

860-RICR-10-00-1

## **Title 860 – Housing Resources Commission**

### **Chapter 10– General Administration**

#### **Subchapter 00 – N/A**

#### **Part 1 - Rules and Regulations Governing the Building Homes Rhode Island Program**

### **1.1 Purpose**

- A. The purpose of these rules and regulations is to govern BUILDING HOMES RHODE ISLAND Program (the “Program”). The primary purpose of the Program is to provide Eligible Developers with resources to finance the creation and preservation of affordable homes and apartments. These Regulations establish procedures and conditions for the Housing Resources Commission’s (the Commission) approval of this financing. The Program is designed to encourage the production and preservation of rental housing and the development and preservation of homeownership opportunities through the allocation of financing from the State as approved by the electorate most recently on November 8, 2016.
- B. The Commission will provide deferred and forgivable loans for the financing of rental developments and forgivable loans for the development of homes to be owner occupied. These Regulations set forth criteria established by the Commission for the Program.
- C. Approval of proposals under this Program is subject to availability of funds.

### **1.2 Application and Authority**

The terms and provisions of these rules and regulations shall be liberally construed to permit the Housing Resources Commission to effectuate the purposes of state law, goals, and policies these rules and regulations are promulgated pursuant to section 42-128-15 of the Rhode Island General Laws of 1956, as amended, and in accordance with Chapter 42-35.

### **1.3 Definitions**

- A. For the purposes of these regulations, the following terms shall have the following meanings:
  - 1. “Act” means the Rhode Island Housing Resources Commission Act of 1998 more particularly set forth in Chapter 128 of Title 42 of the Rhode Island General Laws, as amended.

2. "Affordable" means, in the case of a rental unit, a rent including utility costs, not to exceed 30% of the monthly income of a family with a gross annual income of 80% of Median Family Income; and, in the case of a home for sale to an Eligible Buyer, a sales price resulting in a monthly cost that does not exceed 30% of the monthly income of a family with a gross annual income of 120% of Median Family Income including the monthly cost of principal, interest, taxes, insurance, and condominium fees, if applicable.
3. "Approved affordable housing plan", means a plan prepared and adopted by a town or city to meet requirements of chapter 45-53 or to meet the requirements of subsection 45-22.2-10(f) of Rhode Island General Laws that has been reviewed and approved by the director of administration pursuant to RI General Laws, § 45-22.2-9.
4. "Approved Monitoring Agent" means a monitoring agent approved by Rhode Island Housing
5. "Capacity" means demonstrated experience in successfully implementing financially sound housing programs as well as the ability to provide or coordinate necessary supportive services if applicable.
6. "Chair" means the Chair of the Rhode Island Housing Resources Commission, or designee.
7. "Commission" means the State of Rhode Island Housing Resources Commission, a public corporation existing under the Rhode Island Housing Resources Act of 1998, RIGL § 42-128-1.
8. "Complete Application" means an application submitted to the Commission including all completed application forms and certifications and meeting all eligibility requirements.
9. "Development" means a property which will provide apartments or for sale homes for eligible individuals and families and includes unit(s), site(s), or an entire building. Development includes all the activities associated with the site and building.
10. "Development Budget" means the sources and uses budget submitted with a Proposal by an Eligible Developer. The Development Budget shall set forth in reasonable detail to the satisfaction of the Commission all estimated costs and expenses of the Development and sources to finance the Development through the lease-up and/or sale of the Development.
11. "Eligible Buyer" means a family, individual, or unrelated persons living together with a gross annual income that does not exceed 120% of the Median Family Income.
12. "Eligible Renter" means a family, individual, or unrelated persons living together whose gross annual income does not exceed 80% of Median Family Income.

