

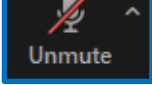


Welcome to the National Housing Trust Fund (NHTF) Draft Guidelines Workshop





Housekeeping in Zoom

- All Participant Lines Muted Upon Entry 
- Chat – Chat features are disabled for this webinar
- Questions – Please use the Q & A feature to enter your questions
- Call In Option – Dial in is available with the registration link
- Recording and Slides – Will Be Available/Posted



Division of Federal Financial Assistance Leadership Team

- Sasha Hauswald, Deputy Director
- Alicia Sebastian, Assistant Deputy Director
- Willa Darley Chapin, Housing Branch Manager III





Presenters

- Anne Nicholls, Section Manager
- Edona Evans, Program Manager
- Colleen O'Meara, Program Manager
- Mylinh Tran, Program Manager
- Virginia Correa, Representative II
- Joe McNicholas, Representative II
- Heather Randrup, Representative II
- Lisa Flower, Representative II
- Deborah Gentile, Representative II
- Latasha Everett, Representative II
- Henry Cheng, Representative II
- Kirsten Larsen, Env. Specialist II
- Kendra Gubaydullin, Specialist II



Section 1

Introduction

Presented by Anne Nicholls
NHTF Section Manager



Statutory Authority, Applicable Law and Overview

- Housing and Economic Recovery Act of 2008
- NHTF Interim Rule
- Assembly Bill no. 816, Chapter 396, statutes of 2021 ("AB 816")
- Local, State and Federal Laws
- Non-Appropriated Funds

Health and Safety Code § 50676





Statutory Authority, Applicable Law and Overview

- **Purpose:** To increase and preserve the supply of affordable housing for Californians with extremely low-incomes
 - AB 816: Affordable housing developments, or Projects, serving people experiencing Homelessness



NHTF – Outlook 2023

- April 2023 - Draft NHTF Guidelines, Workshops and Technical Assistance Office Hours
 - 30-day Public Review and Comment Period
 - Ends 5:00pm PST on Friday, May 26, 2023





NHTF – Outlook 2023

- Summer 2023 - FY22-FY23 NHTF Notice of Funding Availability (NOFA), Final Guidelines, Online Application, Workshops and Technical Assistance Office Hours
 - California's allocation is estimated at \$180 million
 - \$36 million Rural Areas Target
 - \$18 million for Tribal Entities Target
 - \$126 million Competitive



NHTF – Outlook 2023

➤ Program Changes:

- NHTF will be a standalone program, funds will no longer be made available through the Housing for a Healthy California (HHC) Program
- Capitalized Operating Subsidy Reserve (COSR) Grants are no longer eligible, pending guidance from HUD re eligible operating costs





Section 2

Definitions

**Presented by Debbie Gentile
Representative II**



Definitions

- 24 Code of Federal Regulations (C.F.R.) § 93.2: Housing Trust Fund Regulations
- 25 California Code of Regulations (C.C.R.) § 8301





Section 3

Eligible Recipients

Presented by Debbie Gentile
Representative II



Eligible Recipients (Applicants)

- The Department may provide NHTF funds only to Applicant entities that:
 - Meet the definition of a Recipient
 - Demonstrate site control by one of the following:
 - Fee Title
 - Leasehold Interest
 - For Tribal Trust Land, a title status report (“TSR”) or an attorney’s opinion
 - A leasehold estate held by a Native American Entity or a valid sublease





Eligible Recipients (Applicants)

- Continued - The Department may provide NHTF funds only to Applicant entities that:
 - Have resolved any open audit findings
 - Are not debarred or suspended from participation in federal, state housing or community development
 - Includes cities, counties, and local public housing authorities



Section 4

Eligible Uses, Terms, and Limits of NHTF Funds

**Presented by Latasha Everett
Representative II**



Eligible Uses

- A Recipient's use of NHTF funds is subject to Title 24 C.F.R., Part 93, Subpart E and may be used for the following:
 - Permanent Loans for the Acquisition, Rehabilitation or New Construction of a Project



Loans Terms

LOAN



- All loans must include terms that are consistent with the following:
 - Must not exceed the maximum Per Unit subsidy in the NOFA
 - Loan will not bear interest unless the Department increases this rate pursuant to Health & Safety Code (Section 50406.7) of the regulations
 - Initial Loan Term: 55 years or more. For projects on Native American Lands, loans must have an initial term of 50 years or more
 - Monitoring fees to cover the costs of ongoing monitoring and physical inspections of the Project



Multiple Department Funding Sources

- Use of Multiple Department Funding Sources are subject to the following limitation:
 - The Department's "Repeal of Stacking Prohibition of Multiple Department Funding Sources" Memorandum dated August 20, 2021, must remain applicable. A maximum of four (4) Department Funding Sources comprised of no more than two (2) development loans and two (2) housing-related infrastructure grants may be used on a single Project



Multiple Department Funding Sources

- Department Funding Sources do not include the following:
 - Offsite Infrastructure Funds; or
 - Existing Loans or Grants under any Department funding source listed above that are at least 14 years old and that will be assumed as part of an acquisition and Rehabilitation of the Project



