

760 CMR 60.00: COMMUNITY-BASED HOUSING FUND PROGRAM

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60.01: Scope, Purpose, and Applicability

(1) The Community-based Housing loan program (CBH Program) was created by St. 2004, c. 290, § 2E (budget line item 4000-8201) (CBH 1 Legislation), as modified and continued by St. 2008, c. 119, § 2 (budget line item 7004-0030) and § 11 (collectively CBH 2 Legislation), and St. 2013, c. 129, § 2 (budget line item 7004-0041) and § 19 (CBH 3 Legislation) which authorized the Department of Housing and Community Development to use certain general obligation bond funds for loans supporting the development and redevelopment of Community-based Housing, or if funded under the CBH 3 Legislation, Community-based Housing or Supportive Housing, for Persons Certified Eligible (PCEs) who are not eligible for housing developed pursuant to the Facilities Consolidation Fund (FCF) program authorized by St. 2004, c. 290, § 2E (budget line item 4000-8200) (FCF 3 Legislation), as modified and continued by St. 2008, c. 119, § 2 (budget line item 7004-0029) and § 11 (collectively FCF 4 Legislation) and St. 2013, c. 192, § 2 (budget line item 7004-0040) (FCF 5 Legislation). The CBH Program provides loans for Eligible Projects developed by one or more Non-profit Corporations, organizations in which one or more Non-profit Corporations have a controlling financial or managerial interest, or, if funded pursuant to the CBH 2 or 3 Legislation, For-profit Organizations; provided that preference for subcontracts shall be given to Non-profit Corporations.

(2) In the event of any actual or potential inconsistency between or among the provisions of 760 CMR 60.00, the applicable CBH Legislation, the CBH Guidelines, or the loan documents evidencing a loan made under the CBH 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 CBH Legislation, 760 CMR 60.00, the CBH Guidelines and such loan documents, in the foregoing order of priority, shall control.

60.02: Definitions

The following definitions will apply to the CBH Program:

Application. An application for a loan, in the format specified by the CBH Guidelines, including a description of a proposed Eligible Project, all financing sources, and all other matters required by 760 CMR 60.00 and the CBH Guidelines.

CBH Guidelines. Guidelines issued by DHCD setting out, clarifying and further explaining 760 CMR 60.00 program policy and procedure, as such guidelines may be amended, supplemented or replaced. The CBH Guidelines shall apply to all CBH financing programs (subject always to 760 CMR 60.01(2)).

CBH Legislation. Collectively the CBH 1 Legislation, the CBH 2 Legislation, and the CBH 3

Legislation, or where the context so requires, the specific legislation applicable, respectively, to CBH 1, CBH 2 or CBH 3 loans, as appropriate. With respect to any CBH Loan, references to the CBH Legislation shall mean those provisions of the CBH 3 Legislation that apply to the CBH Program generally and any special provisions of the CBH Legislation that apply to the funding phase under which such CBH Loan is made.

CBH Loan. The loan made by DHCD or its Financial Intermediary to a Developer for an Eligible Project/Use under the CBH Program.

CBH Units. The housing units of an Eligible Project that are supported by the CBH Loan or grant and reserved for PCEs.

60.02: continued

Community-based Housing. Housing reserved for Persons Certified Eligible (PCEs) that is:

- (a) Integrated Housing. A non-institutional Residential Housing Development, or housing units therein, either on a single site or multiple sites, in which no more than $\frac{1}{3}$ of the housing units are reserved for PCEs and which complies with any additional requirements that may be specified in the CBH Guidelines, as approved by DHCD; or
- (b) any other non-institutional Residential Housing Development, or one or more housing units therein, that is reserved for PCEs, as approved by DHCD.

Creation of Housing. New construction, rehabilitation of an existing building, or the conversion of an existing non-Eligible Project to an Eligible Project.

DDS. The Department of Developmental Services.

Deferred Payment Loan (DPL). A loan secured by a mortgage on an Eligible Project which defers the repayment of principal and interest (if any) for a defined or undefined period of time.

Developer. The Developer of an Eligible Project satisfying the requirements of 760 CMR 60.03(1), and its permitted successors and assigns. The Developer may also be the owner of the Eligible Project, but need not be the owner, so long as:

- (a) such Developer has control of the site pursuant to a ground lease or other instrument acceptable to DHCD, in its discretion, for a period at least equal to the term of the applicable CBH Loan; and
- (b) the owner assents to the Developer's execution and the recording of the Land Use Restriction, and executes and accepts the Land Use Restriction and such additional documentation as DHCD and/or any Financial Intermediary may require, in its discretion, regarding the rights of DHCD and/or any Financial Intermediary with respect to the site.

