



# **HOME Affordable Rental Preservation (HARP) Program Manual**

*April 2017*



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## MINNESOTA HOUSING - HOME AFFORDABLE RENTAL PRESERVATION PROGRAM (HOME HARP)

**Please note:** Federal statutes and rules that are referenced in this manual may be found at <http://www.hud.gov/offices/cpd/affordablehousing/lawsandregs/>.

To find Minnesota Statutes and Rules go to this webpage maintained by the Office of the Revisor of Statutes: <https://www.revisor.leg.state.mn.us/pubs/>.

## **Introduction**

### **Mission Statement**

Minnesota Housing finances affordable housing for low-and moderate-income households while fostering strong communities.

### **Background**

Minnesota Housing was established by the 1971 session of the Minnesota Legislature to finance the construction and rehabilitation of housing for families of low and moderate income. In addition to providing financing for multifamily rental units, single family mortgage loans and home improvement loans and grants, Minnesota Housing participates in and administers other programs which assist in increasing or improving affordable housing for Minnesota residents.

## **Chapter 1 – Overview**

The information presented in this manual is not intended as a full or complete description of your responsibilities under the US Department of Housing and Urban Development’s Home Investment Partnerships Program (“the HOME Program”), as administered under Minnesota Housing’s HOME Affordable Rental Preservation (HARP) Program. If you have any questions as to how policies in this manual affect your project, please contact the Minnesota Housing underwriter assigned to your project or the HARP Program Manager. Noncompliance by the Borrower with certain HOME Program and HARP requirements may have serious financial consequences.

### **Program Description**

Minnesota Housing’s goal under the HARP Program is to preserve the supply of decent, safe, and sanitary affordable housing for low-income individuals and families. The HARP Program provides financing for the rehabilitation or acquisition and rehabilitation of federally assisted multifamily rental housing. Minnesota Housing gives priority in its Consolidated Request for Proposals (RFP) to developments faced with risk of opt-out from federal subsidy programs (e.g. Section 8). Funding can also be provided for stabilization of federally assisted developments.

## **Chapter 2 – Eligibility and Documentation**

### **2.01 Eligible Entities**

To be eligible for HARP Program funding, the applicant must be one of the following:

- 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) Religious Organizations The owner must provide evidence of a qualifying interest in the property with such interest recorded and appearing in the records of the county. Properties owned by a trust are not eligible to apply for HARP funds. The minimum qualifying interests is a 100% fee simple interest, which may be subject to a mortgage.

### **2.02 Developer Capacity**

Before Minnesota Housing will select a project for receiving HARP funding the developer's capacity including but not limited to prior experience and financial capabilities will be assessed.

### **2.03 Owner and Development Team Debarment Review**

Before selecting a project, signing the Written Agreement or executing a loan closing Minnesota Housing will confirm that no members of the development team, including the owner, are debarred or excluded from receiving federal assistance. If the owner(s) are found to be on either HUD's Limited Denial of Participation or System for Award Management's debarment lists, they will not be eligible to receive HARP funds.

### **2.04 Contractor Debarment**

Before issuing a contract to selected general contractors, the owner must verify with Minnesota Housing that the general contractors is not debarred or excluded from working on federally assisted projects. If the general contractor is found to be on either HUD's Limited Denial of Participation or the System for Award Management's debarment lists, they are not eligible to work on the project. It is the general contractor's responsibility to provide documentation to Minnesota Housing showing that all subcontractors working on the project are not on either HUD's Limited Denial of Participation or the System for Award Management's debarment lists.

### **2.05 Property Eligibility**

#### **Eligible Properties.**

- Properties may contain one or more buildings on a single site. Properties may also be located on more than one site if the properties are under common ownership, management and financing, and housing units are being rehabilitated in each building as part of a single undertaking.
- Properties must conform to all applicable zoning ordinances and possess all appropriate use permits.
- Properties must be used primarily for residential purposes (51% or more of the gross floor area of each structure must be residential space).



- Properties must provide permanent housing; e.g., no emergency shelters, nursing homes or other facilities.

**Ineligible Properties.**

- Developments under the Emergency Low Income Housing Preservation Act of 1987 or the Low-Income Housing Preservation and Resident Homeownership Act of 1990.
- Minnesota Housing-financed developments actively participating in its Redefined Equity Program.
- Public Housing developments.
- Developments previously funded under the HOME Program (by Minnesota Housing or any other Participating Jurisdiction) that are still within their Effective Period unless a waiver has been granted by Minnesota Housing and HUD.
- Developments owned by borrowers who previously received funding assistance from Minnesota Housing and did not successfully maintain compliance with affordability and property standards requirements or otherwise defaulted under the loan documents.
- Developments where there are encumbrances, outstanding liens, or judgments that are not acceptable to Minnesota Housing.
- Developments with a history of negative cash flow.

## **2.06 Improvement Eligibility**

**Eligible Improvements/Expenses.**

- Permanent Improvements that bring the property into compliance with applicable state and local codes, Minnesota Housing [Rental Housing Design/Construction Standards](#), applicable ordinances, Uniform Physical Condition Standards (UPCS) specified in 24 CFR 5.703, zoning ordinances, etc., and that make the housing lead safe;
- Acquisition costs;
- Central air conditioning;
- Air conditioners in AC sleeves.

**Ineligible Improvements/Expenses.** Improvements that are ineligible under the - HARP Program include, but are not limited to, the following:

- New construction;
- Recreational or luxury improvements;
- Installation of fireplaces or wood burning stoves;
- Materials purchased prior to loan closing;
- Acquisition that is not in conjunction with rehabilitation of the development;
- Improvements that started prior to loan closing;
- Equipment and furnishings not considered part of the real estate;

- Materials, fixtures or landscaping of a type or quality exceeding that customarily used in similar neighborhood properties;
- Improvements not included in the scope of work and the loan amount.

