SUMMARY OF COMMENTS AND RESPONSES AND LIST OF CHANGES TO THE FINAL RULE

19-100 C.M.R. Ch. 4: Rule Regarding Housing Opportunity Program Grants

The Maine Department of Economic and Community Development opened the public comment period for this rule on February 8, 2023. Written comments were accepted through March 13, 2023. This document summarizes the comments that were received during the comment period, the Department’s responses, and a list of changes to the final rule.

**Commenters**

1. Matt Panfil, Director of Planning, Greater Portland Council of Governments, Portland, Maine
2. Emily Ruger, Director of Community and Economic Development, Bath, Maine
3. Matthew Drost, Selectperson, Town of Randolph, Maine and Contracted Planner, Town of Chelsea, Maine
4. Agnieszka A. (Pinette) Dixon, Esq., and Amy Tchao, Esq., Drummond Woodsum, Portland, Maine

**Commenter 1:**

1. Commenter 1 proposed the Department add a citation to Title 30-A, Chapter 119 to the eligibility section of the rule to ensure that all types of regional planning organizations are included as eligible applicants.

Response: The Department thanks the commenter for this comment. The Department agrees and added this citation to the rule as a result of the comment.

1. Commenter 1 asked the Department to include the following to the purpose section of the rule:
“Housing Opportunity Grants are intended to support local alignment with regional and state policy priorities in the areas of economic development, transportation, climate action, and natural resource management.”

Response: The Department thanks the commenter for this comment. The authorizing statute of the Housing Opportunity Program Grants, 5 M.R.S. § 13056-J, allows the Department to establish a grant program to increase housing opportunities. The Department acknowledges that in providing services to municipalities to increase housing, service providers may also focus on complementary goals including transportation, climate and natural resource management goals, but the primary purpose of the grants is to provide technical assistance and planning services to increase housing. The Department did not make changes to the final rule as a result of this comment.

1. Commenter 1 proposed that the Department include in Section 3(B)(2) and (3) measurable outcomes “that are compatible with existing and future local development capacity and planning, including water, sewer, broadband, and transportation infrastructure, and climate and open space planning.”

Response: The Department thanks the commenter for this comment. The authorizing statute of the Housing Opportunity Program Grants, 5 M.R.S. § 13056-J, allows the Department to establish a grant program to increase housing opportunities. The Department acknowledges that in providing services to municipalities to increase housing, service providers may also focus on the complementary goals of transportation, broadband, water/sewer, and climate. The Department, however, will provide more detail about project proposals and target metrics for applicants in the grant application. The Department did not make changes to the final rule as a result of this comment.

1. Commenter 1 proposed that the Department include in Section 3(B)(2) and (3) measurable outcomes “that expand social and racial equity in the community.”

Response: The Department thanks the commenter for this comment. The authorizing statute of the Housing Opportunity Grants, 5 M.R.S. 13056-J, allows the Department to establish a grant program to increase housing opportunities. The Department acknowledges that in providing services to municipalities to increase housing, service providers may also focus on the complementary goal of expanding social and racial equity. The Department, however, will provide more detail about project proposals and target metrics for applicants in the grant application. The Department did not make changes to the final rule as a result of this comment.

1. Commenter 1 stated that Section 3(B), which describes the project proposals, is too limiting and unclear because there are many uses of the funds beyond “municipal ordinance development and planning services.” Commenter suggested that the following uses be enumerated in Chapter 4 to remove uncertainty regarding permissible uses of the funds:
* Technical assistance to support municipal compliance with P.L. 2021, Ch. 672;
* Technical assistance to support municipal adoption and implementation of local Accessory Dwelling Unit ordinances and enforcement provisions;
* Technical assistance to support municipal adoption and implementation of local Short Term Rental ordinances and enforcement provisions;
* Technical assistance to support municipal creation of expanded housing opportunities, including;
	+ Market analysis to determine housing inventory gaps and the most efficient use of limited public funds;
	+ Site analysis to encourage good locational decision making for individual projects;
	+ Infrastructure inventories and projections to match housing goals with available and needed infrastructure;
	+ Planning services to connect housing opportunities with other regional and state planning and implementation plans;
	+ Understanding and use of housing-related policy tools like Tax Increment Financing, Housing Authorities, etc.);
	+ Impact analyses to determine housing projects’ impact on municipal revenues and expenses;
	+ Housing development assessments to help municipalities establish the amount and types of housing needed to meet state and regional housing goals;
	+ Development and implementation of zoning and associated land use regulations to expand housing opportunities.
* Expanded regional organizational capacity to track and report on housing growth and progress toward state and regional housing goals;
* Pilot programs to expand regional housing administrative structures, such as collective enforcement of covenants, shared equity housing organizations, or regional housing authorities.”

Response: The Department thanks the commenter for this comment. The authorizing statute of the Housing Opportunity Grants, 5 M.R.S. § 13056-J, allows the Department to establish a grant program to increase housing opportunities by (1) supporting municipal ordinance development, (2) providing technical assistance, and (3) encouraging public participation and community engagement in the process of increasing housing opportunities. The Department must also solicit applications for “[c]ommunity housing planning services to municipalities to support the creation of housing development plans.” 5 M.R.S. § 13056-J(2)(B)(1). The Department acknowledges that there are numerous projects that could fit within the objectives of the Housing Opportunity Program and accompanying Fund. The Department, however, will provide more details about project proposals and permissible use of funds for applicants in the grant application. The Department did not make changes to the final rule as a result of this comment.