Section 5

Project Requirements

Presented by Latasha Everett
Representative II



Project Requirements

- All projects that receive NHTF funds are subject to 24 C.F.R. § 93.302 Subparts G for a minimum of 30 years
- All projects that receive NHTF funds must meet the requirements of Subsection 5(b) of the NHTF Guidelines for a minimum of 55 years
- Native American Lands must meet the requirements of Subsection 5(b) of the NHTF Guidelines for a minimum 50 years





Project Requirements

- Projects must restrict rent for NHTF Assisted Units consistently with Title 24 C.F.R § 93.302:
 - The Rent and utilities for Extremely Low-Income Families must comply with 24 C.F.R. § 93.302(b)(1)(i) and (b)(2)
 - Federal or state Project-based rental subsidy: Tenant must not pay more than 30 percent of the tenant's adjusted income and the maximum Rent is the Rent allowable under the federal or state Project-based rental subsidy program



Project Requirements

- Projects must restrict rent for NHTF Assisted Units consistently with Title 24 C.F.R. § 93.302 (continued):
 - Projects using other Department financing must use the most restrictive program's rent limits
 - Projects located on Native American Lands must be duly encumbered with a Declaration of Restrictive Covenants or Regulatory Agreement to comply with Subsections 5(a)-(d) of the NHTF Guidelines for an initial term of 50 years



Project Requirements

- Projects owned /developed by a city, county or local housing authority must be geographic boundaries of their jurisdiction within California
- Must follow the Core components of Housing First (Welfare and Institutions Code § 8255(b))
- Must comply with, or be exempt from, Article XXXIV
- Projects owned or developed by a Native American Entity and located within the boundaries of Native American Lands are exempt from Article XXXIV





Project Requirements

- Must maintain Fiscal Integrity
- Projects must identify fixed/floating NHTF Assisted Units in the application.
 - A fixed NHTF unit is a permanently designated NHTF unit and must remain the same throughout the period of affordability
 - A floating NHTF unit must be comparable in terms of size, features, and number of bedrooms to the originally designated NHTF unit
 - Floating units may change to maintain conformity with the requirements



Section 6

Underwriting

**Presented by Kendra Gubaydullin
Specialist II**



What is Underwriting?

- “Underwriting” is a review process to ensure that a proposed project meets all program-specific requirements, underwriting standards and Department policies; and that the project is financially feasible. This is generally referred to as “Feasibility Review”
- Requirements are specified in program-specific Regulations 24 C.F.R. 93.300(a), Notice of Funding Availability, NHTF Guidelines, the California Code of Regulation Title 25 (C.C.R.) and HCD policy Memos





Application Feasibility Review

- Includes review of:
 - Development Budget
 - Funding Sources
 - Rents/Unit Mix
 - Operating Budget
 - Cash-flow Analysis





Underwriting 101 (Funding Sources)

- Reconciliation of prior/concurrent HCD funding sources
- Subordination Policies
 - Are there a variable rate or sandwich loan?
 - Public Lenders
 - Sponsor Loans

25 C.C.R. § 8310



Underwriting 101 (Development Budget)

- Questions to ask about the development budget
 - Are funds covering allowable costs?
 - Are costs lumped under one line item?



Underwriting 101 (Development Budget) Continued

- Overhead/Profit/General Requirements (for a General Contractor) should not exceed 14 percent of site work plus structures
- Hard Cost Contingencies
 - Rental New Construction (RNC) at or above 5 percent, Rehabilitation at or below 10 percent (lower amount must be explained)
- For “Other” line items – please specify the item in the application



Underwriting 101 (Income)

➤ Includes any/all of the following:

- Rents

- Underwrite to maximum Area Median Income (AMI) rent (e.g., Restricted/Regulated Rents)
- Review Proposed rents that will be below the Restricted/Regulated Rents, if available

[24 C.F.R. § 93.302\(b\)\(1\)\(i\) and \(b\)\(2\)](#)





Underwriting 101 (Income) Continued

- Utility Allowance (UA) should match the Schedule
- Net Rent is Gross rent minus UA
- Residential vacancy rates based on program requirements



Underwriting 101 (Other Income)

- Includes any/all of the following:
 - Subsidies
 - Operating Subsidies (based on expenses)
 - Project-Based Rental Assistance (PBRA) (Tenant-Based Rental Assistance (TBRA) not included in underwriting)
 - Laundry/Fees
 - Commercial Income, only if income supports the residential Project. Note: The residential Project income must not support the commercial project (One-way Road)



Underwriting 101 (Developer Fee, Total Development Cost, and Cost Reasonableness)

➤ Developer Fee

- Calculated in accordance with [25 C.C.R. § 8312](#)
- Detailed in the [Administrative Notice on 2017 UMR Developer Fee Limits and Capital Contributions memo](#)

➤ Total Development Cost

- Equals total Permanent sources

[25 C.C.R. § 8311](#)





Underwriting 101 (Developer Fee, Total Development Cost, and Cost Reasonableness)

➤ High-Cost Analysis

- Costs exceeding 160 percent (at application) and 170 percent (at closing/conversion) of eligible basis limit are considered unreasonable



Underwriting 101 (Operating Budget)

