



# Deferred Capital Loan Program Guide

*April 2019*

This guide applies to HTF and ELHIF capital financing provided prior to 2016. HTF and ELHIF funds are not currently available for capital financing for multifamily developments.

## MINNESOTA HOUSING – DEFERRED CAPITAL LOAN PROGRAM GUIDE



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## Introduction – Program Purpose and Background

The Minnesota Legislature established the Housing Trust Fund (HTF) in 1988 to support the development of affordable housing for low-income individuals and families. HTF is funded by state appropriations and interest earnings on real estate brokers' trust accounts, interest accrued on revenue bond application fees, and forfeited fees. Eligible uses of HTF include capital loans and grants for operating subsidy and rental assistance.

Minnesota statute requires that 75 percent of the HTF program funds be used for the benefit of households whose income at the time of initial occupancy does not exceed 30% of metropolitan Area Median Income (AMI) for a family of four as determined by HUD, and adjusted for families of five or more. The HUD metropolitan AMI limits are applied statewide. A household with Section 8 project-based or voucher assistance is deemed to meet these income requirements. Minnesota Housing has elected to reserve up to 70 percent of HTF funds for proposals that create permanent rental housing opportunities with support services for households experiencing long-term homelessness.

In 2005, HTF rules were modified to add a funding priority for developments and programs that serve households experiencing long-term homelessness in response to the state's *Business Plan to End Long-Term Homelessness*. Minnesota Housing board members approved the amendment of the 2004-2005 Affordable Housing Plan on May 27, 2004 to establish a new funding source, the Ending Long-Term Homelessness Initiative Fund (ELHIF). ELHIF is administered through HTF rules, and the use of this funding source is to create permanent rental housing opportunities with support services for households experiencing long-term homelessness. Eligible activity types of funding under ELHIF include capital loans and grants for operating subsidy and rental assistance.

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## Chapter 1 – Eligibility

### 1.01 Owner/Sponsor

All applicants must have the authority to enter into the loan or grant agreement required by Minnesota Housing and should have experience operating housing and/or administering housing programs for low- and moderate-income individuals and families.

Applicants are subject to Minnesota Housing’s Mortgage Credit review, assets, liquidity, length of time in operation and previous experience to ensure that the sponsor has the ability to cover any revenue shortages.

Eligible applicants for **capital HTF and/or ELHIF loans** include:

- A nonprofit organization, as defined in Minnesota Statutes section 462A.03, subdivision 22
- A for-profit organization
- A limited dividend entity, as defined in Minnesota Rules part 4900.0010, subpart 14
- A cooperative housing corporation, as defined in Minnesota Rules part 4900.0010, subpart 8
- A city, as defined in Minnesota Statutes section 462A.03, subdivision 21
- A joint powers board established by two or more cities
- A public housing agency
- An Indian tribe or tribal housing corporation
- A natural person

### 1.02 Use and Level of Funding

**Eligible Uses of Funds.**

- The proposed rental housing must consist of living accommodations for individuals and families. Ineligible housing developments include nursing homes, board and care facilities, and supervised living facilities licensed by the Department of Health or a delegated local department of health, or properties where all residents require an individual 24-hour plan for supervision, medical or health care.
- The proposed rental housing must be for individuals and/or families whose gross incomes, at the time of initial occupancy, do not exceed program income limits as described in Section 1.04.
- The proposed rental housing must consist of a minimum of four rental housing units.
- The use restrictions listed above must remain in effect for a minimum of 15 years.
- The proposed rental housing must be marketed for general occupancy and families, except for those units specifically deemed to serve households experiencing long-term homelessness.
- Temporary and transitional housing as defined by the U.S. Department of Housing and Urban Development (HUD) may be funded by HTF.

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- One hundred percent of the proposed rental housing with support services financed with ELHIF must provide permanent supportive housing opportunities for households experiencing long-term homelessness, as defined in Section 1.04.

