

## 760 CMR 24.00: MASSACHUSETTS HOUSING STABILIZATION FUND

## Section

- 24.01: Scope, Purpose, and Applicability
- 24.02: Definitions
- 24.03: Eligible Recipients
- 24.04: Eligible Projects
- 24.05: Acquisition, Preservation, New Construction, and Stabilization
- 24.06: Demolition
- 24.07: Application Process and Administrative Fees
- 24.08: Findings
- 24.09: Waiver Provision
- 24.10: Housing Stabilization and Investment Trust Fund

24.01: Scope, Purpose, and Applicability

The Housing Stabilization Fund (HSF) was created by St. 1993, c. 494, § 2, budget line item 3722-8900 (the HSF I Legislation), and modified and continued by St. 1998, c. 257, § 2, budget line item 7004-8987 and § 13 (the HSF II Legislation), St. 2002, c. 244, § 2, budget line item 7004-7014 and § 6 (the HSF III Legislation), St. 2005, c. 53, § 2, budget line item 7004-0022 and §§ 4 and 7 (the HSF IV Legislation) and St. 2008, c. 119, § 2, budget line item 7004-0032 (the HSF V Legislation) and § 6, which established the HSF as M.G.L. c. 121F. The Department of Housing and Community Development was authorized to use up to \$50 million by the HSF I Legislation, \$41 million by the HSF II Legislation, \$50 million by the HSF III Legislation, \$100 million by the HSF IV Legislation, and \$125 million by the HSF V Legislation, in general obligation bond funds for the purpose of stabilizing and reinvesting in cities and towns by undertaking projects to develop and support affordable housing developments and homeownership affordability through the acquisition, preservation, rehabilitation, and new construction of affordable housing. The Housing Stabilization Fund provides loans or grants to Eligible Projects (Projects) sponsored and developed by government agencies, local housing authorities, community development corporations, by limited equity cooperative housing corporations if funded pursuant to the HSF II, HSF III, or HSF IV Legislation, or by community housing development organizations if funded pursuant to the HSF III or HSF IV Legislation or M.G.L. c. 121F. Funds may be used in connection with foreclosed and distressed properties, and may include costs of demolition in accordance with an approved Neighborhood Revitalization Plan.

M.G.L. c. 121F establishes the Housing Stabilization and Investment Trust Fund. References in 760 CMR 24.00 to funding under, for, or pursuant to M.G.L. c. 121F shall mean funding for programs described in M.G.L. c. 121F authorized by the HSF V Legislation or any other funding for such programs authorized by the Legislature.

In the event of any actual or potential inconsistency between or among the provisions of 760 CMR 24.00, the applicable HSF Legislation, the HSF Guidelines, or the documents evidencing a loan or other form of financial assistance provided under the HSF program, such provisions shall be interpreted, to the extent reasonably possible, so as to reconcile any such inconsistencies. If such provisions cannot reasonably be reconciled, the provisions of the applicable HSF Legislation, including M.G.L. c. 121F, 760 CMR 24.00, the HSF Guidelines, and such loan or other financing documents, in the foregoing order of priority, shall control.

24.02: Definitions

Affordable Housing Restriction. An Affordable Housing Restriction as defined by M.G.L. c. 184, § 31, which runs with the land and is held by or for the benefit of one or more of a Government Agency, an LHA, a CDC, the Department or, for Eligible Projects funded pursuant to the HSF III or HSF IV Legislation or M.G.L. c. 121F, a Community Development Housing Organization, restricting the use of an Eligible Project. Any such restriction shall meet the requirements of 760 CMR 24.05 or more stringent requirements if prescribed by the Department.

Application. An application, including a description of an Eligible Project for which Housing Stabilization Fund (HSF) assistance is requested, in the form and containing the information, including all sources of financing, required by the HSF Guidelines.

24.02: continued

Area Median Income. Income, adjusted for family size, and for the pertinent region, as determined, from time to time, by the United States Department of Housing and Urban Development.

Chief Elected Official. The mayor of a city, or the chairman of the board of selectmen of a town acting under a vote of the requisite number of selectmen.

Community Development Corporation (CDC). A non-profit corporation as defined in M.G.L. c. 40F, § 1, notwithstanding whether it is repealed. To participate in a HSF Project as a developer or member of a development team, a CDC may be required by the Department to be an Internal Revenue Code § 501(c)(3) organization. A CDC may be a Developer or may subcontract with one or more for-profit or non-profit organizations to be the Developer.

CEDAC. The Community Economic Development Assistance Corporation established by M.G.L. c. 40H.

Community Housing Development Organization (CHDO). A non-profit organization that has been certified by the U.S. Department of Housing and Urban Development (HUD) as a “community housing development organization” as defined in 24 C.F.R. § 92.2.

