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# Chapter 1 - Home Mortgage Program Rule, 2018

Maine State Housing Authority

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## 99 INDEPENDENT AGENCIES - NOT PART OF STATE GOVERNMENT

### 346 MAINE STATE HOUSING AUTHORITY

#### CHAPTER 1: Home Mortgage Program Rule

Summary: The Maine State Housing Authority is authorized to use revenues from the sale of tax-exempt bonds and other housing monies to reduce interest rates and other costs associated with the purchase of a home by low and moderate income households. This rule sets forth the basic criteria for determining eligible borrowers and the terms governing the Maine State Housing Authority's purchase and servicing of loans to eligible borrowers generated by participating lenders. The Maine State Housing Authority also publishes and regularly updates a procedural guide for participating lenders. The procedural guide includes specific instructions, guidelines, terms and conditions for the sale of single family mortgage loans to the Maine State Housing Authority and the servicing of the loans. The Maine State Housing Authority also enters into agreements with lenders regarding the sale and servicing of the single family mortgage loans.

#### 1. **Definitions.**

- A. "Act" means the Maine Housing Authorities Act, 30-A M.R.S.A. § 4701, *et seq.* as amended.
- B. "Applicant" means one or more individuals who have applied for a Mortgage Loan, and any other individual who is expected both to live in the Eligible Residence and to be liable on the Mortgage Loan.
- C. "Bond" means a bond of MaineHousing, the proceeds of which are used to purchase Mortgage Loans.
- D. "Eligible Borrower" means an Applicant who meets certain criteria and thus may receive mortgage financing from Bond proceeds.
- E. "Eligible Residence" means a residential housing structure which meets certain criteria and thus may be financed with Bond proceeds.
- F. "Home Mortgage Program" means MaineHousing's use of revenues from Bond sales and other housing monies to reduce interest rates and other costs associated with the purchase of a home by low and moderate income households as set forth in this rule.
- G. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, including applicable rules and regulations proposed or promulgated thereunder.
- H. "Lender" means a mortgage lending institution which originates or sells or originates and sells Mortgage Loans for MaineHousing's purchase.

- I. “MaineHousing” means the Maine State Housing Authority.
- J. “Mobile Home” means a single housing unit built after June 15, 1976 in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C.A. § 5401, *et seq.*, and is on a permanent chassis and transportable in one or more sections which in the traveling mode are 12 body feet or more in width and when erected on site are 600 or more square feet.
- K. “Mortgage” means a written instrument which provides an Eligible Borrower’s interest in an Eligible Residence as security for repayment of a loan made pursuant to this rule.
- L. “Mortgage Loan” means an interest-bearing obligation which is secured by a Mortgage and provides permanent financing for an Eligible Residence.
- M. “Mortgagor” means a person who receives a Mortgage Loan.
- N. “Mortgage Purchase Agreement” means an agreement between MaineHousing and a Lender whereby MaineHousing agrees to purchase Mortgage Loans from the Lender in such form as may be prescribed by MaineHousing from time to time.
- O. “New Home” means a previously unoccupied single-unit residence. A New Home does not include 2, 3 or 4 unit dwellings or Mobile Home.
- P. “Procedural Guide” means the set of instructions, guidelines, terms and conditions for the origination of Mortgage Loans, the sale of Mortgage Loans to MaineHousing, and the servicing of Mortgage Loans provided by MaineHousing, as amended and supplemented.
- Q. “Qualified Rehabilitation” means rehabilitation that satisfies the criteria of a qualified rehabilitation as set forth in § 143 of the Internal Revenue Code.
- R. “Qualified Servicer” means a financial institution which has executed a Servicing Agreement with MaineHousing.
- S. “Servicing Agreement” means an agreement between MaineHousing and a Qualified Servicer whereby the Qualified Servicer agrees to service Mortgage Loans purchased by MaineHousing, in such form as may be prescribed by MaineHousing from time to time.
- T. “Targeted Area” means either a “qualified census tract” as defined in § 143 of the Internal Revenue Code or “an area of chronic economic distress” designated by MaineHousing and approved by the United States as set forth in § 143 of the Internal Revenue Code.

