

**PROGRAM GUIDE**

**LOAN MODIFICATION FOR  
SECTION 8 PROPERTIES** (revised 4/15)

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**Attachments:**

**SCHEDULE A**

**Loan Modification Program Application Rental Loan Program and  
Project-Based Section 8**

# LOAN MODIFICATION PROGRAM GUIDE FOR SECTION 8 PROPERTIES

## Purpose

The purpose of the Loan Modification Program for Section 8 Projects (the “Program”) is to permit eligible Maine State Housing Authority (“MaineHousing”) borrowers to modify the interest rate and/or extend the term of MaineHousing amortizing loans secured by a first mortgage and security agreement, on projects which are subject to a New Construction or Substantial Rehabilitation Housing Assistance Payments Section 8 Contract or Projects Converted from Section 23 Leased Housing Program Section 8 Housing Assistance Payments Contract, in order to foster the preservation of federally subsidized affordable multiunit housing for families and individuals in Maine by assisting existing MaineHousing borrowers in their efforts to address rising project operating costs and ongoing debt service requirements.

## Multi-Family Rule

Any existing MaineHousing loans modified in accordance with the Program are and shall 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 loan modification under the Program consisting of an interest rate modification and extension of loan term through the Program a loan must be **(i)** an existing MaineHousing loan in good standing, **and (ii)** secured by a first mortgage and security agreement on a project subject to a New Construction or Substantial Rehabilitation Section 8 Housing Assistance Payments Contract or Projects Converted from Section 23 Leased Housing Program Section 8 Housing Assistance Payments Contract.

A loan which is subject to an existing restriction concerning prepayment is not eligible for an interest rate modification through the Program, except as otherwise set forth below.

A loan subject to an existing restriction concerning prepayment which otherwise satisfies the loan eligibility requirements set forth above with an interest rate above the Program interest rate is not eligible for an interest rate modification under the Program, but is eligible for an extension of the term of the loan in accordance with the Program. Notwithstanding the foregoing, a loan subject to an existing restriction concerning prepayment and with an interest rate lower than the Program interest rate, which otherwise satisfies the loan eligibility requirements is eligible for an interest rate modification, and will be modified to reflect the Program interest rate in connection with a modification of the term of the loan.

Additionally, in order to qualify for a loan modification under the Program borrowers requesting modification of an eligible loan must modify all other eligible loans secured by the same project in accordance with the Program. Deferred loans are not eligible for an interest rate modification, but are eligible for an extension of loan term in order to be coterminous with the extended term of an eligible loan modified in accordance with the Program. A loan may be modified under the Program only one time.

**b. Borrower Eligibility.** Any entity with an eligible loan in good standing, which is secured by a first mortgage and security agreement on a project subject to a Section 8 Housing Assistance Payments Contract and was **financed prior to January 1, 2009** is eligible to apply under the Program.

No application for the Program will be considered, approved or processed 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 loan document violation in the last 6 months, unless an approved payment or workout plan is in place and in good standing; **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 for any proposed capital improvements, as it deems appropriate.**

**MAINEHOUSING WILL MAKE THE FINAL DETERMINATION REGARDING WHETHER OR NOT EACH LOAN AND BORROWER IS ELIGIBLE FOR THE PROGRAM, INCLUDING WHETHER OR NOT A LOAN IS SUBJECT TO AN EXISTING RESTRICTION CONCERNING PREPAYMENT, IN ITS SOLE DISCRETION.**

## **Application and Processing**

Program Applications will include the following:

1. Cover letter requesting modification of an eligible loan; and
2. Completed Program application in the form attached hereto as Exhibit A.

Incomplete or unsigned submissions will be rejected and returned. A complete Program application may be later rejected if the quality of information provided is determined, after comprehensive review, to be unacceptable.

Successful borrowers will have **90 days to close** from the date of the issuance of the loan modification commitment letter, unless otherwise agreed to by MaineHousing in writing.

Please contact your Asset Manager for an application or more information about the Program.

## **Loan Modification**

**a. Program Interest Rate.** The Program interest rate will be five and one-half percent (5.5 %) for any eligible loan modified under the Program, unless another interest rate shall be established by MaineHousing. Any loan which currently is subject to a restriction concerning prepayment and with an interest rate higher than the Program interest rate is not eligible for an interest rate modification under this Program.

**b. Loan Term.** The minimum term of any loan as modified and extended, or extended, under the Program shall be 15 years or the remaining term of an existing affordability contract/covenant, whichever is greater but not to exceed 30 years. Notwithstanding the foregoing, an eligible borrower may select one (1) of the following three (3) options:

A 15 year loan term calculated on a 30 year amortization schedule with a balloon payment at the end of 15 years.

A prepayment prohibition for the first 10 years with prepayment allowed at any time throughout the remaining 5 years of the term.

A prepayment penalty will apply in years 11 through 15 as follows:

- Year 11- 5% of original loan amount
- Year 12- 4% of original loan amount
- Year 13- 3% of original loan amount
- Year 14- 2% of original loan amount
- Year 15 -1% of original loan amount

2. A 30 year loan term with an election by the owner of either a 30 year amortization schedule or 40 year amortization schedule with a balloon payment in year 30.

