

Chapter # 29 Multi-family Mortgage Loans

**Summary:**

The Maine State Housing Authority extends loans secured by mortgages to MaineHousing under programs for the acquisition, construction, rehabilitation, and preservation of rental housing for low income persons. This rule governs MaineHousing's allocation of resources for such programs, program design, the publication and distribution of program guides, eligibility standards, loan standards, construction and rehabilitation requirements, management requirements, and potential selection criteria.

**1. Definitions.**

- A. "Act" means the Maine Housing Authorities Act, 30-A M.R.S.A. § 4701, *et seq.*
- B. "Applicant" means the individual, municipality or entity, or their assigns, applying for financing governed by this Rule.
- C. "CMF" means the Capital Magnet Fund established by the federal Housing and Economic Recovery Act of 2008.
- D. "Code" means the Internal Revenue Code of 1986, as amended.
- E. "Commissioners" means the Director, the Treasurer of the State of Maine, and the eight other persons appointed to the MaineHousing board of commissioners pursuant to 30-A M.R.S.A. § 4723, *et seq.*
- F. "Developer" means an Applicant, or an assign of the Applicant, who has received a Term Sheet.
- G. "Development" means the land and buildings an Applicant or Developer intends to acquire, construct, rehabilitate, or preserve as rental units for Low-income Persons with funding from a Program.
- H. "Development Team" means Applicants and Developers and those working in conjunction with them on a Development, including, without limitation, consultants, architects, engineers, attorneys, real estate agents and brokers, management and marketing agents, contractors, financial institutions, insurance agents, investment brokers, and service providers.
- I. "Director" means the director of MaineHousing.
- J. "General Mortgage Purchase Bond Resolution" means a resolution adopted by MaineHousing on February 4, 1972, as amended and supplemented, which authorizes MaineHousing to issue bonds for the purchase of first lien single-family and multifamily mortgages.

- K. “HOME Investment Partnerships Act” means Title II of the Cranston-Gonzales National Affordable Housing Act, as amended, 42 U.S.C. 12701, *et seq.*, and implementing regulations including 24 C.F.R. Part 92, all as may be amended.
- L. “HTF” means the National Housing Trust Fund established by the federal Housing and Economic Recovery Act of 2008 and implementing regulations including 24 C.F.R. Part 93, all as may be amended.
- M. “HUD” means the U.S. Department of Housing and Urban Development.
- N. “Loan Documents” means the documents that evidence or secure the Developer’s indebtedness and other obligations to MaineHousing.
- O. “Low-income Persons” means persons or families who lack the income which is necessary, as determined by MaineHousing, to enable them, without financial assistance, to live in or purchase decent, safe and sanitary dwellings, without overcrowding. Financial assistance includes, but is not limited to, the following kinds of assistance: (i) mortgage insurance; (ii) interest subsidies; (iii) rent subsidies; (iv) public assistance payment or services; or (v) any other assistance that may be provided by MaineHousing through the sale of bonds.
- P. “Low-income Persons with Supportive Service Needs” means Low-income Persons who require assistance typically provided in the following types of projects: (i) emergency shelters; (ii) group homes; (iii) transitional housing; (iv) supported apartments; or (v) other types of housing in which supportive services are provided.
- Q. “MEHER” means the Maine Energy Housing and Economic Recovery program as established in 30-A M.R.S.A §4861, *et seq.*
- R. MaineHousing” means the Maine State Housing Authority, a body corporate and politic and an instrumentality of the State of Maine, and its agents, contractors, and employees duly authorized to act on its behalf.
- S. “Mortgage Purchase Program Fund Balance” means the excess of assets over liabilities held in MaineHousing’s General Mortgage Purchase Bond Resolution.
- T. “Program” means an offering of financing in the form of interest-bearing debt, deferred debt, forgivable loans, grants subject to recapture, or a combination of the foregoing available to prospective eligible Applicants on certain terms and for certain purposes determined by MaineHousing pursuant to this rule.
- U. “Program Guide” means the written procedural and administrative guide for a particular Program governed by the terms and conditions of this rule.
- V. “Term Sheet” means MaineHousing’s official notification to an Applicant, or assignee of the Applicant, indicating that its application has been approved and stating the terms of a prospective financing.

2. **Program Design.**

- A. **Programs.** MaineHousing shall design and offer Programs based upon available funds, restrictions attached to such funds, and State housing needs.
- B. **Program Guides.** MaineHousing shall publish a Program Guide with respect to each Program and shall distribute the Program Guide to parties who have expressed an interest to MaineHousing in connection with the type of housing eligible under the Program, to parties MaineHousing selects for marketing the particular Program, and upon request.

