



Loan Modification Program

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mainehousing.org | 207-626-4600

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Loan Modification Program

Purpose

The purpose of the Loan Modification Program (the “Program”) is to permit eligible Maine State Housing Authority (“MaineHousing”) borrowers to modify the amortization and/or extend the term of MaineHousing loans secured by a mortgage and security agreement, on multifamily projects which received financing from MaineHousing. The Program fosters the preservation of 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, by offering debt restructuring which may also be combined with the Subsequent Loan Program.

Multi-Family Rule

Any existing MaineHousing loans modified in accordance with the Program are and shall remain subject to the provisions of MaineHousing’s Multi-family Mortgage Loans Rule, Chapter 29, 99-346.

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 a loan must: (i) be an existing MaineHousing loan in good standing; (ii) be secured by a mortgage and security agreement; (iii) be a multifamily project financed by MaineHousing ; and (iv) not have been modified within the last five year period prior to making application under the Program.

A loan subject to an existing restriction concerning prepayment, which 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. The loan may however be eligible for an extension of the term in accordance with the Program.

A loan subject to an existing restriction concerning prepayment, which satisfies the loan eligibility requirements set forth above, with an interest rate below the Program interest rate, 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 this Program one time only in a five-year period.

If a loan has been modified under the Program within the past five years, and the borrower applies for additional funds under MaineHousing's Subsequent Loan Program, MaineHousing may waive the five-year loan modification prohibition for the purpose of permitting the modified loan to be coterminous with the subsequent loan.

B. Borrower Eligibility

Any entity with a loan which meets the loan eligibility requirements under subsection A of this Program Eligibility Section is eligible to apply.

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 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.

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 IN ITS SOLE DISCRETION 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.

Loan Modification Terms

A. 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 loan modification, MaineHousing may require additional reserves or the use of reserves for improvements to the project.

As a condition of financing under the Program, any replacement reserve accounts and/or tax and insurance accounts that exist outside of MaineHousing must be transferred to MaineHousing to

be held in an institution of MaineHousing's choice, with MaineHousing, or its designee, as sole signatory on the accounts.

B. Program Interest Rate

The Program base rate is the Subsequent Loan Program Base Rate posted on MaineHousing's website: <https://www.mainehousing.org/programs-services/housing-development/developmentdetails/subsequent-loan-program>, unless another interest rate is established by MaineHousing.

C. Loan Terms

Eligible borrowers may select one (1) of the following four (4) options:

1. Amortizing Loan Options:

- A. A 15 to 30-year loan term fully amortizing;
- B. A 15 to 29-year loan term calculated using a 30-year amortization schedule with a balloon payment at maturity; OR
- C. A 30-year loan term with an election by the owner of either a 30-year amortization schedule or a 40-year amortization schedule with a balloon payment in year 30.

All amortizing loans may be pre-paid in the final five years with a prepayment penalty equal to 5% of the outstanding principal amount of the loan.

2. 30-year Interest Only Loan.

- A. A 30-year interest-only loan with a balloon payment in year 30, with the one-time option for the borrower to elect to convert the loan to amortizing after year 15 by providing MaineHousing with a 90-day notice.

Prepayment is prohibited.

D. 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.

E. Recourse/Non-Recourse Debt

The MaineHousing financing, including any eligible loans modified under the Program will be fully recourse, unless prohibited by the funding source or the borrower is a limited partnership.

F. Lien Position

Any eligible loan modified under this Program will remain secured by a 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.

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.

H. Fees

The borrower shall pay the following non-refundable fees:

- Application fee of \$1,000 due with any application under the Program.

Affordability

For projects subject to Section 8 Housing Assistance Payments Contracts ("HAP") the borrower shall comply with the affordability restrictions in the HAP until expiration of the HAP, including any renewals thereof. The borrower shall seek and accept any extensions and renewals of the Section 8 HAP and any comparable replacement assistance or subsidy program offered by HUD.

