



Housing Development Loan Program Guidelines

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Introduction

The Housing Development Loan (HDL) program was established by the Ohio Revised Code Chapter 175 and further promulgated in Ohio Administrative Rules Chapter 175.

The program is administered by the Ohio Housing Finance Agency (OHFA) and receives its funding through Unclaimed Funds from the Ohio Department of Commerce. Because these funds must be repaid to the Department of Commerce, they are not considered to be “risk-based”. OHFA requires that applicants provide sufficient collateral to ensure repayment of their obligation(s). Those unable to meet the collateral requirements are advised to pursue funding through other OHFA gap financing programs.

All funds awarded through the HDL program are contingent upon the availability of funds to OHFA and are subject to approval by the OHFA Board.

These guidelines outline current policies and procedures of OHFA and its Board in regard to the HDL program. These guidelines are subject to change in the future, pending developments in state legislative requirements and/or OHFA policy. OHFA reserves the right to make changes or amendments to these guidelines at any time and to limit loan funding based on funding availability.

I. Program Policies

A. Purpose

The HDL program provides short-term, low-interest loans to developers who have an award of housing credits. The loan can be used to bridge equity, providing interim financing at a low interest rate for deferred equity resulting from the sale of Low-Income Housing Tax Credits (LIHTCs).

B. Eligible Uses

Use of the HDL is limited to bridging the equity pay-ins from a sale of LIHTCs. Loans may be used in one of two ways:

1. Construction and Permanent Financing

HDLs may be used to bridge equity pay-ins during construction of a development. The HDL can transition to permanent financing during post-construction.

2. Permanent Financing only

HDLs may be used to bridge equity pay-in post-construction.

C. Eligible Applicants

Eligible applicants include sponsors and private developers that have been awarded LIHTCs.

D. Loan Amount

Competitive/9% tax credit applications:

- Maximum loan request: \$1,750,000 (\$2,500,000 for applications competing in the Permanent Supportive Housing pool)

Non-competitive/4% tax credit applications with gap financing through OHFA:

- Maximum loan request: \$2,500,000

Non-competitive/4% tax credit applications* without OHFA gap financing:

- Maximum loan request: \$2,000,000
- *Eligible applicants must have at least one 9% LIHTC project or 4% LIHTC project that has been placed in service in Ohio within the past 10 years.

OHFA will prioritize HDL requests for Competitive 9% applications and Non-Competitive 4% applications that are also seeking OHFA gap financing. Should funds remain or additional funds become available, OHFA reserves the right to increase or decrease the maximum loan amount for housing credit projects.

E. Interest Rate and Term of Loans

Construction/Permanent Financing:

- Interest rate: 2.5 percent*
 - **Interest will not accrue and payments will not need to be paid on the HDL during the construction period*
- Maximum Term: 10 years maximum
- Minimum Term: 5 years

Permanent Financing:

- Interest rate: 2.25 percent per annum
- Term: 10 years maximum

F. Loan Repayment

Construction/Permanent Financing:

- Interest will begin to accrue after the second anniversary date of the loan closing. Repayments shall commence no later than the third anniversary date of the loan closing and must consist of equal annual payments of principal and interest for the term of the loan.

Permanent Financing:

- Repayment shall commence no later than the first anniversary date of the loan closing and must consist of equal annual payments of principal and interest for the term of the loan.

Balloon payments will not be considered for the repayment of an HDL. A prepayment penalty will apply if the HDL is used during construction and paid off prior to meeting the minimum term. A prepayment penalty in the amount of the unrealized interest accrual will apply if an HDL used as permanent financing is paid off prior to meeting the minimum term.

G. Default

Events of Default, Remedies, and Default Rate will be outlined in the Loan Agreement. In the event of default, OHFA may assess penalties as outlined in the current QAP.

H. Collateral

Collateral must be in a form and value adequate to secure the amount of the principal and interest accrued during the life of the loan term. Collateral may include, but is not limited to, the following:

Construction/Permanent Financing:

- Assignment of Qualified Cognovit Investor Note, as defined below; or
- A Fund Note provided by the Investor, subject to OHFA approval.

Permanent Financing:

- Assignment of Qualified Cognovit Investor Note, as defined below;
- Pledge of Subscription Agreements, as defined below;
- Qualified Letter of Credit, as defined below;
- Qualified Cognovit Corporate Guaranty, as defined below; or
- Other forms of collateral, as defined below.

1. Assignment of Qualified Cognovit Investor Note

A Qualified Investor Note is an unconditional, negotiable cognovit promissory note that satisfies all of the following criteria:

- a. Maker of the Investor Note (Maker) is an investor of a duly admitted limited partner or investor member (Equity Provider) of the borrower, or in the Equity Provider's authorized affiliate, assignee, successor in interest or other duly admitted substitute for the Equity Provider;
- b. Investor Note does not state any payment conditions and does not refer to any extraneous agreements for ancillary terms of payment, or the Partnership agrees to make all agreements available for legal staff review (a "timing or demand" requirement will not render the Investor Note conditional);
- c. Investor Maker waives all defenses to payment as to OHFA (or a lender-pledgee of the note) in language customary for private sector bridge lenders;
- d. Remaining term of the Investor Note is not less than the term of the HDL;

- e. Outstanding, original available balance of the Investor Note is not less than the aggregate amount of the principal and interest for the entire HDL term; and
- f. Qualified Investor Notes must be accompanied by a pledge of the equity provider's ownership interest in the project.

Investor Notes that do not meet the above criteria must be accompanied by a cognovit guaranty for the investor's corporate parent entity.

2. Pledge of Subscription Agreements

In lieu of Qualified Investor Notes, where such notes are unavailable, subscription agreements can be given as collateral subject to OHFA's review and approval. OHFA will accept subscription agreements from a Syndicator as collateral with all of the following conditions:

- a. The individual investors must be identified in the subscription agreements prior to closing and the funds pledged in such agreements must be readily available and identifiable;
- b. The HDL will be closed only during conversion to permanent financing. The HDL will not be able to be used during construction; and
- c. The term of the HDL may be no more than 5 years.

3. Qualified Letter of Credit

A Qualified Letter of Credit is an irrevocable letter of credit that is issued by a federally-insured national banking association (issuing bank) acceptable to OHFA and that satisfies all of the following criteria:

- a. Borrower provides issuing bank's FDIC certificate number to OHFA;
- b. Letter of Credit is issued using a form acceptable to OHFA with immediate access available to OHFA in the event of a default;
- c. The expiration date for the Letter of Credit must exceed the maturity date of the HDL, plus the grace period, if any, following default, by not less than 10 business days; and
- d. Amount of the Letter of Credit must not be less than the aggregate principal and interest of the loan for the entire term of the housing development loan.

4. Qualified Corporate Cognovit Guaranty

A Qualified Corporate Cognovit Guaranty (Guaranty) is an irrevocable and unconditional, payment guaranty of the outstanding principal balance, accrued interest, and costs and charges of the housing development loan that satisfies all of the following criteria:

- a. Guaranty agreement is cognovit and in a format acceptable to OHFA;
- b. Guaranty specifies Franklin County, Ohio, as venue for enforcement and specifies Ohio law as the choice of laws;
- c. Guarantor furnishes resolutions from the Guarantor's board specifically authorizing the Guaranty. OHFA reserves the right to request that parties other than the director of the Guarantor provide evidence of the authority of certain individuals to execute the guarantee; and
- d. The AHFA must evidence that adequate consideration exists for the Guaranty being offered. OHFA reserves the right to require the Guarantor to furnish an attorney opinion letter stating that there is adequate consideration for the Guaranty.

5. Other Forms of Collateral

Other collateral that meets all of criteria below may be considered:

- a. The pledged assets must be unencumbered and approved by OHFA and are not dependent on and are exclusive of the value of the HDL loan.
- b. The value of the collateral is equal to or greater than one and one half times the amount of the loan.
- c. The collateral is unconditional and immediately available to OHFA upon an event of default.
- d. The proposed term of the HDL loan may not exceed five years.
- e. The applicant must identify the source of funds which will be used to repay the loan, which must be sufficient to make the annual payment of both principal and interest.
- f. The collateral is available only for housing development loans that close after the project has submitted all documentation required for the issuance of the Form 8609.

I. Fees

Application Fee	\$600, due at Final Application submission
Loan Servicing Fee	\$1,000/year, full amount due at closing. <i>OHFA will not reimburse this fee if the loan pre-pays.</i>
Loan Closing Fee	\$1,000 for each Limited Partner (LP), due at closing
Loan Commitment Extension Fee	\$1,000 annually, pro-rated monthly
Loan Commitment Reinstatement Fee <i>(if commitment has expired)</i>	\$250
Adding Limited Partners (LP)/ Amortization Schedules	After OHFA Board Approval but before closing: \$1,500 per LP
	After submitting a closing request: \$2,000 per LP
	Each amortization schedule after the first: \$1,000 per LP
Changes in Legal Documents	\$250
Checks that do not clear due to insufficient funds	\$25

J. Emergency HDL Requests

Projects already placed in service that encounter an emergency or disaster that may lead to resident displacement may apply to OHFA for an Emergency HDL. Emergency HDL requests are subject to the availability of funds.

The Emergency HDL is intended to be a short-term loan similar to a traditional HDL and must meet all HDL collateral requirements. The terms of the Emergency HDL will be set at OHFA's discretion.

II. Application Review and Approval

Except for Emergency HDL requests, requests for HDLs are submitted and reviewed concurrently with requests for funding through the applicable tax credit program.

Once formal underwriting has begun, the applicant will be sent a list of questions and requests for credit-worthiness information. The project will not move through the approval process until all of the information requested by OHFA has been received and reviewed.

A. Application Requirements

Borrowers must complete the HDL section of the AHFA for the development program to which they are applying. Underwriting criteria, occupancy, affordability, and public notification requirements will be consistent with the current Qualified Allocation Plan (QAP) and the Multifamily Underwriting and Implementation Guidelines.

Additionally, conditional equity commitment letters are required. A sample equity commitment letter can be found in Appendix A. OHFA will evaluate the conditional equity commitment provided by the syndicator/investor at final application.

Conditional equity commitments must include the following:

- Project information: Project name, address, GP name
- Ownership interest of the LP (99.9%, 99.99%)
- LIHTC Allocation
- HDL Loan Amount
- HDL Interest Rate
- HDL Term
- Gross LIHTC Equity
 - Gross Equity Cents on the LIHTC
- Net LIHTC Equity (Net of HDL Interest)
 - Net Equity Cents on the LIHTC
- Estimated benefit of the HDL
- Equity Pay-in Schedule
- Collateral

Interest paid on the HDL is not a direct cost to the project and cannot be reflected in the development budget. All costs associated with the HDL must be factored into the syndicator's equity contribution.

B. Application Review Schedule

Loan underwriting and processing is accomplished prior to a formal review process by OHFA management and the OHFA Board. Once formal underwriting has begun, the applicant will be sent a list of questions and any requests for credit-worthiness information by the project analyst. The project will not move through the approval process until all of the information requested by the analyst has been received and reviewed. Once the project is reviewed by the Office of Multifamily Housing it will be presented to the OHFA Multifamily Committee and then OHFA Board for approval.

Previously-approved HDLs:

If a loan has been approved but not yet closed, any requests for changes which are subject to OHFA Board approval must be provided to OHFA staff 30-days prior to the OHFA Peer Review meeting to be considered for approval in the same month.

III. Reservation and Loan Closing

A. HDL Commitment Letter

Following OHFA Board approval, OHFA will provide the borrower with a conditional commitment letter outlining terms and conditions along with the tentative amortization schedule and executive summary. The letter will also include an expiration date before which the project must close on the HDL.

The commitment letter must be signed by the borrower and returned to the project analyst within 30-days from the date of the letter.

Extension of Loan Commitment

To extend a commitment beyond the expiration date stated in the commitment letter, the borrower must submit a formal written request to OHFA at least seven business days prior to the commitment's expiration date.

Reinstatement of Loan Commitment

If a commitment expires, or if the borrower fails to notify OHFA regarding an extension at least seven working days prior to a commitment expiration date, the borrower must submit a formal written request to have the commitment reinstated, which must include:

- The project name and tracking number;
- The reason the additional time is necessary;
How much additional time will be necessary;

If the request for reinstatement is approved, the borrower must submit a Loan Commitment Extension fee in addition to a Loan Commitment Reinstatement fee. Once the fees have been received by OHFA, the commitment will be automatically extended for 12 months.

B. Loan Closing

In order to initiate the process of closing the HDL, the borrower must submit a written request for closing to OHFA's legal counsel. Requests should be made 60 days in advance of the desired closing date.

OHFA will send the borrower a closing checklist, which will detail all of the standard supporting documentation required for the loan closing along with any required additional closing conditions unique to the project. Closing documents will not be drafted and a closing date will not be established until all required due diligence has been received and reviewed by OHFA's legal counsel, and all applicable fees have been paid.

Contact information for OHFA legal counsel and sample closing checklists can be found on the [OHFA Loan Closing webpage](#).

Permanent Financing – Closing Requirements

Projects not utilizing the HDL during construction must close on permanent financing prior to or concurrent with the closing of all other permanent financing sources and OHFA must have received a fully completed request for Form 8609.

If extenuating circumstances prevent this, the borrower must notify OHFA in writing, indicating both the reasons for the delay and the anticipated closing date. Acceptable circumstances that would permit delay include federal insurance or quasi-federal agency insurance to be placed on a loan subject to satisfaction of standard conditions, such as stabilized occupancy. Standard conditions of non-insured loans and mini-perms are not acceptable. Projects will be monitored monthly as to the status of the permanent financing. However, the collateral for the HDL must be in place and secure before the applicant may close on the award.

For projects that do not have federal insurance or quasi-federal insurance, OHFA will review requests to waive this requirement on a case-by-case basis and will approve only in extenuating circumstances. However, the project will be required to provide a firm commitment letter from the permanent lender which states when the loan will close and any conditions that must be met prior to closing. The project must provide evidence that they will be able to meet all conditions within 30 to 45 days of closing the HDL. OHFA will not make any decisions until such documentation has been reviewed.

IV. Notification of Project Changes

A. Prior to loan closing

The owner is required to contact OHFA immediately in the event any changes occur to a project after it has been approved by the OHFA Board including, but not limited to, changes in the development team (ownership structure, developer, general contractor, limited partner, and/or management company), the unit mix or affordability, nature of the project, etc.

The owner must submit a formal written request to the Housing Tax Credit Manager explaining the proposed change and why it is being made. OHFA will review the request, along with any supporting documentation, and issue a decision. If the OHFA staff determines the change is substantive, then it must be reviewed by the OHFA Board. Once a decision has been made, the project owner will be notified by mail.

Loss of other OHFA funding

Should the project lose OHFA program funding (LIHTC, HDAP, etc.) the HDL commitment will be revoked.

B. After loan closing

The borrower must notify OHFA in writing of any changes in address for the borrower, change of key personnel and/or change of ownership entity during the term of the HDL.

Correspondence concerning the above matters should be directed as follows:

*Ohio Housing Finance Agency
Chief Financial Officer
57 East Main Street
Columbus, OH 43215-5135*

V. Term Extensions

Term extensions will be granted for no less than a three-month period. Projects will be invoiced for the full amount of interest resulting from extended terms. However, if the loan is repaid prior to the end of the extension, a refund will be issued for any full month(s) remaining of the extended term. If the term extension affects the commitment period for a subsequent loan, OHFA must receive a request to extend this commitment. Any combination of the above loans cannot exceed 120 months (10 years) in length.

A request for an extension does not guarantee approval. Requests are reviewed on a case-by-case basis based on the information provided and are subject to OHFA Board approval.

If the borrower fails to notify OHFA within five business days of the maturity date of the loan and the loan matures prior to OHFA's approval of the extension, OHFA may assess a penalty fee.

Appendix A

Sample Equity Commitment Letter

Developer/Owner Name
Developer/Owner Address

RE: **Partnership Name**
Project Name

Dear Mr./Ms.:

Thank you for the opportunity to present this letter of intent to make an equity investment in your Partnership, subject to preliminary and final investor approval. This letter of intent sets forth the terms and conditions to syndicate the above noted project in _____ County.

Based upon the amount of Low-income Housing Tax Credits (LIHTC) you will be requesting from the Ohio Housing Finance Agency (OHFA), <**Syndicator name**> is willing to purchase 99.9% of the LIHTC.

The OHFA Housing Development Loan (HDL) being requested is in the amount of \$1,250,000 and carries a 2.5% interest rate. Collateral being offered will be Qualified Investor Note(s) acceptable to OHFA. Funding of the HDL will occur upon <**stabilization of the property and is considered to be permanent financing**>/<**construction commencement and will transition to permanent financing on the second anniversary of the loan closing**>. Repayment of the HDL is outlined in the Pay-In Schedule below.

We have prepared this letter of intent under the following terms and assumptions:

- LIHTC Allocation: \$
- Net LIHTC Equity: \$
- Net Equity Cents on LIHTC: \$
- Gross Equity on LIHTC: \$
- Gross Equity Cents on LIHTC: \$
- Estimated Benefit of HDL Loan: \$

NOTE: Net equity reflects the contribution net of any OHFA Bridge Loan Interest.

Net Equity Pay-In Schedule

- End of Year 1: \$174,334
- End of Year 2: \$174,334
- End of Year 3: \$174,334

End of Year 4: \$174,334
End of Year 5: \$174,334
End of Year 6: \$174,334
End of Year 7: \$174,334
End of Year 8: \$174,334
End of Year 9: \$0
End of Year 10: \$0