Department. The Department of Housing and Community Development (the Department).

Developer. The developer of an Eligible Project and its permitted successors and assigns. The Developer may also be the owner of the Project.

Eligible Project (Project). A project which meets the eligibility criteria contained in 760 CMR 24.00 and the HSF Guidelines.

Extremely Low Income Person or Family. A person or family whose income is less than 30% of the Area Median Income.

Government Agency. An agency, department, board, commission, authority or instrumentality of the Commonwealth of Massachusetts or any political subdivision thereof. A Government Agency may be a Developer or may subcontract with one or more for-profit or non-profit organizations for such organizations to be the Developer.

Housing Stabilization and Investment Trust Fund (HSITF). A separate fund within the Department established pursuant to M.G.L. c. 121F for the purpose of undertaking projects to develop and support affordable housing developments and homeownership affordability, through the acquisition, preservation, rehabilitation, and new construction of affordable housing as described in 760 CMR 24.10 and the HSF Guidelines. The HSITF is also referred to as the HSF.

HSF. Housing Stabilization Fund, established pursuant to the HSF I Legislation and continued by the HSF II Legislation, the HSF III Legislation, the HSF IV Legislation, the HSF V Legislation and by M.G.L. c. 121F under the name “Housing and Stabilization Investment Trust” Fund (HSITF).

HSF Guidelines. Guidelines issued by the Department that clarify and elaborate upon 760 CMR 24.00.

Limited Equity Cooperative Housing Corporation. A limited equity cooperative housing corporation created pursuant to M.G.L. c. 157B.

Local Housing Authority (LHA). A local housing authority created pursuant to M.G.L. c. 121B, § 3, prior statute or special act. A LHA may be a Developer or may subcontract with for-profit or non-profit organizations to be the Developer.

Low or Moderate Income Person or Family. An individual or family whose income is less than 80% of the Area Median Income.

24.02: continued

MassHousing. Formerly the Massachusetts Housing Finance Agency, established by St. 1966, c. 708.

MHP. The Massachusetts Housing Partnership Fund, established by St. 1985, c. 405, § 35.

Weak Market. A geographic area designated by the Department to have a high concentration of assisted rental housing or a low rate of homeownership or low median family income or low average sales prices or high levels of unpaid property taxes or vacant or abandoned buildings as set out in accordance with the HSF Guidelines.

24.03: Eligible Recipients

(1) Any Government Agency, LHA, CDC, or, for Eligible Projects funded pursuant to HSF II, HSF III, HSF IV or M.G.L. c. 121F, Limited Equity Cooperative Housing Corporation, or, for Eligible Projects funded pursuant to HSF III, HSF IV, or M.G.L. c. 121F, CHDO, shall be eligible to receive a HSF loan or grant to carry out an Eligible Project and may be a Developer or may subcontract with one or more for-profit or non-profit organizations for such organizations to be the Developer.

(2) CEDAC or MHP shall be eligible to receive a HSF grant for a Project described in 760 CMR 24.04(2) and may make a loan for such a Project or subcontract with other nonprofit or for-profit organizations to make such a loan.

24.04: Eligible Projects

(1) The Department may make HSF loans, grants, and, additional, in the case of funding under M.G.L. c. 121F, subsidies, credit enhancements and other financial assistance for alternative forms of rental and ownership housing:

- (a) to acquire, preserve, rehabilitate, and construct affordable rental and ownership housing, including foreclosed and distressed properties and other properties;
- (b) to demolish privately-owned buildings as provided in the HSF I, HSF II, HSF III, HSF IV Legislation or M.G.L. c. 121F, and, in connection with such demolition, to undertake, pursuant to a Neighborhood Revitalization Plan pursuant to 760 CMR 24.06, new construction of housing for Low or Moderate Income Families in the area in which such demolition took place, to the extent authorized in the HSF II, HSF III, HSF IV Legislation or M.G.L. c. 121F;
- (c) to qualify as matching contributions under § 220 of the HOME Investment Partnership Act, Title II of the Cranston Gonzalez National Affordable Housing Act;
- (d) if funded pursuant to the HSF I, HSF II, or HSF IV Legislation, for Soft Second Mortgage Loans as described in the HSF I, HSF II or HSF IV Legislation, and if funded pursuant to M.G.L. c. 121F, to write down interest rates and related costs for a program for low-income and moderate-income first-time homebuyers administered by MHP;
- (e) if funded pursuant to the HSF II, HSF III or HSF IV Legislation or M.G.L. c. 121F for the rehabilitation of one to four-family properties owned and occupied by persons of low or moderate income, and for the acquisition and rehabilitation of one to four-family properties by persons of low and moderate income, provided that the Department finds that such a project relies to the greatest extent possible on bank financing and other taxable financing for acquisition and rehabilitation. Funding under M.G.L. c. 121F may include, with out limitation, direct loans, loan guarantees and loan loss reserves. Projects funded under

M.G.L. c. 121F shall be subject to the Department's findings that the Project includes the following additional objectives:

1. coordinating the delivery of the financing and related rehabilitation services with cities and towns that provide such assistance using federal community development block grants, federal HOME funds and other resources;
2. expediting and simplifying the process by which home buyers may obtain financial and technical assistance for acquisitions and rehabilitation; and
3. ensuring that adequate provisions are in place to assure that rehabilitation is completed in a timely and professional manner and to protect homeowners from excessive acquisition and rehabilitation costs.

