

CHAPTER 7 INDIAN HOUSING MORTGAGE INSURANCE PROGRAM RULE

SUMMARY: This rule sets forth standards governing the administration of the Indian Housing Mortgage Insurance Program. The purpose of the Program is to make mortgage loans available to Indians living on reservations on the same terms as they are available to persons not living on reservations. Due to the restrictions on the use and ownership of land which are peculiar to some of the tribal reservations, financial institutions have been historically reluctant to provide loans to Indians living on reservations. Mortgage insurance provided under the Program offers greater assurance to lenders by removing some of the marketability risks to collateral posed by these restrictions. The Rule sets forth eligibility standards and application, closing, default, and insurance claim procedures.

1. Definitions

- A. "Authority" means the Maine State Housing Authority, a body corporate and politic and an instrumentality of the State of Maine.
- B. "Applicant" shall mean a tribal member who currently is or will be a resident of the Penobscot Tribal Reservation, the Indian Township Passamaquoddy Reservation, or the Pleasant Point Passamaquoddy Reservation and who applies for mortgage insurance under the Program.
- C. "Lender" shall mean a financial institution authorized to do business in Maine and further, shall be that lender that originates mortgage loans insured under the Program.
- D. "Committee" shall have the same meaning as set forth in Title 30-A M.R.S.A. § 4933(5), as it may be amended from time to time.
- E. "Demand for Insurance Payment" shall mean the formal written demand for a payment of mortgage insurance benefits submitted by a Lender to the Authority.
- F. "Fund" means the Indian Housing Mortgage Insurance Fund as defined and established in Title 30-A M. R. S. A. §§ 4933(3) and 4934-A, both as may be amended from time to time.

- G. "IHA" means either the Penobscot Tribal Reservation Housing Authority, Indian Township Housing Authority or Pleasant Point Indian Housing Authority.
- H. "Loan" means either a permanent mortgage loan or a construction loan originated by a Lender that is insured by the Program.
- I. "Loan Insurance Certificate" means the evidence of mortgage loan insurance provided under the Program, in a form determined by the Authority, that is delivered to a Lender.
- J. "Loan Insurance Commitment" means the Authority's commitment to provide Loan insurance made available by the Program.
- K. "Program" means the mortgage insurance program governed by the terms and conditions of this Rule.
- L. "Property" means the real and related personal property customarily conveyed with the real property to be acquired by an Applicant that is financed by a Loan insured by the Program.

2. Eligibility

- A. The Applicant must meet the following standards to be eligible for insurance of a Loan under this Program:
 - 1. The Applicant must appear on the current "Annual Census" of the Passamaquoddy Tribe or Penobscot Nation.
 - 2. The land to be mortgaged must be located on one of the following tribal reservations:
 - a. the Penobscot Tribal Reservation;
 - b. the Indian Township Passamaquoddy Reservation; or
 - c. the Pleasant Point Passamaquoddy Reservation.
 - 3. The Applicant's monthly income must be such that (a) his or her projected monthly housing expense, which shall include mortgage principal and interest, mortgage insurance premiums, property insurance premiums and,

if applicable, life and health insurance premiums shall not exceed 28% of the Applicant's gross monthly income and (b) his or her fixed monthly payments (installment loans, alimony, child support, etc.) shall not exceed 36% of gross monthly income, provided, however, that, on recommendation of the Lender, the Authority may permit use of increased ratios up to 33% and 38% respectively.

4. The Applicant shall have a credit rating and an employment history acceptable to the Lender and the Authority in accordance with standard loan underwriting standards prevalent in the industry.
5. The Applicant shall have sufficient cash to pay closing costs and to make the payment described in Section 3(D) of this Rule.

- B. The Property and any existing residential waste disposal system must satisfy applicable life and safety construction or habitability codes and regulations including, without limitation, the requirements of the Maine State Plumbing Code, as it may be amended from time to time.

