

## §5219-WW. Credit for affordable housing

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Affordable housing project" means a qualified low-income housing project, as defined by Section 42(g) of the Code, located in the State. [PL 2019, c. 555, §6 (NEW).]
  - B. "Area median gross income" has the same meaning as in Section 42 of the Code, as adjusted for family size. [PL 2019, c. 555, §6 (NEW).]
  - C. "Authority" means the Maine State Housing Authority. [PL 2019, c. 555, §6 (NEW).]
  - D. "Federal low-income housing tax credit" means the federal tax credit as provided in Section 42 of the Code. [PL 2019, c. 555, §6 (NEW).]
  - E. "Qualified basis" has the same meaning as in Section 42(c) of the Code. [PL 2019, c. 555, §6 (NEW).]
  - F. "Qualified Maine project" means an affordable housing project that is:
    - (1) 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;
    - (2) 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
    - (3) 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. [PL 2019, c. 555, §6 (NEW).]
  - G. "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 United States Department of Agriculture, Office of Rural Development, Rural Housing Service rural development program. [PL 2019, c. 555, §6 (NEW).]
  - H. "Senior housing" means multifamily affordable rental housing units serving seniors that receive funding and project-based rental assistance under a United States Department of Agriculture, Office of Rural Development, Rural Housing Service rural development program or United States Department of Housing and Urban Development multifamily 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. [PL 2019, c. 555, §6 (NEW).]
  - I. "Supportive housing" means housing to assist persons with special needs in achieving housing stability. For purposes of this paragraph, "person with special needs" includes a person who has experienced chronic homelessness or is displaced, has a disability, is a victim of domestic violence or has other special housing needs. [PL 2019, c. 555, §6 (NEW).]
- [PL 2019, c. 555, §6 (NEW).]

**2. Credit allowed.** A taxpayer receiving a credit certificate from the authority for the taxable year pursuant to Title 30-A, section 4722, subsection 1, paragraph GG is allowed a credit against the tax imposed under this Part:

- A. Equal to the total federal low-income housing tax credit computed using the entire federal low-income housing tax credit period as described in Section 42(f) of the Code for all buildings in a qualified Maine project or a lesser amount as may be allocated by the authority pursuant to subsection 4; or [PL 2021, c. 1, Pt. Y, §1 (AMD).]

B. Equal to 50% of the qualified basis of an affordable housing project that incurs not less than \$100,000 includible in eligible basis as defined in Section 42(d) of the Code in the construction or rehabilitation of an affordable housing project for which a credit is not claimed under Section 42 of the Code with regard to those expenditures, except that not more than \$500,000 in credit may be allocated to taxpayers for a single project under this paragraph. [PL 2019, c. 555, §6 (NEW).]

A credit may be allowed for an affordable housing project under paragraph A or B but not both. [PL 2021, c. 1, Pt. Y, §1 (AMD).]

**3. Maximum credit; carry-forward.** The total credit amount available pursuant to this section and section 2534 to be allocated by the authority for each calendar year beginning on or after January 1, 2021 and ending on or before December 31, 2028 is subject to the following limitations.

A. The total allocation may not exceed \$10,000,000. Any portion of that amount not allocated in a calendar year may be carried forward and available to be allocated in subsequent calendar years, except that:

(1) Any previously allocated credits returned to the authority, excluding any credits recaptured under subsection 7, must be added to that amount; and

(2) The authority may not allocate more than \$15,000,000 in any calendar year. [PL 2019, c. 555, §6 (NEW).]

B. No more than 20% of credits allocated in any calendar year may be allocated under subsection 2, paragraph B. [PL 2019, c. 555, §6 (NEW).]

C. Ten percent of credits first available to be allocated in any calendar year must be set aside to be allocated for the purpose of qualified rural development preservation projects pursuant to subsection 2, paragraph B. Any portion of the amount under this paragraph not allocated in a calendar year must be carried forward and be available to be allocated in subsequent calendar years for the purpose of qualified rural development preservation projects. To the extent that any amounts set aside under this paragraph are not allocated on or before December 31, 2028, those amounts may be allocated by the authority without regard to whether the project is a qualified rural development preservation project. [PL 2019, c. 555, §6 (NEW).]

D. Only those credits that have been carried forward or returned, excluding any credits recaptured under subsection 7, as described in this subsection may be allocated by the authority after December 31, 2028. [PL 2019, c. 555, §6 (NEW).]

[PL 2019, c. 555, §6 (NEW).]

