



**WHEDA**

# **Vacancy to Vitality Loan (Act 18) Award Plan**



**VACANCY-TO-VITALITY**

Revised March 03/27/24

WISCONSIN HOUSING AND ECONOMIC DEVELOPMENT AUTHORITY

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# Defined Terms

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The “**Act**” - Wis. Stats. §234.662, created by the enactment of 2023 Act 18.

**AMI** - the area median income as published by the U.S. Department of Housing and Urban Development for the county where the Eligible Project is located, with family size determined using the federal imputed income limitation, as defined in 26 USC 42 (g) (2) (C).

**Completed Project** - a Residential Housing Development developed in connection with an Eligible Project that was financed, in part, with the Program.

**Eligible Political Subdivision** - the city, village, town, or county having jurisdiction of an Eligible Project if all of the following apply:

1. On or after January 1, 2023, the political subdivision has reduced the cost of Residential Housing in connection with the Eligible Project by voluntarily revising zoning ordinances, subdivision regulations, or other land development regulations to increase development density, expedite approvals, reduce impact, water connection, and inspection fees, or reduce parking, building, or other development costs with respect to the development of Residential Housing supported by the Eligible Project;
2. the political subdivision is in compliance with the requirements under Wis. Stats. § 66.1001, 66.10013, and 66.10014, to the extent those requirements apply to the political subdivision; and
3. the political subdivision updated the housing element of its comprehensive plan under Wis. Stats. § 66.1001 (2) (b) within the 5 years immediately preceding the date of the loan application.

**Eligible Project** - construction project for the conversion of a commercial building to a new Residential Housing Development that consists of Workforce Housing or Senior Housing if all of the following apply:

1. the building has been Vacant for at least one year or has been Underutilized, as determined by WHEDA;
2. the building’s current zoning permits a residential use;
3. the building has not been the subject of a claim for a state or federal historic rehabilitation tax credit, as determined by WHEDA; and
4. the building has not received financial assistance from tax increments generated by an active tax incremental district.

**General Set-Aside** - award set aside for Eligible Projects that do not qualify for the Senior Set-Aside or the Small Community Set-Aside.

**LURA** – Land Use Restriction Agreement between WHEDA and the developer of an Eligible Project and/or owner of a Completed Project, documenting one of the following:

1. for multifamily housing, the tenant income restriction and affordability requirements as required by Wis. Stats. §234.662; or
2. for single family housing, the owner income and affordability requirements applicable to the initial purchaser, and the limitations on subsequent sale of the single-family housing, as required by Wis. Stats. §234.662.

The **“Program”** – the revolving loan fund and loan program established by the Act.

**Residential Housing** – single-family or multifamily housing for rent or sale that is subject to taxation under Wis. Stats. Ch. 70.

**Residential Housing Development** – Residential Housing that consists of 16 or more dwelling units.

**Senior Housing** – as defined in Section Wis. Stats. § 234.662(h), housing that is intended and operated primarily for occupancy by at least one person 55 years of age or older per dwelling unit, as determined by WHEDA) and meets the tenant income and affordability restrictions applicable to Workforce Housing.

**Senior Set-Aside** – award set aside for Eligible Projects comprised of residential housing that satisfies the definition of Senior Housing.

**Small Community Set-Aside** – award set aside for Eligible Projects located in cities, villages, and towns with populations of less than 10,000 people.

**Underutilized** – a commercial building will be defined as underutilized based on vacancy requirements (50% or more vacant per sq. ft.), or intermittent uses.

**Vacant** – a commercial property or building, not occupied, or put to use by an owner or possessor for at least one year.

