



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Office of Economic Resilience
WASHINGTON, DC 20410-0050

Program Policy Guidance Number 2014-01
Date: May 5, 2014
Subject: Updated Requirements for Housing Trust Funds and Other Funds Related to Real Property Acquisition
Status: Current
Applicability: All OSHC Regional Planning and Community Challenge Grantees
Related Guidance: Replaces Policy Guidance 2012-09
Comments:

Dear Sustainable Communities Regional or Community Challenge Grantee:

When a grantee is interested in using a housing trust fund or other pooled investment structure for property acquisition (hereafter referred to as a "Housing Fund"), before program funds can be allocated to a new or existing fund, the grantee must provide a Housing Fund Strategy for approval by the Government Technical Representative (GTR). This Strategy must include, but is not limited to:¹

1. The overall goals of the housing fund (including affordable housing units and targeted populations, if any), commercial or mixed use development, transit-oriented focus, etc.;
2. The role of the Housing Fund in implementing the provisions of the Sustainable Communities grant and the Livability Principles;
3. The types of property of interest (vacant properties, existing buildings, etc.) and criteria for selecting prospective property investments;
4. Locations of importance and geographical targets (at a minimum, program funds may only be used to acquire sites within the project area);
5. Projected number of sites to be acquired and the projected number of affordable and total units, terms of affordability, non-residential uses, and other applicable factors;
6. Proposed governance of the Housing Fund, including identification and qualifications of lead entity accepting responsibility for the use of funds (must be a non-profit or governmental entity), investor roles and fund manager roles and qualifications;
7. Provisions for investor repayment (if any) and terms for recapitalization (if any);
8. Sample deed restriction language to retain housing affordability or other public purpose provisions;
9. Bylaws and the most recent audit of the Housing Fund lead entity; and
10. Statement of commitment to accept full responsibility and liability for the terms and conditions of this guidance.

¹ A Housing Fund has additional requirements from acquisition of individual sites using HUD program funds.

If the Housing Fund Strategy is approved by the GTR, the Housing Fund will accept full responsibility for meeting all program guidance and liability for the following:

1. All requirements from *Program Policy Guidance Number 2011-08 – Property Acquisition Requirements* and *Program Policy Guidance Number 2011-05 – Documentation to Submit for Environmental Clearance* regarding basic property acquisition will apply, including but not limited to, securing an appraisal, deed restrictions and environmental clearance. The Housing Fund is required to maintain documentation of these activities on file and make available to the GTR upon request. **If any HUD funds are used in a Housing Fund, all transactions involving that Fund are subject to these guidance documents and all federal requirements.**
2. Grantees can draw down grant funds for individual transactions as needed. Grantees should provide advance notice to their GTR to ensure that their request for funds will be approved quickly. Repayment from the sale of property or repayment (including interest) of Housing Fund monies are program income and must remain in the Housing Fund.
3. Housing Fund monies can be used for predevelopment, a purchase option, or acquisition of land. If using for a purchase option, the total amount used for purchase options as a percent of the amount set aside for the Housing Fund (not of the total grant award) cannot exceed 30%. As stated above, all transactions must be documented by the Housing Fund and made available to the GTR upon request.
4. Housing Fund will provide the GTR with a semi-annual report on all disbursements from the Housing Fund, including the number of sites acquired, site acreages and locations, program and non-program funds used, an explanation of how this transaction fits into the Housing Fund Strategy, the terms of any loan and repayment schedule, and environmental clearance documentation.
5. Housing Fund will work with the GTR to obtain a HUD environmental clearance before committing to any transaction. See *Program Policy Guidance Number 2011-05 – Documentation to Submit for Environmental Clearance*.
6. Deed restrictions must remain on the property for the entirety of the terms set out in the restriction, regardless of if and how ownership transfers.
7. Non-profit and for-profit organizations are allowable recipients from the Housing Fund.
8. Program income in the Housing Fund retains its federal character and, accordingly, is subject to the requirements of this Policy Guidance and the requirements in other applicable Policy Guidance documents, including the requirement for HUD environmental review. However, any remaining program income received after closeout from loans generated by the fund outstanding at the time of closeout is no longer governed by the provisions of the grant agreement and applicable authorities, including OSHC Program Policy Guidance 2012-09, except that such income shall be used for activities and priorities that are consistent with the Grantee's HUD-approved housing trust fund strategy. Proceeds from the sale of real property is to be handled in accordance with the requirements of 24 CFR 85.31 or 24 CFR 84.32, as applicable.

In addition, the grantee must provide all the information requested in and conditions detailed in *Program Policy Guidance Number 2011-05 – Documentation to Submit for Environmental Clearance*, and *Program Policy Guidance Number 2011-08 – Property Acquisition Requirements*. These requirements apply to all transactions for real property, and must be satisfied before a grantee commits to a transaction.

Please note: In certain situations, a GTR will require additional information or additional restrictions on the property before approval.