

## Subsequent Loan Program Guide

**Purpose.** The purpose of the Subsequent Loan Program (the “Program”) is to improve the condition of and maintain, preserve, or extend the affordability of projects financed by the Maine State Housing Authority (“MaineHousing”). Applicants may borrow funds in connection with existing MaineHousing projects for unanticipated operating shortfalls, capital improvements, rehab work, energy efficiency improvements, the creation of new units, the preservation of affordability, and equity takeout. No application fees or points are charged for these loans.

**Loan Eligibility.** The project must have been subject to a first mortgage and security agreement securing a Maine Housing loan within the six (6) months prior to submission of the subsequent loan application.

**Borrower Eligibility.** An application will not be accepted, processed, or approved by MaineHousing if the applicant or any principal or affiliate or member of its development team:

- has been more than 60 days delinquent on any loan with MaineHousing in the past year;
- has been declared in default on any loan with MaineHousing for reason other than delinquency, unless the default has been cured or there is an approved workout plan in place and in good standing;
- has ever been the owner of any MaineHousing-financed project in which MaineHousing has foreclosed a mortgage interest or received a deed-in-lieu of foreclosure of a mortgage interest unless previously waived by MaineHousing;
- is presently debarred, suspended, proposed for debarment, or excluded from participation in any federal or state programs;
- has in the last 10 years had any proceeding in or for bankruptcy, receivership, reorganization or any other arrangement for relief from creditors commenced against it that affected a MaineHousing-funded project and was not dismissed within 90 days of commencement, or commenced any proceeding in or for bankruptcy, receivership, reorganization or any other arrangement for relief from creditors that affected a MaineHousing-funded project; or
- has ever had a professional license to provide the services the party seeks to provide for the project suspended or revoked.

For any proposed changes in ownership, the proposed owner must demonstrate sufficient previous experience in the development of projects of similar scale and complexity, and satisfy the requirements of MaineHousing’s Transfers of Ownership process.

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

MaineHousing will determine at its sole discretion whether or not any applicant is eligible for the Program.

## Subsequent Loan Terms

- a. Capital Needs.** As part of a subsequent loan, MaineHousing will require an applicant 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 applicant 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 and the loan improves the project or preserves, maintains, or extends affordability.
- d. Interest Rate.** The applicable Subsequent Loan Program Base Rate is posted on MaineHousing's website: <http://www.mainehousing.org/programs-services/housing-development/developmentdetails/SubsequentLoan>.
- e. Loan Term.** Borrower may select one (1) of the following three (3) options:
1. An amortizing loan term of five (5) to twenty (20) years at the Subsequent Loan Program Base Rate. The loan may not be prepaid at any time, in whole or in part, before the tenth anniversary of the Note without MaineHousing's prior written consent. Thereafter, the following prepayment premium shall be applied to the then-outstanding principal balance:
    - i. From the 10th anniversary of the Note up to but not including the 11th anniversary of the Note: 5% fee.
    - ii. From the 11th anniversary of the Note up to but not including the 12th anniversary of the Note: 4% fee.
    - iii. From the 12th anniversary of the Note up to but not including the 13th anniversary of the Note: 3% fee.
    - iv. From the 13th anniversary of the Note up to but not including the 14th anniversary of the Note: 2% fee.
    - v. From the 14th anniversary of the Note up to but not including the 15th anniversary of the Note: 1% fee.

The note may be prepaid without premium on or after the 15th anniversary of the Note.

2. An amortizing loan with an interest rate 25 basis points below the Subsequent Loan Program Base Rate for twenty-one (21) to thirty (30) years with a thirty (30) or forty (40) year amortization schedule and a balloon payment upon maturity. The loan may not be prepaid before the fifteenth anniversary of the Note. Thereafter, the following prepayment premiums shall be applied to the then-outstanding principal balance:
  - i. From the 15th anniversary of the Note up to but not including the 16th anniversary of the Note: 5% fee.
  - ii. From the 16th anniversary of the Note up to but not including the 17th anniversary of the Note: 4% fee.
  - iii. From the 17th anniversary of the Note up to but not including the 18th anniversary of the Note: 3% fee.
  - iv. From the 18th anniversary of the Note up to but not including the 19th anniversary of the Note: 2% fee.
  - v. From the 19th anniversary of the Note up to but not including the 20th anniversary of the Note: 1% fee.

The loan may be prepaid without premium on or after the 20th anniversary of the Note.

3. A thirty (30) year loan term with an interest rate 50 basis points below the Subsequent Loan Program Base Rate and a thirty (30) or forty (40) year amortization schedule or interest-only payments for thirty (30) years with a balloon payment at year thirty (30). The loan may not be prepaid before the twentieth anniversary of the Note. No prepayment premium will apply after the end of the prepayment prohibition period.