24.04: continued

(f) if funded pursuant to the HSF II Legislation, to preserve the affordability of existing privately-owned housing subject to a state or federally-assisted Massachusetts Housing Finance Agency mortgage where the prepayment of that mortgage would lead or has led to the termination of a use agreement for low-income housing. HSF funds may be used for a capital access reserve to provide loan guarantees to facilitate the purchase of such housing, and the Department may contract with the Massachusetts Housing Finance Agency to administer such a program of loan guarantees;

(g) if funded pursuant to the HSF III or HSF IV Legislation or M.G.L. c. 121F, for second mortgage loans for the acquisition and rehabilitation, and in the case of funding pursuant to HSF IV, or M.G.L. c. 121F, new construction, of small multifamily rental properties receiving primary financing from the MHP Permanent Plus Program. Such loans shall be administered through contracts with MHP. All housing acquired, rehabilitated and newly constructed pursuant to 760 CMR 24.04(1)(g) shall meet one of the following minimum requirements:

1. at least 20% of the total units shall be rented to individuals or families whose income is less than 50% of the Area Median Income, or
2. at least 40% of the total units shall be rented to individuals or families whose income is less than 60% of the Area Median Income, or
3. at least 50% of the total units shall be rented to Low or Moderate Income Persons or Families.

(h) if funded pursuant to the HSF IV Legislation or M.G.L. c. 121F, to preserve or restore the affordability of housing that is or was subject to the prepayment of a state or federally assisted mortgage, or is receiving project-based rental assistance under § 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) that is expiring, or has received other project-based federal or state subsidies that are terminating or have terminated, including the expiration of federal low-income housing tax credits, where such mortgage prepayment or expiration of federal or state assistance would lead or has led to the termination of a use agreement for low-income housing. The Department will consult with nonprofit housing organizations, MassHousing and CEDAC, and, if funded pursuant to M.G.L. c. 121F, MHP, to identify those projects at greatest risk of prepayment or payment of state or federal subsidy loans, termination of subsidies and use restrictions, or non-renewal of rental assistance. The Department will give priority to projects based on the following at-risk criteria:

1. Housing at risk of losing affordability restrictions due to the potential for the prepayment of its mortgage;
2. Housing in which a project-based rental assistance contract has expired or is expiring; and
3. Occupied projects with substantial capital needs.

(i) if funded pursuant to M.G.L. c. 121F, to stabilize and promote reinvestment in cities and towns including, but not limited to acquisition, rehabilitation and preservation of foreclosed and distressed properties and any other techniques to achieve reinvestment.

(j) for any other purpose permissible under the HSF I, HSF II, HSF III or HSF IV Legislation or M.G.L. c. 121F.

(2) The Department shall fund a revolving loan fund in such amount or amounts as it shall determine reasonable and prudent under all the circumstances, including the availability of funding for other HSF needs; repayments of loans from this revolving loan fund shall be retained by the Department and lent to other qualifying borrowers. The Department may make HSF loans from this revolving loan fund for the repair and maintenance of privately owned residential buildings for which a nonprofit receiver has been appointed by a court pursuant to M.G.L. c. 111,

§ 127I if:

- (a) the housing is abandoned or severely distressed;
- (b) the housing is located in a primarily low or moderate-income neighborhood;
- (c) the HSF loan is necessary to make repairs required for the housing to comply with the state sanitary code and to maintain its habitability;
- (d) the court that has appointed the receiver enters an order:
  - 1. authorizing the receiver to borrow HSF funds up to the amount of the proposed HSF loan, on the anticipated terms, and to assign its priority lien to the lender to secure the HSF loan;

24.04: continued

2. stating that the lender, upon the borrower's breach of the conditions of the HSF loan, may foreclose on its interest under the lien and setting forth an adequate process for such a foreclosure; and
3. requiring the receiver of the housing to repay any balance of the HSF loan in full upon termination of the receivership, unless the receiver shall have previously repaid the HSF loan in full;

In the case of funding under M.G.L. c. 121F, the project may include activities necessary to maintain habitability of the housing units to prevent abandonment and deterioration of the housing in primarily low and moderate income neighborhoods pursuant to the HSF Guidelines. For funding under M.G.L. c. 121F, the Department may administer HSF loans from this revolving fund through contracts with CEDAC and MHP, which may enter into subcontracts to administer the contracts with other for-profit or nonprofit organizations.

