



# **Publicly Owned Housing Program (POHP) Request for Proposals (RFP) and Program Guide**

*September 2018*



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## Chapter 1 – Program Background and Purpose

### 1.01 Program Background and Purpose

The Publicly Owned Housing Program (POHP) was first established by the Minnesota Legislature in 2005 to offer assistance to Housing and Redevelopment Authorities (HRAs)/Public Housing Authorities (PHAs) that provide public housing to individuals and families (households with children). The purpose of POHP is to rehabilitate and preserve public housing units. POHP funds are provided in the form of a 20-year, deferred, forgivable loan to HRAs/PHAs that operate public housing.

Since 2005, POHP has received increased funding and support from the Minnesota Legislature and continues to provide assistance to HRAs/PHAs funded by the sale of General Obligation (GO) bonds. GO bonds are issued by Minnesota Management and Budget (MMB) and are backed by the full faith and credit of the state of Minnesota.

Minnesota Statutes sections [§16A.695](#) and [§462A.202](#) govern the use of GO bond proceeds, which require the project to be owned by a state agency or political subdivision and require a public program be provided in the project. Priority uses of POHP funds include:

- Rehabilitation of public housing, particularly to address health and life safety, accessibility, energy and water efficiency, and critical needs that have an expected useful life of more than 10 years
- Improvements of a capital nature

### 1.02 Funding Availability and Amounts

- Up to \$8 million is available through the 2018 POHP RFP.
- There is no minimum or maximum loan request limit.
- Minnesota Housing may fund all or part of a project identified within the application.
- Minnesota Housing must, by law, give priority among comparable project proposals to those that maximize federal resources such as capital funds, or local (non-state) resources such as philanthropic, community foundations, and/or utility rebates. There is not a required minimum percentage for leverage.
- All HRAs/PHAs are encouraged to apply, even if they have limited, leveraged resources.

## Chapter 2 – Eligibility Criteria

### 2.01 Property

- The property must be public housing, defined as housing for low-income people that is financed, in whole or in part, by the federal government and owned and operated by an HRA, a PHA, or a Community Development Agency (CDA) formed by a city or a county.
- The property must be an existing building(s).
- An HRA/PHA may apply for more than one development; the development should contain a minimum of four units. Because of the limited amount of POHP funding available in 2018, it is advisable to prioritize which development has the most imminent needs.
- All types of public housing (e.g., single family scattered site, duplexes, townhomes and high rises) are eligible to apply.
- **NOTE:** Since POHP loans are funded by GO bonds, the property must remain in public ownership for a 35-year compliance period. As a result, POHP loans are incompatible with Rental Assistance Demonstration (RAD) transactions that involve a transfer of ownership to a non-public owner.

### 2.02 Owner

All applicants must satisfy the following requirements:

- The applicant must have the authority to own and operate the project, enter into the loan agreements required by Minnesota Housing, and comply with the requirements of Minnesota Statutes sections §16A.695 and §462A.202
- The applicant must be a local unit of government, such as a city, county or HRA/PHA as defined in Minnesota Statutes section §462C.02, subdivision 6.
- The applicant must have a current, audited Public Housing Assessment System (PHAS) rating of 80 or above. The PHAS rating system is operated by the U.S. Department of Housing and Urban Development's (HUD) Real Estate Assessment Center (REAC).
- The applicant (public owner) must directly operate and manage the project.

### 2.03 Income Limits

All units in a project financed with POHP funds must be occupied by households whose income at the time of initial occupancy does not exceed the maximum household income as determined by HUD's Office of Public and Indian Housing.

A recipient of POHP funds may choose to restrict fewer than the total number of units in the development. This is an important consideration when applying for funds, as the number of restricted units will need to comply for the entire 35-year compliance period.