**4. Timing of allocation by authority and credit.** The authority may not make an allocation of credit to a taxpayer for a project before the date that any portion of the project is placed in service for federal tax purposes. Upon making an allocation of a credit to a taxpayer, the authority shall certify the allocation to the taxpayer and to the bureau. The certification must provide information required by the assessor for determining eligibility and the amount of the credit for each taxable year.

A. The entire credit allowed for a project pursuant to this section must be taken in the later of:

(1) The first taxable year in which the federal low-income housing tax credit for that project is claimed for projects allocated a credit pursuant to subsection 2, paragraph A; and

(2) The first taxable year for which the project has an allocation of credit from the authority. [PL 2019, c. 555, §6 (NEW).]

B. Notwithstanding paragraph A, the authority may allocate a credit to a taxpayer for a project for the immediately preceding calendar year if:

(1) The project was placed in service for federal tax purposes in the immediately preceding calendar year; and

(2) The allocation is made no later than the 60th day of the calendar year following the year in which the project was placed in service. [PL 2019, c. 555, §6 (NEW).]

C. The authority shall allocate credit for a qualified Maine project in an amount equal to the total federal low-income housing tax credit computed using the entire federal low-income housing tax credit period as described in Section 42(f) of the Code for all buildings in that qualified Maine project, except that the authority may allocate a lesser amount if the authority determines that is necessary to avoid any reduction pursuant to Section 42(m)(2) of the Code in the federal low-income housing tax credit otherwise available for that qualified Maine project. [PL 2021, c. 1, Pt. Y, §2 (NEW).]

[PL 2021, c. 1, Pt. Y, §2 (AMD).]

**5. Credit refundable.** The credit allowed under this section is refundable. [PL 2019, c. 555, §6 (NEW).]

**6. Allocation of credit among taxpayers.** Credits allowed to a partnership, a limited liability company taxed as a partnership or multiple owners of a credit-qualified affordable housing project must be passed through to the partners, members or owners respectively pro rata in the same manner as under section 5219-G, subsection 1 or pursuant to an executed written agreement among the partners, members or owners documenting an alternate allocation method. Credits may be allocated to partners, members or owners that are exempt from taxation under the Code, Section 501(c)(3), Section 501(c)(4) or Section 501(c)(6), and those partners, members or owners must be treated as taxpayers for the purposes of this section. Credits allowed under subsection 2, paragraph B may be claimed by an entity that is exempt from taxation under the Code, Section 501(c)(3), Section 501(c)(4) or Section 501(c)(6) and is the owner of the affordable housing. The tax-exempt entity must be treated as a taxpayer for purposes of this section.

[PL 2019, c. 555, §6 (NEW).]

**7. Recapture; restrictive covenant requirement; liens.** The following provisions apply to the recapture of credits in the event an affordable housing project does not remain qualified as specified in this section. The authority shall administer this subsection.

A. For purposes of this subsection, unless the context otherwise indicates, "credit-qualified affordable housing project" means an affordable housing project:

- (1) In which at least 60% of the residential units for which credits are allocated are restricted to households with income at or below 50% of area median gross income; or
- (2) That is a qualified rural development preservation project. [PL 2019, c. 555, §6 (NEW).]

B. A credit-qualified affordable housing project must remain a credit-qualified affordable housing project for a total of 45 years from the date the credit-qualified affordable housing project is placed in service. If the property does not remain a credit-qualified affordable housing project for 15 years from the date the affordable housing project is placed in service, the owner of the project shall pay to the authority, for deposit in the Housing Opportunities for Maine Fund established under Title 30-A, section 4853, an amount equal to the total credit allocated to the project reduced by an amount equal to the product of that total credit allocated multiplied by a fraction, the numerator of which is the number of months the project has remained a credit-qualified affordable housing project since the date it was placed in service and the denominator of which is 180, except that the amount payable by the owner of the project must be prorated in proportion to the number of residential units that do not remain in compliance with the income requirements and other restrictions imposed by this section.

The requirements and the repayment obligation in this paragraph must be set forth in a restrictive covenant executed by the owner of the credit-qualified affordable housing project for the benefit of

and enforceable by the authority and recorded in the appropriate registry of deeds before the owner of the property claims the credit. [PL 2019, c. 555, §6 (NEW).]

