



**To:** MaineHousing Board of Commissioners

**From:** Mark C. Wiesendanger, Development  
Director Ashley Carson, Chief Counsel

**Date:** June 17, 2024

**Subject:** Adoption of the 2025 and 2026 Qualified Allocation Plan

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At your meeting on June 18, 2024, we will ask you to repeal the existing Low Income Housing Tax Credit Rule and replace it with the attached Low Income Housing Tax Credit Rule. The attached rule is the qualified allocation plan (QAP) for allocating and administering the 2025 and 2026 State ceiling of federal low income housing tax credits, pursuant to Section 42 of the Internal Revenue Code.

As you know, the public hearing was held on April 16, 2024. An additional thirty (30) day comment period was also provided starting on May 15, 2024. We continued to receive written comments through the close of business on June 14, 2024. A summary of the comments and staff's proposed responses to the comments is in the attached rule, beginning on page 31. The following revisions were made to the QAP in response to the comments received:

1. Language was added to Section 3, paragraph A, to clarify that MaineHousing can set aside more than 10% for the Nonprofit Set-Aside.
2. Section 6, paragraph N, was revised to add clarifying language that MaineHousing has the discretion to consider whether non-compliance was a direct result of the Applicant's non-performance, the performance of an unaffiliated third-party, or a result of something outside the control of any affiliated party provided it was corrected appropriately within a reasonable timeframe.
3. Section 6, paragraph O, was revised to add clarifying language that experience successfully managing at least one (1) low income housing property developed under a Federal program that is substantially similar to LIHTC, to be determined at MaineHousing's sole discretion, is experience that qualifies for 1 point.

State law and the Governor's Executive Order on rulemaking state that prior to adopting a final rule, MaineHousing should:

- consider all relevant information available, including, but not limited to, economic, environmental, fiscal and social impact analyses;

- prioritize the health, safety, and welfare of Maine people in conducting these environmental and social impact analyses; and
- consider the extent to which existing law addresses the matter and the rule's impact on the ability of Maine employers to retain and attract a skilled workforce, including by reducing compliance burdens on small businesses in conducting the economic and fiscal impact analysis.

After the Board adopts the attached rule, the rule must be approved by the Governor's office pursuant to Section 42 of the Internal Revenue Code and by the Attorney General's office pursuant to the Maine Administrative Procedures Act. Upon final approval, the rule will be published by the Secretary of State's office.

**PROPOSED MOTION:**

*To repeal the existing Low Income Housing Tax Credit Rule, Chapter 16 of MaineHousing's rules, and replace it with the Low Income Housing Tax Credit Rule as described in the memorandum to the MaineHousing Board of Commissioners from Mark C. Wiesendanger and Ashley Carson dated June 17, 2024.*



**2025-2026**

# **Low Income Housing Tax Credit**

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Qualified Allocation Plan



## CHAPTER 16 LOW-INCOME HOUSING TAX CREDIT RULE

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## SECTION 1: INTRODUCTION

The federal Low-Income Housing Tax Credit (LIHTC) was created by the Tax Reform Act of 1986 to encourage private capital investment in the development of affordable rental housing. It is governed by [Section 42](#) of the Internal Revenue Code of 1986, as amended, and associated regulations. As the designated housing credit agency for the State of Maine, MaineHousing is required by [Section 42](#) of the Code and [30-A MRS §§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 at least 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 \$750,000 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.C.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) \$30,000 per Credit Unit, (ii) \$1,200,000, 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 Wednesday, July 3, 2024 for the 2025 round and by Thursday, July 3, 2025 for the 2026 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 19, 2024 for the 2025 State Ceiling and Thursday, September 18, 2025 for the 2026 State Ceiling.
  3. **Format.** The Application must be completed and submitted electronically in the form and manner prescribed by MaineHousing. Submitted exhibits must include documentation such as grant award letters, signed documentation on letterhead or evidence of official municipal action to provide evidence of all funding sources and official approvals. MaineHousing may require the Applicant to submit additional information.
- C. **Fees.** Applicants must pay the following fees when due. All fees are non-refundable.

<b>Type of Fee</b>	<b>Amount</b>	<b>Due Date</b>
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;
  4. There is a change in the Project's design or financing from what was in the Application which results in a substantial increase in the amount of Credit or other MaineHousing funding required;
  5. The Project's TDC Index exceeds the TDC Index Cap;
  6. Failure to meet the threshold requirements in Section 5;

7. Any event in Section 4.D. occurs and is not cured within any applicable cure period; or
8. There is any other material or substantive amendment or change to the Application.

## SECTION 5: THRESHOLD REQUIREMENTS

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

A. Affordability.

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

- B. 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:

$([2 \times \text{TDC/unit}] + [\text{TDC/bedroom}])$  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	\$395,000per unit
New construction	\$370,000per unit
Acquisition and rehabilitation of existing housing	\$340,000 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.

- C. 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 \$75,000.
  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.
- D. 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.

E. 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.

F. 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. §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. §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.

G. 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.

If MaineHousing determines that the Application includes information that is inconsistent with applicable requirements or is unreasonable based on comparable LIHTC projects, industry standards, or market conditions, MaineHousing may where it deems appropriate re-characterize such information to assess Project Feasibility notwithstanding the identified issue with the information provided.

- H. Project Design and Construction Requirements. 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. The latest version of Construction Services' *Quality Standards and Procedures Manual* can be found here: <https://www.mainehousing.org/programs-services/housing-development/construction-services>

Of particular note are updates to MaineHousing's energy efficiency standards.

When applicable, Projects must also comply with:

1. The Build America, Buy America Act (BABA), enacted as part of the Infrastructure Investment and Jobs Act, [Infrastructure Investment and Jobs Act, Pub. L. 117-58](#) and [2 CFR 184](#). BABA established a domestic content procurement preference for all Federal financial assistance obligated for infrastructure projects after May 14, 2022. The domestic content procurement preference requires that all iron, steel, manufactured products, and construction materials used in covered infrastructure projects are produced in the United States. This requirement is known as the "Buy America Preference" (BAP).

BABA FAQs

[https://www.hudexchange.info/baba/faqs/?utm\\_source=HUD+Exchange+Mailing+List&utm\\_campaign=87c88d5f1e-BABA-FAQs-Now-Available-3.4.24&utm\\_medium=email&utm\\_term=0\\_-87c88d5f1e-%5BLIST\\_EMAIL\\_ID%5D](https://www.hudexchange.info/baba/faqs/?utm_source=HUD+Exchange+Mailing+List&utm_campaign=87c88d5f1e-BABA-FAQs-Now-Available-3.4.24&utm_medium=email&utm_term=0_-87c88d5f1e-%5BLIST_EMAIL_ID%5D)

2. Section 3 of the Housing and Development Act of 1968 (12 U.S.C § 1701u) and its associated regulations (24 C.F.R. Part 75). The Section 3 program requires that recipients of certain HUD financial assistance, to the greatest extent possible, provide training, employment, contracting and other economic opportunities to low- and very low-income persons, especially recipients of government assistance for housing, and to businesses that provide economic opportunities to low- and very low-income persons.

Please refer to the *Section 3 Contractor, Subcontractor and Subrecipient Package* on our website: [https://mainehousing.org/docs/default-source/development/construction-services/other-documents/section-3-contractor-subcontractor-subrecipient-package.pdf?sfvrsn=26f28615\\_5](https://mainehousing.org/docs/default-source/development/construction-services/other-documents/section-3-contractor-subcontractor-subrecipient-package.pdf?sfvrsn=26f28615_5)

I. 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 Access. The Project must include broadband infrastructure with capacity sufficient to support the provision of 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.

Healthcare service providers and the tenants receiving care 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.
- J. Resident Service Coordination. The Applicant must make a resident service coordinator available twice weekly to the tenants on-site a minimum of one (1) hour per week for every five (5) Credit Units. 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.
- K. 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.
- L. 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. **5 Points**

The Project site exhibits one or more of the following characteristics (1 point for each that applies):

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. Lots 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. 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.

or

5. Specifically designated by a municipality for redevelopment to renew a blighted area or remediate environmental risks to the occupants.

**B. Historic Rehabilitation. 5 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.J. Additional funding from the Housing Trust Fund and/or Project-based Vouchers will be made available as necessary.



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

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

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

E. Accessibility. **Up to 12 points**

One (1) point for each unit that

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

<b>Type of Project</b>	<b>Maximum Points</b>
Projects providing Housing for Older Adults	<b>12 points</b>
Projects that are not specifically for Older Adults or Families, having only 1 BR and/or efficiency units	<b>9 points</b>
Family Projects	<b>6 points</b>

**Financial Characteristics**

F. National Housing Trust Fund. **2 points**

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.