**Level of Funding.** Minnesota Housing determines HTF capital and ELHIF loan amounts by reviewing cost reasonableness on a per-unit and total development cost basis. Funding for general improvements to an existing property (such as roof, heating system, or siding) will be determined based upon a percentage of assisted units.

Minnesota Housing will analyze the development's proposed capital and operating costs to determine the overall financial feasibility of the proposal. Minnesota Housing staff may make underwriting adjustments to reflect Minnesota Housing's standards or market trends. Please refer to Minnesota Housing's [Multifamily Underwriting Standards](#) for further information.

**Housing Related Space.** HTF and ELHIF funded housing developments may include housing-related space such as community, administrative or program space. Minnesota Housing will take into consideration the following factors when determining the amount of housing-related space that will be funded:

- The extent to which the proposed use of the space fits with the service needs of the tenants of the housing development and does not expose the tenants to security risks or the development to financial risk
- The ease with which the space is convertible to residential space
- The capacity of the applicant or any partner organization to operate and manage the space
- Whether similar services or facilities that are appropriate for the tenants of the housing development are located nearby
- Whether the space will be used exclusively by tenants of the housing development
- The availability of other funding for the construction and/or rehabilitation of space, as well as operation and maintenance

**Activity Type – Rehabilitation.** In the rehabilitation of existing rental housing, developments are eligible for funding when they are:

- Fully assisted developments, meaning 100 percent of the units in the development meet HTF income and affordability requirements.
- Partially assisted developments, meaning there is a mix of income and affordability levels and only a portion of the total units meet HTF income and affordability requirements.
  - In a partially assisted development, only the units that meet the income, occupancy and affordability requirements of the HTF will be funded with these Minnesota Housing funds. The level of funding will be prorated based on the number of assisted units and level of amenities of the assisted units compared to that of non-assisted units.

**Activity Type – New Construction.** For new construction developments, both partially and fully assisted developments (as defined above) are eligible for funding. In rural areas, new construction will be allowed within areas of commuting distance of the economic growth area. City sewer and water is

required for all new construction proposals unless otherwise approved by Minnesota Housing. Minnesota Housing will review the availability of existing city sewer and water lines to the development without substantial extensions.

For all new construction proposals, sufficient supporting documentation must be submitted from the local government or other sources, such as housing and redevelopment authority studies, independent market studies, and, in the seven-county metropolitan area, negotiated housing goals with the Metropolitan Council demonstrating the need for construction of new rental housing units.

### **1.03 Design and Construction Review**

HTF and ELHIF loans are intended to provide affordable housing over the long term (i.e., 30 years); therefore, proposals for acquisition and rehabilitation of existing rental housing must be improved beyond a decent, safe and sanitary condition. Refer to the [Multifamily Application Instructions Consolidated RFP and HTC Rounds 1 and 2](#) and the [Rental Housing Design/Construction Standards](#) for more information.

### **1.04 Income and Occupancy Requirements**

**Income Limits.** Units assisted with HTF and ELHIF must be occupied by households whose income at the time of initial occupancy does not exceed 60% of metropolitan AMI for a family of four, as determined by HUD and adjusted for families of five or more. Funding priority will be given to proposals that will serve households whose income at the time of initial occupancy does not exceed 30% of metropolitan AMI for a family of four, as determined by HUD and adjusted for families of five or more.

The HUD metropolitan AMI limits are applied statewide. The metropolitan area is defined as the area over which the Metropolitan Council has jurisdiction, including only the counties of Anoka, Carver, Dakota (excluding the city of Northfield), Hennepin (excluding the city of Hanover), Ramsey, Scott (excluding the city of New Prague) and Washington.

A household with Section 8 or other project-based or voucher assistance (such as Housing Support [GRH]) is deemed to meet these income requirements. In addition, Minnesota Housing requires income restrictions consistent with those specified in the owner's application, provided that they are not higher than the statutory income limits.

There are no income limits for non-assisted units in a mixed income development, unless dictated by another source of funding.

