



## **Affordable Housing Program Subsidy Agreement For Homeownership Down Payment Products**

The Federal Home Loan Bank of Des Moines ("Bank") and \_\_\_\_\_ ("Member") enter into this Affordable Housing Program Subsidy Agreement ("Agreement"), effective January 1, 2021, which sets forth the respective duties and obligations of the Bank and Member with regard to the approval and funding of subsidies under the Affordable Housing Program ("AHP") Down Payment Products ("DPPs") by the Bank (a "Subsidy" or "Subsidies").

This Agreement shall be binding upon the parties hereto and upon any successor in interest to the parties.

1. *Notification of member.* Member has been notified of the requirements of, and agrees that any Subsidies provided under this Agreement shall be subject to:
  - a. Section 10(j) of the Federal Home Loan Bank Act (12 U.S.C. § 1421, et. seq.), the AHP regulations codified as 12 C.F.R. Part 1291 and the directives of the Federal Housing Finance Agency ("FHFA") as may be in effect from time to time, or the regulations in effect from time to time of any successor to the FHFA and;
  - b. the Federal Home Loan Bank of Des Moines *AHP Implementation Plan ("Plan")*, including the *Home\$tart and/or Native American Homeownership Initiative Program Guidelines ("Guidelines")*, and the requirements of the Bank or any successor in interest to the Bank, all of which as may be in effect from time to time. To the extent the applicable FHFA regulations are inconsistent with any term or provision of this Agreement or the Plan, said regulations shall control.
2. *Reservation of funds.* Upon execution of this Agreement by the Member and the Bank, the Member may begin reserving funds for eligible households with the Bank during each year in which the Bank makes Subsidies available. Each year's reservations are on a first-come, first-served basis. The Member may initiate the reservation of funds for a household until December 31 of each year in which this Agreement is in effect, subject to the availability of funds.
3. *Subsidy pass-through.* The Member shall pass on the full amount of any Subsidy to the household for which the Subsidy was approved.
4. *Use of Subsidy.* The Member shall use all Subsidies in accordance with the terms of this Agreement, the requirements of the applicable FHFA regulations, the Plan, the Guidelines, and such other policies and procedures of the Bank as may be in effect from time to time.



5. *Eligible households.* Members shall provide Subsidies only to households that:
  - a. Have incomes at or below 80 percent of the median income for the area at the time the household is accepted for enrollment by the Member for the DPPs, with such time of enrollment by the Member being specified in the Plan;
  - b. Complete a homebuyer or homeowner counseling program prior to closing provided by, or based on one provided by, an organization experienced in homebuyer or homeowner counseling for first-time homebuyers; and
  - c. Are receiving a Subsidy to pay for down payment, closing cost, or counseling (as long as the cost of counseling has not been covered by another funding source, including the Member) in connection with the household's purchase of an owner-occupied unit, to be used as the household's primary residence.
  - d. Are first-time homebuyers pursuant to the first-time eligibility requirement specified in the Plan.
6. *Eligible uses of Subsidy.* Households shall use the Subsidies to pay for down payment, closing cost, counseling, or rehabilitation assistance in connection with the household's purchase, including a condominium or cooperative housing unit or manufactured housing, to be used as the household's primary residence.
7. *Financing costs.* The rate of interest, points, fees, and other charges for all loans made in conjunction with a Subsidy shall not exceed a reasonable market rate of interest, points, fees, and other charges for loans of similar maturity terms and risk as defined by the Bank in its Plan.
8. *Fair Housing.* The Member shall follow all applicable fair housing regulations. Federal and State laws prohibit housing discrimination based on race, color, national origin, religion, sex, family status, or disability.
9. *Maximum Subsidy limit.* Members shall provide Subsidies to households as a grant, in an amount up to a per-household maximum established by the Bank in its Plan.
10. *Counseling costs.* The Subsidies may be used to pay for counseling costs only where:
  - a. Such costs are incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit; and
  - b. The cost of the counseling has not been covered by another funding source, including the member.
11. *Cash back to household.* A Member may not provide more than \$250 cash back to a household at closing on a mortgage loan. Member will use any Subsidy exceeding such amount that is beyond what is needed at closing for closing costs and the



approved mortgage amount as a credit to reduce the principal of the mortgage loan or as a credit toward the household's monthly payments on the mortgage loan.

