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

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

1. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

N. "Extended low-income housing commitment" means an agreement between credit recipients and the Authority satisfying the requirements of Section 42(h)(6)(B) of the Code.

O. "Extended use period" means the period described in Section 42(h)(6)(D) of the Code.

P. "Extremely low income" means at or below 30% of the area median income, adjusted by family size.

Q. "Housing development costs" means the total of all direct and indirect costs incurred in financing, creating, purchasing or rehabilitating qualified low-income housing projects except the costs attributable to the acquisition of the land and/or buildings.

R. "Intermediary costs" means all housing development costs except the actual construction or rehabilitation costs attributable to the development of the units.

S. "Need Market Area" means the analysis of labor markets ranked as high, medium or low. Analysis based upon review of specific populations of very low income households and total subsidized housing units. Statistics adjusted for relative community need. % of State need and future growth potential to determine rankings.

T. "Project" means a qualified low-income housing project.

U. "Qualified allocation plan" or "plan" means the plan for allocation of the annual state ceiling on the credit adopted by the housing credit agency pursuant Section 42(m)(1)(B) of the Code.

V. "Qualified basis" means qualified basis as defined in Section 42(c) of the Code.

W. "Qualified census tract" means areas of the State which meet the requirements of Section 42(d)(5)(C)(ii)(I) of the Code.

X. "Qualified low-income building" means a building defined in Section 42(c)(2) of the Code.

Y. "Qualified low-income housing project" means a project defined in Section 42(g) of the Code.

Z. "Qualified non-profit organization" means an organization defined in Section 42(h)(5)(C) of the Code.

AA. "Rehabilitation costs" means the expenses incurred or to be incurred which qualify as rehabilitation expenditures under Section 42(e) of the Code.

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

CC. "Total construction cost" means the sum of site costs, structures costs, general requirements, bond premiums, and contractor overhead and profit.

DD. "Total development cost" means the sum of total construction costs; soft costs such as permits, engineering, legal; costs associated with obtaining and carrying financing package; acquisition costs. Total development cost does not include Developer Fees or syndication expenses.

2. Overview

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

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

3. Housing Needs/Priorities

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

1. Creation and maintenance of an adequate supply of decent, safe and sanitary rental housing affordable to Extremely low income persons.

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

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

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

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

2. Acquisition/Rehab projects which add to or significantly rehabilitate the existing rental housing stock, and also are rent restricted to the lowest income households.

3. Projects which attract new federal rental subsidies where the credit is needed to make the project feasible, including Rural Housing Service projects.

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

4. <u>State Ceiling</u>

A. The state ceiling for the credit for each calendar year will be the sum of:

1. $1.25 multiplied by the State population as determined by the most recent estimate of the State's population released by the United States Bureau of Census before the beginning of such calendar year or by such other method as may be authorized or required by the Code;

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

3. The amount of the state ceiling returned in the calendar year; and

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

B. Non Profit Set-aside. Twenty percent (20%) of the annual state ceiling shall be reserved each year for applications involving qualified low-income housing projects where a qualified non-profit organization is to own an interest in the project (directly or through a partnership), in accordance with IRC 42 (h)(5)(C) and materially participate in the development and operation of the project throughout the compliance period, in accordance with IRC 42 (h)(5)(B). Applications with eligible applicants will be reviewed and ranked with all other applications but, if selected, will be funded first out of this set-aside.

C. Rural Housing Set-aside. $75,000 of the annual available credit will be set aside for proposals that include a commitment of funding from RHS. Applicants must indicate their desire to compete in this set-aside in their application.

D. Assisted Living Set-aside. $500,000 of the annual available credit will be set aside. Only proposals that include a service commitment from the Maine Department of Human Services' "1999 Assisted Living Funds" will be deemed eligible for this set-aside. Applicants must indicate their desire to compete in this set-aside in their application. Projects competing in this set-aside must comply with Maine's regulations

defining assisted living, IRC 42 and applicable revenue rulings on assisted living, including revenue ruling 98-47.