Ineligible improvements/expenses may be completed at the expense of the owner.

**Eligible Soft Costs.**

- Architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups;
- Costs for environmental testing (Phase 1), lead-based paint (LBP) assessment, radon asbestos-containing materials (ACM) assessment;
- Developer fees up to 5% of the HARP loan;
- Finance-related costs;
- Affirmative marketing and fair housing services to prospective tenants or owners of an assisted project;
- Temporary relocation costs;
- Such other soft costs that may be eligible under 24 CFR Part 92 and that are approved by Minnesota Housing in advance of incurring them.

**Ineligible Soft Costs.** Ineligible soft costs include but are not limited to the following:

- Application fees;
- Management agent fees;
- Monitoring fees;
- Operating or replacement reserves (except to fund an initial operating deficit reserve for an initial rent-up period, where a reserve may be used to pay for operating expenses, scheduled payments to a replacement reserve, and debt service for a period not to exceed 18 months.)
- Displacement of tenants

## **Chapter 3 – Funding Terms**

### **3.01 Loan Terms**

HARP funding can be provided in the form of a Construction or End Loan. Regardless, all projects must be capable of beginning construction within 12 months of entering into a written agreement.

The funds will be made available as a zero percent loan, with payment deferred until the earlier of 30 years or the occurrence of one or more of the following: failure of the owner to accept a renewal or extension of federal rental assistance; failure of the federal government to offer to renew or extend federal rental assistance due to actions of the owner or condition of the property; or the occurrence of an event of default described in the HARP mortgage or related documents. The minimum amount of HARP Program assistance is \$1,000 per unit and \$100,000 per project.

The interest rate may be adjusted in order to allow these funds to be utilized with other sources of funding, such as Low Income Housing Tax Credits. The loan term may be adjusted based on requirements and conditions of the federal assistance or other funding sources. Loans will generally be full recourse; however, Minnesota Housing will allow non-recourse debt to single asset entities.

### **3.02 Written Agreement**

The owner and Minnesota Housing must sign and date the HOME Affordable Rental Preservation Program Written Agreement (Written Agreement) prior to construction activities. The Written Agreement outlines the minimum responsibilities and expectations that must be met prior to signing the agreement and throughout the term of the affordability period. Minnesota Housing reserves the right to require additional requirements. . The Written Agreement may be signed well in advance of, or concurrent with loan closing, as long as all HARP Program and Written Agreement requirements have been satisfied.

Minnesota Housing will provide technical assistance where and when necessary to facilitate commitment of HARP funds in a timely manner, and assist owners with understanding their compliance obligations.

### **3.03 Effective Period/Period of Affordability**

The Effective Period or the Period of Affordability marks the time during which the HARP-assisted units must remain in compliance with HARP Program guidelines. The federally-required Effective Period is five years for loans less than \$15,000 per HARP-assisted unit; ten years for loans between \$15,000 and \$39,999 per HARP-assisted unit; and fifteen years for loans over \$40,000 per HARP-assisted unit.

Minnesota Housing reserves the right to require a longer Effective Period as a condition of funding. The Effective Period begins within fifteen days of final disbursement of all the project funds to the owner, which occurs after project completion and submittal of all required documentation, and is established in the Effective Period Certificate, which is signed and recorded at Project Completion.

### **3.04 Subordination to Declaration of Covenants, Conditions and Restrictions**

Minnesota Housing requires all lenders in a senior position to agree to subordinate their mortgage to the HARP Declaration of Covenants, Conditions and Restrictions (The HARP Declaration) prior to Minnesota Housing entering into a loan closing. The subordination to the HARP Declaration by senior

lenders does not in any way affect lien priority; rather, it ensures that HARP rent, income, and occupancy requirements shall run with the property for the duration of the Effective Period regardless of any change of ownership, full payment of the HARP Program loan or event of default.

Borrowers should begin talking to senior lien holders as soon as possible to determine if they are willing to execute the subordination. If a lender is not able to meet this requirement, Minnesota Housing may elect not to fund the loan.

### **3.05 Preservation of Rental Assistance**

In addition to the HARP Declaration, any owner of a project receiving project-based rental assistance (e.g. Rural Development, HUD 236, Section 8, etc.) will be required to sign a rental-assistance Declaration of Covenants and Restrictions, which contains restrictive covenants preventing the owner from opting-out of federal rental assistance contracts, and the borrower will be required to continue to participate in the applicable federally-assisted housing program and to extend any existing low-income affordability restrictions under the federally-assisted housing program for the term of the HARP loan.

### **3.06 Unit Comparability Analysis and Cost Allocation**

The owner is required to perform a unit comparability analysis on all units in the development to assist Minnesota Housing in determining the maximum amount of HARP funds that the project may receive, whether HARP-assisted units will be “fixed” or “floating” as defined below, and how many units will be designated as HARP-assisted. Regardless of the fixed or floating designation, the HARP funding shall only pay the share of HARP-eligible costs that is proportionate to the number of units that are occupied by HARP income-eligible tenants and designated as “HARP-assisted units.” Furthermore, units receiving HARP and HOME funds from another jurisdiction must be evenly distributed among the different unit types so as to not cluster HARP tenants in one bedroom units, for example.

The owner shall perform the analysis using the Unit Comparability Instructions Sheet as soon as possible after executing the HARP Form 1: Application Certification after selection. Minnesota Housing must review and approve the analysis before it will issue a Written Agreement.