(3) For loans or grants made pursuant to the HSF I Legislation, at least 30% of the HSF funds expended in any year shall be used to provide homeownership opportunities to Low or Moderate Income Persons or Families.

(4) The Department shall provide funds pursuant to the HSF III and HSF IV Legislation and M.G.L. c. 121F for loans to nonprofit developers for predevelopment assistance to Eligible Projects including loans for acquisition, financing or other holding costs, and capitalized carrying costs in accordance with the HSF Guidelines or to secure other financing obtained by CEDAC to support such costs. Such pre-development assistance shall be administered by the Department through contracts with CEDAC.

(5) For HSF III Projects and Projects funded under M.G.L. c. 121F receiving such predevelopment assistance, at least 50% of the total housing units in the Project shall be deemed HSF-assisted and shall meet the requirements of 760 CMR 24.05(2) as follows:

- (a) For the first 40 years after the HSF loan is provided, at least 50% of the units in the Project shall be rented to or owned by Low or Moderate Income Persons or Families, and of such 50% of housing units at least 50% (that is, 25% of the total housing units) shall be rented to or owned by Extremely Low Income Persons or Families.
- (b) After the first 40 years, 50% of the units in the project shall meet the affordability requirements of 760 CMR 24.05(2)(b).

(6) For HSF IV Projects receiving such predevelopment assistance, at least 50% of the total housing units in the Project shall be deemed HSF-assisted and shall meet the requirements of 760 CMR 24.05(3) as follows: for a minimum of 50 years after the HSF loan is provided, at least 50% of the units in the Project shall be rented to or owned by Low or Moderate Income Persons or Families, and of such 50% of housing units at least 50% (that is, 25% of the total housing units) shall be rented to or owned by Extremely Low Income Persons or Families.

(7) The Department shall provide funds pursuant to the HSF III and HSF IV Legislation and M.G.L. c. 121F in the amount of at least \$5 million in the aggregate (for each of HSF III, HSF IV and M.G.L. c. 121F) for the production or preservation of housing for persons 60 years of age and older, which may include housing developed pursuant to 12 U.S.C. 1701q (Supportive Housing for the Elderly ("Section 202")).

(8) The Department may provide funds pursuant to M.G.L. c. 121F in the amount of at least \$10 million to stabilize and promote reinvestment, through homeownership, in areas in which

the Department has found that a Weak Market exists and has identified the boundaries of the particular Weak Market and the information supporting the finding in accordance with the HSF Guidelines. For such a Weak Market, the Undersecretary of the Department may waive provisions of 760 CMR 24.00, HSF V and M.G.L. c. 121F, and may subsidize the borrowing costs, or costs of renovation or new construction, of a two- to six-unit residential building, provided that a restriction is recorded with the registry of deeds or registry district of the land court providing that the owner receiving such subsidy shall occupy a portion of the property as the owner's primary residence for at least five years from the date of purchase, and that if such owner sells any interest in the property after five years but before ten years after the date of purchase, the new owner shall occupy a unit in the property as a principal residence for the

## 24.04: continued

difference between the first owner's period of occupancy and ten years. If the owner receiving such subsidy fails to own and so occupy a portion of the property for less than five years, the entire subsidy shall be repaid to the Department. In connection with a Weak Market, the Department may otherwise take action pursuant to 760 CMR 24.09(2).

(9) The Department shall provide funds pursuant to M.G.L. c. 121F for projects to stabilize and promote reinvestment in cities and towns, including but not limited to, acquisition, rehabilitation and preservation of foreclosed and distressed properties and any other techniques necessary to achieve reinvestment.

(10) In reviewing applications for HSF IV and M.G.L. c. 121F funding, the Department will give consideration to the needs of urban, suburban, and rural areas for affordable housing with an emphasis on local and regional needs for such housing.

24.05: Acquisition, Preservation, New Construction, and Stabilization

All housing acquired, preserved, constructed or stabilized by HSF funds shall meet the following requirements, except for housing meeting the requirements of 760 CMR 24.04(2):