G. Acquisition Cost. **Up to 5 points**

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

<b>Type of Project</b>	<b>Average Acquisition Cost</b>
Acquisition and rehabilitation of existing housing	\$60,500 per unit

New construction	\$7,500 per unit
Adaptive Reuse	\$10,500 per unit

For purposes of this subsection, acquisition costs include

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

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

<b>Percentage of Project's Acquisition Cost as compared to Average Acquisition Cost</b>	<b>Points</b>
0% to 1% (nominal)	<b>5 points</b>
>1% to 20%	<b>4 points</b>
>20% to 40%	<b>3 points</b>
>40% to 60%	<b>2 point</b>
>60% to 80%	<b>1 point</b>

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

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

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

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

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

applicable Application deadline (Tuesday, August 20, 2024 for the 2025 State Ceiling and Tuesday, August 19, 2025 for the 2026 State Ceiling.

**Project Location**

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

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

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

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

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

<b>Other Housing Projects (not specifically for Older Adults)</b>			
<b>Service Center Community</b>			<b>Points</b>
Auburn Augusta Bangor Bath Biddeford Brewer Brunswick Caribou	Farmington Lewiston Old Orchard Beach Orono Portland Rumford Saco Sanford	Scarborough Skowhegan South Portland Waterville Westbrook Windham	<b>10 points</b>
Bar Harbor Blue Hill Dexter Ellsworth Falmouth Fort Kent Millinocket Gardiner	Hallowell Houlton Kittery Limestone Madawaska Mexico Yarmouth Newport	Norway Paris Presque Isle Rockland Rockport Topsham	<b>8 points</b>
Ashland Bethel Lincoln Bridgton Calais Columbia Falls Cornish Damariscotta	Danforth Dover-Foxcroft Greenville Machias Oxford Patten Rangeley Southwest Harbor	Stonington Thomaston Van Buren Winter Harbor Wiscasset	<b>4 points</b>

3. Projects located on Native American tribal lands will be awarded **8 points**.

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

J. Community Revitalization. **Up to 5 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.

**Two (2) points** if the Project is located in a QCT and at least 20% of the units are market rate.

**One (1) extra point** if the Project also involves the preservation of existing Affordable Housing.

K. 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. Activities Important to Daily Living are located within not more than a ½ mile of the Project. (1 point per Activity)	Up to 5 points

**Sponsor Characteristics**

L. Readiness.

Up to 10 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 5 points
2. State land use approvals (such as site plan, subdivision, storm water, or wetlands approvals) required to proceed with and complete construction. 5 points

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.

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 successfully 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 successfully developing and operating multifamily rental housing.	3 points

N. Owner Performance.

**Up to a 5 Point loss**

Points reductions 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 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), was declared in default by MaineHousing, or needed a financial workout for any project within the last 5 years.	<b>-2 points</b>
Had LIHTC Projects still in their Compliance Period had a year-end operating deficit, in the last full Fiscal Year, unless the operating deficit was fully funded by the Application deadline.	<b>-2 point</b>
Was (a) issued an IRS Form 8823 from owner non-performance; or (b) had an IRS audit finding resulting in a recapture event, since September 22, 2016. MaineHousing may consider, in its sole discretion, whether (a) or (b) resulted directly from: the Applicant's non-performance, the performance of an unaffiliated third-party, or something outside the control of any affiliated party provided it was corrected appropriately within a reasonable timeframe.	<b>-1 point</b>

O. Management Experience.

**Up to 2 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: (a) at least one (1) LIHTC Project; or (b) at least one (1) low income housing property developed under a Federal program that is substantially similar to LIHTC, to be determined at MaineHousing's sole discretion.	<b>1 point</b>
one (1) staff person with LIHTC training for every 150 units in LIHTC Project(s) the company plans to manage.	<b>1 point</b>

P. Management Performance.

**Up to a 3 point loss**

Management Companies which have shown instances of poor performance in their management of LIHTC Projects still in their Compliance Period may lose points as follows.

The average of the most recent physical plant inspection scores as of June 30 before the Application deadline is below Above Average.	<b>-1 point</b>
The average of Project Reports submission scores for the last reporting period as of June 30 before the Application deadline is below Above Average.	<b>-1 point</b>

The average of the most recent Management and Occupancy Review scores as of June 30 before the Application deadline is below Above Average.	<b>-1 point</b>
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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 \$75,000 per unit of Rehabilitation Costs for Projects involving the acquisition and rehabilitation of existing housing in Section 5.C.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., Chapter 337, Subchapter IV](#)) and all other applicable federal, state and local fair housing and accessibility requirements, and the regulations, guidance and standards associated with all of the foregoing; and
  - 4. Title VI of the Violence Against Women Reauthorization Act of 2013, [42 USC Chapter 136, Subchapter III, Part M](#), and all associated regulations and guidance, as may be amended (VAWA).

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

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

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

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

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

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

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

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

E. Inspections. Every one to three years after a Project is Placed in Service, MaineHousing will inspect LIHTC Projects. For new LIHTC Projects, MaineHousing will inspect Credit Units by the end of the second calendar year following the year the last Qualified Building is Placed in Service. MaineHousing will give reasonable prior written notice. To the extent required by the Internal Revenue Service, MaineHousing will inspect the LIHTC Projects in accordance with IRS Treasury Regulation §1.42 5(c)(2)(iii)(A) through (D) and §1.42 5(d) and will give no more than 15 calendar days prior notice.

F. Utility Monitoring

For all projects funded in Year 2 of this QAP, monitoring of all utilities for all units will be required based on the HUD submission model for PHAs.

G. 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. §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. All Appendices attached to this Rule are incorporated herein and made a part of this Rule.

**STATUTORY AUTHORITY:** 30-A MRS §§4741(1) and 4741(14), §4726, 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
- Updated Section number references
- Repaired grammatical errors (punctuation, typos, correcting defined terms, etc.)

Section 3A: Added "at least" to clarify that MaineHousing can set aside more than 10% for the Nonprofit Set-Aside.

- Section 3B: Updated Preservation Set-Aside amount to \$750,000.
- Section 3C: Increased the amount of credit per unit to \$30,000 from \$20,000, and changed the maximum amount of credit per project to \$1,200,000.
- Section 4A: Pre-apps due July 3, 2024 and July 3, 2025.
- Section 4B2: Applications due September 19, 2024 and September 18, 2025.
- Section 4B3: Added language: “Submitted exhibits must include documentation such as grant award letters, signed documentation on letterhead or evidence of official municipal action to provide evidence of all funding sources and official approvals.”
- Section 4I4: Updated language to clarify.
- Section 4I5: Added language “in the case of a TDC Index Cap waiver, the TDC Index increases substantially”
- Section 5A: Removed Section 811 language.
- Section 5A3 Revised to revert the language back to the language that was adopted in the 2023-2024 QAP. MaineHousing had made changes to the 2023-2024 QAP after a public hearing and those changes were adopted, however in the version MaineHousing published for the 2025-2026 QAP, those changes were inadvertently left out. MaineHousing did not intend to make any changes to this Section.
- Section 5A4 Revised to revert the language back to the language that was adopted in the 2023-2024 QAP. MaineHousing had made changes to the 2023-2024 QAP after a public hearing and those changes were adopted, however in the version MaineHousing published for the 2025-2026 QAP, those changes were inadvertently left out. MaineHousing did not intend to make any changes to this Section.
- Section 5B: Increased the TDC Index caps.
- Section 5C: Increased Rehabilitation Costs per unit of existing housing from \$50,000 to \$75,000.
- Section 5G: Updated and clarified re-characterization language.
- Section 5H: Added a link to the latest version of the Quality Standards and Procedures Manual and noted energy efficiency standards. Additionally, updated Build America, Buy America requirements, removed electrical raceway/conduits language and relocated and updated Section 3 language.



- Section 5I3: Revised to revert the language back to the language that was adopted in the 2023-2024 QAP then revised to update the language to be consistent with the changes that were provided in the 2025-2026 version of the QAP that was published. Changed Broadband Capabilities to “Broadband Access” and indicated that the project must include broadband infrastructure with capacity sufficient to support the provision of Telehealth services. Separated out the definition of Broadband infrastructure and removed “ConnectMaine”. Deleted “If the broadband capabilities are used for telemedicine services”.
- Section 5J: Added that the resident service coordinator must be available twice weekly which is the appropriate number of days each week acceptable to MaineHousing.
- Section 6: Renumbered and reorganized the scoring criteria.
- Section 6A: Increased the scoring points for Rehabilitation or Reuse of Existing Housing, Structure or Site from 4 to 5.
- Section 6B: Increased the scoring points for Historic Rehabilitation from 4 to 5.
- Section 6E: Updated the scoring points for Accessibility to increase 6 points to 9 points for Projects that are not specifically for Older Adults or Families, having only 1 BR and/or efficiency units and to add 6 points for Family Projects.
- Section 6F: Increased the scoring points for National Housing Trust Fund from 1 to 2.
- Section 6G: Increased the scoring points for Acquisition Cost from 4 to 5, increased the average acquisition cost per unit and increased the percentage of project’s acquisition cost as compared to average acquisition cost and the associated points.
- Section 6I: Decreased the scoring points for Housing Need from 10 to 8 and updated the Service Center Community Cities/Towns for both Project providing housing for Older Adults and Other Housing Projects and the associated points. Additionally, adjusted the points for Projects located on Native American tribal lands from 10 points to 8 points.
- Section 6J: Increased the scoring points for Community Revitalization from 3 to 5 and added two points for Projects located in a QCT with at least 20% of the units at market rate.
- Section 6K: Adjusted the scoring points and criteria for proximity to activities important to daily living to up to 5 points for activities important for daily living that are located within not more than a ½ mile of the Project, 1 point per activity.
- Section 6L: Increased the scoring points for Readiness and provided a breakdown of the points for different categories.