2. **Income.**

- A. **Income Limits.** Unless otherwise permitted by MaineHousing, an Applicant will not qualify as an Eligible Borrower if the Applicant's income exceeds income limits established under § 143 of the Internal Revenue Code. MaineHousing may set lower income limits after consideration of availability of volume cap pursuant to § 146 of the Internal Revenue Code and market conditions, including without limitation, interest rates, availability of housing, and acquisition costs. Income limits may vary by geographic area and family size.
- B. **Determination of Income.** Section 143 of the Internal Revenue Code governs the determination of an Applicant's income.
- C. **Verification of Income.** An Applicant must provide evidence of income and employment as established by MaineHousing and required under § 143 of the Internal Revenue Code.

3. **Acquisition Cost.**

- A. **Acquisition Cost Limits.** Unless otherwise permitted by MaineHousing, a residence will not qualify as an Eligible Residence if the acquisition cost of the residence exceeds acquisition cost limits established under § 143 of the Internal Revenue Code. MaineHousing may set lower acquisition cost limits for a particular phase of its Home Mortgage Program after consideration of availability of volume cap pursuant to § 146 of the Internal Revenue Code and market conditions, including without limitation, interest rates, availability of housing, and acquisition costs. Acquisition cost limits may vary by geographic area and number of units in a residence.
- B. **Determination of Acquisition Cost.** Section 143 of the Internal Revenue Code governs the determination of the acquisition cost.
- C. **Included Costs.** Generally, the acquisition cost includes the following:
  - (1) all amounts paid in cash or in kind for the residence;
  - (2) the reasonable cost of completing the residence; and
  - (3) the capitalized value of any ground rent.
- D. **Excluded Costs.** Generally, the acquisition cost does not include the following:
  - (1) the value of personal property not affixed to the residence;
  - (2) usual and reasonable settlement or financing costs such as origination fees paid by the Borrower to the Lender, title insurance fees, survey fees, credit

report fees, appraisal fees, and attorneys' fees;

- (3) the value of services performed by the Applicant or members of the Applicant's family in completing the residence; and
- (4) the cost of land which has been owned by the Applicant for at least 2 years prior to the date construction of the residence begins.

4. **Eligible Residence.**

A. **Included Residences.** The following may qualify as an Eligible Residence:

- (1) A conventional single family residence.
- (2) A unit in a condominium established in compliance with the Unit Ownership Act, 33 M.R.S.A. § 560, *et seq.* or the Maine Condominium Act 33 M.R.S.A. § 1601-101, *et seq.*
- (3) A single residential structure containing two, three or four dwelling units, one of which will be occupied by the Mortgagor and which was first occupied as a residence at least five years before the date of the Mortgage.
- (4) Multiple detached units on a single continuous parcel of land provided:
  - (a) all units have been used as residences for more than five years; and
  - (b) the land on which the units are located cannot be subdivided; or if the land can be subdivided, the Mortgagor shall treat the units as one building and shall attach the units with a permanent connection financed with the Mortgagor's own funds.
- (5) A tenant-shareholder's interest in a cooperative housing corporation.
- (6) Mobile Home in compliance with Section 13.A. of this rule.
- (7) Qualified Rehabilitation.
- (8) A New Home with a builder's warranty that the home is of good quality, free from faults or defects, and fit for use as a home; and the builder's agreement to promptly correct any defects discovered within one year of purchase.

B. **Quality Standards.** An Eligible Residence must be located in the State of Maine; be structurally and functionally sound; comply with all applicable zoning, building and health codes and similar requirements; meet applicable private mortgage insurance, federal mortgage insurance or guaranty program requirements; and satisfy prudent lending standards.