After approving the Borrower’s Unit Comparability Analysis, Minnesota Housing will estimate the number of HARP-assisted units as required under the HOME Program, though the final number and specific initially designated unit type will not be determined until loan closing. In addition, if the loan amount changes during construction, the number of HARP-assisted units will need to be recalculated, possibly resulting in a greater number of HARP-assisted units and/or a longer affordability period.

**Fixed Units.** If all units with the same number of bedrooms are satisfactorily demonstrated to be comparable in terms of area and amenities, the owner in conjunction with Minnesota Housing may select to have the HARP-assisted units be “fixed” OR “floating.” When HARP-assisted units are “fixed,” the specific units that are HARP-assisted (and, therefore, subject to HOME rent and occupancy requirements for the duration of the Effective Period) are designated and never change. In addition, units designated as “fixed” must be occupied by tenants that meet the income and rent limitations of the HARP for the duration of the Effective Period. If the units are determined non-comparable, the HARP-assisted units must be fixed, not floating, and costs must be pro-rated such that HARP funding is only used for the fixed non-comparable units plus a share of common area costs.

**Floating Units.** When HARP-assisted units are floating, the units designated as HARP-assisted may change during the Effective Period so long as the total number of HARP-assisted units in the development remains the same and any newly designated units are comparable in size, features and number of bedrooms to the originally designated units. (REMINDER: In order to use the floating method, the HARP assisted units **must** be comparable to the non-HARP assisted units.)

### **3.07 Limit on Governmental Assistance (Subsidy Layering Review)**

Under the HOME Final Rule at 24 CFR Part 92, each development that receives HOME Program assistance must be evaluated by Minnesota Housing to ensure that no more than the necessary amount of program funds is invested in any one housing development. This analysis is called subsidy layering review. The evaluation is intended to guard against excessive profits that may accrue to the Borrower through the financing.

To complete the analysis, Minnesota Housing will complete the Sources and Uses of Funds contained within the Multifamily Workbook reflecting the development budget and listing all sources (both private and public) of funds and the dollar amount for each source, and all uses of funds (including acquisition cost, rehabilitation, financing costs and professional fees) associated with the development. Minnesota Housing will then confirm that costs funded by HARP Program are eligible and that all costs are reasonable.

The reasonableness of the project's costs will be determined by reviewing the development's quality, construction costs, architectural and engineering fees, and consulting fees. Criteria for assessing the "reasonableness" of construction costs are, in part, by the assigned Minnesota Housing's staff architect and underwriter reviewing the cost estimates, costs of comparable developments in the same geographic area, qualifications of the cost estimators for various budget line items, comparable costs published by recognized industry cost index services, and the comparable bids obtained,.

The reasonableness of the rate of return on the applicant's equity investment will be assessed by reviewing the applicant's submitted pro forma. The pro forma should include the consequences of tax benefits and other assumptions used in calculating the development cash flow and represent, at a minimum, the term of the HARP Program affordability requirements (typically 10 years), or represent a longer period if applicable (for example, 15 years for Low-Income Housing Tax Credit Requirements).

If Minnesota Housing determines that the total amount of HARP funds and other governmental assistance exceeds the amount necessary to make the development feasible (because costs are unreasonable or the projected rate of return is too high), it will pursue one or more of these remedies:

1. Reduce the amount of HARP Program assistance by reducing the development budget or increasing the borrower's contribution or non-public funding;
2. Make other adjustments such as lowering the rents, increasing the replacement reserves, or more thoroughly analyzing various expenses (such as vacancy factor, real estate taxes after rehabilitation) that if increased would reduce the profit;
3. Deny HARP Program assistance if the applicant refuses to make reasonable adjustments or to limit the rate of return and/or profit.

For the purposes of the subsidy layering review, governmental assistance includes any loan, grant (including a Community Development Block Grant), guarantee, insurance, payment, rebate, subsidy,

credit tax benefit, or any other form of direct or indirect assistance from the federal, state, or local government for use in, or in connection with, a specific housing development.

All HARP Program awards must be approved by the Minnesota Housing Board of Directors, and must be approved by its Clearinghouse Committee prior to committing HARP funds by executing the Written Agreement and by the Mortgage Credit Committee prior to loan closing.

## Chapter 4 – Income and Occupancy Requirements

### 4.01 Income Eligibility

At least 90 percent of all HOME assisted units must be initially occupied by families with annual gross incomes at or below 60 percent of the area median income with rents at or below the High HOME rents. In developments containing more than five (5) units, at least 20% of HARP-assisted units must be occupied by households with incomes at or below 50% of AMI. In some circumstances, more restrictive income requirements may apply, as noted below. Income of tenants must be determined and verified in accordance with the requirements of the Minnesota Housing Multifamily HOME Programs [Compliance Manual](#).

The below chart illustrates the income targeting requirements by the number of HARP-assisted units. (NOTE: More restrictive requirements may be required.)

No. of HOME Units		Income Requirements at Initial Certification	Income Requirements After Initial Certification	Rent Requirements
5 +	Very low income / Low HOME Rent	At least 20% of the units must be occupied by very low income households, at 50% AMI or less	At least 20% of the units must be occupied by very low income households, at 50% AMI or lower.	At least 20% of the units must pay the lower of FMR, 50% rent limit (Low HOME Rent), or 30% of the family's adjusted income
	Low income / High HOME Rent	*Up to 10% of the units may be occupied by households above 60% AMI (up to 80% AMI)	*The remaining 80% of the units may be occupied by households above 60% AMI (up to 80% AMI)	The remainder of the units may pay the lower of FMR or 65%** rent limit (High HOME Rent)

\*Note: You must have at least 10 HOME-assisted units to qualify for one unit with a household at 80% AMI.