- Section 6M: Added the word “successfully” to the scoring criteria for two categories.
- Section 6N: Changed to negative points for bad performance. Added language clarifying that MaineHousing has the discretion to consider whether non-compliance was a direct result of the Applicant’s non-performance, the performance of an unaffiliated third-party, or a result of something outside the control of any affiliated party provided it was corrected appropriately within a reasonable timeframe.
- Section 6O: Reduced the weight of the scoring criterion from 5 points to 2. Added language clarifying that experience successfully managing at least one (1) low income housing property developed under a Federal program that is substantially similar to LIHTC, to be determined at MaineHousing’s sole discretion, is experience that qualifies for 1 point.
- Section 6P: Changed to negative points for bad performance.
- Section 10F: Added Utility Monitoring to begin in Year 2 of the QAP.
- Section 11H: Added a reference to Appendices for clarity.
- Appendix A: Change made to “Activities Important to Daily Living” definition adjusting retail store to a store that offers regularly purchased household supplies.
- Deleted the definition for “Telemonitoring.”
- Appendix B: Language was added to require any available radon test results for the Project site.
- Appendix E: Revised to revert the language back to the language that was adopted in the 2023-2024 QAP. MaineHousing had made changes to the 2023-2024 QAP after a public hearing and those changes were adopted, however in the version MaineHousing published for the 2025-2026 QAP, those changes were inadvertently left out. MaineHousing did not intend to make any changes to Appendix E.

## **PUBLIC COMMENT:**

### *Process:*

Notice of Agency Rule-making Proposal (MAPA-3) was submitted to the Secretary of State for publication in the March 27, 2024 edition of the appropriate newspapers. Additionally, MaineHousing sent the proposed rule to Interested Parties on March 27, 2024 and published the proposed rule on its website on March 27, 2024. MaineHousing held a public hearing on April 16, 2024. The comment period was held open until April 26, 2024 at 5:00 PM.

A second Notice of Agency Rule-making Proposal (MAPA-3) was submitted to the Secretary of State for publication in the May 15, 2024 edition of the appropriate newspapers. Additionally, MaineHousing sent the proposed rule to Interested Parties on May 15, 2024 and published the proposed rule on its website on May 15, 2024. No public hearing was held. The comment period was held open until June 14, 2024 at 5:00 PM.

*Summary of Comments and Responses to Comments:*

*Comment:* Brian Kilgallen, Development Officer for Community Housing of Maine, submitted written comments and questions as follows:

- 1) If a property uses the ODE account to fund a YE operating deficit before the application deadline, would the application lose a point in Owner Performance?
- 2) Can Management Company and Ownership scores be available before the Pre-application deadline?
- 3) What is the process for MaineHousing to approve the building design prior to a project submitting for readiness points?
- 4) Is the Maine Construction General Permit required to earn the readiness points? Typically, this is done closer to construction.
- 5) Section H references dates from 2023 and 2024.
- 6) Was any consideration given to phased projects that can run relatively concurrently?

*Response:*

- 1) No.
- 2) Applicants are encouraged to connect with management companies and owners prior to Pre-application and perform due diligence in gathering information regarding performance. Currently MaineHousing does not publish scores on its website.
- 3) There is no process by which MaineHousing would approve a building design prior to the submission of an application. The Pre-application review is generally a site visit (sometimes a walk-through if the project is an adaptive reuse) and potentially a brief review of conceptual plans and specifications. Construction Analysts are not assigned until an application is awarded funding and MaineHousing does not have the resources to conduct detailed building design reviews beforehand for all applicants. MaineHousing can try to answer general questions a developer might have about specific items, but cannot provide full review in advance of an award.
- 4) No. It is typically done closer to construction.
- 5) This has been corrected.
- 6) The QAP scoring currently does not award points for phased projects that can run relatively concurrently. MaineHousing intends to retain that position.

*Comment:* Amanda Bartlett, Chief Operating Officer of Developers Collaborative, submitted written comments asking MaineHousing to further amend Section 6(N), Owner Performance, to better align with the intent of the scoring in the category.

*Response:* MaineHousing has added clarifying language to Section 6(N), Owner Performance, explaining that MaineHousing has the discretion to consider whether non-compliance was a direct result of the Applicant's non-performance, the performance of an unaffiliated third-party, or a result of something outside the control of any affiliated party provided it was corrected appropriately within a reasonable timeframe.

*Comment:* Tyler Norod, Development Director of Westbrook Development Corporation provided testimony at the public hearing and submitted written comments asking MaineHousing to consider removing Brownfield remediation costs from the TDC calculation as the costs are typically paid by outside funds and can be very expensive.

*Response:* Brownfield remediation is frequently performed outside of and/or prior to the project scope of work and therefore does not contribute to the TDC.

*Comment:* Tyler Norod also recommended a waiver process for Section 6(N), Owner Performance, whereby an owner could seek a waiver from the negative scoring points for the issuance of an 8823 that was outside of the owner's control.

*Response:* MaineHousing has added clarifying language to Section 6(N), Owner Performance, explaining that MaineHousing has the discretion to consider whether non-compliance was a direct result of the Applicant's non-performance, the performance of an unaffiliated third-party, or a result of something outside the control of any affiliated party provided it was corrected appropriately within a reasonable timeframe.

*Comment:* Tyler Norod also recommended that MaineHousing outsource the Environmental Review work to qualified engineers to save MaineHousing staff significant time and remove the risks and barriers associated with Choice Limited Actions for tax credit applications. Norod proposed that applicants could have the checklist completed and included with the submission of a project application for tax credits.

*Response:* MaineHousing appreciates this recommendation and intends to look into the possibility of outsourcing the Environmental Review work; however, it should be noted that the requirements of an Environmental Review are dependent on the type of Federal funding a project receives. Applicants would not know which type of Federal funding they would receive prior to an award, so requiring Applicants to complete the Environmental Review prior to award could be a cost to the Applicant that would not be an eligible project cost if it turned out an Environmental Review was not required. Additionally, the Choice Limiting Action period does not expire until the project receives a release of funds from the Department of Housing and Urban Development ("HUD"). The completion of the Environmental Review itself does not stop the Choice Limiting Action period and MaineHousing would still have to request a release of funds from HUD and go through the public comment period before an applicant could take any action that would be considered a Choice Limiting Action.

*Comment:* Cory Fellows, Vice President of Development for Preservation of Affordable Housing ("POAH") submitted written comments asking MaineHousing to replace its project-level \$750,000 Net Developer Fee cap with a \$25,000 per-unit cap that would better reflect the significant overhead and risk associated with larger or more complex Low Income Housing Tax Credit ("LIHTC") projects.

*Response:* MaineHousing continues to believe that the Net Developer Fee cap of \$750,000 is appropriate. The Net Developer Fee cap is reviewed with each iteration of the QAP and adjustments are made as necessary.

*Comment:* Corey Fellows also expressed concern regarding the requirement to set aside at least 60% of the units in a LIHTC project for households under 50% AMI. Fellows indicated this requirement is aggressive and undermines project viability, creating a very significant barrier to financing a viable construction or rehabilitation project and substantially weakening a project's long-term financial stability.

*Response:* MaineHousing designs its financing packages to make its affordability requirements feasible. The need of the State is taken into consideration when determining what is required for affordability. MaineHousing has a long track record and an extremely successful portfolio of projects bolstering the position that its requirements are not burdensome to the properties.

*Comment:* Corey Fellows also recommended that MaineHousing restore scoring criteria for new Project-Based Rental Assistance ("PBRA") to encourage sponsors to incorporate PBRA which is a sustainable solution for long-term affordability.

*Response:* MaineHousing removed the scoring criteria for new PBRA as in the past a number of local public housing authorities have pledged Project-Based Vouchers to their own projects, making it an unfair scoring advantage for those Developers that have their own Project-Based Vouchers. Additionally, MaineHousing has committed to providing Project-Based Vouchers for each unit that a developer pledges to set-aside for special needs populations.

*Comment:* Corey Fellows noted that POAH supports MaineHousing's revisions to the maximum credit amount, including the increased cap per Credit Unit and the imposition of a new \$1.2M total maximum.

*Response:* MaineHousing appreciates the support for those changes.

*Comment:* Corey Fellows noted that POAH supports MaineHousing's efforts to ensure its funded costs are reasonable and necessary, but is concerned that the TDC Index Cap will exclude some worthy projects from competing for MaineHousing resources. Fellows commented that the increased New Construction TDC Index Cap still remains too low, particularly for projects where certain desirable characteristics drive higher costs (i.e. projects for special populations with needs for specific physical accommodations or facilities, projects in high opportunity areas where land costs are higher, projects with advanced energy performance, and projects complying with new Build American, Buy American ("BABA") requirements).

