The other part to comment on that was certainly discussed in those listening sessions brought up by municipalities and developers was the idea that tax relief awards, TIFs, are worthy of points and we would again argue that that's no more compelling than any of the other financial resources that I just mentioned. What was brought up during those listening sessions and I think it is important for all of you to consider is that some municipalities of actually used the desire of developers to get TIF awards as a mechanism to essentially weaponize their ulterior goal of NIMBYism. The scores are very, very tight every time on these applications, so getting three points for a TIF really makes a difference of getting a project funded or not and so when a town can, you know, Bath and Cape Elizabeth, come to mind when they sort of say no, we're not going to give you a TIF award because that gives you points and that might lead to your project getting funded. I don't think that is really what we want to be enabling in the QAP. So again, we fully support the idea of financial resources having value but limiting it to just these two, we think doesn't make a whole lot of sense. The next section, and arguably this is the one that we think is most troubling is on the housing need, which is section 6 J. Every year there are a number of tax credit applications and many as I just said, lose out by a point or two or three and so with this location the categories if you are in the right town, you get six or eight or ten points or if you are in the wrong town, you get zero so this is a difference maker like no other in the QAP. If your town is not on the list the people in your town are very likely not going to see any nine percent tax credit housing built there. We feel this is a flawed list that appears to be from a 2013 State Planning Office Service Center Community list. It is an interesting list, but it is unrelated to housing need. For instance, Bath with a population of 8,333 receives ten points for need. Bath currently has 339 affordable rental homes for families. The town of Gorham with a population more than twice as large 17,651 has 0 affordable rental homes and Gorham receives 0 points in this flawed scoring approach. Gorham is actually included in a subcategory on that old 2013 list but is inexplicably left off the list in this QAP. The Towns of Oxford and Norway each receive 8 points, while the

adjacent and very similar community of South Paris receives 0. Gardiner receives 8 points but Hallowell next door received 0. Thomaston received 6 and Waldoboro receives 0. Rockport received 6 points, Rockland 8 points, and Camden receives 0 in this family housing scoring category. We think many of those restaurants and shops in Camden could use some nearby affordable housing in Camden for their workers. It is simply not fair that these towns and many others like Winslow, Wells, Buxton, Hollis all get 0. In simply, I think it is time to sort of change this scoring in a big way. We realize that fixing this category to better reflect need will take some time. If you feel compelled to proceed with these groupings as presented, we suggest you change the point assignments from 10, 8, and 6 to 3, 2, and 1 to lessen the disadvantage of so many deserving and needy communities. My next comment is on the Community Revitalization section in 6 K. Proposed developments that are in Community Revitalization Plans or in communities that are in a Revitalization Plan receive 2 points. Community Revitalization Plans are outdated, seldom used planning mechanism or designation of municipal government, so we think this category should probably time to eliminate it as well. In closing, I would say that this document really is the document that allows you as policy makers to decide who you want to receive housing, where you want the housing built, and what entities you want to develop the housing and this plan has over many years been incrementally adjusted, tweaked and often changed as a reaction to some specific incident. I even recognize some of my own fingerprints on some of these categories from when I worked at MaineHousing twenty five years ago and so I understand how we got to this document but I think all of these gradual changes have now created a plan that is a bit of a Hodge Podge of items with no clear objectives or goals and really not able to answer those three questions of who you want to serve, where you want housing built, and who do you want to build the housing? So I would urge you for that reason to approve this plan for just one year and not two. And instead embark on a new fresh planning approach to enlist some external help like other states have to do when they realize their plan is a product of incremental changes. I really would urge you to again do this just one year and to take a fresh look in the year coming, so thank you for the opportunity to comment. I really appreciate all that you do, thank you very much.

1:12 – 1:15 Bill Shanahan, Evernorth

Good morning, everyone. Thanks for this opportunity to talk to you this morning. I like Nathan want to speak to the change of adding Appendix E to the Qualified Allocation Plan. The extent that that change is made to preserve affordability, I think that is a very good proposal and it is consistent with what is happening nationwide for housing finance authorities to be proactive in trying to preserve affordability in the exit years. I am co-president of Evernorth. Evernorth is a syndication firm, a nonprofit syndication firm, and we represent often almost exclusively the investors in these LIHTC transactions, and we like I say, support the preserving affordability but I also want to highlight that this change to the QAP is a very prescriptive change and otherwise very heavily negotiated piece of the LIHTC transaction, there are various outcomes and, frankly, we often negotiate deal by deal, partner by partner and this, actually, the proposed language is prescriptive to the point where it actually favors the syndication or the investor side of the transaction, more than it does the developer side. I just want to highlight that. There are references to things like exit taxes, which are absolutely negotiable in a transaction. There references to bonafide third party offers in the right of first refusal provisions. In practice, those are rarely ever exercised. There is compliance, period dates around compliance periods and exits and often the times those are very heavily negotiated and should be flexible. There are times when you know exits need to happen before the end of the compliance period. There are times when both parties can agree and take a separate path to resolution and exit. And some of these things may not be available going forward if we have to

be compliant with this provision of the QAP. I guess our response is that one size does not fit all, and we expect to submit additional written comments before the 27th but I thought I would take advantage of this opportunity this morning to comment on this appendix, and I again applaud the efforts to preserve affordability, but suggest maybe it could be done with a less prescriptive approach. So thank you for letting me speak this morning and thanks for the work you all do.

1:15 – 1:18 Jeff Levine, Maine Affordable Housing Coalition

Jeff Levine | 1:15:41

Thanks, my name is Jeff Levine and I am speaking on behalf of the Maine Affordable Housing Coalition. We are an organization of over a hundred private, public, and nonprofit groups that represent developers, architects, engineers, builders, investors and others that are interested in the affordable housing world. Our mission is to raise public awareness and advanced solutions that create and preserve affordable housing in Maine. I want to speak on a few items briefly and mostly to reiterate some of the comments that have been made by various members of our organization. You have also received some communication from the new director of Maine Public Housing Coalition, Laura Mitchell. We may submit some additional comments as well, but I just wanted to hit some of the high points at the hearing here. First off I want to second the comments from Dana Totman at Avesta ways of reducing the cost of a project. I think getting land at a below market value is a great thing, but there are lots of other ways to help bring other resources into a project. And I would second his comment that sometimes the affordable housing TIF tool well really important for promoting affordable housing development takes on this additional significance of giving additional points in the QAP that is perhaps beyond what it was originally intended to do. So some way to level the playing field with other sources of outside funding would be really helpful as part of the QAP. Second, our members have had a lot of conversation about Appendix E. I do not necessarily offer a solution to the questions that were raised. I think that that both the Szanton Companies and Evernorth have raised some legitimate concerns about the language in it. I do think there is a real concern that needs to be addressed, based on some of the events that have occurred on some LIHTC projects recently and I think there does need to be something in the QAP about this. I tend to agree based on what I am hearing from members that perhaps the existing language that is proposed is a little too prescriptive and would invite a slightly softer approach and I would want to reiterate the comments I heard from Evernorth about perhaps having a list of sort of bad actors that have a record of not following through with the intent of the program at some point that perhaps would not be eligible to work on projects under the QAP. Finally, I just want to reiterate generally the issue of the price of development and the need for flexibility on cost caps. There is this balancing act between promoting low market affordable housing in areas where costs are high and the need is high, but also the jobs are there and sometimes cost caps have the unintended consequence of driving affordable housing out into places where there may be a need, but there perhaps are not opportunities for people to live in those units. So finding some way of balancing, you know, keeping the costs reasonable but also offering some escape valve for circumstances where there is a high need for say service workers in a coastal community and not penalizing them for the fact that other members of that community perhaps are more wealthy and therefore, land is more expensive. Thanks very much. I appreciate you taking our comments.

1:19 – 1:23 Gary Vogel, Esquire, Drummond & Woodsum

Yes, thank you, I'm Gary Vogel an attorney at Drummond Woodsum and I'm speaking today on behalf of three of our clients of our office which is the Portland Housing Authority and its affiliated

development corporation; Westbrook Housing Authority and its affiliated development corporation; and South Portland Housing Authority and its Development Corporation. I want to limit my comments to Appendix E and primarily to sort of agree with and add to the comments that were made by Nathan Szanton and Bill Shanahan on behalf of the Szanton Company and Evernorth first of all to encourage MaineHousing to incorporate back-end provisions into the QAP which we think are helpful. Primarily we're focused on the ability of a non-profit housing developer to really preserve and maintain the affordability of these projects and the continued ability to maintain and improve the projects following year 15 exit. Being able to minimize the amount paid by the sponsor for the exit for the investor retains more assets for the partnership to be able to continue to provide that affordable housing and to maintain the affordable housing by year 15 typically the projects are in need of a fair amount of resources to address needed improvements in the project and so being able to take advantage of provisions that enable a non-profit sponsor to do an exit on the most cost effective basis is really what we are focused on and so for that reason similar to the comments that Bill and Nathan have we also think that the provisions of Appendix E are a little too prescriptive and should be written in a more flexible way in order to preserve more options than those that are just prescribed in Appendix E for the sponsors and the investor to agree upon an exit which is really what typically happens in the real world. Our concern is that by making the provisions of Appendix E as prescriptive as they are that it may limit some of that flexibility. I think Bill did a good job of describing various different arrangements that tend to be negotiated. So we will be submitting some additional comments and suggested language to the Appendix E as well with the idea that we want to try and preserve as much flexibility to be able to enable these non-profit projects to have an exit on the most cost effective basis to retain as many of the assets available for the preservation and continuation of the affordability and maintenance of these projects. Thank you.



Via email: mwiesendanger@mainehousing.org

April 28, 2022

Mr. Mark Wiesendanger
Director of Development
MaineHousing
26 Edison Drive
Augusta, ME 04330

RE: 2023-2024 Qualified Allocation Plan – Final Proposed

Dear Mark,

Thank you for the opportunity to comment on the 2023-2024 Qualified Allocation Plan (QAP) proposed revisions.

Evernorth, a private, non-profit 501(c)(3) formed in 2020, unites Northern New England Housing Investment Fund (NNEHIF) and Housing Vermont (HV) together as a single organization to serve low- and moderate-income people of northern New England with affordable housing and community development equity capital, technical assistance, and consulting.

With Evernorth's combined NNEHIF and HV 30+ year track record and history, we have raised and deployed over \$1 billion in equity capital for more than 13,000 affordable homes and apartments for low- and moderate-income people across northern New England – all primarily through the federal Low Income Housing Tax Credit (LIHTC) program.

We submit the following feedback specifically to Section 5 Threshold Requirements as it relates to Appendix E: Requirements for Purchase Options/Rights of First Refusal.

Thank you for identifying Year 15 and exits as an issue to be addressed in the next Qualified Allocation Plan. While we very much agree with measures to preserve affordability and keep bad actors from preying on existing properties, we are concerned the proposed language is too prescriptive and does not strike the balance and fairness we believe MaineHousing intends between for-profit and non-profit general partners and limited partner investors and the business considerations negotiated between the two parties.

We have thought heavily about the proposed Appendix, looked over our investments, asked for advice from counsel, and offer the following:

Purchase Options/Right of First Refusal and Partnership Agreement

Maine should consider taking the approach of others including New Hampshire and the New York City Housing Preservation and Development agency, both of which have recently published a new QAP that identifies a number of features which must be included in a right of first refusal to ensure it will be

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recognized by the investor without legal ambiguities. The most important provision requires that each right of first refusal agreement include language permitting the non-profit to exercise the right of first refusal either through investor consent, no investor consent where there is a third-party offer, or by a public offer of sale of the property.

A copy of this language as part of a larger document that summarizes various actions states have taken to protect non-profit affordable housing after year 15 is attached to this comment letter.

Other Considerations: Aggregators

We recommend you consider adopting a policy similar to that within the New Hampshire 2023-2024 Qualified Allocation Plan and also utilized in Massachusetts, Virginia, and the District of Columbia. Policies adopted by other states offer good examples of steps that can be taken to protect affordable housing assets in Maine.

New Hampshire and Massachusetts each require credit applicants to use equity providers who have not been “involved in any ‘aggregator’ activity in New Hampshire, Massachusetts or in other states, seeking to undermine the exercise of a LIHTC right of first refusal/right of first option.” Virginia has proposed similar language in its 2022-2023 QAP.

The District of Columbia requires credit applicants “to ask potential investors or syndicators to submit a written acknowledgement that they have never sought to achieve early termination of a LIHTC extended use agreement through the qualified contract process, nor have they sought to undermine the exercise of a right of first refusal or a non-profit’s option to purchase in prior transactions.”

This approach serves **both** to protect future deals **and** discourage equity providers wishing to do business in the state from engaging in aggregator type behavior.

Nevertheless, such an approach, while useful, is limited since most of the worst actors refusing to recognize rights of first refusal do not generate new equity financing; they are simply purchasers of existing investor interests who are in the business of acquiring such interests for nominal amounts and generating profits by demanding general partners pay them off to leave the partnership.

To address those situations, MaineHousing should require approval for any transfer of investor interests on existing properties, a policy that a number of states have instituted.

We strongly support efforts to address Year 15 and bad actor issues and have great concerns about the increasing number of disputes across the country arising from the expected investor exits from LIHTC partnerships in both non-profit and for-profit sponsored properties. While we do not know the extent of this problem in Maine, given the increasing number of disputes across the country we expect that if it is not already a serious problem in Maine, it will soon be.

We support an approach by credit allocators that both attempts to address potential issues with new allocations of Housing Credits and discourages bad actors from preying on existing properties. Policies adopted by other states offer good examples of steps that can be taken to protect affordable housing assets in Maine.

Thank you for your attention to these important issues and the opportunity to present our views. We are available to assist you with the further development of these policies if you so desire.