### 4.02 Properties Receiving Project-based Rental Assistance

**Rent and Income Limits.** HARP-assisted units must be made available for rent to households with incomes at or below 50% of the area median income at gross rents (contract rent plus tenant paid utilities) that are at or below the LOW HOME rent limit as established annually by HUD, OR, If a HARP-assisted unit receives federal project-based rental assistance *and* the unit is occupied by a very low-income (50% AMI) household who pays as a contribution towards rent not more than 30% of adjusted gross income, the maximum rent (tenant contribution plus the project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program. Because the rent under the federal rental assistance program will typically be higher than allowable HOME Program rents, this will provide to the Borrower the highest possible rent.

The rent charged for the HARP-assisted units must be adjusted to comply with the LOW HOME rent limit if in the future the Federal or State project-based assistance is no longer available.

All standards contained in this chapter must be met at project completion and throughout the Effective Period. Properties will be monitored for compliance with affordability and property standards for the duration of the Effective Period.

#### **4.03 Rent Limits**

Every HOME-assisted unit is subject to maximum allowable rents based on bedroom size for the county in which the property is located. These maximum rents are referred to as HOME Rents. There are two HOME Rents established for properties: High and Low Home Rents represent the maximum that owners can charge for rent, including an allowance for tenant-paid utilities. Rent limits and rent increases must be determined and verified in accordance with the requirements of the Minnesota Housing Multifamily HOME Programs [Compliance Manual](#).

**HOME Program Rent Limits** are published by HUD on an annual basis. Minnesota Housing issues a memo to owners and managers and posts the new rent limits on its website when they are released. In the event rent limits decrease for an area, or utility allowances increase, an owner may be required to reduce the rent charged but will not be required to lower rents below those in effect at the time of project commitment.



## Chapter 5 – Design, Construction and Property Standards

### 5.01 HOME Property Standards

The federal HOME Program, and by extension HARP, requires that properties served with HOME funds be brought into conformance with all applicable state and local codes, standards, and ordinances by project completion. In a case where standards differ, the most restrictive will generally apply. Properties must meet local housing habitability or quality standards throughout the effective period unless no such standards exist; then the HUD's Uniform Physical Conditions Standards (UPCS) as set forth in 24 CFR 5.703 shall apply. It is the owner's responsibility to determine if there is a local housing habitability code required for their property and to provide to Minnesota Housing either a copy of the code or an internet URL to the code.

### 5.02 Minnesota Housing Design and Construction Standards

All projects funded through the HARP Program must follow Minnesota Housing's Rental Housing Design/Construction standards. These guidelines are available online at the Minnesota Housing website at: [Rental Housing Design/Construction Standards](#).

All projects consisting of 26 or more units are required to determine the useful remaining life of the major systems. Major systems are: structural support; roofing; cladding and weatherproofing (e.g., windows, doors, siding, gutters); plumbing; electrical; and heating, ventilation, and air conditioning. If the remaining useful 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 replacement reserve must be established and monthly payments made to the reserve that are adequate to repair or replace the systems as needed.

### 5.03 Lead Hazard Evaluation and Reduction

All projects funded through the HARP Program must follow U.S. Department of Housing and Urban Development (HUD) 24 CFR 35, Minnesota Housing's "[Rental Housing Design/ Construction Standards](#)," and Minnesota Housing's [Lead-based Paint Policy](#).

**Disclosure Requirements for Lead-based Paint.** The owner shall complete the Minnesota Housing Lead-Based Paint Pre-Construction Certification form and submit the original to Minnesota Housing in conjunction with signing the HOME Form 1.

In addition, the owner must 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 should be given upon execution of the HARP Form 1 for existing tenants and for new tenants at move-in. For all tenants residing at the property during rehabilitation, the owner must also distribute the "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools" pamphlet no less than 7 days and no more than 60 days prior to commencement of rehabilitation. The owner must have 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.

If lead-based paint hazards are present in the property, whether determined by a risk assessment or presumption of lead, the owner must post such assessment or notice of presumption in a conspicuous location or deliver a copy of the assessment to each household within 15 days.

## 5.04 Construction Considerations

**Initial Inspections.** All projects funded through HARP must have an architect licensed to practice in Minnesota prepare a scope of work and bid specifications. Initial Property Inspections performed by the development team shall be per Minnesota Housing's "Rental Housing Design/Construction Standards."

In addition, HARP Program requires an initial property inspection to Uniform Physical Condition Standards (UPCS) for all projects awarded HOME HARP funds. This inspection is completed by Minnesota Housing staff or by an entity or person contracted by Minnesota Housing to ensure the project scope of work includes all needed items. The findings of this inspection that are deemed emergency in nature will have to be remedied per UPCS protocol after the inspection. The remaining findings of the inspection will either be integrated into the scope of work or into the property's routine maintenance through negotiation between Minnesota Housing and the development team. Needed improvements identified that are part of routine maintenance may, at Minnesota Housing's discretion, be left out of the scope of work, provided that all improvements needed to meet required physical standards are addressed prior to the completion of construction.

**Obtaining Bids.** All projects shall be awarded to a single general contractor. The selected single general contractor will be responsible for all divisions of work. The contractor selection process can use competitive OR negotiated bids. However, if the bid for a general contractor is negotiated, all sub-contractors must be competitively solicited. See Section 2.03 for important information on eligible contractors and subcontractors, and Minnesota Housing's [Contractor Guide](#) for more information on soliciting bids.

**Construction Process Monitoring.** The Borrower's contract with the architect must require the architect to provide regular construction administration and site observations as per Minnesota Housing's [Architect's Guide](#), and the prime general contractor shall comply with Minnesota Housing's [Contractor's Guide](#).

**Change Orders.** All change orders and other contract modifications shall be as per Minnesota Housing's [Architect's Guide](#) and [Contractor's Guide](#).