Upon the expiration of the Section 8 HAP, 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 borrower will also be expected to comply with existing affordability covenants, such as a financial assistance agreement, declaration of covenants, conditions and restrictions or extended use agreement for the longest of the term of the eligible loan, as modified under the Program, or

the term of the existing affordability agreement. In addition, as a condition of loan modification approval, MaineHousing may require additional affordable units, deeper affordability, and/or a longer affordability term.

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; note modification agreement; financial assistance agreements; declaration of covenants, conditions, and restrictions; deposit account control agreement; and subordination agreement. For limited partnerships, limited liability companies and other corporate entities, borrowers may be required to extend the operative agreements (limited partnership agreement, operating agreement, etc.) to match the term of the modified loan.

MaineHousing will require an endorsement to the existing lender's title insurance policy meeting MaineHousing requirements.

Eligible borrowers will provide evidence of current payment of 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.

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.

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.

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

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.

Submission Requirements

Applications for the Program will be reviewed on an on-going, walk-in basis.

Program Applications shall include the following:

- Complete Program Application in the form available on MaineHousing's Website <https://www.mainehousing.org/programs-services/housing->

[development/developmentdetails/loan-modification-program;](#)

- Executed Conflict of Interest Disclosure Form attached hereto as Exhibit A; and
- Payment of the application fee.

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.

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

Conflict of Interest

To maintain the continued confidence of Maine citizens in carrying out our joint mission to assist Maine people in obtaining and maintaining quality affordable housing, MaineHousing Partners must avoid situations which are, or appear to be, at odds with their responsibilities to MaineHousing. Maine law and federal regulations (when federal funding is involved) govern conflicts of interest.

MaineHousing Partners must ensure that **no** person who is an employee, agent, or consultant of the Partner – *and* who performs any functions with respect to any MaineHousing program – may obtain a personal or financial interest or benefit (other than their earnings) from MaineHousing programs, either for themselves or for those with whom they have family, business, or close personal ties. As soon as the Partner becomes aware of a potential conflict of interest:

- The Partner must disclose to MaineHousing all personal and business relationships between Partner's employees and any contractors, agents, or consultants who work on MaineHousing programs.
- The Partner must disclose to MaineHousing all employees (including temporary employees and volunteers) of the Partner who are applicants for MaineHousing programs administered by the Partner.
- The Partner must disclose to MaineHousing anyone who will be paid for work on MaineHousing programs who is a current or former MaineHousing employee or commissioner – or has family, business, or close personal ties with a current or former MaineHousing employee or commissioner (within the last year.)

As part of the Application process, borrowers will be required to complete the Conflict of Interest Disclosure Form, attached hereto as Exhibit A.

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 protected classes under applicable federal and state non-discrimination laws in the admission or access to or treatment in its programs and activities and employment. 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: Kelley Stonebraker, Maine State Housing Authority, 26 Edison Drive, Augusta, Maine 04330, Telephone Number (207) 626-4600 or 1-800-452-4668 (voice), or Maine Relay 711 or email EqualAccess@mainehousing.org.

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.

Approved:

A handwritten signature in black ink, appearing to read "Daniel Brennan", with a long horizontal flourish extending to the right.

Daniel Brennan, Director

Exhibit A - Conflict of Interest Policy & Conflict of Interest Disclosure Form

Conflict of Interest Policy – MaineHousing Partners *

To maintain the continued confidence of Maine citizens in carrying out our joint mission to assist Maine people in obtaining and maintaining quality affordable housing, MaineHousing Partners must avoid situations which are, or appear to be, at odds with their responsibilities to MaineHousing. Maine law and federal regulations (when federal funding is involved) govern conflicts of interest.

MaineHousing Partners must ensure that **no** person who is an employee, agent, or consultant of the Partner – *and* who performs any functions with respect to any MaineHousing program – may obtain a personal or financial interest or benefit (other than their earnings) from MaineHousing programs, either for themselves or for those with whom they have family, business, or close personal ties. As soon as the Partner becomes aware of a potential conflict of interest:

- The Partner must disclose to MaineHousing all personal and business relationships between Partner’s employees and any contractors, agents, or consultants who work on MaineHousing programs.
- The Partner must disclose to MaineHousing all employees (including temporary employees and volunteers) of the Partner who are applicants for MaineHousing programs administered by the Partner.
- The Partner must disclose to MaineHousing anyone who will be paid for work on MaineHousing programs who is a current or former MaineHousing employee or commissioner – or has family, business, or close personal ties with a current or former MaineHousing employee or commissioner (within the last year.)