3. Amount and Nature of Loan and Insurance

- A. The Property must be appraised by an appraiser licensed by the Maine Board of Real Estate Appraisal. The appraisal of improvements shall be performed on a replacement cost basis.
- B. The maximum principal Loan amount that will be eligible for the Program is the maximum home purchase price for the Authority's HOME Purchase Program, as governed by Rule Chapter 1 of the Rules of the Maine State Housing Authority on the date of application.
- C. Insurance under the Program will insure 100% of the principal amount of a Loan not exceeding 99% of the lesser of the sales price or appraised value.
- D. Any difference between the sales price and the principal amount of the Loan shall be paid from cash of the Applicant.
- E. Loans for the following purposes are eligible:
 - 1 The construction of a home;

2. The improvement of an existing home or manufactured housing, including the improvement or installation of sewage disposal and water supply systems, the construction of a garage, or any other permanent improvement of the home, provided such improvement is located on the mortgaged land;
 3. The purchase of an existing dwelling; or
 4. The purchase of manufactured housing located or to be located upon land on one of the Reservations, which land will be mortgaged to secure the Loan.
- F. The Lender shall charge an interest rate which does not exceed the greater of the rates charged by the Lender at the time the Loan application is submitted to the Lender for mortgage loans insured by the Federal Housing Administration or guaranteed by the US Department of Veterans' Affairs, respectively. If the Lender is not offering loans under either of the aforementioned government programs at the time the Loan application is submitted to it, this provision shall not apply.
- G. The Loan term shall not exceed 30 years.
- H. The Borrower's equity in the Property and improvements to be mortgaged shall be equal to at least one percent of the lesser of the sales price or the appraised value of the Property and improvements.

4. Application

- A. The Applicant shall complete an application for the Program that shall be obtained from the applicable IHA.
- B. The IHA will confirm whether the Applicant is a tribal member.
- C. Upon the determination required in Section 4(B), the IHA shall forward the application to the Lender. The Lender shall arrange for the appraisal of the Property and verify the application's accuracy. The Applicant shall bear all costs for the appraisal and verification.

- D. The completed Application and all supporting documentation shall be submitted to the Authority upon the Lender's determination of eligibility. The Authority shall determine whether the application and supporting documentation are prepared in accordance with this Rule. If the application and supporting documentation is in accord with this Rule, the application will be submitted to the Committee for its approval. The Authority shall issue a Loan Insurance Commitment to the Lender and Applicant upon the Committee's approval of the application.

5. Pre-closing Procedures

- A. When the Property is located on the Penobscot Tribal Reservation, the Lender shall cause the Property's title to be searched and a title opinion to be issued for the benefit of both the Lender and the Applicant. The Lender may reject an application if title is defective (notwithstanding the Property's location on tribal land) provided that, the Applicant shall be given a reasonable opportunity to cure the defect(s) to the Lender's satisfaction. When the Property is located on the Indian Township or Pleasant Point Reservations, the applicable Tribal Council shall pass a binding resolution setting forth a legal description of the Property and an authorization for the Applicant to assume possession, control, and the right to occupy the Property. A copy of the resolution shall be provided to the Lender upon request.
- B. The Lender or IHA shall prepare the necessary real estate and Loan closing legal documents and confirm the availability of adequate fire insurance coverage (with an extended coverage endorsement) for the Property.

6. Closing

- A. The Lender shall collect the following amounts at the time of Loan closing, which may be payable out of Loan proceeds:
 - 1. A Lender origination fee equal to the amount charged by the Authority in its HOME Purchase Program as governed by Rule Chapter 1 of the Rules of the Maine State Housing Authority;
 - 2. A maximum, one-time lump sum mortgage insurance premium of four percent of the Loan amount. The actual premium, based on market conditions, shall be periodically announced by the Authority;

3. Fire insurance (with extended coverage) premiums for one year;
4. Credit life insurance and disability insurance premiums, if required;
5. Appraisal costs;
6. Cost of credit verification report;
7. Legal fees.