### 2.04 Eligible Use(s) of Funds

Eligible uses of funds include but are not limited to:

- Expenditures of a capital nature such as design, rehabilitation or major remodeling
- Major roof reconstruction or replacement
- Major window replacement
- Heating and cooling system replacement
- Elevator upgrades
- Other improvements that add value or life to a building and that are not of a recurring nature. In addition, these improvements must have an intended minimum life expectancy of ten years.
- An applicant's application may contain multiple work items. Minnesota Housing will review these items individually and determine how they pertain to the stated priorities of the program (health and life safety; accessibility; energy and water efficiency; critical needs).
- Applicants may request a project management fee not to exceed 5 percent of the net total development cost. The fee may be used to pay for soft costs directly related to costs associated with applying for POHP funds. Such costs may include administrative expenses, processing agent fees or construction management fees.

**NOTE:** All expenditures must be project specific and considered reasonable expenses associated directly to the proposed POHP renovation project.

## **2.05 Ineligible Use(s) of Funds**

Ineligible uses of funds include but are not limited to:

- Expenditures that are not of a capital nature, do not add value or life to a building, or are of a recurring nature
- Operating expenses and costs, reserves, market studies, up-front marketing expenses, hazard and liability insurance, legal fees not attributable to or betterment of the property, relocation expenses and other ongoing maintenance improvements
- Expenses that are incurred prior to formal Minnesota Housing board approval, with the exception of project specific, pre-renovation fees associated with scope of work development, design or engineering specifications.
- New construction of public housing

## Chapter 3 – Application Requirements

### 3.01 Applicant Responsibilities

The applicant is responsible for understanding the submission requirements necessary for a complete application. Application materials will be available on Monday, September 17, 2018 on Minnesota Housing’s website at [www.mnhousing.gov](http://www.mnhousing.gov). The materials include the application checklist, the Narrative and Certifications, the POHP Workbook and supplemental materials.

**NOTE:** All applicants are required to schedule at least one technical assistance meeting either in person, virtually (GoToMeeting platform) or via phone with POHP program staff prior to submitting an application. To schedule a technical assistance meeting, contact Irene Ruiz-Briseno at 651.296.3837 or [irene.ruiz-briseno@state.mn.us](mailto:irene.ruiz-briseno@state.mn.us).

### 3.02 Application Deadline/Application Submission

The application package must be received no later than 5:00 p.m. Central Standard Time (CST) on Wednesday, December 19, 2018.

Applicants must submit the application and all required materials using Minnesota Housing’s Secure Upload Tool ([www.mnhousing.gov](http://www.mnhousing.gov) > Partner Login > Multifamily Applications). Follow the instructions that indicate which Minnesota Housing recipient email to use when submitting application materials.

The RFP process is highly competitive in nature. A typical funding round will result in requests that far exceed the amount of funding that is available; therefore, incomplete applications will not be processed, and resubmissions will not be allowed during the current RFP round.

For each funding round, applicants must use the most current version of application forms found on Minnesota Housing’s website.

### 3.03 Application Content

A separate, complete application must be submitted for each project.

The application package must include all of the following:

- POHP Application Checklist
- POHP Workbook
- Narrative and Certifications
- Most current Five-Year Capital Fund Program (CFP) Action Plan
- Most recent PHA capital needs assessment and any updates
- Most Recent Energy Audit, if available (completed within the last five years)



- Three years of PHAS score reports issued by REAC
- Two years of audited financial statements
- Annual operating budget for HRA/PHA
- Most recent REAC inspection report
- Applicant Certification of Known Environmental Conditions
- Photographs of overall property, existing conditions and proposed improvement areas
- If available, provide any other information deemed appropriate to support the application, including currently available architectural or engineering plans such as site plans, floor plans, exterior building elevations, product specifications, elevator modernization proposals, 3D renderings, etc.