12. *Repayment of subsidies in case of noncompliance.* The Member shall repay Subsidies to the Bank, including interest as determined at the Bank's discretion, that as a result of the Member's actions or omissions, is not used in compliance with the terms of this Agreement, the Plan, Guidelines or applicable FHFA regulations, unless such non-compliance is cured by the Member within a reasonable period of time as determined by the Bank.
13. *Monitoring.* The Member shall comply with applicable monitoring requirements as set forth in the Plan, the Guidelines and applicable FHFA regulations, all of which may be in effect from time to time.
14. *Progress towards use of Subsidy and time limits.* DPP reservations and disbursements shall be made pursuant to the Bank's time limit as stated in its Plan for draw-down and use of the Subsidies by the household. If progress towards draw-down and use of the Subsidies by eligible households is not made within the required time limits, the Bank may, in its sole discretion, cancel the reservation or disbursement due to lack of progress.
15. *Required provisions for retention agreements.* The required retention period with respect to Subsidies will be five (5) years for each homeowner (the "Retention Period"). The Member shall ensure that where a household receives Subsidy for purchase, purchase in conjunction with construction, or purchase in conjunction with rehabilitation, of an owner-occupied unit, the unit is subject to a deed restriction or other legally enforceable retention or mechanism. The Member is required to prepare, file and maintain in the appropriate government office a deed restriction that contains the following requirements:
  - a. *Notice.* The Bank and Member shall be given notice of any sale, transfer, assignment of title or deed, or refinancing of the unit by the household occurring during the five-year Retention Period;
  - b. *Repayment of Subsidy; exceptions.* In the case of a sale, transfer, assignment of title or deed, or refinancing of the unit by the household during the Retention Period, an amount of Subsidy, calculated in accordance with Section 12(e), shall be repaid to the Bank, unless one of the following exceptions applies:
    - i. the unit was assisted with a permanent mortgage loan funded by an AHP subsidized advance;
    - ii. the subsequent purchaser, transferee, or assignee is a very low-, low- or moderate-income household, as determined by the Bank as



determined by proxy, or actual income to be determined as set forth in the Plan;

- iii. the amount of the Subsidy that would be required to be repaid in accordance with the calculation in Section 12(e) is \$2,500 or less; or
  - iv. following a refinancing, the unit continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism as described herein and in 12 C.F.R. Part 1291.
- c. *Subsidy repayments to Bank.* Member shall use its best efforts to assist the Bank in recovering any portion of Subsidy required to be repaid under this section, and such Subsidy shall be repaid to the Bank.
- d. *Termination of Subsidy repayment obligation.* The obligation to repay Subsidy to the Bank shall terminate after any event of foreclosure, transfer by deed-in-lieu of foreclosure, an assignment of a Federal Housing Administration first mortgage to HUD, or death of the Down Payment-assisted homeowner.
- e. *Calculation of Subsidy repayment.* In any repayment of Subsidy, the Bank shall be repaid the lesser of:
- i. the Subsidy, reduced on a pro rata basis per month until the unit is sold, transferred, or its title or deed transferred, or is refinanced, during the Retention Period; or
  - ii. any net proceeds from the sale, transfer, or assignment of title or deed of the unit, or the refinancing, as applicable, minus the DPP-assisted household's investment.

#### 16. *Transfer of Subsidy obligations.*

- a. *To another member.* The Member shall make best efforts to transfer its obligations under the approved reservation for Subsidy to another member in the event of its loss of membership in the Bank prior to the disbursement of Subsidies.
- b. *To a nonmember.* If, after disbursement of a Subsidy to the Member, the Member undergoes an acquisition or consolidation, resulting in a successor organization that is not a member of the Bank, the nonmember successor organization assumes the Member's obligations under its approved reservation/disbursement for Subsidy.



17. The failure by the Bank to exercise any right or privilege granted to it under this Agreement shall not operate as a waiver of that right or privilege.
18. This Agreement and all matters incorporated herein by reference constitute the entire Agreement and understanding between the parties hereto relating to the subject matter hereof and supersedes all prior discussions, understandings and agreements, written or oral, between the parties that relate to such subject matter. Any modifications to this Agreement shall not be valid unless it is in writing and signed by both parties hereto. Words used in this Agreement shall be interpreted according to their ordinary and usual meaning, despite and excluding any trade, custom, or usage to the contrary.
19. This Agreement shall be governed by the Federal Home Loan Bank Act, the rules, regulations, guidelines, and statements of policy of the FHFA and, except to the extent inconsistent therewith, the laws of the State of Iowa without giving effect to the choice of law principles therein included. The parties expressly agree that any action or proceeding with respect to the performance or non-performance of any term or condition contained herein which is brought by or against the Bank shall be resolved by the United States District Court for the Southern District of Iowa or, if such action or proceeding may not be brought and maintained in said court, by an appropriate district court of the State of Iowa for the County of Polk.
20. Should any provision of this Agreement be held invalid or unenforceable, the remainder of this Agreement shall remain in effect.

The parties accept the terms and conditions of the funding as set forth herein by executing this Agreement in the space set forth below. In indicating their acceptance of the terms and conditions of the funding set forth herein, the parties also represent and warrant that they have full corporate power and authority and have received all corporate and governmental authorizations and approvals as may be required to enter into and perform their obligations under this Agreement and that at all times they will adhere to the terms and conditions set forth herein.

Agreed to Accepted (Bank)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Community Investment Department

For: Federal Home Loan Bank of Des Moines

Agreed to and Accepted (Member)

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Member Name: \_\_\_\_\_

FHLB Des Moines Member #: \_\_\_\_\_