- C. **Use.** A residence intended to be used in a trade or business (other than the rental of units not occupied by the Mortgagor in a 2 to 4 unit residence) is not an Eligible Residence unless otherwise permitted by MaineHousing in accordance with § 143 of the Internal Revenue Code. A residence used as an investment property or a vacation home is not an Eligible Residence.
  - D. **Owner Occupancy.** At the time the Mortgage Loan closes, the residence must reasonably be expected to become the principal residence of the Mortgagor within a reasonable time after the financing is provided.
5. **Land.**
- A. **Basic Livability.** Land appurtenant to a residence is part of the Eligible Residence if the land reasonably maintains the basic livability of the residence and does not provide, other than incidentally, a source of income to the Mortgagor.
  - B. **Noncontiguous Lots.** Noncontiguous lots are not included as part of an Eligible Residence unless local zoning law requires the lot to remain with the residence.
  - C. **Maximum Lot Size.** Unless local zoning laws require a larger lot or the value of the land is less than 30% of the appraised value of the residence, the lot of an Eligible Residence may not exceed one acre for New Homes, Mobile Homes being permanently attached to a new site, and farms, and three acres for other homes.
  - D. **Payment for Excess Land.** A Mortgagor shall use sources other than the Mortgage Loan proceeds to pay for excess land. However, MaineHousing will accept an appraiser's determination that the excess land has \$0 value.
6. **Prior Ownership.**
- A. **Three Year Period.** Unless otherwise permitted by MaineHousing in accordance with § 143 of the Internal Revenue Code, a Mortgagor may not have had a present ownership interest in a principal residence, other than the residence financed by the Mortgage Loan, at any time during the three-year period prior to closing of the Mortgage Loan.
  - B. **Included Interests.** The following are present ownership interests: a fee simple interest, joint tenancy, tenancy-in-common, tenancy by the entirety, the interest of a tenant-shareholder in a cooperative, a life estate, a bond-for-deed or installment sale contract, and an interest held in trust for an Applicant that would constitute a present ownership interest if held directly by the Applicant.
  - C. **Excluded Interests.** The following are not present ownership interests: a remainder interest, a lease with or without an option to purchase, a mere expectancy of inheriting an interest in a principal residence, and an interest in a purchase and sale contract.

7. **New Mortgage.**

A Mortgagor may not have an existing mortgage on the residence securing the Mortgage Loan prior to closing of the Mortgage Loan unless: (i) the mortgage was for land alone, a construction loan, or a bridge loan or similar temporary initial financing; or (ii) the Mortgage Loan is for Qualified Rehabilitation.

8. **Targeted Areas.**

MaineHousing shall make certain amounts of Mortgage Loan money available within Targeted Areas as prescribed by § 143 of the Internal Revenue Code.

9. **Recapture.**

Some Mortgagors who sell their residences within nine years of purchase must pay recapture with their federal income taxes in accordance with § 143 of the Internal Revenue Code. The recapture amount depends upon the number of years that the Mortgage Loan is outstanding, family size, income and gain realized. The recapture will not exceed the lesser of 50% of the gain realized by the Mortgagor or 6.25% of the Mortgage Loan. The Lender shall inform each Mortgagor of potential recapture as required under § 143 of the Internal Revenue Code.

10. **Net Worth Limits.**

MaineHousing may establish a net worth limit for Eligible Borrowers including household members. If a net worth limit is established, MaineHousing will determine how it will be calculated and what assets, if any, are excluded from the calculation.

11. **Underwriting Standards.**

Lenders must approve or reject Mortgage Loan applications according to prudent lending practices they use in making other residential mortgage loans in the State of Maine, standard private mortgage insurance requirements, the Procedural Guide, the Mortgage Purchase Agreement, and the requirements of any applicable federal mortgage insurance or guaranty program.