13. "Eligible Developer" means: (i) any State department or agency, municipality, recognized tribe, public housing authority or redevelopment authority, or corporation lawfully created and located in the State of Rhode Island; (ii) any organization exempt from state and federal income taxation which has as one of its organizational purposes to provide housing and related facilities and services; (iii) any partnership or joint venture that includes participation by an entity described in subsection (ii); or (iv) any for-profit entity.
14. "Eligible Property" means any (i) undeveloped real estate or vacant lot; (ii) developed properties containing one or more vacant buildings; (iii) developed properties containing one or more occupied but blighted or dilapidated buildings; (iii) properties containing non-residential buildings to be converted to residential use; or any combination of such properties.
15. "Family" means a household with or without children.
16. "HUD" means the United States Department of Housing and Urban Development
17. "Income" shall be defined as gross annual income which includes but is not limited to: gross wages, salaries, overtime pay, commissions, fees, tips, bonuses, public assistance, retirement and pension benefits, Workmen's Compensation, Temporary Disability Insurance, Supplemental Security Income (SSI), and interest income from assets.
18. "Loan Documents" shall mean collectively, (i) the program agreement, (ii) the mortgage, (iii) the regulatory agreement, (iv) the promissory note, and (v) all other agreements, documents and instruments executed and delivered in connection with the financing of the Development.
19. "Low/Mod Act" means the requirements at RIGL 45-53 of the General Laws of the State of Rhode Island.
20. "Median Family Income" means the published median family income of the area, as determined by the United States Department of Housing and Urban Development, adjusted for family size.
21. "Mixed-use development" means developments that incorporate commercial/retail space with residential units.
22. "Mixed income" development means any combination of market- rate and/or affordable or subsidized units in a development.
23. "Operating Budget" means a budget projecting the costs and expenses associated with the physical day-to-day operation of the site(s) and building(s) through the period of the financing. Examples of these costs and expenses include, but are not limited to: utilities; taxes and insurance; maintenance; repairs and capital reserves

24. "Operating cost" means costs associated with the day-to-day operation of a Development. Some examples include: maintenance and repair, operations staff, taxes, utilities, equipment, supplies and insurance.
25. "PHA" means Public Housing Authority
26. "Proposal" means any eligible activity or group of activities necessary to implement a single program or Development submitted to the Commission by an Eligible Developer for participation in the Program.
27. "Rhode Island Housing" means Rhode Island Housing and Mortgage Finance Corporation, a public corporation organized and existing under Chapter 55 of Title 42 of the Rhode Island General Laws, as amended.
28. "Special Needs" for the purpose of this program means any population requiring specialized services and/or accommodations, including, but not limited to, the homeless, disabled, veteran and elderly populations.
29. "Term of affordability" for the purpose of this program means consistency with RIGL § 45-53-3 (5) which requires that the housing shall remain affordable for a period of not less than thirty (30) years.

## **1.4 Allocation of Funds**

### **1.4.1 Availability of Funds.**

- A. Funds will be available through a Request for Proposals issued by the Commission. Applicants are encouraged to contact the Commission staff to discuss the application process and required documentation needed to facilitate the financing. Capital funds are available in the form of deferred and forgivable loans for rental developments and as forgivable loans for homeownership units with liens to be released upon satisfaction of program requirements and sale to an eligible buyer. Operating funds and funds for services are not available through this Program. At least 30% of the funding will be used to support units benefiting Special Needs households, including, but not limited to, those experiencing homelessness, the disabled and/or the elderly. If, however, the HRC determines inadequate, viable applications serving these subpopulations are submitted at the time of the anticipated final application cycle for available funds, those remaining amounts held-aside for special needs households may be used to support non-special needs proposal.
- B. Funding shall be the minimum amount necessary for the feasibility of the proposed development.
- C. Funds will be in the form of deferred and forgivable loans to the applicant provided that the Development remains in compliance with the requirements of the program.

### **1.4.2 Eligible Applicants.**

- A. Generally eligible applicants include all Eligible Developers including non-profit organizations, Community Housing Development Organizations, private for-profit entities, limited partnerships, any of the 39 cities and towns incorporated in the State of Rhode Island and Public Housing Authorities, Redevelopment agencies and any joint venture including one of these entities.

#### **1.4.3 Income Targeting.**

- A. Developments must benefit individuals and families with gross annual incomes at or below 120%, or 80% in the case of renters, of the Median Family Income, adjusted for family size. Proposals targeting lower incomes will receive priority for funding with consideration given to the percentage of lower-income units to overall affordable and market rate units.

#### **1.4.4 Leveraging.**

- A. Developments must leverage additional funds from other public (federal, state, and local) and private funding sources. Priority will be given to proposals that leverage the greatest percentage of the total development cost.

#### **1.4.5 Maximum funding.**

- A. When the development meets the targeting requirements as set forth in the Request for Proposals, applicants may receive capital funding up to the minimum amount necessary for the feasibility of the proposed development. The Commission may develop project and/or unit caps annually.