Sincerely,

A handwritten signature in black ink, appearing to read 'BB' followed by a stylized flourish.

Beth Boutin

Vice President, Community Investments

bboutin@evernorthus.org

Attachment: Housing Finance Agency Toolkit for Addressing Year 15 Issues



Housing Finance Agency Toolkit for Addressing Year 15 Issues

Troubling changes are sweeping across the Low-Income Housing Tax Credit (Housing Credit) industry as outside capital buys up control of Housing Credit investor limited partnerships with the goal of extracting resources out of affordable housing properties after the end of the initial 15-year compliance period. This is a rapidly growing phenomena that is catching affordable housing advocates, stakeholders, and policymakers unaware, but which will have a profound impact on affordable housing in this country. Essentially, major sources of outside capital have discovered a commercial sector to exploit to reap hundreds of millions of dollars of profits, contrary to the intention of Congress.

This pattern has led to a growing number of troubling legal disputes and litigation that both drains the general partner's resources and threatens the long-term affordability of valuable affordable homes. The challenges to general partner's project-transfer rights involve both nonprofit and for-profit general partners, the nonprofit Right of First Refusal (ROFR) and the for-profit purchase option.

By disputing the transfer of property to a nonprofit through the ROFR, or to a for-profit general partner through a purchase option, private investors can extract unanticipated residual value from affordable housing properties. Recognizing that most general partners, particularly nonprofits, do not have the resources to litigate these issues in court, these private investors often leverage a profitable cash payment or the sale of the affordable property in return for leaving the partnership. This undermines the long-term viability of the affordable housing properties, sometimes leaving them at risk of exiting the affordable housing market. The use of scarce funds for payments from general partners to private investors is contrary to the original intent of the Housing Credit program.

This detrimental process diverts resources that otherwise would be devoted to resident services, building maintenance, and related affordable housing initiatives. In some cases, limited partners take properties through the qualified contract process, ending the affordability restrictions entirely. In high-cost rental markets, rising property values have created an increasing opportunity for investors to profit far beyond the original expectations and congressional intent.

This paper presents a toolkit of policy and regulatory options for state and local Housing Finance Agencies (HFAs) or other Housing Credit allocating agencies to adopt to protect affordable housing assets in their states which can be implemented in a Qualified Allocation Plan (QAP), Consolidated Request for Proposals, or a policy manual.


ACTIONS TO PROTECT FUTURE HOUSING CREDIT DEVELOPMENT BY NONPROFIT DEVELOPERS

1. Protective Language in ROFR

Where there is a nonprofit sponsor, the allocating agency could require partnership agreement language with certain features that ensure the ROFR will be recognized on behalf of the nonprofit grantee. The New York City Department of Housing Preservation and Development (HPD) incorporated exemplary language in its 2021 QAP which it finalized in September 2021. Reference:

<https://www1.nyc.gov/assets/hpd/downloads/pdfs/services/2021-official-qualified-allocation-plan.pdf>

HPD is proposing that as a condition to receiving an allocation of both 4% and 9% Housing Credits, nonprofit applicants must have a Letter of Intent (LOI) from a qualified equity provider that provides for a ROFR with listed features that protect the interests of the nonprofit ROFR grantee within the confines of Section 42(i)(7) of the



Internal Revenue Code. The language in the LOI eventually must be included in the partnership agreement. See Appendix A for the specific features that HPD proposes to require in the ROFR agreement.

The Virginia Housing Development Authority (VHDA) proposed 2022 QAP includes a number of changes to protect the ROFR rights of nonprofits. Utilizing language agreed to by the VHDA Board of Directors, the proposed QAP states: “The Authority is committed to the long-term affordability of developments for the benefit of tenants and full compliance by applicants and principals with the provisions of the IRC, the extended use agreement and other program requirements. The Authority similarly has an interest in preserving the right of first refusal by a qualified nonprofit organization at the close of the compliance period, as authorized in Section 42(i)(7) of the IRC.” As part of the proposed QAP, VHDA proposes to develop specific ROFR agreement language (“a designated form of right of first refusal document”) that must be included in future Housing Credit partnership documents. Reference:

<https://www.vhda.com/BusinessPartners/MFDevelopers/LIHTCProgram/LowIncome%20Housing%20Tax%20Credit%20Program/2022-QAP-Proposed-Changes.pdf>

2. Investor Transfer Policies

For both for-profit and nonprofit sponsored deals, the allocating agency could require agency approval of the transfer of investor interests based on standards designed to discourage the transfer to entities that have a history of engaging in practices that extract resources out of affordable housing.

VHDA’s proposed 2022 QAP would require that provisions be included in a credit applicant’s organizational documents limiting transfers of partnership interests, and that the extended use agreement include terms requiring notice and approval by the executive director of transfers of partnership interests. “The executive director is hereby authorized to require any or all of the following with respect to applications: (i) provisions to be included in the applicant’s organizational documents limiting transfers of partnership or member interests or other actions detrimental to the continued provision of affordable housing;... (iii) terms in the extended use agreement requiring notice and approval by the executive director of transfers of partnership or member interests.”

In its “Policies” document, the Washington State Housing Finance Commission (WSHFC) requires agency approval of any transfer of investor interests “based on whether the proposed transfer will (1) promote satisfaction of all applicable regulatory and contractual obligations, and (2) further the Commission’s priorities for LIHTC projects... including by increasing the likelihood the project will continue to serve the lowest income tenants for the longest period of time.” Potential grounds for disallowing a transfer include whether the “(t)ransferee has been part of a LIHTC ownership/project that subsequently reduced the project’s associated financial resources such that the project was not able to meet its planned capital needs. Reference:


<https://www.wshfc.org/mhcf/9percent/2021application/c.policies.pdf>

3. Investor Eligibility

In its March/April 2021 Notice of Funds Availability, the Massachusetts Department of Housing and Community Development specifically excluded equity providers who have been involved in “aggregator” activity “seeking to undermine the exercise of a LIHTC right of first refusal/right of first option...” Reference:

https://www.mass.gov/doc/nofa-rental-housing-rapid-production-initiative/download?_ga=2.118435722.220054217.1625346619-1034737688.1625346619

The equity provider cannot have refused to honor a ROFR, been involved in a lawsuit against a general partner challenging the exercise of a ROFR or have sought to remove a general partner absent clear evidence of fraud or serious mismanagement. This type of investor disqualification language serves not only to protect the specific



interests of new nonprofit Housing Credit deals in Massachusetts, but also is likely to influence the practices of equity providers for existing deals, at least to the extent the equity provider wishes to conduct business in Massachusetts in the future, because this policy evaluates an investor's eligibility for future deals based on how they have handled the ROFR on existing properties.

Alternatively, this policy objective could be achieved by giving credit applicants extra points for selecting an equity provider who has not engaged in “aggregator” activity to deny ROFR contractual rights of nonprofits.

VHDA's proposed 2022 QAP would debar entities that have “demonstrated a history of conduct detrimental to long-term compliance with extended use agreements, whether in Virginia or another state, and the provision of affordable tax credit units.”

The Department of Housing and Community Development of the District of Columbia in its 2021 QAP approved in October 2021 requires credit applicants to have an investor LOI that includes a “written acknowledgement that they have never sought to achieve early termination of a LIHTC extended use agreement through the qualified contract process, nor have they sought to undermine the exercise of a right of first refusal or a non-profit's option to purchase in prior transactions...” Reference:

<https://dhcd.dc.gov/publication/2021-dhcd-low-income-housing-tax-credit-qualified-allocation-plan-draft>

The Pennsylvania Housing Finance Agency has taken a similar approach in its 2021 QAP approved in November 2020, “The Agency may reject an Application from any Applicant (or related entity) who participates in a transaction... or has actively sought to interfere with or defeat a right of first refusal set forth in Section 42(i)(7), as determined by the Agency in its sole discretion.” Reference:

https://www.phfa.org/forms/multifamily_news/news/2020/2021-lihtc-allocation-plan.pdf

4. Automatic Agreement Changes to Reflect Changes in Federal Law

The New York City HPD and VHDA QAPs would require partnership agreements to include language that automatically converts the ROFR to a purchase option as proposed in pending federal legislation that would amend section 42(i)(7), the ROFR safe harbor in the Internal Revenue Code. See references above and appendixes.


ACTIONS TO PROTECT EXISTING HOUSING CREDIT PROPERTIES

1. Investor Eligibility

As noted above, if equity providers who have actively sought to interfere with or defeat a ROFR set forth in Section 42(i)(7) face regulatory sanctions impeding their ability to do new business within a state, this should cause them to consider modifying their practices with respect to existing properties. This type of policy would not be effective with “aggregators” who are acquiring control of investor limited partnerships but are not in the business of originating new financing.

2. Technical Assistance to Nonprofits

Some nonprofit general partners in Housing Credit properties who must deal with recalcitrant investors demanding a payoff to leave the property partnership may not be familiar with their rights under the partnership agreement or under Section 42. Faced with an unreasonable demand from their limited partner, and without the resources to mount an uncertain legal challenge to the refusal to recognize the ROFR, many nonprofits are inclined to find a way to pay the investor to go away, perhaps by liquidating property reserve funds, borrowing against the nonprofit's balance sheet, or refinancing the property with more debt. Allocating agencies can help protect the affordable



housing assets in their states, and the capacities of their nonprofit affordable housing providers, by educating them about their rights and providing technical assistance on how to deal with their investor.

3. Early Intervention to Identify Properties Approaching Year 15

Ideally, allocating agencies should be in contact with nonprofits by Year 12 to prepare them for Year 15 discussions with their investors for the purpose of arranging an orderly exit. This would be undertaken to ensure nonprofits understand their rights under the partnership agreement and are prepared to assert those rights in discussions with their investors.

4. Support Creation of Entity to Make Offers, Triggering ROFR

Some partnership agreements specifically require a bona fide third party offer to purchase a property to trigger the ROFR. In addition, some courts have ruled that there must be a bona fide third party offer under state common law even when the agreement does not include any language requiring such. Because of the difficulty of getting a third party to make an offer that will invariably be higher than the ROFR statutory price, it is difficult, if not impossible, to secure such offers that are necessary to trigger the ROFR. To address this problem, allocating agencies could support the creation of a special entity endowed with the financial resources and capacity to make bona fide third party offers. Specifically, HFAs could provide financing to back these offers and/or recruit other parties to establish and manage this entity.



APPENDIX A


New York City Department of Housing Preservation and Development Right of First Refusal Section of Proposed Qualified Allocation Plan

Not-for-profit credit applicants must submit a letter of intent from a tax credit investor that clearly grants to a qualified not-for-profit organization a right of first refusal to purchase the project for a below-market purchase price, following the expiration of the tax credit compliance period, in accordance with Section 42(i)(7) of the Code (the “ROFR”).

The letter of intent must specify the ROFR purchase price and identify any amounts due in excess of the minimum purchase price permissible under Section 42(i)(7)(B) of the Code.

In addition, the letter of intent must provide that the operating or partnership agreement (the “Agreement”) of the owner of the project (the “Owner”) will:

- a) grant the not-for-profit organization the ROFR at the ROFR purchase price and provide that all amounts to be included in the ROFR purchase price will be calculated in accordance with the agreement;
- b) provide that the general partner of the owner (the “General Partner”) may elect to do any of the following:
 - (i) subject to the consent of one or more limited partners of the owner (each, a “Limited Partner”), which consent may not unreasonably be withheld, conditioned or delayed, sell the project to the ROFR grantee in connection with the ROFR grantee’s exercise of the ROFR;
 - (ii) at its discretion, without the consent of any Limited Partner, sell the project to the ROFR grantee in connection with the ROFR grantee’s exercise of the ROFR following the General Partner’s receipt of a bona fide third party offer to purchase the project; or
 - (iii) offer the project for sale publicly at any time following the expiration of the tax credit compliance period and thereafter accept an offer from the highest bidder to purchase the project, as long as the sale price is not less than the minimum purchase price permissible under Section 42(i)(7)(B) of the Code, and provided such acceptance is subject to the ROFR grantee’s rights to exercise the ROFR and purchase the project at the ROFR Purchase Price;
- c) authorize and direct the General Partner to execute all documents necessary to effect the sale of the project pursuant to the ROFR;
- d) provide that, unless prohibited by binding legal precedent, the Limited Partners waive all legal rights to challenge (i) the sale of the project by the General Partner to the ROFR grantee even if the ROFR grantee is affiliated with the General Partner and (ii) the General Partner’s acceptance of an offer from the highest bidder in response to the General Partner’s public offer of the project for sale and/or the exercise of the ROFR by the ROFR grantee after any such acceptance;
- e) provide that the term of the ROFR shall expire not less than 36 months after the General Partner’s public offer of the project for sale;

- 
- f) provide that in the event that Section 42(i)(7) of the Code is amended to permit a qualified not-for profit organization to hold a purchase option after the expiration of the tax credit compliance period, and only to the extent permitted under such revised Section 42(i)(7), the ROFR grantee shall be entitled to purchase the project, or at its option, all of the interests in the owner, in either case at the ROFR purchase price, in lieu of exercising the ROFR;
 - g) provide that the ROFR will not be adversely affected or limited by any other rights of the Limited Partners, or any owner of any interest in any Limited Partner, such as forced sale rights, and there are no conditions to the exercise of the ROFR except as explicitly identified in the Agreement or required by binding legal precedent applicable to Section 42(i)(7) of the Code; and
 - h) prohibit, without the prior written consent of HPD, any amendment that would modify any term or condition related to the ROFR. A true and complete copy of the Agreement shall be provided to HPD as of both the closing of the financing for the construction of the project and the submission of an application for a Form 8609, in each case for HPD's review to confirm the Agreement includes the terms set forth in the letter of intent or terms that HPD determines are equivalent.

