Minnesota Housing Finance Agency

MEETINGS SCHEDULED FOR JULY

Location:

Minnesota Housing
400 Sibley Street, Suite 300
St. Paul, MN 55101

THURSDAY, JULY 28, 2016

Regular Board Meeting
State Street Conference Room – First Floor
1:00 p.m.

NOTE: The information and requests for approval contained in this packet of materials are being presented by Minnesota Housing staff to the Minnesota Housing Board of Directors for its consideration on Thursday, July 28, 2016.

Items requiring approval are neither effective nor final until voted on and approved by the Minnesota Housing Board.

The Agency may conduct a meeting by telephone or other electronic means, provided the conditions of Minn. Stat. §462A.041 are met. In accordance with Minn. Stat. §462A.041, the Agency shall, to the extent practical, allow a person to monitor the meeting electronically and may require the person making a connection to pay for documented marginal costs that the Agency incurs as a result of the additional connection.

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Minnesota Housing Finance Agency
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Equal Opportunity Housing and Equal Opportunity Employment

AGENDA
Minnesota Housing Board Meeting
Thursday, July 28, 2016
1:00 p.m.

1. **Call to Order**
2. **Roll Call**
3. **Agenda Review**
4. **Approval of Minutes**
   A. Regular Meeting of June 23, 2016
5. **Reports**
   A. Chair
   B. Commissioner
   C. Committee
6. **Consent Agenda**
   A. Approval, Section 811 (Round 1) Program Rental Assistance Contract
      - Commerce Apartments, Saint Paul, D6264
   B. Commitment, Low and Moderate Income Rental (LMIR) Program
      - Creeks Run Townhomes Phase II, Chaska, D7861
   C. Modification, 2015 Community Homeownership Impact Fund Award
      - Headwaters Regional Development Commission (RDC)
7. **Action Items**
   A. Resolution Relating to State Appropriation Bonds (Housing Infrastructure); Authorizing The Issuance and Sale of Additional Series and Approving the Execution and Delivery of Related Documents; Authorization of Additional Developments to be Funded with Proceeds of Prior Series
   B. Approval, Selections, Enhanced Financial Capacity Homeownership Initiative (Homeownership Capacity)
   C. 2016 Allocation Plan for National Housing Trust Fund
8. **Discussion Items**
   None.
9. **Informational Items**
   None.
10. **Other Business**
    None.
11. **Adjournment**

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DRAFT MINUTES

MINNESOTA HOUSING FINANCE AGENCY BOARD MEETING
Thursday, June 23, 2016
1:00 p.m.
State Street Conference Room – 1st Floor
400 Sibley Street, St. Paul, MN 55101

1. **Call to Order.**
Chair John DeCramer called to order the regular meeting of the Board of the Minnesota Housing Finance Agency at 1:01 p.m.
2. **Roll Call.**
Members present: John DeCramer, Joe Johnson, Craig Klausing, Stephanie Klinzing, and Terri Thao. Auditor Otto was absent.
Minnesota Housing staff present: Gene Aho, Tal Anderson, Ryan Baumtrog, Dan Boomhower, Wes Butler, Kevin Carpenter, Chuck Commerford, Jessica Deegan, Katie Eaton, Lori Gooden, Darryl Henchen, Ruth Hutchins, Karen Johnson, Kasey Kier, Debbi Larson, Eric Mattson, Tom O'Hern, John Patterson, Devon Pohlman, Paula Rindels, Megan Ryan, Becky Schack, Terry Schwartz, Anne Smetak, Kim Stuart, Mary Tingerthal, Nicola Viana.
Others present: Gene Slater, Tim Rittenhouse, CSG Advisors; Derek McGreal, Cory Hoeppner, Laura Janker, RBC Capital Markets; Chip Halbach, Minnesota Housing Partnership; Paul Rebholz, Wells Fargo.
3. **Agenda Review**
Chair DeCramer announced that agenda item 6.A, the 2016 Allocation Plan for the National Housing Trust Fund, had been pulled from the agenda and would instead be presented at the July meeting. Chair DeCramer also stated that the line of credit extension requested as part of item 7.B. was no longer needed. Action on that item would be only to approve the new lines of credit.
4. **Approval of the Minutes.**
A. Regular Meeting of May 26, 2016
Joe Johnson moved approval of the minutes as written. Stephanie Klinzing seconded the motion. Motion carries 5-0.
5. **Reports**
A. Chair
There was no report from the Chair.
B. Commissioner
Commissioner Tingerthal encouraged board members to ask her about any items they would like to know more about, or if there were topics they would like covered during her report.

Commissioner Tingerthal shared information with the board about pending requests to use bonding authority that may be accessed by the Agency, stating there are projects for which, for the first time in about 10 years, the statewide pool does not have sufficient remaining authority. The Agency continues to assess how much bonding authority will be needed for single family programs and continues to await news of a special session before it makes decisions regarding bonding for these types of projects.

Commissioner Tingerthal reminded the board of recent articles that have been critical of the use of state bonding authority and low income housing tax credits to build artist housing. Commissioner Tingerthal stated the Agency and this board did not take any action on those projects, both of which applied to the Agency for deferred financing, but were not selected to receive funds because the costs were well in excess of the predictive model. Commissioner Tingerthal stated that Minnesota

Housing was mentioned recent articles, but the Agency had no decision-making about the projects, other than to say they didn't meet our funding guidelines. Ms. Thao inquired if the costs were so high due to the projects being historic preservation. Commissioner Tingerthal responded that it was her understanding that the costs were high because of the historic preservation, but she had not seen a breakdown of the housing costs and the preservation costs. Commissioner Tingerthal stated that, in both cases, the buildings had been vacant for a very long time and in the case of the A-Mill, a very old series of buildings and historic preservation at the high end of the scale. Commissioner Tingerthal stated she hoped the funders would be forthcoming with that cost information because it would bring some clarity to the discussion. Commissioner Tingerthal stated that the Agency will be making recommendations regarding cost containment measures and the use of 4% credits by developments that do not use other Agency resources – a situation where there currently is not a cost containment policy. Ms. Thao stated that she felt the Agency was always being reactive to what was being written in the community, and the work of the Agency is building homes and helping people to get roofs over their heads. Ms. Thao stated that some of the issues being raised were good, but others were not so good. Commissioner Tingerthal stated the Agency tries to anticipate issues and, for this matter in particular, it was believed there would be an issue due to the costs, so the developments were not selected to receive funding from the Agency.

Commissioner Tingerthal next reported the Agency would receive $3 million from the National Housing Trust Fund, stating this is the first time the program has been funded since it was created. The board has received information several times about the plan, which has undergone a public comment period. Fairly substantial comments were received on the final day of the public comment period and due to those comments, the request for action this month has been withdrawn so that staff will have adequate time to more fully analyze the comments.

Next, Commissioner Tingerthal stated that naturally occurring affordable housing is a big topic in the community right now. Many of these types of buildings are privately owned complexes that were built in the 1970's and 1980's before the tax reforms of 1986. Prior to those tax reforms, owners were able to take fairly high losses and depreciation on those buildings. Traditionally, this type of housing has been affordable without subsidy and has also accepted housing choice vouchers. In the current market, a lot of capital is available for buyers to do minor rehabilitation of these projects and reposition them as market rate buildings that will no longer accept housing choice vouchers, or whose rents are higher than the maximum payment standard for housing choice vouchers. The most visible conversion of this type in Minnesota is the Concierge Apartments in Richfield, a 750-unit complex where 150 tenants who are receiving some type of rental assistance have been notified they will need to move. Meadowbrook, in Saint Louis Park, is in a similar situation but is receiving strong support from the city. Similar situations are also occurring in Golden Valley and in Dakota County. All are large complexes that involve dozens or hundreds of low-income people who now need to find new places to live. Commissioner Tingerthal reported the Agency had received a request from the Housing Justice Center that it act as a center of thought leadership about housing, to think about the issue of naturally occurring affordable housing and other timely topics around which other players in the marketplace can be engaged in conversation to investigate strategies that can be employed to ensure those properties can stay affordable to people who are living there now. Also related to naturally occurring affordable housing, Commissioner Tingerthal shared that the Greater Minnesota Housing Fund (GMHF) has formally requested the Agency's participation in an investment fund that would provide capital to persons or entities interested in purchasing these types of properties and who would pledge to keep them affordable. Agency staff met with GMHF earlier in the week and the Agency's finance team is working to see if the fund is a good fit for our investment guidelines. If the Agency moves forward with participation, the board would be asked for concept approval.

Regarding a special session, Commissioner Tingerthal stated that the Governor had come forward with a partial compromise on requirements to have a special session. Commissioner Tingerthal stated that, if there is not a special session, the Agency will likely see up to five times as many proposals under the RFP than can be funded, compared three to four times as many proposals historically. Because of the more limited funding availability, cut-offs will likely be higher than in previous years. Commissioner Tingerthal stated the lack of available resources is especially disappointing because communities are now stepping up and submitting stronger applications that the Agency will be unable to fund.

Commissioner Tingerthal drew the board's attention to an in-depth report issued by Moody's Investor Services that had been distributed with board packages. Commissioner Tingerthal stated the report was issued following a visit by the finance and management team to the rating agencies in early May. Commissioner Tingerthal characterized the report as highly complimentary of the Agency, especially regarding the assets in which it invests and the management team. Commissioner Tingerthal shared that members of the external finance team were at the Agency that day for a meeting regarding bonding authority and structuring and took a few moments to introduce the team members to the board. Chair DeCramer stated the board would like to take credit for the report, but knows that it is the result of the hard work of the management staff and finance team. Chair DeCramer thanked them for their work.

The following employee introductions were made:

- Gene Aho introduced Katie Eaton. Ms. Eaton joined the Agency as an administrative specialist for Single Family. Ms. Eaton has a BA in graphic design and her work experience includes being a member of the Keller Williams REO team and in sales and marketing for an online clothing company.
- John Patterson introduced his summer interns, both of whom are graduate students at the Humphrey Institute. Mr. Aaron Hanson is looking at multifamily first mortgage production to determine why mortgagees are prepaying and refinancing and what the Agency can do to better serve them. Ms. Hattie Hiler will review national best practices for landlord mitigation funds and make recommendations for the Agency's pilot, which received a $250,000 appropriation from the legislature.

C. Committee.

None.

6. Consent Agenda

A. 2016 Allocation Plan for National Housing Trust Fund

This item was pulled from the agenda and will be considered at the July meeting.

7. Action Items

A. Approval, Changes to the Deferred Payment Loan Program

Ms. Nicola Viana requested approval of changes to the deferred payment loan program and the associated program manual changes. Ms. Viana stated no additional funding was being requested at this time. Ms. Viana stated that the board had approved changes in January that were requested due to high production. At the current time, production has decreased and the changes were being requested to be more responsive to buyer need. Ms. Viana stated that the programs are available to borrowers who qualify for an Agency first mortgage program and help remove entry cost barriers for low- and moderate-income borrowers who credit qualify for a mortgage loan but lack the cash needed to close. Program participants are required to contribute a minimum amount towards the entry costs and to take homebuyer education. Ms. Viana stated that 90% of Agency first mortgage loans close with some type of downpayment assistance. Ms. Viana described the programs and the requested changes in loan maximums for the deferred payment loan program and the deferred payment plus loan program. Ms. Viana stated that staff was also requesting a simplification to the formula used by lenders to determine the loan amount available to borrowers. Ms. Viana stated that program staff is currently in the process of planning for the 2017 program budget, stating that, in order to be agile and responsive to the changing market, additional changes may be sought in the future if production increases and fewer resources are available.

Ms. Thao inquired if maximum loan amounts may be lowered if the market should move to a buyer's rather than the current seller's market. Ms. Viana responded that production and budget is always being tracked and lender feedback and modeling is used to identify possible program changes needed. Mr. Johnson stated he was pleased with the ability to be agile in meeting needs and questioned if the increases were large enough to stimulate more production. Ms. Viana responded that staff has projected an additional $30 million to $40 million of production in the current Affordable Housing Plan and the increases should stimulate activity. **MOTION:** Mr. Johnson moved approval of the requested changes to the Deferred Payment Loan Program. Ms. Thao seconded the motion. Motion carries 5-0.

B. Approval, Revolving Lines of Credit to the Land Bank Twin Cities, Inc. and Extension of Existing Line of Credit

Ms. Karen Johnson and Mr. Chuck Commerford presented this request to provide two new lines of credit in an aggregate amount of $10 million to the Land Bank Twin Cities, Inc., that would be fully guaranteed by the Family Housing Fund through 2018. Ms. Johnson added that repayment had been received for the existing lines of credit following the mailing of the board package, so an extension of those lines of credit was no longer needed. Ms. Johnson provided background on the Land Bank Twin Cities' organizational structure. It was stated that staff has evaluated the overall risk exposure of the lines of credit and has completed a comprehensive underwriting of the Land Bank Twin Cities, Inc. Ms. Johnson stated the lines of credit would support community lending and strategic acquisition activities. Commissioner Tingerthal disclosed for the board a potential conflict of interest, stating that the Agency has had a representative on the board of the Twin Cities Land Bank as well as on their loan committee. Mr. Johnson inquired if draws may be taken during the wind-down phase of the lines of credit. Mr. Commerford responded that funds that have been repaid may not be re-drawn for new activities in the final two years of the lines of credit. **MOTION:** Mr. Klausing moved approval of the lines of credit and the adoption of Resolutions No. MHFA 16-028. Ms. Klinzing seconded the motion. Motion carries 5-0.

8. Discussion Items

A. Fiscal 2017 Administrative Budget

Mr. Kevin Carpenter thanked staff for their assistance in developing the budget, adding that it was his first time through the process, which he described as fairly extensive. Mr. Carpenter stated that the budget is a 15% increase over projected 2016 expenses and a 3.9% increase over projected actual 2016 expenses, Mr. Carpenter stated that, like many government agencies, 75% of the administrative budget is related to staffing costs. Staffing cost increases are attributed to recently approved changes to salary schedules. The Agency's full time equivalent headcount will increase by seven, but those positions are comprised of contractors being made employees and also from positions whose salaries are paid through inter-agency agreements or grant funding. Mr. Carpenter described the process for budgeting salaries. Mr. Carpenter stated there is also growth in budgeted expenses for professional and technical contracts, and computer systems and services, which reflects the work that is going on in the Agency's BTS division.

Mr. Carpenter stated that the budget demonstrates the Agency's stewardship of resources, with the 2016 actual budget compared to forecast having only 1.4% growth, and administrative expenses continuing to be about 3% of expenditures. Commissioner Tingerthal called the board's attention to the chart showing administrative expenses as a percentage of assistance provided, adding that the information is provided to the legislature each year. Commissioner Tingerthal stated that the Agency's administrative expense percentage has remained fairly consistent over many years.

Chair DeCramer inquired about the increase in salary and benefits over the past few years. Mr. Carpenter stated that staff would provide detailed information to him at a future date.

Ms. Klinzing stated that the table showing the total assistance provided along with administrative expenses is very helpful and understandable, calling it a great way to present the information. Discussion item. No action needed.