### **1.5 Application Process**

#### **1.5.1 Submission of Proposals for Funding.**

- A. Once each fiscal year, at a minimum, the Commission will issue a Request for Proposals indicating the amount of funding available, the deadline for submission, and the estimated timeframe for review. Proposals must be submitted to the Commission during regular business hours on or prior to the deadline established in the request for proposals. A Proposal shall be deemed received as of the date the Commission determines that the Proposal contains all the information required by Section 1.7.1 of the Regulations. Proposals shall be reviewed by the Commission and considered for financing subject to the availability of funds.

## **1.6 Review of Applications**

- A. Complete Proposals containing all documentation required by the request for proposals shall be determined to be complete by the Commission staff and then submitted to the program's administrative agency for review.
- B. Proposals will be reviewed by the program's administrative agency staff to determine eligibility and conformance with the threshold requirements.
- C. Staff of the Division of Planning will review for consistency with comprehensive plans and the Historic Preservation Commission will review all properties that are of historic significance.
- D. All Proposals that satisfy the threshold requirements will be evaluated based on the Program funding priorities specified in the Request for Proposals.
- E. A program review committee appointed by the Chair shall make recommendations for funding, and those that should be denied, to the Commission based on the funding priorities in the Request for Proposals.
- F. Financing under the Program is subject to approval by the Housing Resources Commission.

### **1.7.1 Contents of Proposal**

- A. Eligible Developers applying to the Program shall submit to the HRC one (1) original and three (3) copies of the Proposal. Each Proposal shall contain the following information together with such other information as the HRC may request:
  - 1. The name, address, telephone number, fax number, email address and taxpayer identification number of the applicant.
  - 2. A resolution of the Board of Directors, Owner, or other governing body of the applicant authorizing submission of the Proposal.
  - 3. A description of the proposed Development, including address of the site, location map, plat and lot number and type of buildings currently on the property where applicable, and those proposed including a site plan and preliminary schematic plans.
  - 4. Evidence of ownership or site control.
  - 5. Identification and evidence of other financing commitments for the Development.

6. Evidence of compliance with local zoning and environmental regulations where applicable or identification of applicable requirements for which the developer will need permitting and a proposed schedule.
7. Projected date for commencement of rehabilitation or construction activities, development schedule, and a timetable for completion of the Development.
8. A description of the experience of the Eligible Developer including identification of key staff, their qualifications and experience, past projects undertaken and current housing projects underway.
9. Identification of partners in the Development.
10. A construction budget prepared by a consultant, architect, contractor, or other qualified professional.
11. The Development Budget and Operating Budget for the project.
12. If the property is occupied, a plan for relocation of displaced individuals.
13. A marketing plan in compliance with the Rhode Island Fair Housing Practices Act, RIGL § 34-37-1, *et seq.*
14. Identification of the Monitoring Agent, where applicable.

### **1.7.2 Evaluation Process**

- A. All applications will be evaluated by the administrative agency staff in accordance with the following criteria:
  1. Applications must meet the threshold criteria for review
  2. Applications will be ranked based on the extent to which the application addresses any of the priorities set forth in the Request for Proposals.
  3. The Division of Planning staff in the Department of Administration will review applications for consistency with the State Land Use Plan, the Rhode Island Strategic Housing Plan, local affordable housing plans, and elements of the State Guide Plan as applicable.
  4. The Rhode Island Historic Preservation Commission will review the plans for all properties of historic significance as determined by RIGL § 42-45-5, and § 44-33.1-1, *et seq.*
  5. The Governor's Commission on Disabilities will review the site and building plans for accessibility as determined by the State of Rhode Island "ADA" Conformance Regulations as applicable.
  6. The program's administrative agency will review all applications for threshold criteria, to determine the extent to which they meet priorities.

7. The review committee appointed by the Chair will make recommendations for funding to the Housing Resources Commission based on the priorities in the Request for Proposals.
8. The Housing Resources Commission will approve or deny each proposal and all funding allocations

### **1.7.3 Threshold Criteria**

- A. Threshold criteria, as approved by the Housing Resources Commission, will be published with each Request for Proposals. Any application determined non-compliant with stated criteria will be eliminated from consideration.

### **1.7.4 Funding Priorities**

- A. The Program represents a limited resource with a large mandate. To ensure that resources are expended in the most efficient manner that most positively impacts the intended beneficiaries, the Commission will establish a list of program priorities. These priorities will be published with each Request for Proposals (RFP).
- B. Priorities will be factored in the scoring of applications, which will also be detailed in each RFP. Developments that do not significantly advance these priorities may be denied funding through the Program.
- C. Priorities will be reviewed annually and relative priorities will be determined and reviewed regularly by the HRC.

