

MassHousing Proactive Multifamily Preservation and Loan Prepayment Guidelines

Adopted October 14, 2014, Rev. July 14, 2015

These Guidelines apply to all multifamily mortgage loans made by MassHousing that are subject to provisions restricting their prepayment during the life of the loan or some portion thereof. It is intended to apply to loans made to both for-profit and nonprofit borrowers. These Guidelines update and supersede the “Guidelines for Prepayment of MHFA Loans” adopted by the MassHousing Board of Directors in 1992.

Borrowers often seek to refinance their mortgage loans when interest rates are low, rather than waiting until maturity or expiration of any prepayment lockout, when interest rates are uncertain. By proactively creating an opportunity for MassHousing multifamily borrowers to do so under certain circumstances, MassHousing hopes to both ensure that the affordability of such properties is preserved before a possible market conversion, and to retain such properties in MassHousing’s portfolio by offering favorable financing terms.

MassHousing expects to consent to the prepayment of multifamily mortgages under certain circumstances to facilitate refinance of such properties with a new MassHousing loan and preservation of long-term affordability as provided herein. Generally, MassHousing will permit prepayment (or a modification and subordination/defeasance intended to facilitate a refinance) prior to maturity and/or expiration of a prepayment lockout) under the following circumstances:

- The existing senior MassHousing loan has less than 7 years remaining before it matures or less than 5 years remaining before it is eligible to prepay without MassHousing’s consent.
- The prepayment or refinancing transaction will result in the origination by MassHousing of a new permanent mortgage loan for the development (and possibly a construction bridge loan) and will result in a new disposition agreement, which will survive foreclosure, that ensures affordability for at least fifteen (15) years for no less than twenty percent (20%) of the units in the property, as required by MassHousing’s statute.
- The prepayment or refinancing transaction will provide resources to reasonably provide for the capital needs of the development and will not result in a material escalation of rents or displacement of existing tenants at the development;
- The borrower will pay all obligations owed to the Agency, including any prepayment fees or penalties, any unwind costs of swaps and other issuance or finance costs borne by the Agency that would not otherwise be recouped upon prepayment.

- Available federal resources that serve to protect tenants or facilitate affordability will be sought and secured to the greatest extent feasible and will be renewed for the longest term possible. MassHousing expects, in particular, that project-based Section 8 contracts will be renewed for the longest term possible, and that all available federal vouchers will be sought.
- The prepayment is not, in MassHousing's sole judgment, prohibited by the relevant loan participation agreement or other agreement governing or relating to the Agency's finance of the loan.
- To the extent a prepayment would result in a material decrease in the level of affordability at any development, this policy shall not apply. Such prepayment requests would be considered by the Board on a case-by-case basis.

Considerations:

To the extent that prepayments present capacity issues for federal, state or MassHousing resources, or utilize limited funding sources (the Federal tenant protection voucher funding account, for example), MassHousing will prioritize transactions based on the following considerations:

- The immediacy of the maturity date or expiration of the prepayment lock-out or of a time limitation relating to underlying subsidy resources;
- The development's level of physical or financial distress;
- The availability of scarce state resources;
- The degree to which tenants may be at risk of market rent escalation; and
- The borrower's readiness to proceed with the transaction.

The Agency may also take into account such factors and principles for prioritizing preservation transactions as are set forth in the Massachusetts Low Income Housing Tax Credit Qualified Allocation Plan (QAP).

Statutory Limits on Prepayment

Where a loan that otherwise qualifies for prepayment hereunder is within a prepayment lockout period required by MassHousing's enabling act¹, it may be necessary to structure a transaction that approximates the financial benefits of a straight prepayment and refinance, but avoids full prepayment, to ensure compliance with MassHousing's enabling act. We expect that such transactions may employ an alternative strategy to approximate the benefits to the borrower of a clean refinance. In such cases, the Agency may modify the loan to require early repayment of up to 90% of the loan, with the remaining loan to be secured by a cash escrow account, held by or for the benefit of MassHousing, equal to 100% of the sum of the remaining scheduled principal and

¹ For for-profit borrowers, the statutorily prepayment lockout will most often be for fifteen years (twenty years for loans made before July 1, 1983). Nonprofit borrowers are generally subject to a prepayment lockout for the entire term of their loan.

interest payments through the date on which the statutory prepayment restriction expires, plus prepayment fees and costs payable on such date. This account shall cover the remaining loan amount that was not pre-paid (of at least 10% of the loan amount) with all interest earnings on the account accruing to the owner. The account shall be invested by MassHousing in a manner that complies with any relevant tax restrictions associated with the bonds. MassHousing expects to consider such transactions, in consultation with counsel, in light of the terms and facts associated with each particular transaction. Notwithstanding other provisions of these Guidelines, loans to nonprofit borrowers will generally be considered eligible for modification/defeasance as described herein following the first 10 years of the term of the loan.

Exceptions for Loans With Imminent Maturity Dates:

For contractually locked-out loans not subject to a statutory prohibition on prepayment that are within three months of maturity, MassHousing will consent to prepayment, to facilitate a refinancing transaction outside of the Agency under certain circumstances, provided the transaction provides for ongoing affordability and complies with MGL Chapter 40T, the state’s preservation statute, as applicable. It should be noted generally that such loans, once they are refinanced outside the Agency, typically do not have any public asset management and do not provide for ongoing affordability in the event of foreclosure. This is not the case with a MassHousing refinancing. Nonetheless, while these transactions will be lost from the MassHousing portfolio, at least affordability will be preserved. Given that these transactions are virtually at their loan maturity, MassHousing will accommodate a prepayment-generated refinancing outside the Agency under the following circumstances:

1. For transactions that trigger the availability of tenant rental subsidy vouchers (generally Section 236 and 13A deals), and the owner agrees to maximize the number of vouchers, MassHousing will accept a prepayment of the mortgage loan.
2. For transactions where no new vouchers are expected, MassHousing will agree to subordinate its mortgage to a refinancing, provided all future loan payments are advanced to MassHousing at the closing of the refinancing.

Prepayability of Refinanced Loan

New multifamily mortgage loans that are not FHA-insured will be subject to a statutory prepayment lock-out consistent with MassHousing’s enabling act. FHA-insured loans may be subject to a shorter prepayment lock-out consistent with the terms of the FHA financing, to the extent permitted by statute.

These Guidelines are intended to advise borrowers generally regarding how we will approach prepayment requests. Notwithstanding any provision of these Guidelines to the contrary, MassHousing will review each loan proposed for prepayment, modification, subordination and/or defeasance hereunder on a case-by-case basis and will decide whether and on what terms to make a conditional commitment to facilitate a refinancing.