*Response:* MaineHousing took all of these factors into consideration when setting the new TDC caps. MaineHousing's priority is to fund as many new, high quality housing units as possible with its limited resources. Based on the costs in the current pipeline, as well as current labor and materials pricing and trends, MaineHousing is confident that the proposed TDC caps are

reasonable and will eliminate certain projects which would otherwise have a higher per unit cost than necessary. MaineHousing's energy efficiency standards are already quite high and those costs are known; the adjustments to the standards do not add materially to the TDC. The effects of BABA are still unclear at this time.

*Comment:* Corey Fellows also notes that the QAP's Maximum Credit Amount provisions already serve to limit the LIHTC resources allocable to any given project, ensuring that higher cost developments will not claim a disproportionate share of agency resources, so there is no clear policy benefit from the TDC Index Cap to offset the real harm it may cause by excluding good projects from competing. Fellows recommended MaineHousing either eliminate the TDC Index Caps entirely or implement a waiver process for projects where special characteristics cause them to exceed the caps.

*Response:* MaineHousing discusses TDC Caps in preparation for each QAP. MaineHousing has determined that the clarity of specific cost targets is helpful to developers and therefore wishes to keep the TDC Caps. During the pandemic MaineHousing chose not to hold developers to hard caps, which resulted in longer negotiations and higher per unit costs. Most additional resources brought to a project are from other public resources and MaineHousing takes its responsibility as stewards of public funds seriously. In very limited circumstances, the Director of MaineHousing has the ability to waive program guidelines for good cause.

*Comment:* Corey Fellows recommended that MaineHousing take into consideration when considering funding priorities and evaluating project budgets that different towns and regions have different demographics and needs and that the cost of securing local land-use approvals for family housing is often more difficult, time-consuming and expensive than senior housing.

*Response:* MaineHousing does not prioritize housing for older adults over housing for families, or vice versa. Each housing type is eligible for an equal number of points under the QAP. MaineHousing will continue to track the number of units developed under each type of housing and can make adjustments in the future if the Board of Commissioners and MaineHousing Staff feel there is a trend towards unnecessarily producing more of one type of housing.

*Comment:* Erinn Roos-Brown, Project Manager of Travois, Inc. submitted written comments stating that the requirements, in Section 4(B1.a) – Allocation Process: Existing Housing, for Acquisition and Rehabilitation Projects to “include the addition of at least 20 new units, or meet the requirements of the Preservation Set-Aside in Section 3.B” effectively eliminates Tribal entities from applying for acquisition and rehab projects under LIHTC in Maine due to: the smaller scale of Tribal projects; the financial feasibility; the limitation of buildable land in assigned Reservations; and the Federal funding available to Tribes which does not qualify for the Preservation Set-Aside. Roos-Brown recommended MaineHousing remove the requirement that 20 new units be developed as part of Acquisition and Rehabilitation projects.

*Response:* The requirement that 20 new units be developed as part of Acquisition and Rehabilitation projects is aimed at achieving the goal of adding additional housing stock to Maine. MaineHousing believes this strikes the right balance between supporting acquisition & rehabilitation of housing

and creating more affordable housing. MaineHousing continues to search for alternate methods of funding preservation, and increase the ability to do so when more funding is available.

*Comment:* Erinn Roos-Brown also commented that the TDC Index Caps prescribed by MaineHousing are exceedingly low in comparison to LIHTC QAP TDC Caps nationwide. Roos-Brown requested MaineHousing recognize the calculated maximum unit development costs specifically for Tribal projects developed by HUD and include a reference to PIH-2023-30 as the applicable limits for Tribal projects

*Response:* MaineHousing believes that the TDC Caps in Maine's QAP are appropriate for Maine projects and allow for the creation of as many safe, efficient, quality units as possible. Based on a review of the projects in MaineHousing's pipeline, developer partners are currently creating units for far less than the new proposed TDC Caps.

*Comment:* Erinn Roos-Brown stated that MaineHousing's requirement for extensive amenities including a community room, significant broadband infrastructure requirements, and recreational areas at each project is challenging for Tribal developers. Roos-Brown requested MaineHousing eliminate these amenity requirements for Tribal projects or change them from threshold requirements to scoring categories instead.

*Response:* MaineHousing believes that these amenities provide great benefits to the people MaineHousing serves and it is important that everyone have access to such amenities. If a developer can show readily available alternatives of equal quality and accessibility, MaineHousing may take that into consideration to avoid funding redundant resources.

*Comment:* Erinn Roos-Brown recommended that MaineHousing change the scoring criteria in the Property Tax Relief category to 3 points for Projects located in areas of the State that do not assess or collect property taxes and Projects that are exempt from property taxes.

*Response:* The intent of this scoring category within the "Financial Characteristics" section is to reward developers who undertake the work required to bring additional resources to the Project, saving MaineHousing's resources for additional housing production. Both the developer and community in which the housing will be built have undertaken a task for which points will be awarded. While the lack of property taxes on Tribal lands is of value, it is not awarded the maximum points due to the fact that neither the community nor the developer have undertaken a process for which these points are an incentive. MaineHousing welcome suggestions for other forms of funding assistance as an alternative for Tribal developers and communities.

*Comment:* Erinn Roos-Brown noted that Travois, Inc. supports keeping the language in the QAP that awards 8 points for Projects located on Tribal lands.

*Response:* MaineHousing appreciates the support.

*Comment:* Erinn Roos-Brown noted that the 15 points available in the Smart Growth category are typically a major challenge for Tribal projects and requested that this category have a 3-mile radius for Projects located on Tribal land and rural locations to create a fairer scoring opportunity.

*Response:* MaineHousing believes access to transportation and proximity to activities important to daily living are key factors in making projects successful and accessible to all. The scoring criteria creates an opportunity for projects to provide on-demand transportation to receive points when the other categories are not an option. Additionally, the scoring criteria was adjusted to allow projects to score one point for each walkable activity of daily living rather than requiring at least 3 activities in order to obtain any points.

*Comment:* Erinn Roos-Brown requested that MaineHousing change the language in Section 6(O), Management Experience, to match the language in Section M (Developer Capacity). Roos-Brown noted that Tribes have long-standing experiencing managing low income housing under other rules and regulations (NAHASDA and the 1937 Housing Act) that are similar to the LIHTC program and requiring property management agents to have previous LIHTC experiences puts Indigenous nations at a distinct disadvantage scoring wise.

*Response:* MaineHousing has added clarifying language to Section 6(O), Management Experience, stating that experience successfully managing at least one (1) low income housing property developed under a Federal program that is substantially similar to LIHTC, to be determined at MaineHousing's sole discretion, is experience that qualifies for 1 point.

*Comment:* Nicole McKeith Director of Housing Initiatives at ProsperityME testified at the public hearing and submitted written comments stating that a two-year QAP does not allow for flexibility to change the QAP to reflect current housing priorities and the housing market climate.

*Response:* MaineHousing has responded to the development community in Maine by implementing a two-year QAP. This allows developers to better plan their projects around MaineHousing requirements. In drafting the QAP MaineHousing considers current housing priorities and climate and projects trends over that two-year period in order to ensure a successful two-year QAP. MaineHousing has the ability, after the first year, to open rulemaking to make substantive changes to the QAP if it is deemed necessary.

*Comment:* Nicole McKeith commented that MaineHousing should consider QAP incentives or other policy initiatives to ensure New Mainer housing needs are adequately addressed.

*Response:* MaineHousing is open to, and actively solicits advice on, how it can better serve the New Mainer population. MaineHousing has a variety of programs other than LIHTC including the Rural Affordable Rental Housing Program, the Affordable Homeownership Program, the Supportive Housing Program, the Recovery Housing Program, and special programs to assist individuals and families experiencing homelessness. Additionally, MaineHousing has allocated Emergency Housing Relief Funds to assist the New Mainer population, including assisting individuals and families in gaining access to LIHTC housing units. LIHTC projects must meet certain underwriting criteria, without which they are financially infeasible. Due to the small number of 9% LIHTC projects



funded in Maine annually, MaineHousing does not believe additional set-asides should be established.

*Comment:* Nicole McKeith commented that ProsperityME believes family projects and larger family units are discouraged through the scoring system as the scoring encourages Senior Projects. McKeith recommended MaineHousing allow exceptions that promote various bedroom size developments which would include exceptions to the TDC.

*Response:* The QAP provides equal scoring opportunities for family and older adult projects. Additionally, the TDC calculation is indexed to adjust for the number of bedrooms so as not to penalize units with more bedrooms.

*Comment:* Nicole McKeith expressed concern about the decreased per unit average acquisition cost for new construction from \$14,000 to \$7,500, which eliminates the Greater Portland area for development. McKeith recommended eliminating Section 6(G) to allow scoring to be based strictly on TDC for items included in the eligible basis.

*Response:* The average acquisition cost number is based off the average cost of recent projects. The average continues to drop which indicates that developers are finding ways to save on the acquisition of properties. The intent of this scoring category is to reduce TDC by requiring more thoughtful use of funds. MaineHousing has seen no signs that developers are developing fewer units in the Greater Portland area, and wants to ensure that all parts of the State are appropriately served with this funding source.