## **1.11 Program Requirements**

### **1.11.1 Eligible Residents**

- A. Eligible Residents are families and individuals who are Eligible Buyers with an gross annual income that does not exceed 120% of the Median Family Income and Eligible Renters with a gross annual income that does not exceed 80% of the Median Family Income. Eligible Residents must occupy units of appropriate size for the number of persons in the household.
- B. Renters who are no longer Eligible Residents due to income may continue to reside in the Development and pay 30% of the family's gross monthly income. The next available unit shall be rented to an Eligible Resident.

### **1.11.2 Term of affordability**

- A. Units assisted hereunder must remain Affordable for a minimum of thirty (30) years from the date of initial occupancy, or such longer affordability period as



may be included in the proposal and approved by the Commission, and must be enforced by either a recorded deed restriction or land trust covenant.

### **1.11.3 Homebuyer Education**

- A. Homebuyers must complete a homebuyer education course conducted by a HUD-approved counseling agency.

### **1.11.4 Maximum Rent**

- A. The maximum rent is a rent that does not exceed 30% of the gross monthly income of a family with a gross annual income of 80% of Median Family Income and shall be determined by the administrative agency.

### **1.11.5 Purchase Price**

- A. The maximum purchase price shall be established at a price with a monthly cost to an Eligible Buyer of 30% of the gross monthly income of a family with a gross annual income of 120% of Median Family Income, including principal, interest, taxes, insurance and condominium fees, if applicable.

### **1.11.6 Repayment of funds**

- A. If the Development is not operated to provide direct benefit to eligible residents for the term of affordability, all funds advanced for the development plus interest at an annual rate of 9% shall be repaid to the Commission.

### **1.11.7 Financing Terms**

- A. Funds will be in the form of deferred or forgivable loans to the developer.
- B. An Eligible Developer will be required to repay the deferred loan for a rental development upon the sale, refinance, or disposition of the Development at the end of the Term of Affordability.
- C. For housing developed for homeownership, the deferred loan will be forgiven upon sale of the property to an Eligible Buyer.
- D. In any case, the affordability restrictions shall apply for the duration of the term of affordability.

### **1.11.8 Terms of the Agreement**

- A. At the discretion of the Commission, the terms of the Agreement may be negotiated where conflicts exist with other funding sources or where refinancing will benefit the development.

### **1.11.9 Eligible Program Costs**

- A. All funds must be used for the development of permanent housing for sale or rent to Eligible Residents.
- B. Funding may be used for any approved development cost including acquisition, construction, financing, on- site infrastructure, and soft costs normally associated with the cost of development.
- C. Funding may not be used for local impact fees, off- site improvements, or public facilities.
- D. Developer fees and/or profit are limited to the lower of 15% of the total development cost or restrictions imposed by other funding sources.
- E. Neighborhood Opportunities Program funding may be used in the same project.

#### **1.11.10 Construction/Rehabilitation Standards**

- A. All Development must at a minimum meet all State Building Code and Fire Code requirements § 23-27.3-100.0, and Fire Code requirements, RIGL Chapter 23-28.1, § 23-29.1-1, et seq., and meet the HUD Section 8 Housing Quality Standards, 24 CFR Part 982, as authorized by 42 U.S.C. § 1437, State and Federal Lead Paint regulations, 24 CFR Part 35, Part 291.430, and 40 CFR Part 745, as authorized by 42 U.S.C. § 4821-4846, and 42 U.S.C. § 4851-4856, and asbestos mitigation rules and regulations, as authorized by, RIGL § 23-19.1, and 23-24.5. Developments must meet accessibility requirements in RIGL § 37-8-15. and RIGL § 37-8-15.1.
- B. At the discretion of the Commission, more substantial rehabilitation may be required. Developers will be required to submit a work plan and a preliminary cost estimate for the Development.
- C. All sites of state historic significance shall be reviewed and approved by the Rhode Island Historic Preservation Commission. Energy efficiency and healthy housing practices are encouraged.

#### **1.11.11 Relocation**

- A. If any sites identified for development in the Proposal are currently occupied, the applicant must provide a relocation plan to address displacement of residents that is satisfactory to the Commission. Such plan should generally comply with requirements outlined in the federal Uniform Relocation and Real Properties Acquisition Act (URA).