- (1) For Projects funded pursuant to the HSF I or HSF II Legislation:
  - (a) For the first 20 years after a HSF loan or grant is provided, substantially all of the assisted units shall be rented to or owned by Low or Moderate Income Persons or Families.
  - (b) After the first 20 years, the assisted units may be rented or sold to persons or families whose adjusted income is less than or equal to 100% of the Area Median Income: provided that, if the units are sold, they shall remain subject to such affordability restrictions as determined by the Department to be reasonable and necessary to maintain long-term affordability.
- (2) For Projects funded pursuant to the HSF III Legislation or M.G.L. c. 121F:
  - (a) For the first 40 years after a HSF loan or grant is provided, substantially all of the assisted units shall be rented to or owned by Low or Moderate Income Persons or Families, and not less than 25% of the assisted units shall be rented to or owned by Extremely Low Income Persons or Families unless the Department has made a determination at the end of the relevant fiscal year in accordance with the HSF III Legislation or M.G.L. c. 121F that it is not feasible to require 25% of assisted units to be so reserved.
  - (b) After the first 40 years, the assisted units may be rented or sold to persons or families whose adjusted income is less than or equal to 100% of the Area Median Income; provided that, if the units are sold, they shall remain subject to such affordability and appreciation restrictions as determined by the Department to be reasonable and necessary to maintain long-term affordability. Notwithstanding anything in 760 CMR 24.05(2)(b), an owner may not terminate the tenancy or refuse to renew the lease of the tenant of an assisted rental unit except:
    1. for serious or repeated violations of the lease;
    2. for violations of applicable federal, state, or local law; or
    3. for other good cause.
- (3) For Projects funded pursuant to the HSF IV Legislation:
  - (a) For the first 50 years after a HSF loan or grant is provided, substantially all of the assisted units shall be rented to or owned by Low or Moderate Income Persons or families, and not less than 25% of the assisted units shall be rented to or owned by Extremely Low

Income Persons or Families unless the Department has made a determination at the end of the relevant fiscal year in accordance with the HSF IV Legislation that it is not feasible to require 25% of assisted units to be so reserved.

(b) If the assisted units are sold, they shall remain subject to such affordability restrictions and appreciation as determined by the Department to be reasonable and necessary to maintain long-term affordability. Notwithstanding anything in 760 CMR 24.05(3)(b), an owner may not terminate the tenancy or refuse to renew the lease of the tenant of an assisted rental unit except:

1. for serious or repeated violations of the lease;
2. for violations of applicable federal, state, or local law; or
3. for other good cause.

24.05: continued

(4) HSF III Projects and Projects under M.G.L. c. 121F - Purchase Option and First Refusal Option: For Eligible Projects funded pursuant to the HSF III Legislation and M.G.L. c. 121F, the Department shall be granted a purchase option and a first refusal option to purchase the Project:

(a) Purchase Option. Upon the expiration of the term of the Affordable Housing Restriction, the Department shall have an option to purchase the Project from the owner at a price equal to the then-current appraised value of the Project less the total outstanding balance of all principal, interest and any other charges payable under the applicable HSF loan (as more fully described in, respectively, the HSF III Legislation and M.G.L. c. 121F and the documents evidencing the applicable HSF funding, the "Purchase Option"). The appraised value of the Project shall be determined in the manner described in the HSF III Legislation or M.G.L. c. 121F, as applicable. The Department may exercise the Purchase Option by sending notice of its intention to exercise the Purchase Option to the owner within 120 days after the expiration of the term of the affordability restrictions imposed by the Affordable Housing Restriction (the "Option Exercise Deadline").

(b) First Refusal Option. If at any time the owner of a Project wishes to sell or otherwise dispose of ("transfer") the Project where the Department has not previously exercised the Purchase Option, the owner shall send a notice to the Department by regular and certified mail, return receipt requested, setting forth the owner's intention to sell or otherwise dispose of the Project and the terms of any *bona fide* offer by a third party to purchase the Project (the "Owner's Notice"). The Department shall have the right to purchase the Project at the same price and on the same terms as those contained in such *bona fide* offer (as more fully described in, respectively, the HSF III Legislation and M.G.L. c. 121F and the documents evidencing the applicable HSF funding, the "First Refusal Option"). The Department may exercise the First Refusal Option by sending notice to the owner of its intention to exercise the First Refusal Option by certified mail and recording/filing a copy of such notice in the registry of deeds or registry district of the land court within 120 days after its receipt of the Owner's Notice. If the Department fails to exercise the First Refusal Option by such deadline, the First Refusal Option shall automatically terminate; however, if the sale contemplated in the offer by a third party is not effected on the same terms and conditions as those contained in the offer by a third party within six months after the Department's receipt of the Owner's Notice, the First Refusal Option shall be revived.

(c) The Department may assign the Purchase Option or the First Refusal Option to a Qualified Developer. A Qualified Developer is a Developer who:

1. has completed a Housing Stabilization Fund Application (or such equivalent application as may be in use at the time of the assignment) ("Application") with respect to its proposed purchase of the Project; the Department will issue a "Notice of Project Availability" that will include instructions for completing an Application for this purpose;
2. has been selected to purchase the Project based on the Department's review and underwriting of the Application;
3. agrees that, upon purchasing the Project, it will execute an Affordable Housing Restriction providing for the Project to remain an Eligible Project for a term of at least 40 years; and
4. provides any due diligence materials not part of the Application that may be required by the Department.