*Comment:* Nicole McKeith commented it was unclear where the scoring criteria for Section 6, Project Location, was coming from and recommended changing the Section to reflect points for housing need.

*Response:* The State of Maine determines the Service Center communities each year and makes the information available on its website ([Service Centers: Municipal Planning Assistance Program: Maine DACF](#)). Demand for affordable housing units in each Service Center is determined by subtracting the total number of available units for those at or below 60% of Area Median Income from the total number of households making 60% of Area Median Income or less. This housing needs analysis may result in changes to the scoring of individual municipalities in the Project Location Section of the QAP each time it is compiled. MaineHousing continually looks for better data and expertise in this area, but to date this has presented as the best method to assess housing need. MaineHousing welcomes and suggestions or alternative methods that may better assess housing needs in Maine.

*Comment:* Nicole McKeith notes that Maine Housing could consider identifying opportunities to encourage more diversity in development and management teams by reducing barriers to entry, facilitating joint ventures, providing predevelopment capital, or creating other incentives for participation by underrepresented groups. McKeith asked for clarification on the term “successfully” that was added to each section.

*Response:* MaineHousing regularly meets with a Cultural Advisory Board, made up of individuals with diverse cultural backgrounds that provide insight on how MaineHousing can assist in encouraging diversity in its programs. Additionally, MaineHousing encourages partnerships and provides scoring criteria that allows for points to be received based on collective experience of development teams. MaineHousing staff are available to answer questions new developers might have and can assist in linking new developers with experienced developers and consultants. MaineHousing also has engaged and will continue to engage the Genesis Fund to provide technical assistance, which has proven successful in assisting new developers enter MaineHousing programs. Every program MaineHousing offers is sent to Maine Small businesses, Women and Minority Businesses or Labor Surplus Area Firms that provide a similar service/program and a copy of each program is sent to Maine PTAC (Procurement Technical Assistance Center) for publishing on their website for greater outreach.

*Comment:* Nicole McKeith asked for clarification on the term “successfully” that was added to each section.

*Response:* Successful development experience means that the team has consistent recent experience delivering projects on budget and on time.

*Comment:* Nicole McKeith commented that one of the required selection criteria under Section 42 of the Internal Revenue Code is ‘projects intended for eventual tenant ownership’ and recommended that MaineHousing add an additional section of requirements for eventual homeownership, or clarify in Section 6(Q) what is required.

*Response:* Section 6(Q) states that if there is a need for a tie breaker because applications with the same score request the same amount of Credit and 0% deferred debt per unit, the project with the most acceptable plan to convert the project to affordable homeownership for the residents after the Extended Use Period will have priority. Section 6(Q) outlines that 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 conversation. To date, no feasible plan for rental projects to transition to homeownership through the Tax Credit Program has been presented to MaineHousing. Additionally, due to the limited funding available for affordable rental units and the desire to maintain the affordability as rental units, it is most advantageous for projects to remain rental units for a minimum of 45 years. MaineHousing welcomes suggestions as to how to better promote and encourage this concept.

*Comment:* Nicole McKeith asked if there is a list of approved Market Study analysts that MaineHousing considers qualified professionals.

*Response:* MaineHousing requires market studies prepared by National Council of Housing Market Analysts (“NCHMA”), the only professional body dedicated exclusively to enhancing the professionalism and standards surrounding residential rental real estate market analysis. NCHMA

can provide professionals in Maine that meet the definition of qualified professional under the QAP.

*Comment:* Nicole McKeith asks that MaineHousing provide flexibility for Housing Credit owners to utilize the optimal utility allowance for each development and to encourage utility allowances that accurately reflect anticipated utility consumption.

*Response:* MaineHousing allows developers to use the maximum utility allowances. The QAP has been revised to start requiring utility monitoring which should provide developers and MaineHousing with the ability to better estimate consumption over time.

*Comment:* Nicole McKeith commented that allowing twinned 4% and 9% projects leverages the benefits of both programs across different portions of the development, offering a nuanced solution to funding challenges and producing more units in a project.

*Response:* In Maine, both 9% and 4% projects typically need soft money, or subsidy, requiring developers to compete for resources. In competitions, project feasibility is required and thus “twinning” 4% and 9% projects does not work as a project is not guaranteed to be successful in the second competition, thus rendering the project infeasible in the first competition. Twinning is more common where competition for soft money is not required.

*Comment:* Nicole McKeith noted that average income was not addressed in the QAP and asked if it was allowed.

*Response:* Income averaging is allowed under the right circumstances. Applicants should have a conversation with MaineHousing’s Asset Management and Development teams before incorporating income averaging in their development pro formas. Considerations include management company willingness and experience with income averaging and the management company’s ability to report required information through their software systems.

*Comment:* Nicole McKeith commented that the informational sessions regarding the QAP, don’t seem very interactive and recommended that MaineHousing encourage more public involvement in developing policies.

*Response:* MaineHousing holds several sessions throughout each year to listen to and discuss potential changes and emerging needs in the affordable housing market. For the 2025-2026 QAP MaineHousing received less input than in the past, which suggests that the current QAP is serving the State’s need at this time. MaineHousing encourages all partners to participate and engage with MaineHousing staff at any time.

*Comment:* Nicole McKeith commented that overall, ProsperityME would like to see more policies to encourage housing development for New Mainers.

*Response:* MaineHousing is open to, and actively solicits advice on, how it can better serve the New Mainer population. As mentioned in response to McKeith’s earlier comment, MaineHousing has a

variety of programs, including the Rural Affordable Rental Housing Program, the Affordable Homeownership Program, the Supportive Housing Program, the Recovery Housing Program, and special programs to assist individuals and families experiencing homelessness. Additionally, MaineHousing has allocated Emergency Housing Relief Funds to assist the New Mainer population, including assisting individuals and families in gaining access to LIHTC housing units. MaineHousing encourages developers to provide suggestions on additional steps that could be taken, keeping in mind the economics of the LIHTC projects.

*Comment:* Claude Rwaganje, Executive Director of ProsperityME, provided testimony at the public hearing asking MaineHousing to look for a balance between senior and family housing to avoid a disproportionate award of senior projects over family projects.

*Response:* MaineHousing does not prioritize housing for older adults over housing for families, or vice versa. Each housing type is eligible for an equal number of points under the QAP. MaineHousing will continue to track the number of units developed under each type of housing and can make adjustments in the future if the Board of Commissioners and MaineHousing Staff feel there is a trend towards unnecessarily producing more of one type of housing.

*Comment:* Claude Rwaganje also commented that the two year QAP is problematic for new developers trying to enter the program as they have to wait until 2026-2027 to gain entry. Rwaganje recommended a set-aside for new developers to encourage diversity in MaineHousing's programs.

*Response:* A two year QAP offers two consecutive years of funding. One is not dependent on the other and new developers can apply in any year.

*Comment:* Matthew Brock, Kittery Housing Committee Chair, and Kendra Amaral, Town Manager for the Town of Kittery, commented on two areas of the QAP that they felt were a disadvantage to the Town of Kittery:

- 1) The revisions to Section 6, Project Location, reduced the scoring for the Town of Kittery from 10 to 8 points for projects not specifically for older adults. Kittery continues to see an intense demand for housing for younger adults and Brock and Amaral recommended MaineHousing consider maintaining the 10 points in this category.
- 2) Kittery has very few properties that earn maximum points in Section 6(K), Smart Growth, due to the lack of appropriate transit and the fact that properties in Kittery that have public transit are generally in locations that are incredibly valuable. Brock and Amaral recommended MaineHousing reconsider the Smart Growth scoring criteria for rural communities.

*Response:*

- 1) The State of Maine determines the Service Center communities each year and makes the information available on its website ([Service Centers: Municipal Planning Assistance Program: Maine DACE](#)). Demand for affordable housing units in each Service Center is determined by subtracting the total number of available units for those at or below 60% of

Area Median Income from the total number of households making 60% of Area Median Income or less. This housing needs analysis may result in changes to the scoring of individual municipalities in the Project Location Section of the QAP each time it is compiled. The scoring for the Town of Kittery was adjusted based on this analysis. It should be noted that the Project Location Section allows municipalities to receive their Housing Need score from the immediately preceding QAP if that score was higher.

- 2) MaineHousing believes access to transportation and proximity to activities important to daily living are key factors in making projects successful and accessible to all. The scoring criteria creates an opportunity for projects to provide on-demand transportation to receive points when the other categories are not an option. Additionally, the scoring criteria was adjusted to allow projects to score one point for each walkable activity of daily living rather than requiring at least 3 activities in order to obtain any points.

*Comment:* Patrick Hess, the Director of Development at Avesta Housing, commented on the change to Section 6(G), Acquisition Cost, asking for clarification on the thinking of the lower per unit costs for new construction and adaptive reuse. Hess commented that the changes seem to incentivize sprawl by pushing development further out. Hess recommended considering scoring that is based on whether a project meets the standards or not, rather than a sliding scale based on percentages of an average.