E. Maximum Tax Credit Restriction. The maximum amount of tax credits that any single project may receive is $400,000.

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

5. <u>Allocation Process</u>

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

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

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

D. Once ranked, the Authority will determine those applications to be selected for reservation of credits. These reservation cycles will occur on March 1, July 30 , and October 15. The March round is open to all applicants. A waiting list will be developed for projects not selected. The July round is for assisted living projects that have a commitment of service funds from DHS' 1999 Assisted Living Funds. Applicants that have not secured a commitment from DHS' "1999 Assisted Living Funds" will not be eligible for this setaside. Tax credits unused from the March and July rounds will be made available to applicants on the waiting list in rank order of priority. Unused and returned credits will be made available in the October round. Applications received or completed after one of these deadlines or not receiving a reservation in a particular cycle will be considered, if eligible, in the next cycle unless the applicant chooses to amend the application for resubmission.

E. Once a project has been selected for a reservation of credit, the Authority will determine the amount of credit to be reserved based on the evaluation procedure set forth in Section 8. Under Section 42 of the Code an applicant may apply for a credit reservation based on 130% of eligible basis for projects in high cost areas, subject to the overall limitation on credit allocation described in Section 8. These areas are defined as qualified census tracts and difficult development areas which must be so designated by the United States Department of Housing and Urban Development.

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

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

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

Projects experiencing development cost increases resulting in less than a substantial increase in credit dollars may request additional credit and will not be subject to funding rounds, provided a Binding Agreement has not been executed. However, such requests are, however, subject to available credit authority and any decision to favor such requests will be at the sole discretion of the Authority.

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

J. Applications requesting reservation or allocation of credit from the state ceiling for calendar years after 1998 will not be accepted until the Authority adopts such further amendments to this rule as it determines necessary in response to the continuation of the credit program. The Authority may issue a binding commitment to allocate Credit ceiling available in the subsequent year for any Project placed in service in the current year. Credit from the subsequent year's Credit ceiling may only be committed upon the Authority's determination that the amount of Credit that remains in the current year's State ceiling is insufficient to ensure the viability or feasibility of the Credit applicant's Project. Any binding commitment to allocate subsequent year's Credit authorized pursuant to this section shall be processed and evaluated in accordance with the standards effective in the current year and shall be subject to the continuation of the Credit program and applicable law.

6. <u>Threshold Application Requirements</u>

A. Applications for reservation of the credit in connection with qualified low-income housing projects will be accepted by the Authority only on such form established by the Authority. Only the person or entity to whom or which the credit will be allocated is eligible to apply.

B. Applicants will be required to enter into an extended low-income housing commitment with the Authority which will be recorded as restrictive covenants in the appropriate Registry of Deeds, and which will:

1. Require that the low-income targeting, and other representations made in the application be maintained for the extended use period, subject to termination as provided in Section 42(h)(6)(E) of the Code;

2. Allow qualified low-income individuals to enforce the agreement in state courts; and

3. Be binding on all successors in interest.

All project and sponsor characteristics which become the basis for selection of the applicant under this rule must be reflected in this agreement and become binding on the applicant.

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

1. Must be for a qualified low-income housing project.

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

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

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

5. Must have zoning approval and evidence of availability of utilities to the site.

6. Must demonstrate the financial ability to proceed with the project by providing current status of applications for construction and permanent loan commitments, or other proof of ability to proceed from existing resources.

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

8. Must provide an acceptable disclosure and certification of the total financing planned for the project, any proceeds or receipts expected to be generated by

reason of the credit or other tax benefits, the total sources and uses of project funds and the full extent of all Federal, state and local subsidies which apply or for which the applicant expects to apply with respect to the project. This disclosure and certification must include income, operating and development cost projections and methods for satisfying any deficits.

9. Must provide acceptable documentation of need and demand for the type of housing proposed, including evaluation of the anticipated impact on similar housing opportunities in the area. In identifying such opportunities, the applicant must provide a copy of a notification letter to the local community and shall provide demographic data supporting the need which the tax credit allocation will serve.

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

11. Must demonstrate willingness to enter into an extended low income housing commitment to extend the project's low income benefit for the required period of years.

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

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

This subparagraph does not apply to bond-financed properties described in Section 12.

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

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

7. Selection Criteria

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

A. Project Characteristics (maximum of 15 points).

1. Projects involving rehabilitation of existing housing stock with protection against displacement and substantial increase in housing costs attributable to the rehabilitation will receive 3 points.

2. Projects proposing physical plant amenities with related service contract, appropriate to population will receive up to 3 points. Service contract must be committed and funding source identified. Examples might be development of a daycare facility or computer laboratory in family housing.