9. Informational Items

A. Post-Sale Report, Residential Housing Finance Bonds (RHFB) 2016 Series ABC

B. Quarterly Status Report, Enhanced Financial Capacity Homeownership Initiative (Homeownership Capacity)

Informational items. No discussion or action.

10. Other Business

None.

11. Adjournment.

The meeting was adjourned at 1:55 p.m.

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Minnesota Housing Finance Agency

Board Agenda Item: 6.A
Date: 7/28/2016

Item: Section 811 (Round 1) Program Rental Assistance Contracts
Commerce Apartments, Saint Paul - D6264

Staff Contact(s):
Vicki Farden, 651.296.8125, vicki.farden@state.mn.us
Joel Salzer, 651.296.9828, joel.salzer@state.mn.us

Request Type:

☒ Approval
- ☒ Motion
- ☒ Resolution

☐ No Action Needed
- ☐ Discussion
- ☐ Information

SUMMARY REQUEST:
Adoption of the attached Resolution authorizing up to $204,738 for a Section 811 Rental Assistance Contract (RAC) for a period of five years. This action will provide initial funding for a five year RAC for four new supportive housing units for people with disabilities.

FISCAL IMPACT:
The Section 811 Project-based Rental Assistance (PRA) Program is funded by the Department of Housing and Urban Development (HUD) for a five year term, with subsequent annual renewals. Funding for the program was allocated in the 2016 Affordable Housing Plan (AHP) and with this selection the Agency completes its round one funding goals on a timely basis.

Meeting Agency Priorities:
- ☒ Address Specific and Critical Local Housing Needs
- ☐ Finance Housing Responsive to Minnesota's Changing Demographics
- ☐ Preserve Housing with Federal Project-Based Rent Assistance
- ☒ Prevent and End Homelessness
- ☐ Reduce Minnesota's Racial and Ethnicity Homeownership Disparity

Attachment(s):
- Background
- Resolution

Section 811 is a Project Based Rental Assistance (PRA) Program funded by HUD. Minnesota Housing, in partnership with the Department of Human Services (DHS), was selected for two rounds of 811 PRA funding. In round one, the Agency was awarded $3,085,500 for up to 85 units of 811 PRA. In round two, the Agency was awarded $3,000,000 for up to 75 units of 811 PRA. The term for both round one and round two Cooperative Agreements with HUD is 20 years, with initial funding provided for five years and annual renewals subject to appropriations for the remainder of the term.

The purpose of the Section 811 PRA Program is to expand the supply of supportive housing that promotes and facilitates community integration for people with significant and long-term disabilities. The program advances key Minnesota initiatives to prevent and end homelessness and move people from institutional settings to the most inclusive community setting possible, which directly addresses crucial action steps of Minnesota's Olmstead plan. Section 811 PRA provides new affordable housing opportunities to allow more people to exit long-term care facilities and homelessness.

Section 811 PRA provides a project-based rent assistance subsidy for extremely low-income persons with disabilities between the ages of 18 and 62. Minnesota chose to further target the eligible population to persons exiting institutions through the DHS Money Follows the Person Program, or persons experiencing long-term homelessness and working with the Projects for Assistance in Transition from Homelessness (PATH).

Round One

The first round of funding for 811 PRA units must be committed by the end of 2016, so the Agency has been marketing the program to existing multifamily properties that have been financed by Minnesota Housing or those that are in Minnesota Housing's Low Income Housing Tax Credit or Project Based Section 8 Portfolio of developments with existing unsubsidized units.

After offing an initial Request for Proposals, Minnesota Housing has been accepting applications for 811 PRA on a pipeline basis. On June 10, 2016, CommonBond Communities submitted an application for four 811 PRA units at Commerce Apartments. The property meets all of the 811 program selection criteria, including proximity to services and transportation. The application was reviewed by staff and is recommended for selection.

D#	Property Name	Location	Owner	# of units	5 year RAC funding
6264	Commerce Apartments	St Paul	CommonBond	4	$ 204,738

With the addition of these four units, the Agency has a total of 84 units committed for 811 PRA and has reached its funding commitment goal for round one, but is one unit short of our production goal of 85 units. The 811 PRA budget was based on average rents for one bedroom units. Since we started taking applications and leasing units, we found a need to secure several two and three bedroom 811 PRA units. The addition of these larger units with higher average rents changed budget projections for the initial five year grant term and reduces the number of units we can fund by one. This change is acceptable to HUD.

Round Two

The second round of funding for 811 PRA units must be leased by the end of 2019. These units will be awarded to developments applying for capital financing through the Consolidated Multifamily RFP process in 2015, 2016 and 2017. The Agency awarded 18 Section 811 PRA units in the 2015 RFP selections. For the 2016 RFP, we have received seven applications for 45 Section 811 PRA units. Selections will be made in October 2016.

Agenda Item: 6.A
Resolution

MINNESOTA HOUSING FINANCE AGENCY
400 Sibley Street, Suite 300
St. Paul, Minnesota 55101

RESOLUTION NO. MHFA 16-

RESOLUTION APPROVING SELECTION/COMMITMENT SECTION 811 PROJECT-BASED RENTAL ASSISTANCE CONTRACTS

WHEREAS, the Minnesota Housing Finance Agency (Agency) has received an application to provide a Section 811 Rental Assistance Contract for a property serving individuals who are extremely low income, and disabled.

WHEREAS, Agency staff has reviewed the application and determined that it is in compliance with the Agency's rules, regulations and policies; that such grants are not otherwise available, wholly or in part, from private lenders or other agencies upon equivalent terms and conditions; and that the application will assist in fulfilling the purpose of Minn. Stat. ch. 462A.

NOW THEREFORE, BE IT RESOLVED:

THAT, the Board hereby authorizes Agency staff to enter into a Rental Assistance Contract using federal resources as set forth below, subject to changes allowable under the HUD Section 811 Program, upon the following conditions:

1. Agency staff shall review and approve the recommended Rental Assistance Contract (RAC) for up to the total recommended amount for five years:

D#	Property Name	Location	Owner	# of units	Five year RAC funding
6264	Commerce Apartments	St Paul	CommonBond	4	$ 204,738

2. The issuance of the RAC in form and substance acceptable to the Agency staff and the closing of the contract shall occur no later than twelve months from the adoption date of this Resolution; and

3. The sponsors and such other parties shall execute all such documents relating to said contract, to the security therefore, as the Agency, in its sole discretion, deems necessary.

Adopted this 28th day of July 2016.

____
CHAIRMAN

Board Agenda Item: 6.B
Date: 7/28/2016

Item: Creeks Run Townhomes - Phase II, Chaska, D7861

Staff Contact(s):
Sara Bunn, 651.296.9827, sara.bunn@state.mn.us

Request Type: Select from one column only. Resolutions always require a motion.

☒ Approval	☐ No Action Needed
☒ Motion	☐ Discussion
☒ Resolution	☐ Information

Summary of Request:
Agency staff completed the underwriting and technical review of the proposed development and recommends the adoption of a resolution authorizing the issuance of a Low and Moderate Income Rental (LMIR) program commitment in the amount of $1,550,000, subject to the terms and conditions of the Agency Term Letter.

Fiscal Impact:
In the 2016 Affordable Housing Plan (AHP), Minnesota Housing board members allocated $70 million in new activity for the LMIR program, which includes $30 million from the Housing Investment Fund (Pool 2) and $40 million for LMIR and LMIR Bridge Loan activity through tax-exempt bonding. Funding for this loan falls within the approved budget, and the loan will be made at an interest rate and terms consistent with what is described in the AHP. Additionally, the LMIR loan should generate approximately $50,000 in fee income (origination fee and construction oversight fee) as well as interest earnings that will help offset Agency operating costs.

Meeting Agency Priorities:
☒ Address Specific and Critical Local Housing Needs
☒ Finance Housing Responsive to Minnesota's Changing Demographics
☐ Preserve Housing with Federal Project-Based Rent Assistance
☒ Prevent and End Homelessness
☐ Reduce Minnesota's Racial and Ethnicity Homeownership Disparity

Attachment(s):
- Background
- Development Summary
- Resolution

At its October 22, 2015 meeting, the Minnesota Housing Board approved this development for processing under the Low and Moderate Income Rental (LMIR) program. The following summarizes the changes in the composition of the proposal since that time:

DESCRIPTION:	SELECTION		COMMITMENT		VARIANCE	
Total Development Cost		$ 8,784,940		$ 9,394,066		$ 609,126
Gross Construction Cost		$ 6,690,600		$ 6,839,945		$ 149,345
Agency Sources:						
LMIR		$ 1,519,000		$ 1,550,000		$ 31,000
Total Agency Sources		$ 1,519,000		$ 1,550,000		$ 31,000
Other Non-Agency Sources:						
Tax Credit Equity		$ 4,862,355		$ 7,778,972		$ 2,916,617
Energy Rebate		$ 12,600		$ 12,600		$ -
Deferred Developer Fee				$ 52,494		$ 52,494
Gross Rents:						
Unit Type	**# of DU**	**Rent**	**# of DU**	**Rent**	**# of DU**	**Rent**
2 BR	2	$ 691	2	$ 691	2	$ -
2BR	2	$ 975	2	$ 966	2	$ (9)
3 BR	2	$ 691	2	$ 691	2	$ -
3BR	24	$ 1,126	24	$ 1,115	24	$ (11)
4 BR	6	$ 1,256	6	$ 1,245	6	$ (11)
Total Number of Units	**36**				**36**	
LTH Units	**4**				**4**	

Factors Contributing to Variances:

1. Round Two Funding
   The project was not fully funded with tax credits in Round 1. This project applied for and was awarded the remainder of its required tax credits in Round 2. Board approved an additional $252,454 in tax credits on 4/28/2016. There was also an increase in investor pricing. These changes explain the additional $2,916,617 in syndication proceeds.

2. Total Development Costs
   Total Development Cost (TDC) has increased by 6.5 percent since selection due to rising construction costs, increased syndicator-required reserves and a higher than anticipated sewer-water access charge. The developer was able to realize some cost savings elsewhere, but not enough to offset the increased costs so the Agency first mortgage was increased.

   The development cost per unit remains within the Agency's predictive model. Development costs that exceed the predictive model estimate by 25 percent or more require board approval. At the time of selection, the budgeted TDC per unit of $262,685 was 3.26 percent below the

$271,549 predictive model estimate. At the time of commitment, the budgeted TDC per unit of $260,963 was 3.9 percent below the $271,549 predictive model estimate.

3. First Mortgage Underwriting
   The Agency first mortgage has increased by $31,000. Since selection, the Mortgage Insurance Payment required by the Department of Housing and Urban Development (HUD) was reduced from 0.25 percent to 0.125, allowing the property to support a slightly larger mortgage. After further analysis of the proposed property maintenance and operating costs, it was determined operating costs would be slightly less than anticipated at selection. This change also contributed to an increased mortgage.

Other Significant Events since Board Selection:
None

DEVELOPMENT SUMMARY
DEVELOPMENT:

					D7861
Name:	Creeks Run Townhomes – Phase II			App#:	M 17137
Address:	TBD				
City:	Chaska	County:	Carver	Region:	MHIG

MORTGAGOR:

Ownership Entity:	Creeks Run Phase II LLC
General Partner/Principals:	Creeks Run Phase II MM, LLC/ David Dye, Marv Kotek

DEVELOPMENT TEAM:

General Contractor:	MDM Homes, LLC, Minneapolis
Architect:	Kaas Wilson, Bloomington
Attorney:	Winthrop & Weinstine, PA, Minneapolis
Management Company:	Premier Management, St. Paul
Service Provider:	Simpson Housing Services, Minneapolis

CURRENT FUNDING REQUEST/PROGRAM and TERMS:

$ 1,550,000	LMIR First Mortgage	
	Funding Source:	Hsg Investment Fund (Pool 2)
	Interest Rate:	4.75%
	MIP Rate:	0.125%
	Term (Years):	30
	Amortization (Years):	30

RENT GRID:

UNIT TYPE	NUMBER	UNIT SIZE (SQ FT)	GROSS RENT	AGENCY LIMIT	INCOME AFFORDABILITY
2BR	2	1,025	$ 691	$ 966	$ 38,640
2BR	2	1,025	$ 966	$ 966	$ 38,640
3BR	2	1,423	$ 691	$ 1,115	$ 44,600
3BR	24	1,423	$ 1,115	$ 1,115	$ 44,600
4BR	6	1,640	$1,245	$1,245	$ 49,800
TOTAL	36				

Purpose:
Creeks Run II is a new construction, workforce housing development located in Chaska, Minnesota. The 36-unit, two-story townhome development includes a mix of two-, three- and four- bedroom units. The development meets the Agency's strategic priority of providing permanent supportive housing and serves important policy goals of addressing foreclosure remediation and being affordable to the local workforce.

Target Population:
Creeks Run II will provide 32 units of general occupancy workforce housing and four units designated for persons who have experienced long-term homelessness (LTH). All of the units will be rent restricted at 50% MTSP and income restricted at 60% MTSP.

Project Feasibility:
The development is feasible as proposed. Minnesota Housing will issue 9% tax credits and the limited partner will contribute $7,778,972 in tax credit equity based on a $1.025/credit price. The first mortgage amount is supported by Minnesota Housing underwriting standards. The developer has committed a deferred developer fee of $52,494.

Development Team Capacity:
Everwood Development has completed 40 townhouse units of similar size and scope of the proposed development, a 55-unit affordable development using both housing and historic tax credits, and other affordable housing developments. Previous experience with Minnesota Housing and internal staff experience has rated this developer as acceptable.

The property will be managed by Premier Housing Management LLC, which was established in 2010 and currently manages 18 developments. Based on previous experience with Minnesota Housing staff, the property management company has the capacity to manage this development.

Physical and Technical Review:
The applicant is proposing to construct a new 36-unit, four building townhome development. Minnesota Housing's staff architect reviewed and approved the construction plans and specifications. The general contractor, MDM Homes, and the architect, Kaas Wilson, have capacity and have successfully utilized a similar building design in other nearby communities.

Market Feasibility:
The market study was prepared by Novogradac & Company and the report states that affordable and market rate properties in the Chaska area maintain extremely low vacancy rates, with projected growth of both population and households. The proposed rents are affordable to the local workforce.

Supportive Housing:
The service provider is Simpson Housing, and they have the expertise to provide the required services. The rental assistance and supportive service funding will be provided by Group Residential Housing, which is secured through Carver County.