**Workforce Housing** – Residential Housing that satisfies all of the following, as determined by WHEDA:

1. for housing intended to be rented, the estimated annual housing costs, as defined under Wis. Stats. §16.301 (3), do not exceed, or are not expected to exceed, 30 percent of 100 percent of AMI, and the utility-related costs if not included in the rent equal the utility allowance determined by the U.S. Department of Housing and Urban Development;
2. for housing intended to be occupied by the owner, the estimated annual housing costs, as defined under Wis. Stats. §16.301 (3), do not exceed, or are not expected to exceed, 30 percent of 140 percent of AMI;
3. for housing intended to be rented, the housing is for occupancy by individuals whose annual household income does not exceed 100 percent of AMI; and
4. for housing intended to be occupied by the owner, the housing is for purchase by individuals whose annual household income is not more than 140 percent of AMI.

# Introduction

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Thank you for your interest in the Vacancy-to-Vitality Loan Program. This new funding source allows a developer to apply for subordinate financing that covers the construction costs associated with converting a Vacant or Underutilized commercial building into Workforce Housing or Senior Housing. Both rental and for-sale homes are eligible under the Program if they meet the affordability requirements outlined in the term sheet. Funding will be provided by WHEDA through a low-interest loan that is subordinate to other funding sources, as described in the Act. Please refer to the term sheet for origination fees, loan structuring fees, and application fees.

## Program Details

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The total amount to be awarded by this Program is \$100 million. \$30 million will be for the Small Community Set-Aside and \$25 million will be for the Senior Set-Aside. If a project qualifies for the Small Community Set-Aside and Senior Set-Aside, it counts towards both.

Please refer to the term sheet for the maximum financing that will be awarded to any one project.

WHEDA will allocate the funds on a semiannual cycle.

For the initial award cycle, WHEDA intends to allocate a maximum of \$12,500,000. The maximum allocation noted in the initial award cycle allows cities, villages, towns, or counties to come into compliance with requirements of the Act that are prerequisites for projects within their jurisdiction to qualify for funds. WHEDA reserves the right to modify the amount of funding to be allocated in future funding cycles based on actual or projected demand.

### Timeline for Applications and Awards

Annual Schedule	Cycle 1	Cycle 2
Application Deadline	April	October
WHEDA Publication of Preliminary Awards	June	December

### Application Deadline

WHEDA will prepare and make an application available to all interested applicants via its electronic application system known as ProCorem. The application will include a prescribed form and a list of required additional documentation. All initial and subsequent applications must be submitted via ProCorem. WHEDA will accept applications according to the calendar noted above. All applications must be submitted electronically by 12:00am (Central time) of the last day of the application deadline.

# Application Review

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WHEDA will review all applications for completeness and meeting the minimum threshold to comply with the Act, including, but not limited to, the following:

1. the application is complete with all required additional documentation and threshold items;
2. the application is for an Eligible Project;
3. WHEDA will not subordinate loans made through the Program to the following types of financing:
  - a. Lease-to-Own/Land Contracts;
  - b. Loans that WHEDA determines to be out of market or unreasonable;
  - c. Mortgages with cash flow dependent repayment - WHEDA will only subordinate to must pay and other subordinate loans;
  - d. Floating rate / adjustable rate mortgages will be analyzed on a case by case basis with the goal of maintaining 1.0 debt service coverage ratio; and
  - e. Subordination agreements that would impact WHEDA's ability to enforce its LURA's affordability requirements.
4. WHEDA will record a LURA against the property at closing. In the event of a foreclosure of the first-lien mortgage, the LURA will be released.
5. the developer has secured all applicable federal, state, and local government permits or other approvals for the Eligible Project;
6. the developer has secured and provided proof of the necessary financial resources for the total cost of the Eligible Project not to be covered by a loan from WHEDA under this Program;
7. the Eligible Project is located within an Eligible Political Subdivision;
8. the Eligible Political Subdivision, in cooperation with the developer, shall submit to WHEDA a cost reduction analysis in a form prescribed by WHEDA and signed by the developer and the head of the Political Subdivision's governing body that shows the cost reduction measures, including time saving measures, undertaken by the political subdivision on or after January 1, 2023, that have reduced the cost of Residential Housing in connection with the Eligible Project. The signed analysis shall clearly show for each time saving or cost reduction measure the estimated time or dollar amount saved by the developer and the estimated percentage reduction in housing costs;
9. Environmental Assessments have been provided in accordance with the term sheet.; and
10. all units must meet Workforce Housing requirements. For rental units, affordability must be maintained from the date of loan closing or initial occupancy, whichever comes last, and continue thereafter for the longer of 10 years or full repayment of the loan. For housing intended to be owner-occupied the 10-year affordability period commencing immediately after the developer closes on the sale of the housing to the initial owner-occupier.
11. These funds are not eligible for use along with claimed state or federal historic rehab tax credits or assistance due to active Tax Incremental District (TID).