A true and complete copy of the operating or partnership agreement of the owner of the project shall be provided to HPD as of both the closing of the financing for the construction of the project and the submission of an application for a Form 8609, in each case for HPD's review to confirm that such agreement includes the terms set forth in the letter of intent or terms that HPD determines are equivalent.



Appendix B

District of Columbia, Department of Housing and Community Development Right of First Refusal Section of 2021 Proposed Qualified Allocation Plan

Non-profit Participation and Right of First Refusal

Projects in which a qualified non-profit organization is the managing member of the general partner or managing member of the Ownership Entity, as applicable, are required to hold a right of first refusal to purchase the Project at the end of the Compliance Period based on IRC Section 42(i)(7), as may be amended from time to time. The right of first refusal may be exercised anytime within a twenty-four (24) month period, or longer period, after the close of the Compliance Period. Once exercised, the Qualified Non-profit Organization shall have at least twelve (12) months to close on the purchase of the Project or the interests of the nonmanaging members of the Ownership Entity. The Qualified Non-profit Organization may assign the right of first refusal to a governmental entity, another Qualified Non-profit organization, or a tenant organization. In all instances where the non-managing members of the Ownership Entity have the right to consent to the exercise or assignment of the right of first refusal, such consent shall not be unreasonably withheld, conditioned or delayed. The nonmanaging members of the Ownership Entity may not withhold consent for a non-material breach of the Ownership Entity organizational documents. The purchase price shall be DHCD 2021 Qualified Allocation Plan, Page 20 of 45 calculated by the Project accountants and shall be based on the minimum purchase price in IRC Section 42(i)(7)(B) plus the amount needed to pay any unpaid fees, loans or other amounts due to the non-managing members of the Ownership Entity from the managing member.

The right of first refusal cannot be conditioned upon receipt by the Owner of a bona fide offer from any party, including a third party. The right of first refusal as outlined in IRC Section 42(i)(7), as may be amended from time to time, is not the same as a Right of first refusal under statutory, court-interpreted, or common law.

Financing Letters and Terms

As part of each LIHTC equity Letter of Intent, applicants are required to ask potential investors or syndicators to submit a written acknowledgement that they have never sought to achieve early termination of a LIHTC extended use agreement through the qualified contract process, nor have they sought to undermine the exercise of a right of first refusal or a non-profit's option to purchase in prior transactions as described in more detail in the Non-Profit Participation and Right of First Refusal section.



Appendix C

Virginia Housing Development Authority

Aggregators and Right of First Refusal Section of Proposed 2022 Qualified Allocation Plan

The Authority is committed to the long-term affordability of developments for the benefit of tenants and full compliance by applicants and principals with the provisions of the IRC, the extended use agreement and other program requirements. The Authority similarly has an interest in preserving the right of first refusal by a qualified nonprofit organization at the close of the compliance period, as authorized in Section 42(i)(7) of the IRC.

The executive director is hereby authorized to require any or all of the following with respect to applications: (i) provisions to be included in the applicant's organizational documents limiting transfers of partnership or member interests or other actions detrimental to the continued provision of affordable housing; (ii) a designated form of right of first refusal document; (iii) terms in the extended use agreement requiring notice and approval by the executive director of transfers of partnership or member interests; (iv) debarment from the program of principals having demonstrated a history of conduct detrimental to long-term compliance with extended use agreements, whether in Virginia or another state, and the provision of affordable tax credit units; and (v) provisions to implement any amendment to the IRC or implementation of any future federal or state legislation, regulations or administrative guidance.

The decision whether to institute, and the terms of, any such requirements shall be made by the executive director as reasonably determined to be necessary or appropriate to achieve the goals stated in this paragraph and in the best interest of the plan. Any such requirements will be indicated on the application form, instructions or other communication available to the public.



May 16, 2022

Ms. Ashley Janotta, Chief Counsel
Maine State Housing Authority
26 Edison Drove
Augusta, ME 04330-6046

Re: Public Comment – CHAPTER 16, Low-Income Housing Tax Credit Rule

Dear Ms. Janotta:

On behalf of the American Society for the Prevention of Cruelty to Animals (ASPCA), we are writing to respectfully request the integration of a pet-friendly preference for housing developments financed by the Maine State Housing Authority (MaineHousing) utilizing the federal Low Income Housing Tax Credit program (LIHTC).

Founded in 1866, the ASPCA was the first humane society to be established in North America and is today one of the largest in the world. The ASPCA believes that pets and people belong together; that financial circumstances alone is not a reliable indicator of the capacity to love and care for a companion animal; and that strong bonds between people and pets make for stronger communities.

Unfortunately, a shortage of pet-friendly housing can conspire to force even the most devoted pet owner to relinquish a beloved pet to a local shelter. Sadly, the lack housing options available in the market that are both pet inclusive and cost appropriate means that lower income households are forced to make this difficult decision far more frequently. In fact, a national study conducted by the ASPCA revealed that those who rent are more likely to need to rehome their pets for housing issues than for any other reason.ⁱ Further, families that relinquish a pet often cite financial eviction from their current housing and a lack of suitable pet-friendly alternatives in the rental market.

This reality is particularly detrimental because, at a time of extraordinary stress and uncertainty, the emotional and mental health benefits that pets provide for persons experiencing the trauma of eviction, displacement, or homelessness are critical. Consistent with the goals of affordable housing, enabling families to have pets in housing can significantly contribute to their overall wellbeing. According to the Centers for Disease Control and Prevention, pets have positive impacts at nearly every stage of life. Pets influence social, emotional, and cognitive development in children, promote an active lifestyle, and have been able to detect oncoming epileptic seizures or the presence of certain cancers.ⁱⁱ Research shows that cats provide emotional support, improve moods, and contribute to the overall morale of their owners. Cats are also credited with promoting socialization among the elderly and physically or mentally disabled people. Furthermore, people with pets tend to have lower blood pressure, cholesterol and triglyceride levels. These benefits are consistent with goals to holistically address the social, economic, and health outcomes. As such, pet-friendly housing promotes happier and healthier families, better futures for the family pet, and a reduced financial burden to shelters and the public.



Given the many benefits that accrue to humans from pets, the ASPCA believes that it is important to ensure those with lesser financial means who will be served by the LIHTC investments have access to pet-friendly housing. This goal could be achieved through the application in two ways: 1) for non-competitive projects, the requirement could be imposed through the rulemaking process; and 2) for competitive projects, a pet-friendly preference could be included by adding a scored component to the LIHTC application.

Integrating these preferences would result in much-needed pet-friendly housing being added to the market and would build on the strong commitment of the federal government in supporting pet-friendly housing opportunities. The federal Department of Housing and Urban Development (HUD) has required all its public housing and all HUD-insured and/or –financed housing for senior or disabled households to be pet-friendly since 2000 and 2008 respectively.ⁱⁱⁱ

MaineHousing has at its discretion the ability to expand much-needed pet-friendly housing opportunities for lower income Floridians, strengthen communities and families, and improve public health outcomes for impacted households. We thank you for your leadership in considering this proposal so that fewer households are faced with the difficult decision of giving up their pet and keeping a roof over their head.

Sincerely,

Bill Ketzer
Sr. Director of State Legislation
Bill.ketzer@aspca.org

Susan Lea Riggs
Sr. Director of Housing Policy
Susan.riggs@aspca.org

ⁱ Weiss, E., Gramann, S., Spain, V., & Slater, M. (2015). Goodbye to a good friend: An exploration of the re-homing of cats and dogs in the U.S. *Open Journal of Animal Sciences*. 5: 435- 456.
https://www.researchgate.net/publication/283563524_Goodbye_to_a_Good_Friend_An_Exploration_of_the_Re-Homing_of_Cats_and_Dogs_in_the_US.

ⁱⁱ Healthy Pets Healthy People, Centers for Disease Control and Prevention
<https://www.cdc.gov/healthypets/health-benefits/index.html> (April 30, 2014).

ⁱⁱⁱ Pet Ownership in Public Housing, 24 CFR 960, <https://www.law.cornell.edu/cfr/text/24/part-960/subpart-G> (March 29, 2000); Pet Ownership for the Elderly and Persons With Disabilities, 24 CFR Part 5, Subpart C, <https://www.law.cornell.edu/cfr/text/24/part-5/subpart-C> (Nov. 26, 2008).



May 17, 2022

Ashley Janotta
Maine Housing
26 Edison Drive
Augusta, Maine 04330

Dear Ms. Janotta,

The following are comments on Maine Housing's proposed 23-24 QAP. These comments will also be delivered orally at the Public Hearing.

Section 3 B and Section 4F1 Preservation Set-aside. We feel Maine now has the largest shortage of affordable rental homes ever in our state's history. As a result, we feel all 9% tax credits should be spent on new affordable housing. Existing affordable housing developments already have people living in the units and they are already paying an affordable rent. Housing governed by RAD or RD is generally not in any danger of losing its affordability so there's really no need to preserve it. If you feel compelled to do a preservation set-aside, we would suggest that you establish a minimum score of 65 points or require the application to be in the top 60% of all scores. In recent years the successful preservation set-aside applicants' scores have almost always been by far the lowest scores of all applications leaving higher scoring applications simply skipped over. Also, if you feel compelled to do a preservation set-aside, we urge you to not limit it to RD and RAD housing and instead include tax credit developments, Section 8 developments, and other older Maine Housing funded developments. Limiting this funding to RD and RAD projects appears arbitrary and puts Maine in the place of bailing out HUD and RD for not properly investing in their developments.

Section 5J3. Telemedicine Capabilities. We feel requiring broadband capability is reasonable and we likely all agree on our state's need to enhance broadband connectivity. We really question if our tax credit program is the right vehicle to do so. Highlighting telemedicine as desired outcome from broadband appears to be a remnant from a prior administration's priorities. We would argue that attending school and maintaining social contact are equally compelling reasons for broadband connection. However ultimately there just seems like no need for this item and it is difficult, confusing, and administratively expensive to implement.

Section 5M. Waitlist Preference. Giving preference to those on Section 8 waiting lists is troubling for a couple of reasons. Housing Authorities have wait lists that are many years long and many individuals are discouraged with adding their names to a list. Additionally, since most asylum seekers are eligible for tax credit housing but ineligible for Section 8 vouchers this Section 8 waiting list preference creates a bias against asylum seekers. Recently a new Tax Credit development opened in South Portland next door to a hotel full of asylum seekers. Virtually no asylum seekers were able to move in because of the Section 8 preference. We think this preference should be eliminated.

Section 6 H and I. Financial Characteristics. This section appears to attempt to provide extra points for bringing financial resources to the proposed project. Only two resources are identified as worthy of points. One resource is low priced land (section H), and the other is tax relief (section I). We feel applications that contribute non-Maine Housing financial resources to proposed projects do allow Maine Housing to spread

their resources further and this is therefore an important category. However, to specify that discounted land is worthy of points but private donations, other grant awards, foundation commitments, or Federal Home Loan Bank awards are not worthy of points makes no sense. To specify that tax relief awards (TIFs) are worthy of points is also no more compelling than any other financial contribution. In fact, during the Maine Housing QAP listening sessions it was suggested repeatedly to not single TIFs out as one of only two categories by which to earn Financial Characteristic points. Because the 3 TIF points are often the difference between a funded and non-funded application, some municipalities have already demonstrated an unfortunate strategy to weaponize the TIF scoring category by intentionally denying the TIF request as a way to implement their NIMBY intent. Instead, we recommend that you provide points for applicants' financial contributions from any source rather than just TIFs and donated land.

Section 6J. Housing Need. Arguably this may be the most troubling proposed section of any in this draft QAP. Every year there are a number of tax credit applications that lose out by just a couple of points. So, with this location category garnering 6, 8 or 10 points for certain towns it is a huge difference maker. If your town is not on this list, the people in your town are very likely to not see any 9% tax credit housing built there. This is a flawed list that appears to be from a 2013 State Planning Office Service Center Community List. While an interesting list, it is unrelated to housing need. For instance, Bath with a population of 8,333 receives 10 points for need. Bath currently has 339 affordable rental homes for families. The town of Gorham with a population of 17,651 has zero affordable family rental homes. Gorham receives 0 points in this flawed scoring approach. Gorham is actually included in a subcategory of this old 2013 list but inexplicitly is left off the list in this QAP. The towns of Oxford and Norway each receive 8 points while the adjacent and very similar community of South Paris receives zero points. Gardiner receives 8 points but Hallowell next door receives zero. Thomaston receives 6 points and Waldoboro receives zero. Rockport receives 6 points, Rockland receives 8 points, and Camden receives zero in this family housing scoring category. We think many of those restaurants and shops in Camden could use some nearby affordable housing in Camden for their workers. It is simply not fair that these towns and many others receive zero points as we know the need in these communities is the same as the next-door communities. We realize fixing this category to better reflect need will take some time. If you feel compelled to proceed with these groupings as presented, we suggest you change the point assignments from 10, 8, and 6 to 3, 2 and 1 points to lessen the disadvantage of so many deserving and needy communities.

Section 6K Community Revitalization. Proposed developments that are in Community Revitalization Plan receive 2 points. Community Revitalization plans are an outdated seldom used planning mechanism or designation in municipal government so this category should be eliminated.

General. The QAP is the document that allows you as policy makers to decide: who you want to receive housing help; where you want the housing built; and what entities you want to develop the housing. This plan has, over many years, been incrementally adjusted, tweaked, and often changed as a reaction to some specific incident. All of these gradual changes have now created a plan that is a bit of a hodgepodge of items with no clear objectives or goals. We urge you to not approve this plan for two years but instead approve it for one year and in this one year embark on a new fresh plan using external QAP writing experts. Thank you for the opportunity to comment.