➤ Salaries

- Full Time Equivalent (FTE)
- Specify if the manager's rent free unit equals the income
- Calculation for front desk and security

➤ Supportive Services paid from Operating Budget

- Total services costs limited to 25 C.C.R. § 8314(e)



Underwriting 101 (Operating Budget) Continued

- Replacement Reserves (25 C.C.R. §8309)
 - Rental New Construction (RNC) *At least* the Lesser of 0.6 percent of structures or \$500 Per Unit Per Year (PUPY)
 - Rehabilitation placeholder of \$500 PUPY, until the cost is determined by an after rehabilitation Physical Needs Assessment/Capital Needs Assessment



Underwriting 101 (Operating Budget) Continued

➤ Financial Expenses

- Amortized loans, bond issuance fee if applicable, and other lender monitoring fees, and
- Department Fees
 - NHTF Monitoring Fees (based on the number of units) and
 - HCD Monitoring Fees for other HCD loans are based on 0.42 percent of the loan amount
 - Pooled Transition Reserve Fee



Underwriting 101 (Operating Budget) Continued

- Asset Management/Similar Fees (25 C.C.R. § 8314)
 - Not to exceed \$30,000/year (2016 adjusted 3.5 percent per year)
 - Includes Partnership Fees
- Miscellaneous Expenses & Contracts (detail when over \$25,000)
- Total Operating Expenses
 - Should be above Tax Credit Allocation Committee (TCAC) minimums for location/project type



Underwriting 101 (Cash Flow Analysis)

- Trending Negative in Cashflow
 - Extend proforma to at least 30 years
 - Additional Operating Reserve II may be needed

25 C.C.R. §8310

24 C.F.R. §93.300(b)



Underwriting 101 (Cash Flow Waterfall)

➤ Priority distributions:

- First Priority is the Deferred Developer Fee, and
- Asset Management, Partnership Management and Similar fees



Underwriting 101 (Cash Flow Waterfall) Continued

- Residual Receipts and Sponsor Distributions:
 - 50 percent to Sponsor
 - 50 percent Department and other soft lenders
 - Department's pro rata calculation is inclusive of the Department's loans and grants (25 C.C.R. §8314(a)(2)(A) and 25 C.C.R. §8315)



Questions





Section 7

Management and Maintenance

**Presented by Mylinh Tran
Program Manager**



Management

- Responsible for all management functions
- Management Plan must be approved by the Department prior to permanent loan closing and include:
 - Housing First best practices
 - Roles, Responsibilities, and delegated authority to the Management Agent
 - Personnel policy and Staffing arrangements
 - Tenant Selection Criteria and Application Intake
 - Rent Collection and Records Keeping policies





Management Continued

- Initial and Annual Certification of household income and size
- Minimum Occupancy Standards

<u>Unit Size</u>	<u>Minimum Number of Person in Household</u>
Single Room Occupancy (SRO)	1
Studio/0 Bedroom	1
1 Bedroom	1
2 Bedroom	2
3 Bedroom	4
4 Bedroom	6
5 Bedroom	8



Management Continued

- Tenant Protection Policies and Practices as follows:
 - Affirmative Marketing Plan (24 C.F.R. § 93.350)
 - Violence Against Women Act (24 C.F.R. § 93.356)
 - Appeal and Grievance Procedures (25 C.C.R. § 8307)
 - Pet Friendly Housing Act (Health and Safety Code § 50466)
 - Prohibited Lease Provisions (24 C.F.R. § 93.303(b))
 - Evictions, Terminations, and collection for tenant caused damages



Maintenance

- Responsible for all repair and maintenance on the Property
 - Units
 - Common Areas
 - Reasonable Modification for tenants with a disability
 - Commercial Space



Section 8

Application and Award Process

**Presented by Colleen O'Meara
Program Manager**



Funding Cycle

- NHTF funds are available for Projects that serve people experiencing homelessness, and for the following purposes:
 - Projects that do not serve people experiencing homelessness
 - Other specific purposes, such as over-the-counter and/or Projects targeting particular populations





Application Submission Process

- Complete and accurate applications must be submitted electronically
- Applications and required documentation must be submitted through the eCivis Grants Management System Portal (GMS)
- An eCivis Profile account must be created if you do not have one
- More details will be available in the upcoming NOFA Workshop



Threshold Requirements

- NHTF funds may only be awarded if the application meets the following requirements:
 - Eligible Recipients – Section 3
 - Eligible Uses, Terms and Limits of NHTF Funds – Section 4
 - Project requirements – Section 5
 - Minimum Requirements – Section 9



Awarding Funds Continued

- Underwriting guidelines Section 6(a)
 - Maintain Fiscal Integrity for 30 years
 - Feasible under 25 C.C.R. § 8310 for 30 years
 - Development costs must be reasonable - 25 C.C.R. § 8311





Awarding Funds Continued

- Underwriting guidelines Section 6(a) continued:
 - Department's Pooled Transition Reserve Fund Policy (Memo dated January 3, 2023), as may be amended from time to time
 - Return a reasonable level of profit for the Recipient
 - Receive NHTF funds alone or in combination with other governmental assistance necessary to provide quality affordable housing



