



# **Economic Development and Housing Challenge Program Guide**

*April 2020*



MINNESOTA HOUSING - ECONOMIC DEVELOPMENT AND HOUSING CHALLENGE PROGRAM



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**Chapter 1 – Program Purpose and Background**

The Minnesota Housing Finance Agency's (Minnesota Housing) authority to develop the Economic Development and Housing Challenge (EDHC) Program is provided in Minnesota Statute section 462A.33.

The purpose of the program is to provide funding to assist in the development of affordable permanent rental housing that supports economic development and redevelopment activities, job creation, or job preservation within a community or region by meeting locally identified housing needs. The program serves rental households in Minnesota with incomes at or below the greater of 80 percent of state or area median income. The program provides housing that is affordable to the local workforce based on any of the following criteria:

- The wages of the jobs being created or retained in the local area
- The fastest growing jobs in the local area
- The jobs with the most openings in the local area
- The wages of the workforce employed by organizations making contributions under the EDHC program

Fifty percent of the program funds must be used for economically viable rental housing proposals that:

- Include a financial or an in-kind contribution from non-state resources that reduce the need for state resources
- Address the housing needs of the local workforce

Among comparable proposals, preference will be given to:

- Proposals that include contributions from non-state resources for the greatest portion of the total development cost
- Proposals with contributions from local units of government or private philanthropic, religious or charitable organizations

## Chapter 2 – Eligibility Criteria

### 2.01 Owner/Sponsor

Eligible applicants include:

- A nonprofit organization, as defined in Minnesota Statutes, section 462A.03, subdivision 22
- A city, as defined in Minnesota Statutes, section 462A.03, subdivision 21
- A joint powers board established by two or more cities that owns or will own the housing
- A public housing agency that owns or will own the housing
- An Indian tribe or tribal housing corporation that owns or will own the housing
- A natural person who owns or will own the housing
- A private developer, as defined in Minnesota Rules, 4900.3610, subpart 17

### 2.02 Use and Level of Funding

Eligible uses of funds:

- Acquisition, rehabilitation or new construction of permanent rental housing with a minimum of four units
- Single family and duplex properties, with a minimum of four units, in scattered site developments within a city or county

**NOTE:** Temporary uses such as shelters, transitional housing or residential hotels **are not** eligible for funding under this program.

**Level of Funding.** In determining the amount of the EDHC loan, Minnesota Housing reviews cost reasonableness on a per-unit and total development cost basis. Minnesota Housing also analyzes the developmental and operational costs to determine that the amount of funds provided to the development is not more than is necessary to make the development financially feasible. Funding for general improvements to an existing property (such as a roof, heating system, or siding) is determined based on a percentage of assisted units.

- **Activity Type – Rehabilitation:** In rehabilitating existing rental housing, both partially assisted (i.e., where there is a mix of income and affordability levels and only a portion of the total units meet EDHC income and affordability requirements) and fully assisted (i.e., all units in the development meet EDHC income and affordability requirements) developments are eligible for assistance. In a mixed income development, only the units that meet the income and affordability requirements of this program will be funded with EDHC funds. The level of funding will be prorated based on square footage, level of amenities and the number of assisted units compared to that of non-assisted units.
- **Activity Type – New Construction:** New construction developments, both partially and fully assisted developments (as defined above) are eligible for funding. For all new construction proposals, the need for construction of new rental housing units must be demonstrated by sufficient supporting documentation from the local government or other sources, such as negotiated housing goals with the Metropolitan Council (in the seven-county metropolitan area),

other community-based housing studies, independent market studies or demonstrated market need for the affordable housing.

### **2.03 Design and Construction Review**

Projects funded with EDHC funds must meet Minnesota Housing's [Rental Housing Design/Construction Standards](#) and are subject to plan reviews by Minnesota Housing staff architects as outlined in the Minnesota Housing [Architect's Guide](#).

### **2.04 Occupancy Requirements**

**Income Limits.** State law governing the EDHC program allows for units assisted with EDHC funds to be occupied by households with incomes, at the time of initial occupancy, up to 80 percent of the greater of [state or area median income](#), not adjusted for family size. Minnesota Housing requires income limits consistent with those specified in the owner's application, provided that they are not higher than the statutory income limits.

In addition, because the intent of this program is to provide affordable workforce housing based on the wages of jobs in the local area, Minnesota Housing will not select developments designed to be affordable to households with incomes at the 80 percent level if the jobs being created or retained in the local area are at lower income levels.

