

## 99-346 MAINE STATE HOUSING AUTHORITY

### Chapter 19: HOMELESS SOLUTIONS RULE

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**Summary:** The Maine State Housing Authority uses funds from certain federal and state resources to give grants to agencies for a variety of activities to assist people who are experiencing homelessness. This rule governs MaineHousing's allocation of resources for such programs, program design, the publication and distribution of program guides, basic criteria for determining eligible recipients, and potential selection criteria. Some resources are distributed according to a funding formula set forth in the rule. Other resources may be distributed according to programs designed by MaineHousing.

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#### 1. Definitions

- A. "Act" means the Maine Housing Authorities Act, 30-A M.R.S.A. §4701, *et seq.* as amended.
- B. "Applicant" means the municipality or non-profit corporation applying for funds governed by this rule.
- C. "Bed Capacity" means the maximum number of beds in an Emergency Shelter as indicated on an annual Continuum of Care Housing Inventory Count (HIC); provided, however, for purposes of this rule, the Bed Capacity of a Low Barrier Shelter means its maximum number of beds as indicated on the annual HIC multiplied by 125%.
- D. "Agency Participation Agreement" is a document that sets forth the obligations of service providers participating in HMIS and governs how information regarding clients and the services they receive is treated.
- E. "Clients Assessed and Stabilized" means clients who were assessed with housing prioritization tools after experiencing homelessness a minimum of 15 of the 90 days immediately preceding the assessment, and who are receiving housing stabilization services.
- F. "Continuum of Care" or "CoC" is the group organized to carry out the responsibilities required under the CoC Program Interim Rule (24 CFR Part 578) and comprises representatives of organizations that provide a full range of emergency, transitional, and permanent housing and other service resources to address the various needs of Persons Experiencing Homelessness within the State of Maine.
- G. "Coordinated Entry Process" means a process designed to coordinate program participant intake, assessment, and provision of referrals within a geographic area. A Coordinated Entry Process covers the geographic area, is easily accessed by individuals and families seeking housing or services, is well advertised, and includes a comprehensive and standardized assessment tool.
- H. "Emergency Shelter" means any facility, the primary purpose of which is to provide a temporary shelter for Persons Experiencing Homelessness or for specific populations of

Persons Experiencing Homelessness and which meets the criteria set forth in section 3 of this rule.

- I. “Emergency Solutions Grant” means a grant available under the federal Emergency Solutions Grants Program of the McKinney-Vento Act as amended by the HEARTH Act.
- J. “Funding Formula Allocation” means an annual allocation of funds by MaineHousing for Emergency Shelters as further described in section 4 of this rule.
- K. “HEARTH Act” means the Homeless Emergency and Rapid Transition to Housing Act of 2009 (P.L. 111-22), and the regulations promulgated thereunder.
- L. “HMIS” means the Homeless Management Information System as further defined in the McKinney-Vento Act as amended by the HEARTH Act.
- M. “HMIS Data Standards” means the baseline data collection requirements developed by each of the federal partners which require participation in HMIS, or a comparable database for those serving survivors of domestic violence, as a condition of their funding.
- N. “Homeless Prevention” means activities or programs designed to prevent persons from experiencing homelessness including without limitation subsidies for rent, utilities, security deposits, and mortgage payments.
- O. “Housing First” is an approach to quickly and successfully connect Persons Experiencing Homelessness to permanent housing without preconditions and barriers to entry, such as sobriety, treatment, or service participation requirements.
- P. “Housing Inventory Count” (HIC) is a point-in-time inventory of beds and units for Persons Experiencing Homelessness within a Continuum of Care categorized by five program types: Emergency Shelter; transitional housing; Rapid Re-housing; safe haven; and permanent supportive housing.
- Q. “Housing Stabilization” means assessing, arranging, coordinating, and monitoring the delivery of individualized services to facilitate housing stability for a program participant who resides in permanent housing or to assist a program participant in overcoming immediate barriers to obtaining housing.
- R. “HUD” means the United States Department of Housing and Urban Development.
- S. “Low Barrier Shelter” means an Emergency Shelter that does not require any of the following for a client to stay at the shelter: (i) criminal background checks, (ii) credit checks or income verification, (iii) program participation, (iv) sobriety, or (v) identification. Low Barrier Shelters may, however, enforce safety requirements for self, staff, place, and others.
- T. “MaineHousing” means Maine State Housing Authority.
- U. “Maine Consolidated Plan” is a plan prepared by MaineHousing and the Maine Department of Community and Economic Development (“DECD”) and approved by HUD in