C. If the repayment obligation in paragraph B is not fully satisfied after written notice is sent by certified mail or registered mail to the owner of the property at the owner's last known address, the authority may file a notice of lien in the registry of deeds of the county in which the real property subject to the lien is located. The notice of lien must specify the amount and interest due, the name and last known address of the owner, a description of the property subject to the lien, the authority's address and the name and address of the authority's attorney, if any. The authority shall send a copy of the notice of lien filed in the registry of deeds by certified mail or registered mail to the owner of the property at the owner's last known address and to any person who has a security interest, mortgage, lien, encumbrance or other interest in the property that is properly recorded in the registry of deeds of the county in which the property is located. The lien arises and becomes perfected at the time the notice is filed in the appropriate registry of deeds in accordance with this paragraph. The lien constitutes a lien on all property with respect to which the owner receives the credit and the proceeds of any disposition of the property that occurs after notice to the owner of the repayment obligation. The lien is prior to any mortgage and security interest, lien, restrictive covenant or other encumbrance recorded, filed or otherwise perfected after the notice of lien is filed in the appropriate registry of deeds. The lien may be enforced by a turnover or sale order in accordance with Title 14, section 3131 or any other manner in which a judgment lien may be enforced under the law. The lien must be in the amount specified in the notice of lien. Upon receipt of payment of all amounts due under the lien, the authority shall execute a discharge of the lien for filing in the registry or offices in which the notice of lien was filed. [PL 2019, c. 555, §6 (NEW).]

D. Notwithstanding paragraphs A, B and C, a credit-qualified affordable housing project that fails to meet the requirements of this section due to a casualty loss is not subject to recapture or lien if the loss is restored by reconstruction or replacement within a reasonable period of time established by the authority. [PL 2019, c. 555, §6 (NEW).]

[PL 2019, c. 555, §6 (NEW).]

**8. Allocation of credit for new rental units.** The authority in allocating the credit for the construction or adaptive reuse of buildings for new rental units shall seek to achieve the following targets over time:

A. At least 30% of the credit must be allocated to the construction or adaptive reuse of buildings for new rental units of senior housing; and [PL 2019, c. 555, §6 (NEW).]

B. At least 20% of the credit must be allocated to the construction or adaptive reuse of buildings for new rental units of multifamily affordable rental housing located in rural areas as defined by the authority in rules adopted under Title 30-A, section 4722, subsection 1, paragraph GG. [PL 2019, c. 555, §6 (NEW).]

In meeting these targets, senior housing that is located in rural areas may be included in the percentages in both paragraphs A and B.

In allocating the credit for the construction or adaptive reuse of buildings for new rental units, the authority shall require or provide incentives to encourage, for a minimum of 4 units or 20% of the total number of units, whichever is greater, that occupancy preference be given to persons who qualify for supportive housing.

[PL 2019, c. 555, §6 (NEW).]

**9. Reporting.** Beginning in 2022, by March 1st annually the director of the authority shall report to the bureau, to the Office of Program Evaluation and Government Accountability and to the joint standing committee of the Legislature having jurisdiction over taxation matters on the status of the credit if there has been new activity since the previous report. The report must include, but is not limited to, the amount of the credits allocated under this section, the location and cost of projects

receiving credits, the number and type of residential units created or improved by each project, the number and type of units allocated credits in qualified rural development preservation projects and senior housing projects and the amount of other investment leveraged by each project, including federal low-income housing tax credits.

[PL 2019, c. 555, §6 (NEW).]

**10. Evaluation; specific public policy objective; performance measures.** The credit provided under this section is subject to ongoing legislative review in accordance with Title 3, chapter 37. In developing evaluation parameters to perform the review, the Office of Program Evaluation and Government Accountability, the Legislature's government oversight committee and the joint standing committee of the Legislature having jurisdiction over taxation matters shall consider:

A. That the specific public policy objective of the credit provided under this section is to create new affordable housing units for residents of the State, including for seniors, working families and persons with disabilities, and to preserve the affordability of residential units developed or operated with the financial assistance of the United States Department of Agriculture, Office of Rural Development, Rural Housing Service; and [PL 2019, c. 555, §6 (NEW).]

B. Performance measures, including, but not limited to:

- (1) The number and type of new residential units created;
- (2) The number and type of affordable United States Department of Agriculture, Office of Rural Development, Rural Housing Service residential units preserved;
- (3) The amount of credits issued during the period being reviewed and the amount of other investment leveraged by the credits; and
- (4) The extent to which allocations of the credits have met the targets described in subsection 8. [PL 2019, c. 555, §6 (NEW).]

The Office of Program Evaluation and Government Accountability shall provide a report of its evaluation under this subsection to the joint standing committee of the Legislature having jurisdiction over taxation matters.

[PL 2019, c. 555, §6 (NEW).]

#### SECTION HISTORY

PL 2019, c. 555, §6 (NEW). PL 2021, c. 1, Pt. Y, §§1, 2 (AMD).

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