

**Subsequent Loan
Program Guide**

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Subsequent Loan Program Guide

Purpose

The purpose of the Subsequent Loan Program (the “Program”) is to permit eligible Maine State Housing Authority (“MaineHousing”) borrowers to borrow additional funds in connection with existing MaineHousing projects. Proceeds may be used for unanticipated operating shortfalls, capital improvements, rehab work, energy efficiency improvements, the creation of new units, and equity takeout.

Multi-Family Rule

MaineHousing financed projects remain subject to the provisions of Maine State Housing Authority’s Multi-family Development and Supportive Housing Loans and Grants Rule, Code of Maine Rules, 99 346 029.

Program Eligibility

The eligibility requirements for the Program are as follows:

- a. Loan Eligibility.** In order to be eligible for a subsequent loan under the Program, a borrower must have an existing MaineHousing loan in good standing secured by a first mortgage and security agreement on a project.
- b. Borrower Eligibility.** Any borrower with an eligible loan in good standing, which is secured by a first mortgage and security agreement on a project, is eligible to apply under the Program.

No application for the Program will be considered or approved if the borrower, any of its principals, any entity controlled by the borrower, any affiliates or any guarantor of a borrower’s loan obligations (i) is in default or violation of any obligation to MaineHousing; (ii) has been more than 60 days delinquent on any loan with MaineHousing in the past year or has been issued a notice of default or regulatory violation in the last 12 months; or (iii) was the owner of a MaineHousing financed project upon which MaineHousing foreclosed. For any proposed changes in ownership, the borrower must demonstrate sufficient previous experience in the development of projects of similar scale and complexity, and satisfy the requirements of MaineHousing’s Ownership Transfer Process.

A borrower or member of a development team may not participate if the borrower or development team member (i) is debarred, suspended, or excluded from any federal program; or (ii) has ever had a professional license to provide the services the party seeks to provide for the project suspended or revoked; or (iii) is debarred, suspended, or voluntarily excluded from any MaineHousing programs. Borrowers and their contractors and agents will be required to certify that they are not so classified.

MaineHousing may direct applicants to other financing programs, as it deems appropriate.

MaineHousing will make the final determination regarding whether or not each borrower is eligible for the Program, in its sole discretion.

Subsequent Loan Terms

a. Capital Needs. As part of a subsequent loan, MaineHousing will require a borrower to assess the project's current and future capital needs and to prepare a plan to address identified capital needs. MaineHousing may require a capital needs assessment from a professional consultant. At MaineHousing's discretion, MaineHousing's internal technical staff may work with the borrower to identify immediate capital needs and forecast future capital needs. Evaluation of a project's current capital needs will include consideration of the long-term needs in relationship to the level of replacement reserve funding. MaineHousing will determine, at its sole discretion, the minimal level of repair and improvements to a project that must be accomplished in conjunction with a subsequent loan.

b. Reserves. MaineHousing will determine, at its discretion, whether project reserves are adequately funded and if adjustments to existing funding requirements should be made. In conjunction with a subsequent loan, MaineHousing may require additional reserves or the use of reserves for improvements to the project.

c. Equity Takeout. Equity takeout will be permitted only if MaineHousing determines in its discretion that capital needs and reserves are adequately addressed.

d. Interest Rate. The interest rate for a subsequent loan will be seven percent (7%), unless another rate shall be established by MaineHousing.

e. Term. The term of a subsequent loan shall be 30 years from the date of subsequent loan closing. Notwithstanding the foregoing, a borrower may request a shorter period. A borrower may request MaineHousing to consider a loan repayment schedule based on a 40 year amortization with a final balloon payment due at the end of the term.

f. Recourse/Non-Recourse Debt. The subsequent loan will be fully recourse, unless the existing loan is a non-recourse obligation, because the borrower is a limited partnership or has low income housing tax credits.

g. Lien Position. Any subsequent loan will be secured by a first mortgage and security agreement on the land and improvements constituting the MaineHousing financed project, and any and all related personal property. If the land and improvements constituting the project are subject to a ground lease, the ground lease and the lessor's fee interest in the land and buildings must be subordinated to MaineHousing's first mortgage and security agreement upon terms and conditions acceptable to MaineHousing. **Please note that no other encumbrances, liens, security interests or mortgages will be permitted on the Development without the prior written consent of MaineHousing.**

h. Loan Modification Program. An eligible borrower may obtain a loan modification pursuant to MaineHousing's Loan Modification Program for Section 8 Projects