Section 9A

Application Minimum Requirements

**Presented by Virginia Correa
Representative II**



Minimum Requirements

- All applications must clearly contain the following:
 - Project Narrative/Details
 - Name of the Applicant and development team
 - Project Name and location
 - Specify if Project is located in a Rural Area or on Native American Lands





Minimum Requirements

- All applications must clearly contain the following (continued):
 - Assessor's Parcel Number(s)
 - Assembly Member, State Senator, U.S. Senators and Congressional Representative
 - Zoning details
 - Site Acreage





Minimum Requirements

- All applications must clearly contain the following (continued):
 - Construction Scope of Work
 - Number of Units and their size (number of bedrooms, number of bathrooms, and Unit square footage)
 - Detailed Unit mix (affordability levels, funding sources, layering, and if any, market rate Units)
 - List of amenities and services offered at the Project's site
 - Playground for school aged children (up to age 12) is required at multifamily sites



Minimum Requirements

- All applications must clearly contain the following (continued):
 - List and map of amenities and services offered within 1.5 miles of the Project (specify current and proposed)
 - Exceptional circumstances
 - Project Milestones
 - Construction Costs supported by third party estimates and information verifying the application meets Section 3-10 of the NHTF Guidelines
 - Copies of all firm written financial commitments for the Project



Minimum Requirements

- All applications must clearly contain the following (continued):
 - Detailed information of the Applicant adequate to determine the experience and capacity as outlined in Subsection 9(2)(A)-(O)
 - Site Information:
 - Site Control
 - Voluntary Acquisition Letter (form provided by the Department)
 - Information adequate to determine the readiness of the Project to proceed

25 C.C.R. § 8303 and § 8316



Minimum Requirements

- All applications must clearly contain the following (continued):
 - Site Information (continued):
 - Preliminary Title Report, not more than 90 days old
 - Flood plain status, including back-up documentation
 - Map and photos of the Project's location
 - Utility Allowance analysis or letter from local Housing Authority



Minimum Requirements

- All applications must clearly contain the following (continued):
 - Property Management Plan that meets the requirements of Section 7
 - Resident Services Plan and Agreement/Memorandum of Understanding that includes a 0.25 full-time equivalent (FTE) dedicated on-site services for every 50 Units in the Project (0.25:50)





Minimum Requirements

- All applications must clearly contain the following (continued):
 - Supportive Services Plan and Agreement/Memorandum of Understanding that includes a ratio of one FTE case manager for every 20 individuals (1:20)
 - Market study and a property appraisal dated within one year of the NHTF application submission deadline
 - For Projects located on Native American Lands, appraisals will be provided based on the data available



Minimum Requirements

- All applications must clearly contain the following (continued):
 - Relocation Plan for Non-Residential Business or a self-certification that relocation is not applicable with pictures of the site
 - Rehabilitation Projects:
 - Temporary and/or Permanent Relocation Plan for Residents that is in compliance with federal ([24 C.F.R. § 93.352](#)), state, and local law, whichever is more stringent. Or a self-certification that relocation is not applicable with pictures of the site
 - Physical Needs Assessment
 - Market study



Minimum Requirements

- All applications must clearly contain the following (continued):
 - Rehabilitation Projects (continued):
 - Property appraisal
 - Asbestos and mold assessments
 - Lead-based paint assessment (projects constructed prior to January 1, 1978)





Minimum Requirements

- Any third-party documents must be prepared by an individual or firm that:
 - Has the appropriate license, knowledge and experience;
 - Correctly employs methods/techniques to produce a complete document;
 - Communicates in a manner that is not misleading as to the true market, and the value and condition of the subject property; and
 - Is an independent third-party having no identity of interest with the Applicant, the partners of the Applicant, the intended partners of the Applicant, or with the general contractor



Minimum Requirements

- Applications must be received by the deadline(s) specified in the NOFA and must clearly demonstrate:
 - Applicant and Project meet the requirements in Sections 3-9 of the NHTF Guidelines
 - NHTF funding requested does not exceed maximum per Unit subsidy and award limits in the NOFA
 - No pending lawsuits that will prevent implementation of the Project



Minimum Requirements

- Applications must be received by the deadline(s) specified in the NOFA and must clearly demonstrate (continued):
 - The Project either complies with or is exempt from Article XXXIV of the California Constitution; and
 - The Applicant has provided documentation satisfactory to the Department that it complied with the submittal requirements of 2 C.F.R. § 200.512 Single Audit reporting requirements
 - The Project must meet the NHTF Environmental Provisions 24 C.F.R. § 93.301(f)



Intermission – 15 mins





Section 9B

Environmental Provisions

**Presented by Kirsten Larsen
Senior Environmental Specialist**



Environmental Provisions (Background)

- National Environmental Policy Act (NEPA) of 1969
- HTF was established under section 1131 of Title I of the Housing and Economic Recovery Act (HERA) of 2008
- NEPA and HTF
 - HTF Property Standards at 24 C.F.R. §93.301(f) for new construction and rehabilitation



Complying with the Provisions (HTF)

- 24 C.F.R. §93.301(f)(1) – Property Standards for New Construction
- 24 C.F.R. § 93.301(f)(2) – Property Standards for Rehabilitation
- Notice CPD-16-14: Requirements for Housing Trust Fund Environmental Provisions



Environmental Provisions vs. Part 58

➤ What's the same as NEPA Part 50/58?