### **3.04 Scope of Work**

Rehabilitation scope of work items eligible for consideration under POHP may include but are not limited to:

#### **1. Health and Life Safety**

- a. Non-grandfathered, building or fire code violations such as fire alarms, smoke alarms, GFCI/AFCI protection, carbon monoxide (CO) alarms, nitrogen dioxide (NO<sup>2</sup>) alarms, fire egress, elevator upgrades
- b. Environmental remediation for mold, radon, friable asbestos, lead-based paint hazards, soil vapor, sound/noise
- c. Site improvements to correct tripping/fall hazards or other unsafe site conditions
- d. Replace, repair or remove any conditions of imminent structural collapse or failure
- e. Building envelope work to adequately prevent water or air penetration and prevent mold or other unsafe, interior health and life safety conditions
- f. Repair or replace systemic leaky or failed water and sewer piping
- g. Repairs or replacements of mechanical equipment, controls, ductwork, etc.
- h. Remedies to provide proper clothes dry venting and natural gas combustion equipment venting

#### **2. Accessibility**

- a. Compliance with Section 504 of the Rehabilitation Act of 1973, the Architectural Barriers Act, the Fair Housing Act, the Americans with Disabilities Act (ADA), and state accessibility requirements
- b. Improvements such as Universal Design features, reasonable accommodations requests and aging-in-place features

#### **3. Energy and Water Efficiency**

- a. Replacement of inefficient plumbing fixtures with water conserving fixtures
- b. Replacement of inefficient/antiquated Heating Ventilating and Air Conditioning (HVAC), lighting, controls, etc.
- c. Weatherization improvements such as additional insulation, air-bypass sealing, exterior window/door upgrades, or other energy efficiency strategies
- d. Renewable energy systems may be considered if supported by a third-party analysis with a simple 10-year payback

#### **4. Critical Needs**

- a. Replacement or repair of items that outlived their expected useful life, are antiquated, worn-out, or simply inoperable
  - b. Conditions determined to be critical via a certified HUD Universal Physical Condition Standard (UPCS) or Real Estate Assessment Center (REAC) Deficiencies Inspection Report
  - c. Any work described in Minnesota Housing’s Rental Housing Design/Construction Standards (RHD/CS), Chapter 10 – Critical Needs and Preservation Housing Projects
5. In general, scope of work items must include durability and life expectancy for at least 10 years.

### **3.05 Leverage**

For leverage, an HRA/PHA may submit an application showing the commitment of a portion of their capital fund; however, if your application were to be selected for funding, you could not close on the loan until these capital funds were available.

An applicant may commit unissued bond proceeds as leverage; however, the POHP loan cannot close until funds have been received. The HRA/PHA should be cautious in offering bond proceeds as leverage, in the event the bonds are not issued.

### **3.06 Relocation Plan**

Minnesota Housing prohibits involuntary displacement of residents from developments receiving Minnesota Housing funding. All existing developments must submit a relocation plan that addresses both temporary relocation and permanent voluntary displacement. The applicant must thoroughly assess the potential for displacement.

The plan must include:

- A description of the project
- Whether another funding source will require compliance with the Uniform Relocation Act (URA)

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- A description of any temporary relocation, if any, that will occur based upon the scope of work
- A description of how tenants' needs will be accommodated while they are temporarily displaced
- If tenants with special needs will be affected, include a description of how those needs will be accommodated
- A description of what the development team will do to help displaced tenants who may be hard to house, for example, due to family size
- Any social or other services to be used, as appropriate
- The assistance and compensation that will be offered to tenants who will either be temporarily relocated or permanently and voluntarily displaced
- An estimated budget identifying relocation/displacement expenses and an identified funding source
- A timeline

## **Chapter 4 – Selection Process**

### **4.01 Review of the POHP Application**

Minnesota Housing staff will review all POHP submissions after the application process has closed on Wednesday, December 19, 2018.

Minnesota Housing will review RFP application submittals for:

- Program eligibility
- Owner capacity
- The ability for an applicant to leverage POHP funds with other resources

Applications will be reviewed based upon the following criteria:

- Scope of work and consequences for not completing the work
- Anticipated operational or utility cost savings
- Geographic distribution of applicants
- First time or repeat applications
- Leverage
- Applicant capacity

A site visit may be conducted by Minnesota Housing staff based upon the proposed scope of work and construction costs.