DHCD. The Department of Housing and Community Development.

DMH. The Department of Mental Health.

Eligible Project/Use. The acquisition, construction, renovation and/or rehabilitation and operation of Community-based Housing for PCEs that meets the requirements of 760 CMR 60.00. An Eligible Project supported by a CBH Loan is sometimes referred to as a "Project."

EOHHS. The Executive Office of Health and Human Services.

EOHHS Services Plan. The Enhancing Community-based Services Plan dated August 2002, prepared by the Secretary of EOHHS, which has been reviewed and approved by DHCD and filed with the Secretary of Administration and Finance of the Commonwealth and the House and Senate Ways and Means Committees.

Expiring Use Restriction Housing. A Residential Housing Development that is acquired by one or more Non-profit Corporations (or an entity or entities in which one or more Non-profit Corporations have a controlling financial or managerial interest, as approved by DHCD) under Title II of the National Emergency Low Income Housing Preservation Act of 1987 or Title VI of the National Affordable Housing Act of 1990.

Financial Intermediary. An entity or entities selected by DHCD in accordance with the applicable CBH Legislation.

Financially Feasible Project. An Eligible Project that is likely to secure binding financial commitments from other funding sources which, together with the CBH Loan described in the Firm Financing Commitment, total the amount reflected in the estimated budget necessary to develop and operate the Eligible Project (as approved by DHCD and/or the Financial Intermediary).

For-profit Organization. An entity, including a corporation, partnership or trust organized under the laws of the Commonwealth or another state. The For-profit Organization must also demonstrate to the satisfaction of DHCD, the capability of managing all of its responsibilities to the Eligible Project.

60.02: continued

Gross Cash Expenditures. All expenses paid out by the Project, including: all payments of principal and interest (if any) and any other debt service on outstanding loans, all operating and maintenance expenses, and reasonable payments into capital and operating reserves for the Project.

Gross Cash Receipts. All cash collections received by the Project from all sources, with the exception of documented contributions, donations and grant proceeds.

Land Use Restriction. An agreement by the Developer (and, as required by DHCD, by the owner of the site on which the Project is located, if other than the Developer), running with the land for the benefit of DHCD, EOHHS and MRC, and restricting the Project to use as Community-based Housing, or if funded under the CBH 3 Legislation, as Community-based Housing or Supportive Housing, for PCEs, with the CBH Units reserved for PCEs who are Low-income Persons or Families. Such agreement, as further described in 760 CMR 60.03(4) and 760 CMR 60.04(2)(f), shall include such terms and conditions as are imposed under the CBH Legislation and/or CBH Guidelines or are otherwise required by DHCD. The Land Use Restriction shall be recorded and/or registered in the Registry of Deeds and/or Registry District of the Land Court where the Project is located.

Low-income Person or Family. A single person or family whose adjusted income is less than or equal to 80% of the median gross income for the area in which the Project is located, adjusted for family size and region, as determined by the United States Department of Housing and Urban Development, or any successor department or agency thereto, pursuant to Section 8 of the United States Housing Act of 1937.

MRC. The Massachusetts Rehabilitation Commission.

Non-profit Corporation. A corporation organized under M.G.L. c. 180, which may also be required to be a 501(c)(3) organization under the Internal Revenue Code at the time of application or loan closing. To qualify as a Non-profit Corporation for purposes of the CBH Program, no member, shareholder, director, officer or employee of the corporation or its board of directors can profit, in any way, from the CBH assistance or from the Eligible Project. The Non-profit Corporation must also demonstrate, to the satisfaction of DHCD, the capability of managing all of its responsibilities to the Eligible Project.

Person Certified Eligible (PCE). A Low-income Person or Family with disabilities who is institutionalized or at risk of being institutionalized, but who is not eligible for housing developed pursuant to the FCF program, authorized by the FCF 3 Legislation, as modified and continued by the FCF 4 Legislation and the FCF 5 Legislation, and who has been certified as an eligible PCE by MRC or any other agency of EOHHS in accordance with the procedure described in the CBH Guidelines.

Preservation of Housing. New capital financing for an Eligible Project that is already used for an Eligible Use. A proposed Eligible Project will qualify as Preservation of Housing that may be supported by CBH funding only if such Eligible Project involves:

- (a) 1. a transfer of ownership to a Non-profit Corporation, or if funded pursuant to CHB 2 or 3 Legislation, For-profit Organizations, subject to 760 CMR 60.01(2),
2. physical improvements to the real estate; and/or
3. improved forms of management and social services;

- (b) an Expiring Use Restriction Housing project; or
- (c) the preservation of Community-based Housing, as determined by DHCD.