Agenda Item: 6.B
Resolution

MINNESOTA HOUSING FINANCE AGENCY
400 Sibley Street, Suite 300
St. Paul, Minnesota 55101

RESOLUTION NO. MHFA 16-

RESOLUTION APPROVING MORTGAGE LOAN COMMITMENT
LOW AND MODERATE INCOME RENTAL (LMIR) PROGRAM

WHEREAS, the Minnesota Housing Finance Agency (Agency) has received an application to provide construction and permanent financing for a multiple unit housing development to be occupied by persons and families of low- and moderate-income, as follows:

Name of Development:	Creeks Run Townhomes – Phase II
Sponsors:	Everwood Development
Guarantors:	Marvin Kotek and David Dye
Location of Development:	Chaska
Number of Units:	36
General Contractor:	MDM Homes, LLC, Minneapolis
Architect:	Kaas Wilson, Bloomington
Amount of Development Cost:	$9,394,066
Amount of LMIR Mortgage:	$1,550,000

WHEREAS, the Agency has determined that such applicant is an eligible sponsor under the Agency's rules; that such permanent mortgage loan is not otherwise available, wholly or in part, from private lenders upon equivalent terms and conditions; and that the construction of the development will assist in fulfilling the purpose of Minn. Stat. ch. 462A; and

WHEREAS, the Agency has reviewed the application and found the same to be in compliance with Minn. Stat. ch. 462A and the Agency's rules, regulations and policies;

NOW THEREFORE, BE IT RESOLVED:

THAT, the Board hereby authorizes Agency staff to issue a commitment to provide a permanent mortgage loan to said applicant from the Housing Investment Fund (Pool 2 under the LMIR Program) for the indicated development, upon the following terms and conditions:

1. The amount of the LMIR amortizing loan shall not exceed $1,550,000; and

2. The interest rate on the permanent LMIR loan shall be 4.75 percent per annum plus 0.125 percent per annum HUD Risk Share Mortgage Insurance Premium, with monthly payments based on a 30 year amortization; and

3. The term of the permanent LMIR loan shall be 30 years; and

4. The LMIR End Loan Commitment shall be entered into on or before January 30, 2017 and shall have an 18 month term (which shall also be the LMIR Commitment Expiration Date); and

5. The Mortgagor shall agree with the terms set forth in the Agency Term Letter.

6. The Mortgagor shall execute documents embodying the above in form and substance acceptable to Agency staff; and

7. Marvin Kotek and David Dye shall each guarantee the mortgagor's payment obligation regarding operating cost shortfalls and debt service until the property has achieved a 1.15 debt service coverage ratio (assuming stabilized expenses) for three successive months; and

8. Marvin Kotek and David Dye shall each guarantee the mortgagor's payment under LMIR Regulatory Agreement and LMIR Mortgage (other than principal and interest) with the Agency; and

9. The sponsor, the builder, the architect, the mortgagor, and such other parties as Agency staff in its sole discretion deem necessary shall execute all such documents relating to said loan, to the security therefore, to the construction of the development, and to the operation of the development, as Agency staff in its sole discretion deem necessary.

Adopted this 28th day of July 2016.

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CHAIRMAN

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Board Agenda Item: 6.C
Date: 7/28/2016

Item: Amendment to Headwaters Regional Development Commission (HRDC) 2015 Community Homeownership Impact Fund Award and Approval of Corresponding Community Fix Up Loan Program Initiative Allocation Increase

Staff Contact(s):

Nira Ly, 651.296.6345, nira.ly@state.mn.us
Nick Boettcher, 651.296.9567, nick.boettcher@state.mn.us

Request Type:

☒ Approval
  ☒ Motion
  ☐ Resolution

☐ No Action Needed
  ☐ Discussion
  ☐ Information

Summary of Request:

Staff requests Board approval to amend the 2015 Community Homeownership Impact Fund award to the Headwaters Regional Development Commission (HRDC). The amended award will convert $10,000 of awarded Deferred Loan Funds to Grant Funds to write down Community Fix Up Loan (CFUL) interest rates resulting in an increase to HRDC's current CFUL allocation.

Fiscal Impact:

Amending the awarded funds from Loan Funds to Grant Funds will move the award from an asset on the balance sheet to an expense on the operating statement, though that change is immaterial to the Agency's overall financial condition.

Meeting Agency Priorities:

☒ Address Specific and Critical Local Housing Needs
☐ Finance Housing Responsive to Minnesota's Changing Demographics
☐ Preserve Housing with Federal Project-Based Rent Assistance
☐ Prevent and End Homelessness
☐ Reduce Minnesota's Racial and Ethnicity Homeownership Disparity

Attachment(s):

- Background
- Revised Impact Fund Award Details
- Community Fix Up Loan Program Initiative – Allocation Increase

Background:
Minnesota Housing awarded the Headwaters Regional Development Commission (HRDC) $100,000 in Deferred Loan Funds for its Owner Occupied Rehabilitation program through the 2015 Community Homeownership Impact Fund (Impact Fund) Single Family Request for Proposals (RFP). The funds were awarded to serve 10 households in Beltrami, Lake of the Woods, Hubbard, Clearwater, and Mahnomen counties. To date, HRDC has closed five loans for a total of $42,962.

In 2014, Minnesota Housing awarded HRDC $25,000 in Grant Funds through the 2014 Impact Fund Single Family RFP to write down interest rates on five Community Fix Up Loans (CFUL). In 2016, Minnesota Housing awarded HRDC an additional $10,000 in Grant Funds through the Incentive Fund to write down CFUL interest rates for an additional two households. HRDC has served more households under its CFUL Initiative than proposed. It closed nine loans under its 2014 Impact Fund award and four loans under its Incentive Fund award.

HRDC has seen an overwhelming interest in CFUL write downs. It has $5,634.40 in Grant Funds remaining under its Incentive Fund award. The need for Grant Funds to write down CFUL interest rates currently exceeds HRDC's remaining Grant Funds.

Revised Impact Fund Award Details:
The amended 2015 Impact Fund award will convert $10,000 of the remaining Deferred Loan Funds under HRDC's 2015 Impact Fund award into Grant Funds to write down CFUL interest rates. HRDC proposes to serve a minimum of two households at or below 80% area median income (AMI). The maximum Grant Funds for each interest rate write down will be $5000. The target areas will remain the same as awarded.

Staff requests this amendment to the 2015 Impact Fund award to meet the need for CFUL interest rate write downs in the communities that HRDC serves.

Community Fix Up Loan Program Initiative – Allocation Increase:
The following recommendation for a CFUL Initiative allocation increase meets the guidelines for participation contained within the CFUL Program Concept. Staff applies threshold indicators and considers compensating factors when determining whether to recommend a specific proposal to access funds under CFUL. The threshold indicators include:

- Confirmation that the initiative fits within the Program Concept
- The strength of partnership
- Leverage and/or value-added features
- A focused marketing plan
- Budget counseling, if required

Using the $10,000 in Grant Funds under the amended 2015 Impact Fund award described above, HRDC proposes an allocation increase to its current CFUL Initiative. Households with incomes between 50% and 80% of Twin Cities AMI will be eligible for a 3% interest rate. Households with incomes below 50% AMI will be eligible for a 1% interest rate. HDRC has closed 13 loans under this initiative for a total loan volume of $158,129.20.

Board Agenda Item: 7.A
Date: 7/28/2016

Item: Resolution Relating to State Appropriation Bonds (Housing Infrastructure); Authorizing the Issuance and Sale of Additional Series and Approving the Execution and Delivery of Related Documents; Authorization of Additional Developments to be Funded with Proceeds of Prior Series

Staff Contact(s):
Kevin Carpenter, 651-297-4009, kevin.carpenter@state.mn.us
Paula Rindels, 651-296-2293, paula.rindels@state.mn.us

Request Type:

☒ Approval	☐ No Action Needed
☒ Motion	☐ Discussion
☒ Resolution	☐ Information

Summary of Request:
Agency staff is preparing to issue State Appropriation Bonds, (Housing Infrastructure), the proceeds of which will be used to finance eligible housing infrastructure projects that have already been approved by the Board. Kutak Rock, the Agency's bond counsel, will send the resolution and Preliminary Official Statement describing the transaction under separate cover. The Board will be asked to adopt the resolution approving the terms of the bond issue on a not-to-exceed-basis.

Fiscal Impact:
The debt service on these State Appropriation Bonds will be paid by annual appropriations from the State of Minnesota. Therefore, the bonds are not a debt or liability of the Minnesota Housing Finance Agency. This resolution provides the authority for the Agency to issue the remaining amount of currently authorized Housing Infrastructure Bonds. Any future new authority granted by the State legislature would be subject to new authorizing resolutions to be presented to the Board.

Meeting Agency Priorities:
☐ Address Specific and Critical Local Housing Needs
☐ Finance Housing Responsive to Minnesota's Changing Demographics
☐ Preserve Housing with Federal Project-Based Rent Assistance
☐ Prevent and End Homelessness
☐ Reduce Minnesota's Racial and Ethnicity Homeownership Disparity

Attachment(s):
- Preliminary Official Statement *(to be sent under separate cover)*
- Resolution *(to be sent under separate cover)*

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Minnesota Housing Finance Agency

Board Agenda Item: 7.B
Date: 7/28/2016

Item: Approval, Selections, Enhanced Financial Capacity Homeownership Initiative (Homeownership Capacity)

Staff Contact(s):
Ruth DuBose, 651.297.3128, ruth.dubose@state.mn.us
Tal Anderson, 651.296.2198, tal.anderson@state.mn.us

Request Type:

☒ Approval	☐ No Action Needed
☒ Motion	☐ Discussion
☒ Resolution	☐ Information

Summary of Request:
The Enhanced Financial Capacity Homeownership Initiative (Homeownership Capacity) pilot is designed to expand the efforts of organizations that currently provide intensive financial empowerment education and coaching to those with the goal of homeownership. The goal of this initiative is to increase the probability of successful homeownership, especially among households of color or Hispanic ethnicity and low-income individuals and to address the homeownership gap between white/non-Hispanic and households of color or Hispanic ethnicity. Staff is hereby requesting board approval of $750,000 in funding recommendations for the third year of the pilot program in the following three categories:

- $600,630 Program funding for 13 applicants
- $60,825 Two NeighborWorks America certification trainings
- $88,545 Homeownership Capacity Incentive fund

Staff is also recommending the Board adopt the attached resolution delegating to the Commissioner the authority to approve modifications of grantee awards.

Fiscal Impact:
The Homeownership Capacity Program uses Pool 3 funds budgeted in the 2016 Affordable Housing Plan.

Meeting Agency Priorities:
☐ Address Specific and Critical Local Housing Needs
☐ Finance Housing Responsive to Minnesota's Changing Demographics
☐ Preserve Housing with Federal Project-Based Rent Assistance
☐ Prevent and End Homelessness
☒ Reduce Minnesota's Racial and Ethnicity Homeownership Disparity

Attachment(s):
- Background
- Proposed Homeownership Capacity Provider Coverage Map
- Resolution

Background:
The Homeownership Capacity program concept was approved at the April 2014 Board meeting. As noted in the Program Concept, organizations will provide financial empowerment services that include, but are not limited to:

- Asset building (i.e. savings, retirement plans, home ownership, higher education, etc.)
- Credit report education, repair and re-building
- Development of spending plans, including discussion of financial best practices
- Consumer protection training and education (i.e. banks, credit unions, insurance companies, predatory financial scams, and identity theft)
- Filing taxes

Since the program began August 1, 2014, 891 households have committed to receiving the services offered through Homeownership Capacity. As of March 31, 2016, 218 households have exited the program with 50% of these clients reporting home purchase as an outcome. In the third phase of the pilot, evaluation of the program will continue to be both quantitative and qualitative. A standard set of data collection items used to demonstrate client progress towards goal and post-goal achievement outcomes will be defined and required for reporting under Homeownership Capacity.

In May 2015, the Board approved additional funding in the amount of $650,000 for 10 agencies under the second year of the pilot.

In April 2016, a Request for Proposal (RFP) was released and applications were submitted for funding under the third year of the pilot. In the RFP, applicants addressed the following:

- The target service area and target demographic the applicant will serve as well as the approach to securing client participation
- The number of clients that will be served and the capacity of the applicant to meet the demand
- The role of the coach and client
- The anticipated average length of time the applicant will work with clients
- How homebuyer education will be integrated into the program design
- Training of those providing Homeownership Capacity services
- Outreach efforts to ensure applicants are attracting potential clients that fall within the program parameters

Each proposal was reviewed and evaluated by Single Family program staff and ranked pursuant to the criteria summarized above by a selection committee made up of staff from throughout the Agency.

Program Funding Recommendations
Agency staff is recommending the top 13 applicants be selected for the funding amounts listed below:

Organizations Funded in 2014 and/or 2015 and Recommended for Funding in 2016	
Organization	**Funding Amount**
Bii Gii Winn	$ 44,000
Comunidades Latinas Unidas En Servicio (CLUES)	$ 56,400
Hmong American Partnership (HAP)	$ 35,830
Neighborhood Development Alliance (NeDA)	$ 85,000
NeighborWorks Home Partners	$ 36,000
Project for Pride in Living, Inc. (PPL)	$ 36,000
Southwest Minnesota Housing Partnership (SWMHP)	$ 24,000
Three Rivers Community Action, Inc.	$ 110,000
TOTAL	**$ 427,230**

New Organizations Recommended for Funding in 2017	
Organization	**Funding Amount**
African Development Center	$ 30,400
Community Action Duluth	$ 60,000
Community Action Partnership of Suburban Hennepin (CAPSH)	$ 36,000
Minneapolis Urban League	$ 24,000
PRG, Inc.	$ 23,000
TOTAL	**$ 173,400**

GRAND TOTAL	**$ 600,630**

The Agency also received non-recommended applications from the following organizations: Emerge Community Development and Lao Assistance Center of Minnesota. Additionally, Build Wealth was an applicant under the 2016.2017 competitive RFP and since applying, was specified to receive funds from a direct legislative appropriation to the Agency in the amount of $500,000 to provide similar services to that of Homeownership Capacity. Therefore, Build Wealth was not considered for additional Homeownership Capacity funding in this round.

With this funding, the 13 recommended organizations expect to serve 598 diverse low-income renters and households of color or Hispanic ethnicity statewide. Funds will be made available for a period of 12 months from October 1, 2016 - September 30, 2017.

NeighborWorks America Certification Trainings
NeighborWorks America is nationally recognized for their trainings that meet a wide audience base in the housing industry. Specifically, NeighborWorks America offers six certification courses including pre- and post-purchase education, homeownership counseling, foreclosure counseling, homeownership counseling for program managers and executive directors and financial capability. Additionally, NeighborWorks America offers courses in economic development, community engagement, revitalization, lending for small businesses and families, affordable housing development, construction and rehab, and real estate asset management.

Staff recommends funding in the amount of $60,825 to bring the Financial Capability Certification and Post-Purchase training as a Place-Based Training in Minnesota which will provide each agency with the opportunity to obtain up to two certifications at a significantly reduced cost. The amount requested covers the cost of the trainer, trainer fees (lodging and travel), materials and shipment costs of those materials. This also covers the cost of registration for participants with an allowed maximum of 35 participants.

Certification Training		
Certification Training	**Cost**	
Financial Capability Certification Training	$	35,425
Post-Purchase Education Certification Training	$	25,400
TOTAL	**$**	**60,825**

The overall average cost per participant for Minnesota Housing under this proposal is $726 for the Post-Purchase Certification Training and $1,012 for the Financial Capability Certification training. If participants were to attend these certification trainings during one of NeighborWorks' National Training Institutes, the cost to attend each certification series would be near $5,000 including airfare, lodging, food and ground transportation for participants.