The Developer shall pay a prepayment penalty charge equal to three percent (3%) of the outstanding principal balance of this Note in the event of any involuntary prepayment.

Note: An ownership transfer of a property that has a mortgage under the Program is subject to the MaineHousing Transfer of Ownership Interests Rule.

**f. Recourse/Non-Recourse Debt.** The subsequent loan will be fully recourse unless the borrower is a limited partnership.

**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. At its sole discretion, MaineHousing may also require a modification of the existing debt terms or sources as a condition of approving a subsequent loan. If there are five

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(5) or fewer years left on the existing loan and that loan has a higher interest rate than the current applicable Subsequent Loan Program Base Rate, MaineHousing will reduce the interest rate for the existing loan to that Subsequent Loan Program Base Rate effective as of the date of its original maturity.

**i. Restriction Concerning Prepayment.** Any subsequent loan shall include a provision prohibiting prepayment of the subsequent loan in whole or in part as described in Paragraph e. above; provided, however, MaineHousing may waive the prepayment prohibition to allow the borrower or its affiliate to refinance the project under another MaineHousing program for which the project is eligible.

**j. Fees.** The borrower shall pay in advance for any appraisals, capital needs assessments, market studies and environmental assessments commissioned by MaineHousing. However, there are no application fees or points for the loan. Developer fees are payable only from equity-takeout.

**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 of subsidy program offered by United States Department of Housing and Urban Development (“HUD”).

Upon the expiration of the Section 8 HAP, 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 Section 8 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 longest of the term of the existing loan, the subsequent loan, or the term of any existing affordability agreement. In addition, as a condition of a subsequent loan approval, MaineHousing may require additional affordable units, deeper affordability, and/or a longer affordability term.

**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 a *Quality Standards and Procedures Manual and Best Practices Guide*. Any rehabilitation or construction of additional units shall comply with MaineHousing's standards which may be found at [www.mainehousing.org](http://www.mainehousing.org). Completed improvements must meet *Maine Uniform Building and Energy Code* (MUBEC) 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. All lead-based paint and asbestos hazards must 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.

**Outreach Efforts to Women and Minority-owned Businesses.** Certain federal equal access and affirmative action laws require recipients of federal funding provide job training, employment and contracting opportunities to women- and minority-owned businesses to the greatest extent possible. Accordingly, all developers, applicants and contractors shall solicit bids from women and minority-owned businesses involved in the construction of multi-family housing in Maine. All bid packages for the construction and rehabilitation of multi-family housing must include these requirements.

**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 or interest-only 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 amortizing and interest only loans, existing and subsequent, may not exceed 85% loan-to-value. MaineHousing will determine whether 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; declaration of covenants, conditions and restrictions; regulatory agreement; escrow agreement; deposit account control agreement; and fair housing and accessibility act compliance certification. MaineHousing shall require a lender's title insurance policy with mechanics' lien and survey 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;
- Requested loan terms;

- 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; and
- Description of how the loan improves the project or preserves affordability.

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. Applicants shall state whether the applicant, any principal or affiliate of the applicant, or anyone who will be paid for work with proceeds of the Program has business ties, familial relationships, or other close personal relationships with a current MaineHousing employee or commissioner or anyone who was a MaineHousing employee or commissioner within the past year; and describe any such relationship.

**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.

**Temporary Relocation:** If tenants 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.

**Multi-Family Rule.** MaineHousing financed projects are subject to the provisions of Maine State Housing Authority’s Multi-family Mortgage Loans Rule, Code of Maine Rules, 99 346 029.

**Non-Discrimination and Compliance with Federal Laws.** MaineHousing does not discriminate on the basis of race, color, religion, sex, sexual orientation, national origin, ancestry, physical or mental disability, age, familial status or receipt of public assistance in the admission or access to or treatment in its programs and activities. In employment, MaineHousing does not discriminate on the basis of race, color, religion, sex, sexual orientation, national origin, ancestry, age, physical or mental disability or genetic information. 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, Maine State Housing Authority, 353 Water Street, Augusta, Maine 04330-4633, Telephone Number 1-800-452-4668 (voice in state only), (207) 626-4600 (voice) or Maine Relay 711.

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 a subsequent loan. MaineHousing accepts no obligation to make any loan until a subsequent loan commitment or term sheet has been issued and accepted by the borrower in accordance with its terms. MaineHousing cannot ensure whether a loan under this program resulting in a change in ongoing debt service for a project which is subject to, and benefitted by, a Section 8 Housing Assistance Payments Contract will or will not result in a corresponding future change in project rents by HUD under any rental adjustment provision.

Approved:



Daniel E. Brennan, Director