For acquisition and/or rehabilitation, the borrower will be required to contact each household prior to mortgage commitment and have them disclose their income on a tenant income verification form. Minnesota Housing will review the income verifications to verify the number of assisted units.

**Long-term Homelessness Occupancy Requirements.** The proposed housing development must consist of permanent supportive housing units designated for long-term homeless or High Priority Homeless households as defined below. The housing must provide or coordinate with linkages to services necessary for residents to maintain housing stability.

- **Permanent supportive housing:** Defined as permanent rental housing affordable to the population served, where support services are available to residents. Permanent supportive

housing is available to individuals and families with multiple barriers to obtaining and maintaining housing.

- **Households experiencing long-term homelessness (LTH):** Includes individuals, unaccompanied youth, and families with children lacking a permanent place to live continuously for a year or more, or at least four times in the past three years. Any period of institutionalization or incarceration is excluded when determining the length of time a household has been homeless. Refer to [Supportive Housing Information and Resources](#) for additional clarification on the [long-term homelessness definition](#).
- **High Priority Homeless (HPH): Households prioritized for permanent supportive housing by the Coordinated Entry (CE) system:** Each local Continuum of Care (CoC) has a CE system that assesses households to determine the type of housing and services needed. Households that are determined to need permanent supportive housing are placed on a waiting list and prioritized for referral to available units based on their assessment score and CoC priorities.

All referrals for permanent supportive housing units for HPH and LTH households must come directly from the CoC's CE system.

**Compliance.** The income and occupancy requirements will be monitored by Minnesota Housing for the length of the loan. Household incomes for all assisted units will be reviewed for compliance by Minnesota Housing through the review and analysis of various forms and formats acceptable to Minnesota Housing.

As assisted units become vacant, incomes of new households occupying the assisted units will be verified, analyzed and reported to Minnesota Housing on an annual basis. Households need only qualify at the time of initial occupancy and do not need to be recertified thereafter.

## Chapter 2 – General Characteristics HTF and ELHIF Funding

Minnesota Housing underwriting parameters for all developments will include analysis of financial feasibility; development costs; and review of management, marketability, and architectural requirements. If there is no amortized debt, Minnesota Housing will assume the first mortgage position. Where first mortgage financing is being provided, additional requirements will be based upon the level of assistance requested.

### 2.01 Funding Terms

Minnesota Housing will award HTF and ELHIF proceeds under the following terms:

- **Loans:** In most situations, capital funds are issued as a loan.
  - HTF and ELHIF loans are provided as zero percent deferred or amortizing loans to be repaid at the end of the 30-year term.

Minnesota Housing may, at its sole discretion, require 20 percent of cash flow in excess of \$50,000 to be repaid annually. The loan term may be adjusted based on requirements and conditions of other funding sources related to the loan term or the existence of a leasehold mortgage. The interest rate may be adjusted to allow coordination with other sources of funding such as housing tax credits. Loans will be full recourse; however, non-recourse may be considered on a case-by-case basis.

- **Grants:** In unique situations, the capital funds may be awarded as a grant. Grant terms will be 30 years, with the exception that the term may be adjusted as outlined in the previous paragraph. The grant will be forgiven at the end of the 30-year term, unless adjusted as outlined above; however, the full amount must be repaid in the event that the terms of the grant agreement are not met.

### 2.02 Transfers of Ownership/Prepayment

**Transfers of Ownership.** Sale of the property to another eligible borrower and assumption of the loan must be pre-approved in writing by Minnesota Housing. Approval must be requested through the [Request for Action \(RFA\) process](#). Approval is at Minnesota Housing's sole discretion and will only be considered (but not guaranteed to be approved) if:

- Mortgagor is not in default of any of its agreements with Minnesota Housing, whether such agreements involve the capital HTF/ELHIF loan or some other loan that is secured by the mortgaged property
- The new entity is creditworthy, in Minnesota Housing's sole opinion
- Minnesota Housing reviews and approves the proposed ownership entity
- Proposed ownership entity assumes all contractual obligations with Minnesota Housing
- Payment, by the original borrower, of a processing fee equal to the approximate administrative costs incurred by Minnesota Housing in processing the sale or assumption. The processing fees for the sale or assumption of the mortgage do not apply to mortgages dated prior to January 1, 2007.