B. The Authority, upon approval of the Application, shall send to the Lender a Loan Insurance Certificate promptly after the Authority's receipt of the Lender's written certification that all Loan closing agenda items have been satisfied or will be satisfied in the ordinary course. Upon a Lender's written request, the Authority may approve a transfer of the Loan Insurance Certificate to any other financial institution as defined in 30-A M.R.S.A. § 4702(7). Upon a transfer, all of the Lender's right, title, interest, benefits, and obligations under the Program shall cease and shall be assigned to the successor financial institution who shall then become a Lender within the meaning of this Rule.

7. Default

- A. The Lender shall document its efforts to collect any unpaid amounts due under a Loan. All notices of default and other material delivered to a borrower in connection with a Loan in default and copies of any other documentation prepared in connection with a Loan in default shall be delivered to the IHA and the Authority. The Lender shall use its best collection efforts and exercise that degree of diligence customary in its business to collect any unpaid amounts due under a Loan.
- B. Notwithstanding a Lender's efforts to collect unpaid amounts due under a Loan as set forth in Section 7(A) of this Rule, no Loan shall be allowed to remain delinquent for more than 90 days. If, upon the 90th day, the borrower has not cured a default, the Lender shall deliver to the Authority a Demand for Insurance Payment.
- C. Upon receipt of a Demand for Insurance Payment, the Authority shall pay an amount from the Fund to the Lender equal to the sum of the outstanding principal of the Loan, accrued interest, and accrued fire insurance premiums, if any.

- D. Upon receipt of such payment, the Lender shall deliver the following documents to the IHA or the Authority, as applicable:
1. Original Loan closing documents including an assignment to the IHA of the mortgage and / or other security documents and an endorsement to the IHA of the promissory note and / or other documents evidencing the indebtedness due under the Loan;
 2. A release to the Authority of all the Lender's claims arising out of or based upon the applicable Loan Insurance Certificate;
 3. The fire insurance policy and all endorsements, with evidence acceptable to the IHA that it has been substituted as loss payee.
- E. Within one month of the receipt of the original closing documents as assigned or endorsed to the IHA, the IHA shall either:
1. Accept a conveyance of the Property from the Borrower. In return, the IHA may release the Borrower from any or all obligations under the Loan documents but only with the written consent of the Authority;
 2. Lease the Property for a term of no more than one year. A lease to the borrower or the borrower's family members may only be for a term, rental amount, and on other conditions acceptable to the Authority; or
 3. Institute legal proceedings to collect unpaid amounts and / or realize upon the collateral securing the Loan. All such proceedings must be commenced and prosecuted in recognition of the jurisdictional constraints and the rights and duties set forth in "An Act to Implement the Maine Indian Claims Settlement", 30 M.R.S.A. § 6201 et seq. and in particular, Title 30 M.R.S.A. §§ 6202, 6204, 6205(5), and 6206(2); the federal Maine Indian Claims Settlement law, codified at 25 U.S.C. §§ 1721 et seq.; and the applicable regulations of the Bureau of Indian Affairs of the U. S. Department of the Interior, codified at 25 C.F.R. Part 152.
- F. Any amount received by the IHA on account of the disposition or lease of Property shall be remitted to the Authority promptly after receipt and shall be deposited by the Authority in the Fund for additional uses consistent with this

Rule. The IHA may deduct the following from any amount prior to its remittance to the Authority:

1. Legal fees and costs;
2. Property insurance premiums;
3. The cost of any repairs approved in advance by the Authority; and
4. Other reasonable expenses related to the disposition, lease, or management of the Property that are itemized and approved by the Authority prior to their incurrence.

G. The IHA may sell the Property. The Property may not be sold for less than the amount due under the Loan without the Authority's consent. The proceeds of the sale shall be remitted to the Authority, except that the IHA may deduct all foreclosure, Property management, and sale expenses not previously deducted.

