

MARYLAND REGISTER

**Proposed Action on Regulations**

<b>Transmittal Sheet</b>  <b>PROPOSED OR REPROPOSED</b>  <b>Actions on Regulations</b>	<b>Date Filed with AELR Committee</b>	<b>TO BE COMPLETED BY DSD</b>
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**2. COMAR Codification**

**Title Subtitle Chapter Regulation**

34 04 02 08

**3. Name of Promulgating Authority**

Department of Planning

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**Title 34**  
**DEPARTMENT OF PLANNING**  
**Subtitle 04 HISTORICAL AND CULTURAL PROGRAMS**  
**34.04.02 Maryland Historical Trust Historic Preservation Loan Program**  
Authority: State Finance and Procurement Article, §§5-7B-01—5-7B-10 and 5A-327,  
Annotated Code of Maryland; Executive Orders 01.01.1992.27C and 01.01.1998.04

**Notice of Proposed Action**

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The Secretary of the Maryland Department of Planning proposes to change COMAR 34.04.02.08 to modify, revise and clarify certain Historic Preservation Loans provisions. Changes include: (i) providing authority to modify terms of loan prior to default; (ii) specifying types of acceptable collateral consistent with current loan requirements; and (iii) specifying loan insurance requirements consistent with current loan requirements.

**Statement of Purpose**

The purpose of this action is to modify, revise and clarify certain provisions of and requirements for Maryland Historical Trust (MHT) Historic Preservation Loans in order to improve MHT's ability to asset manage its loan portfolio and better respond to its borrowers' needs.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Rieyn DeLony, Deputy Counsel, Assistant Attorney General, Maryland Historical Trust, 100 Community Place, 3rd Floor, Crownsville, MD 21032-2023, or call 410-514-7847, or email to [rieyn.delony@maryland.gov](mailto:rieyn.delony@maryland.gov), or fax to 410-987-

4071. Comments will be accepted through August 22, 2016. A public hearing has not been scheduled.

### **Economic Impact Statement Part C**

A. Fiscal Year in which regulations will become effective: FY 17

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

No

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

No additional funds are required to implement the regulations.

E. If these regulations have no economic impact under Part A, indicate reason briefly: Proposed changes specify and clarify current loan requirements only; they will not add costs for borrowers or otherwise negatively impact loan program.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet. Proposed changes specify and clarify current loan requirements only; they will not add costs for borrowers or impact borrowers' eligibility or obligations under the loan program..

G. Small Business Worksheet:

Intended Beneficiaries. Who are the intended beneficiaries of the proposed regulation? Are these intended beneficiaries primarily households or businesses?

Intended beneficiaries of the Historic Preservation Loan program are individuals and entities that need to borrow funds in order to acquire, rehabilitate or refinance historic properties. Eligible borrowers include nonprofit organizations, local jurisdictions, business entities, and individuals. This loan program is not targeted specifically towards either business entities or households, but towards the preservation of both commercial and residential historic properties.

1b. Intended Beneficiaries: Households. If households are the primary intended beneficiaries, will the proposal affect their income or purchasing power such that the volume or patterns of their consumer spending will change? If so, what directions of change would you anticipate? Will these expected spending changes have a disproportionate impact on small businesses? Can you descriptively identify the industries or types of business activities that are impacted?

Individuals are eligible borrowers under the Historic Preservation Loan program, but households are not the primary intended beneficiary. These amendments to the regulations are administrative in nature and incorporate current agency practices, and therefore are not anticipated to impact consumer spending or borrowing patterns.

1c. Intended Beneficiaries: Businesses. If businesses are the intended beneficiaries, identify the businesses by industry or by types of business activities. How will businesses be impacted? Are these Maryland establishments disproportionately small businesses? If so, how will these Maryland small businesses be affected? Can you identify or estimate the present number of small businesses affected? Can you estimate the present total payroll or total employment of small businesses affected?

Non-profit organizations and for profit business entities are eligible borrowers under the Historic Preservation Loan program, but are not the primary intended beneficiaries. It is not anticipated that these amendments will affect small businesses in any material way.

2a. Other Direct or Indirect Impacts: Adverse. Businesses may not be the intended beneficiaries of the proposal. Instead, the proposal may direct or otherwise cause businesses to incur additional expenses of doing business in Maryland. Does this proposal require Maryland businesses to respond in such a fashion that they will incur additional work-time costs or monetary costs in order to comply? Describe how Maryland establishments may be adversely affected. Will Maryland small businesses bear a disproportionate financial burden or suffer consequences that affect their ability to compete? Can you estimate the possible number of Maryland small businesses adversely affected? (Note that small business compliance costs in the area of regulation are the sum of out-of-pocket (cash) costs plus time costs — usually expressed as payroll, akin to calculations for legislative fiscal notes. Precise compliance costs may be difficult to estimate, but the general nature of procedures that businesses must accomplish to comply can be described.)

The proposed changes to the loan program regulations are administrative in nature and are revenue neutral. They will not create any adverse impact on Maryland businesses.

