

# **National Housing Trust Fund (HTF)**

## **Summary of Proposed Program Rule**

### **GENERAL OVERVIEW**

The National Housing Trust Fund (HTF) was enacted as part of the Housing and Economic Recovery Act (HERA) of 2008. HTF is a formula grant program to be administered by states which is intended to increase and preserve the supply of decent, safe, sanitary, and affordable housing, primarily rental housing, for extremely low-income and very low-income households.

HUD has issued the proposed program rule for the Housing Trust Fund as a new Subpart N of the HOME Investment Partnerships program regulations (24 CFR Part 92) in an effort to consolidate largely similar programs, improve the coordination of local and regional planning efforts and activity delivery, and reduce the administrative burden placed on grantees overall. The HOME program is HUD's primary rental housing production program for low-income families. Most of the eligible activities under the HTF and HOME programs are the same, and many of the requirements are similar, if not identical. Aligning HTF regulations with the HOME program regulations, insofar as the statute allows, should eliminate any need for grantees to create new or separate administrative structures, and will enable HUD to offer grantees and recipients an integrated "menu" of production programs that state and local governments can use to address the entire spectrum of affordable housing needs for low-income families in the community, including those with special needs.

Proposed HTF requirements include:

### **ELIGIBLE GRANTEES AND SUBGRANTEES; PARTICIPATION REQUIREMENTS**

A state must notify HUD in writing of its intention to become an HTF grantee for the first year of HTF funding no later than 30 days after receiving notice of its formula allocation amount. The state or a state-designated entity will be the HTF grantee.

In order to receive its grant, a state must submit a consolidated plan in accordance with 24 CFR Part 91. The state, or state entity designated to be the HTF grantee, may directly fund projects or may choose to fund projects through one or more sub-grantees.

Each HTF grantee and subgrantee must submit an "HTF Allocation Plan" as part of its consolidated plan. Public comment on the HTF Allocation Plan is required. Projects must be selected in accordance with the grantee or sub-grantee's HTF Allocation plan, as applicable.

Grantees must ensure that their sub-grantees comply with all HTF requirements and other applicable laws, and carry out the grantee's responsibilities.

## **PROGRAM REQUIREMENTS**

### **Income Targeting**

#### Rental Housing and Homeownership

In each fiscal year, not less than 75% of funds awarded to each grantee must be provided to rental or homeownership projects that benefit extremely low-income families or families with incomes at or below the poverty line, whichever is greater. For the first year of HTF funding, states must use 100% of HTF rental housing funding for extremely low-income families or families with incomes at or below the poverty line.

### **Eligible and Prohibited Activities**

#### Rental housing

80% of HTF funds may be used for the production, preservation, and rehabilitation of affordable rental housing and affordable housing for homeownership through the acquisition, new construction, reconstruction, or rehabilitation of non-luxury housing with suitable amenities.

#### Homeownership

Not more than 10% of total annual HTF funds allocated to a grantee shall be used for homeownership.

#### Administrative and Planning Costs

Up to 10% of the fiscal year HTF grant may be used for a grantee's reasonable administrative and planning costs of the HTF program.

#### Eligible activities and expenses include:

- Real property acquisition,
- Site improvements,
- Conversion,
- Demolition,
- Financing costs,
- Relocation expenses,
- Operating costs and operating cost reserves, \* and
- Reasonable administrative and planning cost. \*\*

\*Not more than 20% of the annual formula allocation to each state may be used for operating cost assistance, which may only be provided to rental housing being acquired, rehabilitated, preserved, or newly constructed with HTF funds that does not receive project-based assistance.

\*\*Grantees may not charge (and must prohibit sub-grantees and recipients from charging) any servicing, origination, or other fees to cover the cost of administering the HTF program. Grantees may charge owners of rental projects reasonable annual fees for monitoring

compliance during the affordability period. Grantees may also charge nominal application fees (although these fees are not an eligible HTF cost). All such fees are applicable credits (i.e., program income) under OMB Circular A-87.

### Prohibited Activities and Fees

Except for the circumstances described in this section, HTF funds may not be used to:

- Provide assistance (other than assistance to a homebuyer to acquire housing previously assisted with HTF funds) to a project previously assisted with HTF funds during the affordability period;
- Pay for the acquisition of property owned by the grantee;
- Pay delinquent taxes, fees, or charges on properties to be assisted with HTF funds;
- Pay for political activities, advocacy, lobbying, counseling services, travel expenses, and preparing or providing advice on tax returns;
- Pay for administrative, outreach, or other costs to manage and operate the grantee of HTF funds; or
- Pay for any cost that is not eligible under §92.731 and §92.732.

Grantees must also prohibit project owners from charging origination fees, or charge more than is customary for parking and laundry room use, among other fees. However, project owners may charge reasonable application fees to prospective tenants.

### **Other Program Requirements**

#### Permanent Housing

HTF-funded housing must be permanent or transitional housing.