H. If the IHA shall fail to follow the procedures set forth in this Section 7 with respect to any one or more defaulted Loans for Properties on a particular reservation, or if there is outstanding for 12 or more consecutive months \$50,000 or more paid from the Fund on account of defaulted Loans on a particular reservation, then no further Loans shall be made for properties on that reservation, until such compliance or until the amount paid from the Fund is reduced to below \$50,000.

8. Construction Loans

Construction Loans shall be originated and administered by Lenders in accordance with their own prudent lending and loan administration guidelines as applicable to disbursements of Loan proceeds and the inspection of residential buildings except that, notwithstanding the Lender's guidelines, improvements must satisfy applicable local codes and ordinances and federal construction and habitability standards such as the BOCA Basic National Building Code and the federal Housing Quality Standards as set forth in 24 C.F.R. § 882.109.

9. Manufactured Housing

Loans for the acquisition and / or improvement of manufactured housing may be insured under the Program. All manufactured housing must satisfy all requirements of those provisions set forth in the HOME Purchase Program promulgated as Rule Chapter 1 of the Rules of the Maine State Housing Authority that are applicable to manufactured housing.

BASIS AND BACKGROUND STATEMENT: In November, 1971, Maine voters approved an amendment to the Maine Constitution which added Article IX, Section 14-D. This section permits the State to insure payment of mortgage loans secured by housing on Maine's three Indian reservations. Statutes enabling the Indian Housing Mortgage Insurance Program (30 MRSA §4784, et seq.) were enacted in 1973. Regulations were adopted in 1974. In 1977, the section of regulations governing defaults was amended. Statutory amendments were made in late 1980 as part of the Maine Indian Claims Settlement Act. Among other things, the amendments created the Indian Housing Mortgage Insurance Committee and clarified procedures enabling the State Treasurer to obtain funds to make insurance payments. Regulations were prepared in late 1981 and a public hearing was held on the proposed regulations in April, 1982.

Representative comments received during the 1982 rulemaking process and the Authority's rationale for adopting or failing to adopt suggested changes are set forth below.

Due to the high rate of defaults under the Program (over 50% of the loans have been paid off by insurance), a number of changes were made in order to give banks and homeowners a greater incentive to maintain the loans. A downpayment requirement of 20% and insurance coverage of 90% were proposed. Commenters stated that the downpayment requirement would make the Program unaffordable to most Indians and that banks would not participate without 100% insurance (see Section 3). For the reasons given by the commenters, the Authority provided for a 5% downpayment with 100% insurance. Because of these changes, the Authority did not restore, as requested, the provision contained in the 1974 regulations allowing up to \$350 of closing costs to be paid from loan proceeds. It is not standard lending practice to permit payment of closing costs from loan proceeds.

The Authority did not extend the 15-day grace period for making loan payments because there are adequate provisions for time to work out problems in the event of default beyond the 15-day period (see Section 3).

The proposed rule prohibited an Indian Housing Authority from leasing property acquired on default to the defaulting borrower or a member of his family. A commenter stated

that this would be unfair in the case where the default was due to illness. For this reason, the rule was changed to require that the monthly rental payment be in an amount no less than the monthly mortgage payment under the defaulted loan (see Section 8.F.1).

The rule requires repayment to the State of funds received by an Indian Housing Authority from sale or lease of a property acquired on default and allows the Indian Housing Authority to recover certain expenses from proceeds of the sale or lease. Formerly, there was an allowance for actual legal fees and costs plus other expenses up to 10% of the proceeds. The rule allows more itemized costs but limits the unspecified category to 5%. The Authority did not restore the original rule provision as requested because the Authority believes that the current rule provides better cost control while still permitting reasonable costs to be paid for out of proceeds of sale or lease of the property (see Section 8.G and H).

By emergency rulemaking the Authority has amended Section 3.F of this rule in order to allow Banks offering loans under this program to charge market interest rates at times when they are not offering to the general public loans which are either insured by the Federal Housing Administration or guaranteed by the Veterans Administration. The adoption of this amendment as an emergency rule change will enable loans to be made under the program before the end of the current construction season. Effective October 26, 1982; Adopted as permanent February 17, 1983.

