

760 CMR 18.00: MASSACHUSETTS CAPITAL IMPROVEMENT AND PRESERVATION FUND

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18.01: Scope, Purpose, and Applicability

The Capital Improvement and Preservation Fund program (CIPF) was created by St. 1998, c. 257, budget line item 7004-9980 (the CIPF I Legislation). The Department of Housing and Community Development (DHCD) was authorized to use up to \$20 million in general obligation bond funds for the purpose of preserving and improving existing privately-owned, state or federally assisted housing. The Capital Improvement and Preservation Fund provides loans or grants to Eligible Projects (Projects) sponsored and developed by community development corporations, for-profit organizations, or non-profit organizations. Funds may be used in connection with state or federally assisted housing that is at risk of termination of its affordability restrictions due to prepayment of a mortgage or termination of a mortgage insurance contract, or in connection with any other state or federally assisted housing where a CIPF grant or loan is necessary to maintain affordability.

The CIPF program was continued by St. 2002, c. 244, budget line item 7004-7015 (the CIPF II Legislation), which authorized DHCD to use up to \$35 million in general obligation bond funds for the above-stated purposes. CIPF II funds may also be provided to Eligible Projects sponsored by Local Housing Authorities.

The CIPF program was continued by St. 2008, c. 119, § 2 budget line item 7004-0037 (the CIPF III Legislation) and § 6, which established the Capital Improvement and Preservation Fund as M.G.L. c. 121G. CIPF III was established for the purpose of preserving and improving existing privately owned, state or federally-assisted housing. Budget line item 7004-0037 authorized DHCD to use up to \$100 million in general obligation bond funds for the purposes set forth in M.G.L. c. 121G.

M.G.L. c. 121G establishes the Capital Improvement and Preservation Trust Fund. References in 760 CMR 18.00 to funding under, for, or pursuant to M.G.L. c. 121G shall mean funding for the program described in M.G.L. c. 121G authorized by the CIPF III Legislation or any other funding for such program authorized by the Legislature.

In the event of any actual or potential inconsistency between or among the provisions of 760 CMR 18.00, the applicable CIPF Legislation or the CIPF Program Guidelines, or the loan or other documents evidencing a loan or other form of financial assistance provided under the CIPF 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 CIPF Legislation, including M.G.L. c. 121G, 760 CMR 18.00, the CIPF Program Guidelines, and such loan or other financing documents, in the foregoing order of priority, shall control.

18.02: Definitions

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

Community Development Corporation (CDC). A non-profit corporation as defined in M.G.L. c. 40F, § 1. To participate in a CIPF 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.

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

Eligible Project (Project). A project which meets the eligibility criteria contained in 760 CMR 18.00 and the CIPF Guidelines.

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

CIPF. Capital Improvement and Preservation Fund, established pursuant to the CIPF Legislation.

CIPF Guidelines. Guidelines issued by the Department that clarify and elaborate upon 760 CMR 18.00.

CIPF Legislation. Collectively, the CIPF I Legislation, the CIPF II Legislation, and M.G.L. c. 121G or, where the context so requires, the specific legislation applicable, respectively, to CIPF I, CIPF II, and M.G.L. c. 121G loans or grants.

Local Housing Authority (LHA). A public body politic and corporate organized and existing pursuant to M.G.L. c. 121B § 3.

Low or Moderate Income Person or Family. An individual or family whose adjusted income is less than or equal to 80% of the median income for the family size in the pertinent region as determined by the Secretary of the U.S. Department of Housing and Urban Development (HUD) or successor agency for federal housing programs.

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

MassHousing. (The former Massachusetts Housing Finance Agency), established by St. 1966, c. 708.

Very Low Income Person or Family. An individual or family whose adjusted income is less than or equal to 50% of the median income for the family size in the pertinent region as determined by the Secretary of HUD or successor agency for federal housing programs.

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.

18.03: Eligible Recipients

A CDC, LHA, for-profit organization, or Non-profit Corporation shall be eligible to receive a CIPF loan or grant to carry out an Eligible Project.