For acquisition and rehabilitation projects, the borrower must complete the [Owner Certification of Tenant Income Eligibility form](#). Minnesota Housing reviews this form to verify the number of assisted units. As assisted units become vacant, they must continue to be leased to income qualifying households. New households must similarly certify their gross annual household income prior to occupancy.

If there are other funding sources for the project, there may be additional income requirements.

**Economic Integration.** Integration of economically diverse households is encouraged. The housing should be marketed for general occupancy and families.

- Property owners must not refuse to rent to a household on the basis of the household's Section 8 or other tenant-based rental assistance.
- Minnesota Housing Deferred Loan debt will only be used for and based upon the financing gap on affordable (rent restricted) units.
- There are no income limits for non-assisted units in a mixed income development, unless dictated by another source of funding.

**Minimum Term.** The income and occupancy restrictions for the assisted units are in effect for the term of the loan. If the loan is prepaid, the income and occupancy restrictions remain in place for a minimum of 15 years.

## **2.05 Rent Requirements**

**Maximum Gross Rents.** State law governing the EDHC Program requires units assisted with EDHC funds to be affordable to the local workforce. This means that the rents must be affordable based on the wages of jobs being created or retained in the local area. Minnesota Housing requires rent limits consistent with those specified in the owner's application, provided that they are not higher than the statutory rent limit.

**Utility Allowances.** Tenant-paid utility allowances are included in gross rent. Generally, acceptable utility allowances are those provided by public housing authorities on a Section 8 utility allowance schedule. Utility allowances must be updated annually.



## Chapter 3 – General Deferred Loan Characteristics

Minnesota Housing underwriting parameters for all developments include an analysis of financial feasibility and development costs, and a review of management, marketability, and architectural requirements. Please refer to Minnesota Housing’s [Multifamily Underwriting Standards](#).

### 3.01 Prevailing Wage

Under certain circumstances, awards of agency funds may trigger state prevailing wage requirements under Minn. Stat. § 116J.871. In broad terms, the statute applies to awards that meet the following conditions: (1) new housing construction (not rehabilitation); and (2) a single entity receives from Minnesota Housing \$200,000 or more of grant proceeds or \$500,000 of loan proceeds. The statute excludes new housing construction in which total financial assistance at a single project site is less than \$100,000.

Please note the following statutory provisions:

- A state agency may provide financial assistance to a person only if the person receiving or benefiting from the financial assistance certifies to the commissioner of labor and industry that laborers and mechanics at the project site during construction, installation, remodeling, and repairs for which the financial assistance was provided will be paid the prevailing wage rate as defined in section 177.42, subdivision 6. Minn. Stat. § 116J.871, subd. 2.
- It is a misdemeanor for a person who has certified that prevailing wages will be paid to laborers and mechanics under subdivision 2 [see above] to subsequently fail to pay the prevailing wage. Each day a violation of this subdivision continues is a separate offense. Minn. Stat. § 116J.871, subd. 3 .

In addition, a separate prevailing wage statute, Minn. Stat. § 177.41-.43, may apply if funds are used for a building that is publicly owned or leased.

All questions regarding state prevailing wages and compliance requirements should be directed to the Department of Labor and Industry as follows:

Division of Labor Standards and Apprenticeship  
Karen Bugar, State Program Administrator  
443 Lafayette Road N, St. Paul, MN 55155  
651-284-5091 or [dli.prevwage@state.mn.us](mailto:dli.prevwage@state.mn.us)

### 3.02 Mortgage Interest Rate and Term

EDHC awards are generally provided in the form of a 0 percent, 30-year loan with principal due and payable at the end of the 30-year term. The interest rate may be adjusted in order to allow these funds to be utilized with other sources of funding, such as housing tax credits. The loan term may be adjusted based on requirements and conditions of other funding sources related to the length of the term.

Minnesota Housing may, at its sole discretion, require a cash flow note. More information on cash flow note requirements can be found in the [Multifamily Underwriting Standards](#).

Loans are full recourse; however, Minnesota Housing allows non-recourse debt to single asset entities.

Minnesota Housing will provide EDHC in the form of a grant only if documentation is provided confirming that another funding source requires the agency's funds to be provided in the form of a grant and the other funding source is providing a greater amount of funding than Minnesota Housing is providing. The term will be 30 years, but may be adjusted based on requirements and conditions of other funding sources. The grant will be completely forgiven at the end of the 30-year term, unless conditions of the grant agreement are not met. If this happens, the EDHC funds must be repaid in full to Minnesota Housing.