**Repayment.** The mortgage may be repaid in full at anytime; however, the covenants and conditions in the declaration(s) will remain in place for the remaining term of the declaration. Minnesota Housing will

charge a repayment processing fee in an amount equal to the approximate administrative costs of processing the prepayment. The repayment processing fee does not apply to mortgages dated prior to January 1, 2007.

## **2.03 Management and Operation**

**Maintenance and Operating Budget.** The budget submitted in the application will be reviewed and compared to information on comparable properties within Minnesota Housing financed developments to project long-term operating costs and ensure the long-term financial viability of the development. For more information, please refer to the Minnesota Housing [Multifamily Underwriting Standards](#).

**Property Management.** Minnesota Housing recognizes that quality property management is necessary for the long-term success of multifamily rental housing. For that reason, Minnesota Housing, in its evaluation of the owner's or management agent's qualifications, will consider all previous management experience. On an ongoing basis, Minnesota Housing asset management staff will conduct an on-site physical assessment of properties currently managed, and the owner and/or agent must also complete a Minnesota Housing Managing and Marketing Agents Qualifications application, which can be found at the [Development Team Qualification Form Instructions](#) page.

Minnesota Housing reserves the right to reject or adjust the operating and maintenance figures based on the information supplied regarding specific development type, circumstances and/or significant changes to the economics of the development's current market place.

**Utilization of Units.** All units must be rented to family sizes appropriate to the unit size with a ratio of at least one person per bedroom. If during the course of tenancy a family size changes, a household may submit a written request to the management agent to transfer to another unit or be placed on a waiting list for such transfer. In the event of a decrease in family size, the household may be required to move into the next available suitably sized, smaller unit.

**Marketing.** Owner/agent must demonstrate that they have established networks and linkages with city and county supportive service organizations that will be necessary for residents to maintain housing stability.

**Supportive Housing Documentation.** The owner must submit a management plan, supportive service budget, supportive services plan, memorandum of understanding (MOU) and any other documentation deemed necessary for Minnesota Housing staff review and approval.

## 2.04 Monitoring and Reporting Requirements

Minnesota Housing actively monitors each development it finances. Monitoring activities include tenant incomes, rents, affirmative action, equal opportunity requirements and the collection of financial operating data.

Additionally, each adult member of a household occupying an assisted unit must sign and date a Minnesota Government Data Practices Act Disclosure Statement. This information informs the tenant that their annual household income and other information will be reported to Minnesota Housing and may be reviewed by other governmental agencies. This is required for the administration and management of state or federal programs that provide housing for low- and moderate-income families.

Recipients may be required to submit monthly operating reports, annual Minnesota Housing approved operating budgets and property financials. Properties are subject to periodic management reviews and physical inspections. Minnesota Housing will monitor tenant incomes, rents, and affirmative action and equal opportunity requirements for loan mortgagees.

Upon Minnesota Housing request, reporting requirements for owners of developments that provide **permanent supportive housing opportunities for households experiencing long-term homelessness (LTH) or High Priority Homeless (HPH) households** may include:

- **Proposed Operating Budget:** Within 60 days prior to the end of the development’s fiscal year, submit:
  - A proposed schedule for rental rates on Minnesota Housing’s [Budget Reporting Form](#)
  - A proposed Operating Budget for the next fiscal year on Minnesota Housing’s Budget Reporting form
- **Monthly Operating Reports:**
  - Prepared on Minnesota Housing’s [258 Operating Report Form](#).
    - OR
- **Year End Report:** On February 15 of every year, submit:
  - A year-end operating statement of income and expenses for the operation of the development during the past fiscal year, prepared on Minnesota Housing’s 258 Operating Report Form
    - OR
  - Annual financial submission through Minnesota Housing’s Property Online Reporting Tool (PORT)
- **Annual Rent and Income:** Reporting through PORT to certify rent and income limits are being met.
- **Long-term Homelessness (LTH) or High Priority Homelessness (HPH) Verification Form:** The owner must ensure that the appropriate verification form is completed prior to the initial time of occupancy for households that meet the state’s definition of LTH or HPH. The form must be maintained in the tenant’s file for at least three years after the tenant vacates. The following forms are located on [Minnesota Housing’s website](#):