3. **Development Funding.**

- A. **Processing of Applications.** MaineHousing may process applications on a first come first served basis or may set an application due date described in the Program Guide for submission for review by a scoring committee.
- B. **Selection for Funding.** The Director shall retain final discretion as to whether or not to offer financing to a particular Applicant for a particular Development.
- C. **Availability of Funds.** Financing is always subject to the availability of funds.

4. **Sources of Funds.** Funds from the following sources may be made available under this rule:

- taxable bonds issued by MaineHousing pursuant to 30-A M.R.S.A. §4871 *et seq.*, the refunding of such taxable bonds, and other surplus funds which are considered non tax-exempt funds;
- tax-exempt 501(c)(3) bonds issued by MaineHousing pursuant to 30-A M.R.S.A. §4871 *et seq.* and Section 145 of the Code and the refunding of tax-exempt bonds;
- tax-exempt residential rental project bonds, issued by MaineHousing pursuant to 30-A M.R.S.A. §4871 *et seq.*, Section 142 (d) of the Code;
- tax-exempt essential function bonds issued by MaineHousing pursuant to 30-A M.R.S.A. §4871 *et seq.* and the Code and the refunding of such tax-exempt bonds;
- Housing Opportunities for Maine Fund established pursuant to 30-A M.R.S.A. § 4851 *et seq.*;
- HOME Investment Partnerships Act;
- HTF;
- MEHER;
- CMF; and
- other funds.

5. **Types of Programs.** MaineHousing may offer a Program for any of the following, any combination of the following, any subset of the following, or any combination of subsets of the following:

- A. **Preservation of Affordability.** Programs may provide financing to add or preserve low income or use restrictions pertaining to a target population or supportive services in existing housing.
- B. **New Construction, Rehabilitation, and Creation of Affordability.** Programs may finance the creation of rental units for Low-income Persons through acquisition, new construction, rehabilitation, refinancing, or dedication of existing housing as rental units for Low-income Persons.
- C. **Subsequent Loans.** Programs may offer financing for the repair, maintenance or expansion of assets securing existing mortgages in favor of MaineHousing.
- D. **Tax Credits.** Programs may offer financing for use in conjunction with low-income housing tax credits allocated by MaineHousing pursuant to Section 42 of the Code and any applicable rules adopted by MaineHousing pursuant to the Maine Administrative Procedures Act.
- E. **Construction Loans.** Programs may offer construction-period financing for the creation of rental units for Low-income Persons subject to the following limitations.
  - i. **Public Instrumentalities and Nonprofit Corporations.** MaineHousing may provide construction-period financing to nonprofit corporations, which are exempt from taxation under Section 501(c)(3) of the Code and are not private foundations pursuant to Section 509(a) of the Code, and municipal housing authorities, which are established pursuant to the Act, for the acquisition, new construction and rehabilitation of housing for Low-income Persons. Upon completion of the new construction or rehabilitation of such housing, the construction loan shall automatically convert to permanent financing.
  - ii. **For-Profit – Participation.** If less than 60% of the financing of a Development is required to be tax-exempt bonds from MaineHousing, and the Developer is a for profit entity, then MaineHousing must at a minimum use a financial institution as an escrow agent. MaineHousing may use the proceeds of tax-exempt bonds to purchase a participation in construction loans made by financial institutions in the State for a Development. A financial institution shall not sell any additional participation in a construction loan in which MaineHousing is participating without MaineHousing’s prior written consent.
  - iii. **For-Profit - Whole Loans.** If a Development’s financing requires MaineHousing to participate in the construction loan at a level greater than 60%, MaineHousing may make the whole construction loan without using an escrow agent.
  - iv. **Limitation on Interest.** MaineHousing and any financial institution making or participating in a construction loan in which MaineHousing is participating may charge interest rates on the construction loan, or its participation in the construction loan, provided that such interest rates are as described in the applicable Program Guide and do not exceed the Wall Street Journal Prime Rate plus three percent (3%).
  - v. **Limitation on Fees and Charges.** MaineHousing and any financial institution making or participating in a construction loan in which MaineHousing is participating may charge application fees, commitment fees, origination or financing fees, document preparation fees, legal fees, construction review fees and construction management or escrow fees, late charges, and prepayment charges provided the fees and charges do not exceed the usual and customary fees and charges imposed by financial institutions in the State and are consistent with the applicable Program Guide.