- Coastal Barrier Resources
- Coastal Zone Management
- Explosive and Flammable Facilities
- Endangered Species (informal consultation)
- Wild and Scenic Rivers
- Sole Source Aquifers



Environmental Provisions vs. Part 58

- **What's different from NEPA Part 50/58?**
- Historic Preservation
 - Farmlands Protection
 - Airport Hazards
 - Floodplain Management
 - Wetlands Protection
 - Site Contamination
 - Noise Abatement and Control
 - Safe Drinking Water



Environmental Site Assessment Phase I & II

- Timing and contents of the Phase I
- Non-ASTM scope items and issues that must be addressed (ASTs, radon, historic pesticide use, lead-based paint, and asbestos)
- Phase II required if Phase I finds possible environmental concerns
 - How to provide evidence of hazardous/toxic site cleanup



Timing

- HTF projects must meet applicable Property Standards and the Provisions at 24 C.F.R. §93.301(f)(1) or (2) at project completion
- However, HCD requires determination before construction whether a project can meet the Environmental Provisions (EP)
- If a project cannot meet the EP, the project cannot be funded by HTF



HTF Funds Only

- No need to determine Level of Review (CEST/EA)
- No Public Comment or objection periods
- No Request for Release of Funds and Certification
 - No Authority to Use Grant Funds



HCD Resources

- HCD is in the process of creating an environmental web presence. Contact Kirsten and Michael if you'd like to be added to the Environmental Service's Team email list for more information about our web page when it becomes available.
 - NEPA@hcd.ca.gov
 - Kirsten.Larsen@hcd.ca.gov
 - Michael.McHenry@hcd.ca.gov



HCD Resources

- HTF Environmental Provisions Links:
 - [HUD Exchange HTF Environmental Provisions](#)
 - [HUD Exchange Notice CPD-16-14](#)
 - [HUD Exchange HTF Environmental Provisions Webinar](#)



Section 10 Selection Criteria

**Presented by Joseph McNicholas
Representative II**



Selection Criteria

- The Fiscal Years 2022-2023 funding round will be a competitive process only. Over-the-counter (OTC) applications will not be accepted.
 - All applications received are subject to the competitive process.
 - If undersubscribed, eligible projects will still be rated and ranked





Selection Criteria

- The Department must rate applications using a numeric point scoring system specified in the NOFA based on the following criteria:
 - The numeric point scoring system must make the greatest number of points available to an application.



Selection Criteria Scoring Breakdown

Summary Table

Section A – The Project's Geographic Diversity

Section B – Extent to which Project Rents are Affordable

Section C – Merits of the Project

Section D – Project Readiness

Section E – Project's use of Non-federal Funds

Section F – Development Team's Experience



Selection Criteria

➤ Tie Breakers

- 1) Readiness to Proceed
- 2) Enforceable Financial Commitments
- 3) Affordability for Households at or below 30 percent Area Median Income (AMI). For example, if two applications tie and Project A has 10 more units at or below 30 percent AMI than Project B, Project A will be awarded



Selection Criteria

➤ Rating and Ranking

- Projects will be awarded beginning with the highest score until all available NHTF funds have been awarded



Section 11

Legal Documents

Presented by Heather Randrup
Representative II



Legal Documents (Standard Agreement Requirements)

- If award is canceled, no obligation to execute
- NHTF written agreement requirements: 24 C.F.R. §93.404
- Compliance with NHTF Guidelines, state and federal laws



Legal Documents (Standard Agreement Requirements)

- Firm written financial commitments required
- Before executing the Standard Agreement, the Department must determine consistency with Section 6 – Underwriting:
 - Fiscal Integrity – 30 years
 - Feasible – 30 years
 - Reasonable development costs

25 C.C.R. § 8310 and § 8311





Legal Documents (Standard Agreement Requirements)

- Section 6 – Underwriting consistency (continued)
 - Transition Reserve Policy
 - Reasonable level of profit
 - Receive only enough government assistance and NHTF Funds needed to provide affordable housing



Legal Documents (Note & Deed of Trust)

- Promissory Note
- Deed of Trust
 - Encumber the fee estate of the real property
 - Recorded in the county the Project is located
 - Have priority over other liens and encumbrances, and other matter of records
 - Except as may be approved under 25 C.C.R. § 8310(f) and 8315



Legal Documents (Note & Deed of Trust)

➤ Leasehold

- If the land where the Project is located is subject to a leasehold, the Department may authorize the Note to be secured by a Deed of Trust

➤ Fee Estate

- The owner of the fee estate in real property the Project occupies must enter into a Regulatory Agreement with the Department

25 C.C.R. § 8310(f) and § 8315



Legal Documents (Note & Deed of Trust)

➤ Leasehold

- If the Project occupies a leasehold, the Department may authorize the Recipient to enter into a Regulatory Agreement that encumbers the leasehold the Project occupies, instead of the fee estate in the real property the Project is located on.