12. **Loan Document Requirements.**

- A. **Security.** The Mortgage Loan shall be evidenced by a promissory note and secured by a perfected first lien Mortgage on an Eligible Residence.
- B. **Binding Obligations.** The Mortgage, note and any other instruments securing the Mortgage Loan shall create legal, valid, and binding obligations of the Mortgagor, enforceable in accordance with their terms, free from any right of set-off, counterclaim, or other claim or defense.

- C. **Use of Funds.** Mortgage Loan funds shall be used only to finance the acquisition, acquisition plus improvement, or qualified rehabilitation of an Eligible Residence.
  - D. **Term.** The original term of the Mortgage Loan shall not exceed thirty years excluding any construction period.
  - E. **Amortization.** The Mortgage Loan documents shall provide for monthly payments, interest payable in arrears, and full repayment by maturity. Amortization shall commence within two months after closing. Monthly amortization payments shall be due on the first day of each month, and the final payment date shall be shown on the loan documents.
  - F. **Late Fee.** The Mortgage shall provide for a late charge in an amount not to exceed 5% on payments fifteen days or more past due.
  - G. **Escrow.** The Mortgage shall provide for the monthly collection of escrow payments for real estate taxes, any mortgage insurance premiums, and hazard insurance premiums in addition to the monthly amortization payments.
  - H. **Good Repair.** The Mortgage shall require the Mortgagor to keep the residence in good repair and condition, to keep the residence free from liens and encumbrances, and to maintain hazard insurance.
  - I. **Lender's Compliance with Laws.** Lenders shall make the Mortgage Loans in compliance with all applicable federal and state laws, rules and regulations, including without limitation truth-in-lending laws, fair credit reporting laws, and equal opportunity laws.
  - J. **Mortgagor's Compliance with Rule.** The Mortgage shall contain covenants and representations assuring the Mortgagor's compliance with this rule.
  - K. **Due-On-Sale.** The Mortgage shall contain a due-on-sale clause.
13. **Mobile Homes.** Mortgage Loans for Mobile Homes must be secured by a perfected lien on real property consisting of the Mobile Home and the land and meet the following requirements:
- A. **Permanent Attachment.** The Mobile Home must have its wheels, axles and hitch removed; be anchored to land according to the manufacturer's specifications; and be permanently connected to utilities.
  - B. **Permanent Skirt.** The Mobile Home must have a compatible permanent exterior cover from the bottom of the unit to the ground.
  - C. **Compliance of Mobile Home Park.** If the Mobile Home is located in a mobile home park, the mobile home park must be in compliance with applicable laws; and an Eligible Borrower shall provide the mobile home park manager with a notice of



lien, in form acceptable to MaineHousing, informing the mobile home park of MaineHousing's lien interest in the Eligible Residence.

- D. **Leased Land.** If the Mobile Home is located on leased land, the lease must meet requirements established by MaineHousing such as a minimum term, termination for cause, and assignability.
- E. **Additional Documents.** A loan for a Mobile Home requires a mortgage, a security agreement, and a supplemental appraisal. If the Mobile Home is single wide with a manufacturing date prior to September 30, 2007 or double wide, a UCC-1 financing Statement is required. If the Mobile Home is single wide with a manufacturing date on or after October 1, 2007, a Certificate of Title from the Bureau of Motor Vehicles is required.

14. **Insurance.** Mortgage Loans generally require the following insurance:

- A. **Mortgage Insurance.** Private mortgage insurance acceptable to MaineHousing or federal mortgage insurance or a federal guaranty of repayment, if the loan to value ratio exceeds an amount set by MaineHousing in accordance with prudent lending standards, with any resulting private mortgage insurance being subject to the provisions contained in the Homeowners Protection Act of 1998.
- B. **Title Insurance.** Lender's title insurance ensuring MaineHousing has a good and valid first lien Mortgage on the Eligible Residence subject only to:
  - (1) standard exceptions permitted by national mortgage market lenders; and
  - (2) other minor impediments to title if the Lender warrants the impediments do not materially affect marketability and the Lender indemnifies MaineHousing against cost and damages arising from the impediment.
- C. **Hazard Insurance.** Fire and customary extended coverage insurance in an amount equal to the lesser of replacement cost of the improvements or the original principal balance of the Mortgage Loan, unless otherwise permitted by MaineHousing.
- D. **Flood Insurance.** Flood insurance if required in accordance with prudent lending standards or federal mandates.
- E. **Condominiums.** Fidelity insurance, if the Eligible Residence is part of a condominium that has more than twenty units, and comprehensive public liability insurance for the association of unit owners.