accordance with 24 CFR part 91. The Consolidated Plan serves as the framework for a statewide dialogue to identify housing and community development priorities that align and focus funding from the Community Development Block Grant Program administered by DECD, the HOME Investment Partnerships Program, the Housing Trust Fund, and the Emergency Solutions Grant Program, which are administered by MaineHousing.

- V. “Mainstream Resources” means a variety of Federal and state benefit government assistance programs Persons Experiencing Homelessness may be eligible to receive. These include but are not limited to: Temporary Assistance For Needy Families (TANF), Food Supplement Program, veterans’ benefits, MaineCare, General Assistance, Supplemental Security Income Program (SSI), Social Security Disability Insurance (SSDI), and Housing Choice Voucher Program.
- W. “Maine’s Job Bank” is an on-line job posting and job search system provided by Maine CareerCenter.
- X. “McKinney-Vento Act” means the Stewart B. McKinney-Vento Homeless Assistance Act, 42 U.S.C. §11301 *et seq.*, and the regulations promulgated thereunder.
- Y. “Persons Experiencing Homelessness” means persons sleeping in a place not meant for human habitation, in an Emergency Shelter, or in other emergency housing; persons exiting an institution where they resided for 90 days or less and who had resided in an Emergency Shelter, other emergency housing, or place not meant for human habitation before entering that institution; and persons fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions in the individual’s or family’s current housing situation, including where the health and safety of children are jeopardized, and who have no other residence and lack the resources or support networks to obtain other permanent housing.
- Z. “Program” means an offering of grants subject to recapture available to prospective eligible Applicants on certain terms and for certain purposes determined by MaineHousing pursuant to this rule.
- AA. “Program Guide” means the written procedural and administrative guide for a particular Program governed by the terms and conditions of this rule.
- BB. “Rapid Re-housing” means housing relocation and stabilization services and short- and/or medium-term rental assistance as necessary to help Persons Experiencing Homelessness move as quickly as possible into permanent housing and achieve stability in that housing.
- CC. “Regional Homeless Council” means one of the following three advisory committees concerning homelessness: Region I comprising York and Cumberland Counties; Region II comprising Androscoggin, Franklin, Kennebec, Knox, Lincoln, Sagadahoc, Somerset, Oxford, and Waldo Counties; and Region III comprising Penobscot, Piscataquis, Aroostook, Washington, and Hancock Counties.

- DD. “Shelter Operations” are the costs of maintenance (including minor or routine repairs), rent, security, fuel, equipment, insurance, utilities, food, furnishings, and supplies necessary for the operation of an Emergency Shelter.
- EE. “Statewide Homeless Council” means the advisory committee created pursuant to §5046 of the Act.
- FF. “Violence Against Women Act “or “VAWA” is a United States federal law (Title IV, sec. 40001-40703 of the Violent Crime Control and Law Enforcement Act of 1994, H.R. 3355).