#### **1.11.12 Accessibility**

- A. All Developments must meet the accessibility standards set forth in 24 CFR Part 41, as authorized by 42 U.S.C. § 4151, RIGL, § 37-8-15, and § 37-8-15.1 *et seq.*

#### **1.11.13 Fair Housing**

- A. All Developments must have an approved marketing plan in conformance with Fair Housing standards in 24 CFR 200.929a, as authorized by 42 U.S.C. § 3601-3619, and RIGL § 34-37-1.

#### **1.11.14 Minority Contracting**

- A. All projects shall comply with Rhode Island General Law 37-14.1-6 which states minority business enterprises (MBEs), including woman business enterprises (WBEs), shall be included in all procurements and construction projects and shall be awarded a minimum of ten percent (10%) of the dollar value of the entire procurement or project to such entities.

### **1.12 Program Administration**

#### **1.12.1 Contracting**

- A. All contracts shall be submitted to the administrative agency in support of funding requisitions.

#### **1.12.2 Administration**

- A. The Commission shall designate an administrative agency to implement and monitor the funding decisions made by the Commission with review and recommendation of the staff of the administrative agency and the Housing Resources Commission in accordance with these regulations.

#### **1.12.3 Monitoring**

- A. To ensure compliance with the requirements set forth in these Regulations, the administrative agency and/or the Commission may require information and reports on Developments financed hereunder and may conduct site visits and inspections.

#### **1.12.4 The Loan Documents**

- A. If the Proposal is approved, the Eligible Developer will execute the Loan Documents which shall set forth, among other things, certain terms and conditions of participation in the Program.

#### **1.12.5 Financing Policy**

- A. Each affordable housing development is unique. Each Proposal submitted under the Program will be reviewed independently and with flexibility. With this approach in mind, the administrative agency staff will work with the Eligible Developer to determine the amount of financing appropriate through the Program and other financing sources available to the Eligible Developer for the project.
- B. Loans, if approved, shall be in the form of deferred loans with the appropriate terms determined by the Commission. The Commission shall base its

determination on the financial feasibility of the proposed Development and on the requirements of other financing sources in the development proposal.

#### **1.12.6 Underwriting Analysis.**

- A. The administrative agency and the Commission shall use the following criteria as part of its underwriting analysis of a Proposal to determine feasibility:
1. Staff may visit the site(s) to determine suitability for the Program.
  2. Staff may require and commission an independent appraisal that conforms to the Uniform Standards of Professional Appraisal Practice ("USPAP") and in accordance with other State standards to determine project valuation for land and buildings.
  3. The external and internal design of the building must be approved by the administrative agency and must meet all applicable building code requirements.
  4. The extent to which the construction budget will be sufficient to support the proposed work on the building.
  5. The Eligible Developer must provide an estimate of local taxes based on current municipal policy.
  6. Professional liability insurance is required for the contractor, architect and any other professional(s) for any project which has construction costs in excess of \$100,000. Architects must have "errors and omissions" insurance.
  7. All Developments must have insurance policies providing property, crime, liability and equipment coverage approved by the Commission.
  8. For those Developments that require moderate rehabilitation as approved by the Commission, the Commission may consider a general contractor's services instead of engaging an architect, so long as all federal, state, and local requirements such as permits will be obtained by the general contractor.

#### **1.12.7 Recapture and Repayments**

- A. All funding repaid to the program whether from loan repayment or recapture due to non-compliance, shall be reallocated to eligible developments in accordance with these regulations.

#### **1.12.8 Right to Waive Regulations**

- A. Upon a determination and finding of "Good Cause" shown, the Commission, upon a majority vote, may waive any provision of these Regulations. Good Cause shall include facts, determinations, or circumstances where the granting of a specific case based waiver:

1. Is necessary to permit the Development to proceed,
  2. Would not pose an undue financial risk to the Commission, regarding the particular project at issue,
  3. Is necessary to carry out the purposes of the Program, with regards to the project request and,
  4. Is consistent with the mission of the Commission in regards to affordable housing.
- B. Each waiver request must be in writing and must be supported by documentation of the pertinent facts and circumstances. A determination and finding of Good Cause shown, shall be made upon thorough review of the request and supporting documentation by Commission staff, recommendation for waiver, and majority vote of the Commission.

### **1.13 Severability**

If any provision of these Rules and Regulations, or any application thereof to any purpose or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules and Regulations shall not be affected thereby.