Minnesota Housing's POHP selection committee will review all proposals and provide recommendations for funding. Recommendations are presented to various staff internally and if approved, recommendations will then be presented to Minnesota Housing's board for final approval.

### **4.02 Selection Notification**

Applications recommended for further consideration and additional technical assistance will be presented to Minnesota Housing's board in April 2019. All applicants will be notified of their status after the board has taken action.

Once selected, applicants have 20 months to secure an End Loan commitment or hold a Construction Loan closing.

## **Chapter 5 – Post-Selection Processing, Loan Terms and Conditions**

### **5.01 Intake and Technical Assistance Kickoff Meeting**

Projects that are selected for further consideration will be required to participate in an initial intake and technical assistance meeting within 90 days of selection. The purpose of the meeting is to review the details of the proposal and the specific requirements of the funding source.

The initial intake and technical assistance meeting will include the discussion of:

- The proposed scope of work
- The need for a third party capital needs assessment
- The need for architectural and/or engineering services
- Required environmental studies
- The potential for a project processing agent
- Whether a general contractor will be required

Minnesota Housing staff will explain POHP program due diligence requirements necessary to obtain an End Loan commitment and a Construction Loan closing. The intake meeting may be in person at Minnesota Housing offices or via GoToMeeting.

### **5.02 Due Diligence Checklists**

Following selection, POHP recipients are required to submit due diligence items to proceed to a loan closing or End Loan commitment. Separate checklists exist for Construction Loans and End Loans and can be found on the POHP webpage of Minnesota Housing's website ([www.mnhousing.gov](http://www.mnhousing.gov) > Multifamily Rental Partners > Apply for Funding > Deferred Loans > View more information (under Other Deferred Loan Programs)).

Due diligence items will be submitted via Box.com.

### **5.03 Issuance of Loan Commitment/Loan Closing**

Once due diligence and design reviews are complete, Minnesota Housing will issue a Mortgage Loan Commitment for End Loans or conduct a loan closing for Construction Loans. POHP recipients are able to begin rehabilitation activities once the commitment is issued or the closing has taken place. Construction work should not begin prior to issuance of a Loan Commitment or a Construction Loan closing.

### **5.04 Loan Types**

The POHP Loan Commitment term and closing date are determined by the type of loan the applicant requests:

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- **Construction Loan** – A permanent, long-term loan to finance construction and eligible soft costs. Loan funds are advanced during construction as the project progresses. The Construction Loan must close within 20 months from the initial Minnesota Housing board approval date.
- **End Loan** – A permanent, long-term loan that is used to pay off a short-term loan or other form of interim financing. The project must enter into an End Loan commitment within 20 months of board approval. The project must be completed and the loan closed within 18 months once the End Loan commitment is issued.

Either loan type may be available, with Minnesota Housing approval.

If an applicant does not enter into an End Loan commitment or Construction Loan closing within the 20 month term, Minnesota Housing reserves the right to recapture funds or require a commitment extension.

### **5.05 Loan Terms**

Selected proposals will be awarded funding in the form of a zero interest, deferred loan with a 20-year term. At the end of the 20-year term, the debt will be forgiven if no event of default has occurred; however, the applicant is required to continue to own and operate the project for a public purpose for a total of 35 years or until it is sold.

The sale of a GO bond financed property cannot occur unless the owner or Minnesota Housing determines by official action that:

- The property is no longer usable or needed to carry out the governmental program for which it was acquired or constructed
- The sale is made as authorized by law
- The sale is made at fair market value
- The sale of the property requires prior written approval by Minnesota Housing and MMB

Minnesota Housing reserves the right to review the HRA's/PHA's POHP eligibility and potential ability to repay POHP funds if the HRA/PHA should no longer participate in HUD's Public Housing Program. At the time of the project loan closing, both a GO bond Declaration and a Declaration of Covenants, Conditions and Restrictions are recorded against the property.