### **3.03 Transfer of Ownership/Prepayment**

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

- The mortgagor is not in default of any of its agreements with Minnesota Housing. The new entity is creditworthy, in Minnesota Housing's sole opinion
- The new entity assumes all contractual obligations with Minnesota Housing
- Payment of an assumption fee equal to the approximate administrative costs incurred by Minnesota Housing in processing the sale and assumption

**Prepayment.** The mortgage may be prepaid in full at any time; however, covenants and conditions in the declaration(s) will remain in place for a minimum of 15 years. Minnesota Housing will charge a prepayment fee in an amount equal to the approximate administrative costs incurred by Minnesota Housing in processing the prepayment.

### **3.04 Return on Equity**

Minnesota Housing statutes currently allow a maximum return of 15 percent based on actual developer equity for development of units on which Minnesota Housing has a mortgage. For the EDHC program, the limitation on return applies to loans or grants if the loans or grants made by Minnesota Housing, from all sources, are equal to or greater than 50 percent of the total costs, as determined by Minnesota Housing.

### **3.05 Management and Operations**

**Management and Operating Budget.** The budget submitted in the application is reviewed and compared to budgets of comparable Minnesota Housing financed developments. Minnesota Housing comparables are used in the underwriting of the loan and are used to project long-term operating costs that will protect the owner's long-term investment.

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

**Utilization of Units.** All units must be rented to family sizes appropriate to the unit size, with a ratio of at least one person per bedroom. If, during the course of tenancy, a family size changes, a household may

submit a written request to the management agent to transfer to another unit or be placed on a waiting list for such transfer. In the event of a decrease in family size, the household may be required to move into the next available suitably sized smaller unit.

**Marketing.** The owner or agent should demonstrate that they have established networks and linkages necessary for residents to maintain housing stability.

### **3.06 Monitoring and Reporting Requirements**

Minnesota Housing actively monitors each development it finances. This includes monitoring of tenant incomes, rents, affirmative marketing and equal opportunity requirements, and year-end operating reports. All referenced forms can be found on Minnesota Housing's website. Developments financed by Minnesota Housing are subject to periodic management reviews and physical inspections.

Assisted units must be leased to qualified households who must disclose their annual household income at initial occupancy on an [Initial Occupancy Statement by Tenant form](#) (other, more detailed income certification forms may be acceptable). This form is used to ensure households are qualified to occupy an assisted unit. Owners must also request (but cannot require) that qualified households complete a [Tenant Demographic Profile Form](#), which provides additional information for program evaluation. Occupancy information on all units must be reported annually in the form and manner requested by Minnesota Housing.

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

### **3.07 Economic Development Housing Challenge Fees**

- Please review the [Multifamily Loan Programs and Housing Tax Credit Fee Schedule for applicable fees](#) associated with the loan products in this guide.

## Chapter 4 – Fair Housing Policy

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

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

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

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

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

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

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

## **Chapter 5 – Fraud, Misuse of Funds, Conflict of Interest, Suspension, and Disclosure and Reporting**

### **5.01 Fraud**

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

Any person or entity (including its employees and affiliates) that enters into an agreement with Minnesota Housing and witnesses, discovers evidence of, receives a report from another source, or has other reasonable basis to suspect that fraud or embezzlement has occurred must immediately make a report through one of the ways described in section 5.05.

### **5.02 Misuse of Funds**

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

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

Any borrower or grantee (including its employees and affiliates) of Minnesota Housing funds that discovers evidence, receives a report from another source, or has other reasonable basis to suspect that a misuse of funds has occurred must immediately make a report through one of the ways described in section 5.05.

### **5.03 Conflict of Interest**

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

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

Organizational conflicts of interest occur when:

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

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

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

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

Any person or entity (including its employees and affiliates) that enters into an agreement with Minnesota Housing must avoid and immediately disclose to Minnesota Housing any and all actual, perceived or potential conflicts of interest through one of the ways described in section 5.05.

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

#### **5.04 Suspension**

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

#### **5.05 Disclosure and Reporting**

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

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

## **Chapter 6 – Allocation of Funds**

This funding is available on a statewide basis and is made available through Minnesota Housing's Consolidated Request for Proposal (RFP), which consolidates and coordinates multiple programs into a single RFP. Minnesota Housing reviews all proposals submitted and attempts to make the best and most appropriate funding choices for each development selected.

## **Chapter 7 – Program Contact**

Contact Minnesota Housing at 651.296.9832, or the underwriter assigned to your project, for questions concerning this program.