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State Low Income Housing Tax Credit Rule, Chapter 35, 2020

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Summary: The state low income housing tax credit law was enacted to provide funds for the development and preservation of multi-family affordable housing. Under the law, at least 80% of the credit to be allocated in a calendar year must be set aside for the construction or adaptive reuse of buildings for new rental units. The amount of the state low income housing tax credit a project receives for such new rental units is equal to the amount of federal low income housing tax credits the project receives in conjunction with the issuance of tax exempt bonds. Over time, MaineHousing must seek to allocate 30% of the credit allocated to new rental units to senior housing and 20% of the credit allocated to new rental units to “rural areas.” In addition, at least 10% of the credit to be allocated in a calendar year, must be set aside for qualified rural development preservation projects that incur at least \$100,000 in improvements. The law requires MaineHousing to adopt a rule to allocate and administer the credit and to define “rural areas.”

1. Definitions. The following terms shall have the following meanings:
 - a. “Affordable Housing Project” means a qualified low-income housing project, as defined by Section 42(g) of the Code.
 - b. “Allocation of Credit Certification” means a certification that a project is allowed the State Low Income Housing Tax Credit and includes information required by the State of Maine Department of Administrative and Financial Services, Bureau of Revenue Services.
 - c. “Area Median Gross Income” has the same meaning as in Section 42 of the Code, as adjusted for family size.
 - d. “Code” means the United State Internal Revenue Code of 1986, as amended.
 - e. “Difficult Development Area” has the same meaning as in Section 42(d) of the Code.
 - f. “Director” means the director of MaineHousing.
 - g. “Federal Low-Income Housing Tax Credit” means the federal tax credit as provided in Section 42 of the Code.
 - h. “MaineHousing” means the Maine State Housing Authority.
 - i. “Qualified Allocation Plan” means the applicable Federal Low-Income Housing Tax Credit rule adopted by MaineHousing.
 - j. “Qualified Census Tract” has the same meaning as in Section 42(d) of the Code.

- k. “Qualified Maine Project” means an Affordable Housing Project that is:
 - i. Either the construction of one or more new buildings or the adaptive reuse of one or more previously constructed buildings that have not been previously used for residential purposes;
 - ii. Subject to a restrictive covenant requiring an income mix in which at least 60% of the units in the project to which credits are allocated are restricted to households with income at or below 50% of Area Median Gross Income; and
 - iii. Eligible for the 30% present value credit as described in Section 42 of the Code as a result of tax-exempt financing described in Section 42(h)(4)(B) of the Code.
- l. “Qualified Rural Development Preservation Project” means an Affordable Housing Project in which at least 75% of the residential units are assisted or financed under a Rural Development program.
- m. “Rural Areas” are all parts of the State of Maine that are deemed rural for purposes of Rural Development multi-family housing (<https://eligibility.sc.egov.usda.gov/eligibility/welcomeAction.do?pageAction=mfhc>).
- n. “Rural Development” means the United States Department of Agriculture, Office of Rural Development, Rural Housing Service.
- o. “Rural Development Headquarters” means the national office of Rural Development.
- p. “Rural Development Section 515 Properties” means rental housing projects financed under Section 515 of the Housing Act of 1949 (42 U.S.C. 1498).
- q. “Rural Development State Director” means the state director of the Rural Development state office for the State of Maine.
- r. “Senior Housing” means multifamily affordable rental housing units serving seniors that receive funding and project-based rental assistance under a Rural Development program or a United States Department of Housing and Urban Development multi-family elderly housing program or that meet the definition of “housing for older persons” under the federal Fair Housing Act, 42 United States Code, Section 3607(b)(2) and the Maine Human Rights Act.
- s. “State Credit” means the tax credits awarded pursuant to the State Low Income Housing Tax Credit Law and this rule.

- t. “State Low Income Housing Tax Credit Law” means P. L. 2019, ch. 555, An Act to Create Affordable Workforce and Senior Housing and Preserve Affordable Rural Housing.
- u. “Supportive Housing” means housing to assist persons with special needs in achieving housing stability, including persons who have experienced chronic homelessness or who are displaced, have a disability, are a victim of domestic violence or who have other special housing needs.

2. Set Asides.

- a. Eighty percent of the State Credit available to be allocated in any calendar year, including any State Credit that has been carried forward or returned, is set aside for Qualified Maine Projects that use the Federal Low-Income Housing Tax Credit in conjunction with tax-exempt bonds issued by MaineHousing.
- b. Ten percent of the State Credit first available to be allocated in any calendar year is set aside for Qualified Rural Development Preservation Projects, and if not allocated in that calendar year must be carried forward and be available to be allocated in subsequent calendar years for Qualified Rural Development Preservation Projects. Upon January 1, 2029, any amount previously set aside under this section 2.b. and not previously allocated to a Qualified Rural Development Preservation Project is released from the set aside and need not be allocated to a Qualified Rural Development Preservation Project.

3. Priorities.

- a. In reserving and allocating the State Credit for Qualified Maine Projects, MaineHousing will prioritize:
 - i. use of the State Credit in Qualified Census Tracts and Difficult Development Areas;
 - ii. efficient use of MaineHousing resources including without limitation the Federal Low-Income Housing Tax Credit, the State Credit, and 0% deferred financing resources to maximize the number of new residential units created;
 - iii. project readiness including approvals and financing in place;
 - iv. over time, 30% of the cumulative State Credit for Qualified Maine Projects Credits allocated to Senior Housing and 20% of the cumulative State Credit for Qualified Maine Projects allocated to Rural Areas; and
 - v. projects with an occupancy preference for persons who qualify for Supportive Housing in the greater of 4 units or 20% of the total number of units.

