Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	**Maine State Housing Authority**
Umbrella-Unit:	**99-346**
Statutory authority:	30-A MRS §§ 4741.1, 4741.18, 4852 *et seq.*
Chapter number/title:	**Ch. 19**, Homeless Solutions Rule
Filing number:	**2017-106**
Effective date:	7/11/2017
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:
The replacement rule repeals and replaces the current *Homeless Solutions Rule*. The replacement rule amends the funding formula allocation by changing the definition of "Clients Assessed and Stabilized" and provides for a one-time payment adjustment.

Basis statement / summary:
This rule replaces in its entirety the current *Homeless Solutions Rule*. MaineHousing uses funds from certain federal and state resources to give grants to agencies for a variety of activities to assist people who are experiencing homelessness or the risk of becoming homeless. The rule governs MaineHousing's allocation of resources for such programs, program design, the publication and distribution of program guides, basic criteria for determining eligible recipients, and potential selection criteria. This replacement *Homeless Solutions Rule* amends the definition of Clients Assessed and Stabilized in order to ensure the fairest allocation of payments consistent with the overall intent of the rule.

Fiscal impact of rule:
None.

Agency name:	**Maine State Housing Authority**
Umbrella-Unit:	**99-346**
Statutory authority:	30-A MRS §§ 4722(l)(W), 4741(15), 4991 *et seq.*; 42 USCA §§ 8621 *et seq.*
Chapter number/title:	**Ch. 24**, Home Energy Assistance Program Rule
Filing number:	**2017-107**
Effective date:	7/11/2017
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The replacement rule repeals and replaces the current *Home Energy Assistance Program Rule*. The replacement rule: (i) Eliminates the asset test for minor, low cost work for the Central Heating Improvement Program (CHIP) and only requires it for higher cost, system replacements; (ii) adds clarifying language regarding how the benefit is determined for CHIP Heating System Replacement, when assets actually exceed the allowable threshold; (iii) requires the determination of who is responsible for maintenance of a home in life estate of life lease situations, only for higher cost system replacements; (iv) excludes from a household's income calculation any income from a qualifying full-time college student; (v) simplifies the application process for an applicant whose dwelling does not have electricity or water. In such cases, the Community Action Agency will verify eligibility without needing to request a waiver from MaineHousing; (vi) expands the list of allowable Energy Crisis Intervention Program (ECIP) expenditures to include additional intervention measures such as purchasing space heaters, assisting with temporary relocation (hotel/ motel), and assistance for rent with heat included applicants who are facing eviction due to nonpayment of rent; (vii) other non-substantive policy clarifications and changes necessary due to the new Hancock (HEAT) computer system used for weatherization activities.

Basis statement / summary:

This replacement rule repeals and replaces in its entirety the current *Home Energy Assistance Program Rule*. The rule establishes standards for administering fuel assistance, emergency fuel assistance, weatherization, and heating system repair and replacement funds to low income households in the State of Maine. The replacement rule: (i) eliminates asset test for minor, low cost work for the Central Heating Improvement Program (CHIP) and only requires it for higher cost system replacements; (ii) excludes from Household's income calculation any income from a qualifying full-time college student; (iii) adds clarifying language regarding how the benefit is determined for CHIP heating system replacement, when assets exceed the allowable threshold; (iv) simplifies the application process for an applicant whose dwelling does not have electricity or water; (v) expands allowable Energy Crisis Intervention Program (ECIP) expenditures to include additional intervention measures; and (vi) excludes the value of primary residence as an asset when determining eligibility for a heating system replacement.

Fiscal impact of rule:

None.

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Agency name:	**Maine State Housing Authority**
Umbrella-Unit:	**99-346**
Statutory authority:	30-A MRS §§ 4741(1), 4741(14), and Section 42 of the *Internal Revenue Code of 1986*, as amended
Chapter number/title:	**Ch. 16**, Low Income Housing Tax Credit Rule
Filing number:	**2017-183**
Effective date:	11/26/2017
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The rule is the qualified allocation plan for allocating and administering the federal low-income housing tax credit in the State of Maine, including without limitation the State's housing credit ceiling for calendar year 2018, as required pursuant to Section 42 of the *Internal Revenue Code*. The rule repeals and replaces the current Ch. 16, *Low-Income Housing Tax Credit Rule.*

Basis statement / summary:

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

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

- The rule has been overhauled and reformatted to make it simpler and easier to use.
- The rule includes the process for allocating the 2018 state ceiling of federal low-income housing tax credits for the State of Maine (the "State Ceiling"). The scoring criteria points are normalized to a total score of 100.
- The Preservation Set-aside is reserved for existing affordable housing assisted under a Rural Development program or HUD's Rental Assistance Demonstration (RAD) Program and the minimum rehabilitation requirement for the set-aside is reduced to $50,000 per unit to ensure the preservation of affordable housing that is difficult, if not impossible, to preserve under other MaineHousing programs.
- The pre-application process is more interactive and informative. The pre-application review is still mandatory, but applications will not be rejected at the pre-application stage. MaineHousing will meet with each applicant at least 30 days before the full application is due to provide feedback on eligibility and scoring issues. An application may be rejected at the full application stage if eligibility issues raised by MaineHousing during the meeting are not addressed.
- The State Ceiling application limits extend to consultants because of capacity concerns in the last round. Consultants cannot be a consultant or a principal in more than 3 applications in each round or in more than 4 outstanding projects at any time.
- The application, allocation and monitoring fees increased to cover the cost of administering the program.
- Investors that fail to make required capital contributions are barred from the program. Uncertainty about the federal corporate tax rate caused a significant drop in LIHTC pricing in the last round, and for the first time in Maine, an investor failed to meet its funding obligations. With the support of MaineHousing and the construction lender, the developer was able to find another investor and make the project work financially, but the default increased

project costs and reduced the capital investment in the project because of lower LIHTC pricing available in the market.

- The State Ceiling selection process is streamlined to reduce the number of applications that are scored in an effort to expedite the selection process. Only applications with the highest self-scores will be selected for scoring until the LIHTC is fully awarded to the applications with the highest actual scores.
- Smaller projects (less than 20 units) with limited financial capacity and projects that abut and have access to other projects with telemedicine facilities are excluded from the obligation to provide telemedicine facilities. Alternative methods for delivering telemedicine services and additional uses of the telemedicine room may be allowed.
- The scoring criteria provide greater balance between family and senior housing. Only one senior housing project was awarded State Ceiling in the last round. The TDC benchmark for new non-family housing is slightly increased from $180,000 to $185,000 per unit and 5 additional points are available under the accessibility scoring criteria for senior projects to incent more new senior housing.
- New scoring bands have been added to the TDC scoring category which narrow the scoring differential between bands to minimize any incentive for developers to submit artificially low budgets to maximize their TDC score. Higher point values are awarded at levels closer to the caps than previously.
- The weight of the property tax relief scoring criteria is less because certain municipalities have expressed that they do not want to feel pressured to provide tax increment financing to have affordable housing developed in their communities.
- The housing need scoring criteria uses the same formula, but is updated with the latest data. Changes in the senior housing criteria reflect population shifts. There are significant shifts in the non-senior housing criteria; 14 communities moved into higher point categories and 12 new communities were added. These changes reflect population shifts and an increase in the number of households in the State that qualify for LIHTC housing.
- The rent differential scoring criteria include a new 3 point category for areas where the difference between the market rent and the tax credit is 20% or more to incent the development of new affordable housing in tightening rental markets in the State.
- Proximity to downtown is removed from the smart growth scoring criteria because the other criteria are indicative of downtown areas. The definition of "safe walking distance" in the smart growth criteria no longer includes paved wide shoulders because they are not a safe and suitable means for walking to the destinations addressed in the smart growth criteria.
- The LIHTC training requirement in the management experience scoring criteria is limited to LIHTC units, to which the training relates, rather than total units in projects.
- The rule includes new performance scoring criteria. One replaces the negative point for failing to start construction within 15 months of an award notice with a negative point for failing to develop projects in accordance with the progress timelines in the award notice. The other criteria builds on the management performance criteria and includes a loss of up to 2 points based on the number of projects with two consecutive below average or unsatisfactory management reviews.
- The reuse of existing sites scoring criteria is expanded to include buildings that are municipally-designated for renewal because of environmental hazards to the occupants, such as lead-based paint, asbestos and radon.
- The most efficient use of MaineHousing's scarce resources, i.e. LIHTC and 0% deferred debt, replaces total development cost (TDC) per unit as the first tie breaker for prioritizing applications with the same score to incent developers to use less of these resources.

- The net developer fee for projects that involve the rehabilitation of existing housing and new construction will be pro-rated based on the relative number of new and existing units to better reflect the complexity of developing the projects.
- The limits on general contractor intermediary costs reflect the National Council of State Housing Authority's best practices for the LIHTC Program.

The rule clarifies MaineHousing's administration of the gross rent floor (i.e. the lowest tax credit rent limit for a project) under Section 42 of the Code. Unless an owner elects the project's placed-in-service date using the new form attached to the rule, the gross rent floor will be established on the date of the first LIHTC allocation (often a carryover allocation) for State Ceiling projects, and the date of the LIHTC award notice, which is the first eligibility determination under Section 42(m) of the Code, for automatic LIHTC projects.

Fiscal impact of rule:

The State's housing credit ceiling for calendar year 2018 is expected to generate approximately $29,500,000 of private investor capital. Additional capital may be generated through the allocation of federal low-income housing tax credits for housing that is financed with tax-exempt facility bonds pursuant to Section 42 (h)(4) of the *Internal Revenue Code*. The capital generated by the syndication of the federal low-income housing tax credits will be used to develop affordable housing for low- and very low-income persons in the State of Maine. The rule will not impose any costs on municipalities or counties for implementation or compliance.