## 2. **Eligible Applicants**

To be eligible to receive funds, an Applicant must:

- A. be a non-profit corporation in good standing in the State of Maine qualified for tax exemption under 501(c)(3) of the Internal Revenue Code or a municipal corporation;
- B. be eligible in accordance with the HEARTH Act;
- C. be a provider of homeless services with at least one (1) year of experience providing emergency housing, street outreach, Homeless Prevention, or Rapid Re-housing activities;
- D. be a regular and active participant in the Maine Continuum of Care, in accordance with its governance charter and performance criteria;
- E. have board and or advisory board representation from Persons Experiencing Homelessness or formerly experiencing homelessness who are involved in policy or planning of the organization;
- F. participate in Coordinated Entry Process by entering into an Agency Participation Agreement for sharing data and administering housing prioritization and assessment tools;
- G. have the administrative and financial management capacity necessary to administer and to account for the use of the applicable grant in accordance with the funding requirements;
- H. operate in accordance with the homelessness strategy outlined in the Maine Consolidated Plan;
- I. meet the objectives of the Program under which they are applying as set forth in the applicable Program Guide;
- J. participate in and meet the performance and reporting requirements of the Homeless Management Information System (HMIS) or a comparable database if the Applicant serves victims of domestic violence;
- K. not engage in any explicitly religious activities, such as worship, religious instruction, or proselytization, as part of the activities and services funded with any grant for activities or services covered by this rule; and if religious activities are offered, they must be offered at a

separate time or location from the activities and services covered by this rule; and participation in those religious activities must be voluntary for persons receiving assistance with funds covered by this rule;

- L. operate its programs free from discrimination on the basis of age, race, color, religion, national origin, physical or mental disability, sexual orientation, or gender in accordance with applicable federal and state fair housing laws;
- M. comply with Section 504 of the Rehabilitation Act of 1973, which prohibits disability discrimination in programs that receive HUD funds; and
- N. comply with MaineHousing requirements.

### **3. Emergency Shelter Requirements**

Applicants that are Emergency Shelters must do the following:

- A. provide access 365 days per year to assist Persons Experiencing Homelessness meet basic emergency shelter needs;
- B. provide adequate sleeping space or beds, and clean and functioning shower and toilet facilities;
- C. provide safe and nutritious food, including breakfast or access to breakfast and, if open 24 hours, also provide lunch and dinner or access to lunch and dinner;
- D. treat all guests with dignity and respect, regardless of religious or political beliefs, cultural background, disability, gender identity or sexual orientation;
- E. provide shelter and housing services based upon a Rapid Re-housing or Housing First approach;
- F. have admittance and stay policies that are appropriate for the population served and do not create unnecessary barriers to guests staying;
- G. provide linkages and access to community resources such as health care, job readiness and employment services, Mainstream Resources, and educational services to assist guests in achieving housing stability;
- H. assess guests for housing prioritization and services to enable mobility to permanent housing with adequate supports;
- I. inform guests of their rights and responsibilities, including specific shelter policies and house rules;
- J. accept eligible persons regardless of their ability to pay or their eligibility for reimbursement or actual reimbursements from any third party source, including local, municipal, state, or federal funding sources;

- K. have no lease requirements for guests;
- L. if serving families with children, provide space other than open dormitory style and do not require involuntary family separation for admission;
- M. provide separate accommodations for male and female consumers consistent with their gender identity;
- N. protect the privacy and confidentiality of guests and their personal information;
- O. provide training, policies, procedures and regular maintenance to encourage, improve, and maintain the health and safety of guests, volunteers and staff;
- P. post fire, disaster, and other emergency procedures in a conspicuous place and review the procedures with each guest;
- Q. maintain a daily and confidential census of shelter clients including precise sleeping locations;
- R. operate in compliance with all applicable federal, state and local codes, laws and regulations; and
- S. have written policies and procedures for standards that address the following areas: access to shelter services, residential rights and responsibilities; program, personnel and facility operations; health and safety; food preparation and distribution; case management services; staff training; and HMIS or comparable database and computer protocols.