## Chapter 6 – HARP Compliance

The federal HOME Program and HARP establish specific compliance responsibilities prior to, during, and after project completion, as well as for the duration of the Effective Period and the term of the loan. For complete information on compliance using HARP funds, please see the Minnesota Housing Multifamily HOME Programs [Compliance Manual](#).

### 6.01 Lease Terms and Tenant Selection Policies

Leases for HARP-assisted units must be for at least 1 year, unless a shorter term is agreed upon by the owner and tenant. Per federal regulation, leases may not contain certain provisions (see the Compliance Manual for a listing of prohibited lease provisions). Additionally, owners must adopt written tenant selection policies and criteria and make these available to Minnesota Housing upon request. These policies must:

- Be consistent with the purposes of providing housing for low and very-low income families;
- Provide for selection of tenants from an existing written waiting list in the chronological order of their application; and
- Allow for prompt written notification to any rejected application of the grounds for rejection.
- HUD issued its Final Rule on February 3, 2012 regarding Equal Access to Housing in HUD programs regardless of Sexual Orientation or Gender Identity. Owners may not inquire about the sexual orientation or gender identity of an applicant or occupant of HUD assisted housing for the purpose of determining eligibility or continued occupancy. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity. This prohibition on inquiries does not prohibit lawful inquiries of an applicant or occupant's sex where the housing provided or to be provided to the individual is temporary, emergency shelter that involves the sharing of sleeping areas or bathrooms.

In accordance with the Violence Against Women Reauthorization Act of 2013, the selection criteria cannot deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault or stalking. Owners should provide to each applicant/tenant HUD form 91066 or its successor form to allow the applicant/tenant to provide information regarding his or her status as a victim of domestic violence, dating violence or stalking.

### 6.02 Mandatory Lease Terms

All leases must contain the following provisions:

- HARP Tenant Income Certification:
  - On an annual basis, the tenant shall certify the household's income and composition by completing and signing a Tenant Income Certification form which is provided by owner.
  - The owner may terminate the lease or refuse to renew the lease of a household for failure to supply the completed and signed Tenant Income Certification form within thirty (30) days of the request.
- Third Party Income Verifications:
  - The tenant shall sign consents to third-party income verification as reasonably requested by owner.

- The owner may terminate the lease or refuse to renew the lease of a household for failure to supply the consent to third party income verification within thirty (30) days of the request.
- Right of Access:
  - The tenant shall sign an acknowledgement that the owner, or his/her duly authorized agents, employees or representatives, upon reasonable notice to the household, shall have the right of access to the dwelling unit for the purpose of examining the condition thereof and for making improvements and repairs, and for the purpose of showing the dwelling unit for re-rental.
- Lease:
  - The tenant and owner shall sign an acknowledgement that the lease between a tenant and an owner of rental housing assisted with HARP funds must be for not less than one year, unless by mutual agreement between the tenant and the owner.

The owner shall secure from all new tenants at the time of move-in (and from all existing HARP-assisted units at time of lease renewal) a signed HARP Lease Addendum. Signed lease addendums must be retained in the tenant's file, and are subject to compliance review by Minnesota Housing.

### **6.03 Prohibited Lease terms under the HARP Program include the following:**

- Agreement to be sued: This lease cannot contain a tenant agreement to be sued, admit guilt, or accept a judgment in favor of the property owner in a lawsuit brought in connection with the lease
- Treatment of property: This lease cannot contain a tenant agreement that the property owner may take, hold or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to disposition of personal property remaining in the housing unit after the tenant has moved out. The property owner may dispose of this personal property in accordance with state law.
- Excusing the property owner from responsibility: This lease cannot contain tenant agreement not to hold the property owner or the property owner's agents legally responsible for actions or failure to act, whether intentional or negligent.
- Waiver of notice: This lease cannot contain a tenant agreement that the property owner may institute a lawsuit without notice to the tenant.
- Waiver of legal proceedings: This lease cannot contain a tenant agreement that the property owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
- Waiver of jury trial: This lease cannot contain a tenant agreement to waive any right to a jury trial.
- Waiver of right to appeal court decision: This lease cannot contain a tenant agreement to waive right to appeal or to otherwise challenge in court a decision in connection with the lease.
- Tenant chargeable with cost of legal actions regardless of outcome: This lease cannot contain a tenant agreement to pay attorney fees or other legal costs even if the tenant wins a court proceeding by the property owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

- Mandatory Supportive Services. This lease cannot require the tenant, as a condition of occupancy, to participate in or agree to accept supportive services that are offered (other than a tenant in transitional housing).

#### **6.04 Termination of Tenancy**

The owner/agent must comply with HOME requirements on evictions as well as state law regarding eviction procedures. There must be a written notice that gives a household 30 days to vacate its unit, regardless of whether household has violated the law or lease terms.

Under the HOME Program, tenancy may be terminated only for:

- Serious or repeated violation of the terms and conditions of the lease;
- Violation of applicable federal, state, or local law;
- Completion of the tenancy period for transitional housing;
- Failure to participate in required supportive services for transitional housing; or
- Other good cause.

#### **6.05 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.

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.

For more information on fair housing, please see the Minnesota Housing Multifamily HOME Programs [Compliance Guide](#).

## **6.06 Affirmative Action**

Minnesota Housing works affirmatively to ensure that all persons, regardless of race, color, creed, national origin, sex, religion, marital status, age, status with regard to receipt of public assistance, disability, sexual orientation, or familial status, will be treated fairly and equally in employment or program participation.

All programs financed or administered through Minnesota Housing will contain equal opportunity/affirmative action requirements in the contracts or procedural manuals, regardless of whether or not federal funding is involved.