3. Projects that reserve at least 20% of the units for homeless or displaced individuals, persons with mental or developmental disabilities, or other special needs will receive 3 points. Projects reserving units must provide documentation from an identified source of funding for the provision of services appropriate to the particular special needs population.

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

B. Lowest Intermediary Costs (maximum of 15 points).

Projects that demonstrate a high percentage of construction and rehabilitation costs relative to the total housing development costs will receive greater points. Total housing development costs will be net of an appropriate level of capitalized reserves which shall include one year of replacement reserves and up to six months of operating reserves. Projects that have construction and rehabilitation costs that are:

75% - 90% of TDC will receive 8 points

60% - 74% of TDC will receive 6 points

Projects that demonstrate a below market funding commitment or other financial commitment from a source other than the Authority will receive up to 7 points. Applicants that leave more than 50% of the developer fee in as a source are eligible for points in this category.

C. Extending Low-Income Use for Longest Period (maximum of 15 points). Projects which extend the guaranteed period of low income benefit thirty years or more from the placed-in-service date and agree not to request the Authority to find a buyer to acquire the low income portion of the project during the extended period. No points will be given to projects which pledge less than 30 years of irrevocable low income benefit. 1 point will be added for each additional four year period pledged beyond 30 years.

D. Creation of affordability for Lowest Income Tenants (maximum of 30 points). 10 points will be given for each 15% of the total units pledged to people at or below 40% of AMI. 10 points will be awarded for a pledge of 30% of the total units at or below 50% of AMI. Only 10 points can be awarded for restrictions to units at 50% AMI.

Assisted living proposals should set rents at 60% AMI. Assisted living proposals which submit an executed DHS commitment with funding for assisted living will be awarded 30 points.

E. Project Location (maximum of 13 points).

1. Projects proposed in the HIGH Need Market Area as determined by the Authority will be awarded 8 points.

2. Projects proposed in the MEDIUM Need Market Area as determined by the Authority will be awarded 5 points.

Statewide Subsidized Housing Ranks:

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

Dover-Foxcroft	medium	low
Presque Isle-Caribou	low	low
Van Buren	low	low
Fort Kent	low	medium
Madawaska	low	high

Applicants may submit data relative to housing needs from the local unit of government in which the project is proposed. MSHA will then determine, in its sole discretion, whether this data affects the housing rank of the jurisdiction.

3. Projects that are part of a larger neighborhood revitalization plan will be awarded 3 points. To receive these points an applicant must submit evidence from the local government of its intent to revitalize the neighborhood. Revitalization efforts may include without limitation plans to attract commercial development to the area, to increase employment opportunities for residents, to implement social services for residents, or to improve schools in the area.

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

F. Sponsor Characteristics (maximum of 10 points).

1. For applicants that have had prior experience with MSHA and have no history of defaults, 5 points will be awarded.

2. If an applicant has instances of 8823's in more than one year, 2 points will be deducted.

3. Applicants that have a tax exempt non profit organization as part of their ownership will receive 3 points. The organization must be a qualified nonprofit which has included, as one of its tax exempt purposes, the fostering of low income housing (IRC Section 42(h)(5)(C). The non profit must participate in the project as described in IRC Section 42 (h)(5)(B).

8. <u>Project Evaluation</u>

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

B. The amount of housing credit dollars reserved for a project cannot exceed the lesser of the amount the project is eligible for under the Code or the amount the Authority

determines is necessary for the financial feasibility of the project and its viability as a qualified low income housing project throughout the credit period. The evaluation process will be extensive and will require applicants to provide significant amounts of financial information and project detail. In making this determination, the Authority will consider:

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

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

3. The percentage of the housing credit dollar amount used for project costs other than intermediary costs.

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

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

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

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

E. The Authority will limit recognition of developer fees. The standard fee, regardless of whether costs used to calculate the fee include compensation paid to consultants, will be based on all aspects of project development including, without limitation, creation of the project concept, identification and acquisition of the project site, obtaining construction and permanent financing, obtaining necessary subsidies, negotiation of syndication of investment interests in the project, obtaining all necessary regulatory approvals, construction and marketing. Fees paid to consultants do not include fees

for professional services such as those for environmental assessments, rental market studies, soil tests, and water tests. Reserves, in the form of cash, expected to return to the Developer from the project in two or fewer years will be included in the Developer Fee calculation.

