

MAINE STATE HOUSING AUTHORITY  
LOW INCOME HOUSING TAX CREDIT  
QUALIFIED ALLOCATION PLAN

1999

MAINE STATE HOUSING AUTHORITY

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Low Income Housing Tax Credit

Qualified  
Allocation Plan

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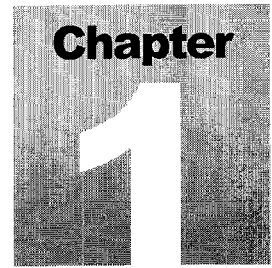
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## **Section 1: Mission**

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

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

## **Section 2: 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.

## **Section 3: Overview of the LIHTC**

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.

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Projects selected under this plan must be evaluated as outlined herein to determine the amount of credit to be allocated.

**Section 4: Housing Needs/Priorities**

- A. The Authority annually completes a statewide needs assessment as part of its Consolidated Plan. Based on that annual needs assessment, the Authority determines priorities in its housing delivery program. The allocation of 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.

### Section 5: State Ceiling

- 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 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.

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- E. Maximum Tax Credit Reservation: The maximum amount of tax credits that any single project may receive is \$400,000.
- F. 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.

**Section 6: Allocation Process**

- 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 7, 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 7 will be reviewed and ranked according to the selection criteria set forth in Section 8.
- 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 9. 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 9. These areas are defined as qualified census tracts and difficult development areas which

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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 10.
- G. Projects holding a valid credit reservation may receive allocations pursuant to either Section 11 or Section 12.
- 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 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 subject to available credit authority and any decision to consider 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 31<sup>st</sup> of that calendar year may, at the discretion of the Authority, be carried over to the succeeding calendar 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 a 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.

### Section 7: Threshold Requirements

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



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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. Providers which deliver services to special needs populations must provide documentation from an identified source of funding.
7. Must include a proposal from an accredited investor or experienced tax credit syndicator. Net Proceeds made available to the project should be identified and expressed as a "factor" of the annual credit dollar amount anticipated.
8. Must provide an acceptable disclosure and certification of the total financing planned for the project, any proceeds or receipts expected to be generated by reason of the credit or other tax benefits, the total sources and uses of project funds and the full extent of all Federal, state and local subsidies which apply or for which the applicant expects to apply with respect to the project. This disclosure and certification must include income, operating and development cost projections, and methods for satisfying any deficits.
9. Must provide 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 in the event of such termination or non-renewal, and
  - (b) a pro forma operating statement running five years beyond the anticipated expiration.

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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 10 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 13.

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.

**Section 8: 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.
4. Family projects with a minimum of 50% of the units as 3 bedroom apartments or larger will receive 6 points.

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

1. 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

2. Projects that demonstrate a below market funding commitment or other financial commitment from a source other than MSHA 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 MSHA 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 4 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 MSHA will be awarded 8 points.
2. Projects proposed in the MEDIUM need market area as determined by MSHA will be awarded 5 points.

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Statewide Subsidized Housing Ranks:

<i>Labor Markets</i>	<i>Seniors Statewide Ranking</i>	<i>Families Statewide Ranking</i>
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-Eastport	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

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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 non-profit 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).

**Section 9: Project Evaluation**

- A. Once a project is selected, the Authority will determine the amount of credit to be reserved. The amount requested in the application will be the basis on which the Authority will determine the actual reservation, but the amount reserved will not necessarily equal the amount requested. The calculation of the amount of credit will be based on the applicable percentage for the month in which the calculation is made unless there has been a qualified irrevocable election of the applicable percentage for a prior month.
- B. The amount of housing credit dollars reserved for a project cannot exceed the lesser of the amount the project is eligible for under the Code or the amount the Authority determines is necessary for the financial feasibility of the project and its

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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 credits.

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,

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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.

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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.

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.



### **Section 10: Reservation of Credit**

- A. Applicants will receive a Notice of Selection indicating that an evaluation pursuant to Section 9 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 9 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 the 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 6, 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 31<sup>st</sup> of that calendar year

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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 the 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 the 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 MSHA or receiving certification from a tax credit trainer approved by MSHA.

**Section 11: 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 certification requirements 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.

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

3. An allocation fee as follows:

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

This paragraph does not apply to Bond-financed properties described in Section 13.

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 10.

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 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**

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RELIANCE MAY BE PLACED ON THE AUTHORITY BY ANY PARTY  
FOR THIS DETERMINATION.

**Section 12: 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 5, 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, 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:

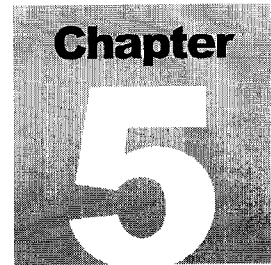
Applications up to 11 units	\$ 250
Applications 11 to 23 units	\$ 500
Applications 24 or more units	\$1,000

No carryover allocation will be made to an applicant who has not been issued a valid reservation of credit pursuant to Section 10.

- 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;

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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.



### **Section 13: 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 7 and 11 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 9 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 has 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 5<sup>th</sup> 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.

### **Section 14: 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

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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).
- B. 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.
- C. Certifications 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:
    - i) The project met the minimum low-income set-aside test applicable to the project;
    - ii) 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;
    - iii) 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;



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- iv) Each qualified low-income unit in the project was rent-restricted under section 42(g)(2) of the Code;
  - v) All units in the project were for use by the general public and used on a non-transient basis except for transitional housing for the homeless provided under Section 42(i)(3)(B)(iii) of the Code;
  - vi) Each building in the project was suitable for occupancy under applicable health, safety and building codes;
  - vii) 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);
  - viii) 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;
  - ix) 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;
  - x) 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
  - xi) 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.

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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 any event, no later than May 1 of each year. The certification must cover the preceding twelve-month period and must be made as of December 31<sup>st</sup> 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.
- D. 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 14.
- E. Pursuant to Section 11.A.4 of this Plan, all applications received and processed 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

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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 into a compliance monitoring agreement acceptable to the Authority, and agrees to provide sufficient annual documentation to enable the Authority to perform its required oversight.

- F. Notification of noncompliance. In the event the Authority does not receive the certifications required hereunder when due or if 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.
- G. **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.**

### Section 15: Additional Requirements

- 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 ENFORMCENT 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.

**Section 16: 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(l)(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 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.

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- 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 media 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(c)(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 42E of the Code.

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- BB. "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.