## **6.07 Equal Economic and Employment Opportunity**

Employers with federally assisted construction contracts must not be discriminatory in employment practices. Whenever contracts involving HARP assistance consist of more than \$10,000, an equal opportunity clause, as detailed by Executive Order 11246, must be incorporated into **all** construction contracts. Sixteen specific equal employment and affirmative action steps are outlined in Executive Order 11246 to establish good faith effort (these examples are not, however, the only options available to meet affirmative marketing and action requirements). See [Minnesota Housing Equal Employment Opportunity Policy Statement](#).

## **6.08 Minority and Women-Owned Businesses**

It is the policy of Minnesota Housing that minority- and women-owned business enterprises (MBEs/WBEs) have equal access to business opportunities resulting from Minnesota Housing-financed developments, and that the workforces on the development projects Minnesota Housing finances, are demographically representative of the area in which the developments are located. When reviewing bid information, Minnesota Housing will review:

- The owner's and general contractor's certification that they comply with laws prohibiting discrimination in employment and that they hire affirmatively;
- The extent to which they solicit bids from MBEs/WBEs; such solicitations and the results must be documented; and

- The demographic make-up of the contractor and subcontractor's workforces.

State and federal regulations direct that all affirmative steps be taken to assure that MBEs/WBEs are used when possible. Outreach to minorities and women must be conducted and documented to Minnesota Housing for contracts in excess of \$50,000.

## **6.09 Section 3**

Work done under the HARP is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u). These requirements are described in 24 CFR Part 135 and the [Multifamily Division Minority or Women Business Enterprises Compliance Guide](#). Minnesota Housing will request certain documentation and tracking information be provided to verify compliance with this obligation.

To demonstrate compliance with Minnesota Housing's affirmative contract compliance requirements, owners must identify jobs bid by minority-owned, women-owned, and small or disadvantaged businesses, using the Minnesota Housing Contract Compliance Activity Report. The Minnesota Housing contract compliance form is a data collection tool to be included in bidding documents. All contractors and sub-contractors providing bids must complete this form. If not enough minority and female contractors have been solicited, then Minnesota Housing reserves the right to insist work is re-bid affirmatively. See the [Multifamily Division Minority or Women Business Enterprises Compliance Guide](#) for target hiring goals for specific geographic areas.

## **6.10 Federal Labor Standards**

Owners agree to abide by and ensure compliance with the federal labor standards laws and regulatory requirements. The three laws that apply are:

- Davis-Bacon Act: Requires that workers receive not less than the prevailing wages being paid for similar work in the locality. Prevailing wages are computed by the U.S. Department of Labor (DOL) and are issued in the form of federal wage decisions for each classification of work;
- Copeland "Anti-kickback" Act: Workers must be paid at least once a week without any deductions or rebates except permissible deductions, which include taxes, deductions the worker authorized, and those required by court processes. The Act also requires that contractors maintain payroll records and submit weekly payrolls and statements of compliance to the contracting agency; and
- Contract Work Hours and Safety Standards Act: Workers must receive overtime compensation at a rate 1 ½ times their regular wage after they have worked 40 hours in one week.

Please refer to the [U. S. Department of Housing and Urban Development Office of Labor Relations](#) for additional information about the laws outlined above.

## **6.11 Davis Bacon**

People working on a rental housing development that contains twelve (12) or more HARP-assisted dwelling units must be paid an hourly rate not less than the minimum rate specified in the applicable Wage Decision for each particular development. Owners must require that the general contractor and all sub-contractors enter their certified weekly payroll reports and all applicable documentation into the LCPtracker software on a weekly basis and verify compliance with Davis Bacon labor standards. The

completion and submittal of all documentation for conformance with federal labor standards requirements is a condition for the release of HARP funds. When combining HARP assistance with other federal sources, follow the Davis-Bacon standards of the program which applies the standards to the smallest number of units.

### **6.12 Wage Determination**

Each development with twelve (12) or more HARP-assisted units must pull a wage decision from the US Department of Labor (DOL) website. The owner's architect is responsible for pulling the wage decision and providing a copy to the Minnesota Housing Labor Standards Officer (LSO). The Minnesota Housing-approved wage decision must be included in all bid specifications, bid documents, and contracts. Failure to include a wage decision or the use of a wrong decision in bid specifications, bid documents, and contracts will not relieve the contractor or owner from potential enforcement action, and may make costs ineligible for payment with HARP funds. The owner must have a formal construction contract with the selected general contractor, and an owner who is also the licensed general contractor must have formal construction contracts with all individual sub-contractors. All construction contracts must contain Davis-Bacon language binding the contractor to Davis-Bacon requirements (HUD 4010).

General wage determinations may be modified by the DOL at any time. Most changes occur on Fridays of each week. For purposes of the HARP, the "contract award" date, or the date on which a wage decision is considered "locked in," for contracts entered into pursuant to competitive bidding procedures, the bid opening date "locks-in" the wage decision provided that the contract is awarded within 90 days. If the contract is awarded more than 90 days after bid opening, the contract award date locks-in the wage decision. For contracts, purchase orders or other agreements for which there is no bid opening or award date, the signing of the general contractor's contract locks in the wage decision for the project.

The applicable wage decision, HUD Form 4010: Federal Labor Standards Provisions, Minnesota Housing Equal Employment Opportunity Form, and the Section 3 Guide and all of the Attachments must be contained in all bid specifications and bid documents. Minnesota Housing must be given a copy of the bid specifications and bid documents before they are released for bids.

The general contractors and subcontractors contracts must also contain the HUD4010 and the contractor completed and signed Minnesota Housing Equal Employment Opportunity Form and Section 3 Clause. Inclusion by reference is not acceptable.

