# 94-457 FINANCE AUTHORITY OF MAINE

CHAPTER 204 SECONDARY MARKET PROGRAM

Summary: This rule establishes the procedures, standards and fees applicable to those applying for and benefitting from the Authority's secondary market program for insured loans.

1. Definitions.

A. Reference to Act Definitions. Certain terms used in this rule, which are defined in the Finance Authority of Maine Act, 10 M.R.S.A. § 961 and following (the Act), shall have the meanings set forth in the Act, unless clearly specified otherwise or unless the context clearly indicates otherwise.

B. Defined Terms.

1. “Cap" means the maximum stated amount of liability of the Authority under any Program Document, stated as such, to any Holder.

2. "Certificate" means, as appropriate or as the context may require, the instrument evidencing ownership of an entire Guaranteed Portion or the instrument evidencing a fractional undivided ownership interest in a pool of Guaranteed Portions, each of which shall be an "insured certificate”.

3. "Chief Executive Officer” means, the Authority's chief executive officer or a person acting under the supervisory control of the Chief Executive Officer.

4. “Eligible Loan" means a loan insured under the Authority's Mortgage Insurance Program ("Chapter 101") or Small Business and Veterans' Small Business Mortgage Insurance Programs ("Chapter 103'), except asset-based or revolving working capital loans or any other working capital loan which is not on regular amortization schedule for a period greater than one year

5. "Fiscal and Transfer Agent" or "FTA" means the Authority's agent in carrying out the central registration, initial settlement, and paying functions with respect to

(I) The Guaranteed Portions sold and

(ii) Certificates.

The FTA has the responsibility for issuing, on behalf of the Authority, Certificates.

6. “Guaranteed Portion” means that portion of an Eligible Loan which has been insured by the Authority.

7. "Holder" is a person or organization other than the originating Lender who holds the Guaranteed Portion of an Eligible Loan with no servicing responsibilities. When a Lender assigns the Guaranteed Portion to an assignee, the assignee becomes a Holder only when a Program Document in substance and content acceptable to the Chief Executive Officer is executed.

8. "Lender” is the person or organization making and servicing an Eligible Loan. The Lender is also the party requesting insurance of an Eligible Loan.

9. “Loan Insurance Agreement" means the agreement between a Lender and the Authority to insure loans pursuant to the Small Business and Veterans' Small Business Mortgage Insurance Programs or to insure a specific loan pursuant to the Mortgage Insurance Program.

10. “Loan Insurance Authorization" means a letter from the Chief Executive Officer to a Lender agreeing to insure a loan to a Borrower on the terms and conditions and subject to the requirements stated therein.

11. "Loan Note Guarantee” means the agreement executed by the Chief Executive Officer setting forth the obligations of the Authority to the Holder of a Certificate evidencing either the Guaranteed Portion of an individual Eligible Loan or a fractional undivided interest in a specific pool of Guaranteed Portions.

12. “Program” means the Secondary Market Program governed by this rule and the Act.

13. “Program Documents” mean any and all instruments and documents acceptable in form and content to the Chief Executive Officer prepared for use in and to effectuate the Program.

14. "Secondary Market” means any Holder which acquires the insured portion of Eligible Loans insured by the Authority under Chapter 101 or Chapter 103, or both, and those portions of the Act pursuant to which those rules have been promulgated.

15. "Unguaranteed Portion” means that portion of an Eligible Loan which is not insured or guaranteed by the Authority.

2. Application Procedures

A. A Lender shall submit an application which complies with the requirements of this Rule on such forms and in such numbers as may be specified and with such supporting information as shall be required by the Chief Executive Officer.

B. The Chief Executive Officer shall be responsible for making application forms available and assisting Lenders in preparing applications.

C. No application will be considered complete unless substantially all questions are answered, substantially all supporting information is provided and the proper application fee is provided.

D. Ordinarily, an application must be received by the Chief Executive Officer at the same time an application under the Small Business and Veterans' Small Mortgage Insurance Program or the Mortgage Insurance Program is received.

3. Application Contents

A. General Information. The Lender shall submit with its application an application for insurance under either Chapter 101 or Chapter 103, unless there is already insurance under either Chapter.

B. Other. The Lender shall submit such other evidence or information as the Chief Executive Officer or the application form may require.

4. Approval/Rejection.

Any loan disapproved for loan insurance shall be automatically disapproved for the Program, and any loan approved for loan insurance shall be automatically approved for the Program unless the Chief Executive Officer shall prepare a written rejection briefly describing the proposed project, any significant communications between the Lender and the Chief Executive Officer, an evaluation of the application and the reasons for the disapproval. There shall be appended to the rejection portions of the application any written communications concerning the project which are deemed significant by the Chief Executive Officer. The members may, consistent with the Freedom of Access Act, 1 M.R.S.A. § 401 and following, and the Act, review the application in executive session.

5. Criteria and Considerations.

A. An application will not be approved unless the Authority determines that the appropriate criteria and considerations under Chapter 101 or 103, as appropriate, have been met and satisfied.