Sincerely,


Dana Totman

President/CEO
Avesta Housing



PRESIDENT & CEO

Maresh Ramanujam

FOUNDERS

David Gottfried

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S. Richard Fedrizzi

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💻 usgbc.org

May 17, 2021

Daniel Brennan, Executive Director
MaineHousing
26 Edison Drive
Augusta, ME 04330

RE: 2023-2024 Low-Income Housing Tax Credit Program Qualified Allocation Plan

Dear Director Brennan,

On behalf of the U.S. Green Building Council (USGBC) and our community in Maine, we are pleased to provide our written comments regarding the draft 2023-2024 Low-Income Housing Tax Credit Program Qualified Allocation Plan.

USGBC is a nonprofit organization committed to transforming the way all buildings and communities are designed, built, and operated to support a sustainable, resilient, and prosperous environment that improves the quality of life for all. Our flagship green building system, Leadership in Environmental and Energy Design (LEED), is a nationally recognized standard that takes a holistic view to whole-building performance that includes materials, resource efficiency, location and transportation, as well as resident health and comfort.

The Value of Third-Party Verification in Affordable Housing

A building is considered high-performance if it is built above the minimum energy, health, and safety requirements found in a state's building code, creating healthier and more efficient spaces. LEED is the most widely used high performance building rating system in the world; to achieve certification, projects must meet a set of rigorous criteria in a flexible system of prerequisites and optional credits that, when combined, set building projects on the path to excellence in design and operations.

Residents of multifamily affordable housing benefit from third-party high performance building standards like LEED through energy and water savings – addressing one of the perpetual barriers to affordability – as well as better indoor environmental quality and improved occupant comfort. Fundamentally, third-party certification holds building developers, owners, and operators accountable to achieving desired building performance outcomes. It's for this reason that 30 state housing

authorities currently cite LEED in their QAP – either through a requirement or incentivizing it through points in its selection criteria.

USGBC Recommendations for 2023-2024 QAP

Maine's legislature affirmed the importance of building its affordable housing stock to high-performance building standards this legislative session. After passing through both chambers, Governor Mills signed ME LD 1656 into law on May 3, amending Maine's affordable housing statute to require that all affordable housing projects funded by the Maine Housing Authority be built to a high-performance building certification.

In light of this development, USGBC recommends that MaineHousing align its 2023-2024 QAP with the amended statute by including points for achieving third-party certifications in its project selection criteria. By doing so, MaineHousing will ensure that all projects reflect the state's goals as well as its stated commitment to improve the quality of its affordable housing stock.

USGBC has curated resources to help state housing agencies understand the benefits of certifying affordable housing to high-performance building standards. To learn more about how LEED improves the quality of affordable housing, please see this [QAP advocacy brief](#) and this [LEED in Motion: Residential](#) report. USGBC is also available to assist MaineHousing with suggested language and examples from other states on including points for achieving third-party certifications.

Thank you for your consideration of these comments. Please contact Rebecca Price at rprice@usgbc.org if you have questions.

Sincerely,

Rebecca Price

Rebecca Price
State Advocacy Specialist
U.S. Green Building Council



From: Fair Tide Executive Director <executivedirector@fairtide.org>
Sent: Thursday, May 26, 2022 9:42 AM
To: Mark Wiesendanger <mwiesendanger@mainehousing.org>
Subject: LIHTC QAP Public Comment

EXTERNAL EMAIL

Hi, Mark-

Hope you're doing well. I'm not sure if the public comment period for the LIHTC QAP is still open, but I wanted to share my support (and express my appreciation) for including the set aside for special needs populations in the scoring criteria. At a value of 6 points, this will ensure additional, much needed, units of rental housing are created for folks experiencing homelessness. Thank you for responding to the incredible need for housing opportunities for those at the very bottom of the economic spectrum.

Thanks again,
Emily

Emily Flinkstrom, MSW
Executive Director
Fair Tide
A Long-Term Solution to Homelessness
15 State Road
Kittery, ME 03904
Office: 207-439-6376 ext.1
Cell: 801-652-6077

Fax: 207-438-0294

www.fairtide.org



Via email: mwiesendanger@mainehousing.org

May 26, 2022

Mr. Mark Wiesendanger
Director of Development
MaineHousing
26 Edison Drive
Augusta, ME 04330

RE: 2023-2024 Qualified Allocation Plan – Final Proposed

Dear Mark,

Thank you for the opportunity to comment on the 2023-2024 Qualified Allocation Plan (QAP) proposed revisions.

Evernorth, a private, non-profit 501(c)(3) formed in 2020, unites Northern New England Housing Investment Fund (NNEHIF) and Housing Vermont (HV) together as a single organization to serve low- and moderate-income people of northern New England with affordable housing and community development equity capital, technical assistance, and consulting.

We had previously commented on Section 5 Threshold Requirements as it relates to Appendix E: Requirements for Purchase Options/Rights of First Refusal.

Again, thank you for identifying Year 15 and exits as an issue to be addressed in the next Qualified Allocation Plan. As we stated previously, we very much agree with measures to preserve affordability but viewed the proposed language as too prescriptive and not striking the balance and fairness we believe MaineHousing intends between for-profit and non-profit general partners and limited partner investors and the business considerations negotiated between the two parties.

We wanted to provide what we think are constructive edits and comments to Appendix E, see attached.

Thank you for your attention to these important issues and the opportunity to present our views. We're glad to work with MaineHousing and others to refine the QAP so it is responsive to the ever increasing need for affordable housing.

Sincerely,

Beth Boutin
Vice President, Community Investments
bboutin@evernorthus.org

APPENDIX E

REQUIREMENTS FOR PURCHASE OPTIONS/RIGHTS OF FIRST REFUSAL

II. The Purchase Options must:

- 1) grant to one or more of the general partner, managing member, developer or sponsor an irrevocable option to purchase the Project at an agreed upon amount (or if no agreement than by a fair market value (FMV) appraisal) the greater of: (a) its fair market value as encumbered by the Extended Use Agreement; and (b) the sum of: (i) the outstanding debt secured by the Project, (ii) the amount of the limited partner's or non-managing member's federal, state and local tax liability resulting from the sale of the Project, and (iii) all amounts owed to the limited partner or non-managing member under the limited partnership agreement or limited liability company operating agreement (the "Project Option Price");
- 2) grant to one or more of the general partner, managing member, developer or sponsor an irrevocable option to purchase the interest of the limited partner(s) or non-managing member(s) in the Project ownership entity ("Ownership Interest") at an agreed upon the purchase price (or if no agreement than by a FMV appraisal) equal to the amount the limited partner(s) or non-managing member(s) would have received on an after-tax basis if the Project had been sold at the Project Option Price and the proceeds distributed pursuant to the terms of the limited partnership agreement or limited liability company operating agreement ("Interest Option Price");
- 3) be exercisable beginning at the earlier of: (a) the expiration of the Compliance Period; or (b) the exit of or change of controlling interest in the limited partner or non-managing member occurring after the expiration of the Credit Period;
- 4) expire no earlier than 36 months after the expiration of the Compliance Period; and
- 5) give the holder of the option a minimum of 12 months to close on the purchase of the Project or the Ownership Interest after exercise of the option or such longer period required by any lender(s) or other party whose consent to the transfer is required but in no event longer than 18 months to close on the purchase of the Project.

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

- 1) grant to a Qualified Nonprofit Organization, tenants (in cooperative form or otherwise), resident management corporation of the Project, or government agency an irrevocable and exclusive ROFR to purchase the Project at the lesser of: (a) its fair market value, taking into account all existing restrictions such as encumbered by the Extended Use Agreement; and (b) the Minimum Purchase Price as defined in Section 42(i)(7) of the Code, excluding indebtedness incurred within the 5-year period ending on the date of the sale pursuant to the ROFR, but in no event less than the outstanding debt secured by the Project (the "ROFR Price");
- 2) be exercisable beginning at the expiration of the Compliance Period;

- 3) expire no earlier than 36 months after the ~~later of: (i) the public offer of the Project for sale by the general partner or managing member; and (ii)~~ the expiration of the Compliance Period; and
- 4) give the holder of the ROFR ~~a minimum of~~ 90 days to exercise its ROFR and ~~a minimum of~~ 12 months to close on the purchase of the Project after exercise of the ROFR or such longer period required by any lender(s) or other party whose consent to the transfer is required but in no event longer than 18 months to close on the purchase of the Project.

III. The Project owner's limited partnership agreement or limited liability company operating agreement must provide that:

- 1) the holder of the ROFR may assign the ROFR to a governmental unit, tenant organization or resident management corporation of the Project, or another Qualified Nonprofit Organization without the consent of the limited partner(s) or non-managing member(s), provided that the holder of the ROFR is not in default under the terms of the LPA/OA or standalone ROFR/Purchase Option;
- 2) the general partner or managing member may elect to do any of the following:
 - a) subject to the consent of the limited partner(s) or non-managing member(s), which consent shall not be unreasonably withheld, conditioned, or delayed, sell the Project to the holder of the ROFR in connection with the exercise of the ROFR (the limited partner(s) or non-managing member(s) may not withhold consent for a non-material breach of the Project owner's organizational documents);
 - b) at its discretion, without the consent of the limited partner(s) or non-managing member(s), sell the Project to the holder of the ROFR in connection with the exercise of the ROFR following the general partner's or managing member's receipt of a bona fide third party offer to purchase the Project, which offer may be solicited by the general partner/managing member or the holder of the ROFR; or
 - c) at its discretion, without the consent of the limited partner(s) or non-managing member(s), offer the Project for sale publicly at any time following the expiration of the Compliance Period and thereafter accept ~~the~~ offer from the highest bidder to purchase the Project, as long as the sale price is not less than the ROFR Price, and provided such acceptance is subject to the rights of the holder of the ROFR to exercise the ROFR and purchase the Project at the ROFR Price;
- 3) the general partner or managing member is directed and authorized to execute all documents necessary to effect the sale of the Project pursuant to the ROFR or Purchase Options;
- 4) the limited partner(s) or non-managing member(s) affirmatively agree not to challenge: (i) the sale of the Project pursuant to the terms of the ROFR by the general partner or managing member to the holder of the ROFR even if the holder of the ROFR is affiliated with the general partner or managing member; (ii) the general partner's or managing member's acceptance of an offer from the highest bidder in response to the general partner's or managing member's public offer of the Project for sale and/or the exercise of the ROFR by the holder of the ROFR after any such acceptance, provided the offer price is not less than the ROFR Price; and (iii) the

Commented [BB1]: We suggest that ROFR and Purchase Option provisions be within a separate standalone agreement from the LPA that may be recorded to give notice of these rights.

The QAP could authorize that these requirements can be satisfied in a standalone agreement that is recorded. Sections in the LPA or company operating agreement can incorporate the provisions of the ROFR and Purchase Option by reference.

Commented [BB2]: We suggest eliminating 2a) because without the ROFR being triggered by a bona fide third-party offer, it could be interpreted by the IRS as a purchase option and jeopardize investor status as a "partner" and hinder investor counsel from the ability provide an opinion on that matter.

exercise of the Purchase Options by the holder(s) thereof pursuant to the terms of the Purchase Option;

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

From: Norman Maze <NMaze@shalomhouseinc.org>
Sent: Friday, May 27, 2022 7:37 AM
To: Mark Wiesendanger <mwiesendanger@mainehousing.org>
Subject: Re: QAP follow up

EXTERNAL EMAIL

Dear Mr. Wiesendanger,

Please consider these my formal comments on MaineHousing's proposed 2023-2024 Qualified Allocation Plan (QAP).

I want to thank MaineHousing for its continued prioritization of housing for persons experiencing homelessness and for special needs populations (Permanent Supportive Housing), especially the 6 possible points assigned to housing these individuals in the proposed 2023-2024 QAP's scoring criteria.

Another group of individuals I would like to bring to your attention who sometimes struggle perhaps even more than others in securing permanent housing are persons being released from jails and prisons who are without permanent housing, identified and secured prior to release. Our data show that these individuals are over three times less likely to secure permanent housing during a four-month search period than individuals currently experiencing homelessness or those living with special needs... persons who are ***not*** being released from jails or prisons.

I'm not sure if commenting on the proposed QAP is the appropriate means by which to do this, but I would like to advocate for MaineHousing to either consider prioritizing the housing of persons being released from jails and prisons through additional points in the QAP or perhaps through tenant selection plan expectations as a condition of affordable housing funding through MaineHousing.

While I understand that individuals convicted of certain offenses are temporarily, or even permanently, disqualified from being housed in many affordable housing developments as well as for certain rental assistance programs, there are a great many other offenses which do not rise to that level of disqualification or concern. I ask that MaineHousing consider expanding the lowering of barriers to the affordable housing which so many need to get their lives back on track to include persons being released from jails and prisons, through its QAP process or through some other effective means.

Thank you for your consideration of my thoughts on this matter and the 2023-2024 QAP.

Sincerely,
Norm Maze

Norman E. Maze, Jr.
Deputy Director/ Housing Director
Shalom House, Inc.
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Portland, Maine 04102
Office: [\(207\) 874-1080, ext. 119](tel:(207)874-1080)
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nmaze@shalomhouseinc.org



**Testimony of Frank D'Alessandro, Maine Equal Justice to the Proposed
Maine State Housing Authority CH. 16, 2023-2024 Low Income Housing
Tax Credit Qualified Allocation Plan**

My name is Frank D'Alessandro, and I am the Legal Services Director of Maine Equal Justice. Maine Equal Justice is a civil legal services organization and we work with and for people with low income seeking solutions to poverty through policy, education, and legal representation. Thank for the opportunity to offer our comments to the Maine State Housing Authority's Proposed Low-Income Housing Tax Credit Rule (LIHTC).

INTRODUCTION

It is critical that the State of Maine create a plan to develop housing that is affordable to Maine's low-income population.