The Financial Capability Certification training was offered here in May/June 2015 and was well received. Twenty-three organizations sent 39 staff from around the state to attend this training. Of the organizations recommended for funding, 22 staff are currently certified. However, there are another 25 staff that are not certified but work directly with Homeownership Capacity clients that would benefit from this training.

The Post-Purchase Certification Training has not been offered by Minnesota Housing as a Place-Based Training. Of the organizations recommended for funding, there are only three staff that have received Post-Purchase Certification through attendance at the NeighborWorks' National Training Institutes. Post-purchase services are a requirement under the Homeownership Capacity program so the network of providers would greatly benefit from such training.

These certification trainings will be offered to the Homeownership Capacity grantees first. If any spots remain, they will be made available to other stakeholders throughout Minnesota with an interest in expanding into these service areas or enhancing their already existing program(s).

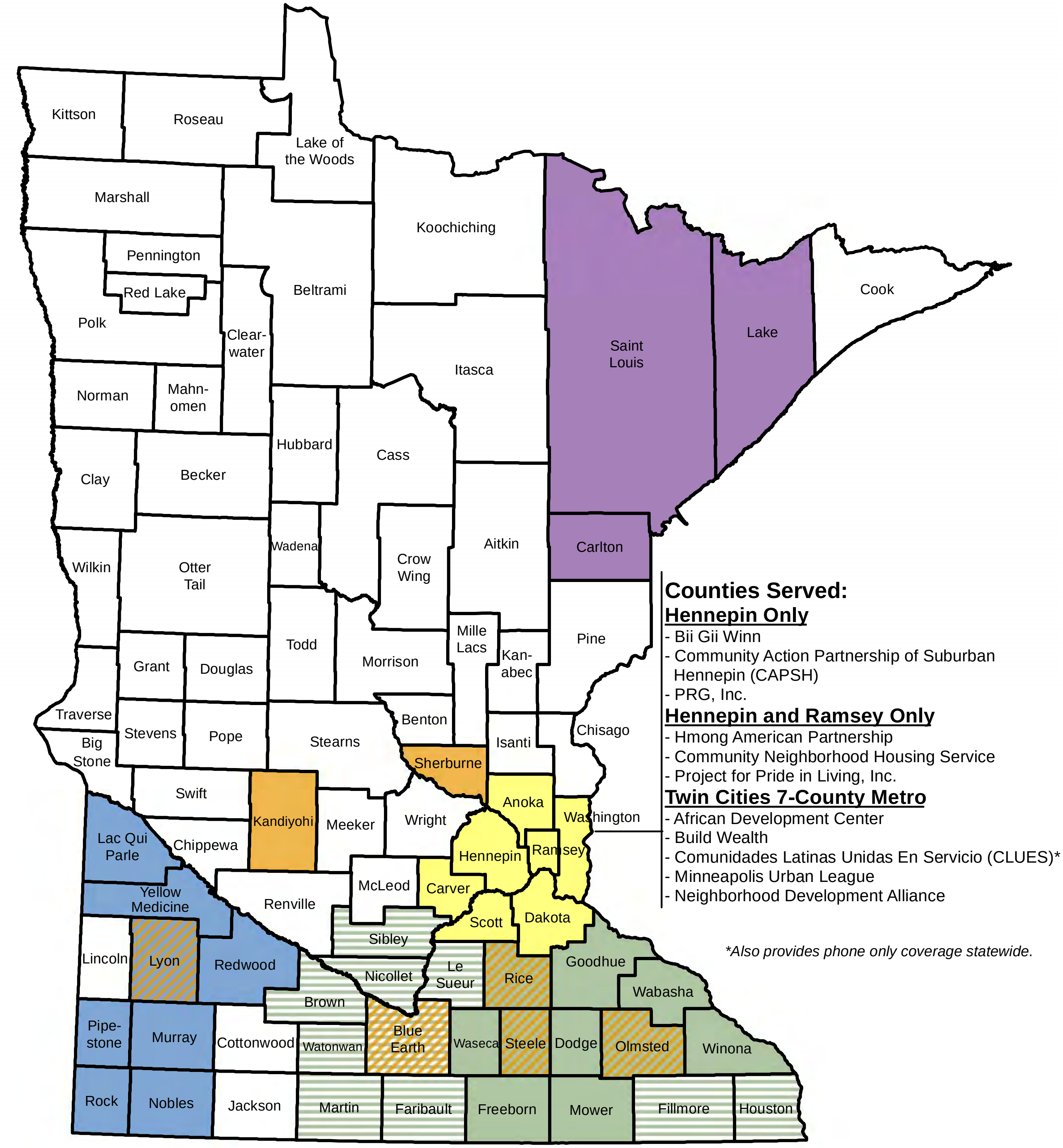
Homeownership Capacity Incentive Fund

The Homeownership Capacity Incentive Fund will allow grantees access to additional funds if they can demonstrate they have met their original households served goal under the grant agreement. A short application process will be established for grantees to request those additional funds. The total available fund is $88,545. Staff proposes the following parameters for grantees to access the Homeownership Capacity Incentive Fund subject to funding availability on a first-come first-served basis.

1. The amount of Homeownership Capacity Incentive Fund awards is limited up to 25% of the original funding commitment not to exceed $25,000 per grantee and, in addition, up to a maximum of $1,200 per household .
2. Funding for Incentive Fund Awards is available only during the current 12 month grant agreement term and grantee requests must be submitted by August 15 of the program year.

3. The grantee must have met its original households served goal for the current grant period and have no outstanding reporting or monitoring issues or not be in compliance with its required follow up activities.
4. Incentive Funds Awards are subject to the terms and conditions of the original award and the Agency reserves the right to ask for additional documentation.

Proposed Homeownership Capacity Provider Coverage



Multiple Providers
African Development Center (Phone Only)
African Development Center
Three Rivers Community Action, Inc. (Phone Only)
Three Rivers Community Action, Inc.
Southwest Minnesota Housing Partnership
Community Action Duluth

0 20 40 Miles

Minnesota Housing Finance Agency

Source: Minnesota Housing Date Printed: 05/10/2016

MINNESOTA HOUSING FINANCE AGENCY
400 Sibley Street, Suite 300
St. Paul, Minnesota 55101

RESOLUTION NO. MHFA
BOARD DELEGATION NO.

RESOLUTION DELEGATING AUTHORITY TO THE COMMISSIONER REGARDING AWARD MODIFICATIONS UTILIZING THE HOMEOWNERSHIP CAPACITY INCENTIVE FUND

WHEREAS, the Minnesota Housing Finance Agency ("Agency") Commissioner ("Commissioner") has requested the Minnesota Housing Finance Agency Board ("Board") to delegate to the Commissioner certain authority regarding the administration of grants in order to improve the efficiency of the Agency's grant programs; and

WHEREAS, such authority would permit the Commissioner to perform the activities encompassed by the delegation without prior Board approval; and

WHEREAS, the Board has considered the request and finds that it is in the best interests of the Agency to delegate such authority.

NOW, THEREFORE, BE IT RESOLVED that the Board delegates the authority described below to the Commissioner so long as such authority is exercised in accordance with the parameters and requirements stated herein. This delegated authority shall remain in effect for the current and future Commissioners until revoked.

DELEGATED AUTHORITY
To authorize the Commissioner to make certain funding modifications, herein called "Incentive Fund Awards," under the Homeownership Capacity Program ("The Program").

PARAMETERS OF DELEGATED AUTHORITY
1. The amount of Homeownership Capacity Incentive Fund awards is limited up to 25% of the original funding commitment, not to exceed $25,000 per grantee and, in addition, up to a maximum of $1,200 per household.

2. Funding for Incentive Fund Awards is available only during the current 12 month grant agreement term and grantee requests must be submitted by August 15 of the program year.

3. The grantee must have met its original households served goal for the current grant period and have no outstanding reporting or monitoring issues or not be in compliance with its required follow up activities.

4. Incentive Funds Awards are subject to the terms and conditions of the original award.

REPORTING REQUIREMENTS

The Commissioner shall make a written report to the Board at least annually describing the actions taken utilizing the delegated authority and shall indicate whether the parameters of the delegated authority merit revision.

Adopted this 28th day of July, 2016

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CHAIRMAN

Minnesota Housing
Finance Agency

Board Agenda Item: 7.C
Date: 7/28/2016

Item: Adoption, 2016 Allocation Plan for National Housing Trust Fund
(Substantial Amendments to the Consolidated Plan 2012-2016 and the 2016 Annual Action Plan)

Staff Contact(s):
Jessica Deegan, 651.297.3120, jessica.deegan@state.mn.us

Request Type:

☒ Approval
- ☒ Motion
- ☐ Resolution

☐ No Action Needed
- ☐ Discussion
- ☐ Information

Summary of Request:
Staff requests the Board adopt the National Housing Trust Fund Allocation Plan (as substantial amendments to the 2012-2016 Consolidated Plan and 2016 Annual Action Plan). The Allocation Plan covers October 1, 2015 to September 30, 2016, and is required by the U.S. Department of Housing and Urban Development (HUD) for Minnesota Housing to receive the FY2016 allocation of the new National Housing Trust Fund program.

Fiscal Impact:
The 2016 allocation for the National Housing Trust Fund is $3,000,000.

Meeting Agency Priorities:
☐ Address Specific and Critical Local Housing Needs
☐ Finance Housing Responsive to Minnesota's Changing Demographics
☒ Preserve Housing with Federal Project-Based Rent Assistance
☒ Prevent and End Homelessness
☐ Reduce Minnesota's Racial and Ethnicity Homeownership Disparity

Attachment(s):
- Background
- Public Comments and Response
- Draft Annual Allocation Plan (*with changes from May version tracked*)

BACKGROUND:

This spring, HUD announced that nearly $174 million will be made available through the first-ever allocations of the National Housing Trust Fund. The National Housing Trust Fund is a new affordable housing production program that will complement existing Federal, State, and local efforts to increase and preserve the supply of decent, safe, and sanitary affordable housing for extremely low- and very low-income households, including families experiencing homelessness. The Fund is capitalized through contributions by government sponsored enterprises Fannie Mae and Freddie Mac and administered by HUD. The Fund was established through the Housing and Economic Recovery Act of 2008.

The State of Minnesota, along with 39 other states, will receive the state minimum of $3 million for 2016. Governor Dayton designated Minnesota Housing as the recipient/grantee of the funds, and these funds will be made available in the 2016 Annual Request for Proposals, with applications due in June.

Minnesota will direct the resources to provide opportunities to increase or preserve the supply of multifamily rental housing for extremely low-income families, including homeless families.

Minnesota's program will provide financing for one to two developments for any of the following activity types:

- New construction
- Acquisition with rehabilitation
- Rehabilitation without acquisition
- Operating Subsidy with one of the above for developments producing new units meeting the Permanent Supportive Housing strategic priority

The National Housing Trust Fund Allocation Plan is an annual submission required by HUD that describes how the State will distribute the funds, including how it will use the funds to address its priority housing needs. The allocation plan also describes what activities may be undertaken with these funds and how recipients and projects will be selected.

As a substantial amendment to the existing 2012-2016 Consolidated Plan and 2016 Annual Action Plan (which was approved by the board in March), the Allocation Plan was presented as a draft for public comment through June, including a public hearing on June 21st, and final comments due June 22nd. Full comments and the agency's response follow.

Upon approval by the board and sufficient treatment of any comments made, the substantial amendments will be made and the Allocation Plan will be submitted to HUD, and are then subject to a 45 day period prior to approval by HUD.

PUBLIC COMMENT RESPONSE:

Minnesota Housing is a grantee of National Housing Trust Fund (NHTF) funds from the U.S. Department of Housing and Urban Development (HUD). In accordance with HUD regulations, Minnesota Housing published a draft allocation plan regarding use of the NHTF funds on May 22, 2016. The agency also held a hearing on the draft allocation plan on June 21, 2016. In response to the draft allocation plan, Minnesota Housing received comments from two organizations. The following is our response to those comments, which are attached in full.

The comments can be organized into several themes, each of which we address.

Utilizing the Agency's Consolidated Request for Proposal Process for NHTF Funds

Minnesota Housing received conflicting comments regarding use of the agency's Consolidated Request for Proposal (RFP) process as an application process for NHTF funding. One commenter "agree[d] that the distribution of NHTF resources should occur through the annual Consolidated Request for Proposals." The second commenter raised concerns about the RFP process, suggesting that the process "runs the risk of giving local governments an effective veto over projects" and that entities that participate in the RFP are those that "include or serve high populations of poor families".

Minnesota Housing's Consolidated RFP is a mechanism that allows the agency to consolidate multiple housing resources into one multifamily application process. Applicants do not apply for a specific funding source, but rather the applicants request funding for a specific housing development. Minnesota Housing's Consolidated RFP streamlines the distribution of funds across many programs, including federal, state, and local resources.[1] While entities that participate in the Consolidated RFP make their own determination regarding whether or not to put their own funds into a particular project, the system does not give any entity an "effective veto" over projects. Moreover, while the entities that participate in the consolidated RFP do include those that "serve high populations of poor families," that is a function of the reality that those are the entities with available funding to create and/or renovate housing affordable to low-income households. The Consolidated RFP is an effective and efficient way to allocate resources, which results in a greater number of affordable housing units throughout the state.

Consideration for Developments with Long Affordability Periods

Affordable units funded with NHTF must satisfy affordability requirements for 30 years after project completion.[2] While grantees have the option to impose longer periods of affordability, Minnesota Housing opted not to give any additional priority to projects with longer than 30 year affordability terms in the allocation plan. One commenter disagreed with that decision and would like to see "incentives for developers to commit to longer periods of affordability."

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[1] Use of the Consolidated RFP for NHTF funds also helps the agency to consider whether an application leverages non-federal resources. See 24 C.F.R. § 91.220(l)(5).
[2] 24 C.F.R. § 93.302(d)(1).

While the agency supports the development and preservation of long-term affordable housing, there are practical concerns that make it difficult for the agency and developers to commit to an affordability term longer than 30 years. It is very difficult to predict what will happen in a given market in future decades. Owners proposing developments in stronger markets may be less willing to commit to a longer affordability period. In addition, many projects need new capital funding within the current 30-year affordability requirement, which typically is provided with new affordability restrictions. Minnesota Housing will consider longer affordability periods more fully in conjunction with the development of the 2019 Low Income Housing Tax Credit Qualified Allocation Plan (QAP) and subsequent Consolidated RFP in 2018.

Strategic Priorities Applicable to NHTF Applications

Minnesota Housing is required to utilize certain priorities in evaluating NHTF applications, including geographic diversity and the extent the proposed use of NHTF funds aligns with the priority housing needs of the jurisdiction.[3] The agency incorporates economic integration as a strategic priority through the Consolidated RFP process. One commenter suggested that Minnesota Housing should prioritize economic integration over other priorities and raised concerns regarding the prioritization of transit-oriented development, planned community developments, and preservation of affordable housing.

Minnesota Housing takes geographic diversity and the importance of priority housing needs throughout the state very seriously. The agency believes its funding priorities are an important mechanism to create and preserve a variety of affordable housing resources that meet the needs of diverse households across the state, which is a crucial component of fair housing choice.