*Response:* The average acquisition cost number is based off the average cost of recent projects. The average continues to drop which indicates that developers are finding ways to save on the acquisition of properties. The intent of this scoring category is to reduce TDC by requiring more thoughtful use of funds. MaineHousing wants to ensure that all parts of the State are appropriately served with this funding source.

*Comment:* Laura Mitchell, the Executive Director of the Maine Affordable Housing Coalition, asked MaineHousing to reconsider Total Development Cap figures more frequently within the 2 year QAP process to adjust for inflation, unexpected construction cost changes, and other ongoing shifts in state and national policy/funding.

*Response:* MaineHousing has responded to the development community in Maine by implementing a two-year QAP. This allows developers to better plan their projects around MaineHousing requirements. In drafting the QAP MaineHousing considers inflation, unexpected construction cost changes and other potential shifts in policies/funding over that two-year period in order to ensure a successful two-year QAP. If an unforeseen circumstance warrants opening rulemaking after the first year, MaineHousing has the ability to do so and make substantive changes to the QAP if necessary.

*Comment:* Laura Mitchell asked MaineHousing to build in the added cost that EV requirements create in terms of larger transformers in addition to AC use tracking.

*Response:* The TDC Caps take into consideration greater costs than in the past. The EV requirements have been in other MaineHousing programs since 2022 and have not been a cost

burden. MaineHousing does not require specific AC electricity use tracking outside of the total electricity consumption tracking.

*Comment:* Laura Mitchell asked MaineHousing to consider that data collection and energy use monitoring has a cost that should be included in the LIHTC eligible expenses.

*Response:* MaineHousing agrees and those expenses are eligible.

*Comment:* Laura Mitchell asked that MaineHousing add another priority group to Section 5 to prioritize Section 8 vouchers and those seeking, but ineligible for Section 8.

*Response:* The QAP gives an occupancy preference to eligible persons whose names are on a public housing or Section 8 waiting list in an attempt to assist those individuals with affordable housing (Section 5(L)). Providing another priority group for individuals seeking Section 8 vouchers and/or individuals who are ineligible for Section 8 vouchers would not result in an increase in access to LIHTC units, without rental assistance or sufficient income to pay LIHTC rents.

*Comment:* Laura Mitchell recommends that to meet workforce and demographic needs, a balance of senior, 1-bedroom nonage restricted, and family units is needed. Mitchell recommends a regular needs analysis so developers can effectively meet changing needs over time.

*Response:* MaineHousing does not prioritize housing for older adults over housing for families, or vice versa. Each housing type is eligible for an equal number of points under the QAP. MaineHousing will continue to track the number of units developed under each type of housing and can make adjustments in the future if the Board of Commissioners and MaineHousing Staff feel there is a trend towards unnecessarily producing more of one type of housing. The State of Maine determines the Service Center communities each year and makes the information available on its website ([Service Centers: Municipal Planning Assistance Program: Maine DACF](#)). Demand for affordable housing units in each Service Center is determined by subtracting the total number of available units for those at or below 60% of Area Median Income from the total number of households making 60% of Area Median Income or less. This housing needs analysis may result in changes to the scoring of individual municipalities in the Project Location Section of the QAP each time it is compiled. MaineHousing continually looks for better data and expertise in this area, but to date this has presented as the best method to assess housing need. MaineHousing welcomes and suggestions or alternative methods that may better assess housing needs in Maine.

*Comment:* Laura Mitchell noted that the proposed QAP's scoring discourages larger bedroom counts. Special populations that need consideration are immigrants in need of large bedroom counts for intergenerational and larger family residence. Mitchell recommends in areas with demonstrated need, exceptions should be allowed to promote various bedroom size developments.

*Response:* The TDC calculation is indexed to adjust for the number of bedrooms so as not to penalize units with more bedrooms.

*Comment:* Laura Mitchell commented that the changes to Section 6(G) reduce scoring for projects in high land value areas such as the Portland Labor Market Area making it unclear what Section 6(G) is trying to incentivize.

*Response:* The average acquisition cost number is based off the average cost of recent projects. The average continues to drop which indicates that developers are finding ways to save on the acquisition of properties. The intent of this scoring category is to reduce TDC by requiring more thoughtful use of funds. MaineHousing has seen no signs that developers are developing fewer units in the Portland Labor Market Area, and wants to ensure that all parts of the State are appropriately served with this funding source.

*Comment:* Laura Mitchell states that there continues to be a lack of transparency in how project need/location are identified and prioritized. Mitchell recommended leveraging the housing study that identifies housing need by region in addition to regional and local income levels on top of housing need. Mitchell further commented that it was unclear why communities abutting prioritized communities are not also prioritized. Mitchell also recommended adjusting “Other Housing Projects” to include Portland Labor Market area communities or removing overall point scores for town/city location. Mitchell also recommended that MaineHousing clarify why so few communities are listed and encourage greater municipal participation in the project location selection and scoring section.

*Response:* The State of Maine determines the Service Center communities each year and makes the information available on its website ([Service Centers: Municipal Planning Assistance Program: Maine DACF](#)). Demand for affordable housing units in each Service Center is determined by subtracting the total number of available units for those at or below 60% of Area Median Income from the total number of households making 60% of Area Median Income or less. This housing needs analysis may result in changes to the scoring of individual municipalities in the Project Location Section of the QAP each time it is compiled. MaineHousing continually looks for better data and expertise in this area, but to date this has presented as the best method to assess housing need. MaineHousing welcomes and suggestions or alternative methods that may better assess housing needs in Maine.

*Comment:* Laura Mitchell commented that adding points for market rate units (Section 6(J)) does not seem fair for rural communities to be able to compete with areas such as Cumberland County where market rate units would be easier to fill. Mitchell recommended adding points for vouchered units instead.

*Response:* MaineHousing believes offering points for projects in QCTs where at least 20% of the units are market rate is one way to achieve community revitalization.

*Comment:* Laura Mitchell recommended adding a variance of points to Section 6(K), Smart Growth, to separate out elderly and family to increase the requirement of safe walking distance for families to  $\frac{3}{4}$  mile or 1 mile. Mitchell commented that location and smart growth points should focus on suburban areas with good school systems in strong labor markets as important sites for equitable development and distribution of housing.

*Response:* MaineHousing believes that ½ mile is a reasonable and appropriate walking distance to activities important to daily living for all housing types.

*Comment:* Laura Mitchell commended that the changes to Section L, Sponsor Characteristics – Readiness, was a positive addition to the QAP.

*Response:* MaineHousing appreciates the support for those changes.

*Comment:* Laura Mitchell commended that clarity on the added term “successfully” to Section 6(M) should be provided.

*Response:* Successful development experience means that the team has consistent recent experience delivering projects on budget and on time.

*Comment:* Laura Mitchell commended that the required selection criteria under Section 42 of the Internal Revenue Code ‘projects intended for eventual tenant ownership’ should either be added as an additional requirement prior to the Tie Breaker section or clarify as to why it is in the Tie Breaker section should be provided.

*Response:* “Projects intended for eventual tenant ownership” is included in the Tie Breaker section as MaineHousing believes due to the limited funding available for affordable rental units and the desire to maintain the affordability as rental units, it is most advantageous for projects to remain rental units for a minimum of 45 years. Additionally, to date, no feasible plan for rental projects to transition to homeownership through the Tax Credit Program has been presented to MaineHousing to warrant a change to the current scoring. MaineHousing welcomes suggestions as to how to better promote and encourage this concept.

*Comment:* Laura Mitchell commended that a list of qualified Market Study Analysts or a definition of “qualified profession” would help new developers engage the right professionals.

*Response:* MaineHousing requires market studies prepared by National Council of Housing Market Analysts (“NCHMA”), the only professional body dedicated exclusively to enhancing the professionalism and standards surrounding residential rental real estate market analysis. NCHMA can provide professionals in Maine that meet the definition of qualified professional under the QAP.

*Comment:* Laura Mitchell commented Maine needs a variety of housing types serving a range of income levels and recommended MaineHousing consider new ways in which LIHTC can be used to increase the range of housing opportunities for those at the lower end of the economic spectrum.

*Response:* Most LIHTC projects currently have mixed incomes which may include Extremely Low Income units, Very Low Income units, Low Income units and/or Market Rate units. Additionally, some funding sources, such as the National Housing Trust Fund create deeper affordability in LIHTC projects. Developers may also elect Income Averaging, in the right circumstances with



approval from MaineHousing, which could be used to address the needs of different income levels. Additionally, MaineHousing offers a number of other programs which have varying income eligibility requirements that provides a wide range of housing to individuals of mixed incomes.

*Comment:* Laura Mitchell commented that there are a number of ways to achieve a variety of housing types serving a range of income levels such as:

- 1) A set-aside for one housing project targeting tenants within the lower income range each round.
- 2) Providing Project-Based Voucher with LIHTC funding for every unit at the building.
- 3) Leveraging Average Income that enables projects to target a broader mix of tenants.