Maine Equal Justice is very thankful for the Maine State Housing Authority's efforts to provide services to its homeless population. Since the declaration of the Public Health Emergency additional shelter space has been opened throughout the State and the Maine State Housing Authority and various General Assistance programs have provided assistance for homeless families and individuals to obtain non-congregate shelter in local motels. However, despite these significant efforts, we can all agree that the homeless services system in the State is stretched to its limit and highlights the overarching importance of providing housing adequate to meet the needs of the people who live in the State of Maine.

Indeed, the current public health emergency has laid bare the shortcomings of our fragile safety net, including access to one of the most basic of all needs: safe, affordable housing.

To that end Maine Equal Justice strongly encourages that LIHTC funds be used to the greatest extent possible to provide housing to low-income and very low-income residents of the State of Maine who are experiencing homelessness or who are at risk of homelessness.

Maine's existing housing need outstrips existing housing capacity

Everyone in Maine deserves a safe, affordable place to call home, and the opportunities to fulfill their potential that comes with it. Even before the pandemic, Maine's rental housing market has been among the least affordable in the nation, and our state has not done enough to protect people who are being priced out of their homes. Nearly 60% of extremely low-income households pay more than 50% of their monthly income towards rent, a threshold which HUD deems severely rent burdened. These families continuously face the threat of eviction for non-payment. Finding affordable housing has become so difficult, many Mainers become homeless because they simply cannot find an apartment that meets their budget. According to MaineHousing's 2020 annual report Maine needs about 25,000 more affordable housing units to respond effectively to the need.¹

This is a racial equity issue as well. In Maine as in the rest of the country, people of color are disproportionately harmed due to the lack of affordable housing. According to Pine Tree Legal Assistance, between 2017 and 2019, 12% of households they represented in eviction court were non-white, though only 5% of Maine's population is non-white. Significantly, according to a study conducted by the Maine State Housing Authority in 2019, 26% of Maine's homeless population is Black or African American even though they make up only 1% of Maine's population.²

The pandemic has pushed Maine's housing affordability problems to a crisis point. While Maine's low-income tenants have been suffering in the recession and the pandemic, business has been booming in Maine's real estate market. Property values have increased during the pandemic in every county across the State. The Maine Association of Realtors reported a 22% increase in median sales price between Fall 2019 and Fall 2020, with a 27% increase in the number of units sold.³

¹ <https://bangordailynews.com/2021/07/26/news/the-pandemic-made-maines-affordable-housing-problemworse/#:~:text=Maine%20needs%20about%2025%2C000%20more,to%20MaineHousing's%202020%20annual%20report.>

² https://www.mainehousing.org/docs/default-source/housing-reports/2019-point-in-timesurvey.pdf?sfvrsn=6d6fb415_4#:~:text=The%202019%20survey%20respondents%20were,in%20those%20who%20experience%20homelessness.&text=Over%201%2F3%20of%20the,2019%20survey%20were%20under%2018.

³ See Glenn Jordan, Maine Home Sales Continue to Break Records Despite Pandemic, Portland Press Herald (Dec. 22, 2020), <https://www.pressherald.com/2020/12/22/maine-home-sales-continue-to-breakrecords-despite-pandemic/>; Maine Association of Realtors, State of Maine Single Family Home Sales, <https://www.mainerealtors.com/wp-content/uploads/2021/02/StateofMaine20Data.pdf> (last updated Dec. 31, 2020).

While so many people are buying new Maine homes, many Mainers are struggling to stay in theirs. Increasing property values are linked to gentrification.

Gentrification is a process which displaces low-income community members, usually renters, when more affluent people move in. Gentrification is spurred by speculation in the real estate market which incentivizes landlords to raise rents and/or evict tenants to pursue higher-end development. This is occurring not only in Maine's cities, but also in rural parts of the State.⁴ We must confront the fact that gains for some result in losses for others and take steps to end the rental housing crisis.

Keeping Mainers in their homes is critical to support their economic security and personal wellbeing. Of all the things we can do to support families and individuals trying to rebuild their economic security post-pandemic, safe homes that are realistically affordable and don't eat up the whole family budget are at the top of the list. *We need more affordable housing.* Maine's tenants are in desperate need of affordable housing. The largest rental assistance program in the U.S., the Section 8 Housing Choice Voucher Program, only funds vouchers for 1 in every 5 families who are eligible for it. In Maine, there are 25,742 families on the waitlist for the program. The patchwork of other state and federally funded voucher programs serve only narrow subsets of Maine's renter population.

RECOMMENDATIONS:

Maine Equal Justice makes the following recommended changes to the proposed rules:

Section 6(A) Rehabilitation Should Be Weighted More Heavily

Section 6(A) proposes to allocate 4 points for the "Rehabilitation or Reuse of Existing Housing, Structure, or Site." This is an increase from 3 points from the last plan. We strongly support this increase; however, we believe that the points should be even higher for this characteristic since rehabilitating an existing structure is less expensive than building an entirely new structure or rehabilitating an historic structure.

Section 6(B) Historic Rehabilitation Should Not Be Weighted at All

⁴ See University of Maine School of Marine Sciences, Fishing Communities Need to Prepare For Gentrification Challenges (Aug. 23, 2016), <https://umaine.edu/marine/2016/08/23/fishing-communitiesneed-prepare-gentrification-challenges-say-umaine-researchers-2/>; Megan Mayhew Bergman, 'We Have No Market But Lots of Lobsters': A Maine Lobsterwoman Fights For Her Livelihood, The Guardian (July 23, 2020), <https://www.theguardian.com/environment/2020/jul/23/maine-lobsterwoman-coronavirusclimate-change>.

Section 6(B) proposes to allocate 4 points for the “rehabilitation of a certified historical structure.” This is an increase from 3 points. We do not believe this characteristic should be given any points. The focus of the Low-Income Housing Tax Credit (LIHTC) should be on creating new housing or preserving existing housing. Allocating points to the rehabilitation of historic structures does not further this goal. This is especially true given that Historic Rehabilitation is the most expensive way to create housing.

Section 6(C) Populations with Special Needs

Section 6(C) proposes to allocate 6 points for set projects that set aside at least 20%, but not less than 4 units for populations with special needs. This is an increase from 3 points in the existing plan. We strongly support this increase.

Section 6(E) Emphasis on Single Room Occupancy Units and Projects that Emphasis the Housing First Model

Section 6(E) gives up to 6 points for multi-room family units. While we support the award of points in support of families experiencing homelessness, we think there should also be points awarded based on Single Room Occupancies designed to provide housing to people who are experiencing long-term homelessness. This section, as written, does not provide a scoring mechanism to incentivize the construction of housing for individuals experiencing long-term homelessness. We believe that a Housing First approach, focused on incentivizing the construction of individual units, is necessary and should be given the same number of points in this section and the creation of multi-room family units.

Section 6(J) Proposal to Delete Project-Based Rental Assistance as a scoring criterion

The proposed rules would remove existing Section 6(J) that awards points for “new eligible project-based rental assistance” units. We strongly oppose this proposal that would eliminate the award of points for meeting this criterion.

While there is some variation, most of Maine Equal Justice’s clients are below 50% AMI. Without a subsidy these households cannot afford to pay the rents charged by LIHTC units.

According to a report released by the National Low-Income Housing Coalition, as of 2020 in Maine there were only 71 affordable housing units for every 100 households who earned 50% AMI and only 51 affordable housing units for every

100 extremely low-income households.⁵ Maine State Housing Authority's focus should be on providing housing to this income demographic.

Removing this scoring criteria is a step in the wrong direction. Maximizing the number of project-based units will help alleviate problems in other areas of low-income housing as well. Specifically, a higher number of units with project-based designation could alleviate problems with Maine's Section 8 housing vouchers. The waiting list for housing vouchers is years long and often closed to new applicants. Even tenants with vouchers are often not able to use their vouchers because of the lack of safe and affordable housing and the lack of landlords willing to accept tenants with Section 8 vouchers. These families need units with subsidies so that they can afford the rent and maintain stable housing.

Section 6(T) Adjustments to the Tiebreaker Section

Currently, Section 6(T) provides that when a tiebreaker is necessary for applications with the same score, priority is given to "the Application for the least amount of credit and 0% deferred debt from MaineHousing per unit[.]" In order to best achieve the goals of the LIHTC program, we feel that the tiebreaker instead should consist of the first, the number of units provided to serve families and individuals who experience long-term homelessness and secondly, to low- and very-low income families and individuals.

⁵ <https://nlihc.org/housing-needs-by-state/maine>

From: Claude Rwaganje <crwaganje@prosperityme.org>

Date: May 27, 2022 at 4:46:40 PM EDT

To: Ashley Janotta <AJanotta@mainehousing.org>

Subject: Rule change on Tax Credit

EXTERNAL EMAIL

Dear Ms. Janotta:

My name is Claude Rwaganje and I am commenting on Maine Housing's draft QAP. I am commenting on Section 5M. Maine Housing is proposing to give a preference to those on Section 8 waiting list. I understand that tax credit rules prevent discrimination against Section 8 voucher holders. However, I do not believe the tax credit's federal rules require a preference and hope Maine Housing will not add this as a preference. Because so many asylum seekers are ineligible for Section 8 vouchers, they cannot get on to the Section 8 wait list. This proposed rule creates a real disadvantage and hardship for asylum seekers and I hope you will remove it. Thank you for the opportunity to comment.

Claude Rwaganje

Executive Director

ProsperityME: The Center for Financial Education

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Development Associate

May 24, 2022

Mr. Mark Wiesendanger
Director of Development

MaineHousing
26 Edison Drive

Augusta, ME 04330

RE: 2023-2024 Qualified Allocation Plan – Final Proposed

Dear Mark,

Thank you for the opportunity to comment on the 2023-2024 Qualified Allocation Plan (QAP) proposed revisions.

I am writing on behalf of Community Housing of Maine or CHOM, the largest supportive housing provider for homeless populations in Maine. Our staff of 14 works collaboratively with more than 50 different service provider organizations to house well over 1100 of Maine's most vulnerable people.

Thank you for the crafting a thoughtful QAP. I have two comments.

1. Populations with Special Needs – Permanent Supportive Housing

I am particularly pleased to see focus in this QAP on Permanent Supportive Housing, something desperately needed in Maine. The QAP provides six points for “having a set-aside for at least 20%, but not less than 4 of the units, for Persons Experiencing Homelessness or persons who have disabilities, are victims of domestic violence, or have other special housing needs, to create permanent supportive housing for persons who require that level of intervention within the special needs populations”, and this is very much welcome.

Thank you as well for thoughtfully including “additional funding from the Housing Trust Fund and/or Project-based Vouchers will be made available as necessary.” This combination could make the difference for Maine in finally ending chronic homelessness (a relatively small population of less than 200 people) and housing all other populations in need of permanent supportive housing. Six points will be difficult to ignore and will challenge developers as well as support them in finding a way to include populations in need of permanent supportive housing. The result should be a very significant increase in the supply of permanent supportive housing in Maine.

These actions will also challenge the state to provide adequate support services for the populations in need of permanent supportive housing. CHOM has found that every population can be successful in housing given adequate support. I believe other developers will see similar positive results now that they will have a strong incentive to include this type of housing in their developments. I commend MaineHousing on taking this large step toward inclusive permanent supportive housing, something that has been a best practice in states such as Connecticut, Massachusetts, New York, Minnesota, Illinois, and California. This will open the door to much needed permanent supportive housing at exactly the time when more people experiencing homelessness are landing outside in encampments. This population needs to be inside with safe, permanent supportive housing. We have learned that among Long Term Stayers, one of the key populations that requires a permanent supportive housing intervention, this population has a 92% success rate in their housing and is up to 19 times more likely to be



in the hospital and up to 45 times more likely to be in jail when unhoused than when housed. This point incentive will allow Maine to have places for this population to live and be successful, rather than ricocheting through our most expensive emergency systems.

Thank you for including this. Please keep this in and only increase the incentive in years ahead until we have a supply of permanent supportive housing that is commensurate with need.

2. Section 5 Threshold Requirements as it relates to Appendix E: Requirements for Purchase Options/Rights of First Refusal.

Thank you for identifying Year 15 exits as an issue to be addressed in the next Qualified Allocation Plan. Beth Boutin from Evernorth has researched and made careful recommendations for improvement of the QAP in this area; Appendix E needs to be modified. CHOM echoes those comments and supports the recommendations set forth in Ms. Boutin's letter sent to you dated 4/28/22 commenting on the QAP. Please take all necessary steps to see that Maine protects future deals and discourages equity providers from engaging in aggregator behaviors. Maine will not benefit from Year 15 disputes or the jeopardization of affordable housing, something particularly precious in Maine right now.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in blue ink, appearing to read "Cullen Ryan", with a stylized flourish at the end.

Cullen Ryan, Executive Director

Commissioners

Kristin Blum, Chair
Monique Mutumwinka, Vice Chair
Luisa Deprez, Commissioner
Christian MilNeil, Commissioner
Shirley Peterson, Commissioner
Thomas Valleau, Commissioner
Joan White, Commissioner



Cheryl A. Sessions

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Mr. Mark Wiesendanger
Director of Development
MaineHousing
26 Edison Drive
Augusta, ME 04330

RE: 2023-2024 Qualified Allocation Plan – Final Proposed

Dear Mark,

Thank you for the opportunity to comment on the 2023-2024 Qualified Allocation Plan (QAP) proposed revisions.

The Portland Housing Authority (PHA), is a public entity that was formed in 1943 to provide federally subsidized housing and housing assistance to low-income families, within Portland, ME. The Agency is headed by an Executive Director (ED) and is governed by a seven-person board of commissioners and is subject to the requirements of Title 24 of the Code of Federal Regulations (hereinafter, “CFR”) and the Agency’s procurement policy. Though brought into existence by a Resolution of the City of Portland, it is a separate entity from the City.