Geographic diversity "means a cross-section of communities, including higher-income areas of opportunity and non-racially concentrated communities and neighborhoods."[4] The agency is committed to a balanced approach that results in investment in higher income communities without excluding affordable housing and investment in communities that have experienced years of disinvestment and are part of a larger revitalization plan. In order to accomplish those goals, the agency utilizes a number of strategic priorities in the Consolidated RFP process. Agency priorities include developments for specific household types, such as large families, single room occupancy and special populations; projects that promote economic integration by providing mixed-income house or housing located within higher-income communities; rural or tribal housing; workforce housing; housing for supportive housing units for households experiencing long-term homelessness; housing located near jobs and transportation; and preservation of existing affordable housing units at risk of loss of affordability. The fact that the economic integration priority is one of several priorities does not diminish its value as an important component of the agency's commitment to serving a variety of different low income household needs in different geographic areas.

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[3] 12 U.S.C. § 4568(g)(2)(D); 24 C.F.R. §91.220(l)(5)(i)(A).
[4] Poverty & Race Research Action Council, The National Housing Trust Fund: Promoting Fair Housing in State Allocation Plans 4 (May 2016).

The agency incorporates a priority for transit-oriented development because it is an important factor in developing an array of housing choices. Access to transportation is widely seen as a valid and important issue in providing beneficial housing choice to low-income households. Transit is available in many different types of communities, including higher income suburban communities. Indeed, HUD's Affirmatively Furthering Fair Housing regulations utilize access to transportation as an important measure of access to opportunity.[5]

Preservation of deeply affordable housing units and funding of developments that are part of comprehensive planned community development efforts are also important areas of priority. Units that are at risk of loss of a federal funding stream or other source of existing rental subsidy are important to maintain as a relatively low investment of state funds preserves the existing subsidy. In some cases, such as project-based Section 8 developments, the failure to preserve those contracts means the permanent loss of the subsidy stream as a resource for low-income Minnesotans. The NHTF statute provides that an important priority for funding is "the extent to which rents for units in the project funded are affordable, especially for extremely low-income families."[6]

The commenter also questioned why the agency did not incorporate school considerations into the NHTF allocation plan. The agency agrees that access to high-quality schools is an important consideration for placement of family housing. In light of that, the agency has revised the 2018 QAP to give priority to access to high performing schools.[7] The agency intends to include a similar priority measure in the 2017 Consolidated RFP, which will apply to future rounds of NHTF funds. Applications for the 2016 RFP have already been submitted, and are under review under the existing 2016 priorities.

The commenter also faults the allocation plan for not evaluating proposals on the basis of their effect on racial integration in Minnesota. However, NHTF site selection standards require that newly constructed housing utilizing the funds "must not be located in an area of minority concentration, except as permitted under paragraph (e)(3) of this section [§ 983.57], and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area."[8] Minnesota Housing will evaluate the racial composition of the area for proposed new construction NHTF developments in accordance with the requirements of the site and neighborhood standard regulations.

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[5] See, e.g., 24 C.F.R. § 5.153. This is also consistent with HUD's regulations regarding the NHTF allocation plan. See 24 C.F.R. § 91.220(l)(5)(i)(A) ("The plan must identify priority factors for funding that shall include . . . the merits of the application in meeting the priority housing needs of the jurisdiction . . . such as housing that is accessible to transit or employment centers").

[6] 12 U.S.C. § 4568(g)(2)(D)(iii);

[7] See the Proposed 2018 HTC Self Scoring Worksheet and Methodologies at www.mnhousing.gov > Multifamily Rental Partners > Funding > Tax Credits

[8] 24 C.F.R. § 983.57(e)(2), made applicable to the NHTF by 24 C.F.R. § 93.150(b).

Integrative fair housing measures

One commenter suggested that the agency utilize tools such as tenant selection plan guidance or affirmative marketing plans to promote fair housing considerations. Minnesota Housing recently issued tenant selection plan guidance to owners and developers of agency-funded properties. The guidance stressed fair housing concerns, including a focus on the HUD guidance on criminal background screening.[9]

The agency agrees that the affirmative fair housing marketing process is an important issue. While the agency already includes language incorporating that process in the agency's Consolidated RFP application, the agency is incorporating the following into the NHTF Allocation Plan:

> *Consistent with Affirmative Fair Housing Marketing regulations, Minnesota Housing requires that each housing provider carry out an affirmative marketing program to attract prospective buyers or tenants in the housing market area regardless of race, creed, color, religion, sex, national, origin, marital status, status with regard to public assistance, disability, sexual orientation, or familial status. The plan should detail how the housing provider intends to market and attract populations that are least likely to apply to the project, including persons with disabilities and households of color.*

Changes to the Allocation Plan based on public comment

As a result of the comments pertaining to integrative fair housing measures, Minnesota Housing has added the above section on affirmative marketing to the allocation plan.

[9] See Tenant Selection Plan Guidance at www.mnhousing.gov > Multifamily Rental Partners > Management, Compliance & Servicing > Asset Management

Minnesota Housing Partnership www.mhponline.org 651–649–1710

mhp

Via email

June 22, 2016

To: Jessica Deegan, Minnesota Housing
From: Chip Halbach, Minnesota Housing Partnership

Subject: Comment on Minnesota's National Housing Trust Fund Draft Allocation Plan

MHP supports the draft Allocation Plan, with an emphasis on these elements:

- Understanding that the amount for the state only amounts to $3 million, we agree that the entire amount used in program should be for rental housing and benefit extremely low income households.
- We agree that the distribution of NHTF resources should occur through the annual Consolidated Request for Proposals.
- We agree that the maximum percentage so available under federal law should be committed to operating cost assistance or reserves.

We do disagree with the Agency's proposal to give no consideration for proposed developments that promise an affordability period in excess of 30 years. In geographic areas likely to see long term growth in property value there should be incentives for developers to commit to longer periods of affordability.

Finally, the National Housing Trust Fund is, for many decades, the first new federal housing production program focused on helping those facing the greatest housing need. But as now implemented it is vastly underfunded to be considered a meaningful response to this need. This inadequacy in funding is borne out in the allocation plan which identifies 22 units being created or rehabilitated in the context of 137,286 extremely low income Minnesota households having an unmet housing need. We therefore encourage Minnesota Housing to invest NHTF funds in a high profile development so that this development can be used to illustrate the value of the trust fund program and support efforts to increase funding.

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Institute on Metropolitan Opportunity's Comments on MHFA Draft National Housing Trust Fund Allocation Plan (June 22, 2016)

As with any affordable housing program, the National Housing Trust Fund can, if utilized inappropriately, perpetuate or create segregation and concentrate poverty. Such an outcome, however, is forbidden by the federal Fair Housing Act. Likewise, it is imperative that the National House Trust Fund be implemented in a fashion that complies with the Fair Housing Act's statutory mandate to affirmatively further fair housing. The following comments will focus on the interaction between MHFA's Draft NHTF Allocation Plan and these federal civil rights requirements. In short, a number of components of the draft plan raise concerns under fair housing law. In addition, the plan misses several significant opportunities to promote racial and economic integration in housing.

Obligation to affirmatively further fair housing. The Poverty & Race Research Action Council (PRRAC) has produced a detailed brief describing, in general terms, the interaction of federal fair housing law and the newly implemented NHTF program. The brief succinctly lays out the "statutory directive" with which any state NHTF must comply:

> Under the Fair Housing Act, the HTF must comply with the statutory directive that all federal housing programs affirmatively further fair housing (AFFH). Specifically, the AFFH provision of the Fair Housing Act, 42 U.S.C. 3608(d), provides that: "All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this subchapter and shall cooperate with the Secretary [of HUD] to further such purposes." As a result, states that provide housing units through the HTF program must go beyond simply policing discriminatory activities to ensuring that their project actively advances housing integration and expanded housing choice.
> Last summer, HUD issued its final rule on Affirmatively Furthering Fair Housing, which requires jurisdictions to address levels of segregation, poverty concentration, disparities in access to opportunity across communities and neighborhoods, and disproportionate housing needs. The Assessment of Fair Housing (AFH) planning tool for state governments includes an analysis of the state's implementation of the HTF. Every state will be required to go through the AFFH process sometime over the next six years, on a five-year cycle coinciding with the state's Consolidated Plan

> (ConPlan) process. When this process takes place, states will be asked to "[d]escribe how the administration of CDBG, HOME, and the National Housing Trust Fund programs may affect patterns of segregation, R/ECAPs, disparities in access to opportunity and disproportionate housing needs." In addition to the AFH review, the HTF program itself will require states to certify their compliance with the AFFH duty, as a condition of receiving HTF funds.[1]

The brief in its entirety is incorporated into following comments, and attached as Appendix A.

Consolidated Request for Proposals process. The NHTF allocations will be distributed through the state's Consolidated RFP ("Super RFP") process. Because the Super RFP process includes as major partners both local governments for heavily segregated municipalities (Minneapolis, Saint Paul, Ramsey and Hennepin Counties) and a private entity with a proven historic pattern of pro-segregative, concentrated development (Family Housing Fund), it raises critical fair housing concerns.[2] These concerns are two-pronged. First, the Super RFP both runs the risk of giving local governments an effective veto over projects – historically a major obstacle to fair housing. Second, the governmental and private entities that participate in the Super RFP are those that include or serve high populations of poor families, increasing the probability that the resulting funding allocations will simply reflect existing, segregated living patterns. Both of these practices have in the past been the basis for civil rights legal claims against government bodies.

Low priority for economic integration. Although the Allocation Plan includes economic integration as a "geographic priority area," this factor is placed on equal footing with over a dozen other "strategic priorities," the bulk of which are likely to be economically and racially segregative in impact. There is no mechanism in the Allocation Plan to ensure that NHTF investments are, on balance, integrative in impact.

Prioritizing economic integration as one of many strategic priorities is unlikely to result in any meaningful movement towards integrated housing. This is because the robust menu of strategic priorities ensures that virtually any proposal, no matter where sited, can reasonably claim to meet one or more strategic priority. While it is certainly conceivable

[1] POVERTY & RACE RESEARCH ACTION COUNCIL, THE NATIONAL HOUSING TRUST FUND, PROMOTING FAIR HOUSING IN STATE ALLOCATION PLANS 6-10 (May 2016) (internal citation omitted), *available at* http://www.prrac.org/pdf/Promoting_Fair_Housing_in_HTF_State_Allocation_Plans.pdf.

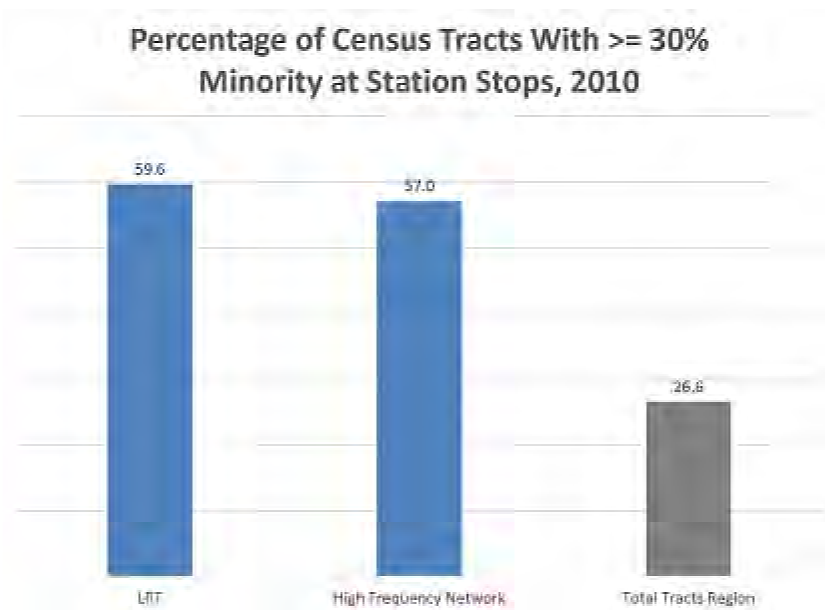
[2] For additional information about Family Housing Fund's historic preference for development in segregated neighborhoods, see Myron Orfield, Will Stancil, Thomas Luce, and Eric Myott, *Response to Poverty-Pimping CDCs: The Search for Dispersal's Next Bogeyman*, 25 HOUSING POLICY DEBATE 619, 627 (2015). In summary, of MHFA funded affordable units developed with Family Housing Fund as a partner, 70 percent were in Minneapolis and Saint Paul (which tend to be more segregated as a whole than other municipalities) and 70 percent were in areas between 50 and 100 percent nonwhite. By comparison, only 51 percent of affordable units developed without Family Housing Fund participation were in Minneapolis and Saint Paul and only 50 percent were located in areas between 50 and 100 percent nonwhite.

that this Allocation Plan could result in the funding of an economically integrated proposal, it cannot be said that such a proposal would be significantly more likely to receive funding than, for instance, a highly segregated transit-oriented development that is a component of a planned community development strategy.

Integration and the mandate to affirmatively further fair housing is not a coequal consideration in housing funding decisions. *Instead, the mandate to affirmatively further fair housing is an overarching consideration that governs all decisions made with regards to federally funded affordable housing*. To the extent that other factors, such as the need to prioritize transit-oriented development, conflicts with this obligation, mechanisms must be found to minimize that conflict and ensure that resulting policy decisions *do not* undermine the affirmatively furthering mandate.

Incorporation of segregative strategic priorities. As mentioned above, a number of the strategic priorities utilized in the Allocation Plan and Consolidated RFP process seem likely to increase and perpetuate the segregative siting of affordable housing, rather than reduce it.

For instance, transit-oriented development is listed as a geographic priority area for the NHTF funding, and "TOD on fixed transit" is listed as a strategic priority in the Consolidated RFP Guide. However, housing along transit, and particularly along fixed-line transit, is far more likely to be located in economically and racially concentrated neighborhoods than housing elsewhere. This is illustrated by the chart below:



To the extent that MHFA wishes to pursue transit-oriented affordable development, it must be counterbalanced by robust efforts to ensure that such development does not create or perpetuate segregation, and, in the aggregate, affirmatively furthers fair housing. No such mechanism appears to exist in the Allocation Plan.

In similar fashion, the prioritization of affordable housing in areas with "planned community development" seems likely to perpetuate segregation, since the economically disadvantaged and concentrated areas that are the focus of most community development also tend to be much more racially segregated.

The use of NHTF for "[p]reservation of developments that contain existing federal assistance or other critical affordable units at risk of loss" will perpetuate segregation to the extent that such developments already reflect segregated living patterns.

This is not a complete list. In order to fulfill its federal fair housing obligations, MHFA should analyze its strategic priorities to ensure that they do not, either conceptually or as a result of their implementation, prioritize funding for segregative proposals or municipalities that already suffer from severe economic or racial concentration.