The standard developer fee to be recognized for purposes of calculating the credit must separately identify two components: (1) Overhead and (2) Profit. Together these two components will not exceed an amount equal to 15% of the housing development costs, plus 10% of the costs of acquisition of land, existing buildings and equipment, all determined without regard to developer fees.

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

F. In reviewing intermediary costs, the Authority will limit recognition of certain general contractor costs. Regardless of the geographic location of the project, the standards for general contractor overhead, general requirements and profit will be an amount not greater than 16% of the total construction cost, within the following ranges:

Overhead	up to 2% of total construction cost
General Requirements	up to 8% of total construction cost
Profit	up to 6% of total construction cost

G. In reviewing project costs the Authority will consider the reasonableness of the per unit total development cost. However, the following standards will not automatically be used as a limit when calculating the amount of credit for which the project is eligible. Each project will first be compared with historical data for similar projects, i.e. size, location, funding source, etc. Consideration will be allowed for costs associated with tenant service and common area spaces. Otherwise, the per unit total development cost recognized for credit allocations made in 1999 should not exceed the HUD 221(d)(3) per unit limits established for Maine.

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

1. The application for credit.

2. The allocation of credit.

3. The date each qualified low-income building is placed in service.

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

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

9. Reservation of Credit

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

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

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

2. Deadline for final working drawings and specifications.

3. Deadline for loan closing(s).

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

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

6. Termination date.

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

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

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

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

G. As long as a Binding Agreement has not been executed, proposals facing increased project development costs and, therefore, potentially qualifying for less than a substantial amount of additional credit, may request additional credit and not be subject to funding rounds. However, such requests will be subject to available credit authority and any decision to favor such requests will be at the sole discretion of the Authority.

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

10. Allocation of Credit

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

1. A complete Application for Allocation of Credit. A complete application must include a cost certification prepared by an independent, third party CPA. Projects financed by Rural Housing Services (RHS) may have cost certifications imposed by that agency. The Authority will accept RHS approved cost certifications when forwarded by RHS State officials. In these circumstances costs that are not eligible under RHS but that are eligible to be reimbursed for the tax credits, including developer overhead and profit, reserves and syndication costs, must also be certified if not already included.

2. Certification of the total financing planned for the project, all ~~any~~ proceeds or receipts expected to be generated by reason of the credit or other tax benefits, the total sources and uses of project funds and the full extent of all Federal, state and local subsidies which apply or which the applicant expects to apply

with respect to the project. In addition, the sponsor must identify all costs associated with the sale (i.e. commissions, due diligence, legal, accounting, reserves, etc.). This certification must include income, operating and development cost projections and methods for satisfying any deficits.

3. An allocation fee as follows:

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

This paragraph does not apply to Bond-financed properties described in Section 12.

4. A monitoring fee as follows:

An amount equal to $225.00 per tax credit eligible unit in the project.

No allocation of credit will be made to an applicant who has not been issued a valid reservation of credit pursuant to Section 9.

B. The amount of credit allocated on behalf of each qualified low-income building shall be the lesser of:

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

2. The amount determined by the Authority as the minimum amount necessary for the financial feasibility of the project and its viability as a qualified low-income project throughout the credit period; and

3. The amount stated in the conditional reservation.

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

11. Carryover Allocation

A. If applicant's qualified low-income project, or individual qualified low-income building within the project will not be placed in service, within the meaning of the Code, in the calendar year for which a reservation of credit has been issued, the Authority may issue a carryover allocation to qualifying applicants or choose to carry over the balance

of the state ceiling as provided in Section 4, subsection C. In order to be considered for a carryover allocation, an applicant must provide:

1. A complete Application for Carryover Allocation of Credit.

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

3. Satisfactory evidence that applicant's basis in the project at the end of the calendar year will exceed ten percent of applicant's reasonably expected basis in the project at the end of the second calendar year following the calendar year in which the carryover allocation is made.

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

5. An allocation fee as follows:

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

No carryover allocation will be made to an applicant who has not been issued a valid reservation of credit pursuant to Section 9.