Residential Housing Development. Property that is predominantly used for housing and is in compliance with applicable laws and ordinances.

Single-purpose Owner Entity. A Non-profit Corporation or any other single-purpose entity in which one or more Non-profit Corporations have a controlling financial or managerial interest, or a For-profit Organization, whose business and operations relate solely to the Eligible Project, as approved by DHCD.

60.02: continued

Supportive Housing. Community-based Housing that provides residents with supports and services linked to their housing.

Total Development Costs. Total hard and soft costs of developing an Eligible Project, including the costs to acquire, design, construct, renovate and/or rehabilitate and finance the Eligible Project.

60.03: Eligible Projects/Uses

A CBH Loan can only be made for a Residential Housing Development that is a Financially Feasible Project and that:

(1) is developed to be owned and operated by one or more Non-profit Corporations (or an entity or entities in which one or more Non-profit Corporations have a controlling financial or managerial interest, as approved by DHCD), a Single-purpose Owner Entity, a For-profit Organization, or a joint venture partnership with a for-profit developer and one or more of the foregoing, provided that preference in awarding subcontracts shall be given to Non-profit Corporations;

(2) in accordance with the EOHHS Services Plan, provides Community-based Housing for PCEs;

(3) involves the Creation of Housing, the Preservation of Housing or the refinancing of an existing CBH Loan if permitted under 760 CMR 60.04(4);

(4) as required by the CBH Legislation, will be subject to a Land Use Restriction for the benefit of DHCD, DDS and DMH for loans granted under CBH 1 and 2, and for the benefit of DHCD, EOHHS and DDS for loans granted under CBH 3, running with the land on which the Project is located and duly registered/filed, requiring that the Project shall be used for the purpose of providing Community-based Housing for PCEs and reserving all the CBH Units in the Project for occupancy by Low-income Persons or Families, which Land Use Restriction shall be released only in accordance with the provisions of the CBH Legislation, 760 CMR 60.00 and the CBH Guidelines; and

(5) complies, or upon completion will comply, with the CBH Legislation and all other applicable federal, state or local requirements, including the Americans with Disabilities Act of 1990, M.G.L. c. 79A and 105 CMR 410.00: *Minimum Standards of Fitness for Human Habitation State Sanitary Code: Chapter II.*

60.04: Type of Loans, Loan Terms, Loan Conditions

(1) Loan Types. Eligible Projects may receive CBH assistance in three areas: acquisition loans, construction/rehabilitation loans, and permanent loans. All loans will be structured as Deferred Payment Loans (DPL). Developers shall complete the Application process in accordance with the CBH Guidelines.

(2) Loan Terms. All loans under the CBH program shall be made upon the following terms and such other terms as are included in the CBH Guidelines and/or DHCD's loan documents:

(a) Loan Proceeds. The proceeds of the loan shall be used solely for the development of the

Eligible Project approved by DHCD.

(b) Loan Amount.

1. The amount of a CBH Loan shall be set by DHCD in accordance with the CBH Guidelines. A CBH Loan shall not exceed 50% of the Total Development Cost of the Eligible Project (or the portion of the Eligible Project eligible under the CBH Program);
2. DHCD may establish a maximum percentage of the Total Development Cost and dollar limits (per unit or per Eligible Project, or both) in the CBH Guidelines, to which the loan would also be subject.

60.04: continued

(c) Loan Period. The original term of a CBH Loan shall be up to 30 years. At the maturity date, the term may be extended for additional periods of up to ten years each at the discretion of DHCD, with the consent of the owner, if DHCD, in consultation with EOHHS, shall have determined that there still exists a need for such housing, the Project continues to meet the CBH Program requirements and the requirements for an extension under the CBH Legislation, 760 CMR 60.00, the CBH Guidelines, and the CBH Loan documents for such loan, including the continuing applicability of the Land Use Restriction for the duration of the loan term, as so extended.

(d) Interest Rate. Interest rates for the Loans shall be fixed at rates determined by DHCD, in consultation with the Office of the Treasurer of the Commonwealth.

(e) Loan Payments. Because all CBH Loans are structured as DPLs, payments of principal and any applicable interest will be deferred for the loan period unless either of the following occurs:

1. The Project and/or the borrower of the CBH Loan is in default of the terms of the CBH Loan; or
2. Except with respect to loans granted under the CBH 3 Legislation, the Project supported by the CBH Loan has Gross Cash Receipts in any fiscal year that exceed its Gross Cash Expenditures by 105% or more, in which event within 45 days after the end of each Project's fiscal year, the borrower of the CBH Loan shall supply DHCD or the Financial Intermediary with the necessary financial statements needed to determine the amount of payment necessary for the period. All amounts paid pursuant to 760 CMR 60.04 shall be applied to the outstanding principal balance.