Program Guide or MaineHousing's Loan Modification Program for Rental Loan Program (RLP) Projects in conjunction with the subsequent loan.

i. Restriction Concerning Prepayment. Any subsequent loan shall include a provision prohibiting prepayment of the subsequent loan in whole or in part; provided, however, MaineHousing may waive the prepayment prohibition to allow a borrower to apply for refinancing under a MaineHousing preservation program.

j. Fees. The borrower shall pay for any appraisals; capital needs assessments; market studies and environmental assessments commissioned by MaineHousing. Developer fees are payable only from equity-takeout.

Affordability

a. Projects Subject to Housing Assistance Payments Contracts. For projects subject to Section 8 Housing Assistance Payments Contracts the borrower shall comply with the affordability restrictions in the Housing Assistance Payments Contract until expiration of the Housing Assistance Payments Contract, including any renewals thereof. The borrower shall seek and accept any extensions and renewals of the Section 8 Housing Assistance Payments Contract and any comparable replacement assistance of subsidy program offered by United States Department of Housing and Urban Development ("HUD").

Upon the expiration of the Section 8 Housing Assistance Payments Contract, any extensions or renewals thereof and any comparable replacement assistance of subsidy program, the borrower shall comply with the affordability requirements contained in a financial assistance agreement or declaration of covenants, conditions and restrictions to be executed in connection with each project securing the subsequent loan.

Note: Subsequent loan debt may affect future contract rent increase requests.

In any event, MaineHousing shall require a financial assistance agreement or declaration of covenants, conditions and restrictions, in a form as approved by MaineHousing, which obligates the borrower to comply with one of the minimum affordability restrictions adjusted for family size as follows:

20% of the project units at 50% of Area Median Income; or
40% of the project units at 60% of Area Median Income.

Notwithstanding the foregoing, in the event that a project is subject to an existing agreement which requires more stringent affordability restrictions than the minimum affordability restrictions set forth above, the financial assistance agreement or declaration of covenants, conditions and restrictions shall obligate the borrower to comply with the more stringent affordability restrictions for the term of the financial assistance agreement or declaration of covenants, conditions and restrictions.

Any low income units required under the financial assistance agreement or declaration of covenants conditions and restrictions must be rent restricted. Maximum rents will be based

on 30% of the HUD eligibility income limits, adjusted by the number of bedrooms in the low income units. Income limits for each geographic area are published annually by HUD.

The financial assistance agreement or declaration of covenants, conditions and restrictions shall be recorded in the appropriate registry of deeds and its covenants and restrictions shall be considered covenants that run with the real estate, and shall bind subsequent owners for the full term of the agreement.

The borrower will comply with the above affordability requirements for the longer of the term of the existing loan; the term of the subsequent loan, or the term of any existing affordability agreement.

Environmental Assessment

Environmental assessments may be required. Environmental assessments cover hazardous material and conditions such as asbestos, lead paint, radon, noise from airports, railroads, and impacts on environmental resources. If the environmental assessment identifies possible significant impacts on the environment, a Phase I or Phase II Environmental Assessment also may be required.

Construction/Rehabilitation Standards

MaineHousing has adopted Green Standards. Any rehabilitation or construction of additional units shall comply with MaineHousing's Green Standards and MaineHousing's standards of design and construction. Completed improvements must meet the applicable standards of the *Building Officials and Code Administrators Building Code* (BOCA code) and the applicable standards from the *National Fire Protection Association Codes* (NFPA). The project must meet all state and federal accessibility and adaptability requirements, and all environmental, labor, civil rights, relocation and other requirements. MaineHousing will require that lead-based paint and asbestos hazards be addressed according to applicable federal and state laws.

MaineHousing staff will perform periodic and final inspections.

Contractor

The contractor must demonstrate experience constructing a project of similar size and complexity. MaineHousing staff will work with the general contractor to ensure timely and quality workmanship. For construction contracts of \$100,000 or more, MaineHousing may require payment and performance bonds to ensure construction completion.