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- **Long-term Homelessness Eligibility Form:** This form should generally be completed by the referring agency or service provider and serves as verification that the individual, family or unaccompanied youth meets the LTH definition.
- **Third Party Verification Form:** This form may be used by a referring agency, service provider, shelter, family member or friend to document an episode of homelessness.
- **High Priority Homeless Verification:** Will be provided by the referring CoC CE staff.
- **Homeless Management Information System (HMIS):** The owner must utilize [HMIS](#) and ensure that the required information is collected and entered on behalf of eligible households that occupy LTH and HPH assisted units. It is important that the HMIS system is utilized in compliance with Minnesota Housing's and the HMIS administrator's requirements. Quarterly and annual HMIS reports will be provided to Minnesota Housing.
- **Supportive Housing Assessment Report:** The owner must complete an annual supportive housing assessment report. Minnesota Housing will send this form to owners annually.

## Chapter 3 – Fair Housing Policy

It is the policy of Minnesota Housing to affirmatively further fair housing in all its programs so that individuals of similar income levels have equal access to Minnesota Housing programs, regardless of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, familial status, gender identity or sexual orientation.

Minnesota Housing's fair housing policy incorporates the requirements of the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendment Act of 1988, as well as the Minnesota Human Rights Act. Housing providers are expected to comply with the applicable statutes, regulations, and related policy guidance. Housing providers should ensure that admissions, occupancy, marketing and operating procedures comply with non-discrimination requirements.

In part, the Fair Housing Act and the Minnesota Human Rights Act make it unlawful, because of protected class status, to:

- Discriminate in the selection/acceptance of applicants in the rental of housing units;
- Discriminate in terms, conditions or privileges of the rental of a dwelling unit or services or facilities;
- Engage in any conduct relating to the provision of housing that otherwise make unavailable or denies the rental of a dwelling unit;
- Make, print or publish (or cause to make, print or publish) notices, statements or advertisements that indicate preferences or limitations based on protected class status;
- Represent a dwelling is not available when it is in fact available;
- Deny access to, or membership or participation in, associations or other services organizations or facilities relating to the business of renting a dwelling or discriminate in the terms or conditions of membership or participation; or
- Engage in harassment or quid pro quo negotiations related to the rental of a dwelling unit.

Minnesota Housing has a commitment to affirmatively further fair housing for individuals with disabilities by promoting the accessibility requirements set out in the Fair Housing Act, which establish design and construction mandates for covered multifamily dwellings and requires housing providers to make reasonable accommodations and to allow persons with disabilities to make reasonable modifications.

Applicants will be required to submit an Affirmative Fair Housing Marketing Plan at the time of application, to update the plan regularly and to use affirmative fair housing marketing practices in soliciting renters, determining eligibility and concluding all transactions.

As a condition of funding through Minnesota Housing, housing providers are not permitted to refuse to lease a unit to, or discriminate against, a prospective resident solely because the prospective resident has a Housing Choice Voucher or other form of tenant-based rental assistance.

## **Chapter 4 – Fraud, Misuse of Funds, Conflict of Interest, Suspension, and Disclosure and Reporting**

### **4.01 Fraud**

Fraud is any intentionally deceptive action made for personal gain or to damage another.

Any person or entity (including its employees and affiliates) that enters into an agreement with Minnesota Housing and witnesses, discovers evidence of, receives a report from another source, or has other reasonable basis to suspect that fraud or embezzlement has occurred must immediately make a report through one of the ways described in section 4.05.