## **Financial Feasibility Threshold**

1. The total loan to value must meet the requirements outlined in the term sheet.
2. The Eligible Project must meet the debt service coverage ratio as outlined in the term sheet.
3. WHEDA will rely upon senior lender's underwriting, review and approval as it relates to determination of creditworthiness of the developers. If WHEDA is the primary lender, underwriting standards for similar loan product will be followed in determining creditworthiness.
4. WHEDA will require guarantees as outlined in the term sheet.

## **Cure Period for Threshold Items**

There is no cure period for any material item. Applicants are encouraged to apply for the next cycle in six months.

## **Prioritization If Limited Resources**

1. Credit risk, collateral, and the need for a loan guarantee.
  - a. Credit Risk to be determined by analysis of credit reports, personal financial statements, and corporate financial statements that are pulled by the Eligible Project's senior lender.
  - b. Collateral to be analyzed by the loan-to-value ratio including WHEDA financing.
  - c. Need for one or more unlimited personal guarantees is dictated by the Act; Eligible Projects that do not require a guarantee will have a higher priority.
2. Estimated reduction in housing costs.
  - a. Eligible Projects resulting in a higher reduction of housing costs will be prioritized. Housing cost reductions will be determined by analysis of the Cost Reduction Analysis submitted with the application.
3. Need for Workforce Housing in the area.
  - a. Need for Workforce Housing to be demonstrated in a market study or the housing section of the comprehensive plan.

# Award Process

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1. WHEDA will publish a list of awarded applications at the conclusion of each award allocation round. The list will include the set-aside category and the amount of each loan awarded to an Eligible Project.
2. Commitment letters outlining the awarded amount and loan terms will be sent to developers.
3. Upon execution of commitment letters, WHEDA staff and developers will engage in the loan closing process.

## Closing Process

1. Following receipt of a fully executed commitment letter and upon notice from the developer that the Eligible Project is ready to proceed to closing, WHEDA will generate a closing checklist for the developer.
2. WHEDA will generate and distribute loan documents for the developer's review.
3. Developer will be required to deliver all diligence items outlined on the closing checklist to WHEDA for review and approval prior to closing.
4. Once all items required under the loan closing checklist are complete, and the loan documents are in final form, the transaction will be ready to close.
5. The developer will work with WHEDA to generate a sources & uses statement in WHEDA's form at closing along with a title company settlement statement. Any expenses to be paid at closing must be supported by invoices and any requests for reimbursement to developer must be supported by invoices and check copies evidencing prior payment.
6. Once the developer's original signatures to the loan documents have been received by WHEDA, WHEDA will then deliver its executed recordable loan documents to the title company at closing, and WHEDA will wire any funds to title to be disbursed on the day of closing.

## Draw Process

WHEDA will develop a Draw Process utilizing a construction escrow agent, or title company.



# Compliance Monitoring Process

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WHEDA will monitor all Completed Projects to determine whether they are complying with the requirements of the Program.