2b. Other Direct or Indirect Impacts: Positive. Maryland businesses may positively benefit by means other than or in addition to changed consumer spending patterns. How may Maryland businesses be positively impacted by this initiative? Will Maryland small businesses share proportionately or disproportionately in these gains? Can you estimate the possible number of Maryland small businesses positively affected?

The proposed changes to the loan program regulations are administrative in nature and are revenue neutral. They will not create any positive impact on Maryland businesses.

3. Long-Term Impacts. There are instances where the longer run economic impact effect from regulations differ significantly from immediate impact. For example, regulations may impose immediate burdens on Maryland small businesses to comply, but the overall restructuring of the industry as a consequence of monitoring and compliance may provide offsetting benefits to the affected small businesses in subsequent years. Can you identify any long run economic impact effects on Maryland small businesses that over time (a) may compound or further aggravate the initial economic impact described above, or (b) may mitigate or offset the initial economic impact described above?

The proposed changes to the loan program regulations are administrative in nature and are revenue neutral. They will not create any long term impact on Maryland businesses.

4. Estimates of Economic Impact. State Government Article, §2-1505.2 requires that an agency include estimates, as appropriate, directly relating to: (1) cost of providing goods and services; (2) effect on the work force; (3) effect on the cost of housing; (4) efficiency in production and marketing; (5) capital investment, taxation, competition, and economic development; and (6) consumer choice.

The proposed changes to the loan program regulations are administrative in nature and are revenue neutral. They will not create any economic impact on Maryland businesses.

Attached Document:

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34.04.02.08 (6/16/15)

## **Title 34 DEPARTMENT OF PLANNING**

### **Subtitle 04 HISTORICAL AND CULTURAL PROGRAMS**

#### **Chapter 02 Maryland Historical Trust Historic Preservation Loan Program**

Authority: State Finance and Procurement Article, §§5-7B-01—5-7B-10 and 5A-327, Annotated Code of Maryland; Executive Orders 01.01.1992.27C and 01.01.1998.04

##### **.08 Loan Terms and Requirements.**

A. General Requirements. Loans shall meet the following requirements:

(1) — (2) (text unchanged)

(3) Insurance. The borrower shall cause the assisted historic property to be insured against loss or damage by fire and other hazards, casualties, and contingencies as may be required from time to time by the Trust in amounts satisfactory to the Trust, *as described in §C of this regulation.*

(4) — (6) (text unchanged)

(7) Security.

(a) [The Trust may require that repayment of a loan be secured by liens, guarantees of repayment, or other forms of] *Financial assistance from the Trust may be secured, at the discretion of the Trust, by collateral acceptable to the Trust[.]; and*

(b) *Collateral acceptable to the Trust may include:*

(i) *A cash escrow;*

(ii) *A letter of credit;*

(iii) *A pledge of depository accounts;*

(iv) *A pledge of accounts receivable;*

(v) *An assignment of income;*

(vi) *A security interest in machinery and equipment;*

(vii) *A mortgage or deed of trust on the historic real property assisted by the loan;*

(viii) *A mortgage or deed of trust on other real property satisfactory to the Trust; or*

(ix) *Guarantees of repayment from guarantors acceptable to the Trust.*

(8) — (10) (text unchanged)

(11) Modification [or Acceleration] of Loan. *In order to facilitate the successful completion or operation of a project, the Trust may modify:*

(a) *The rate of interest;*

(b) *The time or amount of payment; or*

(c) *Any other term of a loan.*

(12) *Acceleration of loan.* In accordance with the terms of the loan documents, the Trust may [modify the terms of repayment or] accelerate the payment of the entire principal and interest due if the:

(a) [Borrower's income changes or if the borrower is no longer eligible in accordance with Regulation .04 of this chapter] *Borrower defaults on the loan;*

(b) Encumbrance of the deed of easement referred to in §C(4) of this regulation is extinguished by the foreclosure of a prior lien or otherwise; or

(c) Deed of easement referred to in §C(4) of this regulation or the preservation agreement referred to in §A(8) of this regulation is determined not to be legally enforceable by the Trust for any reason.

[(12)](13) (text unchanged)

[(13)](14) (text unchanged)

[(14)](15) (text unchanged)

B. *Deferred Loan Requirements.* In addition to the conditions and requirements of §A of this regulation, deferred loans shall meet the following additional requirements:

(1) (text unchanged)

(2) The deferred terms shall provide for repayment of deferred amounts at the maturity date or any earlier date established by the Trust, or upon any sale or other transfer of the [historic] *real property securing a loan, or any sale or other transfer of an interest in [the historic] such real property.* The Trust may, but need not, charge interest on deferred interest payments.