#### 4. **Funding Formula Allocation**

From time to time MaineHousing will allocate a certain amount of funds to be distributed, subject to availability, pursuant to the following funding methodology:

- A. **Shelter Operations.** An amount equal to 45% of the Funding Formula Allocation will be disbursed among Emergency Shelters, such that each Emergency Shelter will receive a percentage equal to its Bed Capacity divided by a number equal to the total Bed Capacity available statewide for the calendar year. Agencies will receive scheduled payments on a quarterly basis.
- B. **Housing Stabilization Share.** An amount equal to 45% of the Funding Formula Allocation will be disbursed among eligible agencies, such that each agency providing staffing for Rapid Re-housing, Housing First and Housing Stabilization services operated by the agency will be eligible to receive a percentage equal to the agency's number of Clients Assessed and Stabilized, divided by the total number of Clients Assessed and Stabilized statewide in the previous quarter. Agencies are reimbursed for costs on a quarterly basis.
- C. **Performance Share.** An amount equal to 10% of the Funding Formula Allocation will be allocated among Emergency Shelters that in the previous 6 months had 15% or fewer clients

who exited to permanent housing return to homelessness based on performance indicator data in HMIS (or elsewhere for providers of services to victims of domestic violence). The percentage of funding an Emergency Shelter receives will be equal to the number of clients served by that provider divided by the total number of clients served by all of the Emergency Shelters that meet this performance measure in the applicable 6 month period. The performance share for the first half of the calendar year will be calculated and paid for in the following July and the performance share for the second half of the calendar year will be calculated and paid for in the following January.

## 5. **Program Design**

- A. **Allocation.** In addition to the Funding Formula Allocation, MaineHousing may allocate other funds for Programs to assist Persons Experiencing Homelessness in accordance with applicable federal and state laws.
- B. **Programs.** MaineHousing shall design and offer Programs based upon available funds, restrictions attached to such funds, best practices, and needs. The funds may be used for shelter services and outreach activities; for Homeless Prevention and Rapid Re-housing activities such as rental assistance, housing search, mediation, outreach to property owners, legal services, security on utility deposits, and moving costs; and to support entities that offer an integrated array of services to meet the health, housing, employment, and other basic needs of Persons Experiencing Homelessness.
- C. **Program Guides.** MaineHousing shall publish on MaineHousing's website a Program Guide with respect to each Program and shall distribute the Program Guide to parties who may be eligible for the Program and who have expressed an interest to MaineHousing in connection with the type of activities eligible under the Program, to parties MaineHousing selects for marketing the particular Program, and upon request.

## 6. **Funding**

- A. **Processing of Applications.** MaineHousing may process applications on a first come first served basis or may set an application due date described in the Program Guide for submission for review by a scoring committee. The selection process will be outlined in the Program Guide.
- B. **Selection for Funding.** MaineHousing shall retain final discretion as to whether or not to offer funds to a particular Applicant for a particular purpose.
- C. **Availability of Funds.** Grants are always subject to the availability of funds.
- D. **Selection Criteria.** MaineHousing will set forth requirements and selection and approval criteria germane to a particular Program in the applicable Program Guide. Selection criteria may include but are not limited to the following:

### 1. **Mainstream Resources**

- a. how well the Applicant assists clients in the completion and submission of applications for Mainstream Resources; and
- b. how well the Applicant captures the results of the actual benefits received.

2. **Housing**

- a. how well the Applicant assists clients in the completion and submission of applications for client appropriate housing;
- b. how well the Applicant assists clients with housing searches;
- c. how well the Applicant assists clients with landlord relationships; and
- d. how well the Applicant has developed and maintained effective working relationships with local General Assistance offices in assisting clients with access and applications.

3. **Health Care**

- a. Applicant's relationships and links with one or more local health care providers who provide treatment for clients; and
- b. Applicant's ability to provide or refer clients for mental health or substance abuse assessments and treatment.

4. **Employment**

- a. how well the Applicant assists clients with employment searches, including registering with Maine's Job Bank;
- b. how well the Applicant has developed and maintained effective working relationships with local CareerCenters in assisting clients; and
- c. how well the Applicant has developed and maintained effective working relationships with local employers or employment agencies in assisting clients.

5. **Prevention**

- a. Applicant's knowledge of and ability to refer clients to Pine Tree Legal Assistance for eviction prevention and other legal assistance; and
- b. Applicant's knowledge of and ability to actively refer clients to other local and regional resources, as appropriate.