(d) If the Department exercises the Purchase Option, the Department or its assignee shall have 120 days after the expiration of the Option Exercise Deadline (*i.e.*, 240 days after the term of the affordability restrictions imposed by the Affordable Housing Restriction) to

purchase the Project. If the Department exercises the First Refusal Option, the Department or its assignee shall have 120 days after the expiration of the First Refusal Option period (*i.e.*, 240 days after the Department's receipt of the Owner's Notice) to purchase the Project. Promptly upon request by the Department or its assignee, the owner will provide the Department or its assignee with such due diligence material and opportunity to inspect the Project as would be reasonably required by any third-party purchaser. The date for closing under the Purchase Option or the First Refusal Option may be extended by agreement of the parties and the agreed upon extension shall be recorded/filed in the registry of deeds or registry district of the land court. The Department or its assignee may extend the date for closing to a reasonable date if it determines that additional time is needed due to delays in

24.05: continued

closing preparations caused by the owner. After exercising the Purchase Option or First Refusal Option, the Department may at any time terminate the Purchase Option or First Refusal Option if it determines it is not in the best interests of the Department to effect the purchase (but such termination right shall apply to the Department only, and not to any assignee).

(5) HSF IV Projects – First Refusal Option. For Eligible Projects funded pursuant to the HSF IV Legislation, a city, town, LHA, or the Department shall have a first refusal option to purchase the Project:

(a) If property on which the Project is located was previously leased or sold to an owner by a city, town, or LHA, the owner shall send a notice to the city, town, or LHA by regular and certified mail, return receipt requested, setting forth the owner's intention to sell, transfer, or otherwise dispose of the Project and the terms of any *bona fide* offer by a third party to purchase the Project (the "First Owner's Notice"). The city, town, or LHA shall have the right to purchase the Project at the same price and on the same terms as those contained in such *bona fide* offer (as more fully described in the HSF IV Legislation and the documents evidencing the HSF IV funding, the "Municipal Option"). The city, town, or LHA may exercise the Municipal Option by sending notice to the owner of its intention to exercise the Municipal Option by certified mail and recording/filing a copy of such notice in the registry of deeds or registry district of the land court within 60 days after its receipt of the First Owner's Notice (the "Municipal Option Exercise Deadline").

(b) If the city, town, or LHA fails to exercise the Municipal Option by the Municipal Option Exercise Deadline, the owner shall send a notice to the Department by regular and certified mail, return receipt requested, setting forth the owner's intention to sell, transfer, or otherwise dispose of the Project and the terms of any *bona fide* offer by a third party to purchase the Project (the "Second Owner's Notice"). The Department shall have the right to purchase the Project at the same price and on the same terms as those contained in the *bona fide* offer by a third party to purchase the Project (as more fully described in the HSF IV Legislation and the documents evidencing the HSF IV funding, the "Department Secondary Option"). The Department may exercise the Department Secondary Option by sending notice to the owner of its intention to exercise the Department Secondary Option by certified mail and recording/filing a copy of such notice in the registry of deeds or registry district of the land court within 120 days after its receipt of the Second Owner's Notice (the "Department Secondary Option Exercise Deadline"). In no event shall the Department Secondary Option Exercise Deadline be less than 120 days after the Municipal Option Exercise Deadline.

(c) If property on which the Project is located was not previously leased or sold to an owner by a city, town, or LHA, the owner shall send a notice to the Department by regular and certified mail, return receipt requested, setting forth the owner's intention to sell, transfer, or otherwise dispose of the Project and the terms of any *bona fide* offer by a third party to purchase the Project (the "Owner's Department Notice"). The Department shall have the right to purchase the Project at the same price and on the same terms as those contained in such *bona fide* offer (as more fully described in the HSF IV Legislation and the documents evidencing the HSF IV funding, the "Department Option"). The Department may exercise the Department Option by sending notice to the owner of its intention to exercise the Municipal Option by certified mail and recording/filing a copy of such notice in the registry of deeds or registry district of the land court within 120 days after its receipt of the Owner's Department Notice (the "Department Option Exercise Deadline").

(d) The city, town, LHA, or Department may assign the Municipal Option, the Department Secondary Option, or the Department Option, as the case may be, to a Qualified Developer.