A prepayment prohibition for the first 15 years with a sliding scale prepayment penalty applied in years 16 through 20 as follows:

- Year 16- 5% of original loan amount
- Year 17- 4% of original loan amount,
- Year 18 -3% of original loan amount,
- Year 19 -2% of original loan amount
- Year 20 - 1%of original loan amount.

Loan may be prepaid without penalty after year 20.

3. A 30 year loan term with an election by the owner of **(i)** a 30 year amortization schedule; **(ii)** a 40 year amortization schedule with a balloon in year 30; **or (iii)** interest-only for 30 years with a balloon in year 30.

There is a prepayment prohibition for the first 20 years. No prepayment penalty will apply after the end of the prepayment blackout period.

A .25 basis point reduction will be applied to the applicable mortgage interest rate.

**c. Mortgage Bifurcation.** A property with a MaineHousing amortizing loan that has a current loan balance in excess of \$25,000 per unit is eligible to request a debt bifurcation to modify the loan repayment schedule as follows;

- Principle and interest payments to be calculated on a portion of the current loan balance and;
  - Interest-only payments on the remaining portion of the current loan balance.
- The loan bifurcation split will be calculated on a case-by-case basis.

Any ownership transfer of a property that has a mortgage modified under the Note Modification Program is subject to the MaineHousing Ownership Transfer Rule.

**d. Recourse/Non-Recourse Debt.** The MaineHousing financing, including any eligible loans modified under the Program will be fully recourse, unless the eligible loan to be modified is currently a non-recourse obligation, in which case it shall remain a non-recourse obligation.

**e. Lien Position.** Any eligible loan modified under this Program will remain 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.**

**f. Loan Documents.** The existing promissory note(s) evidencing the eligible loan(s) will be modified by a loan modification agreement, allonge to promissory note or other loan documentation required by MaineHousing in its sole discretion. Any and all existing loan documents related to the modified eligible loan shall remain unmodified and in full force and effect, unless otherwise agreed in writing by MaineHousing.

**g. Guarantors.** Any guarantor of an eligible loan shall consent to the requested loan modification and shall reaffirm the guaranty of the loan and any related obligations under the loan documents, as modified in accordance with the Program.

## **Affordability**

**Projects Subject to Housing Assistance Payments Contracts.** For eligible loans secured by 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 or 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 or 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 an eligible loan. The financial assistance agreement or declaration of covenants, conditions and restrictions, as approved by MaineHousing, shall obligate 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 term of the eligible loan, as modified under the Program, except that in the event the remaining term of any existing affordability agreement exceeds the term of the eligible loan, as modified, the borrower shall comply with the Program affordability requirements for the remaining term of the existing affordability agreement.

Borrower may prepay the MaineHousing loans without restriction in the event the Section 8 Housing Assistance Payments Contract applicable to the property is not continued or renewed through no fault of the Borrower and there is no comparable replacement assistance or subsidy program available to the Borrower.

## **Appraisal**

MaineHousing generally will not require an appraisal, but reserves the right to do so if it deems such a requirement necessary or appropriate in connection with a requested modification.

## **Project Reserves**

The Borrower shall continue to maintain the project reserves currently required by the Regulatory Agreement between the owner and MaineHousing and/or the existing loan documents in accordance therewith. Notwithstanding the foregoing, MaineHousing reserves the right to require an increase in the funding of the project reserve accounts in connection with any loan modification.

## **Closing Requirements**

Eligible borrowers will execute all loan documents in such form and substance as MaineHousing determines necessary or appropriate, including without limitation, as applicable: a commitment letter; loan modification agreement and/or mortgage modification agreement; allonge to promissory note; financial assistance agreements; declaration of covenants, conditions, and restrictions; deposit account control agreement; and subordination agreement. MaineHousing will require an endorsement to the existing lender's title insurance policy. MaineHousing will also require corporate, company, or partnership authorization for the proposed loan modification and execution of any loan documents or amendments to existing loan documents as required by MaineHousing in connection therewith. Further, MaineHousing will require a legal opinion for all borrowers and guarantors, other than individuals, regarding legal status, authority to modify eligible loans and authority to execute all loan documents required by MaineHousing in connection with the loan modification closing. Eligible borrowers will provide evidence of the current payment for property, liability, casualty and such other insurance coverage in such amount as MaineHousing may require in its sole discretion for the Development, with MaineHousing named as mortgagee and loss payee. Eligible borrowers are responsible for obtaining any consents or approvals which may be required by HUD in connection with any loan modification under this Program. All eligible borrowers shall satisfy such other requirements as MaineHousing, in its discretion, determines are necessary or appropriate in connection with the loan modification.

## 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

There shall be no displacement or relocation of tenants in connection with the modification of any eligible loan(s) under the program.

## Non-Discrimination and Compliance with Federal Laws

MaineHousing 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 upon sufficient notice. MaineHousing will also provide this document in alternative formats upon sufficient notice. MaineHousing has designated the following person responsible for coordinating compliance with applicable federal and state nondiscrimination requirements and addressing grievances: Louise Patenaude, Equal Access Coordinator, Maine State Housing Authority, 353 Water Street, Augusta, Maine 04330-4633, Telephone Number (207) 626-4600 or 1-800-452-4668 (voice), or 1-800-452-4603 (TTY).

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.

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**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.**