No prioritization or analysis of racial integration. The NHTF Allocation Plan does not in any way mention, address, or evaluate proposals on the basis of their effect on racial integration in Minnesota. The same is true of the Multifamily Request for Proposals Guide. *This is a clear obstacle to the fulfillment of the state's duty to affirmatively further fair housing*. Without, at minimum, any system in place to evaluate the impacts of multifamily project funding decisions on racial integration, MHFA cannot know whether its policies are affirmatively furthering fair housing or perpetuating racial segregation. In at least one major instance, the failure of a government agency to evaluate housing decisions through a fair housing lens was found to violate the Fair Housing Act's affirmatively furthering provisions – despite subsequent analysis showing that no discriminatory policy decisions occurred as a result of this analysis.[3] MHFA cannot not opt to "fly blind" and hope that segregation is not created as a result of its actions.

Failure to incorporate school attendance into Allocation Plan or Consolidated RFP process. Access to high-quality, integrated schools is often a determinative factor in family housing decisions. MHFA research has shown this to be even more true of low- and moderate-income families than it is for households as a whole.[4] Relatedly, the concentration of low-income and nonwhite families in segregated schools is a major component of segregation and economic concentration in housing.

Nonetheless, at no point in the Allocation Plan or Consolidated RFP process more broadly is a proposal's impact on local schools considered. Nor is the availability of high-quality, integrated local schools to housing residents. This omission acts as a severe handicap on the agency's ability to fulfill its mandate to affirmatively further fair housing.

Failure to require or incentivize integrative fair housing measures, such as genuinely integrative affirmative marketing plans. Housing agencies in other states have implemented a number of innovative requirements into allocation plans for LIHTC

[3] NAACP v. Sec'y of Hous. And Urban Dev., 817 F.2d 149, 156 (1st Cir. 1987).
[4] MINNESOTA HOUSING FINANCE AGENCY, HOUSING LOCATION PREFERENCES OF MINNESOTANS (2012), *available at* http://www.mnhousing.gov/idc/groups/administration/documents/document/mhfa_012251.pdf.

and other sources of federal financing, to encourage or require developers to develop truly integrative proposals and operate resulting developments in a fashion that affirmatively furthers fair housing. Such measures include provisions requiring or incentivizing the following:

- robust affirmative marketing plans that meet clearly specified requirements and make special outreach to underserved groups
- tenant selection plans which explicitly disallow certain discriminatory preferences (e.g., for particular occupations, local residency) or screening criteria (credit scores or involvement in legal actions)

The aforementioned PRRAC Policy Brief discusses potential requirements for affirmative marketing and tenant selection that promote fair housing.[5] MHFA is strongly encouraged to review these requirements and considering implementing similar provisions into its NHTF Allocation plan.

[5] POVERTY & RACE RESEARCH ACTION COUNCIL, THE NATIONAL HOUSING TRUST FUND, PROMOTING FAIR HOUSING IN STATE ALLOCATION PLANS 6-10 (May 2016).

Appendix A

PRRAC Policy Brief

The National Housing Trust Fund: Promoting Fair Housing in State Allocation Plans

PRRAC
Poverty & Race
Research Action Council

Policy Brief

May 2016

The National Housing Trust Fund: Promoting Fair Housing in State Allocation Plans

The national Housing Trust Fund (HTF) is the newest federal low-income housing development program, and is particularly valuable for its focus on providing housing for extremely low-income families. Like the Low Income Housing Tax Credit (LIHTC), the HTF is allocated to state governments on a formula basis, and states are then responsible for allocating funds through a state allocation plan. And like the LIHTC and other federal housing programs, the HTF has the potential to perpetuate and even increase segregation and concentrated poverty if careful steps are not taken by state officials who implement the program. This policy brief will provide some guidelines for states and advocates to ensure that the HTF will fulfill the Fair Housing Act's goal that federal housing programs affirmatively further fair housing and expand housing choices for low-income families living in segregated, high-poverty neighborhoods.

Like the LIHTC and other federal housing programs, the HTF has the potential to perpetuate and even increase segregation and concentrated poverty if careful steps are not taken by state officials who implement the program.

AFFH and the HTF

The HTF was established in 2008 as part of the Housing and Economic Recovery Act of 2008, and is initially funded in 2016 with allocations from Fannie Mae and Freddie Mac. These initial allocations are small (with most states receiving $3 million in the first year),[1] but the program is expected to grow in future years. The HTF is designed to address the severe shortage of affordable housing for the lowest-income Americans. The HTF is a federal program with a dedicated fund not subject to the annual appropriations process and primarily designed to provide revenue to produce, preserve, rehabilitate, and operate rental housing for extremely low-income individuals.[2] Generally, the purposes of the HTF are to: (1) increase and preserve the national supply of rental housing for extremely low-income (ELI) households (households with incomes of 30% or less of area median) and very low-income (VLI) households

1 See 81 Fed. Reg. 27165 (May 5, 2016).
2 12 U.S.C. §4568(c)(7) and §4568(c)(10)(A).

(households with incomes of 50% or less of area median), including homeless households; and (2) increase homeownership among ELI and VLI households.[3] On January 30, 2015, the Department of Housing and Urban Development (HUD) issued interim regulations to implement the HTF, which are modeled on federal HOME program regulations.[4] HUD subsequently published guidance to states to assist in the development of annual HTF Allocation Plans.[5]

Under the Fair Housing Act, the HTF must comply with the statutory directive that all federal housing programs affirmatively further fair housing (AFFH).[6] Specifically, the AFFH provision of the Fair Housing Act, 42 U.S.C. 3608(d), provides that: "All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this subchapter and shall cooperate with the Secretary [of HUD] to further such purposes." As a result, states that provide housing units through the HTF program must go beyond simply policing discriminatory activities to ensuring that their project actively advances housing integration and expanded housing choice.[7]

Last summer, HUD issued its final rule on Affirmatively Furthering Fair Housing, which requires jurisdictions to address levels of segregation, poverty concentration, disparities in access to opportunity across communities and neighborhoods, and disproportionate housing needs. The Assessment of Fair Housing (AFH) planning tool for state governments includes an analysis of the state's implementation of the HTF. Every state will be required to go through the AFFH process sometime over the next six years, on a five-year cycle coinciding with the state's Consolidated Plan (ConPlan) process. When this process takes place, states will be asked to "[d]escribe how the administration of CDBG, HOME, and the National Housing Trust Fund programs may affect patterns of segregation, R/ECAPs, disparities in access to opportunity and disproportionate housing needs." In addition to the AFH review, the HTF program itself will require states to certify their compliance with the AFFH duty, as a condition of receiving HTF funds.[8]

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3 See http://nlihc.org/sites/default/files/NHTF_FAQ_4-12-13.pdf.

4 80 Fed. Reg 5200 (January 30, 2015), available at http://www.gpo.gov/fdsys/pkg/FR-2015-01-30/pdf/2015-01642.pdf.

5 HUD Notice CPD-16-07, "Guidance for HTF Grantees on Fiscal Year 2016 Housing Trust Fund (HTF) Allocation Plans," April 26, 2016, available at http://portal.hud.gov/hudportal/documents/huddoc?id=16-07cpdn.pdf.

6 42 U.S.C. §3608. The HTF statute is also subject to other federal civil rights laws that will not be covered in this policy brief, including nondiscrimination provisions of the Fair Housing Act, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1973, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, Section 3 of the Housing and Urban Development Act of 1968, the Uniform Relocation Act, and the lead-based paint regulations at 24 CFR part 35.

7 See also, for example, *Shannon v. HUD,* 436 F.2d 809 (3d Cir. 1970); *NAACP v. HUD,* 817 F.2d 149 (1st Cir. 1987).

8 See HUD Notice CPD-16-07, "Guidance for HTF Grantees on Fiscal Year 2016 Housing Trust Fund (HTF) Allocation Plans," April 26, 2016.

Incorporating AFFH Principles into the State HTF Allocation Plan

Unlike the HOME or Community Development Block Grant (CDBG) programs, HTF funding is not distributed directly to cities and counties. Under statute, each state must designate a state agency to receive and administer HTF funding.[9] Additionally, each state must prepare an annual HTF Allocation Plan that delineates how the state will distribute HTF resources based upon the housing needs identified in the state's ConPlan.[10] Under the interim rule, each state's HTF Allocation Plan must be included as a component of and integrated into the state's ConPlan.[11] Further, the HTF Allocation Plan must be made available to the public for comment and review.[12]

Each state must prepare an annual NHTF Allocation Plan that delineates how the state will distribute NHTF resources based upon the housing needs identified in the state's ConPlan. Under the interim rule, each state's NHTF Allocation Plan must be included as a component of and integrated into the state's ConPlan. Further, the NHTF Allocation Plan must be made available to the public for comment and review.

Under statute, each state HTF Allocation Plan must set forth requirements for selecting qualified applications from prospective recipients of HTF resources.[13] Specifically, the state HTF Allocation Plan must prioritize the allocation of funds based upon the following factors: (1) geographic diversity, as reflected in the ConPlan; (2) the extent to which rental units are affordable, especially for ELI households; (3) the length of time rental units will remain affordable; (4) the merit of a project, which is elucidated by HUD with several examples that include housing that serves people with special needs, housing accessible to transit or employment centers, and housing that includes green building and sustainable development features; (5) the ability of the applicant to obligate the funding and to carry out the project in a timely manner; and (6) the extent to which the project incorporates other funding sources.[14] The statute also requires that at least 90% of a state's HTF resources be used to produce, preserve, rehabilitate, or operate rental housing, while the remaining 10% is allocated toward homeownership activities.[15] Further, at least 75% of states' HTF resources that are allocated to rental housing must benefit ELI households or households with incomes below the federal poverty line.[16] The remaining 25% allocated to

9 See National Low Income Housing Coalition (NLIHC), "How Can I Influence Where the Money Goes?" (A NHTF Policy Brief) available at http://nlihc.org/sites/default/files/04_NHTF_Influence-the-Money_0615.pdf; 12 U.S.C. §1338(c)(2) statute; 24 CFR §93.101(a).

10 Id.; 12 U.S.C. §4568(c)(5)(A); 24 CFR §93.2, §93.100(b), and §93.101(b), and ConPlan regs at 24 CFR §91.220(l)(5) and §91.320(k)(5).

11 Id.; 12 U.S.C. §4568

12 Id.; 12 U.S.C. §4568(c)(5)(B).

13 Id.; 12 U.S.C. §4568(c)(5)(C).

14 Id.; 12 U.S.C. §4568(c)(6) and §4568(g)(2)(D); ConPlan regulations at 24 CFR §91.220(l)(5) and §91.320(k)(5).

15 See National Low Income Housing Coalition (NLIHC) "Focused on Extremely Low Income Renters" (A NHTF Policy Brief), available at http://nlihc.org/sites/default/files/03_NHTF_Focus-on-ELI-Renters_0615.pdf; 12 U.S.C. §4568(c)(7) and §4568(c)(10)(A).

16 Id.; 12 U.S.C. §4568(c)(7)(A).

rental housing must benefit VLI households.[17] All funding designated toward homeownership activities must benefit households with incomes less than 50% of the area median income.

The factors listed in the interim rule are all governed by the overarching affirmatively furthering fair housing mandate. When selecting projects and designing ranking criteria among eligible projects, states must also adhere to these fair housing mandates. For example, a proposal that undermines fair housing goals should not necessarily be eligible for state funding, even if it satisfies one of the other allocation factors in the HTF rule.

INCLUDING AFFH in the HTF State Allocation Plan

Site Selection

Under statute, each state HTF Allocation Plan must prioritize geographic diversity. In the context of AFFH, geographic diversity means a cross-section of communities, **including** higher-income areas of opportunity and non-racially concentrated communities and neighborhoods. HUD's April 26 guidance on HTF state allocation plans is explicit about this obligation, noting that **"[t]he State's geographic distribution priorities must be consistent with the State's certification that it will affirmatively further fair housing…"** Thus, each state plan should clarify how geographic diversity is to be achieved within the context of AFFH, and also incorporate a strategy for racial/ethnic deconcentration by prioritizing areas that currently have few affordable units.

Allocation plans that simply re-allocate NHTF units based on existing poverty population in each city or town are likely to violate the Fair Housing Act, where patterns of poverty concentration parallel patterns of racial concentration. These types of allocation plans are essentially using historical patterns of segregation as the basis to justify a policy of continuing segregation.

The state HTF Allocation Plan will play a critical role in ensuring that ELI and VLI households have equal access to fair and affordable housing opportunities in non-segregated communities. Allocation plans that simply re-allocate HTF units based on existing poverty population in each city or town are likely to violate the Fair Housing Act, where patterns of poverty concentration parallel patterns of racial concentration. In other words, these types of allocation plans are essentially using historical patterns of segregation as the basis to justify a policy of continuing segregation. For this reason, we strongly advise against state allocation plans that automatically re-allocate funds to HUD entitlement jurisdictions, which are by definition areas that already have significant populations of poor families. States should make their own policy choices for HTF allocation, including providing funds to appropriate housing developments in entitlement jurisdictions, consistent with the Fair Housing Act, rather than simply

17 Id.; http://nlihc.org/sites/default/files/03_NHTF_Focus-on-ELI-Renters_0615.pdf; 12 U.S.C. §4568(c)(7).

following HUD's existing funding structures, which can have the effect of limiting choice and perpetuating segregation.

State HTF plans should take account of the needs of low-income families with children for safe neighborhoods with high-performing schools. High-opportunity neighborhoods provide critical resources for families, such as jobs, health care, high-performing school systems, retail and commercial enterprises, and public amenities. To advance fair and affordable housing, state HTF Allocation Plans should incorporate siting standards related to: (1) racial and/or economic concentration/deconcentration; (2) proximity to high-quality schools, positive or negative neighborhood assets, and accessible transit networks; and (3) for developments in lower income neighborhoods, the presence of meaningful community revitalization plans.[18] Based on HUD-sponsored research on state LIHTC Qualified Allocation Plans (QAPs), these types of fair-housing-based threshold requirements or point systems actually have the effect of providing more LIHTC housing in high-opportunity communities.[19]

State NHTF plans should take account of the need of low-income families with children for safe neighborhoods with high-performing schools. High-opportunity neighborhoods provide critical resources for families, such as jobs, health care, high-performing school systems, retail and commercial enterprises, and public amenities.

States can rely on model definitions of "opportunity areas" included in many state QAPs for the LIHTC. For example, in the 2014 Massachusetts QAP for the LIHTC, "opportunity area" is defined: "as part of a neighborhood or community with a relatively low concentration of poverty (poverty rates <15%) that also offers access to opportunities such as jobs, health care, high-performing school systems, higher education, retail and commercial enterprise, and public amenities."[20] Similarly, the 2013 Pennsylvania QAP awarded points in its scoring rubric "to developments in areas that demonstrate the following relative to the immediate market area: low poverty rates, limited affordable housing options (both subsidized and non), limited affordable housing production in the past 20 years, close proximity to employment, strong housing markets and high owner-occupied markets."[21] Other states have also included deconcentration provisions in their QAPs for the LIHTC, such as awarding points for developments located in high-income census tracts and/or in nonqualified census tracts, or creating an actual set-aside for developments located in suburban areas. For example, the New Jersey 2013 QAP included a 60% pool of tax credits available for suburban (and rural) locations.[22]

18 See *Building Opportunity II: A Fair Housing Assessment of State Low Income Housing Tax Credit Plans* (PRRAC, May 2015), available at www.prrac.org/pdf/BuildingOpportunityII.pdf.