A Qualified Developer is a developer who:

1. has completed a Housing Stabilization Fund Application (or such equivalent application as may be in use at the time of the assignment) (“Application”) with respect to its proposed purchase of the Project; the Department will issue a “Notice of Project Availability” that will include instructions for completing an Application for this purpose;
2. has been selected to purchase the Project based on the city’s, town’s, LHA’s, or Department’s review and underwriting of the Application;
3. agrees that, upon purchasing the Project, it will execute an Affordable Housing Restriction providing for the Project to remain an Eligible Project for a term of at least 50 years; and

24.05: continued

4. provides any due diligence materials not part of the Application that may be required by the city, town, LHA, or Department.
- (e) If the city, town, LHA, or Department has exercised the Municipal Option, the Department Secondary Option, or the Department Option, as the case may be, then the city, town, LHA, Department, or its assignee who has been designated a Qualified Developer, shall have the right to purchase the Project:
1. the city, town, LHA, or its assignee shall have 120 days after the Municipal Option Exercise Deadline (*i.e.*, 180 days after the city, town, or LHA's receipt of the First Owner's Notice) to purchase the Project.
  2. the Department, or its assignee, shall have 120 days after the Department Secondary Option Exercise Deadline (*i.e.*, 180 days after the Department's receipt of the Second Owner's Notice) to purchase the Project.
  3. the Department, or its assignee, shall have 120 days after the Department Option Exercise Deadline (*i.e.*, 180 days after the Department's receipt of the Owner's Department Notice) to purchase the Project.
  4. promptly upon request by the city, town, LHA, Department, or its assignee, the owner will provide the city, town, LHA, Department, or its assignee with such due diligence material and opportunity to inspect the Project as would be reasonably required by any third-party purchaser. The date for closing under the Municipal Option, Department Secondary Option, or Department Option may be extended by agreement of the parties and the agreed-upon extension shall be recorded/filed in the registry of deeds or registry district of the land court. The city, town, LHA, Department, or its assignee may extend the date for closing to a reasonable date if it determines that additional time is needed due to delays in closing preparations caused by the owner. After exercising the Municipal Option, the Department Secondary Option, or the Department Option, the city, town, LHA, or Department, as the case may be, may at any time terminate the Municipal Option, Department Secondary Option, or the Department Option if it determines it is not in the best interests of the city, town, LHA, or Department to effect the purchase (but such termination right shall not apply to any assignee of the city, town, LHA, or Department).
- (f) If the city, town, or LHA fails to exercise the Municipal Option by the Municipal Option Exercise Deadline and the Department fails to exercise the Department Secondary Option by the Department Secondary Option Exercise Deadline, the Municipal Option and the Department Secondary Option shall automatically terminate; however, if the sale contemplated in the offer by a third party is not effected on the same terms and conditions as those contained in the offer by a third party within six months after the Department's receipt of the Second Owner's Notice, the Municipal Option and the Department Secondary Option shall be revived. If the Department fails to exercise the Department Option by the Department Option Exercise Deadline, the Department Option shall automatically terminate; however, if the sale contemplated in the offer by a third party is not effected on the same terms and conditions as those contained in the offer by a third party within six months after the Department's receipt of the Owner's Department Notice, the Department Notice shall be revived.
- (g) A city, town, or LHA may not use state funds to effect the purchase of the Project pursuant to the Municipal Option.
- (h) The Department or its assignee may purchase the Project pursuant to the Department Secondary Option or the Department Option only for the purposes of preserving or providing affordable housing.

(3) The affordability restrictions applicable to the homeownership opportunity program and to Soft Second Mortgage loans made pursuant to 760 CMR 24.04(1)(d), shall be the restrictions generally in effect for that program at the time of application.

24.06: Demolition

- (1) Demolition. A privately owned building may be demolished if:
  - (a) it is vacant, abandoned, uninhabitable, taken by the city or town for taxes, and not economically feasible to rehabilitate; and
  - (b) demolition is in accordance with an approved Neighborhood Revitalization Plan for the area in which the demolition is undertaken.

24.06: continued

(2) Neighborhood Revitalization Plans. The Chief Elected Official of any city or town may submit a Neighborhood Revitalization Plan to the Department for approval. If the Department finds the plan to satisfy the requirements herein, and to set out a sound plan for neighborhood revitalization, it shall approve the plan. Any such plan shall include, but not be limited to:

- (a) a detailed description of the boundaries of the neighborhood subject to the plan;
- (b) an evaluation (including, where applicable, maps, site plans and photographs) of the properties in need of rehabilitation or demolition, including, where appropriate, documentation of the need for demolition;
- (c) housing goals;
- (d) a plan of action for achieving the housing goals, including, where applicable, projected dates of development and milestones for specific Projects and for the neighborhood generally (e.g., request for proposals, site control, permitting, demolition, construction, and occupancy);
- (e) a detailed presentation of all other funding sources to be used to implement the plan;
- (f) demonstration of the plans consistency with other duly adopted local land use planning objectives;
- (g) documentation that the plan was approved by the Chief Elected Official of the city or town, acting with proper authority and after a public hearing, and that the public will be able to participate in the plan's implementation; and
- (h) such other information as may be required in the HSF Guidelines.