- b. In reserving and allocating State Credit for Qualified Rural Development Preservation Projects, MaineHousing will prioritize projects that:
 - i. are Rural Development Section 515 Properties being transferred to a new owner in accordance with Rural Development requirements;
 - ii. incur a minimum of \$100,000 in property improvements in accordance with the State Low Income Housing Tax Credit Law; and
 - iii. are not claiming the Federal Low Income Housing Tax Credit.
- 4. Notice of Reservation of Credit.
 - a. MaineHousing will issue a notice of reservation of State Credit for Qualified Maine Projects as follows:
 - i. the notice of reservation will be issued at the same time as the Notice to Proceed described in the Qualification Allocation Plan;
 - ii. the notice of reservation will remain in effect as long as the Notice to Proceed remains in effect; and
 - iii. the notice of reservation may include State Credit to be allocated in future years.
 - b. MaineHousing will issue a notice of reservation of State Credit for Qualified Rural Development Preservation Projects after receipt of the following:
 - i. An approval of transfer issued by Rural Development Headquarters;
 - ii. Current appraisal and capital needs assessment in compliance with Rural Development requirements;
 - iii. Repair plan approved by Rural Development; and
 - iv. Any additional documents needed by MaineHousing to determine the amount of credit.
- 5. Allocation of Credit.
 - a. MaineHousing will issue an Allocation of Credit Certification for a Qualified Maine Project after:
 - i. MaineHousing issues a Form 8609 for the Federal Low Income Housing Tax Credit; and

- ii. A restrictive covenant meeting the requirements of the State Low Income Housing Tax Credit Law is executed by the owner of the project and MaineHousing and recorded in the appropriate registry of deeds.
- b. MaineHousing will issue an Allocation of Credit Certification for a Qualified Rural Development Preservation Project after:
 - i. receipt of a notice of final inspection from the Rural Development State Director;
 - ii. Calculation by MaineHousing of the amount of State Low Income Housing Tax Credit to be awarded to the Qualified Rural Development Preservation Project; and
 - iii. A restrictive covenant meeting the requirements of the State Low Income Housing Tax Credit Law is executed by the owner of the project and MaineHousing and recorded in the appropriate registry of deeds.

6. General.

- a. MaineHousing may publish program guides for the allocation of the State Credit in accordance with the State Low Income Housing Tax Credit Law and this rule.
- b. MaineHousing will track annual allocations and provide information required by the State of Maine Department of Administrative and Financial Services, Bureau of Revenue Services to determine eligibility and amount of credit allocated each calendar year.
- c. MaineHousing will charge a reasonable fee for each State Credit project to defray its increased costs due to the State Credit.

7. Rule Limitations.

- a. Other Laws. If this rule conflicts with any provision of applicable federal or state law, such federal or state law shall control.
- b. Waivers. Upon determination for good cause, the Director of MaineHousing, 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 for the waiver.
- c. Full Discretion. MaineHousing is entitled to the full discretion allowed by law in making all decisions and interpretations under this rule.
- d. Final Agency Action. The Director of MaineHousing, individually or by exercise of the delegation of powers contained in the Act, shall make all decisions and take all

action necessary to implement this rule. Such action of the Director shall constitute final agency action.

- e. Freedom of Access Act. MaineHousing is subject to the Freedom of Access Act, 1 M.R.S.A. §401 *et seq.*, which requires the disclosure of all information provided to MaineHousing that is not specifically excluded, such as confidential information under the Act. MaineHousing shall not be liable for the disclosure of any information that it determines must be disclosed under the Freedom of Access Act.
- f. Liability. Compliance with State Low Income Housing Tax Credit Law is the responsibility of the owner. MaineHousing is in no way responsible for an owner's compliance or liable for an owner's noncompliance. Any allocation, review or inspection by MaineHousing and any determination made by MaineHousing pursuant to this rule is for the sole benefit of MaineHousing. No liability or responsibility for owner compliance with applicable requirements and no representation or warranty of a project's feasibility or viability, eligibility for State Credit, or compliance shall be implied or construed from any such actions and determinations by MaineHousing.
- g. Headings/Context. The headings in this rule are for convenience only and do not define or limit the scope of the provisions of this rule.

BASIS STATEMENT: The state low income housing tax credit law was enacted to provide funds for the development and preservation of multi-family affordable housing. Under the law, the amount of the state low income housing tax credit a project receives for new rental units is equal to the amount of federal low income housing tax credits the project receives in conjunction with the issuance of tax exempt bonds. At least 10% of the credit to be allocated in a calendar year, must be set aside for qualified rural development preservation projects that incur at least \$100,000 in improvements and do not receive federal low income housing tax credits. The law requires MaineHousing to allocate and administer the credit and define "rural areas."

PUBLIC COMMENT: Notice of Agency Rule-making Proposal was published on MaineHousing's website and in appropriate newspapers on Wednesday, July 29, 2020, and sent to interested parties on July 15, 2020.

MaineHousing held a public hearing on Tuesday, August 18, 2020, to receive testimony on the proposed rule. Written comments were accepted until 5:00 p.m. EST on Friday, August 28, 2020. No one testified or provided written comment.

STATUTORY AUTHORITY: 30-A M.R.S.A. §§4722 and 4741.1 and 36 M.R.S.A. §5219-WW

FISCAL IMPACT NOTE: \$10,000,000 per year tax credits.

EFFECTIVE DATE: October 13, 2020