Currently, the Agency owns and/or manages: (a) 10 public housing developments totaling 978 housing units; 222 units of Low-Income Housing Tax Credit from former public Housing converted under RAD (our entire portfolio of public housing has an approved RAD filing) and Section 18. We currently have 28 more units with planning approval and tax credits issued which are pending construction. We also have 10 units Market Rate; 169 housing units HUD Multi-family housing; (b) 2037 Vouchers.

We submit the following feedback specifically to *Section 5 Threshold Requirements as it relates to Appendix E: Requirements for Purchase Options/Rights of First Refusal.*

Thank you for identifying Year 15 and exits as an issue to be addressed in the next Qualified Allocation Plan. While we very much agree with measures to preserve affordability and prevent non-profit sponsors from the unscrupulous, we are concerned the proposed language is too prescriptive and does not strike the balance and fairness we believe MaineHousing intends, but that it makes a good minimum set of protections and guidelines. Our attorney, Gary Vogel, has submitted suggested changes to Appendix E which we support.

Other Considerations: Aggregators:

We agree with comments by Evernorth that you consider adopting a policy similar to that within the New Hampshire 2023-2024 Qualified Allocation Plan and also utilized in Massachusetts, Virginia, and the District of Columbia. Policies adopted by other states offer good examples of steps that can be taken to protect affordable housing assets in Maine regarding ‘aggregator’ activity.

Cost Inflation and Cost Caps:

PHA has seen severe increases in construction costs in the last several years, with the last 12 months increasing over 20%. We applaud MaineHousing’s efforts to be flexible with developers who are striving to keep cost down

in such a challenging market. The cost caps that are published for each QAP are the requirements for projects that will receive their final bids 18-24 months after the QAP is published. By that time, they are out-of-sync with the market. With the speed at which the market is shifting PHA suggests that MaineHousing shift its methodology for determining cost caps to one that is more immediately reflective of the cost environment while also allowing for waivers of the cost caps for projects that have shown best efforts to provide a balanced budget.

Addressing Other Comments at public hearing:

- **Regarding set asides for preserving affordable housing:**

I assure everyone that existing affordable housing needs preservation! If left out and not rehabbed it will most certainly go away as obsolete and unsafe. To say it exists and people are housed there, and it will continue ignores the sad conditions existing in public housing for lack of adequate capital improvement funding provided by Congress over the years. Most of our conversions are proceeding through the Section 18 provisions with LIHTC and not RAD for that reason. The costs of renovation compared to total value is so high as to classify the properties as obsolete! This program gives us full voucher rates for the property, allowing us enough to pull these properties back from the edge

- **HUD is financially behind this important work:**

When these properties convert to Tax Credit, often HUD allows us to donate the property to the project. This is multimillion dollar property for little to no acquisition cost! Then HUD pays for all the residents to remain or return at full voucher rates leveraging tremendous borrowing capacity for the project, greatly reducing the need for scarce subsidy resources of MaineHousing.

- **Preferences for new construction:**

It is most often less expensive to renovate and preserve existing housing than to build new. Our housing covers the lowest income individuals who would not easily find housing elsewhere. Not only that but PHA works wherever it can to add new units and take advantage of new density allowances in the same project.

- **PHA's have long waitlists:**

Yes! That means as soon as the property is rehabbed it will fill it up in record speed. In fact, because units are being left open for rehab, there will be a tremendous lease up opportunity making a good dent in those lines. New people will get housing, those that have been in long lines for subsidy, how is that seen as a bad thing? The factor that delays housing refugees is that we can not house people without permanent status, not the long lines.

Thank you for your attention to these important issues and the opportunity to present our views. We are available to assist you with the further development of these policies if you so desire.

Sincerely,

Cheryl A. Sessions

**Comments of Nathan S. Szanton of The Szanton Company and
Maine Workforce Housing, LLC**

To

**Maine State Housing Authority Proposed Qualified Allocation Plan for 2023-24
Proposed Rule No. 2022-P057**

May 11, 2022

Thank you for the opportunity to comment on the proposed Qualified Allocation Plan for 2023-24 (the “QAP”). In my capacities as President of The Szanton Company and Manager of Maine Workforce Housing, LLC and Maine Workforce Housing II, LLC, I have been involved in the development of 10 completed Maine low-income housing tax credit (“LIHTC”) projects and have an additional five Maine LIHTC projects currently under development.

I’m writing to comment on the proposed new provisions of the QAP governing the so-called “back end” of development transactions. I understand that you’re receiving comments from Evernorth and perhaps others, suggesting a general change in approach. However, should MaineHousing continue to implement its proposed approach, I offer some comments on the text of proposed Appendix E.

The provisions of Appendix E require LIHTC equity investors who provide letters of interest to agree to certain provisions regarding the transfer of the equity investor ownership interest after the conclusion of the LIHTC compliance period.

I understand and truly appreciate MaineHousing’s interest in setting standards for the transfer of investor interests after the LIHTC period. That said, I’m concerned that the rules as proposed will have some unintended consequences, and that there are some provisions that should be technically improved. My comments are below, followed by a redline of the provisions with suggested language. Specific concerns are:

- 1) Appendix E requires particular business terms in the deal between the investor and the development team. There is no flexibility for the development team to negotiate a better deal than the terms provided in Exhibit E. If the development team is not permitted to negotiate more favorable LPA language than the terms required by Maine Housing, that may result in LIHTC investors receiving a higher back end payout than they might otherwise be willing to take. Experience has shown that we can many times negotiate back end provisions with investors more favorable than those in Appendix E. I believe that instead of being mandated provisions, a better result would be achieved by providing that the Appendix E provisions establish a floor for these “back end” provisions, rather than mandating specifically what the provisions must be.
- 2) Appendix E (I)(2) addresses the price to be paid by the development team for the investor’s partnership interest. This provision requires that the payment to the investor be based on what the investor would receive if the *entire property* were sold. Many times, we have negotiated provisions that the price to be paid for the investor’s interest be the fair market value of the

investor's partnership interest, rather than the investor's take if the entire property was sold and liquidated. Using the value of the investor's partnership interest, rather than the value of the investor's share of the liquidation value, would likely result in a lower buyout price. This is because it would take into account other factors, including, for example, that the investor doesn't have control over the partnership and that there isn't a very liquid market for investor interests. It's likely that no party would pay for the investor's interest the amount that the investor would receive if the entire property were sold and the partnership were dissolved.

3) On a much more granular level, the fair market value of the property should be not only "as encumbered by the Extended Use Agreement," but also by all the other restrictions of record, such as restrictions that come with the HOME, CDBG, Maine Historic Tax Credit, Maine LIHTC, municipal requirements and all the other layers of financing which impose various encumbrances and controls on a property. Omitting those other restrictions would result in an over-valuation of the property.

Based on the above concerns and to make some other technical changes, I suggest that the language of proposed Exhibit E be revised as follows:

REQUIREMENTS FOR PURCHASE OPTIONS/RIGHTS OF FIRST REFUSAL

- I. The Purchase Options must provide to the general partner, managing member, developer or sponsor terms as least as favorable as the following:
 - 1) grant to one or more of the general partner, managing member, developer or sponsor an irrevocable option to purchase the Project at the greater of: (a) its fair market value as encumbered by the Extended Use Agreement and other restrictions of record; and (b) the sum of: (i) the outstanding debt secured by the Project, (ii) the amount of the limited partner's or non-managing member's federal, state and local tax liability resulting from the sale of the Project, and (iii) all amounts owed to the limited partner or non-managing member under or as referenced in the limited partnership agreement or limited liability company operating agreement (the "Project Option Price");
 - 2) grant to one or more of the general partner, managing member, developer or sponsor an irrevocable option to purchase the interest of the limited partner(s) or non-managing member(s) in the Project ownership entity ("Ownership Interest") at the purchase price equal to either (i) the amount the limited partner(s) or non-managing member(s) would have received on an after-tax basis if the Project had been sold at the Project Option Price and the proceeds distributed pursuant to the terms of the limited partnership agreement or limited liability company operating agreement or (ii) the then fair market value of the interest of the limited partner(s) or non-managing member(s) determined on an after-tax basis;
 - 3) be exercisable beginning at the earlier of: (a) the expiration of the Compliance Period; or (b) the exit of or change of controlling interest in the limited partner or non-managing member occurring after the expiration of the Credit Period;

- 4) expire no earlier than 36 months after the expiration of the Compliance Period; and
- 5) give the holder of the option a minimum of 12 months to close on the purchase of the Project or the Ownership Interest after exercise of the option or such longer period required by any lender(s) or other party whose consent to the transfer is required.

From: lmitchell@mainehousingcoalition.org <lmitchell@mainehousingcoalition.org>
Sent: Wednesday, May 11, 2022 7:34 AM
To: Mark Wiesendanger <mwiesendanger@mainehousing.org>; Ashley Janotta <AJanotta@mainehousing.org>; Dan Brennan <dbrennan@mainehousing.org>
Cc: jlevine@mainehousingcoalition.org
Subject: MAHC QAP and Feedback

EXTERNAL EMAIL

Hello Mark, Ashley, and Dan.

Sharing feedback from MAHC members, particularly developers, on the QAP regarding Appendix E and rising construction costs.

- **Appendix E:** We understand the intent behind Section 5 Threshold Requirements as it relates to Appendix E: Requirements for Purchase Options/Rights of First Refusal, but align with the well-stated testimony shared by Evernorth (attached) that finds MSHA's response to addressing Year 15 and exits "too prescriptive" and it "does not strike the balance and fairness intended between for-profit and non-profit general partners and limited partner investors and the business considerations negotiated between the two parties." Examples from other states have been shared with you that address the Year 15 and exit issue in preferable ways including:
 - Requiring approval for any transfer of investor interests on existing properties
 - Requiring that each right of first refusal agreement include language permitting the non-profit to exercise the right of first refusal either through investor consent, no investor consent where there is a third-party offer, or by a public offer of sale of the property.
- **Cost of Construction:** MAHC members are very concerned about the rapidly escalating cost of construction exacerbated by workforce shortages, supply chain issues, and the cost of materials. In light of these real impacts on the cost to develop new units, MAHC members seek flexibility in MSHA's funding limits to reflect the actual building costs of today. Estimates and desired costs identified last year or just a few months ago are no longer realistic. MAHC seeks MSHA's support in reflecting these costs in available funding and in supporting creative efforts to address factors driving up costs. MAHC will be hosting a discussion on the rising construction costs this Fri, 5/13, 9-10 am via [Zoom](#) if you would like to participate or listen in.

We have a shared mission of producing affordable homes for Mainers in need. We hope this common foundation can lead us both to embrace creativity and innovation in meeting the current crisis low-income Mainers face finding a home and an equitable path to success here.

Laura

Laura Mitchell, Executive Director
Maine Affordable Housing Coalition
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(MAHC) is a diverse coalition of more than 125 private and public sector organizations, including developers, architects, engineers, builders, investors, Community Action agencies, public housing authorities, housing and service providers, advocates and others committed to ensuring that all Mainers are adequately and affordably housed.



2023-2024

Low Income Housing Tax Credit

Qualified Allocation Plan



CHAPTER 16 LOW-INCOME HOUSING TAX CREDIT RULE

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APPENDICES:

- APPENDIX A: Definitions
- APPENDIX B: Pre-Application Submission Requirements
- APPENDIX C: Capital Needs Assessment Requirements
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- APPENDIX E: Requirements for Purchase Options and Rights of First Refusal

Chapter 16: LOW-INCOME HOUSING TAX CREDIT RULE

SECTION 1: INTRODUCTION

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

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

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

SECTION 2: HOUSING NEEDS AND PRIORITIES

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

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

SECTION 3: SET-ASIDES AND MAXIMUM CREDIT AMOUNT

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

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

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

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

SECTION 4: ALLOCATION PROCESS

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

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

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

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

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

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

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

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

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

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

SECTION 5: THRESHOLD REQUIREMENTS

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

A. Affordability.

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

- B. Section 811. For Family Housing, the Applicant agrees to accept HUD Section 811 Project Rental Assistance (PRA) and comply with the program requirements, if made available by MaineHousing. This does not necessarily constitute a commitment of PRA funding.
- C. Total Development Cost (TDC). Cost reasonableness will be evaluated using an index, which is the weighted average of the TDC per unit and the TDC per bedroom. For mixed-use projects, the TDC for only the residential portion of the project, including common areas, will be used for this calculation. The weighted average will be calculated as follows:

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

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

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

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

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

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

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

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

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

1. Development Budget. The Applicant must identify

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

2. Operating Budget. The Applicant must identify all

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

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

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

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

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

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

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

1. Community Room. The Project must include an on-site community room with sufficient capacity to serve tenants' needs. For a scattered-site Project, only one community room is required and should be centrally located to the greatest extent possible to best serve all tenants.

2. Laundry Facilities. The Project must include either a washer/dryer hook-up in each unit or a fully accessible, centrally located laundry facility with sufficient capacity to serve all tenants.

3. ~~Broadband/Telemedicine~~ Capabilities. The Project must include broadband infrastructure ~~which with capacity sufficient to support the provision of Telemonitoring and/or Telehealth services.~~

~~Broadband infrastructure~~ includes cables, fiber optics, CAT5e (or greater) interior wiring, or other permanent (integral to the structure) infrastructure, including wireless infrastructure, as long as the installation results in broadband infrastructure in each dwelling unit sufficient for the build-to standard of The Maine Connectivity Authority and ConnectMaine.

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

4. Shared Facilities. An amenity will meet the requirements if the amenity:
 - a) is fully accessible and located on an accessible path to the Project,
 - b) is within an existing multifamily housing project adjacent to the subject site,
 - c) has sufficient capacity to serve both the Project's tenants and the existing project,
 - d) will be available to the Project's tenants during the Compliance Period on the same terms as the residents of the existing multifamily project, and
 - e) will not charge the tenants to use the shared amenity other than a reasonable fee that does not exceed the amount charged to any others for the same use.