15. **Mortgage Loan Portfolio Diversification.**

MaineHousing reserves the right to restrict the aggregate principal balance of Mortgage Loans (1) insured by one mortgage insurer; (2) insured by a type of mortgage insurer; (3) originated pursuant to a particular MaineHousing program; or (4) secured by certain types of

residences such as condominiums, 2 to 4 unit structures, Mobile Homes, and new construction in a particular bond issue or in MaineHousing's entire portfolio consistent with § 143 of the Internal Revenue Code and portfolio diversification needs.

16. **Down Payment/Closing Cost Assistance.**

MaineHousing may provide down payment or closing cost assistance in addition to the Mortgage Loan.

17. **Lenders.**

- A. **Distribution of Mortgage Money.** MaineHousing may make Mortgage Loan money available to Eligible Borrowers through Lenders. MaineHousing will notify Lenders when Mortgage Loan money is available.
- B. **Participation of Lenders.** To participate as a Lender, a financial institution must be authorized to do business in Maine and be in compliance with all applicable laws. The financial institution must submit an application including its financial statements, its current underwriting practices and guidelines for residential mortgage loans, staff experience and training, fidelity bond and errors and omissions insurance coverage, and proof that an adequate system of quality control exists for originating residential mortgage loans.
- C. **Eligibility Determination.** A Lender shall review each application for a Mortgage Loan and take reasonable steps to verify the information provided in the application.
- D. **Loan Registration.** A Lender shall register each loan application submitted by an Applicant in accordance with the loan registration requirements contained in the Procedural Guide.
- E. **Duty to Repurchase.** A Lender shall repurchase any Mortgage Loan sold to MaineHousing if:
  - (1) MaineHousing determines that any representation was untrue when made, a misstatement of a material fact exists in any of the documents delivered in connection with the Mortgage Loan, or any warranty or term required of the Lender has been breached;
  - (2) the mortgage insurer or guarantor fails to deliver a certificate of insurance or a guaranty certificate for the Mortgage Loan, if applicable; or
  - (3) the Lender fails to deliver any documents required by the Procedural Guide or required by MaineHousing as a condition of purchase, all in form and substance satisfactory to MaineHousing within the period provided in the Procedural Guide; or

- (4) the Mortgage Loan does not conform to the requirements of this rule, the Mortgage Purchase Agreement, or the Procedural Guide.
- F. **First Come, First Served.** A Lender shall process applications on a first come, first served basis. A Lender shall not reject an application because the Applicant is not a depositor or customer. A Lender shall accept and process all applications for Mortgage Loans unless it appears from information provided that the Applicant would not be an Eligible Borrower.
- G. **No Discrimination.** A Lender shall not discriminate against any person or group of persons on account of race, color, religion, age, familial status, physical or mental disability, sex, sexual orientation, marital status or national origin, or on any other basis prohibited by federal, state or local law.
- H. **Mortgage Purchase Agreement.** A Lender shall enter into a Mortgage Purchase Agreement with MaineHousing.
- I. **Prudent Investment and Reinvestment Certificate.** Unless otherwise agreed, MaineHousing shall not purchase a Mortgage Loan unless the Lender certifies that in its judgment the Mortgage Loan would in all respects be a prudent investment for its own account and that the proceeds of the sale or its equivalent shall be reinvested in mortgage loans or notes providing financing for housing within the State of Maine.
- J. **Continued Participation.** MaineHousing may impose conditions on Lenders' continued participation such as requiring Lenders to issue a certain number of Mortgage Loans or to continue to maintain a certain level of quality in originating and selling Mortgage Loans.
18. **Loan Servicing.**
- A. **Qualified Servicers.** Only a financial institution designated as a Qualified Servicer may service the Mortgage Loans. A Lender that is not designated a Qualified Servicer and has not previously designated another Qualified Servicer to service its Mortgage Loans shall release its servicing rights to MaineHousing for a release fee established by MaineHousing.
- B. **Servicing Agreement.** A Qualified Servicer shall enter into a Servicing Agreement with MaineHousing.
- C. **Responsibilities.** A Qualified Servicer collects all payments from the Mortgagor, remits principal and interest payments to MaineHousing, and renders an accounting to MaineHousing of all sums collected and disbursed. A Qualified Servicer shall service Mortgage Loans in accordance with prudent servicing practices, the Servicing Agreement, and the Procedural Guide.
- D. **Fee.** A Qualified Servicer receives a monthly servicing fee from MaineHousing.