On January 27, 1983, in response to the request of a potential participating lender, the Authority amended this Rule so as to 1) impose the cost of loan application-related investigative procedures on the applicant (§4.D), 2) clarify the extent of the Bank's obligation in relation to property insurance, i.e., confirmation of its existence (§5.F), 3) reduce the number of days the IHA can grant a Borrower to cure a default from 120 to 90 (§8.C), and 4) empower the Authority to approve a transfer of the Loan Insurance Certificate to another financial institution (§7.D). The Authority believes these amendments to be appropriate in light of its policy of encouraging maximum private lender participation consistent with the overall intent of the Legislature in establishing the program. No comments were submitted on these amendments as originally proposed.

On January 27, 1983, the Authority amended §10.B of this Rule in order to limit mobile homes eligible for mortgage insurance under the program to those 1) constructed in accordance with standards promulgated under either the National Manufactured Housing Construction and Safety Standards Act of 1974 or the Maine Industrialized Housing Law, and 2) meeting certain size requirements. The Authority believes this change to be necessary in order to bring this aspect of the program into conformance with reasonably prudent standards of program administration. No comments were submitted on this amendment as originally proposed.

AUTHORITY: 30 MRSA §4789

EFFECTIVE DATE: July 17, 1982

AMENDED: October 26, 1982

AMENDED: February 9, 1983

BASIS STATEMENT: By emergency rulemaking the Authority has amended Section 3.F of this rule in order to allow Banks offering loans under this program to charge market interest rates at times when they are not offering to the general public loans which are either insured by the Federal Housing Administration or guaranteed by the Veterans Administration. The adoption of this amendment as an emergency rule change will enable loans to be made under the program before the end of the current construction season. No comments were submitted on this amendment when the Authority proposed to adopt it permanently.

EFFECTIVE DATE: March 20, 1983

BASIS STATEMENT: Many of the provisions of the current Indian Housing Mortgage Insurance Program Rule are obsolete and do not reflect current practice in the residential mortgage insurance market. The Board of Commissioners of the Maine State Housing Authority wish to repeal the Rule and replace it with one that reflects current market practices and otherwise, facilitates the efficient administration of the Indian Housing Mortgage Insurance Program. This repeal and replacement of the Rule sets forth revised standards governing the administration of the Indian Housing Mortgage Insurance Program. The purpose of the Program is to make mortgage loans available to Indians living on reservations on the same terms as they are available to persons not living on reservations. Due to the restrictions on the use and ownership of land which are peculiar to some of the tribal reservations, financial institutions have been historically reluctant to provide loans to Indians living on reservations. Mortgage insurance provided under the Program offers greater assurance to lenders by removing some of the marketability risks to collateral posed by these restrictions. The Rule sets forth eligibility standards and application, closing, default, and insurance claim procedures.

One written comment was received from Mr. Richard H. Mitchell, Executive Director of the Penobscot Tribal Reservation Housing Authority. Mr. Mitchell raises two concerns: (1)

the premium charge for mortgage insurance is excessive and (2) the Rule does not authorize the Insurance Committee to delegate all or some of its powers.

Section 6(A)(2) of the Rule has been clarified to state that the premium is a one-time charge. The Rule also states that the amount will fluctuate based on the most recent premium charged in the public and private mortgage insurance markets. The statute authorizing the Rule does not allow the Authority to delegate the functions of the Insurance Committee. If and when the statute is amended to allow a delegation, the Authority will accordingly amend the Rule.

Other changes to the rule were made for grammatical and stylistic reasons.

STATUTORY AUTHORITY: 30-A MRSA §4741(1); 30-A M.R.S.A., chapter 201, subchapter X; Me. Const. art. IX, § 14-D

EFFECTIVE DATE: April 15, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION): May 1, 1996

NON-SUBSTANTIVE CORRECTIONS: October 4, 1996 - removal of underlines and strikeouts which highlighted language altered by the April 15, 1996 amendment.

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