## 7. Data Collection Requirements

In order to receive funding, eligible Applicants must do the following, unless prohibited by VAWA:

- A. Enter into an Agency Participation Agreement to share certain Homeless Management Information System (HMIS) data with other Emergency Shelters and other providers of services for Persons Experiencing Homelessness;
- B. Enter client data as prescribed by MaineHousing and HUD in accordance with requirements set forth in the HMIS Data Standards as revised, and the HEARTH Act, and ensure data completeness and quality in regard to program performance measures on a monthly basis and submit reports as prescribed by MaineHousing or HUD;
- C. Enter client data on outcomes and housing stability as prescribed by MaineHousing or HUD, which will be used for performance measurement, research, or evaluation;
- D. Have the capacity to enter client level data into the system of the CoC designated vendor for HMIS data entry; and
- E. Submit de-duplicated aggregate reports as required by MaineHousing.

Providers of shelter to victims of domestic violence are required to have the capacity of a comparable database that collects client level data and provides aggregate, de-duplicated data to MaineHousing in electronic form.

## 8. Reporting Requirements

- A. **General Reporting Requirements.** A grantee must provide client data prescribed by MaineHousing in a form or forms prescribed by MaineHousing to centralized data collection systems prescribed by MaineHousing as often as required by MaineHousing.
- B. **Missing Reports or Data.** A grantee must provide all reports and all required client data in accordance with the reporting requirements at the time of funds disbursement in order to receive funding.
- C. **Complete Report.** A report will not be considered submitted unless MaineHousing determines that the report is sufficiently complete and all client data is valid.
- D. **Final Reports.** A grantee must submit a final report showing its use of a grant within 30 days of the end of the term of the grant.

## 9. Monitoring and Assessment.

- A. MaineHousing will review for program compliance at least every two years at reasonable times.

- B. MaineHousing may copy and examine all of a grantee's records other than medical or other confidential client information protected by privacy laws.
- C. Grantees will maintain records sufficient to meet monitoring and auditing requirements of MaineHousing and HUD including without limitation daily rosters and client files.

In the case of a physical shelter program facility, MaineHousing will inspect to a minimum for compliance with HUD's minimum emergency shelter standards pursuant to [24 CFR 576.403\(b\)](#).

## 10. Rule Limitations

- A. **Other Laws.** If this rule conflicts with any provision of federal or state law, the federal or state law shall control.
- B. **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.

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**BASIS STATEMENT:** This rule replaces in its entirety the current *Homeless Solutions Rule*. MaineHousing uses funds from certain federal and state resources to give grants to agencies for a variety of activities to assist people who are experiencing homelessness or the risk of becoming homeless. The rule governs MaineHousing's allocation of resources for such programs. The new rule (i) revises and updates language where appropriate; (ii) addresses concerns regarding bed utilization; and (iii) makes changes to the funding formula allocation.

### **PUBLIC COMMENT:**

#### *Process:*

Notice of Agency Rule-making Proposal was published in the Wednesday, August 28, 2019 edition of the appropriate newspapers. Additionally, MaineHousing sent the proposed rule to Interested Parties on Wednesday, August 21, 2019, and published the proposed rule on its website on Wednesday, August 21, 2019.

MaineHousing held a public hearing on Tuesday, September 17, 2019, to receive testimony on its proposal to repeal and replace the rule. The comment period was held open until 5:00 p.m. on Friday, September 27, 2019. MaineHousing received comments from Frank D'Alessandro, of Maine Equal Justice and Joshua D'Alessio of Hope House Health and Living Center at the public hearing.

#### *Summary of Comments and Responses to Comments:*

#### ***Comments from Josh D'Alessio, Associate Director, Hope House Health and Living Center:***

Mr. D'Alessio testified in favor of the proposed rule and thanked MaineHousing for the transparent and inclusive process in drafting the proposed rule.