➤ Deed of Trust and Regulatory Agreement to encumber a leasehold

- The lease must conform to the requirements of 25 C.C.R. § 8316(a)(2) and the Department must be a party to the lease. If a lease rider is applicable, it must amend the lease and be recorded on the fee estate from which the lease is derived.



Legal Documents (Note & Deed of Trust)

- Projects located on Native American Lands that are subject to a leasehold interest must conform to the following:
 - Ground lease must conform to the requirements of 25 C.C.R. § 8316(a)
 - Landlord, lessee, the and the Department must execute a lease rider

25 C.F.R. Part 162



Legal Documents (Note & Deed of Trust)

- Projects located on Native American Lands that are subject to a leasehold interest must conform to the following (Continued):
 - Declaration of Restrictive Covenants or a Regulatory Agreement that runs with the land (50 year affordability period)
 - Lease, lease rider, Declaration of Restrictive Covenants (or Regulatory Agreement) against the Native American Lands with the BIA Land Title and Records Office



Legal Documents (Note & Deed of Trust)

- Native American Entities - limited waiver of sovereign immunity
- Construction Loan Agreement (Disbursement Agreement)
- Sponsor Operating Guaranty
- Additional agreements and documents as the Department may require



Legal Documents (Note & Deed of Trust)

➤ NHTF Regulatory Agreement

- If the Department is disbursing funds during construction, the Department will record a Senior Regulatory Agreement that is superior to all other liens associated with the Project's debt.
- The Senior Regulatory Agreement will include affordability restrictions consistent with 25 C.C.R. § 8310(f) and Supportive Services, when required as a condition of the NHTF award.
- Subsection 11(c)(1)-(19) of the NHTF Guidelines detail the Regulatory Agreement contents.



Section 12

Project Set Up and Disbursement of Funds

Presented by Lisa Flower
Representative II



Project Set Up and Disbursement of Funds

➤ Set up in Federal Disbursement and Information System

- Prior to first disbursement, submit Project set up report
- Verify Project complies with conditions in the standard agreement
- After verification, Project will be set up in the Federal Disbursement and Information System





Project Set Up and Disbursement of Funds

➤ Department Draw Down

- Monthly Construction draws using Department forms and supporting documentation (e.g., pay applications, third-party progress inspection report, conditional waiver, certified payrolls - payment to contractors and itemized invoices)
- 10 percent retention for hard costs
- The Department must withhold disbursements in the event the Recipient fails to comply with: Standard Agreement, Guidelines, 24 C.F.R. Part 93, or any other applicable federal and state law



Project Set Up and Disbursement of Funds

- **Additional Disbursement Requirements**
 - Prior to final disbursement: Project Completion Report, Final Audited Cost Certification, and NHTF tenant demographics and income verifications
 - After final disbursement: HUD requires HCD to close the project in their system within 120 days
 - Failure to meet this HUD requirement may result in recapture of the NHTF award from the Borrower



Section 13

Reporting and Recordkeeping

Presented by Heather Randrup
Representative II



Reporting and Recordkeeping

➤ Reporting Requirements

▪ Monthly Status Report

- 10 days following the last day of the month
- After Standard Agreement execution
- Submit until final Project Completion Report is accepted
- Projects in Construction: Monthly Labor Compliance Certification





Reporting and Recordkeeping

➤ **Monthly Status Report must include:**

- Environmental and Labor Standards requirements
- Project financing status
- Local government approval progress
- Changes in site control
- Timeline for project completion
- Contract information for parties overseeing development



Reporting and Recordkeeping

➤ Native American Entities

- Tribally determined wages may be acceptable in place of State of California prevailing wages
- The Department encourages the recipient seek counsel on this wage determination



Reporting and Recordkeeping

➤ Reporting Requirements

▪ Quarterly Performance Report

- After Standard Agreement execution
- Submit until final Project Completion Report is accepted
- Due no later than 30 calendar days at the end of each calendar quarter





Reporting and Recordkeeping

➤ Performance Report must include:

- Activities done to implement project and meet milestones
- Anticipated Activities
- Problems and/or complaints received, and actions taken to resolve
- Financial details in relation to NHTF funds and activity in local account
- Additional information requested by the department



Reporting and Recordkeeping

➤ Additional Reporting Requirements

- Cost Certification
- Annual Compliance Report
 - State Affordability Period
 - Due 90 days after the end of each fiscal year until final fiscal year
 - Audit completed by certified public accountant
 - Includes tenant demographics and income verifications





Reporting and Recordkeeping

➤ Proposed Financing

- Submit no later than 60 days prior to the end of each fiscal year
- Detailed in Section 14 – Annual Operating Budget and Schedule of Rental Income





Reporting and Recordkeeping

➤ Services Provided Reporting

- **Annual Report to include:**
 - Services provided to residents
 - Qualifying characteristics of residents
- **Maintain and retain records as indicated in the 24 C.F.R. § 93.407(b) and made available**