## Chapter 6 – Design Review and Construction Management

Every applicant is required to comply with all of the following:

- Applicable requirements of the [Minnesota Housing Rental Design/Construction Standards](#)
- The most recently adopted edition of the Minnesota Building Code, International Building Code (IBC)
- Any other local, state and national codes and standards in effect. The most restrictive codes and regulations will apply
- Applicable Building, Benchmarks, and Beyond (B3) sustainability guidelines required for state-funded projects in Minnesota (refer to section 6.05 of this guide), or Minnesota Housing’s Limited Scope Sustainability Standards

POHP applicants selected for further processing will confer with the assigned Minnesota Housing staff architect early in the design process to ensure rehabilitation plans and designs meet Minnesota Housing’s standards and requirements.

### 6.01 Plan Review and Plan Approval

After the initial intake meeting and approval of scope of work, the applicant must submit construction documents to the assigned Minnesota Housing staff architect at the 50 percent completion phase and the 100 percent completion phase. Loan Commitment for End Loans and loan closing for Construction Loans are contingent upon an approved set of plans. Issuance of an End Loan commitment or a Construction Loan closing will not occur without plan approval. Construction documents may be submitted in hard copy or electronic PDF. Consult with a Minnesota Housing staff architect for submission requirements.

### 6.02 Environmental Standards

Based upon the proposed scope of work, the HUD environmental review (if completed), and discussions with Minnesota Housing staff, the following environmental studies may be required:

- A Phase I Environmental Site Assessment (ESA) with the exception of:
  - A HUD “Categorical Exclusion Determination” may substitute for a Phase I ESA, if approved by Minnesota Housing, or
  - A Phase I ESA is not required for projects with a total construction cost less than \$300,000
- Phase II ESAs
- Lead-Based Paint (LBP) Inspection/Assessments
- Asbestos-Containing Material (ACM) Assessments and Asbestos Containing Material (ACM) Operating and Maintenance (O&M) Plans

- Response Action Plans (RAP)
- Ongoing testing during construction

### **6.03 Architectural Services**

If an architect is required, applicants must use the services of a licensed architect and/or licensed professional engineer unless waived per Minnesota Housing’s Architect’s Guide (also refer to section 2.02 of the Architect’s Guide). This may be waived by Minnesota Housing based upon limited scope of work status.

### **6.04 Design-build Design and Construction Delivery**

**Design-build delivery is not allowed unless approved by Minnesota Housing. Design-build is typically only allowed for single subcontractor-type scope of work such as elevator upgrades, re-roofing, etc.**

### **6.05 B3 Sustainable Building Guidelines**

The Buildings, Benchmarks, and Beyond (B3) program outlines Minnesota’s Sustainable Building Design (MSBD) requirements. Per Minnesota Statutes section §16B.325, all projects funded by GO bond proceeds must comply with B3 Guidelines. More information about B3 is available at [b3mn.org](http://b3mn.org).

Minnesota Housing will work with both the recipient and the Center for Sustainable Building Research (CSBR) to determine if a recipient is required to comply with B3 Guidelines. A recipient is required to comply with B3 Guidelines if **both** of the following apply:

- The building exceeds 10,000 square feet; **and**
- If modifications are made to the HVAC system

If Minnesota Housing and/or the recipient believe that they are not required to comply with B3 Guidelines, they must request a B3 non-applicability waiver from CSBR. A copy of the waiver must be provided to Minnesota Housing via your Box.com account, which will be set up after selection.

**NOTE:** Any projects receiving a B3 waiver are required to comply with [Minnesota Housing’s Limited Scope Sustainability Standards](#).

### **6.06 Predesign Requirements**

Minnesota Statutes section §[16B.335](#) requires Predesign and legislative review for GO bond funded projects with a total construction cost (including construction contingencies) of \$1.5 million or more. Applicants should review the statute for exemptions.