6. **Low-income and Use Restrictions.**

- A. **Low-income Restrictions.** Developments shall benefit Low-income Persons as required by applicable laws, funding source restrictions, applicable Program Guides, and the Developer's commitments.
- B. **Use Restrictions.** Developments may be required to serve a target population and provide supportive services as required by applicable laws, funding source restrictions, applicable Program Guides, and the Developer's representations.
- C. **Assurance of Continued Restrictions.** The Developer shall provide any certifications, reports, or other assurances MaineHousing requires to ensure compliance with low-income restrictions and use restrictions, including without limitation, an agreement to be recorded in the appropriate registry of deeds which will obligate the Developer and its successors to comply with the restrictions for a period of time within the applicable Program Guide.

7. **Eligible Applicants.** To be eligible for funding, Applicants must satisfy the following:

- A. **Creditworthiness.** Applicants must demonstrate credit worthiness and repayment ability acceptable to MaineHousing. MaineHousing may independently verify credit information.
- B. **Funding Source Restrictions.** Applicants must satisfy any criteria for qualification for receipt of funding attached by law or regulation to the funds the Applicant seeks.
- C. **Program Qualifications.** Developments must meet the objectives of the Program under which they are applying as set forth in the applicable Program Guide.
- D. **Outstanding or Prior Defaults.** MaineHousing will not consider the application of an Applicant if the Applicant, or any other entity in which the Applicant or one of its affiliates has a controlling interest, (i) at any time during the previous 6 months, (a) has been more than 60 days delinquent on MaineHousing financing, or (b) has been issued a notice of default; or (ii) is otherwise disqualified as described in the Program Guide.
- E. **Debarment.** An Applicant or member of a Development Team may not participate in Programs governed by this rule if the Applicant or Development Team member (i) is debarred, suspended, or voluntarily excluded from any federal program; (ii) has ever had a professional license to provide the nature of services the party seeks to provide in the Development suspended or revoked; or (iii) is debarred, suspended, or voluntarily excluded from MaineHousing Programs.
- F. **Debt Concentration.** If the Applicant and its affiliates have, or would have after the additional loan, loans outstanding from MaineHousing's General Mortgage Purchase Bond Resolution in an amount equal to or greater than 25% of the Mortgage Purchase Program Fund Balance, additional review will be triggered which will include an analysis of the Applicant and its affiliates as a whole and consultation with the Commissioners, and may result in denial of the loan by the Director.
- G. **Supportive Housing Project Concentration.** If the Applicant and its affiliated entities own, or would own after the additional financing, greater than 25% of the housing units or projects for Low-income Persons with Supportive Service Needs financed by MaineHousing, additional review will be triggered which will include an analysis of the Applicant and its affiliates as a whole and consultation with the Commissioners, and may result in denial of the financing by the Director.

- H. **Conflict of Interest.** Applicants shall disclose their current and recent financial, business, professional, and family relationships and associations with any MaineHousing employee or commissioner and comply with any restrictions imposed by MaineHousing on account of conflict of interest concerns.
  - I. **Identity of interest.** Applicants shall disclose the nature of the relationship between them and any of their principals, proposed sellers, contractors, suppliers, 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.
8. **Interest-bearing Debt.** When MaineHousing financing includes interest-bearing debt payable to MaineHousing, the financing shall be subject to the following standards:
- A. **Underwriting Standards.** MaineHousing will assess whether, in its sole discretion, a Development has an acceptable probability of providing rental units for Low-income Persons for the term required. In its assessment, 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 proposed owners; performance history of the Applicant and its affiliates on MaineHousing financed Developments; credit enhancements such as guarantees, mortgage insurance, and letters of credit; the prior performance of the Development; the prior performance of comparable projects; the presence of rental assistance or other operating funds 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.
  - B. **Appraisals.** MaineHousing may obtain an appraisal or appraisals to determine whether there is adequate value in a Development. Such appraisals shall conform to the then current Uniform Standards of Professional Appraisal Practice and MaineHousing's requirements. Applicants shall reimburse MaineHousing for appraisal costs.
9. **Financing Standards.** Financing of Developments will be subject to the following:
- A. **Documents Evidencing Obligations of Developer.** The Developer shall execute the documents MaineHousing determines are necessary or in its best interest including, without limitation and as applicable, promissory notes; mortgage and security agreements; financial assistance agreements; declarations of covenants, conditions, and restrictions; financing statements; regulatory agreements; participation agreements; escrow agreements; and certifications.
  - B. **Developer and Consultant Fees.** MaineHousing may condition financing upon a reduction of developer or consultant fees that MaineHousing finds in its discretion are excessive.
  - C. **Title Insurance.** MaineHousing may require a lender's title insurance policy with mechanics' lien and survey exceptions deleted.
  - D. **Property Insurance.** The Developer shall 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.
  - E. **Authority Legal Opinion.** For Developers which are other than individuals, MaineHousing shall require a legal opinion regarding the Developer's legal status and authority to receive the financing.