## Compliance Monitoring for Rental Units

All Completed Projects that create rental units are required to comply with the following regulations:

1. The compliance period will run the date of loan closing or initial occupancy, whichever comes last, and continue thereafter for the longer of 10 years or full repayment of the loan as outlined in the LURA.
2. The owner of a Completed Project must keep records, including prescribed unit and tenant data, for each year in the compliance period. They must also annually submit to WHEDA a certification of continuing compliance. In addition, WHEDA has the right to perform physical inspections of any Completed Project and associated files through the end of the compliance period.
3. Annual monitoring fees will not be charged to the Owner for this Program; however, late charges will be assessed for documentation not received by the due date. WHEDA will only accept payment via ACH agreement. All Completed Projects must complete and keep current an ACH agreement with WHEDA.
4. For additional detail regarding WHEDA's compliance procedures and requirements, please visit the Program's Rental Units Compliance Guide.

## Compliance Monitoring for Owner-Occupied Housing

All Completed Projects that create **owner-occupied housing** are required to comply with the following regulations:

1. Initial Purchase Price Limitation – the initial purchase price is limited to an amount such that the estimated annual housing costs, as defined under Wis. Stat. § 16.301 (3), do not exceed, or are not expected to exceed, 30 percent of 140 percent of the area median income, with family size determined by assuming 1.5 individuals for each separate bedroom. WHEDA will provide additional guidance on how to calculate the estimated annual housing costs.
2. Income Limit of the Initial Owner-occupier – the initial owner-occupier's annual household income may not be more than 140 percent of the area median income, adjusted for the actual family size of the initial owner-occupier.
3. Use Restrictions – for a 10-year period commencing upon the sale to the initial owner-occupier, the following restrictions apply:
  - a. the housing must remain owner-occupied;
  - b. the housing may only be sold to an owner-occupant (not for rental); and

- c. the housing may not be sold for a price that exceeds the price charged by the developer to the initial owner-occupier, adjusted annually by the average compounded annual percentage increase in the sale price of all residential housing in the county in which the housing is located, as determined by WHEDA, and published on its website.

These Use Restrictions shall be contained in the LURA and recorded against the housing with the applicable register of deeds and shall run with the land.

### **Administration and Modification of the Plan**

This initial Award Plan has been approved by WHEDA's Product Development Committee, Internal Loan Committee, and Members Loan Committee.

WHEDA's Director of Commercial Lending shall oversee the implementation, administration and interpretation of this Plan by WHEDA staff, including: the preparation of forms of all applications, certifications, scoring sheets and other documents; and the implementation of fair and reasonable processes for consideration of objections that may be raised by applicants to decisions made by staff who administer the Program.

WHEDA's Members Loan Committee may amend this Plan from time to time to implement policy or program changes that the Committee deems to be in the best interests of the citizens of the State of Wisconsin.

The Director of Commercial Lending may amend this Plan to implement administrative changes, and technical corrections.

### **Noncompliance**

WHEDA will have all rights and remedies typical under a commercial loan. Additionally, WHEDA will have the right of specific performance resulting from noncompliance with the LURA's requirements.

# Statement of Policy

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WHEDA is given the discretion to determine the appropriate amount of a loan made to Eligible Projects selected under the Program, so long as such amount does not exceed \$1,000,000 per Eligible Project or 20 percent of the total project costs, including any land purchase, whichever is less.

WHEDA is responsible for allocating only the amount of funding to a given Eligible Project required to make that Eligible Project economically feasible. This decision shall be made solely at the discretion of WHEDA, but in no way represents or warrants to any person that the Eligible Project is, in fact, feasible or viable.

The Program must:

1. set criteria used to determine that the occupants meet AMI; and
2. when awarding a loan under the Program, prioritize the following in descending order:
  - a. credit risk, collateral, and the need for a loan guarantee;
  - b. the estimated reduction in housing costs, and
  - c. the need for Workforce Housing in the area.

The Program may also include other criteria WHEDA deems appropriate and, except for the inclusion of the specified preference items, WHEDA has discretion with respect to the relative weight of these criteria as determined by WHEDA.

WHEDA will implement a procedure to monitor for noncompliance of the occupants' income limits, notify the owner of the Completed Project of noncompliance and monitor for noncompliance through an annual review.