Minority- and Women-owned Businesses

The Maine State Housing Authority is committed to ensuring that minority-owned and women-owned businesses have access to the economic benefits of projects financed with State and Federal dollars. As part of this commitment and to assist in reporting requirements, applicants for MaineHousing financing will be asked to solicit construction bids from businesses on the Department of Transportation list of minority- and women-

owned contractors in Maine and, when economically feasible, to divide total requirements into small tasks or quantities to permit maximum participation of minority- and women-owned businesses. Prior to any financing commitment from MaineHousing applicants will be required to document all such outreach efforts.

Design Professional

MaineHousing will determine, in its sole discretion, if a design professional is required. If an architect is needed, he/she must be licensed to do business in the State of Maine, and have experience designing projects of similar scope and magnitude.

Underwriting

MaineHousing will assess whether, in its sole discretion, a project has an acceptable probability of providing the affordable housing for the term required. In underwriting, MaineHousing may consider any combination of the following: capital budgets; operating budgets; long term projected cash flows; collateral value; debt service coverage ratios; the applicant's credit; market evaluations; the capacity of the development team; the capacity of the applicant; performance history of the applicant and its affiliates; credit enhancements such as guarantees, mortgage insurance, and letters of credit; the prior performance of the project; the prior performance of comparable projects; the presence of supportive service funding from the State of Maine and the likelihood the funding will continue; a capital needs assessment; and additional factors that MaineHousing deems necessary for a thorough evaluation of an application.

Financing assumptions, including vacancy rates and trending will vary depending upon local market conditions, relevant federal regulations, the strength of the asset within the market, and the operating history. A minimum debt service ratio of 1.15 is required. Any subordinate amortizing financing must be included in the debt service coverage ratio. MaineHousing may adjust this ratio to reflect the inherent characteristics of the project and the market involved. MaineHousing will review existing escrow balances for adequacy and reserves the right to set levels of replacement reserve funding consistent with an analysis of future capital needs.

Loan-to-Value

The total principal outstanding balance for all loans, existing and subsequent, may not exceed 85% loan-to-value. MaineHousing will determine whether to use the project's assessed value or to commission an appraisal based on assumptions satisfactory to MaineHousing.

Market feasibility for additional units

At MaineHousing's discretion, projects proposing additional units may have to provide a market study or similar data substantiating the need for the proposed additional units.

Closing Requirements

The owner shall execute the documents MaineHousing determines are necessary or in its best interest including, without limitation and as applicable: promissory note; mortgage and security agreement; financial assistance agreement; declarations of covenants, conditions and restrictions; financing statement; regulatory agreement; escrow agreement; deposit account control agreement and certification. MaineHousing shall require a lender's title insurance policy with mechanics' lien and survey coverage, and liability insurance acceptable to obtain and provide evidence of fire, hazard, extended coverage, and liability insurance acceptable to MaineHousing and such other insurance as MaineHousing in its discretion may reasonably require, all containing the standard Maine mortgagee clause with loss payable to MaineHousing. For owners that are other than individuals, MaineHousing shall require a legal opinion regarding the owner's legal status and authority to receive the financing and execute the loan documents. MaineHousing may require a legal opinion regarding compliance of the project with applicable zoning and land use laws. The owner shall satisfy such other requirements as MaineHousing, in its sole discretion, determines are prudent.

Submission Requirements

Applications for subsequent loans will be reviewed on an on-going, walk-in basis.

Applications shall include the following:

- Cover letter requesting the subsequent loan;
- Borrowing resolution from the ownership entity, if applicable;
- Proposed use of loan proceeds;
- Scope of work, if any, with related budget;
- Current vacancy rates;
- Current operating expense data;
- 5-year cash-flow projection;
- Rent structure and post-rehab operating budget, if any;
- Proposed sources of funds, i.e., MaineHousing loan, use of project operating or reserve funds via drawdown or loan, owner contribution, grants, or any combination thereof.

Please contact your Asset Manager for more information.

Identity of Interest

Applicants shall disclose the nature of the relationship between them and any of their principals, proposed sellers, contractors, vendors, suppliers, agents and service providers. MaineHousing may, at its discretion, impose restrictions, or require independent appraisals, or other third party verifications on account of identity of interest concerns.