19 See *Effect of QAP Incentives on the Location of LIHTC Properties* (U.S. Department of Housing and Urban Development, April 2015), available at www.huduser.org/portal/publications/pdf/QAP_incentive_mdrt.pdf

20 MA QAP 2014, pg. 37.

21 PA QAP 2013, pg. 27.

22 See *Building Opportunity II* (2015), pg. 10.

Taking further insights from the LIHTC program, the 2013 North Carolina QAP for the LIHTC specified, as a general requirement, that "Projects cannot be in areas of minority and low-income concentration (measured by comparing the percentage of minority and low-income households in the site's census tract with the community overall) though exceptions may be granted for economically distressed areas which have community revitalization plans with public funds committed to support the effort."[23] Similarly, in various state QAPs for the LIHTC – including in Alabama, Ohio, North Carolina, and South Dakota – strong point scores/requirements are incorporated to encourage developments to be located away from detrimental land uses.[24]

Finally, states should strive for geographic balance not just in the overall distribution of HTF units, but especially in the distribution of larger units for families with young children. Traditionally, it has been easier to site affordable housing for elderly residents in exclusionary white towns – however, this practice does little to affirmatively further fair housing, and can lead to a racially divided HTF system within a state.

Avoiding Local Opposition to HTF Developments

The HTF includes no requirement for local approval of HTF developments. Indeed, there are not even any provisions in the HTF statute for the notification of local officials. **The practice of local approval has been shown to be detrimental to the siting of LIHTC family developments in high-opportunity communities and neighborhoods,**[25] and the requirement of local contribution and approval for LIHTC developments has prompted a HUD fair housing complaint in at least one state.[26] For these reasons, state HTF allocation plans should avoid local approval requirements (or point incentives for local approval or contribution).

Affirmative Marketing

To promote fair housing for all low-income households, especially those families who have historically experienced the greatest discrimination, the **HTF allocation plan should ensure not only that affordable housing is available in high-opportunity communities, but also that these developments are accessible to families in low-income and underserved communities** through affirmative marketing strategies.[27] In other words, it is not enough to simply provide low-cost housing for families who already live in a lower-poverty community. Affirmative marketing strategies seek to "level the information playing field by

23 NC QAP 2013, pg. 23.

24 See *Building Opportunity II* (2015), pg. 10.

25 See *Effect of QAP Incentives on the Location of LIHTC Properties,* Supra.

26 *Baltimore Regional Housing Campaign v. State of Maryland and Raymond A. Skinner, Secretary of the Department of Housing and Community Development of the State of Maryland* (HUD Complaint, August 2011)

27 The HTF Interim Rule sets out requirements for affirmative marketing at 24 CFR §§93.350(b), 93.404(c)(2)(vii)

encouraging the entry of underrepresented racial groups to a community and making special outreach efforts to these groups."[28]

In LIHTC state QAPs, affirmative marketing provisions are frequently mandated. Likewise, affirmative marketing should be included in any HTF allocation plan as a fundamental project characteristic, and states should undertake responsibility for reviewing these plans and monitoring their implementation. Such affirmative fair housing marketing plans should include market studies from the applicant, and also explain how the prospective HTF project intends to affirmatively further fair housing and attract underserved populations to the project.[29]

Affirmative marketing provisions from state QAPs provide some helpful examples; for example, the 2014 Georgia QAP states, "At a minimum, Marketing Plans must include: outreach efforts to service providers, homeless shelter, or local disability advocacy organizations in the country where project is located; strategy to affirmatively market to persons with disabilities and the homeless; strategy to establish/maintain relationships between management agent and community service providers; referral/screening process that will be used to refer tenants to the projects, the screening criteria to be used, and reasonable accommodations made to facilitate admittance of persons with disabilities and homeless persons; marketing of properties to underserved populations 2-4 months prior to occupancy; applications for affordable units shall be made available in public locations including at least one with night hours."[30]

In Massachusetts, the QAP for the LIHTC program is explicit about specific racial/ethnic groups that should be targeted through affirmative marketing strategies. The Massachusetts 2014 QAP for the LIHTC program states: "All [applicants] should include a detailed plan detailing how they intend to market and attract underserved populations to the project, indicating persons with disabilities and minority households."[31] The Massachusetts QAP further states: "DHCD requires that developers establish affirmative action goals for the percentage of minority participation in each project. Applications must include marketing plans to reach the identified minority groups that are least likely to apply for the housing project being provided."[32]

Researchers have noted that marketing plans must incorporate innovative strategies to reach the most underserved populations. Relying on word-of-mouth or newspaper ads is unlikely to

28 Mark W. Zimmerman, "Opening the Door to Race-Based Real Estate Marketing: South-Suburban Housing Center v. Greater South Suburban Board of Realtors," 41 DEPAUL L.REV. 1271, 1316 (1992).

29 Megan Haberle, Ebony Gayles, and Philip Tegeler, *Accessing Opportunity: Recommendations for Marketing and Tenant Selection in LIHTC and Other Housing Programs* (PRRAC, December 2012)

30 Georgia 2014 QAP, pg. 41, available at http://www.prrac.org/pdf/BO2AppendixB/georgia_2014.pdf

31 MA QAP 2014, pg. 34, http://www.prrac.org/pdf/BO2AppendixB/massachusetts_2014.pdf

32 Id. pg. 50.

overcome existing stigmas and increase the familiarity of underserved populations with high-opportunity neighborhoods.[33]

In order to maximize the long-term benefits of integrative moves for families and children, agencies allocating HTF funds can award points for tenant selection preferences on the basis of applicants' residency in low-performing school districts and high-poverty, segregated communities with low environmental quality and other characteristics that are improved in the receiving community.[34] These families potentially have the most to gain from a move to a high opportunity community.

According to a study conducted by the Fair Housing Justice Center on a number of successful affirmative marketing initiatives, "The affirmative marketing plan and rental criteria utilized by a developer for the initial rent-up of a mixed income housing site in a low-poverty area, as well as during the on-going management of the site, directly impacts whether the site is racially diverse. If a site's initial marketing plan includes a wide variety of media outlets and targets a broad geographic area, it is more likely that a racially diverse tenant applicant pool will be created."[35]

Tenant Selection

In conjunction with affirmative marketing programs, nondiscriminatory tenant selection procedures are critical to ensuring equal access for low-income and underserved households, which will help ameliorate the legacy of exclusion that plague many low-income individuals who benefit from government-funded housing programs. Researchers have demonstrated that different racial and economic groups often have access to different knowledge about housing opportunities within a metropolitan area, often due to tenant selection policies that create racial blind spots.[36] Certain tenant selection procedures – such as tenant qualifications and screening criteria, the use of preferences, and waitlist management practices – can directly influence resident demographics in a development.[37]

HUD program rules already require coordination between affirmative marketing and tenant selection policies, as noted in HUD's Affirmative Fair Housing Marketing (AFHM) regulation, which requires that program participants "shall pursue affirmative fair housing marketing policies in soliciting buyers and tenants, in determining their eligibility, and in concluding sales and rental transactions."[38]

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33 *Accessing Opportunity*, pg. 12.

34 *Accessing Opportunity*, pg. 36.

35 See Diane L. Houk, Erica Blake, and Fred Freiberg, "Increasing Access to Low-Poverty Areas by Creating Mixed-Income Housing," June 2007 (Fair Housing Justice Center).

36 See Maria Krysan and Michael Bader, "Racial Blind Spots: Black-White-Latino Differences in Community Knowledge," *Social Problems*, Vol. 56, Issue 4: 677–701 (2009).

37 *Accessing Opportunity*, pg. 34.

38 24 C.F.R. § 200.610 ("Policy").

The most well-known examples of a discriminatory tenant selection policy is the local residency preference. As the Fair Housing Justice Center notes, "Since many neighborhoods are racially homogenous, especially low-poverty ones, the use of localized rental marketing techniques and criteria, such as residency preferences, limit access for prospective tenants."[39] For example, strict residency preferences in predominantly white communities tend to perpetuate racial segregation by excluding minorities seeking to move from other communities.[40] Residency preferences should be avoided because they unfairly harm those least likely to apply to development in high-opportunity neighborhoods. The use of residency preference should be made impermissible except "where it can be shown (1) not to have a discriminatory effect and (2) not to conflict with AFHM (or other fair housing) objectives."[41]

State HTF allocation plans should also be mindful of discriminatory application or waitlist management procedures. Best practices can be gleaned from the guidance provided by HUD regarding waitlist procedures for public housing and vouchers.[42] Some recommendations included in the waitlist guidance include: providing adequate notice of waitlist openings and affirmative outreach to a broad range of communities, especially underserved communities that are least likely to apply to developments in high-opportunity neighborhoods due to a lack of awareness; expanding time for accepting applications and offering more diverse platforms for submitting applications (for example, not *requiring* people to go to a physical place to subscribe to the waiting list, accommodating persons with disabilities, etc); eliminating uneven eligibility standards for local and nonlocal residents, and other arbitrary rules that harm underserved communities; and avoiding discriminatory waitlist selection procedures, such as using local preferences, selecting applicants by lottery or selecting by the date and time of the application.[43]

The screening criteria used by HTF grantees to select applicants are another area where proper guidance through the state HTF allocation plan can help prevent discrimination. It is customary for housing agencies and private landlords to utilize tenant screening criteria to limit financial risk and assess other potential risks, such as criminal history, history of drug use, and employment history.[44] However, many screening practices can have a discriminatory impact on

39 Diane Houk et al, supra

40 See Keaton Norquist, "Local Preferences in Affordable Housing: Special Treatment for Those Who Live or Work in A Municipality?" 36 B.C. *Envtl. Aff. L. Rev*. 207, 224 (2009).

41 *Accessing Opportunity*, pg. 38.

42 Notice PIH 2012-34, "Waiting List Administration," (August 13, 2012): http://1.usa.gov/NUkh08. This guidance updates that available in HUD's Multifamily Occupancy Handbook.

43 *Accessing Opportunity*, pg. 39.

44 See, e.g., description of Chicago Housing Authority Practices in Lisa T. Alexander, "Stakeholder Participation in New Governance: Lessons from Chicago's Public Housing Reform Experiment," 16 *Georgetown Journal on Poverty Law and Policy* 117: 161 (2009).

minority applicants.[45] For example, a reliance on conventional credit (FICO) scores as a screening method can disadvantage minority applicants, who may have limited access to mainstream credit-building resources. Additionally, the use of credit scores and criminal background scores can harm minority applicants because of frequent errors by reporting services and the inability of applicants to dispute mistaken records.[46] Some landlords reject applicants based on prior involvement in legal actions, which should not be viewed as a legitimate business justification for tenant screening.[47] Also, some landlords automatically exclude applicants based on criminal records, which has a disproportionate impact on minority households with family members who committed minor offenses or offenses unrelated to their tenancy or distant in time.[48] HUD's new guidance on the discriminatory impacts of indiscriminate criminal background screening[49] has reinforced this message: **state HTF allocation plans should not perpetuate automatic or overbroad exclusions in the tenant selection process.**

Minimizing the Segregative Impact of Federally Mandated Allocation Guidelines

Two of the six priority funding factors in the interim HTF rule parallel provisions of the HOME program, which have helped foster segregation in the HOME rental housing programs. These factors are "the ability of the applicant to obligate the funding and to carry out the project in a timely manner" and "the extent to which the project incorporates other funding sources."[50]

It is important to recognize the role that these two factors have sometimes played in favoring projects that increase racial segregation and poverty concentration in neighborhoods that are already segregated. For example, **the existence of local funding support from other low-income housing funding sources, and the easy availability of a site for development, are often closely correlated with very low-opportunity, segregated neighborhoods.** While it may be appropriate to fund such projects in a rapidly gentrifying poor neighborhood, or in the

45 For example, researchers have noted that at various Chicago housing developments, "At some sites, any debt over 90 days past due could prevent an applicant from meeting the screening requirements. Some tenant plans look at criminal history indefinitely with regards to certain crimes. Some tenant plans are silent as to whether a conviction or merely an arrest is required to reject applicants." See Lisa T. Alexander, "Stakeholder Participation in New Governance: Lessons from Chicago's Public Housing Reform Experiment," 16 *Georgetown Journal on Poverty Law & Policy* 117: 162–63 (2009) (internal cites omitted).

46 Eric Dunn and Marina Grabchuk, "Background Checks and Social Effects: Contemporary Residential Tenant-Screening Problems in Washington State," 9 *Seattle Journal for Social Justice* 319: 328 (2010), listing common errors in background checks due to mistakes arising from similar names or birth dates, criminal identity theft, reports containing expunged records, clerical errors, and other issues.

47 *Accessing Opportunity*, pg. 41.

48 Merf Ehman, Columbia Legal Services, "Fair Housing Disparate Impact Claims Based on the Use of Criminal and Eviction Records in Tenant Screening Policies" (January 2011), http://nhlp.org/files/PRRAC%20Disparate%20Impact%201-2011.pdf

49 "Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions" (HUD, April 4, 2016), available at http://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHAStandCR.pdf.

50 12 U.S.C. §4568(c)(6) and §4568(g)(2)(D); ConPlan regs at 24 U.S.C. §91.220(l)(5) and §91.320(k)(5).

context of a bona fide community revitalization plan, the preference in the allocation criteria is not a license to violate the Fair Housing Act – rather it means that, among otherwise eligible projects, the existing of other funding sources and the ability to carry out the project in a timely fashion will give the project an advantage in the competition for funds.

A number of QAPs in the LIHTC program favor developments in Qualified Census Tracts if they contribute to a "concerted community revitalization plan," avoiding the placement of more low-income units in high-poverty areas with no other neighborhood investment strategy in place. For example, Pennsylvania requires that tax credits in the LIHTC program be used to support a "broader community revitalization program which has the capability of changing fundamentally the character of a neighborhood, enhancing the lives and amenities available to residents of the community…focused on implementing a mixed income strategy, and/or which seeks to counteract the pattern through which some metropolitan areas are being segregated by income or race."[51]

Preservation, Acquisition, and New Construction: Achieving an Appropriate Balance

The HTF was intended to *increase* the supply of housing affordable to extremely low income families, so there should be an emphasis in most state plans favoring new construction. However, the preservation and acquisition of existing housing are also appropriate uses of HTF funds, as long as allocation policies do not drive segregation. Here are some suggested general principles:

- New construction should be focused on developments in lower-poverty areas of opportunity; investments in higher-poverty areas should focus on the preservation and rehabilitation of existing housing.
- Acquisition of existing housing (or portions of existing rental housing) for conversion to deed-restricted low-income housing should be limited to lower-poverty, higher-opportunity areas.
- Preservation of low-income housing should prioritize, but not be limited to, the preservation of assisted housing resources in lower-poverty, higher-opportunity areas.
- Funds allocated to housing preservation should not represent a disproportionate share of state HTF allocations; most funds should be allocated to new construction or new housing acquisition in lower-poverty areas of opportunity.