- F. **Land Use Legal Opinion.** MaineHousing shall require a legal opinion regarding compliance of the Development with applicable zoning and land use laws.
- G. **Real Estate Taxes and Municipal Charges.** The Developer shall provide evidence of payment of real estate taxes and municipal charges prior to closing.
- H. **Escrows.** The Developer shall fund escrows in the amount and on terms established by MaineHousing. Such escrows may include without limitation operating deficit escrows, rehabilitation escrows, replacement reserve escrows, tax and insurance escrows, incomplete work escrows, and relocation escrows.
- I. **Prepayment.** MaineHousing may prohibit prepayment of loans, impose restrictions on prepayments, or impose charges in the event of prepayments.
- J. **Ownership Transfers.** Any grant, sale, assignment or other transfer of an ownership interest in a Development or the Developer will be subject to MaineHousing's Transfer of Ownership rule.
- K. **Fair Housing and Accessibility.** The Development must be operated in accordance with all applicable fair housing and equal access requirements including without limitation the Federal Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988; the Maine Human Rights Act, Subchapters IV and V; Section 504 of the Rehabilitation Act of 1973; and Title II of the Americans with Disabilities Act of 1990, and all associated regulations and guidance.
- L. **Fees.** MaineHousing may charge application fees, commitment fees, financing fees, and escrow administration fees provided such fees are described in the applicable Program Guide.
- M. **Other Requirements.** The Developer shall satisfy requirements of funding sources and such other requirements as MaineHousing, in its discretion, determines are prudent.
- N. **Waivers.** In the event MaineHousing offers a Program under which (i) MaineHousing lends money short term for acquisition of real estate or (ii) MaineHousing anticipates it will obtain undercollateralized mortgages, MaineHousing may waive or substitute less cumbersome requirements than those set forth in C., D., E., and F. for that Program.
10. **Selection criteria.** MaineHousing will set forth selection and approval criteria germane to a particular Program in the applicable Program Guide. Such criteria may include but are not limited to the following:
- how well a Development meets the objectives of the Program;
  - the use of resources other than MaineHousing's resources in the Development;
  - the length of commitment to affordability of the Development;
  - the length of commitment to a particular use of the Development;
  - the reasonableness of costs;
  - the efficiency of the use of proposed non-interest bearing resources;

- financial feasibility of the Development;
- income targeting;
- community preference and support;
- support of a state agency;
- the need for the Development;
- the capacity of the Development Team;
- the capacity of the Applicant to own and operate;
- extent of tenant displacement; and
- other criteria required by a funding source or established by MaineHousing.

11. **Relocation.** Developments are subject to the following relocation standards:

- A. **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.
- B. **Federally-assisted Developments.** Developers of Developments assisted with federal funds shall comply with applicable requirements including without limitation: 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; §104(d) of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. 5304(d)(4), and the Displacement Relocation Assistance, and Real Property Acquisition for HUD and HUD-Assisted Program Final Rule, 24 C.F.R. 42, as amended.
- C. **MaineHousing Financing.** Developers of Developments financed by MaineHousing and not subject to 11.B. above shall comply with the following:
  - i. **Temporary Tenant Relocation.** If tenants are not required to move permanently but must relocate temporarily because of rehabilitation to a Development, 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 Development upon completion of the Development; and the provisions for reimbursement of expenses and increased costs.
  - ii. **Displaced Persons.** If an individual moves from a property or moves personal property from real property permanently and involuntarily as a direct result of a Developer's acquisition, relocation, or demolition of such real property financed in whole or in part by MaineHousing, the Developer shall do the following:



- (1) The Developer shall provide in a form satisfactory to MaineHousing initial notices to all tenants. Failure to send such notices may cause tenants to be deemed displaced.
- (2) The Developer shall send each tenant a 90-day advanced written notice of the date by which the tenant must move in a form satisfactory to MaineHousing.
- (3) If the displaced person's income is below 80% of area median income, the Developer must do the following: (i) prior to sending the 90-day notice, contact the person to be displaced to explain the benefits, ascertain needs, and offer transportation for up to 3 available comparable units and (ii) pay either the tenant's actual reasonable out-of-pocket moving and related expenses or a one-time payment determined by MaineHousing.
- (4) If the displaced person's income is below 60% of median family income for the area, the Developer shall in addition to 11.C. ii. (1), (2), and (3) above, make 12 months of replacement housing payments to the displaced person. The Developer may make the payments in a lump sum or on a monthly basis. The amount of the replacement housing payments is the difference between the rent and utilities at either the replacement unit or a unit comparable to the vacated unit found by the Developer, whichever is less, and the monthly rent and utilities of the vacated unit multiplied by 12.