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

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

2. The amount determined by the Authority as the minimum amount necessary for the financial feasibility of the project and its viability as a qualified low-income project throughout the credit period; and

3. The amount stated in the conditional reservation.

C. A carryover allocation made by the Authority will be effective only if the 10% basis test referred to in subsection A, paragraph 3, above, was satisfied, the qualified low-income building is placed in service within two years following the calendar year in which the allocation is made and only to the extent that the Internal Revenue Service gives effect to such allocation. CREDIT RECIPIENTS ARE RESPONSIBLE FOR TAKING ONLY THE AMOUNT OF CREDIT AUTHORIZED UNDER THE CODE AND RECOGNIZED BY THE INTERNAL REVENUE SERVICE AND

NO RELIANCE MAY BE PLACED ON THE AUTHORITY BY ANY PARTY FOR THIS DETERMINATION.

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

E. The Authority may carry over the entire unallocated portion of the state ceiling and deny all requests for project-specific carryover allocations.

12. Bond Financed Projects

A. A qualified low-income building which is financed with the proceeds of tax-exempt bonds subject to the state volume cap on such bonds qualifies for the credit on the portion of the eligible basis of the building financed with such bond proceeds without an allocation from the state ceiling. If 50% or more of the eligible basis of a qualified low-income building is financed with the proceeds of tax-exempt bonds subject to the state volume cap on such bonds, all of the eligible basis of the building qualifies for the credit without an allocation from the state ceiling.

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

C. Developers of properties financed with tax-exempt bonds and seeking credit without an allocation from the state ceiling may, to the extent the project is not yet placed in service and is otherwise authorized by the Code, elect to fix the applicable percentage for each qualified low-income building in the project by irrevocably electing the percentage for the month in which the bonds are sold, as opposed to the applicable percentage for the month the building is placed in service. Such an election must be made on forms provided by the Authority and must be made by the 5th day of the month following the month in which the bonds are sold.

D. Developers of properties seeking credit without an allocation from the state ceiling must request the issuance of an IRS Form 8609 for each qualified low-income building in the year the project is placed in service. Such request must be made on forms provided by the Authority.

13. Monitoring and Notification of Noncompliance

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

A. Recordkeeping and record retention. Project owners must keep records for each qualified low-income building in the project showing:

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

2. The percentage of residential rental units in the building that are low-income units;

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

4. The number of occupants in each low-income unit, but only if rent is determined by the number of occupants in each unit under section 42(g)(2) of the Code (as in effect before the amendments made by the Revenue Reconciliation Act of 1989);

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

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

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

8. The eligible basis and qualified basis of the building at the end of the first year of the credit period; and

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

These records shall be maintained for each qualified low-income building in the project throughout the building's extended use period. These records shall be retained for at least six years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, shall be retained until the later of the end of the building's extended use period or six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building. First year quarterly reports shall be filed with MSHA.

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

1. All project owners must certify to the Authority annually throughout the extended use period of the project for the twelve-month period preceding certification that:

   a. The project met the minimum low-income set-aside test applicable to the project;

   b. There was no change in the applicable fraction of any building in the project or that there was a change and a description of the change;

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

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

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

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

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

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

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

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

k. An extended low-income housing commitment was in effect (for buildings subject to section 7108(c)(1) of the Revenue Reconciliation Act of 1989).

2. Annually throughout the extended use period, all project owners must certify to and provide the Authority with an Annual Status Report reflecting tenant income and rent data.

3. Subject to paragraph 4, below, 20% of all project owners must submit to the Authority with the annual certification, a copy of the annual income certification, the documentation received to support that certification and the rent record for 20% of the project's low-income tenants.

4. The projects subject to this additional submission, and the tenant records to be reviewed, will be selected randomly by the Authority. Notice of project selection, as well as the required timeframe for submission of details will be provided by the Authority in writing by not later than January 5 of each year.

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

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

7. The annual certifications required hereunder must be submitted to the Authority on or before a date established by the Authority, but in no event, later than May 1 of each year. The certification must cover the preceding twelve-month period and must be made as of December 31st of the prior year. The certifications shall be made only on such forms established by the Authority and must be made under penalty of perjury.

C. Inspections. The Authority will perform site inspections on a 1-3 year cycle , and shall have the right, at any time upon 30 days notice to the project owner, to review all records referred to in Section 13. D. Pursuant to Section 10.A.4 of this Plan, all applications received and processed in after 1996 shall be required to remit a one-time Monitoring Fee equal to $225.00 for each tax credit eligible unit in the project. This fee must be paid prior to the issuance of the IRS Form 8609.