Other Incentives to Promote Racial Integration

State HTF Allocation Plans should also require detailed demographic reporting to permit the state to assess whether the program is being used in a manner to further geographic diversity and residential integration over time, and whether any internal segregation is developing among the HTF developments within a given metropolitan area.

51 PA QAP 2013, pg. 7; see *Building Opportunity II* (2015), pg. 17.

Acknowledgments

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Minnesota's National Housing Trust Fund Allocation Plan

Substantial Amendments to Minnesota's 2016 Annual Action Plan and 2012-2016 Consolidated Plan

July 28, 2016

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Introduction

These substantial amendments (amendments) to the State of Minnesota's 2012-2016 Consolidated Plan and the 2016 Annual Action Plan1 are necessary to implement the federal government's National Housing Trust Fund (NHTF). The amendments are being offered for public comment.

The Minnesota Housing Finance Agency has been designated by the Governor as the Minnesota recipient of NHTF from the U.S. Department of Housing and Urban Development (HUD).

Minnesota will receive the minimum state grant amount of $3,000,000 in 2016. All NHTF funds that Minnesota Housing receives in 2016 will be used to house extremely low-income families. In accordance with 24 CFR Part 93, Minnesota Housing will allocate 10% of its grant to program planning and administration costs ($300,000); up to one-third for operating cost assistance or funding operating cost assistance reserves (up to $1,000,000); the balance of the grant will provide capital funding for new construction or rehabilitation of NHTF units.

Chapter 1 - National Housing Trust Fund Strategic Plan §91.315(b)(2)

1.01 Geographic Priorities

The NHTF funds will be part of a deferred pool of resources, through Minnesota Housing, which are targeted to address specific and critical needs in rental housing markets, including multiple geographic priority areas: transit oriented development, areas with strong job markets or job growth, economic integration areas with higher incomes, and tribal areas.

1.02 Goals

Because this is the final year of the 5-year strategic plan, the goals are the same as the 2016 plan.

Number of NHTF units constructed or rehabilitated in 2016:	22
Number of NHTF units receiving operating subsidies:	up to 12

Operating subsidies assume providing assistance for up to fifteen years of the thirty year affordability period. The number may be greater if it is found that less than fifteen years of subsidy is necessary, or less if eligible applications are not received and operating funds are not committed to projects. Minnesota Housing intends to use operating subsidies only with other NHTF units constructed or rehabilitated.

Chapter 2 - National Housing Trust Fund Action Plan §91.320(k)(5)

2.01 Distribution of NHTF funds

Minnesota will not allocate funds to subgrantees for their distribution to owners/developers. Instead, NHTF funds will be distributed directly to owner/developers of affordable housing via Minnesota Housing's annual Consolidated Request for Proposals. The NHTF funds will be part of a deferred pool of resources, through Minnesota Housing, which are targeted to address specific and critical needs in rental housing markets, including multiple geographic priority areas: transit oriented development,

[1] Find current 2012-2016 Consolidated Plan and 2016 Annual Action Plan on Minnesota Housing's website: www.mnhousing.gov > Policy & Research > Plans for Federal Funds

areas with strong job markets or job growth, economic integration areas with higher incomes, and tribal areas. Minnesota Housing retains the option to offer funds on a pipeline basis in the event qualified proposals are insufficient to use the entire HTF grant.

2.02 Application Requirements and Selection Criteria

Developers, owners, and the entire development team are required to meet the same eligibility criteria as for other agency programs, as specified in the Consolidated RFP.

The needs of very low income renters, those with incomes below 50% of area median income (AMI), are a high priority for the State of Minnesota, with significant priority on extremely low income renters (below 30% AMI). Applications will be evaluated in accordance with need and scoring criteria that emphasizes other State priorities. For the 2016 consolidated RFP, these strategic priorities include:

1. Preservation of developments that contain existing federal assistance or other critical affordable units at risk of loss,
2. Address specific and critical rental housing needs, for example, TOD on fixed transit, economic integration, workforce housing, senior housing,
3. Planned community development, and
4. Prevent and end homelessness through permanent supportive housing.

Among proposals that best satisfy strategic priorities, Minnesota Housing will give priority in awarding funding to the proposals that best meet the greatest number of selection priorities in effect at the time of the RFP. Selection priorities may be found in the "Multifamily Request for Proposal Guide." The 2016 Guide is located on the Minnesota Housing website, www.mnhousing.gov.

Consistent with Affirmative Fair Housing Marketing regulations, Minnesota Housing requires that each housing provider carry out an affirmative marketing program to attract prospective buyers or tenants in the housing market area regardless of race, creed, color, religion, sex, national, origin, marital status, status with regard to public assistance, disability, sexual orientation, or familial status. The plan should detail how the housing provider intends to market and attract populations that are least likely to apply to the project, including persons with disabilities and households of color.

Chapter 3 - Priority for Awarding Funding to Eligible Applicants

3.01 Geographic Diversity.

Minnesota Housing will accept and consider proposals for NHTF from across the state consistent with the state's certification to affirmatively further fair housing. The needs of very low-income and extremely low-income tenants across Minnesota are a high priority in the consolidated plan; however, geographic location of a project may be considered in the context of the project's proximity to certain community features whose presence is a priority for Minnesota Housing. See "Priority Housing Needs" below.

3.02 Applicant Capacity.

Applicants must be capable of undertaking and completing NHTF-funded activities in a timely manner. This capability is evaluated during the Consolidated RFP process. Capacity of the entire development team is evaluated, taking into consideration experience with similar projects, financial and staff capacity, and other factors relevant to the role of the entity.

3.03 Project-based Rental Assistance.

Minnesota Housing gives priority for preservation of rent-assisted projects; and for projects with binding commitments for project-based vouchers.

3.04 Duration of Affordability Period.

New Construction, rehabilitation, and rehabilitation and acquisition rental projects have an affordability period of thirty years. No additional consideration will be given to projects that will provide affordability beyond thirty years. Operating cost assistance reserves may be funded for the amount estimated to be necessary for up to fifteen years from the start of the affordability period.

3.05 Priority housing needs.

Minnesota's most current Consolidated Plan (2012-2016) identifies priority housing needs among extremely low income renters for all renter household types from small and large families to elderly households. The total unmet need among extremely low income renters in Minnesota was estimated to be 137,286 units in at the time of the Consolidated Plan publication.

In addition to helping to meet the substantial unmet need of extremely low income renters, Minnesota Housing has defined the following housing priorities:

- Affordable to the local workforce
- Located in high opportunity areas
- Located near transit
- Responsive to needs of underserved populations
- Furthers community recovery efforts
- Part of a broader community vision
- Tribally-sponsored
- Permanent supportive housing

3.06 Leveraging.

Minnesota Housing's NHTF funds will leverage other agency, private, and low-income housing tax credit investment.

3.07 Eligible Activities.

The application/proposal must describe the activity to be funded with NHTF, and the applicant must certify that the assisted units will comply with NHTF requirements. Activities to be undertaken include rehabilitation (including acquisition), preservation, and new construction of rental housing and operating assistance.

3.08 Eligible Recipients.

Eligible entities for NHTF include owners or developers that must be either:

- A for-profit entity,
- A 501(C)(3) non-profit entity (including Community Housing Development Organizations, or CHDO),
- A government unit (excluding the federal government), or
- A religious organization.

The owner must provide evidence of a qualifying interest in the property. Such interest must be recorded and appear in the county records. The minimum qualifying interest is 100 percent fee simple interest that may also be subject to a mortgage.

The owners and development team must not be debarred or excluded from receiving federal assistance prior to selection or entering into a Written Agreement or closing the loan.

Applicants and their development team must undergo an evaluation by Minnesota Housing of their capacity and pass Minnesota Housing underwriting before the applicant qualifies as an eligible recipient.

Eligible recipients will certify that housing units assisted with the NHTF will comply with NHTF program requirements during the entire period that begins upon selection and ending upon the conclusion of all NHTF-funded activities. Recipients must also demonstrate familiarity with requirements of other Federal, State or local housing programs that may be used in conjunction with NHTF funds to ensure compliance with all applicable requirements and regulations of such programs.

3.09 Performance Goals and Benchmarks.

Minnesota will receive the minimum state grant amount of $3,000,000 in 2016. All NHTF funds that Minnesota Housing receives in 2016 will be used to house extremely low-income families. In accordance with 24 CFR Part 93, Minnesota Housing will allocate 10% of its grant to program planning and administration costs ($300,000); up to one-third for operating cost assistance or funding operating cost assistance reserves (up to $1,000,000); the balance of the grant will provide capital funding for new construction or rehabilitation of NHTF units.

At an anticipated average per unit capital cost of $98,000 for supportive housing, Minnesota Housing anticipates completing 22 units of housing that is affordable to extremely low-income families.

Based on Minnesota Housing's experience of providing operating assistance through the State's housing trust fund for supportive housing, Minnesota Housing expects average annual operating cost assistance to be $2,700, which will provide operating assistance for up to 12 NHTF units for 15 years.

Minnesota Housing reserves the right to reallocate uncommitted operating funds to capital costs if qualified applications for operating funds are insufficient to award all operating funds.

3.10 Maximum Per-unit Development Subsidy Limits.

Minnesota will establish the maximum per-unit development subsidy at the same level as per-unit cost thresholds established the cost containment methodology associated with ~~in~~ the State's Low-income

Housing Tax Credit Qualified Allocation Plan (QAP). The thresholds, based upon total development costs for developments funded by Minnesota Housing since 2002, are adjusted for number of bedrooms and geographic location of the project. Despite the per-unit subsidy limits, subsidies may be further limited on individual projects based on the result of subsidy layering reviews and the financing needs of the project.

Per-unit subsidy limits are set forth in Attachment A, but are subject to change whenever a new QAP is adopted or modified. Adjustments are made in response to cost trends.

3.11 Rehabilitation Standards.

Properties served with NHTF funds must comply with all applicable state and local codes, standards and ordinances by project completion. In cases where standards differ, the most restrictive standard will apply. In the absence of a State or local building code, the International Residential Code or International Building Code of the International Code Council will apply.

Properties must meet local housing habitability or quality standards throughout the effective period. If no such standards exist, HUD's Uniform Physical Conditions Standards (UPCS), as set forth in 24 CFR 5.705, will apply.

All projects funded through the HOME and NHTF programs must follow Minnesota Housing's Rental Housing Design/Construction Standards. These guidelines are available on Minnesota Housing's website: Rental Housing Design/Construction Standards[2].

All projects with 26 or more units are required to have the useful remaining life of the major systems determined. Major systems include: structural support; roofing; cladding and weatherproofing (e.g., windows, doors, siding, gutters); plumbing; electrical; and heating, ventilation, and air conditioning.

If the useful remaining life of one or more major system(s) is less than the applicable effective period, the system(s) must be either included in the scope of work or a replacement reserve must be established and monthly deposits made to the reserve account to adequately repair or replace the systems as needed.

All projects funded through the NHTF program must follow HUD 24 CFR 35 subparts A, B, J, K, M and R, Minnesota Housing's Rental Housing Design/Construction Standards and Minnesota Housing's Lead-Based Paint policy. Owners are required to follow disclosure requirements for Lead-Based Paint (LBP), including:

- Complete Minnesota Housing's Lead-Based Paint Pre-Construction Certification form and submit the original to Minnesota Housing in conjunction with signing the NHTF Form 1.
- Provide the EPA-approved lead hazard pamphlet "Protect Your Family from Lead in Your Home" to all tenant households in a property built prior to 1978. The pamphlet must be given upon

[2] Minnesota Housing's Rental Housing Design/Construction Standards are found at http://www.mnhousing.gov/wcs/Satellite?blobcol=urldata&blobheadername1=Content-Type&blobheadername2=Content-Disposition&blobheadername3=MDT-Type&blobheadervalue1=application%2Fpdf&blobheadervalue2=attachment%3B+filename%3DMHFA_010794.pdf&blobheadervalue3=abinary%3B+charset%3DUTF-8&blobkey=id&blobtable=MungoBlobs&blobwhere=1361480699020&ssbinary=true

execution of the NHTF application form titled NHTF Form 1 for existing tenants and for new tenants at move-in

- Distribute to all tenants residing at the property during rehabilitation, the "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools" pamphlet. This must be distributed no less than seven days and no more than 60 days prior to commencement of rehabilitation.
- Retain on file a Lead-Based Paint Acknowledgment of Disclosure form signed by the tenant. The signed Lead-Based Paint Acknowledgement of Disclosure must be retained for three years from the beginning of the leasing period.
- Post an assessment or notice of lead-based paint hazards present, whether determined by a risk assessment or presumption of lead. The owner must post the notice in a conspicuous location or deliver a copy of the assessment to each household within 15 days.

3.12 Resale and Recapture Provisions.

Not applicable. Minnesota Housing will not use NTHF to assist first time homebuyers.

3.13 Affordable Homeownership Limits.

Not applicable. Minnesota Housing will not use NHTF for homebuyer assistance.

3.14 Limitation on Beneficiaries or Preferences.

Minnesota Housing does not limit to segments of the NHTF-eligible population. Minnesota Housing makes an effort to integrate units targeted to households experiencing long-term homelessness or those at risk of long-term homelessness (collectively LTH households) across a variety of developments. In the appropriate situation, Minnesota Housing may utilize NHTF funds in units that are targeted to LTH households or whose eligibility is limited to LTH households. In the interest of furthering economic integration, LTH units typically make up a small number of units in each development.

3.15 Refinancing Existing Debt.

Minnesota Housing will not use NHTF to refinance existing debt.

Attachment A

Per Unit Subsidy as Adjusted for Mix of Unit Sizes

	~~Subsidy limit adjustment for unit size mix~~	Subsidy limit for Families/Mixed Developments
New Construction Metro for Singles	~~1.17~~	$ 206,838
New Construction Metro for Families/Mixed	~~1.00~~	$ 242,000
New Construction Metro for Large Families	~~0.96~~	$ 252,083
New Construction Greater MN for Singles	~~1.17~~	$ 164,103
New Construction Greater MN for Families/Mixed	~~1.00~~	$ 192,000
New Construction Greater MN for Large Families	~~0.96~~	$ 200,000
Rehabilitation Metro for Singles	~~1.30~~	$ 148,462
Rehabilitation Metro for Families/Mixed	~~1.00~~	$ 193,000
Rehabilitation Metro for Large Families	~~0.85~~	$ 227,059
Rehabilitation Greater MN for Singles	~~1.30~~	$ 117,692
Rehabilitation Greater MN for Families/Mixed	~~1.00~~	$ 153,000
Rehabilitation Greater MN for Large Families	~~0.85~~	$ 180,000

- "Metro" applies to the seven-county Twin Cities metro area, while "Greater MN" applies to the other 80 counties.
- "Singles" applies to developments where the share of efficiencies and 1 bedroom units is 75% or greater.
- "Large Families" applies to developments where the share of units with 3 or more bedrooms is 50% or greater.
- "Families/Mixed" applies to all other developments.
- "New Construction" includes regular new construction, adaptive reuse/conversion to residential housing, and projects that mix new construction and rehabilitation if the new construction gross square footage is greater than the rehabilitation square footage.