Predesign is a written plan that is completed prior to designing and constructing the project. It includes information regarding the project purpose, architectural plans, project budget and



schedule. It should also include information on staffing as well as the operating budget for the project. Please refer to the Department of Administration webpage and [Predesign Manual for Capital Projects](#).

Applicants who propose projects at or near the \$1.5 million construction cost level should consult with the Department of Administration (Gordon Christofferson, 651.201.2380, [gordon.christofferson@state.mn.us](mailto:gordon.christofferson@state.mn.us)) to ensure the correct timeline and procedure are followed.

### **6.07 Energy Rebate Analysis**

Minnesota Housing requires POHP funding applicants to apply for energy efficiency incentives from utilities and other sources. The purpose of this requirement is to leverage utility funds in order to increase the energy efficiency in affordable housing properties throughout Minnesota. In order to comply, each application must include information that outlines the type and amount of the available incentives.

For additional information on working with utilities to access energy incentives, please reference the [Utility Incentive Application Process resource](#).

Refer to Section 8.03 of Chapter 8 of Multifamily Rental Housing Design/Construction Standards for details on the energy rebate analysis required prior to commitment or closing.

### **6.08 Prevailing Wage**

The applicant must agree that it will comply with all of the applicable provisions contained in Minnesota Statutes [Chapter 177](#).

### **6.09 Construction Management**

To ensure compliance with approved construction documents and regardless of an End Loan or a Construction Loan, Minnesota Housing must:

- Be granted access to the construction site during construction
- Receive regular construction meeting minutes and observation reports from the PHA's architect (electronic PDF only)
- Receive (electronic PDF only) copies of Request for Proposals (RFP), change orders, Architectural Supplemental Instructions (ASIs), or any other change directive. Change orders must be submitted to and approved by Minnesota Housing prior to acceptance or prior to being executed

### **6.10 Jobs Reporting Requirement**

Per Minnesota Statute [§16A.633, subdivision 4](#) (MN Laws of 2012 Chapter 293, Section 28), PHAs are required to:

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- Include the [Jobs Reporting Provision language](#) on Jobs Reporting in the construction contract(s) with the contractor(s)
- Review contracts between the contractor(s) and subcontractor(s) to ensure the [Jobs Reporting Provision Language](#) is included in construction contract(s)
- Ensure the information in the [Jobs Reporting Attachment](#) of the Repayment Agreement is completed by the contractor(s) and is submitted to Minnesota Housing upon project completion
  - **NOTE:** A Jobs Reporting Attachment must be completed for **each** approved project.

### **6.11 Construction Loan – Request for Funds Process**

For Construction Loans, contractor pay applications will be reviewed on site once a month at a regularly scheduled pay draw meeting with the owner, general contractor and the PHA's architect in attendance. Upon approval of the pay application by the PHA's architect, the pay application and other soft cost expenses (with receipts) must be submitted to Minnesota Housing using the request for funds process.

A detailed explanation of this process can be found on [Minnesota Housing's website](#) under the forms and resources section.

A Minnesota Housing staff architect may or may not attend on-site, pay draw meetings. Photos of the construction progress must be included with the pay application. The pay application process may be streamlined based upon a limited scope of work status if approved by Minnesota Housing.

Submittals required for end of construction and project closeout are included in the POHP Mortgage Checklist.

## **Chapter 7 – Compliance Monitoring and Reporting**

### **7.01 Compliance Monitoring Requirement**

Minnesota Housing performs periodic inspections of the housing it finances. The frequency of physical inspections is determined by several factors such as loan type, term, loan amount, etc. Owners will be notified in advance of any inspection.

### **7.02 Compliance Reporting Requirement**

POHP recipients are required to provide annual reporting using Minnesota Housing’s Property Online Reporting Tool (PORT). Owners must submit an annual certification of compliance and occupancy data on all restricted units in the property. [Instructions on how to access PORT](#) can be found on Minnesota Housing’s website.

### **7.03 Compliance Term**

All projects funded through GO bond proceeds are required to comply with the affordability restrictions and are subject to monitoring and reporting for 35 years beginning on the date of closing.