5. **Recreational Activities.** An area(s) of recreational activity must be located on the Project site or within a ½ mile. The area(s) and activities must be free of charge to the tenants and not require membership. Projects with single-family detached style units satisfy this requirement if each unit has a private lawn with sufficient room for playground equipment, gardening or other activities acceptable to MaineHousing.
 6. **Exceptions.** The requirements of this subsection do not apply to existing multifamily housing projects if the Applicant cannot comply with the requirements because of the nature of the site, structural limitations, zoning restrictions or other land use limitations.
- K. **Resident Service Coordination.** The Applicant must make a resident service coordinator available to the tenants on-site a minimum of one (1) hour per week for every five (5) Credit Units over an appropriate number of days each week acceptable to MaineHousing. The coordinator shall meet with tenants in a private and confidential manner to evaluate individual needs and make appropriate referrals. The services provided must be free of charge to the tenants. The Applicant must maintain adequate funding throughout the Compliance Period.
- L. **Smoke-free Housing.** The Applicant must
1. implement a written occupancy policy prohibiting smoking in the units and common areas,
 2. include a non-smoking clause in the lease for every household, and
 3. make educational materials on tobacco treatment programs (including the phone number for the statewide Maine Tobacco HelpLine) available to all tenants through the resident service coordinator.
- M. **Waiting List Preference.** The Applicant must give an occupancy preference to eligible persons whose names are on a public housing or Section 8 waiting list, except for Projects: (i) financed by Rural Development, or (ii) with Section 8 Project-Based Rental Assistance (preference will apply to any Credit Unit without project-based rental assistance).

SECTION 6: SCORING CRITERIA

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

Project Characteristics

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

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

1. Replacement or rehabilitation of existing rental housing containing 5 or more units without permanently displacing any existing tenants or increasing their housing costs (including rent and all other charges paid by the tenant) by more than 10%;
2. Rehabilitation, remediation, or reuse of an existing building or structure that has a current use other than multifamily rental housing;
3. One or more buildings or structures used for purposes other than single family residential housing or agriculture purposes, have been or will be demolished or removed for purposes of redeveloping the site;
4. Left vacant or nearly vacant in the development of a downtown or other city or town center, such as vacant lots or parking lots abutting commercial buildings and/or multifamily rental housing; or
5. Specifically designated by a municipality for redevelopment to renew a blighted area or remediate environmental risks to the occupants.

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

B. Historic Rehabilitation. 4 points

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

C. Populations with Special Needs. 6 points

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

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

D. National Housing Trust Fund. 1 point

The Applicant agrees to accept and use any funding from MaineHousing's National Housing Trust Fund program for the Project. Any funding award will require a certain number of units

in the Project to be affordable to and occupied by Extremely Low Income households. Awarding points is not a commitment of funding from the National Housing Trust Fund.

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

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

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

F. Readiness. **8 points**

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

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

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

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

One (1) point for each unit that

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

Type of Project	Maximum Points
Projects providing Housing for Older Adults	12 points
Other Projects	6 points

Financial Characteristics

H. Acquisition Cost.

Up to 4 points

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

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

For purposes of this subsection, acquisition costs include

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

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

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

I. Property Tax Relief.

Up to 3 points

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

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

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

Funding made possible by an Affordable Housing TIF will not be eligible unless the Applicant submits a complete application for the TIF at least 30 calendar days before the applicable Application deadline (Tuesday, August 23, 2022 for the 2023 State Ceiling and Tuesday, August 22, 2023 for the 2024 State Ceiling).

Project Location

J. Housing Need.

Up to 10 points

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

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

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

Boothbay Harbor	Jackman	Pittsfield	
Cornish	Limestone	Rangeley	
Damariscotta	Mars Hill	Southwest Harbor	
Dexter	Millbridge	Thomaston	
Dover-Foxcroft			

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

Other Housing Projects (not specifically for Older Adults)			
Service Center Community			Points
Auburn	Farmington	Saco	10 points
Augusta	Kittery	Sanford	
Bangor	Lewiston	Skowhegan	
Bath	Old Orchard Beach	South Portland	
Biddeford	Orono	Waterville	
Brewer	Portland	Westbrook	
Brunswick	Rumford	Windham	
Bar Harbor	Hermon	Oxford	8 points
Calais	Houlton	Presque Isle	
Caribou	Limestone	Rockland	
Ellsworth	Lincoln	Scarborough	
Falmouth	Madawaska	Topsham	
Fort Kent	Mexico	Wiscasset	
Gardiner	Norway		
Ashland	Dexter	Pittsfield	6 points
Bethel	Dover-Foxcroft	Rangeley	
Blue Hill	Greenville	Rockport	
Boothbay Harbor	Kennebunk	Southwest Harbor	
Bridgton	Millinocket	Thomaston	
Cornish	Mount Desert	Van Buren	
Damariscotta	Newport		

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

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

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

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

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

L. Smart Growth.

Up to 15 points

Smart Growth Feature	Points
Access to Public Transportation. The Project is located within a Safe Walking Distance (½ mile or less) of a designated pick-up location for existing Fixed-route Public Transportation.	5 points
Demand Response Transportation. Demand Response Transportation is available to all tenants with no eligibility criteria that would limit or deny service.	5 points
Proximity to Activities Important to Daily Living. The Project is located within not more than a ½ mile of at least 3 Activities Important to Daily Living.	5 points

Sponsor Characteristics

M. Developer Capacity.

Up to 5 points

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

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

N. Owner Performance.

Up to 5 Points

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

Has not been 60 calendar days or more delinquent in the payment of any MaineHousing loan since September 22, 2014 (except delinquencies resulting from the delay or loss of Section 8 housing assistance payments), declared in default by MaineHousing, nor had a municipal tax lien placed on any housing funded by MaineHousing.	2 points
No LIHTC Projects still in their Compliance Period had a year-end operating deficit, in the last full Fiscal Year, unless the operating deficit was fully funded by the Application deadline.	2 point

Was not (a) issued an IRS Form 8823 for any reason other than a violation of UPCS or local inspection standards (box 11c) that was subsequently reported as “noncompliance corrected” within the correction period, nor (b) had an IRS audit finding resulting in a recapture event, since September 22, 2016.	1 point
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O. Management Experience. **Up to 5 points**

The company that will manage the Project has at least

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

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

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

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

Q. Tie Breaker.

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

R. Review Process.

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

SECTION 7: PROJECT EVALUATION

A. Amount of Credit. The amount of Credit allocated will be determined as follows:

1. The calculation of the amount of Credit will be based on 130% of Eligible Basis. MaineHousing has designated the entire State as a DDA under [Section 42\(d\)\(5\)\(B\)\(v\)](#) of the Code because of the high cost of developing housing, the low median income, and the high annual operating costs for housing relative to other states;
2. To determine the amount of Credit, MaineHousing will use the lesser of (a) the market rent, based on the Application market study as approved by MaineHousing, and (b) the maximum Credit rent. For three or more bedroom units MaineHousing will use the maximum Credit rent for two-bedroom units plus \$50.00;
3. The amount of Credit allocated for a Project will not exceed the least of
 - a) the amount the Project is eligible to receive under [Section 42](#) of the Code,
 - b) the amount MaineHousing determines is necessary for financial feasibility and viability throughout the Credit Period, and
 - c) the Maximum Credit Amount;
4. The Applicant must submit financial and all other required information. MaineHousing will evaluate the need for Credit based on
 - a) all sources of financing, including the terms and conditions,
 - b) equity expected to be generated by reason of tax benefits, and
 - c) the uses of funds, including the reasonableness of development costs and operating expenditures; and
5. In order to determine the amount of Credit, MaineHousing must identify a gap between development sources and uses absent a Credit allocation. MaineHousing may limit recognition of Intermediary Costs, re-characterize Project sources and uses and make reasonable assumptions with respect to projected revenues and expenses. MaineHousing will also take into consideration any federal limitations when combining the Credit with other federal assistance (i.e. “subsidy layering” guidelines).

B. Developer Fee. Developer Fee will be determined as follows:

1. Maximum Developer Fee. The total Developer Fee may not exceed the sum of 15% of the Housing Development Costs, plus 10% of the costs of acquisition of land, existing buildings and equipment, determined without regard to the Developer Fee.
 2. Net Developer Fee. The amount of Developer Fee not deferred may not exceed \$750,000 plus any unused construction contingency returned to the Applicant after completion.
 3. Additional Developer Fee. An Applicant is eligible for Developer Fee in excess of the Net Developer Fee calculated above only if it is deferred and used to increase the tax credit basis.
- C. General Contractor Intermediary Costs. The general contractor's Intermediary Costs must be:
1. separated from other construction and rehabilitation costs,
 2. with general conditions and overhead and profit parsed out, and
 3. no more than 14% of the Total Construction Cost, within the following ranges:
 - a) General conditions up to 6% of Total Construction Cost, and
 - b) Overhead and profit up to 8% of Total Construction Cost
- D. Time of Credit Determination. MaineHousing will determine the amount of Credit at the time of
1. Application, which will be evidenced by the Notice to Proceed;
 2. the allocation of Credit, including any carryover allocation;
 3. the date each Qualified Building is Placed in Service; and
 4. if a Qualified Building is allocated Credit pursuant to Section 9, the date of issuance of the tax-exempt bonds.
- Prior to each determination, the Applicant must certify the full amounts of all funding sources and provide any other information required by MaineHousing.
- E. Market Study. The applicant must submit a comprehensive market study prepared by a qualified professional in accordance with the *National Council of Housing Market Analysis Model Standards for Market Studies for Rental Housing*. MaineHousing may require the Applicant to either correct any inadequacies it identifies or submit a new market study. MaineHousing also may elect to commission its own market study.

- F. Construction Cost Increases. MaineHousing may allocate additional Credit to a Project if its construction costs increase after the Application date and the increase is the result of market conditions or other circumstances beyond the Applicant's control. Any additional Credit will not exceed an amount necessary to generate equity equal to 5% of the Total Construction Cost based on construction bids.

SECTION 8: ALLOCATION OF CREDIT

- A. Allocation. MaineHousing will issue one or more IRS Form(s) 8609 after receipt of the following:

1. A complete request for allocation of Credit in a form prescribed by MaineHousing.
2. An audit report on the schedule of project costs prepared by an independent, third party certified public accountant including all associated costs (such as commissions, due diligence, legal, accounting, reserves, and other similar items).
3. Certification of the Project's sources, including all federal, state and local subsidies in any stage of commitment. This certification must include income, operating and development cost projections and methods for satisfying any deficits.
4. The allocation fee and monitoring fee less the amount of any allocation fee paid in connection with the issuance of a carryover allocation.

- B. Carryover Allocation.

1. The Applicant must submit the following to receive a carryover allocation:
 - a) A complete request for carryover allocation in the form prescribed by MaineHousing no later than the first day of December of the year in which the carryover allocation is made.
 - b) Certification of the Project's sources, including all federal, state and local funding. This certification must include income, operating and development cost projections and methods for satisfying any deficits.
 - c) Development progress report, including completion likelihood.
2. The applicant must execute a carryover allocation and return it to MaineHousing, together with the allocation fee, no later than December 31 of the year in which the carryover allocation is made.
3. A carryover allocation will be subject to the following conditions:

- a) satisfactory evidence that more than 10% of the Project's reasonably expected basis is incurred within 12 months of the carryover allocation, including an audit report prepared by an independent, certified public accountant; and
- b) any performance conditions MaineHousing may require.

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

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

SECTION 9: TAX-EXEMPT BOND FINANCED PROJECTS

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

- A. the Maximum Credit Amount limitation in Section 3.C.,
- B. the application limits in Section 4.B.1.,
- C. the application deadlines in Section 4.B.2.,
- D. the selection process described in Sections 4.F.,

- E. the affordability threshold requirement set forth in Section 5.A.,
- F. the requirement of a minimum \$50,000 per unit of Rehabilitation Costs for Projects involving the acquisition and rehabilitation of existing housing in Section 5.D.2.,
- G. the scoring criteria in Section 6, and
- H. the Developer Fee limits in Section 7.B.

SECTION 10: MONITORING

- A. Compliance with Applicable Laws. Owners must comply with all local, state and federal laws and regulations, including without limitation:
 - 1. [Section 42](#) of the Code and associated regulations and guidance;
 - 2. UPCS and all other local, state and federal health, safety and building codes applicable to the Project;
 - 3. the [Federal Fair Housing Act, Title VIII of the Civil Rights Act of 1968](#), as amended by the Fair Housing Amendments Act of 1988 ([42 U.S.C. §3601 et seq.](#)), Title II of the Americans with Disabilities Act of 1990 ([42 U.S.C. §12101 et seq.](#)), and the Maine Human Rights Act ([5 M.R.S.A., Chapter 337, Subchapter IV](#)) and all other applicable federal, state and local fair housing and accessibility requirements, and the regulations, guidance and standards associated with all of the foregoing; and
 - 4. Title VI of the Violence Against Women Reauthorization Act of 2013, [42 USC Chapter 136, Subchapter III, Part M](#), and all associated regulations and guidance, as may be amended (VAWA).
- B. Recordkeeping and Record Retention. Each Owner must keep on file and available to MaineHousing upon request the following records for each Qualified Building in its LIHTC Project(s) for each year in the Extended Use Period:
 - 1. The total number of residential rental units including the number of bedrooms and the square footage of each unit;
 - 2. The number of low-income units;
 - 3. The rent charged for each unit including any utility allowances;
 - 4. The number of occupants in each low-income unit;
 - 5. The number of low-income unit vacancies and information showing when, and to whom, the next available units were rented;

6. Income certification and third-party documentation verifying the income of each household occupying a Credit Unit at the time of initial occupancy and for each new person added to the household after initial occupancy;
7. Annual income certifications and third-party documentation verifying the income of each household occupying a Credit Unit in a LIHTC Project are required if not all of the units in the LIHTC Project are Credit Units, or the LIHTC Project is financed or assisted under a state or federal program that requires annual certifications.