### **6.13 Notices for Job Site**

Applicable wage decision, HUD4010, Employees Rights under the Davis Bacon Act Notice and weekly sign-in sheets must be posted at the work site in a location that employees can easily have access to and the documents are protected from the weather for the duration of the contract work. Minnesota Housing will make one or more site visits to determine that the applicable notices are posted at the site.

### **6.14 Required Submittals to Minnesota Housing**

Before the initial closing, the general contractor must submit a complete list of all contractors/subcontractors to be employed. This list must be updated, as additional subcontractors are determined.

The general contractor must report weekly in LCPtracker the following records:



- A list showing all contractors/subcontractors working on the development during the workweek.
- The documentation showing that the subcontractors are not on the HUD's Limited Denial of Participation or System for Award Management's debarment lists. (NOTE: this documentation only needs to be provided once per project but before the subcontractor starts working on the project.)
- The certified weekly payroll report for each contractor/subcontractor with employees working at any time during the week. These submittals must be made no later than seven (7) days following the reporting period covered. Incomplete or incorrect payroll reports will delay payment.

### **6.15 Owner's Letter Certifying Compliance**

Upon completion, the owner must submit a letter to Minnesota Housing certifying compliance with all Davis-Bacon Labor Standards requirements.

### **6.16 Disputes Concerning Labor Standards and Payment of Wages**

Disputes arising out of labor standard provisions should be resolved in accordance with the policies and procedures as set forth by Minnesota Housing below, including disputes between the contractor/subcontractor and Minnesota Housing, HUD, the Department of Labor, or the employees or their representatives. Procedures may include review of disputes by Minnesota Housing staff, HUD staff, and the DOL. The purpose of these procedures is to establish a uniform method of receiving, resolving and documenting complaints, investigations and/or disputes where Davis-Bacon Labor standards apply.

The following procedures will be followed to resolve complaints:

- The Minnesota Housing Labor Standards Officer is responsible for resolving any complaints and conducting all investigations received where Davis-Bacon Labor Standards apply;
- All complaints received shall be referred to the Minnesota Housing Labor Standards Officer for investigation and resolution within 10 days of receipt; and
- The Minnesota Housing Labor Standards Officer will review complaints, request additional information if necessary, and issue a written notice of findings to all parties within 30 days of receiving all information required to make a decision.

If a contractor or subcontractor disagrees with the findings of the Minnesota Housing Labor Standards Officer concerning payment of prevailing wage rates, overtime pay, or proper classifications, the contractor or subcontractor must submit a written request for a review of the decision and provide an explanation (along with supporting documentation) of the disagreement, within 30 days of notification of findings. The Minnesota Housing Labor Standards Officer and the Minnesota Housing Multifamily Assistant Commissioner will review the original findings and the submitted information to determine if the disagreement is justified and will notify the contractor (or subcontractor) of the determination in writing within 30 days of receiving the request for a review of decision.

If the contractor (or subcontractor) is not satisfied with Minnesota Housing's determination concerning any disputes/disagreements, they may request that the case be referred to HUD and/or the DOL for reconsideration. Such disputes shall be resolved in accordance with the procedures of the DOL set forth in 29 CFR Parts 5, 6, and 7.

A request for DOL reconsideration of a work classification and wage rate must be submitted in writing to the DOL within 30 days of the decision, and be accompanied by a full statement and supporting data or information.

### **6.17 Compliance Retainage**

Minnesota Housing will hold a minimum of \$20,000 or 1% of the HARP loan, whichever amount is higher, until the final draw, in addition to any construction retainage, pending satisfactory evidence that all HOME Program and HARP compliance responsibilities have been met and that all associated documentation needed for project close-out is complete.

The information introduced in this section is not intended as a full or complete description of labor standards responsibilities and obligations. It is important to develop a working knowledge of HUD Labor Standards. If you are not well versed in labor standards issues and compliance, you may want to consider hiring a consultant to ensure full compliance.

## Chapter 7 – Uniform Relocation Act (URA)

The purpose of the Uniform Relocation Act (URA) is to provide displaced persons with fair, equitable treatment and protection from disproportionate injury by projects designed to benefit the public as a whole. The URA requirements must be adhered to by the borrowing entity. If the borrowing entity will be displacing or temporarily relocating tenants, an experienced relocation specialist must manage the entire process. This section covers basic URA requirements. For a complete recital of federal URA requirements for HUD-funded projects, please see [HUD Handbook 1378](#).

### 7.01 Displacement

Displacement occurs when a “person” (or their property) is displaced as a DIRECT RESULT (as defined under federal regulation) of a federally assisted acquisition, demolition or rehabilitation project. The term “displaced person” means any tenant, regardless of income, who is forced to move from the property permanently as a direct result of rehabilitation, demolition, or acquisition of a HARP-assisted development. This includes, but is not limited to physical displacement caused by overcrowding, loss of a unit, or economic displacement due to an increase in rents.

Minnesota Housing does not use HARP for permanent relocation benefits, as the program is designed to enhance long-term benefit to the development, owner(s), and current tenants. Therefore HARP assistance will be provided only if rehabilitation will not cause displacement of existing tenants. The owner, owner’s architect and/or contractors must thoroughly review applications to assess the potential for displacement. The owner should also take care to follow the policies as given below in providing information to tenants to ensure that permanent relocation benefits are not inadvertently triggered by displacement under the URA. Tenants living in the property at the time of application, as well as any tenants legally moving into the property any time after application, and before development completion, must be informed of their rights. The potential for displacement may be a valid reason not to fund a project.