Reporting and Recordkeeping

➤ Additional Reports

- The Recipient will provide the Department any reports deemed necessary





Section 14

Annual Operating Budget & Schedule of Rental Income

Presented by Mylinh Tran
Program Manager



Annual Operating Budget & Schedule of Rental Income

- Proposed operating budget and Schedule of Rental Income (SRI) reports must be submitted to the Department for approval
 - Prior to Occupancy:
 - Initial operating budget reflecting anticipated income; expenses for management, operations and maintenance; debt services and reserve deposits
 - Initial SRI that reflects the proposed rents, unit designation, rental and operating subsidies



Annual Operating Budget & Schedule of Rental Income

- Proposed operating budget and Schedule of Rental Income (SRI) reports are to be submitted to the Department for approval
 - Annual Submission:
 - 60 days prior to the Project's fiscal year
 - SRI approval is required before enacting proposed rent adjustments



Section 15 Project Deadlines

**Presented by Henry Cheng
Representative II**



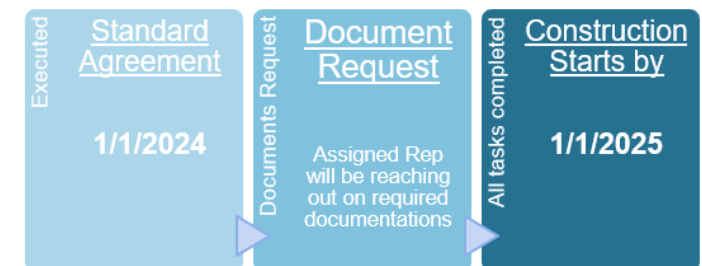
Project Deadlines

- **Recipient must comply with the following deadlines:**
 - Project must begin construction within 12 months of the executed Standard Agreement, unless an extension is granted by the Department;
 - Recipient must execute NHTF Standard Agreement within 24 months from the date HUD executes the NHTF Grant Agreement; and
 - NHTF funds must be fully disbursed within five years from the date HUD executes the NHTF Grant Agreement



Project Deadlines Continued

- Project must begin construction within 12 months of the executed Standard Agreement, for example:
 - Executed Standard Agreement: January 1, 2024
 - Documents Request – Assigned Representative will be reaching out on required documentation
 - All tasks completed – Construction starts by January 1, 2025





Project Deadlines Continued

- Recipient must execute a Standard Agreement with the Department within 24 months from the date HUD executes the NHTF Grant Agreement, and must provide:
 - Organizational Documents
 - Legal Forms
 - Resolution/Authorization
 - Other required documents



Project Deadlines Continued

- NHTF funds may only be disbursed after Recipient satisfies all applicable terms and conditions of the Standard Agreement, including:
 - Environmental Clearance
 - Underwriting required information
 - Updated documentations
 - Other required documents



Project Deadlines Continued

- After award, Recipient must secure all permanent financing for the Project before it executes a Standard Agreement with the Department. For example:
 - **Funding Sources:**
 - ABC Bank - \$50 million
 - County Funding - \$20 million
 - HCD NHTF - \$10 million





Project Deadlines Continued

- Enforceable Funding Commitments (EFC) must include the following:
 - Separate Commitments
 - Highlight the following required information on each EFC:
 - Sponsor or the ultimate owner is named as the borrower
 - Project Name
 - Project site's address, assessor's parcel number or legal description
 - Amount, interest rate and terms of the financing being committed



Project Deadlines Continued

- Enforceable Funding Commitments (EFC) must include the following:
 - Highlight the following required information on each EFC (Continued):
 - Commitment must be fully executed by all parties
 - If a prepaid ground lease loan is included in the commitments, include the following:
 - Third party documentation justifying the commercial rent
 - Current appraisal (Within 6 months) documenting the methodology to arrive at “present value”



Project Deadlines Continued

- Permanent financing for the Project must be compatible with these Guidelines. It is the Recipient's responsibility to ensure that all permanent financing is compatible with these Guidelines
 - Communication is the KEY





Section 16

Sales, Transfers, Encumbrances, and Loan Payoff

Presented by Lisa Flower
Representative II



Sales, Transfers, Encumbrances, and Loan Payoff

- Recipient may not sell, transfer, convey or assign project without HCD written approval
- Department may approve if:
 - Recipient complies with Regulatory Agreement





Sales, Transfers, Encumbrances, and Loan Payoff

- Department may approve if (continued):
 - Successor-in-interest assume all obligations and meets Department requirements
 - No terms of the sale, transfer, or conveyance jeopardize either the Department's security



Sales, Transfers, Encumbrances, and Loan Payoff

- If the Recipient or its successor-in-interest is a partnership, the Recipient must not discharge or replace any general partner or amend, modify, or add to its partnership agreement
- The Recipient may not transfer Limited Partnership interests without the prior written approval of the Department





Sales, Transfers, Encumbrances, and Loan Payoff

- Department approves a sale, assignment, transfer, or conveyance
- Conditions include, but are not limited to:
 - The deposit of sales proceeds