### **4.02 Misuse of Funds**

A loan or grant agreement is a legal contract between Minnesota Housing and the borrower or grantee. The borrower or grantee promises to use the funds to engage in certain activities or procure certain goods or services while Minnesota Housing agrees to provide funds to the borrower or grantee to pay for those activities, goods or services. Regardless of the Minnesota Housing program or funding source, the borrower or grantee must use Minnesota Housing funds as agreed, and the borrower or grantee must maintain appropriate documentation to prove that funds were used for the intended purpose(s).

A misuse of funds shall be deemed to have occurred when: (1) Minnesota Housing funds are not used as agreed by a borrower or grantee; or (2) A borrower or grantee cannot provide adequate documentation to establish that Minnesota Housing funds were used in accordance with the terms and conditions of the loan or grant agreement.

Any borrower or grantee (including its employees and affiliates) of Minnesota Housing funds that discovers evidence, receives a report from another source, or has other reasonable basis to suspect that a misuse of funds has occurred must immediately make a report through one of the ways described in section 4.05.

### **4.03 Conflict of Interest**

A conflict of interest, actual, potential, or perceived, occurs when a person has an actual or apparent duty or loyalty to more than one organization and the competing duties or loyalties may result in actions which are adverse to one or both parties. A potential or perceived conflict of interest exists even if no unethical, improper or illegal act results from it.

An individual conflict of interest is any situation in which one's judgment, actions or non-action could be interpreted to be influenced by something that would benefit them directly or through indirect gain to a friend, relative, acquaintance or business or organization with which they are involved.

Organizational conflicts of interest occur when:

- A contracting party is unable or potentially unable to render impartial assistance or advice to Minnesota Housing due to competing duties or loyalties
- A contracting party's objectivity in carrying out the award is or might be otherwise impaired due to competing duties or loyalties

- A contracting party has an unfair competitive advantage through being furnished unauthorized proprietary information or source selection information that is not available to all competitors

Once made aware of a conflict of interest, Minnesota Housing will make a determination before disbursing any further funds or processing an award. Determinations could include:

- Revising the contracting party's responsibilities to mitigate the conflict
- Allowing the contracting party to create firewalls that mitigate the conflict
- Asking the contracting party to submit an organizational conflict of interest mitigation plan
- Terminating the contracting party's participation

Any person or entity (including its employees and affiliates) that enters into an agreement with Minnesota Housing must avoid and immediately disclose to Minnesota Housing any and all actual, perceived or potential conflicts of interest through one of the ways described in section 4.05.

A contracting party should review its contract agreement and request for proposals (RFP) material, if applicable, for further requirements.

#### **4.04 Suspension**

By entering into any agreement with Minnesota Housing, a contracting party represents that the contracting party (including its employees or affiliates that will have direct control over the subject of the agreement) has not been suspended from doing business with Minnesota Housing. Refer to Minnesota Housing's website for a list of [suspended individuals and organizations](#).

#### **4.05 Disclosure and Reporting**

Activities required to be reported under this chapter may be made in any of the following ways:

- Minnesota Housing's Chief Risk Officer
- Any member of Minnesota Housing's [Senior Leadership Team](#)
- The Minnesota Housing hotline reporting service vendor, EthicsPoint, by calling toll-free 866.886.1274 to speak with a live operator or by visiting the EthicsPoint reporting [webpage](#)

## **Chapter 5 – Allocation of Funds**

Funding is available on a statewide basis through Minnesota Housing's annual Multifamily Request for Proposals (RFP). Applications may also be submitted on a year-round basis subject to the requirements outlined in the [Multifamily Application Instructions Consolidated RFP and HTC Rounds 1 and 2](#).

Minnesota Housing will review all proposals submitted and will attempt to make the best and most appropriate funding choices for each development selected.

## Chapter 6 – Program Contact

For questions about the Housing Trust Fund (HTF) or the Ending Long Term Homelessness Initiative Fund (ELHIF), contact [Joel Salzer](#) at 651.296.9828 or the housing development officer identified in your selection letter.