**Commenter 2:**

1. Commenter requested that the Department expand eligibility for the grants to include municipalities.

Response: The Department thanks the commenter for this comment. The Department agrees and has amended Sections 1, 2, and 3 to expand eligibility to include municipalities.

**Commenter 3:**

1. Commenter 3 requested that the grant opportunities to extend beyond service providers to include individual municipalities because small towns do not have the financial resources to comply.

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment #6.

**Commenter 4:**

1. Commenter 4 stated that the grant rule, as written, seems to give priority to organizations that provide a regional approach, including non-municipal service providers such as regional planning organizations, nonprofits, and academic institutions. Furthermore, Commenter stated that the service provider definition treats municipalities as “a secondary class” and places the burden on municipalities to ‘demonstrate experience and capacity.’ The commenter proposes the Department should define “service provider” to state the following:

“Service provider” means a municipality, consortium of municipalities, regional planning organization (council of governments or regional planning commission), regional economic development organization, county government, non-profit organization, academic institution and cooperative extension program, for-profit enterprise or any other entity that provides community housing planning services to municipalities to support the creation of housing development plans, including municipal ordinances, and policy amendments to support those plans or community housing implementation services.

Response: The Department thanks the commenter for this comment. The Department amended the definition of service provider to remove the phrase “and other organizations focused on providing a regional approach” to clarify that not just organizations, individuals, or entities that provide regional support are eligible to receive funding.

Furthermore, municipalities, unless they can demonstrate the capacity and expertise to support other communities with technical assistance, are not eligible to receive grant funding as a service provider. Municipalities can, however, receive grant funding intended only for municipalities. The Department amended the definition of “service provider” to state that municipalities and service providers will need to demonstrate experience and capacity to clarify that both municipalities and service providers must demonstrate this in order to be eligible for a service provider grant.

1. Commenter stated that the grant rule appears to be forward-thinking to cover costs incurred after grants are awarded, instead of covering costs already expended to come into compliance with LD 2003.

Response: The Department thanks the commenter for this comment. The Department, in its grant application, will provide more detail about the allowable uses of the funds and scoring criteria to ensure that the statutory requirements are met, including to support municipalities with ordinance development. The Department anticipates making multiple grant awards. The Department did not make changes to the final rule as a result of this comment.

1. Commenter stated that the eligibility criteria in Section 2 suggests that all grant funding could be awarded to service providers to support community housing planning services, with no grant funding to municipalities to develop municipal ordinances. Commenter requested that the Department establish separate grant criteria for the two distinct grant categories, including clarifying that municipalities may seek reimbursement for costs associated with municipal ordinance development efforts.

Response: The Department thanks the commenter for this comment. The authorizing statute of the Housing Opportunity Grants, 5 M.R.S. § 13056-J, allows the Department to establish a grant program to increase housing opportunities by (1) supporting municipal ordinance development, (2) providing technical assistance, and (3) encouraging public participation and community engagement in the process of increasing housing opportunities. The Department must also solicit applications for “[c]ommunity housing planning services to municipalities to support the creation of housing development plans.” 5 M.R.S. § 13056-J(2)(B)(1). The Department, in its grant application, will provide more detail about the allowable uses of the funds and scoring criteria to ensure that the statutory requirements are met, including to support municipalities with ordinance development. The Department anticipates making multiple grant awards. The Department did not make changes to the final rule as a result of this comment

1. Commenter stated that the review criteria listed in the rule, including “measurable outcomes that will be achieved as a resulting of achieving funds” and “target metrics describing how the applicant will measure performance,” are not tailored to municipalities seeking grant funding for costs associated with implementing the requirements of LD 2003.

Response: The Department thanks the commenter for this comment. The Department purposefully used the term “may” in Section 3(B) while listing grant proposal requirements to allow for flexibility based on the multiple project types allowed by the authorizing statute. The Department will provide more detail in the grant applications on grant proposal requirements for service providers. The Department did not make changes to the final rule as a result of this comment.

1. Commenter stated that the grant rule overly emphasizes regional planning initiatives, instead of awarding grants to municipalities to support the creation of housing development plans, including municipal ordinances.

Response: The Department thanks the commenter for this comment. While the authorizing statute does require the Housing Opportunity Program to “support regional approaches”, 5 M.R.S. § 31056-J(1), the Department acknowledges there are other allowable uses for the funding. The Department amended the definition of “service provider” to remove the phrase “and other organizations focused on providing a regional approach” to clarify that a regional approach is not required to be eligible for a Housing Opportunity Grant.

**List of Changes to the Final Rule**

1. The Department added the phrase “and municipalities” to Section 1(A).
2. The Department added the definition of “municipality” in Section 1(B).
3. The Department amended the definition of “service provider” in Section(1)(B) to include a citation to Title 30-A, Chapter 119.
4. The Department amended the definition of “service provider” in Section (1)(B) to remove the phrase “and other organizations focused on providing a regional approach.”
5. The Department amended the definition of “service provider” in Section 1(B) to state that municipalities and service providers will need to demonstrate experience and capacity.
6. The Department amended Section 2 to include municipalities as eligible grant recipients.
7. The Department amended Section 3(A) to include municipalities.