Sales, Transfers, Encumbrances, and Loan Payoff

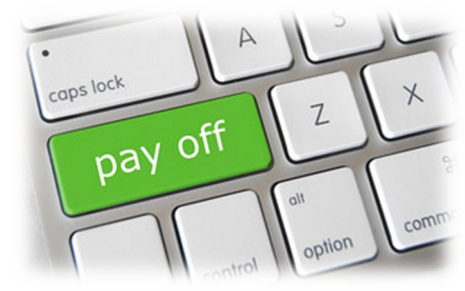
- Conditions include, but are not limited to (continued):
 - Recapture of syndication proceeds or other funds
 - Conditions necessary to ensure compliance with the NHTF Guidelines and any applicable state and federal law



Sales, Transfers, Encumbrances, and Loan Payoff

- Recipient must not encumber, pledge, or hypothecate the Project
 - Maintain or improve the Fiscal Integrity of the Project, to maintain affordable rents, or to decrease rents and for no other purpose, including, but not limited to, cash payments to the Recipient

25 C.C.R. § 8308 (g)

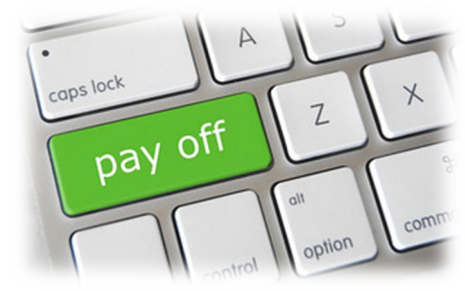




Sales, Transfers, Encumbrances, and Loan Payoff

- No loan may be paid off prior to maturity without the prior written consent of the Department
 - All loan documents, including the Regulatory Agreement and Deed of Trust, must continue in full force and effect

25 C.C.R. § 8308 (g)





Section 17

Program Income and Repayments

Presented by Edona Evans
Program Manager



Program Income

- Gross income received by the grantee that is directly generated from use of HTF funds.
 - Some Examples:
 - Proceeds from the sale of property purchased or rehabilitated with HTF funds
 - Interest on Program Income earned pending disposition

24 C.F.R. § 93.2





Program Income

- Must be treated as HTF funds and used in accordance with the guiding regulations
- Must be remitted to the Department
- The Department must report Program Income to HUD's Disbursement and Information System

24 C.F.R. § 93.403



Repayments

- Required if HTF funds invested in:
 - Housing that does not meet affordability requirements for the specified period
 - A project that is terminated before completion, voluntarily or otherwise





Monitoring Fees

- The Department must establish and charge the recipient the annual monitoring fee
- The fee is payable throughout the term of the project's Regulatory Agreement or Declaration of Restrictive Covenant
- The fee increases by 3 percent annually

24 C.F.R. § 93.204(b)(1)



Monitoring Fee

2022 Monitoring Fees

2023 Monitoring Fees

Number of NHTF Units	Annual Fee	x 3 Percent	2023
12 or Fewer	\$5,900	\$177	\$6,077
13 to 24	\$9,600	\$288	\$9,888
25 to 36	\$11,700	\$351	\$12,051
37 to 48	\$12,000	\$360	\$12,360
49 to 60	\$14,350	\$431	\$14,781
61 or more	\$16,800	\$504	\$17,304



Section 18 Cancellation and Defaults

**Presented by Edona Evans
Program Manager**



Written Agreements

- Regulatory Agreement
- Standard Agreements
- Declaration of Restrictive Covenants
- The Note
- Deed of Trust

[AB 816 \(Chapter 396 statues of 2021\)](#)





Written Agreements – Responsibilities

- The Department is responsible for:
 - Managing the day-to-day operations of HTF
 - Ensuring funds are used in accordance with requirements and agreements
 - Taking appropriate action when performance problems arise

24 C.F.R. § 93.404(a)



Written Agreements – Enforcement

- Taking action appropriate action when performance problems arise
 - Specify remedy for breach of provisions
 - Specify that in accordance 2 C.F.R. §200.338 and §200.339
 - Suspension or termination will occur for failure of compliance

24 C.F.R. § 93.404(c)(1)(xi)





Cancellation and Default

- In the event of a default the department may:
 - Give written notice to cure
 - Require an amendment of the agreement
 - Cancel or reduce the award



Cancellation and Default

- HCD may cancel or reduce an award for any one of the following:
 - Project is not in compliance or will not comply with guidelines
 - HCD terminates the Standard Agreement with the recipient
 - Implementation of project does not or will not comply project deadlines/timeframes, goals, NOFA, or guidelines, or other provisions

REDUCED



Cancellation and Default

➤ Continued...

- Special conditions not met in Standard Agreement
- Recipient requests cancellation
- Material changes not approved by HCD
- Withdrawal of any perm financing
- Recipient misrepresents material facts of project
- HUD reduces or eliminates HCD's HTF funding





Cancellation and Default Notice

- HCD must give at least 15 days notice of cancellation or reduction
- Recipient completes any affected work and stops all activities to be paid out with NHTF funds
- Negative points can be applied to future HCD applications
- Repayments must be returned within 30 calendar days



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Thank you!

Thank you for your participation. Please submit your comments to the Draft Guidelines no later than 5:00pm PST on Friday, May 26, 2023.

Kindly stay updated on the availability of the Frequently Asked Questions, Recorded Workshops, PowerPoints and details on the upcoming NOFA via eBlast.

For more information, or to send a comment or question, please email NHTFNOFA@hcd.ca.gov