18.04: Eligible Projects (Projects)

- (1) The Department may make CIPF loans and grants:
 - (a) to acquire, preserve, and improve affordable rental and ownership housing
 1. where the prepayment of a state or federally-assisted MassHousing mortgage would lead or has led to the termination of a use agreement for low income housing; or
 2. if funded pursuant to the CIPF I Legislation, for which the United States Department of Housing and Urban Development has approved but not fully funded a plan of action to transfer the housing to a qualified tenant or tenant endorsed purchaser pursuant to 12 U.S.C. §§ 4010 through 4147; or
 3. if funded pursuant to the CIPF II Legislation or M.G.L. c. 121G, where a contract for project-based rental assistance is expiring or has expired, or where the expiration of any state or federally-assisted mortgage, or the expiration of federal or state low-income housing tax credits, would lead or has led to the termination of a use agreement for low-income housing.

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(b) for a predevelopment loan to a nonprofit organization that has purchased, or has a valid agreement to purchase, a housing project described in 760 CMR 18.04(1)(a)1. where such housing project has been identified by the Department, in consultation with nonprofit organizations and MassHousing, as being among those at greatest risk of mortgage prepayment; if funded pursuant to the CIPF II Legislation or M.G.L. c. 121G, such predevelopment loan shall be administered through CEDAC or MHP.

(c) for any other purpose permissible under the CIPF Legislation.

(2) In allocating CIPF funds:

(a) if funded pursuant to the CIPF I Legislation, the Department may give preference to nonprofit organizations seeking to purchase a housing project that is or was subject to prepayment of a state or federally assisted MassHousing mortgage. If the Department gives such preference, then, in consultation with nonprofit organizations and MassHousing, it shall identify the projects at greatest risk of prepayment of a state or federally assisted MassHousing mortgage and give such projects equal preference in the allocation of CIPF funds.

(b) if funded pursuant to the CIPF II Legislation or M.G. L. c. 121G, the Department shall give preference to nonprofit organizations or LHAs seeking to purchase a housing project that is or was subject to prepayment of a state- or federally-assisted mortgage or the termination of a project-based rental assistance contract, or subject to the expiration of federal or state low-income housing tax credits. In giving such preference, the Department, in consultation with MassHousing, CEDAC, and MHP, shall identify projects at greatest risk of prepayment or nonrenewal of a rental assistance contract or expiration of tax credits and give preference to such projects in the allocation of funds.

18.05: Acquisition, Preservation, and Improvement

All housing acquired, preserved, or improved by CIPF funds shall meet the following requirements:

(1) If funded pursuant to the CIPF I Legislation, for at least 30 years after a CIPF loan or grant is provided, a minimum of 50% of the total number of units shall be reserved for occupancy by Low or Moderate Income Persons or Families and, of such reserved units, a minimum of 10% of the units (that is, 5 % of the total number of units) shall be reserved for occupancy by Very Low Income Persons or Families.

(2) If funded pursuant to the CIPF II Legislation or M.G.L. c. 121G, for at least 40 years after a CIPF loan or grant is provided, a minimum of 50% of the total number of units shall be reserved for occupancy by Low or Moderate Income Persons and Families and, of such reserved units, a minimum of 10% of the units (that is, 5% of the total number of units) shall be reserved for occupancy by Very Low Income Persons or Families.

(3) MassHousing or United States Department of Housing and Urban Development regulations may require that a greater percentage of units than is specified in 760 CMR 18.05(1) or (2) shall be rented to or owned by Low or Moderate Income Persons or Families and Very Low Income Persons or Families.

18.06: Application Process and Administrative Fees

The CIPF application process and administrative procedures and fees shall be established by the Department in the CIPF Guidelines.

18.07: Findings

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

(1) that the housing would not be available to Low or Moderate Income Persons or Families and Very Low Income Persons and Families;

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- (2) that the amount of the assistance appears to be the minimum amount necessary to make the housing development feasible;
- (3) 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;
- (4) that the housing shall remain affordable for its useful life as determined by the Department;
- (5) that provision of the housing will be of public benefit and for a public purpose; and
- (6) that the owner is current on all existing mortgage obligations with the Commonwealth of Massachusetts on any political subdivision thereof.

18.08: Waiver Provision

The Undersecretary of Department may waive, in writing, any provision of 760 CMR 18.00 not required by statute if he or she determines that such action is advisable and in the public interest.

REGULATORY AUTHORITY

760 CMR 18.00: M.G.L. 23B; St. 1998, c. 257, budget line item 7004-9980; St. 2002, c. 244, budget line item 7004-7015; St. 2008, c. 119, budget line item 7004-0037.