*Response:*

- 1) Creating too many set-asides will limit MaineHousing's ability to fund projects as well as developers' abilities to compete for MaineHousing funding. A typical 9% competitive process results in at most four projects being funded and with two already established set-asides, creating a third could limit more than 75% of the funding available through the competitive process. LIHTC projects to some extent already accommodate a range of mixed incomes and other funding sources aid in creating deeper affordability in LIHTC projects. Additionally, Income Averaging, in the right circumstances with approval from MaineHousing, could be used to address the needs of individuals at different income levels. MaineHousing also offers a number of other programs which have varying income eligibility requirements that provides a wide range of housing to individuals of mixed incomes.
- 2) MaineHousing believes in keeping with the Congressional intent of the Housing Choice Voucher Program, spreading Project-Based Vouchers throughout many different types of projects creates a broader reach and provides more opportunity. MaineHousing is currently allocating Project-Based Vouchers appropriately in accordance with funding/availability and MaineHousing's Housing Choice Voucher Plan. Additionally, MaineHousing has committed to providing Project-Based Vouchers for each unit that a developer pledges to set-aside for special needs populations.
- 3) Income averaging is allowed under the right circumstances. Applicants should have a conversation with MaineHousing's Asset Management and Development teams before incorporating income averaging in their development pro formas. Considerations include management company willingness and experience with income averaging and the management company's ability to report required information through their software systems.

*Comment:* Emily Flinkstrom, Executive Director of Fair Tide and Hershey Hirschkop, Director of Housing for Fair Tide commented that making LIHTC funding more available for individuals making 30%-40% AMI would assist with the growing homelessness crisis. Flinkstrom and Hirschkop recommended a set-aside for one housing project targeting tenants within the lower income range each round, similar to the set-aside for a preservation project. Flinkstrom and Hirschkop commented another approach would be to provide Project-Based Vouchers with LIHTC funding for every unit at the building.

*Response:* Creating too many set-asides will limit MaineHousing’s ability to fund projects as well as developers’ abilities to compete for MaineHousing funding. A typical 9% competitive process results in at most four projects being funded and with two already established set-asides, creating a third could limit more than 75% of the funding available through the competitive process. LIHTC projects to some extent already accommodate a range of mixed incomes and other funding sources aid in creating deeper affordability in LIHTC projects. Additionally, Income Averaging, in the right circumstances with approval from MaineHousing, could be used to address the needs of individuals in the 30-40% range. MaineHousing also offers a number of other programs which have varying income eligibility requirements that provides a wide range of housing to individuals of mixed incomes. With regards to Project-Based Vouchers, MaineHousing is currently allocating Project-Based Vouchers appropriately in accordance with funding/availability and MaineHousing’s Housing Choice Voucher Plan. Additionally, MaineHousing has committed to providing Project-Based Vouchers for each unit that a developer pledges to set-aside for special needs populations.

*Comment:* Beth Boutin, Vice President of Community Investments at Evernorth, commented that Appendix E should be revised to remove the “the lesser of fair market value” language so that the exercise price is just the statutory minimum purchase price under Section 42(i)(7) of the Internal Revenue Code. Beth commented if “the lesser of FMV” language is required, a sponsor could purchase a property for less than the outstanding debt on the property which could result in a cancellation of debt income and resulting tax consequences.

*Response:* The language in Appendix E does not allow a purchase that is less than the outstanding debt. The language specifically says “. . . 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 . . .” MaineHousing will reevaluate this language as it prepares for the next QAP and clarify the language as necessary.

*Comment:* Beth Boutin also recommended the removal of “the later of: (i) the public offer of the Project for sale by the general partner or managing member; and (ii)” language in Appendix E so that the Right of First Refusal exercise period ends 36 months after the expiration of the Compliance Period. Beth commented that the language as currently drafted could be interpreted as having an unlimited ROFR exercise period if a public offer of the project for sale is never made as a forced sale is not allowed.

*Response:* MaineHousing acknowledges that there could be a scenario where a public offer of the project for sale is not made for a long period of time however because the general partner or management member may elect to 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, 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.

*Comment:* Beth Boutin also recommended the removal of the “bona fide” requirement in Appendix E and suggested instead a requirement of only a third party offer because bona fide: (a) is contrary to the public policy underlying the LIHTC statutory scheme; (b) sets an extremely high bar that

makes it very difficult for a nonprofit to exercise a ROFR; and (c) encourages aggregators to challenge the exercise of ROFRs by nonprofits.

*Response:* The requirement that offers be “bona fide” means the offers must be made in good faith. MaineHousing does not believe this standard is unduly burdensome, extreme or contradictory to public policy. Requiring a good faith offer is standard practice.

*Comment:* Bill Pearce, Chief Financial Officer at Realty Resources Management provided testimony at the public hearing stating MaineHousing should exercise discretion under Section 6(K), Smart Growth, to allow the proximity to activities important to daily living to be increased from ½ mile to a further distance in certain circumstances. Nichole Lorentzen, Development Officer of Realty Resources Management added to Pearce’s comment asking MaineHousing to look at senior housing vs. family housing and perhaps adjust the distances based on the type of housing.

*Response:* MaineHousing believes that ½ mile is a reasonable and appropriate walking distance to activities important to daily living for all housing types.

*Comment:* Bill Pearce also commented that the Nonprofit Set-Aside in Section 3(A) discourages nonprofits from being able to move forward with new construction as the set-aside is only 10% of the annual State Ceiling (approximately \$400,000). Pearce commented this is not an adequate amount of funding for new construction and is small in comparison to the credits that are offered in the competitive programs.

*Response:* MaineHousing has added language in Section 3(A) to state it will set-aside “at least” 10%, which clarifies that MaineHousing may, in its sole discretion, provide more than 10% for the Nonprofit Set-Aside.

*Comment:* George Lavigne, Licensed Architect for CWS Architecture and Interior Design, submitted a written comment noting that the QAP references the 2009 edition of ANSI 117.1 twice and asking if this was correct as his understanding was that MaineHousing was moving to a new edition.

*Response:* This is the correct reference at this time. Once the newest version of the Maine Uniform Building and Energy Code is approved the new edition of ANSI will apply and MaineHousing will update the requirements as necessary.

*Comment:* Seth Parker, Director of Real Estate Development for Bath Housing, submitted written comments regarding Section 6L, Readiness. Seth noted that the provision for having all local and state approvals in hand plus having any appeals periods expired puts tremendous pressure upon the developer to start the approvals process so far in advance of the tax credit deadline. Seth suggested softening this provision by requiring only approvals in hand by the application deadline, which would give time for the appeals period to expire before the LIHTC award date. Seth also suggested that an alternative might be to require approvals in hand and appeals expired before the LIHTC award date.

*Response:* The Readiness Scoring Criteria gives points to Developers who are fully prepared to proceed with a project. The requirement that the timeframe to appeal has passed and no actions

have been taken and/or all actions have been resolved supports the notion that a Developer is fully prepared to proceed with a project. Without the passage of the appeal timeframe, there is a risk of the appeal terminating the project or resulting in the project not being able to move forward for a long period of time. For these reasons, MaineHousing believes the requirement is appropriate. It requires preplanning on the Developer's part to ensure all approvals are in place and all appeal timeframes have passed prior to Application, but it does not create an undue burden.

*Comment:* Brooks More, Director of Development for South Portland Housing Authority, submitted written comments asking MaineHousing to consider removing the TDC Index Cap as a reason for termination of an application in Section 4(I)(5).

*Response:* MaineHousing's priority is to fund as many new, high quality housing units as possible with its limited resources. MaineHousing takes its responsibility as stewards of public funds seriously and for that reason believes the TDC Index Caps are important. Projects that exceed the TDC Index Cap warrant closer examination and if the costs are too great, MaineHousing needs a mechanism to not move forward with a project. That said, in limited circumstances, projects can request a waiver of the TDC Index Cap for good cause and avoid the termination of an application if the reasons are justified.

*Comment:* Brooks More commented that the Total Development Cost Section (Section 5(B)) should be removed as the TDC index is a static figure that is based on historic data which does not reflect real-time construction costs. In the alternative, Brooks suggested increasing the cap for new construction above \$370,000, adjust the cap annually using a benchmark such as the Consumer Price Index or a construction price index, and including a percentage increase for Passive House or LEED certified buildings.

*Response:* The TDC Index is not a static figure. MaineHousing discusses the TDC Index and TDC Caps in preparation for each QAP and takes into consideration characteristics of projects that drive higher costs. MaineHousing looks at the costs of projects in its current pipeline, as well as current labor and materials pricing and trends to propose numbers that are reasonable and allow for increased costs over the short term. MaineHousing believes that the TDC Index and TDC Caps in Maine's QAP are appropriate for Maine projects and allow for the creation of as many safe, efficient, quality units as possible. Currently MaineHousing is not requiring Passive House or LEED certifications due to the fact that MaineHousing's energy efficient standards produce comparable results. For that reason, those costs will not be factored into TDC.

*Comment:* Brooks More commented that the new design criteria in Section 5(H) for higher efficiency buildings, Build America, Buy America Act and Section 3 requirements are laudable, but increase project costs which supports the removal of the TDC cost cap.