For all applications received and processed before 1997, the Authority requires either (1) an annual Monitoring Fee paid of $25.00 for each tax credit eligible unit in the project, or (2) a one-time Monitoring Fee equal to $225.00 for each tax credit eligible unit in the project. The annual fee must be paid when each Annual Compliance Certification is returned to the Authority. Failure to remit this fee in either form will result in a non-compliance notice.

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

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

F. LIABILITY. COMPLIANCE WITH THE REQUIREMENTS OF SECTION 42 OF THE CODE IS THE RESPONSIBILITY OF THE OWNER OF THE BUILDING FOR WHICH THE CREDIT IS ALLOWABLE. THE

AUTHORITY'S OBLIGATION TO MONITOR FOR COMPLIANCE WITH THE REQUIREMENTS OF SECTION 42 OF THE CODE DOES NOT MAKE THE AUTHORITY LIABLE FOR AN OWNER'S NONCOMPLIANCE.

14. <u>Additional Requirements</u>

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

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

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

D. This rule establishes a pool of eligible applicants but does not preclude additional reasonable criteria and does not confer any automatic right or entitlement to credit on any person or entity eligible hereunder.

E. The Director of the Authority, individually or by exercise of the delegation powers contained in the Act, shall make all decisions and take all action necessary to implement this rule. Such action of the Director shall constitute final agency action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A question was raised concerning the evaluation of the equity gap to be filled by the credit pursuant to Section 8(C) in those cases where the credit will be used by the individual owner and not

syndicated for upfront capital. The project evaluation is done to determine the amount of credit necessary for the feasibility of the project and the viability of the project throughout the credit period. In the situation described, there would still have to be an identified gap or need for the credits for on-going project viability in order for the project to qualify under the new federal requirements and if so the process as set forth would allow for credits to be allocated.

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

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

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

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

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

Numerous comments spoke to what was perceived to be inconsistency between conflicting selection criteria. There is apparently some confusion about how the point system works and how the

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

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

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

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

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

credit. The Authority does not intend to substantially rewrite proformas, etc. Rather, it will be a process of reaching a consensus on projections which will form the basis for the ultimate allocation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Other minor changes are incorporated for stylistic or grammatical reasons.

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

EFFECTIVE DATE: February 5, 1994

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

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

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

The commentator next requests that the Authority identify a new housing priority as Section 3(B)(4) that "empowers residents and creates a setting to prevent family violence

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

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

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

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

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

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

The commentator next proposes a change in the proposed reservation cycles set forth in Section 5(D) to address year end workload problems at the Authority. The Authority agrees with the

recommendation and therefore, changes the start date of the last reservation cycle from November 15 to October 1. No change is made to the 1995 reservation cycles.

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

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

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

EFFECTIVE DATE: April 26, 1995

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

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

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

EFFECTIVE DATE: April 24, 1996

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

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

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

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

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

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

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

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

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

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

Section 13,D - Written comment was received from Bill Shanahan and Peter Roche, along with public hearing comments from Marcia Brown objecting to the requirement of a monitoring fee. Response:

Language was included that allows for the Authority to waive all or part of the fee in the event the partnership enters into a compliance monitoring agreement acceptable to the Authority.

STATUTORY AUTHORITY: 30-A MRSA §§4741(1) and 4741(14), Section 42 of the Code.
EFFECTIVE DATE: February 16, 1997

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

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

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

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

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

Three comments were received on the issue of "maximum tax credit reservation." Matthew Smith of CCI recommended lowering the maximum to $250,000; the MHIF recommended lowering the maximum to $350,000; and the Sanford Housing Authority recommended going no lower than $400,000. This is the first year that we have proposed a maximum tax credit reservation. A lower limit will encourage more projects of smaller scale. The establishment of a maximum tax credit

reservation means the credit is likely to benefit more communities. Setting the cap too low, however, could make moderate sized family or Assisted Living projects infeasible, especially if interest rates increase. After reviewing these comments, given the desire to create more projects of smaller scale and the need to balance this with allowing good projects to remain feasible, we amended the plan to include a maximum tax credit reservation of $400,000 in Section 4.E.

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

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

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

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

We received comments from Gail Walker of the City of Auburn; Mayor Lee Young of the City of Auburn; Matthew Smith of CCI; Gregory Mitchell of the City of Lewiston; William Shanahan of Realty Resources, Joseph Cloutier of Realty Resources; and the Maine Housing Investment Fund responding to the Project Location criterion in Section 7.E. The comments suggest considering three

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

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

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

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

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

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

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