Conflict of Interest

State and federal law and MaineHousing's policy on conflicts of interest prohibit current employees or commissioners from working on certain transactions with applicants with whom they have a financial or personal relationship, prohibit past MaineHousing employees from working on certain transactions, and prohibit persons who exercised responsibilities in

connection with certain federal funds from benefiting from those funds. Accordingly, applicants for funding under MaineHousing's programs must complete a conflict of interest disclosure form and comply with the law and policy and any requests by MaineHousing to ameliorate potential or perceived conflicts of interest.

Relocation

Projects are subject to the following relocation standards:

Minimizing Displacement. Applicants must take all reasonable steps to minimize the displacement of persons from their homes as a result of rehabilitation, change of use, or rent increases.

Federally-assisted Projects. Owners of projects assisted with federal funds shall comply with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended, 42 U.S.C. § 4601 *et seq.*, and the Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs Final Rule, 49 C.F.R. 24, published March 2, 1989, as amended.

HOME-assisted Projects. In addition, owners of projects assisted with HOME Investment Partnerships Act, Community Development Block Grant or Urban Development Action Grant funds shall comply with the requirements of §104(d) of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. 5034(d)(4), and the Displacement Relocation Assistance, and Real Property Acquisition for HUD and HUD-Assisted Program Final Rule, 24 C.F.R. 42, published November 4, 1996, as amended.

MaineHousing Financing. If the project is financed by MaineHousing without federal funds and tenants are not required to move permanently but must relocate temporarily because of rehabilitation to a project, the applicant shall provide the tenants with (a) reimbursement for all reasonable out-of-pocket expenses and increased costs incurred in connection with the temporary relocation; and (b) appropriate advisory services including reasonable advance notice of the date and approximate duration of the temporary relocation; the location of a suitable, decent, safe and sanitary dwelling to be made available for the temporary period; the terms and conditions under which the tenant may lease and occupy a bed or unit in the project upon completion of the project; and the provisions for reimbursement of expenses and increased costs.

Non-Discrimination and Compliance with Federal Laws

Maine State Housing Authority does not discriminate on the basis of race, color, religion, sex, sexual orientation, national origin, ancestry, age, physical or mental disability, or familial status in the admission or access to, or treatment or employment in, its programs and activities. MaineHousing will provide appropriate communication auxiliary aids and services to persons with disabilities upon sufficient notice. MaineHousing will also provide this document in alternative formats upon sufficient notice. MaineHousing has designated Jodie Stevens at Maine State Housing Authority, 353 Water Street, Augusta, Maine 04330, Telephone Number (207) 626-4600

or 1-800-452-4668 (voice) or 1-800-452-4603 (TTY), as the person responsible for coordinating compliance with applicable federal and state nondiscrimination requirements.

Applicants are cautioned to be aware of the potential applicability of provisions of the Americans with Disabilities Act, the Maine Human Rights Act, federal Fair Housing Act and Section 504 of the Rehabilitation Act of 1973 to any housing proposed for funding. Procedures for selection of residents, conditions of residency, and rules regarding termination may fall within the scope of these laws. Providers must make reasonable accommodations of rules, policies, and procedures and may be required to allow reasonable structural modifications of buildings to be made, if necessary, to allow persons with disabilities equal access to housing.

MAINEHOUSING RESERVES THE RIGHT TO REJECT OR CEASE PROCESSING ANY OR ALL SUBMISSIONS OR APPLICATIONS PRIOR TO ISSUANCE OF A COMMITMENT FOR LOAN MODIFICATION. MAINEHOUSING ACCEPTS NO OBLIGATION TO MODIFY ANY LOAN UNTIL A LOAN MODIFICATION COMMITMENT HAS BEEN ISSUED AND ACCEPTED BY THE BORROWER IN ACCORDANCE WITH ITS TERMS. MAINEHOUSING CANNOT ENSURE PARTICIPATING ELIGIBLE BORROWERS THAT MODIFICATION OF AN ELIGIBLE LOAN UNDER THIS PROGRAM RESULTING IN A REDUCTION OF ONGOING DEBT SERVICE FOR A PROJECT, WHICH IS SUBJECT TO, AND BENEFITED BY, A SECTION 8 HOUSING ASSISTANCE PAYMENTS CONTRACT WILL NOT RESULT IN A CORRESPONDING FUTURE REDUCTION IN PROJECT RENTS BY HUD UNDER ANY RENTAL ADJUSTMENT PROVISION.