## Chapter 8 – 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 to, because of protected class status:

- 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.

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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 9 – Fraud, Misuse of Funds, Conflict of Interest, Suspension, and Disclosure and Reporting**

### **9.01 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 9.05.

### **9.02 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 9.05.

### **9.03 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 9.05.

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

#### **9.04 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](#).

#### **9.05 Disclosure and Reporting**

Minnesota Housing promotes a "speak-up, see something, say something" culture whereby internal staff, external business partners (e.g., grantees, borrowers) and the general public are encouraged to report instances of fraud, misuse of funds, conflicts of interest, or other concerns without fear of retaliation. You may report wrongdoing or other concerns by contacting:

- Minnesota Housing's Chief Risk Officer at 651.296.7608 or 800.657.3769

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- Any member of Minnesota Housing’s [Servant Leadership Team](#) (visit [mnhousing.gov](http://mnhousing.gov) and enter **SLT** in the Search box)
- [Report Wrongdoing or Concerns](#) (visit [mnhousing.gov](http://mnhousing.gov) and enter **Wrongdoing** in the Search box)



## Appendix A – Terms

| Term                                      | Definition  |
|---|---|
| Buildings, Benchmarks, and Beyond (B3)    | Guidelines developed for state-funded projects in Minnesota to ensure projects meet sustainability goals.   |
| Community Development Agency (CDA)        | A local government agency as defined in Minnesota Statutes Section §462C.02, subdivision 6, responsible for the management and operation of its local public housing program and/or other types of housing, community or economic development programs.   |
| Construction Loan                         | A construction/permanent, long-term loan to finance construction/rehabilitation and eligible soft costs. The loan funds are advanced incrementally during construction/rehabilitation.  |
| End Loan                                  | A permanent, long-term loan that is used to pay off a short-term construction/rehabilitation loan or other form of interim financing.   |
| General Obligation (GO) Bonds             | Debt instruments issued by states and local governments to raise funds for public works that are backed by the full faith and credit of the issuing municipality.   |
| Housing and Redevelopment Authority (HRA) | A local government agency as defined in Minnesota Statutes Section §462C.02, subdivision 6, responsible for the management and operation of its local public housing program and/or other types of housing, community or economic development programs.   |
| Jobs Reporting                            | The state mandated reporting requirement to ensure women and minorities have equal access to jobs created by Minnesota Housing funded projects.   |
| Loan Commitment                           | A contractual agreement between Minnesota Housing and the borrower that sets forth the terms under which Minnesota Housing will lend funds to the borrower for a project.   |
| Predesign                                 | A plan required by local government units utilizing funding from the state legislature for capital improvement projects exceeding \$1.5 million in construction costs.  |
| Public Housing Authority (PHA)            | A state, county, municipality or other governmental entity or public body, or agency or instrumentality of these entities, that is authorized to engage or assist in the development or operation of low-income housing under the United States Housing Act of 1937 ( <u>42 U.S.C. 1437et seq.</u> ). |
| Uniform Relocation Act (URA)              | The Uniform Relocation Act applies to federally funded projects involving rehabilitation or acquisition. The URA provides displaced persons with fair, equitable treatment and protection from disproportionate injury by projects designed   |

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| <b>Term</b> | <b>Definition</b>  |
|-------------|--|
|             | to benefit the public. The URA requirements must be adhered to by the owner. If the borrowing entity will be displacing or temporarily relocating tenants, a tenant relocation plan that conforms to all URA requirements is required and must include an outline of how tenants will be accommodated during construction, an overview of construction activities, a project timeline, an estimated budget, and whether or not the scope of work will require temporary or permanent relocation. |

## **Appendix B – Resources (if applicable)**

B3 Form P-Oc: Application Form

Minnesota Housing Limited Scope

Minnesota Housing 20-Year Capital Expenditure (20YCE) Template

Minnesota Housing Physical Needs Assessment Template (PNAT)

Jobs Compliance Workbook