B. No application will be approved for a loan for which insurance under Chapter 101 or 103 is already in effect unless the Authority determines that the Eligible Loan will continue to be serviced as required by the Authority and unless the Authority determines that the Eligible Loan proceeds are still being used in connection with an eligible enterprise.

6. Payments by the Authority

Subject to the provisions of this Rule, the Authority will agree to pay to:

A. Any Holder, subject to the Cap on such Guaranteed Portion, 100 percent of any loss sustained by such Holder on the Guaranteed Portion and on interest due on such portion.

B. The Lender, in accordance with the Loan Insurance Authorization and Loan Insurance Agreement between the Authority and the Lender.

7. Loan Servicing.

Lender will be responsible for servicing the entire Eligible Loan, and Lender will remain mortgagee and/or secured party of record notwithstanding the fact that another party may hold the Guaranteed Portion of the Eligible Loan.

8. Priorities.

The entire Eligible Loan will be secured by the same security with equal lien priority for the Guaranteed Portion and the Unguaranteed Portion of the Eligible Loan. The unguaranteed portion of the Eligible Loan will not be paid first nor given any preference or priority over the Guaranteed Portion.

9. Faith and Credit.

Each Loan Note Guarantee will constitute an obligation supported by the faith and credit of the State of Maine pursuant to the Act and be incontestable except for fraud or misrepresentation of which Lender or any Holder has actual knowledge at the time it became such Lender or Holder or which Lender or any Holder participates in or condones. If any note to which the insurance relates provides for payment of interest on interest, then the Loan Note Guarantee will be void. In addition, a Loan Note Guarantee will be unenforceable by Lender (but not the Holder) if Lender fails to collect from Borrower and remit to the Authority the insurance premiums as and when payable or to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which the Authority acquires knowledge of the foregoing. Any claim by Lender for losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by the Authority in its Loan Insurance Authorization. Negligent servicing is defined as the failure to perform those obligations more fully set forth in the Loan Insurance Agreement and related Loan Insurance Authorization, and by way of illustration and not of limitation includes services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not insured or guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of Eligible Loan maturity or until a final loss is paid. A Loan Note Guarantee will be executed solely for the purpose of the Program and for the information and use of a Holder, as defined herein. As between the Lender and the Authority, the Loan Insurance Agreement will be controlling.

10. Rights and Liabilities.

The guarantee and right to require purchase of a Certificate will be directly enforceable by Holder notwithstanding any fraud or misrepresentation by Lender or any unenforceability of the Loan Note Guarantee for that Certificate by Lender. Nothing contained in the Loan Note Guarantee will constitute any waiver by the Authority of any rights it possesses against the

Lender. Lender will be liable for and will promptly pay to the Authority any payment made by the Authority to Holder which if such Lender had held the Guaranteed Portion of the Eligible Loan, the Authority would not be required to make.

11. Payments.

Lender will receive all payment of principal, or interest, on account of the entire Eligible Loan and will promptly remit the amount allocable to the Guaranteed Portion either to a FTA designated by the Authority, which shall promptly remit to Holder its pro rata share thereof determined according to its interest in the Eligible Loan or, if there be no FTA, then to Holder its pro rata share thereof determined according to its interest in the Eligible Loan, less only Lender's servicing fee.

12. Protective Advances.

Protective advances made by Lender will with respect to an Eligible Loan be guaranteed against a percentage of loss to the same extent as provided in the related Loan Note Guarantee notwithstanding the Guaranteed Portion of such Eligible Loan that is held by another.

13. Repurchase by Lender.

Any repurchase by the Lender of a Guaranteed Portion shall be for an amount equal to the unpaid Guaranteed Portion of principal and accrued interest less the Lender's servicing fee, if any. The Authority's liability for accrued interest on a Guaranteed Portion is limited to the extent provided in the Program Documents. The Lender is encouraged to repurchase the Eligible Loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender shall notify the FTA and the Authority of its decision.

14. The Authority Repurchase.

A. If Lender does not repurchase as provided by paragraph 13 hereof, the Authority will purchase from Holder the unpaid principal balance of the Guaranteed Portion together with accrued interest to date of repurchase less Lender's servicing fee, as provided, and subject to the limitations set forth, in the Program Documents. The Authority will be subrogated to all rights of Holder upon repurchase.

B. The Authority shall promptly notify the Lender of its receipt of a demand for payment of a Guaranteed Portion. The Lender shall promptly provide the Authority with the information necessary for the Authority's determination of the appropriate amount due the Holder. If there is any discrepancy between the amount claimed by the Holder and the information submitted by the Lender, the Authority will notify both parties, who must resolve the conflict before payment by the Authority will be approved. Upon receipt of the appropriate information, the Authority will review the demand, issue the appropriate check and remit the required payment as provided in the related Program Documents.

C. The Lender shall agree to consent to the purchase by the Authority and agrees to furnish on request by the Authority a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the Eligible Loan. The Lender shall agree that any purchase by the Authority does not change, alter or modify any of the Lender's obligations to the Authority arising from said Eligible Loan or guarantee nor does it waive any of the Authority's rights against Lender, and that the Authority will have the right to set off against Lender all rights inuring to the Authority as the Holder against the Authority's obligation to Lender under the Loan Note Guarantee.