*Response:* MaineHousing's analysis of the TDC Cost cap in preparation for each QAP takes into consideration characteristics of projects that drive higher costs, such as Build America, Buy America Act and Section 3 requirements. MaineHousing reassess these characteristics periodically and if the TDC Cost caps prove to be too prohibitive given the regulatory requirements, MaineHousing can adjust the caps or consider a waiver for good cause.

*Comment:* Brooks More commented that community rooms should be made optional particularly for family projects where they do not get much use. Making this requirement in Section 5(I) option would further the goal of lowering costs.

*Response:* MaineHousing believes the requirement of a community room in all projects is essential to encouraging socialization, collaboration and a sense of community and is for the benefit of the tenants. In certain circumstances a community room may not be feasible and there may be viable alternatives which can be explored through a request for a waiver for good cause.

*Comment:* Brooks More commented asking MaineHousing what the criteria of a “single-family residential area” in Section 6(A)(3) means.

*Response:* A “single-family residential area” is an area predominately made up of single family homes, meant to be used as living spaces and not for multiple families or a commercial venture. There may be situations where it is not clear if an area is predominately single family and in those situations MaineHousing would consider the factors and circumstances in making that determination.

*Comment:* Brooks More commented suggesting the acquisition cost points in Section 6(G) should increase in light of the rising cost of land in Maine.

*Response:* The average acquisition cost figures are based on recent purchase prices, which have stayed consistent in most areas of Maine. The goal of this point category is to keep acquisition costs down and encourage developers to negotiate for a better price. MaineHousing will continue to review this category in preparation for each QAP and make adjustments as necessary.

*Comment:* Brooks More commented applauding the separation of points for local and state approvals under Section 6(I).

*Response:* MaineHousing appreciates the support.

*Comment:* Brooks More commented the Net Developer Fee in Section 7(B) needs to increase. Maine has the lowest Net Developer Fee in the nation and projects take a long time and considerable resources to developer therefore the fee should reflect this commitment and risk.

*Response:* MaineHousing reevaluates the Net Developer Fee with every QAP and will continue to do so in the future. MaineHousing believes the New Developer Fee is appropriate at this time.

*Comment:* Jay Waterman, Director of Real Estate Development for Portland Housing Development Corporation, submitted written comments addressing Section 5B stating that the QAP incentivizes developers to take on brownfield mitigation, which can be very costly, outside of LIHTC deals because of the cost caps. Jay urged MaineHousing to consider removing Brownfield remediation costs from the TDC calculation.

*Response:* If Brownfield remediation is performed as part of the LIHTC deal it must be included in the TDC calculation as it is part of the total development cost. Developers may, as suggested,

perform Brownfield remediation outside of and/or prior to the project scope of work to avoid inclusion in the TDC.

*Comment:* Jay Waterman also commented that generally the project cost caps are too low. With higher costs associated with building in Southern Maine's urban areas and the fact that cost caps are fixed for over two years, it leads to developers needing to seek waivers of the cost caps. Jay urged MaineHousing to consider annual increases to the cost caps based on actual costs and/or a recognized inflation index, as well as regional cost caps, splitting the state into lower and higher cost cap areas.

*Response:* MaineHousing's priority is to fund as many new, high quality housing units as possible with its limited resources. Based on the costs in the current pipeline, as well as current labor and materials pricing and trends, MaineHousing is confident that the proposed TDC caps are reasonable and will eliminate certain projects which would otherwise have a higher per unit cost than necessary. MaineHousing believes that the TDC Caps in Maine's QAP are appropriate for Maine projects.

*Comment:* Jay Waterman also commented on Section 6(N), Owner Performance, expressing concern regarding negative points for situations where incidents occur that are no fault of the owner or property management company and are quickly remediated, but still result in the issuance of an 8823.

*Response:* MaineHousing has added clarifying language to Section 6(N), Owner Performance, explaining that MaineHousing has the discretion to consider whether non-compliance was a direct result of the Applicant's non-performance, the performance of an unaffiliated third-party, or a result of something outside the control of any affiliated party provided it was corrected appropriately within a reasonable timeframe.

*Comment:* Jay Waterman also commented on Section 7B, Developer Fee, stating \$750,000 is still among the lowest in the nation. Jay expressed there is significant financial risk in taking on these projects and the amount should be increased to at least the national median.

*Response:* MaineHousing continues to believe that the Net Developer Fee cap of \$750,000 is appropriate. The Net Developer Fee cap is reviewed with each iteration of the QAP and adjustments are made as necessary.

*Comment:* Jay Waterman also commented that MaineHousing should streamline the environmental review process and help mitigate some of the risk that comes with a potential Choice Limiting Action. Jay suggested using qualified third-party engineers to compile the Environmental Review Checklist to submit to MaineHousing for review and approval. Jay commented this would be relatively inexpensive and would save a lot of MaineHousing staff time and remove the regulatory risk of a Choice Limiting Action much earlier in the life of a LIHTC project.

*Response:* MaineHousing appreciates this recommendation and intends to look into the possibility of outsourcing the Environmental Review work.

**FISCAL IMPACT OF THE RULE:** The 2025 State of Maine ceiling of federal low-income housing tax credits is projected to raise approximately \$ 34,700,000 of private investor capital, and the 2026 State of Maine ceiling of federal low-income housing tax credits is projected to raise approximately \$ 35,300,000 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. §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 store that offers regularly purchased household supplies, 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., 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. §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.C.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., Chapter 206](#), as may be amended.

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

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

"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.

“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* which can be found at <https://www.mainehousing.org/programs-services/housing-development/construction-services>.
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.I 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 and all available radon test results for the Project site. 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.C. and Appendix C.
8. A conceptual construction estimate(s) prepared by a qualified general contractor or third-party estimator for the Project and any Related Development, including trade breakdowns in the form of a schedule of values and a reasonable estimating contingency, if applicable, with sufficient detail to demonstrate expected construction-related costs. All exclusions and qualifications, if any, must be clearly stated in the estimate. The estimate is to be the basis of the hard cost line items contained in the project underwriting without exception.
9. A projected development and operating budget(s) for the Project and any Related Development which must be submitted electronically in the format prescribed by MaineHousing.



## APPENDIX C

### Capital Needs Assessment Requirements

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

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

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

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

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



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

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

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

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

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

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

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

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

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

**NO CHANGE**     **CHANGE**

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

**NO CHANGE**     **CHANGE**

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

documentation to support the certification at their initial occupancy.

YES  NO

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

YES  NO

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

YES  NO  HOMELESS

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

FINDING  NO FINDING

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

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

FINDING  NO FINDING

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

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

YES  NO

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

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

YES  NO  N/A

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

NO CHANGE  CHANGE

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

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

12. All tenant facilities included in the eligible basis under Section 42(d) of the Code of any building in the project, such as swimming pools, other recreational facilities, parking areas, washer/dryer hookups, and appliances were provided on a comparable basis without charge to all tenants in the buildings:

YES  NO

13. If a low-income unit in the project has been vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units were or will be rented to tenants not having a qualifying income:

YES  NO

14. If the income of tenants of a low-income unit in any building increased above the limit allowed in Section 42(g)(2)(D)(ii) of the Code, the next available unit of comparable or smaller size in that building was or will be rented to residents having a qualifying income:

YES  NO

15. Project complies with an extended low-income housing commitment as described in section 42(h)(6) (not applicable to buildings with tax credits from years 1987-1989):

YES  NO  N/A

16. In the prior 12 month period, the owner has:

- a) terminated the tenancy of a tenant in a low income unit, including without limitation, non-renewal of the lease of an existing tenant in a low income unit, for other than good cause;
- b) increased the gross rent of a tenant with respect to a low income unit not otherwise permitted under Section 42 of the Code and any other applicable program (e.g. HOME, HUD Section 8);
- c) denied tenancy to any applicant or terminated the tenancy of any tenant solely because the applicant or tenant had a Section 8 voucher or certificate; or
- d) denied tenancy to any applicant, terminated the tenancy of any tenant, or failed to assist a tenant in finding alternative appropriate housing in violation of Title VI of the Violence Against Women Reauthorization Act of 2013, 34 USC Subpart 2 – housing rights Chapter 121 and applicable regulations (VAWA), as amended.

YES  NO

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

17. The project complies with the requirements of all applicable Federal and State Housing Programs included in the development (e.g., Rural Housing Services, HOME, HUD Section 8, or Tax-Exempt Bonds).

YES  NO

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

18. The owner received its credit allocation from the portion of the state ceiling set-aside for a project involving "qualified non-profit organizations" under Section 42(h)(5) of the code and its non-profit entity materially participated in the operation of the development within the meaning of Section 469(h) of the Code.

YES  NO  N/A

19. The property has not suffered a casualty loss resulting in the displacement of residents.

YES  NO

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

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

NO CHANGE     CHANGE

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

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

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

\_\_\_\_\_

(Ownership Entity)

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

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

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

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

Question #	Explanation

**CHANGE IN MANAGEMENT CONTACT**

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

1. **CHANGES IN OWNERSHIP OR MANAGEMENT**

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

2. **TRANSFER OF OWNERSHIP**

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

**CHANGE IN OWNER CONTACT**

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

## APPENDIX E

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

#### I. The Purchase Options must:

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

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

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

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

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

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



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