(f) Land Use Restriction. The Developer of the Eligible Project shall execute and record at the applicable Registry of Deeds (and/or Registry District of the Land Court) a Land Use Restriction. If the Developer is not the owner of the real property on which the Eligible Project is located, the owner shall also execute (or, in the discretion of DHCD or the Financial Intermediary, acknowledge and accept) the Land Use Restriction. The Land Use Restriction shall only be released:

1. upon:
 - a. payment in full of all amounts due under the CBH Loan (provided, however, that no prepayment shall be allowed under the loan prior to the maturity date as defined in the promissory note for such loan, as such maturity date may be extended from time to time); and
 - b. the written determination by the Secretary of EOHHS that there is no longer a need to maintain the Project's use as Community-based Housing for PCEs; or
2. upon:
 - a. foreclosure of the Project by the holder of a bona fide first-priority mortgage, or, with DHCD's consent, a bona fide mortgage that was senior to the lien of the CBH mortgage loan at the time of loan closing, or to which the CBH mortgage loan has been duly subordinated; and
 - b. the written determination by the Secretary of EOHHS as to the inability of EOHHS to locate a purchaser or manager for the Project who can maintain the Eligible Use; provided, however that if the Secretary of EOHHS fails to notify the foreclosing mortgagee of the identity of such purchaser or manager by the later of 30 days after EOHHS has received notice of such foreclosure action, or 60 days prior to such foreclosure sale by the foreclosing mortgagee, the Land Use Restriction shall automatically be released if, within six months after the receipt by the Secretary of EOHHS of the foreclosure notice, the foreclosing mortgagee causes to be recorded in the applicable Registry of Deeds (and/or Registry District of the Land Court) a

sworn affidavit by the foreclosing mortgagee certifying as to the Secretary's failure to meet such deadline, and the foreclosure deed to the property on which the Project is located.

- (g) Mortgage Lien. The Loan shall be secured by a mortgage lien against the Project, which may be junior only to such senior mortgage liens as are permitted by DHCD.
- (h) Refinancing. A CBH Loan may be refinanced during the term of the Loan only subject to the prior written approval of DHCD and/or its Financial Intermediary.

60.04: continued

(3) Repayment. As a condition of each CBH Loan for an Eligible Project, the agreement for use of the affected property shall provide for repayment to the commonwealth at the time of disposition of the property in an amount equal to the commonwealth's proportional contribution from community based housing to the cost of the development through payments made by the state agency making the contract.

(4) Purchase Option and First Refusal Option. As a condition of each CBH Loan, DHCD shall be granted a purchase option and a first refusal option to purchase the Project, or if funded under the CBH 3 Legislation, CBH Units, in accordance with the following terms:

(a) Purchase Option. Upon the expiration of the term of the affordability restrictions imposed in the Land Use Restriction for a Project funded under the CBH 1 or CBH 2 Legislation, DHCD shall have an option to purchase the Project from the Developer/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 CBH Loan. Upon the expiration of the term of the affordability restrictions imposed in the Land Use Restriction for CBH Units developed with funds under the CBH 3 Legislation, DHCD shall have an option to purchase the CBH Units from the Developer/owner at a price equal to the then-current appraised value of the CBH Units less the total outstanding balance of all principal, interest and any other charges attributable and payable under the CBH Loan. The appraised value of the Project shall be determined in the manner described in the CBH Legislation and in accordance with the CBH Guidelines and DHCD policies, as applicable. DHCD may exercise the Purchase Option by sending notice to the Developer/owner of its intention to exercise the Purchase 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 the expiration of the term of the affordability restrictions imposed by the Land Use Restriction. If DHCD fails to exercise the Purchase Option by such option exercise deadline, DHCD shall automatically be deemed to have waived the Purchase Option, and such Purchase Option shall automatically terminate.