*MaineHousing Response:* MaineHousing thanks Mr. D'Alessio for his support and appreciates the work he put into the drafting of the rule as part of the Emergency Shelter and Housing Assistance Program (ESHAP) stakeholder working group.

***Comments from Frank D'Alessandro, Litigation and Policy Director of Maine Equal Justice:***

**Section 1-G – Coordinated Entry Process**

*Retain original language of the Definition of Coordinated Entry Process:* Maine Equal Justice recommends that MaineHousing retain the additional language “A Coordinated Entry Process covers the geographic area, is easily accessed by individuals and families seeking housing or services, is well advertised, and includes a comprehensive and standardized assessment tool” in Section 1-G in order to maintain transparency and uniformity of shelter entry policies.

*MaineHousing Response:* MaineHousing supports the recommendation of Maine Equal Justice and has made the decision to retain the original language of the definition.

**Section 1-O – Housing First**

*Changes in the definition of Housing First:* Maine Equal Justice strongly supports the changes in the definition in Section 1-O.

*MaineHousing Response:* MaineHousing thanks Maine Equal Justice for their support of the change in the definition.

**Section 1-S – Low Barrier Shelter**

*Changes in the definition of Housing First:* Maine Equal Justice strongly supports the changes in the definition in Section 1-S.

*MaineHousing Response:* MaineHousing thanks Maine Equal Justice for their support of the change in the definition.

**Section 1-Y – Persons Experiencing Homelessness**

*The proposed definition of Persons Experiencing Homelessness:* Maine Equal Justice opposes the proposed definition and recommends that MaineHousing adopt the statutory definition of homelessness adopted by the Maine State Legislature in L.D. 459 – “An Act Regarding Presumptive Eligibility and Homelessness under the General Assistance Laws.”

*MaineHousing Response:* MaineHousing feels that it is less confusing to the Emergency Shelter and Housing Assistance Program (ESHAP) grantees to retain the current definition.

**Section 1-BB – Rapid Re-housing**

*Retain original language of the Definition of Rapid Re-housing:* Maine Equal Justice opposes the proposed changes to the definition and recommends that the original language regarding achieving housing stability be retained.

*MaineHousing Response:* MaineHousing supports the recommendation of Maine Equal Justice and has made the decision to retain the original language of the definition

except the term “Homeless Persons” will be replaced with “Persons Experiencing Homelessness.”

Section 2-H – Operating in accordance with the Maine Consolidated Plan

*Changes in the language regarding Eligible Applicants operation and the Maine Consolidated Plan:* Maine Equal Justice opposes the proposed changes to the language and recommends keeping the original language that an applicant must “meet the objectives and strategic goals to end homelessness as outlined in the Maine Consolidated Plan.” Maine Equal Justice believes it is important to include this language to help ensure that the objectives and goals of the plan are in fact accomplished.

*MaineHousing Response:* The proposed language reflects the current structure of the Maine Consolidated Plan and MaineHousing has made the decision to retain the proposed language as is.

Section 2-L – Types of discrimination disallowed under applicable federal and state fair housing laws

*Changes in the language regarding Eligible Applicants operation and the Maine Consolidated Plan:* Maine Equal Justice supports the change made to prohibit discrimination on the basis of gender identity. Maine Equal Justice recommends adding a prohibition of discrimination on the basis of poverty.

*MaineHousing Response:* MaineHousing’s proposed language reflects current federal and state fair housing laws. The purpose of homeless services providers is to assist those living in poverty in having a safe place to stay and obtaining permanent housing.

Section 3-F– Shelter admittance and stay policies

*Change requiring shelters to have admittance and stay policies that do not create unnecessary barriers to guests staying:* Maine Equal Justice supports the change, emphasizing the need for low-barrier emergency shelter for people experiencing homelessness.

*MaineHousing Response:* MaineHousing appreciates the support of this change in the rule.

STATUTORY AUTHORITY: 30-A M.R.S.A. §§4741 (1) and (18); 42 U.S.C.A. §§11301, *et seq.*

EFFECTIVE DATE: NOVEMBER 3, 2019