### 7.02 Temporary Relocation

Residents who are not required to move permanently may be required to move temporarily if all conditions of the move are reasonable. Those to be temporarily relocated must receive “reasonable” advance written notice of the location, terms and conditions of the temporary move and of their right to reimbursement of all reasonable out-of-pocket expenses. Minnesota Housing must review and approve a written plan of action outlining the relocation activity and timelines, including a copy of the notice given to tenants. The notice should suggest comparable units and rents and give information about the timeline, payment for moving expenses, utility hookups, and the option to move back to the original unit after rehabilitation.

The owner must prepare an outline of the relocation activity showing tenants’ names, unit number and rent, address, size and rent of the comparable unit, other expenses paid, date of the move, and projected date of the move back to the original unit. If these procedures are not followed, a tenant would be considered displaced and becomes eligible for a displacement and relocation payment. The payment is equal to 42 times the difference between the replacement unit rent plus utilities and the lesser of 30% of the tenant’s adjusted monthly income or the tenant’s pre-rehabilitation rent.

### **7.03 Required Notices & Compliance Responsibilities**

Certain notices and information must be given to all tenants at specific times throughout development. If these requirements are not followed, tenants could easily move from a development, and be eligible for displacement and relocation assistance. Any displacement and permanent relocation expenses incurred will be the **sole responsibility of the owner**.

All notices under this section must be issued by the owner and personally served or sent by certified or registered first-class mail, return receipt requested. It is insufficient to have the owner or property manager state that notices were delivered, and as such there must be evidence of delivery on file for **each** affected party to a lease, and documentation demonstrating delivery must be sent to Minnesota Housing. All required notices should be issued as soon as feasible.

General Information Notice (GIN): must be served to all signors/parties to each lease. This notice informs occupants of the planned rehabilitation activities their rights under the URA. The GIN notices should be served as soon as possible after execution of the HOME Form 1.

Notice of Non-Displacement: informs households that they will remain in the project after completion of the assisted activity of their rights and of the terms and conditions of their remaining at the property. If the owner is certain that no tenants will be displaced as a result of rehabilitation, the GIN and Notice of Non-Displacement may be combined into a single notice.

Temporary Relocation Notice: informs households who will be temporarily relocated of their rights and of the conditions of their temporary move. This notice should include addresses of comparable replacement apartments, and information on any assistance available.

Move-in Notice: must be given to prospective or new occupants. This notice explains that the owner has applied to receive federal HARP funding for rehabilitation activities that could involve displacement or a rent increase and that they will not be entitled to relocation assistance in either event.

### **7.04 Notices if households will be displaced**

Notice of Eligibility: informs households that are to be displaced of their rights, levels of assistance, and procedures for obtaining the assistance under the URA.

Notice to Vacate: this 90 day notice informs displaced households of the earliest day by which they must vacate the property.

### **7.05 After Construction**

The owner must have readily available records demonstrating compliance with the URA and applicable relocation regulations. The URA records must be kept for at least five years after the later of:

- The date the person has received all of the assistance to which the person is entitled; or
- The date the project is completed.

Records should include documentation sufficient to preclude any possible later claim by a non-displaced or temporarily displaced tenant that they were displaced by the project. For any displaced persons, a separate case file must be created and retained for each affected person.

## **7.06 Guiding Statutes, Regulations, & Reference Materials**

Applicable statutes and regulations pertaining to displacement include:

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which applies to displacement that results from acquisition, demolition, or rehabilitation for HUD-assisted projects carried out by public agencies, nonprofit organizations, private developers, or others and real property acquisition for HUD-assisted projects (whether publicly or privately undertaken);
- Section 104(d) of the Housing and Community Development Act of 1974;
- HOME Program regulations found in 24 CFR Part 92; and
- [Handbook 1378: Tenant Assistance, Relocation and Real Property Acquisition](#), as updated, consolidates relocation requirements for all HUD programs in one document and provides instructions for compliance.

## Chapter 8 – Rural Development

Rural Development (RD) properties typically need significant rehabilitation; each of these properties will require RD construction analyst or architectural staff review and approval of the scope of work. Due to the extensive scope of work, interim construction financing is strongly recommended. Below are the following first steps you must take when applying for funds to rehabilitate an RD development:

- Contact the local RD office prior to submitting application for Minnesota Housing funding to discuss RD's procedure for applying for federal loans;
- Ensure that RD's construction analyst or architect has inspected the site and assisted with the scope of work.

The owner is required to demonstrate that RD's construction analyst or architect has inspected the site and assisted with the scope of work.

RD allows over-income tenants to continue to reside in their units, but owners cannot increase their rents over the stated Note Rate Rent; therefore, RD developments will be structured as mixed-income developments. Minnesota Housing will allow a maximum of 80 percent of the units to be financed with HOME HARP assistance when the Note Rate Rents exceed the applicable HOME Program rent limits.

**Example:** If you have 10 units, only a maximum of 8 units may receive HOME HARP assistance (ex.  $10 \times 80\% = 8$ ).

Minnesota Housing requires that all RD approvals for acquisition be obtained prior to submitting the application. If Minnesota Housing receives an application without the necessary RD approvals, the application will be returned. This provision assures that the maximum funds can be used in the most timely and effective manner.

After submission of the completed application and required documentation and Minnesota Housing's review, Minnesota Housing will send an executed "Notice of Default" form to the appropriate RD office along with their request for junior lien approval.

**Note:** Minnesota Housing will not issue a loan commitment until it has received written consent from RD for junior lien approval.

### 8.01 Preservation of Rental Assistance

In addition to The HARP Declaration, an owner of a property that receives rental assistance (i.e. Rural Development, HUD 236, Section 8, etc.) will be required to sign a rental-assistance Declaration of Covenants, Conditions and Restrictions, which contains restrictive covenants preventing the owner from opting-out of federal rental assistance contracts for the term of the HARP loan.