24.07: Application Process and Administrative Fees

The HSF application process and administrative procedures and fees shall be established from time to time by the Department in the HSF Guidelines.

24.08: Findings

In approving Projects that will receive funding through the HSF, the Department shall make the following findings:

- (a) that the housing would not by private enterprise alone and without government assistance be available to Low or Moderate Income Persons or Families.
- (b) that the amount of the assistance appears to be the minimum amount necessary to make the Project feasible;
- (c) that with respect to rental housing, the operations of the owner, including any pertinent articles of organization and bylaws, and any changes in management operations or corporate structure, will be subject to regulation by the Department, except, if funded pursuant to HSF I, HSF II, HSF III, HSF IV Legislation or M.G.L. c. 121F, for housing meeting the requirements of 760 CMR 24.04(2);
- (d) that, subject to the requirements of 760 CMR 24.05(1), (2) if funded pursuant to HSF III, and (3), the housing shall remain affordable for its useful life as determined by the Department, except for housing meeting the requirements of 760 CMR 24.04(2); and
- (e) that provision of the housing will be of public benefit and for a public purpose.

24.09: Waiver Provision

(1) The Undersecretary of the Department may waive, in writing, any provision of 760 CMR 24.00 not required by statute if he or she determines that such action is reasonably required, in the public interest, and will not derogate from the statutory purposes.

(2) In the case of funding under M.G.L. c. 121F, if the Department determines that a Weak Market exists pursuant to 760 CMR 24.04(8), and, further, if the Undersecretary finds that 760 CMR 24.05(2) or any other provisions of 760 CMR 24.00, HSF V and M.G.L. c. 121F are inconsistent with promoting homeownership in the Weak Market, pursuant to the HSF Guidelines, the Undersecretary may waive such requirements and take other action to promote homeownership in the Weak Market including, but not limited to, reducing the length of required affordability to not less than ten years and permitting the funded property to be purchased by a household whose income at the time of purchase does not exceed 135% of the Area Median Income, or both; provided however, that the purchaser shall own and occupy the property as his primary residence.

24.10: Housing Stabilization and Investment Trust Fund

- (1) The Housing Stabilization and Investment Trust Fund is established under M.G.L. c. 121F for the purpose of undertaking projects to develop and support affordable housing developments and homeownership affordability, through the acquisition, preservation and rehabilitation of affordable housing. The Department shall administer the HSITF.
- (2) Administration of the HSITF may include assistance for projects to stabilize and promote reinvestment in cities and towns including, but not limited to, acquisition, rehabilitation and preservation of foreclosed and distressed properties and any other techniques necessary to achieve reinvestment.
- (3) Funds from the HSITF may be expended for the purpose of energy audits and housing modifications to achieve energy efficiency and conservation.
- (4) The HSITF is an expendable trust fund and is not subject to appropriation.
- (5) Funds from the HSITF shall be distributed among urban, suburban and rural areas with a particular emphasis on the local and regional needs in accordance with the HSF Guidelines.
- (6) Contributions to the HSITF may be made from:
  - (a) revenue from appropriations or other monies authorized by the Legislature and specifically designated for the HSITF;
  - (b) gifts, grants, private contributions, repayment of loans, fees and charges imposed relative to the making of loans, grants, subsidies, credit enhancements and other financial assistance; and
  - (c) investment income earned on the assets of the HSITF and any other sources.
- (7) Money remaining in the HSITF at the end of a fiscal year shall be retained by the Department and lent to other qualifying borrowers or recipients of HSF assistance.
- (8) In providing assistance from the HSITF, the Department shall use only the criteria established in M.G.L. c. 121F for projects owned or sponsored by nonprofit or for-profit organizations, as set out in the HSF Guidelines, including, but not limited to requirements that:
  - (a) the Department provides assistance to projects that involve complex multiple-source financing or the preservation of existing affordable housing; and
  - (b) the sponsor of the assistance is current on all existing mortgage obligations with the Commonwealth or any political subdivision thereof.
- (9) The Department shall enter into agreements with MHP and CEDAC to provide assistance from the HSITF for projects owned or sponsored by non-profit organizations.

REGULATORY AUTHORITY:

760 CMR 24.00: M.G.L. c. 23B, and 121F; St. 1993, c. 494, § 2, budget line item 3722-8900; St.1998, c. 257, § 2, budget line item 7004-8987; St. 2002, c. 244, § 2, budget line item 7004-7014 and § 6; St. 2005, c. 53, § 2, budget line item 7004-0022 and §§ 4 and 7; St. 2008, c. 119, § 2, budget line item 7004-0032 and § 6; St. 2013, c. 129, § 2, budget line item 7004-0043 and §§ 11 through 13.