15. Repurchase by Lender for Servicing.

If, in the opinion of the Lender, repurchase of the Guaranteed Portion of the Eligible Loan is necessary to adequately service the Eligible Loan, the Holder shall agree to sell the portion of the Eligible Loan to the Lender for an amount equal to the unpaid principal and interest on such portion less Lender's servicing fee.

A. The Lender shall not repurchase a Guaranteed Portion from the Holder for arbitrage purposes or other purposes to further its own financial gain:

B. Any repurchase will only be made after the Lender obtains, the Authority's written approval; and

C. If the Lender does not repurchase the Guaranteed Portion from the Holder, the Authority at its option shall have the right to purchase such Guaranteed Portion for servicing purposes.

16. Custody of Unguaranteed Portion.

The Lender may retain or sell the Unguaranteed Portion of the Eligible Loan only through participation. “Participation” means the sale of an interest in the Eligible Loan wherein the Lender retains the note, collateral securing the note, and all responsibility for Eligible Loan servicing and liquidation. Sale of participations in an Unguaranteed Portion shall be subject to the limitations in the related Program Documents.

17. When Guarantee Terminates.

The Loan Note Guarantee for a Certificate will terminate automatically (a) upon full payment of the related Eligible Loan; or (b) upon full payment of any loss obligation thereunder; or (c) upon written notice from the Lender to the Authority that the guarantee will terminate 30 days after the date of notice, provided the Lender holds the Guaranteed Portion and the Loan Note Guarantee is returned to be canceled by the Authority, or (d) at such time as there is no Holder of the Guaranteed Portion of the Eligible Loan, at which such time the provisions of the Loan Insurance Agreement, shall solely apply.

18. Commitment or Rejection.

A. Upon approval of an application, a commitment for the Program will be issued as part of a Loan Insurance Authorization subject to the execution of instruments evidencing full compliance with Authority requirements and in form and content satisfactory to the Authority.

B. If, upon examination of the application and supporting information the Chief Executive Officer or the members, as applicable, reject such application, the Lender shall be so informed.

19. Premiums, Fees and Other Charges

A. In addition to other requirements, no Program commitment shall be effective until the Authority has received a commitment fee calculated as up to 2% of the insured portion of the insured Eligible Loan, for Eligible Loans other than loans insured or guaranteed under Chapter 103

B. In addition to other requirements, the Authority shall be paid a Program premium either calculated as up to 2% of the insured portion of the Eligible Loan scheduled (other than in cases of partial or full prepayment) to be outstanding on each anniversary date of the Eligible Loan or on some other date or the actual balance owed by the borrower if larger, or a one-time fee payable at inception calculated on a present-value basis. The premium shall be paid in advance for such period as specified in the Program Documents.

C. The Authority will be entitled to the full amount of the premium over the term of the Loan Note Guarantee. If the Eligible Loan is paid without loss or insurance payment by the Authority before the end of the loan term or if the Loan Note Guarantee is terminated without loss to the Authority before the end of the maximum term of the contract, the Authority may waive the balance of the premium claimed or, if the full premium was paid in advance without any discount, then the Authority may remit the balance of the premium. In order to assure that the Authority will receive the full premium, the Authority may provide in the Program Documents that the balance of any premium due may be deducted from the insurance payment of that premium escrow or investment arrangements be made.

D. The Holder’s right to receive payment with respect to a Certificate is not affected by the Lender’s or Borrower’s failure to pay the required insurance premiums to the Authority.

20. Waiver of rule.

The members or the Chief Executive Officer may waive any requirement of this rule except to the extent that the requirement is mandated by the Act, in cases where deviation from the rule is insubstantial.

21. Miscellaneous.

Any approvals, reviews, determinations or findings of the Authority related to any plans, specifications, contracts, application or other documents required or contemplated by this rule or the Act are solely for the benefit of the Authority and shall not in any way constitute any approval of the adequacy of such documents or of the project.

22. Implementation/Appeal to Members

The Chief Executive Officer may approve any loan pursuant to this Program which the Chief Executive Officer may approve pursuant to the Small Business and Veteran’s Small Business Programs or the Mortgage Insurance Program. In the event that any request by a Lender is denied by the Chief Executive Officer, the Lender shall have the right to appeal the decision of the Chief Executive Officer to the members. Notice of the appeal, together with a statement of the reasons why the Chief Executive Officer's decision should be reversed or modified, shall be given to the Chief Executive Officer in writing within twenty days after the date on which the Chief Executive Officer mailed the notice of decision to the Lender. The appeal shall be heard at a meeting of the members, and the Lender must be present to support the appeal. The members ordinarily meet once each month. The appeal shall be based on the record before the Chief Executive Officer on the date of the decision. The decision of the Chief Executive Officer shall be final unless the members determine that the decision by the Chief Executive Officer was arbitrary, capricious or an abuse of discretion, in which event the members may overturn or modify the decision of the Chief Executive Officer and may direct the Chief Executive Officer to take further action with respect to the request.

STATUTORY AUTHORITY: 10 M.R.S.A. Section 969-A(5)

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