C. [Historic] *Real Property Requirements.* In addition to the conditions and requirements of §§A and B of this regulation, when *real property secures a loan, or [the] historic real property is assisted by the loan [is real property],* the loan shall meet the following requirements:

(1) *Mortgage or Deed of Trust.* [Repayment of the loan shall be secured by a mortgage or deed of trust on the real property in the form required by the Trust. The mortgage or deed of trust shall be recorded in the land records of the political subdivision in which the real property is situated. The mortgage or deed of trust may be subordinate to other recorded mortgage liens provided that the Trust and the other mortgagee give any required consents.]

(a) *A mortgage or deed of trust on real property securing a loan shall be recorded in the land records of the political subdivision in which the real property is situated.*

(b) *The mortgage or deed of trust may be subordinate to other recorded mortgage liens, provided that the Trust and the other mortgagee or mortgagees give any required consents.*

(2) *Property, Liability, and Other Insurance.*

(a) *The borrower shall provide evidence that the borrower, the property owner if borrower is not the property owner, and contractors, have obtained and continues to maintain the following insurance, as required by the Trust:*

(i) *Owner's liability;*

(ii) *Contractor's liability; and*

(iii) *Owner's property or hazard, or builder's risk.*

(b) *All insurance required under this section shall:*

(i) *Be written by a company registered with the Maryland Insurance Administration, or a company approved by the Trust in the event the property and company are located out-of-State;*

(ii) *Be in force at or before the time of loan closing;*

(iii) *Not be terminable without prior notification to the Trust; and*

(iv) *Contain such other terms and coverage satisfactory to the Trust.*

(c) *Owner's liability insurance shall:*

(i) *Name the Trust as an additional insured; and*

(ii) *Remain in force for the duration of the loan.*

(d) *Contractor's liability insurance shall:*

(i) *Name the Trust as an additional insured; and*

(ii) *Remain in place through completion of construction the project or such later date as the Trust may require.*

(e) *Owner's property or hazard insurance and builder's risk insurance shall:*

(i) *Name the Trust as an additional insured, loss payee, and mortgagee; and*

(ii) *Remain in force for the duration of the loan.*

[(2)] (3) *Title Insurance.*

(a) For loans in amounts [greater than] of \$15,000 or greater [the Trust], in its discretion[,] *the Trust may require the borrower to provide a standard American Land Title Association Loan Policy—[1970]2006, as amended, which policy shall*

(i) *Be issued by a title insurance company acceptable to the Trust[.];*

(ii) [for] *Be issued in an amount equal to the maximum principal amount of the loan[.];*

(iii) [This policy shall insure] *Insure the Trust[.] as additional insured and mortgagee;*

(iv) [evidencing] *Evidence that title to the real property on which the improvements are located is, as of the date of closing, [is] vested in the borrower[, and];*

(v) [may contain] *Contain* only [standard] exceptions and encumbrances approved by the Trust[.]; *and*  
(vi) *Not include exceptions for survey matters, general or blanket exceptions, materialman's liens or for taxes or assessments that are due and payable as of the date of closing.*

(b) For loans in amounts up to \$15,000, [the Trust,] in its discretion[,] *the Trust* may require the borrower to provide an attorney's certificate of title *or other evidence of title* acceptable to the Trust [certifying] , *which*;

(i) *Establishes* that [the] title to the real property on which the improvements are located *is* as of the date of closing, [is] vested in the borrower[.];

(ii) [The certificate of title may] *May* contain only [standard] exceptions and encumbrances approved by the Trust[.]; *and*

(iii) *May not include exceptions for survey matters, general or blanket exceptions or materialman's liens or for taxes or assessments that are due and payable as of the date of closing.*

[(3)](4) Appraisals. For loans [greater than] of \$25,000 *or greater*, the Trust, in its discretion, may require:

(a) [an] *An* appraisal of the assisted *historic* real property *that secures a loan*, showing the property's value after completion of any scheduled restoration or rehabilitation[.]; *or*

(b) *An appraisal of other real property that secures a loan, showing the property has sufficient value, taking into account all senior liens, to secure the lien at a 80% loan to value ratio.*

[(4)](5) Deed of Easement.

(a) The borrower, and the owner of the *historic* real property if the owner is not the borrower, shall convey to the Trust a perpetual deed of easement containing preservation covenants applicable to the historic *real* property *assisted by the loan*, in form and substance satisfactory to the Trust. The borrower shall record the deed of easement among the land records of the political subdivision in which the real property is situated. A recorded deed of easement under this paragraph satisfies the requirement of a preservation agreement in §A(8) of this regulation.

(b) The requirement of a preservation agreement or deed of easement set forth in [§§C(4)(a)] §C(5)(a) and A(8) of this regulation may be modified or waived by the Secretary if the Secretary has issued a written determination that such an agreement or easement is impracticable or infeasible under the circumstances. Evidence of impracticability or infeasibility may include, among other things, the existence of a previous agreement or deed of easement in form and substance satisfactory to the Trust.

(c) The provision in [§C(4)(a)] §C(5)(a) of this regulation, requiring execution of the deed of easement by the owner if the owner is not the borrower, may be modified or waived by the Director in the case of long-term leasehold property, if necessary.