- E. **Default.** A Qualified Servicer shall give notice of default on a Mortgage Loan to MaineHousing and shall foreclose or take other actions necessary to protect MaineHousing's interest in accordance with MaineHousing's instructions.
- F. **Indemnification.** A Qualified Servicer shall purchase any Mortgage Loan serviced by it or otherwise indemnify MaineHousing as outlined in the Servicing Agreement if:
  - (1) its negligence causes the mortgage insurance to lapse;
  - (2) its misfeasance, nonfeasance, or malfeasance with respect to servicing of the Mortgage Loan causes or threatens MaineHousing with material loss;
  - (3) it waives the repayment of the Mortgage Loan upon the sale of the Eligible Residence or approves the assumption of the Mortgage Loan without MaineHousing's prior written consent; or
  - (4) any attempted foreclosure proceeding is prevented, delayed, or judicially determined to be improper by virtue of a defect in the documents assigned to MaineHousing.

19. **Sources Other Than Bond Proceeds.**

MaineHousing may appropriate funds from sources other than Bond proceeds to facilitate the Bond sales or reduce interest rates, principal amounts, or closing costs on all or some Mortgage Loans. MaineHousing may defer repayment of loans from such other sources to the sale or refinance of the Eligible Residence, the maturity of the Mortgage Loan, or any other time. MaineHousing will determine the interest rate, if any, charged on such loans.

20. **Rule Limitations.**

- A. **Other Laws.** If this rule conflicts with any provision of federal or state law, such federal or state law shall control.
- B. **Pool of Eligible Borrowers.** This rule establishes a pool of Eligible Borrowers and does not confer any rights to Mortgage Loan money on such persons. MaineHousing may provide further or more detailed guidance on eligibility criteria and administrative procedures in other publications such as the Procedural Guide.
- C. **Additional Requirements.** This rule does not preclude additional or alternative requirements to implement § 143 of the Internal Revenue Code, the Act, or this rule, or to facilitate the Bond sales.
- D. **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.

BASIS STATEMENT: This replacement rule repeals and replaces in its entirety the current Home Mortgage Program Rule. The replacement rule does the following: (i) MSHA references are changed to MaineHousing; (ii) the new mortgage requirement is clarified to state that a homebuyer may not *currently* have a mortgage on the residence; (iii) mobile home security requirements are updated to comply with current law; (iv) the requirement for fidelity insurance on condominiums is changed from condominiums with greater than 30 units to condominiums with greater than 20 units; (v) language allowing MaineHousing to limit mortgage insurers by type of mortgage insurer is added; (vi) the section on application requirements for lenders to participate in our single family requirements is expanded; (vii) the Servicing Agreement is referenced in the section requiring indemnification from a Qualified Servicer.

FISCAL IMPACT NOTE: The rule will not impose any cost on municipalities or counties for implementation or compliance.

STATUTORY AUTHORITY: 30-A M.R.S.A. § 4741.1

EFFECTIVE DATE: