County of Loudoun
Rental Housing Acquisition and Preservation Loan Program Guidelines

January 18, 2022

RENTAL HOUSING ACQUISITION AND PRESERVATION LOAN PROGRAM GUIDELINES

Purpose of the Program

The purpose of the rental housing acquisition and preservation program (the "Program") is to provide loans to help finance the acquisition and preservation of existing multi-family rental housing developments within the County to help address the unmet rental housing needs of County households and to preserve market affordable housing and rent restricted housing in danger of conversion to market-rate housing. The County of Loudoun Board of Supervisors (Board), through the Program, serves as a gap lender. Loans are intended to assist developers with gap financing, not to pay the entire cost of acquisition. An application must achieve a leverage ratio of 1:4[1].

The Program may provide loans to assist funding the acquisition of the following types of projects:

Multi-family affordable rental housing units in the County with existing rent restrictions such as the Low Income Housing Tax Credit (LIHTC) program, where affordable is defined at units renting to households with incomes 60% Area Median Income (AMI) or below, or multi-family rental housing in the County whose rents are considered market affordable, even with no existing rent restrictions. Market affordable is defined for this Program as units renting to households with incomes at 80% AMI or below.

The Program will assist in funding the preservation of affordable or market affordable rental housing in the County, at the discretion of the Board. Loan funds may be used for real estate acquisition costs[2] directly linked to preservation of market affordable or affordable rent restricted units.

Preservation requires ensuring the ongoing availability of affordable or market affordable multi-family rental units on currently built property. Preservation also requires ensuring a minimum 30-years affordability period moving forward after acquisition. A plan for how existing tenants will be served must be provided with any application.

The Program may not be used to finance operating expenses, social services, project reserves (unless required by lender/Virginia Housing (VH)), hard or soft cost contingencies, developer fees, builder's profit, syndication related costs, construction management fees, fees for non-development related services, financing consultant fees, or financing fees.

Loan applications for a mixed income project (projects that include rental units to benefit households with income higher than 80% AMI) or a mixed-use project are eligible for assistance, though loan

[1] Leverage is calculated as (Total Development Costs – County loan request)/County loan request.

[2] These costs may include appraisals, purchase agreement deposits, option payments, other site control or acquisition costs, on a reimbursement basis, and for the acquisition price of the site and/or repayment of loan(s) that originally financed the purchase of the site.

funds will only be used to support affordable rent-restricted or market affordable units.

Eligible Loan Applicants

Eligible loan applicants must be on the list of Certified Developers. The Office of Housing will issue a Pre-Qualification Opportunity to create a pool of certified developers. An interdepartmental staff team will review the submissions and present a list of potential certified developers to the Board of Supervisors for approval. This group of developers would be able to apply to the Rental Housing Acquisition and Preservation Loan program for gap financing. The goal would be to streamline the application process by creating a pre-approved group of Certified Developers. Certification and eligibility would be in place for 12 months; a Pre-Qualification Opportunity would be issued annually, not later than June 1 every year. A developer must be on the certified list in order to apply for a loan.

Funding Availability

The Program may be funded by appropriations from the Board. Applications will be accepted on a rolling basis. Once loan funds are fully committed, the Program will not accept new loan applications until the Board authorizes new funding for the Program and/or loan repayments create sufficient funding for a new round of applications. When funds have been committed down to or below the $1 million level, the Program will pause pending appropriation of additional funding.

Loan Application Review Criteria

Funding decisions will be made based on the merits of each loan application in accordance with the Guidelines, the County Priorities for the Rental Housing Acquisition and Preservation Loan Program including as part of the review criteria for the Program, and the availability of resources in the Program. Loans may be approved by the Board for less than the full amount requested in the loan application, and if multiple developers apply for acquisition loan funds for the same property, County priorities may be used to compare proposals.

Highest consideration will be given to loan applications that demonstrate, based on information provided in the loan application, (i) that the project will result in the greatest number and highest quality of affordable units to serve County households at the greatest need in the most economically sustainable way, (ii) that the existing rental housing is located proximate to employment, transit and other amenities, which is a high priority for the County, and (iii)evidence of a shorter repayment period for the loan.

All applications will be reviewed, if complete, and presented to the Board for consideration. However, the County reserves the right to disqualify or qualify any project for justifiable reasons that were not contemplated when these Guidelines were established.

Gap Financing

The Board serves as a gap lender. Loan applicants must demonstrate that they are seeking and will continue to seek other financing sources in their loan application. The amount of the loan cannot be higher than the minimum amount necessary to make the acquisition feasible, with a minimum leverage of 1:4. The loan applicant shall structure the loan request to maximize the long-term affordability and sustainability of the affordable rental housing project receiving assistance from the County, as well as to encourage opportunities that include participation from other public and private funding sources. A priority for the Board in awarding the loan is the ability of the developer to leverage the County's funds to secure private investment and other federal, state, and local sources of financing and to strategically preserve market affordable or affordable rent restricted housing.

Rent Restrictions

The goal of this program is to either maintain existing affordable rental units through new restrictive covenants or to create new rent-restricted units. At a minimum, the loan application must offer that after acquisition at least 20% of the units shall be affordable to households with incomes at 50% AMI or 40% of the units shall be affordable to households at 60% AMI. The Rent-Restricted Units must be distributed by unit size, amenity mix, and income affordability throughout the entire Project, and the rent-restricted units will float as needed. Rent may be increased annually based on AMI increases as published by the U.S. Department of Housing and Urban Development (HUD).

Loan Application Package

The loan application package must contain the components listed in the Application Requirements. The loan application package shall contain any material documents, records, or other information deemed necessary by the loan applicant for the County staff and the Board to review and evaluate the loan application.

The obligation of the loan applicant to provide documents, records, or other information requested by the County for the County to review the application continues throughout the loan application review process. Applicants will be asked to update the budget and pro-forma through the time of loan approval and loan closing.

Acquisition and Preservation Costs

The acquisition and preservation costs of the multi-family rental housing development to be partially financed with the loan must be within a reasonable range. Funds can be used for site acquisition costs such as appraisals, purchase agreement deposits, option payments, other site control and acquisition costs, on a reimbursement basis, and/or for the acquisition price of the site and/or repayment of loan(s) that originally financed the purchase of the site (i.e. take-out financing).

Staff will determine if the purchase price is reasonable based on the sale contract price, accepted bid, and "as is" appraised value of the property. Staff may also be guided by the opinion of value rendered by the County's Commissioner of the Revenue, or designee, and/or the underwriter.

Funding per Project and Terms

The loan amount is based on the demonstrated gap financing needed for the loan and the availability of funding in the Program, and the level at which the proposed project meets County affordable housing needs as identified in the Guidelines. Loan funds will be disbursed at closing.

- Interest rates on the loan will be simple interest at a fixed rate of interest guided by the 10-year Treasury bill rate, as set 60 days prior to closing of the County loan or closing of the VHDA/HUD or primary loan, if prior to closing of County loan and required by either VHDA or HUD, as applicable. The County recommends using a 2% interest rate in the funding application.
- Loans must be repaid through 75% of cash flow. The cash flow split may be negotiated depending upon use of LIHTCs and if a deferred developer fee is planned.
- The length of the loan shall not exceed 30 years at any point in time; a balloon payment at the end of the 30 years may be considered as part of a refinance or recapitalization.
- The loan must be instrumented as a promissory note payable to the County, secured by a deed of trust on the multi-family rental housing development.
- The notes and respective deed of trust will be subordinated only to the primary lender, with a secured priority no lower than second position with respect to any lender at all times.
- Along with the deed of trust, the borrower must execute a declaration of covenants, in a form suitable for recordation among the land records of the Loudoun County Circuit Court, providing for the number of affordable rental units to be preserved or created with the loan.

Equal Housing Opportunity

All projects receiving loans from the County must comply with applicable Equal Housing Opportunity and Fair Housing laws.

Loan Repayment Schedule and Affordability Period

The County will approve loan terms where repayment is feasible and does not jeopardize the affordability and sustainability of the proposed affordable housing project. The County expects the loans on the Property to be short-term bridge loans. Notwithstanding, the loans may have a maximum 30-year term. Loan applicants must demonstrate the ability to repay the loan based on the terms of the loan. The rent restrictions shall apply while the loan funding is outstanding.

The loan will be due and payable in the event of a sale or refinance of the project, unless the Board, at its discretion, previously agrees to the transaction. Notwithstanding, the County will not call the loan due and payable if the sale or refinance of the project, as applicable, is the result of a restructuring agreement between the developer/operator/manager of the project and first lender, VH or HUD, as applicable, as long as (i) the County is informed in advance by the developer/operator/manager of the project of their reaching out to VH or HUD and (ii) the secured priority of the County's loan remains intact with respect to any lender.

The County expects regular loan payments on an annual basis from net cash flow from the operations of the affordable housing development. Repayment terms may include, on a case by case basis: negotiation of the net cash flow split in terms of the loan repayment while the deferred developer fee is being paid and negotiation of the interest rate; and if applicable, that the cash flow is sufficient to pay not only interest on the loan, but also to start paying principal by no later than the end of 10 years after closing of the loan.

Net cash flow shall specifically include, but not be limited to, the amount by which gross revenues exceed annual debt service payments, approved operating expenses, and payments to the capital replacement reserve. Any other fees or payments in excess of what is stated here must be paid from the applicant's portion of residual cash flow.

Regardless of the structure of the loan, the County expects and requires repayment of the loaned amount in full and on an annual basis. The outstanding balance of the loan (unpaid principle and accrued interest) is due at the end of the loan term.

Long-term affordability is the County's preference; long-term affordability means no less than a thirty (30) year affordability period. The Board may approve a shorter affordability period, if it aligns with and results in shorter loan repayment terms. Additionally, the applicant must sufficiently demonstrate the business reasons for this shorter affordability. The affordability period will not be shortened, or the affordability covenants will not be released, should the loan be paid off ahead of schedule.

LIHTC Financing

All loan applicants proposing projects that will use VH LIHTC and/or HUD 221(d)(4) financing must present a plan for the project that addresses the period after the initial 15-year compliance period. Loan applicants must agree to maintain affordability for at least 30 years (to include the first 15-year compliance period and a minimum 15 year extended affordability period) by waiving the right to seek a qualified contract for project purchase at the end of the 14th year of the compliance period.

Project Monitoring

The County has the right to inspect and monitor the affordable multi-family rental housing development, including gaining access to the management and financial records of the borrower and, if applicable, VH LIHTC and HUD required reports to determine compliance with household income and rental restrictions, restrictive covenants, and terms and conditions of the loan. The requirement to provide information continues throughout the term of the loan and includes any documents requested by the County to support calculations of cash flow, reporting to other lenders or investors, and any other document, report, or information relevant and material to the loan, whether or not the County has requested it. These documents shall be submitted to the County no less than annually, as requested.

Application Process

All funding decisions will be at the discretion of the Board. The loan application process will be managed by the Loudoun County Office of Housing, assisted by other County staff to include staff from the Departments of Finance and Budget, the Treasurer's Office, and the County Attorney's Office. The review process may also include review by County leadership to ensure coordination.

Applications are accepted on a rolling basis from certified developers.

All content or process-related questions must be submitted in writing to Rebekah King, Housing Finance Project Manager, at rebekah.king@loudoun.gov. All general questions and answers, excluding confidential information exempt from disclosure under Virginia law, may be posted to the County's Notice of Funding Availability webpage.

1. Loan approval will be based upon Board discretion, funding availability and the criteria in these Guidelines, which has been designed to measure the affordable housing project and its overall value to increase the County's affordable housing supply. Staff may present project types or loan parameters not currently envisioned in the Guidelines to the Board for approval if flexibility would support a strategic housing acquisition.

2. Applicants must contact the Housing Finance Project Manager and request a pre-application meeting prior to submitting an application.

3. A **complete** loan application must be submitted, in order to be considered.

4. Once the loan application is submitted, the loan applicant will receive written confirmation of receipt of the application and will be notified within 5 business days by the Office of Housing of loan application completeness. Once a loan application has been submitted to the County, it cannot be changed, modified, or supplemented by the loan applicant, without prior written approval from the Office of Housing. After a loan application is considered complete, staff will work to include the loan application for review by the Finance/Government Operations and Economic Development Committee (FGOEDC) and the Board at the next possible meetings.

5. Any changes to the terms contained in the loan application due to financing adjustments required by the lender, VH or HUD need to be communicated to the County as soon as possible with updated documents/records. Material revisions to the loan application that reduce the number of units or the support services to be provided, or the targeted population to be served, must be approved in writing by the County or may result in the rejection of the loan application.

6. A professional underwriter, under contract with the County (Underwriter), may also evaluate the loan application for risk and feasibility of the proposed project and repayment to the County, and provide a professional assessment about the viability of each application to County staff and the Board.

7. County staff will be in regular communication with applicants, and meetings with County staff

may be scheduled, as needed, on a case-by-case basis.

8. County staff will review and evaluate each application based on the criteria in these Guidelines, and the underwriter's assessment, and will develop a written recommendation to the FGOEDC and the Board.

9. Final funding decisions are made by the Board. Approved loan(s) will be available for closing within thirty (30) business days after the Board's approval.

10. An applicant must submit 1 original and 1 hard copy of the loan application, including attachments, as well as an electronic copy via email, including attachments. The loan application shall be mailed to:

    Office of Housing
    Attn. Acquisition Loan Program
    P.O. Box 7000
    Leesburg, VA 20177
    rebekah.king@loudoun.gov

11. Before closing of an approved loan, or during the life of an approved loan, the County Administrator is authorized to make or accept technical amendments to such loan without further approval by the Board. The County Administrator is also authorized to accept clerical or administrative non-material changes to the Guidelines proposed by the Office of Housing, without Board approval (e.g. updating County department names or state agency names as necessary).

12. The term of the County loan commitment is two (2) years after approval. If the County loan does not close within two (2) years after its approval by the Board, the Board may at its discretion reassign the funds to another project in the County. The applicant may reapply to the Board for reassignment of the funds using the same loan application for the affordable housing project that was originally approved, subject to funds availability.

LOAN APPLICATION AFFIDAVIT **(to be executed and submitted along with the Loan Application Materials)**

Submit a signed affidavit acknowledging and agreeing with the items below. The affidavit must be signed by loan applicant's authorized representative on behalf of the applicant and must be dated.

1. The application contains a factual description of the project type, size, and location; population to be served.
2. The application contains a factual description of the type of support services and programs the applicant is proposing for the project, if any, with indication of the estimated number of people to be served, the purpose/benefits of the program on a per unit/person basis, the additional operating expenses included in the project associated with such program, and any financial value for the County by having such services and programs, if any.
3. The application indicates the relationship between the loan applicant and the owner of the project site and certifies that no relationship exists between the loan applicant and the seller of the project site, except as shown in this application.
4. The application identifies the total amount of funds to cover gaps in the planned financing that are being requested from the County and contains a description of how the repayment of the County loan will be prioritized, how the loan will be used and the plan for maximizing resources and minimizing costs.
5. The application contains a list of all additional funding, not secured at the time of the application, for which the applicant is seeking from non-County sources contingent and after award of tax credits, if applicable, including the name of the funding entity, type of funding, and projected application and award dates.
6. The loan applicant understands and agrees that if being financed by LIHTC (4% or 9% projects) it shall provide to the County, within 10 business days of submission to either VH or HUD, as applicable, a copy of the project's VH/HUD application for reservation, including score sheet and attachments; a copy of an updated tax credit application after VH/HUD releases its annual update of the reservation and attachment materials; and a copy of applicant's application submitted to VH, including all attachments.
7. The loan applicant understands and agrees that it shall provide to the Office of Housing an updated sources and uses, budget and proforma of the project within reasonable time before the Board considers the loan application, and the final sources and uses, budget and proforma before closing of the County loan, if approved.
8. The loan applicant understands and agrees that the County may request physical property inspections at any time during the life of the loan, upon 15 business days' notice, unless an emergency at the County's discretion.
9. The loan applicant understands and agrees that during the life of the loan, property managers shall send to the Office of Housing any documentation or reports submitted to VH or HUD, as applicable, within 10 business days of such submission, to include among others: monthly operating summary, annual owner/agent financial statements, annual budget documents, annual project information report, and annual owner certifications.
10. The loan applicant understands and agrees that during the life of the loan, the County may

request and shall get from borrower on a year-by-year basis the 12-month operating budget and reports showing total gross revenue, total operating expenses, total debt service payments, payments into the capital replacement reserve, as well as calculation and amount of County loan repayments.

11. The loan applicant understands and agrees that during the life of the loan, the County may request, and the applicant shall provide among others the following documents/records with respect to any affordable unit in the project: copies of each tenant's file, rental application, executed rental agreement (lease), rental income-restricted unit income certification form with supporting documentation, annual rental occupancy affidavit, and/or income verification.
12. The loan applicant hereby certifies that the information set forth in this application is true, correct, and complete.
13. The loan applicant understands and agrees that the information in this application may be disseminated to others for purposes of verification or other purposes consistent with the Virginia Freedom of Information Act. However, with the exception of the Virginia Freedom of Information Act, all information will be maintained, used, or disseminated in accordance with the Virginia Privacy Protection Act. The loan applicant may refuse to supply the information requested; however, such refusal will result in the County's inability to process the loan application.

The original or copy of this application may be retained by the County, even if the loan is not approved or disbursed.

COUNTY OF LOUDOUN
RENTAL HOUSING ACQUISITION AND PRESERVATION LOAN PROGRAM APPLICATION REQUIREMENTS

ALL ITEMS LISTED BELOW MUST BE INCLUDED WITH THE LOAN APPLICATION. INCOMPLETE APPLICATIONS WILL BE REJECTED.

Item	Provided (Y/N)
1. Two physical (1 original and 1 copy) and one electronic (e-mail) copy of the loan application and attachments.	
2. A summary statement of facts that explains how this project will preserve the greatest number of rent restricted or market affordable rental units to serve the County's households at the greatest need in the most economically sustainable way. At a minimum, the summary statement shall include how existing residents will be served through the transaction, whether and how the development (i) meets the transportation needs of residents, (ii) approaches Internet connection (whether broadband will be provided and its costs), and (iii) provides common facilities and other amenities available on-site and in the larger market-rate development, if applicable, and its cost. Additionally, the statement should describe development amenities and can include a discussion of the developer's experience with this type of project.	
3. Submit a signed affidavit.	
4. Loan applicant's organizational chart (if changed from Pre-Qualification as Certified Developer submission), including ownership structure identifying corporate/partnership membership in levels to show individuals' names rather than entities as ultimate owners, with percentage of interest by each level of ownership.	
5. Organizational chart of the project developer (if changed from Pre-Qualification as Certified Developer submission), including ownership structure identifying corporate/partnership membership in levels to show individuals' names rather than entities as ultimate owners, with percentage of interest by each level of ownership.	

6. Organizational chart of the proposed affordable housing project manager, including ownership structure identifying corporate/partnership membership in levels to show individuals' names rather than entities as ultimate owners, with percentage of interest by each level of ownership.	
7. One page resume of each ultimate owner listed in response to numbers 4, 5, and 6 (if additional personnel from Pre-Qualification submission)	
8. Operating or partnership agreement of ownership entity.	
9. Letter from each member of the loan applicant's team, (if not submitted with the Pre-Qualification) including but not limited to those listed in 4, 5, and 6 above, certifying that he/she is not or has not been debarred from participation in any federal program nor have any unresolved default or noncompliance issues with the County of Loudoun or the Commonwealth of Virginia.	
10. Purchase listing, bid notification, and/or site control documentation. The applicant should provide a summary description of the project's location including the immediate neighborhood, civil association, or condominium, as applicable, and the context of other development/uses in the adjacent area; the amenities and services available near the project, the distance of those amenities from the site, including access to public transit; land acquisition cost (including discount by the seller, if any), as well as explanation of other costs, besides vacant land acquisition (e.g. improvements, proffers, utilities, infrastructure), that has been included within the bid or agreed upon purchase price for the site, if any, with evidence to support such additional costs. The location information shall include: a photo of the site, a map showing street names, if the property is served by transit currently, how far away is the closest current transit stop, existing address or closest key intersections (if the property has no current mailing address), and census tract(s) of the proposed development.	
11. If rehabilitation is not occurring within the first two years of acquisition, a capital needs assessment is required.	
12. Project development budget in the form of sources & uses of funds (provided in Excel format), and proposed project schedule. The full project development budget should include the financing sources with itemized amounts (federal, other public, private entities), status of commitment, timing and intended use of all the sources, as well as, known acquisition cost, contingencies and all anticipated financing and soft cost (professional/legal/appraisal fees, developer fees, marketing costs, real estate taxes, insurance costs, any loan or financing fees, anticipated relocation expenses and consultant fees) calculated on an aggregate, per unit and square foot basis), both with respect to the total financing sources available and with respect to the County loan. Any item, including	

contingencies, with a cost of $10,000 or higher should be individually identified in the development budget. The total amount budgeted for contingencies needs to be shown as well. This section of the application should also include a list of other funding sources the developer has applied for or plans to apply for this development, whether those applications were submitted or will be submitted, as applicable, as well as estimated time for their approval or rejection. The proposed project schedule shall include pre-development, site control, development site approval (with enumeration of any known or potential challenges to development of the site), financing milestones (including use of sources received) and if applicable, construction milestones through completion, occupancy and lease up.	
13. 15 year operating pro forma, as applicable, (including aggregate & per unit amounts) (provided in Excel format). The proforma should include at a minimum: rental revenues and ancillary income, as well as expenses such as market vacancy; operating and management costs (e.g. cost/expenses associated with support services including permanent supportive housing units provided at the site); real estate taxes; all fees the applicant expects to pay from the operating budget, reserves for operating deficits (operating reserves) and any contingency amount, lease up and future capital expenses, including the capital replacement reserve; developer's and other fees and amount of the deferred fees; reserve for replacement deposits; hard debt service; the term required to fully repay the County's loan; methodology used/to be used during life of the County's loan for calculating cash flow to repay such loan, as well as waterfall for distribution/disbursement of such cash flow. Any item, including contingencies, for an amount of $10,000 or higher should be individually identified in the operating pro-forma.	
14. Letters of intent or interest for all funding sources identified in the loan application, if applicable and available. At a minimum, a narrative of all proposed funding sources and amounts must be provided.	
15. Factual or documentary evidence to support factual description of the type of support services and programs the applicant is proposing for the project, its estimated operational costs, and how those costs will be supported.	

If LIHTCs are intended to be part of the financing sources, please also submit:

1. Loan applications proposing projects developed using the LIHTC and/or HUD 221(d)(4) Affordable program must present a plan for the project that addresses the after-the-initial-15-year compliance period, which clearly describes the exit strategy for the limited partner and anticipated ownership changes; any anticipated refinancing, re-syndication, or sale to a third party; and how affordability will be maintained through the extended affordability period.	
2. Tax credit calculations (provided in Excel format).	
3. LIHTC Post-Year 15 Plan The plan must clearly describe the following: • Exit strategy for the limited partner and anticipated ownership changes; • Any anticipated refinancing, re-syndication, or sale to a third party; • How affordability will be maintained through the extended affordability period; • Measures in place to ensure any future investor transfer serves the interests/guidelines of the Program and maintains the Right of First Refusal (ROFR) agreement.	

County Priorities for Rental Housing Acquisition and Preservation Loan Program

- Long-term affordability period
- 60% AMI units and below
- Well-located in terms of employment, transit, and amenities
- Serving vulnerable populations (older adults, people with disabilities, homeless)
- Permanent supportive housing
- Development and community amenities
- Broadband for residents[3]
- Financial Feasibility demonstrated
- Existing tenant engagement[4] and plan to serve current tenants
- Developer experience
- Property management experience
- Project track record
- Partnerships with service providers
- Clear and accurate project budget
- Maximizing resources
- Developer participation[5]
- Strong leverage ratio of at least 1:4
- Reasonable income projections and operating expenses
- Repays within the loan term; shorter repayment preferred
- Assignable right of refusal

[3] At a minimum, free Wi-Fi in community spaces
[4] Tenants are being informed of ownership change and meeting or other form of engagement is planned.
[5] Developer contribution equals at least 10% of the funding request.