Conflict of Interest Definitions

A ***conflict of interest*** arises when the personal interest of an employee (or a family member, friend, or business associate of the employee) conflicts or potentially conflicts with the employee’s work duties or responsibilities to MaineHousing. Conflicts of interest can occur when actions may be improperly influenced by a secondary motive, such as:

- financial gain,
- professional advancement, or
- desire to do favors for family and friends.

An ***appearance of a conflict of interest*** exists if circumstances are believed to create a risk that decisions may be improperly influenced by other motives. It is important to note that a conflict of interest may exist, regardless of whether any unethical or improper act has taken place.

A ***direct interest*** occurs when the employee individually, or through a majority stakeholder position in an entity, owns or is a party to any contract, business agreement, project, or property.

Individuals with management, control or other decision-making responsibilities, or voting rights for an entity, are also considered to have a direct interest.

* This policy applies to all individuals and organizations who receive funding from or who have a business or contractual relationship with MaineHousing. Pertinent partners include, but are not limited to: Grantees, Subgrantees, Sub-recipients, Community Action Agencies, Shelters, Developers, Applicants, Contractors, Administrators, and Vendors.

An *indirect interest* occurs when family members, friends, or business associates of the employee have ownership or contractual rights in any contract, business agreement, project, or property. Shares in an entity by the employee or commissioner through an investment vehicle, a trust or estate arrangement, mutual fund, or other intermediary also meets the definition of an indirect ownership interest. Additionally, any ownership interest in a related entity (such as a parent company or subcontractor) that plans to do business with MaineHousing is considered an indirect interest.

Family members are defined broadly, and include spouse/partner, mother, father, son, daughter, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother, sister, brother-in-law, sister-in-law, nephew, niece, uncle, aunt, first cousin, grandparent, grandchild. Family members also include all "half" or "step" relatives (e.g. half-brother or step-daughter).

Conflict of Interest Procedures

Personal or Business Relationships Involving Employees

As soon as a Partner becomes aware of a personal or business relationship involving an employee that could give rise to perceived partiality, an appearance of a conflict of interest, or an actual conflict of interest in connection with MaineHousing programs, **the Partner shall disclose the relationship to MaineHousing in writing, with a description of the Partner's plan to manage the potential conflict.** Once reviewed and approved by MaineHousing's Director of Audit, the plan must be signed by the employee and representative(s) of the Partner and submitted to MaineHousing. Plans must be reviewed and re-signed once a year.

Employees as Applicants for MaineHousing Programs

If eligible, Partner employees (including temporary staff and volunteers) are encouraged to apply for MaineHousing programs administered by the Partner. However, approval of any program application by a partner employee **requires two levels of signature**, including the Director or other Senior Executive of the Partner.

Copies of signed applications must be submitted to MaineHousing, and maintained by the Program Department in accordance with required Records Retention periods. The Partner must also retain original signed and approved applications in accordance with required Records Retention periods.

Compliance with the Partner Conflict of Interest Policy and Procedures will be monitored by MaineHousing staff and subject to periodic program audits.

If you are unsure whether a situation constitutes a conflict of interest, please consult with your contact at MaineHousing, or email MaineHousing's Director of Audit, Kimberly Whitley, at kwhitley@mainehousing.org.

MaineHousing Partners
Conflict of Interest Disclosure Form

I have read and understand the *Conflict of Interest Policy – MaineHousing Partners*.

- YES
- NO

Do you (or any of your principals or affiliates, or anyone who will be paid for work in connection with the project, program, contract or services at hand), have business ties, family relationships, or other close personal relationships with a current MaineHousing commissioner or employee or anyone who was a MaineHousing commissioner or employee within the past year?

- NO
- YES (please describe below, or attach)

Signed: _____

Date: _____

Printed Name: _____

Title: _____