12. **New Construction and Rehabilitation Requirements.** If the Development includes new construction or rehabilitation, the following applies:

- A. **Approval of Construction Documents and Budget.** Funding for new construction or rehabilitation is subject to MaineHousing's review of the drawings, specifications, construction contract, and budget for reasonableness and completeness. MaineHousing may require a competitive bidding process for any general contractors or subcontractors.
- B. **Payment and Performance Bonds.** MaineHousing at its discretion may require any of the following or a combination of the following: (i) a payment and performance bond, (ii) a letter of credit, and (iii) a maintenance bond.
- C. **Escrows.** MaineHousing may establish, maintain, and administer an escrow account for all construction.
- D. **Other Requirements of Funding Resources.** The Developer shall comply with all applicable requirements of funding resources including without limitation: (i) taking affirmative steps to assure contracting with Women-owned and Minority-owned Business Enterprises; (ii) Davis-Bacon; (iii) Section 3 of the Housing and Urban Development Act of 1968; and (iv) the National Environmental Policy Act.
- E. **Codes and Standards.** All elements of the Development shall meet all applicable state and local codes and ordinances. Generally, all work undertaken must meet the standards set forth in the Maine Uniform Building and Energy Code and the minimum standards outlined in MaineHousing's *Quality Standards and Procedures Manual*. MaineHousing may require any or all the following: a plan review, a construction permit, a sprinkler permit, or a barrier free permit from the Department of Public Safety.
- F. **Accessibility and Adaptability Requirements.** The design and construction of and improvements to the Development shall comply with all applicable accessibility laws, which include but are not limited to the Federal Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988; the Maine Human Rights Act, Subchapters IV and V;

Section 504 of the Rehabilitation Act of 1973; and Title II and III of the Americans with Disabilities Act of 1990, MUBEC and associated regulations accessibility standards and guidance as may be amended.

- G. **Interpretation of Codes and Standards.** If there is a question in interpretation of codes or standards, the construction or rehabilitation shall conform to MaineHousing's interpretation of such codes and standards.
  - H. **Incomplete Work Escrows.** MaineHousing may disburse all of its funds upon completion of all but a few items if (i) (a) the incomplete work items are awaiting seasonable opportunity; (b) the incomplete work items are back-ordered and therefore unavoidably incomplete; or (c) MaineHousing determines that circumstances warrant inclusion of other non-safety related incomplete work items; and (ii) MaineHousing retains an amount equal to 150% of the cost required to complete such items.
  - I. **Flexible Use.** To the extent feasible, the Development shall comply with the physical licensing standards for residential facilities of the Department of Health and Human Services; the Department of Corrections; the Department of Education; and their successor agencies.
  - J. **Other Requirements.** The Developer shall comply with all requirements MaineHousing, in its discretion, determines are prudent.
  - K. **Waivers.** In the event MaineHousing offers a Program under which (i) MaineHousing lends money short term for acquisition of real estate or (ii) MaineHousing anticipates it will obtain undercollateralized mortgages, MaineHousing may waive or substitute less cumbersome requirements than those set forth in A., B., C., and H.
13. **Management Requirements.** The Developer shall manage the property in accordance with state and federal laws, the requirements attached to the source or sources of financing, applicable Program Guides, and the loan documents.
14. **Maintenance Requirements.**
- A. **Minimum Maintenance Standards.** The Developer shall maintain the Development in good condition and in accordance with applicable laws and codes; the funding sources; the Loan Documents; and the International Property Maintenance Code established by the International Code Council.
  - B. **Inspections.** The Developer shall permit MaineHousing to inspect the Development as it deems reasonably necessary as a prudent lending institution and a responsible public agency.
15. **Matching of Resources.** MaineHousing may match resources provided by a municipality in connection with a Development (which resources may include, without limitation, land, buildings, equipment, personnel, zoning provisions, and money) on a dollar-for-dollar basis, with the value of the resources being provided by the municipality to be determined by MaineHousing.
16. **Rule Limitations.**
- A. **Other Laws.** If this rule conflicts with any provision of federal or state law, the federal or state law shall control.

**B. Waivers.** Upon determination of 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.

**STATUTORY AUTHORITY:** 30-A MRSA §§4741(1) and 4722(1)(L)

**EFFECTIVE DATE:**