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

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

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

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

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

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

3. comply with [Section 42](#) of the Code or any others requirements under this QAP.

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

SECTION 11: GENERAL

- A. Conflicts. If this rule conflicts with [Section 42](#) of the Code or any other provision of federal or State law, the federal or State law shall control.
- B. Full Discretion. MaineHousing is entitled to the full discretion allowed by law in making all decisions and interpretations under this rule.
- C. Not an Entitlement. This rule establishes a pool of eligible Applicants but does not preclude additional reasonable criteria and does not confer any automatic right or entitlement to Credit on any person or entity eligible hereunder. MaineHousing may reject any and all Applications and may refuse to award any or all of the Credit.
- D. Final Agency Action. The director of MaineHousing, individually or by exercise of the delegation of powers contained in the Act, shall make all decisions and take all action necessary to implement this rule. Such action of the director shall constitute final agency action.
- E. Waiver. Upon a determination of good cause, the director of MaineHousing or the director’s designee may, subject to statutory limitations, waive any provision of this rule. The waiver must be in writing and must be supported by documentation of the pertinent facts and grounds.
- F. Freedom of Access Act. MaineHousing is subject to the Freedom of Access Act, [1 M.R.S.A. §401 et seq.](#), which requires the disclosure of all information provided to MaineHousing that is not specifically excluded, such as confidential information under the Act. MaineHousing shall not be liable for the disclosure of any information that it determines must be disclosed under the Freedom of Access Act.
- G. Liability. Compliance with [Section 42](#) of the Code is the responsibility of the Owner. MaineHousing is in no way responsible for an Owner’s compliance or liable for an Owner’s noncompliance. Any allocation, review or inspection by MaineHousing and any determination made by MaineHousing pursuant to this QAP is for the sole benefit of MaineHousing. No liability or responsibility for Owner compliance with [Section 42](#) of the Code or other applicable requirements and no representation or warranty of a Project’s feasibility or viability, eligibility for Credit, or compliance shall be implied or construed from any such actions and determinations by MaineHousing.

- H. Headings/Context. The headings in this rule are for convenience only and do not define or limit the scope of the provisions of this rule. The use of Section, Subsection or Appendix without a reference to another document or source refers to a section, subsection and Appendix of this rule.

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

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

This rule replaces the prior rule and includes the following changes:

Throughout:

- Updated deadlines
- Repaired grammatical errors (punctuation, typos, correcting defined terms, etc.)

Section 3B: Added HUD’s Section 18 Demolition/Disposition Program and other HUD conversion programs to the Preservation Set-Aside eligibility.

Section 4A: Pre-apps due July 7, 2022 and July 6, 2023. Deleted deadline for pre-app discussions with MaineHousing.

Section 4B: Applications due September 22, 2022 and September 21, 2023.

Section 4D: Expanded factors for deeming Applicants and Investors ineligible to include seeking early termination of an Extended Use Agreement through the Qualified Contract process and undertaking efforts to undermine the exercise of a right of first refusal or purchase option.

Section 5A: Expanded Threshold Requirements to include submission of an investor letter of intent committing to the granting of purchase options and, when an eligible nonprofit organization is involved, a right of first refusal.

Section 5C: Increased the TDC Index caps.

Section 5E: Clarified the management experience and capacity requirements when multiple subsidy sources create overlapping targeting and rental restrictions.

- Section 5I: Added installation of electrical raceways/conduits for electrical vehicle chargers and PV solar panels to the Project Design requirements.
- Section 5J: Standards for broadband infrastructure required for telemedicine will be those established by the Maine Connectivity Authority in addition to ConnectMaine.
- Section 5M: Clarified that the preference for public housing or Section 8 waiting list in Projects with Section 8 project-based rental assistance will apply to any Credit Units without project-based rental assistance.
- Section 6A: Increased the scoring points for Rehabilitation or Reuse of Existing Housing, Structure or Site from 3 to 4.
- Section 6B: Increased the scoring points for Historic Rehabilitation from 3 to 4.
- Section 6C: Increased the scoring points for Populations with Special Needs from 3 to 6, revised the criteria from requiring a waiting list for special populations to creating a set-aside of those units. Funding from Housing Trust Fund and/or Project-Based Vouchers will be available as necessary.
- Section 6F: Increased the scoring points for Readiness from 6 to 8.
- Section 6H: Deleted Below Market Capital as a scoring criteria.
- Section 6J: Deleted New Project-Based Rental Assistance as a scoring criteria.
- Section 6K: Reduced the maximum scoring points for Property Tax Relief from 4 to 3, revised the scoring categories and added the dates of the application deadlines for approval of Affordable Housing TIFs.
- Section 6L: Increased the maximum scoring points for Housing Need from 8 to 10, clarified the ability of a municipality to carry over its scoring points for one year if the prior year was higher and revised the breakdown of municipalities in each scoring block.
- Section 6O: Deleted High Opportunity Areas as a scoring criteria.
- Section 6P: Increased the maximum scoring points for Developer Capacity from 4 to 5.
- Section 6Q: Increased the maximum scoring points for Owner Performance from 4 to 5.
- Section 6R: Increased the maximum scoring points for Management Experience from 3 to 5.
- Section 7A: Dropped the reference to the monthly Applicable Percentage in calculating Credit amounts as both the 9% and 4% credit percentages are now fixed.

Section 7E: Deleting the Binding Agreement/Rate Lock for the Applicable Percentage as both the 9% and 4% credit percentages are now fixed.

Definitions: Deleted definitions of “Below Market Capital” and “High Opportunity Areas”, added definitions of “Compliance Period”, “Credit Period”, “Persons Experiencing Homelessness”, “Qualified Contract” and “Qualified Nonprofit Organization” and clarified that MaineHousing’s Construction Standards include its accessibility policy and procedures.

Appendix E: Added to set forth the requirements for Purchase Options and Rights of First Refusal.

PUBLIC COMMENT:

Process:

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

Summary of Comments and Responses to Comments:

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

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

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

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

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

Response: Chapter 27 of MaineHousing’s rules deals with Transfers of Ownership Interests. MaineHousing is in the process of reviewing that rule and anticipates future rulemaking to address the

concerns raised by this comment. Changes to the Transfer of Ownership Interests rule will go through a similar public process to that of the QAP.

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

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

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

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

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

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

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

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

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

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

Comment: Rebecca Price, State Advocacy Specialist for the U.S. Green Building Council, provided testimony at the public hearing and submitted written comments requesting that a scoring criteria

be added awarding points for achieving third-party certification of high-performing building standards such as Leadership in Environmental and Energy Design (LEED). Ms. Price pointed to the just enacted Maine PL2021, chapter 718, An Act to Promote Energy-efficient Affordable Housing in support of this request.

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

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

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

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

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

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

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

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

Response: The decision to drop two scoring criteria from the Financial Characteristics section of the QAP, Below Market Capital and New Project Based Rental Assistance, has created greater emphasis on the two remaining criteria, Acquisition Cost and Property Tax Relief. The Below Market Capital

criteria incentivized applicants to seek funding sources that in many cases added significant complexities and obstacles to the transaction with decreasing benefits as interest rates have risen above the rates offered by MaineHousing. Project-based rental assistance disproportionately favored applicants with access to their own project-based vouchers. While MaineHousing agrees that additional resources/contributions can be beneficial to a project, it has been difficult to develop a quantifiable measurement for such resources like those for Acquisition Cost and Property Tax Relief. MaineHousing will continue to work to consider additional financial criteria for future QAPs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Response: MaineHousing appreciates the support for that change.

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

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

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

Response: MaineHousing appreciates the support for that change.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Response: MaineHousing declines to make this change because the fair market value calculation needs to take into account the impact of any current encumbrances on the property and any agreement to

sell the project for less than fair market value to other than qualified entities under the provisions of Section 42 can create tax issues.

Comment: Ms. Boutin's next edit is in paragraph 3) of Part I which requires that a purchase option be exercisable beginning at the earlier of the expiration of the Compliance Period or the exit of or change of controlling interest in the investor occurring after the expiration of the Credit Period. Her recommendation is to remove "after the expiration of the Credit Period".

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Comment: Frank D'Alessandro, Legal Service Director of Maine Equal Justice, submitted written comments supporting some aspects of the QAP and recommending some revisions. The first item was the increase in points for projects involving rehabilitation or reuse of existing housing from 3 points to 4 points. Mr. D'Alessandro expressed strong support for this increase but recommended that the points for this category be increased even further.

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

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

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

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

Response: MaineHousing appreciates the support for that change.

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

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

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

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

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

Response: MaineHousing has incorporated the financial resources tiebreaker in order to create the greatest number of overall housing units by prioritizing projects requesting fewer scarce resources. The scoring criteria already provide incentives for applicants to serve Persons Experiencing Homelessness, and yet must still address the needs of individuals up to 60% of Area Median Income (AMI). MaineHousing offers other funding resources to more specifically address the needs of Persons Experiencing Homelessness.

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

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

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

EFFECTIVE DATE:

APPENDIX A

Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“MaineHousing” means Maine State Housing Authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“State” means the State of Maine.

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

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

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

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

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

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

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

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

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

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

APPENDIX B

Pre-Application Submission Requirements

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

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

APPENDIX C

Capital Needs Assessment Requirements

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

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

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

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

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

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

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

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

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

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

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

The undersigned_____ on behalf of

_____(the "Owner"), hereby certifies that:

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

☐ NO CHANGE ☐ CHANGE

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

☐ NO CHANGE ☐ CHANGE

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

documentation to support the certification at their initial occupancy.

☐ YES

☐ NO

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

☐ YES

☐ NO

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

☐ YES

☐ NO

☐ HOMELESS

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

☐ FINDING

☐ NO FINDING

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

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

☐ FINDING

☐ NO FINDING

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

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

☐ YES

☐ NO

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

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

☐ YES

☐ NO

☐ N/A

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

☐ NO CHANGE

☐ CHANGE

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

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

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

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

17. The project complies with the requirements of all applicable Federal and State Housing Programs included in the development (e.g., Rural Housing Services, HOME, HUD Section 8, or Tax-Exempt Bonds).
☐ YES ☐ NO
- If “No”, please explain the nature of the violation on page 4.
18. The owner received its credit allocation from the portion of the state ceiling set-aside for a project involving "qualified non-profit organizations" under Section 42(h)(5) of the code and its non-profit entity materially participated in the operation of the development within the meaning of Section 469(h) of the Code.
☐ YES ☐ NO ☐ N/A

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

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

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

☐ NO CHANGE ☐ CHANGE

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

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

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

(Ownership Entity)

By: _____

Title: _____

Date: _____

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

Question #	Explanation

CHANGE IN MANAGEMENT CONTACT

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

1. **CHANGES IN OWNERSHIP OR MANAGEMENT**

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

2. **TRANSFER OF OWNERSHIP**

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

CHANGE IN OWNER CONTACT

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

APPENDIX E

THRESHOLD REQUIREMENTS FOR PURCHASE OPTIONS/RIGHTS OF FIRST REFUSAL

I. The Purchase Options must:

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

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

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

- 4) give the holder of the ROFR a minimum of 90 days to exercise its ROFR and a minimum of 12 months to close on the purchase of the Project after exercise of the ROFR or such longer period required by any lender(s) or other party whose consent to the transfer is required; and
- 5) not require more than a nominal earnest money deposit in order to exercise the ROFR.

III. The Project owner's limited partnership agreement or limited liability company operating agreement must provide that:

- 1) the holder of the ROFR may assign the ROFR to a governmental unit, tenant organization or resident management corporation of the Project, or another Qualified Nonprofit Organization without the consent of the limited partner(s) or non-managing member(s);
- 2) the general partner or managing member may elect to do any of the following:
 - a) subject to the consent of the limited partner(s) or non-managing member(s), which consent shall not be unreasonably withheld, conditioned, or delayed, sell the Project to the holder of the ROFR in connection with the exercise of the ROFR (the limited partner(s) or non-managing member(s) may not withhold consent for a non-material breach of the Project owner's organizational documents);
 - b) at its discretion, without the consent of the limited partner(s) or non-managing member(s), sell the Project to the holder of the ROFR in connection with the exercise of the ROFR following the general partner's or managing member's receipt of a bona fide third party offer to purchase the Project, which offer may be solicited by the general partner/managing member or the holder of the ROFR; or
 - c) at its discretion, without the consent of the limited partner(s) or non-managing member(s), offer the Project for sale publicly at any time following the expiration of the Compliance Period and thereafter accept an offer from the highest bidder to purchase the Project, as long as the sale price is not less than the ROFR Price, and provided such acceptance is subject to the rights of the holder of the ROFR to exercise the ROFR and purchase the Project at the ROFR Price;
- 3) the general partner or managing member is directed and authorized to execute all documents necessary to effect the sale of the Project pursuant to the ROFR or Purchase Options;
- 4) the limited partner(s) or non-managing member(s) affirmatively agree not to challenge: (i) the sale of the Project pursuant to the terms of the ROFR by the general partner or managing member to the holder of the ROFR even if the holder of the ROFR is affiliated with the general partner or managing member; (ii) the general partner's or managing member's acceptance of an offer from the highest bidder in response to the general partner's or managing member's public offer of the Project for sale, provided the offer price is not less than the ROFR Price, and/or the exercise of the ROFR by the holder of the ROFR after any such acceptance; and (iii) the exercise of the Purchase Options by the holder(s) thereof pursuant to the terms of the Purchase Option;

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