(b) First Refusal Option. If at any time the Developer/owner of a Project funded under the CHB 1 or CBH 2 Legislation wishes to sell, transfer or otherwise dispose of (transfer) the Project, or any part thereof, prior to DHCD's exercise of the Purchase Option, and receives a *bona fide* third-party offer for the same, the Developer/owner shall send a notice to DHCD by regular and certified mail, return receipt requested, setting forth the Developer/owner's intention to transfer all or part of the Project and the terms of any *bona fide* offer by a third party to purchase the Project (or the applicable portion(s) thereof). If at any time the Developer/owner of a Project funded under the CHB 3 Legislation wishes to sell, transfer or otherwise dispose of (transfer) CBH Units, prior to DHCD's exercise of the Purchase Option, and receives a *bona fide* third-party offer for the same, the Developer/owner shall send a notice to DHCD by regular and certified mail, return receipt requested, setting forth the Developer/owner's intention to transfer all or some of the CBH Units and the terms of any *bona fide* offer by a third party to purchase the CBH Units. DHCD shall have the right to purchase the Project (or the portion(s) thereof to which such offer relates) at the same price and on the same terms as those contained in such offer. DHCD may exercise the First Refusal Option by sending notice to the Developer/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 Developer/owner's notice. If DHCD fails to exercise the First Refusal Option by such option exercise deadline, DHCD shall automatically be deemed to have waived the First Refusal Option, and such First Refusal Option shall automatically terminate (but only with respect

to the portion(s) of the Property to which the third-party offer relates); however, if the sale contemplated in the third-party offer is not effected on the same terms and conditions as those contained in the offer, as described in the Developer/owner's notice, within six months after DHCD's receipt of the Developer/owner's notice, or if any of the material terms of such third-party offer shall be revised, DHCD's First Refusal Option shall be revived. If a Developer/owner's notice relates to a proposed transfer of only a portion of the Project for Projects funded under the CBH 1 or CBH 2 Legislation, or only some but not all of the CBH Units, for Projects funded under the CBH 3 Legislation, the First Refusal Option shall remain in effect with respect to all remaining portions of the Project, or CBH Units, as applicable.

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

1. is a Non-profit Corporation;
2. has completed an application with respect to its proposed purchase of the Project, in the format specified by DHCD (the Purchase Application) (DHCD will issue a "Notice of Project Availability" that will include instructions for completing a Purchase Application for this purpose);
3. has been selected to purchase the Project based on DHCD's review and underwriting of the Purchase Application;
4. agrees that upon purchasing the Project, it will execute a Land Use Restriction providing for the Project to remain a Project for a term of at least 40 years; and
5. provides any additional due diligence materials not part of the Purchase Application that may be required by DHCD.

(d) If DHCD exercises the Purchase Option, DHCD or its assignee shall have 120 days after the expiration of the option exercise deadline specified in 760 CMR 60.04(4)(a) (and not less than 240 days after the expiration of the term of the affordability restrictions imposed by the Land Use Restriction) to purchase the Project. If DHCD exercises the First Refusal Option, DHCD or its assignee shall have 120 days after the expiration of the option exercise deadline specified in 760 CMR 60.04(4)(b) (and not less than 240 days after the DHCD's receipt of the Developer/owner's notice) to purchase the Project. Promptly upon request by DHCD or its assignee, the owner will provide DHCD or its assignee with such due diligence material and such opportunity to inspect the Project as would be reasonably required by a third-party purchaser. The date for the acquisition closing under the Purchase Option or the First Refusal Option, as applicable, 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. DHCD or its assignee may extend the date for the acquisition closing to a reasonable date, if it determines that additional time is needed due to delays in closing preparations caused by the Developer/owner. After delivering notice of its intent to exercise the Purchase Option or First Refusal Option, DHCD may at any time terminate its exercise of the Purchase Option or the Right of First Refusal, in its discretion, without incurring any damages or other liability, if it determines it is not in the best interests of DHCD to effect the purchase (but such termination right shall apply to DHCD only, and not to any assignee).

(5) Application Process. Application procedures for CBH Loans are specified in the appropriate CBH Guidelines. DHCD reserves the right to hold competitive funding rounds for CBH Loans.

60.05: Waiver Provisions

If any of the requirements relating to repayment set forth in 760 CMR 60.04(2) would cause an Eligible Project to become ineligible for federal funds that would otherwise be available for an Eligible Project, the Commissioner of MRC may modify or waive that requirement to allow the use of such federal funds; provided, however, that the interests of the Commonwealth shall remain protected. The Undersecretary of DHCD may also waive any provision of 760 CMR 60.00 not required by the applicable CBH Legislation, if the Undersecretary determines that such action is advisable and in the public interest.

REGULATORY AUTHORITY

760 CMR: DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

760 CMR 60.00: M.G.L. c. 23B; St. 2004, c. 290, § 2E, budget line item 4000-8201; St. 2008, c. 119, § 2, budget line item 7004-0030 and § 11; St. 2013, c. 129, § 2, budget line item 7004-0041 and § 19.