#### Public Housing

HTF funds may not be used for public housing, including housing that is developed under HOPE VI that is operated as public housing. HTF-assisted housing may not receive operating assistance under section 9 of the 1937 Act during the HTF period of affordability. HTF funds may be used for affordable housing in a project that also contains public housing units, as long as the HTF funds are not used for the public housing units and HTF funds are only used for eligible costs.

#### Forms of assistance may include:

- Equity investments,
- Interest-bearing loans or advances,
- Non-interest bearing loans or advances,
- Interest subsidies,
- Deferred payment loans,
- Grants, or
- Other forms of assistance approved by HUD.

#### Site and Neighborhood Standards

The site and neighborhoods standards in § 92.202 apply to the HTF.

#### Income Determinations

Grantees must determine that each family occupying an HTF-assisted unit is income eligible to ensure that income targeting requirements are met. The definitions of “annual income” and “adjusted gross income” are defined in this section. The methods for determining and calculating annual income for tenants and homebuyers are also addressed in the full text of the proposed rule.

## **PROJECT REQUIREMENTS**

### Eligible Project Costs Include:

- Development hard costs,
- Refinancing costs,
- Acquisition costs,
- Related soft costs,
- Operating cost assistance and operating cost assistance reserves,
- Relocation costs, and
- Costs related to payment of loans.

### Maximum Per-Unit Subsidy Amount,

The grantee must establish maximum limitations on the total amount of HTF funds that may be invested per unit for development, with adjustments for the number of bedrooms and the geographic location of the project. The grantee must include these limits in its annual consolidated plan and update them annually.

### Underwriting and Subsidy Layering

Before committing funds to a project, the grantee must evaluate the project in accordance with applicable guidelines and not invest any more HTF funds, alone or in combination with other governmental assistance (including any operating cost assistance or project-based rental assistance), than necessary to provide quality affordable housing that is financially viable for, at a minimum, the affordability period required by this regulation. The grantee must also examine the sources and uses of funds for the project and determine that these costs are reasonable and will not provide undue return on the owner’s or developer’s investment or undue profit.

### Cost Allocation for Multi-Unit Projects

For multi-unit projects, only the actual HTF-eligible development costs, which may be based on a method of cost allocation, of assisted units may be charged to the HTF program. After project completion, the number of designated HTF-assisted units may not be reduced.

### Fixed and Floating HTF Units

In a project containing both HTF-assisted and other units, the grantee may designate fixed or floating HTF units at the time of project commitment in the written agreement and the HTF units must be identified not later than the time of project completion. Fixed units remain the same throughout the affordability period and floating units are changed to maintain conformity with the requirements of this section during the affordability period.

### Terminated Projects

An HTF-assisted project that is terminated before completion or does not meet the requirements for affordable housing constitutes an ineligible activity. The grantee must repay any HTF funds invested in an ineligible activity or project to the HTF account.

### Disaster Mitigation

Where relevant, the housing must be constructed or rehabilitated to mitigate the impact of potential disasters, in accordance with applicable State and local codes, ordinances, and requirements, or other requirements established by HUD.

## **PROPERTY STANDARDS**

Projects are eligible to receive HTF funds only if the housing meets the applicable property standards.

### **Property Standards: New Construction Projects and Gut Rehabilitation Projects**

HTF-assisted new construction and gut rehabilitation projects must meet all applicable state and local codes, ordinances, and zoning requirements. Upon completion, new construction and gut rehab HTF-assisted projects must meet the International Residential Code or International Building Code (as applicable), or state or local residential and building codes for new construction or gut rehabilitation.

### Written Standards and Materials

The grantee must establish written standards for methods and materials to be used for new construction and gut rehabilitation; ensure that project plans, specifications, and work write-ups are in compliance with State and local codes, ordinances, requirements, and the grantee's standards; and review and approve written cost estimates.

### Energy and Water Efficiency

All residential buildings up to 3 stories must meet the guidelines for ENERGY STAR Qualified New Homes, as certified by a qualified Home Energy Rater. The requirement for ENERGY STAR certification applies to all projects with funds committed after 6 months from the effective date of this rule.

All mid- or high-rise multifamily housing over 3 stories must exceed, by 20%, the minimum energy efficiency requirements defined by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1-2007, Appendix G: Performance Rating Method (or the updated ASHRAE standard for all projects with HTF funds committed after the date that the updated standard is published). If an ENERGY STAR standard is established for housing over 3 stories, the ENERGY STAR guidelines and certification requirements will apply.

All water-usage products installed in HTF-assisted units must bear the WaterSense label.

## **Property Standards: Rehabilitation Projects**

HTF-assisted rehabilitation projects must meet all applicable state and local codes, ordinances, and requirements upon project completion.

### **Written Standards for Methods and Materials**

The grantee must establish written standards for methods and materials to be used for rehabilitation work and describe these standards in its consolidated plan. At a minimum, the grantee's standards must cover all items included in HUD's most recent version of Uniform Physical Condition Standards (UPCS) Comprehensive Listing of Inspectable Areas, or other requirements established by HUD. The rehabilitation standards must address each of the following:

- The housing must be free of all health and safety defects.
- The housing must meet minimum standards of habitability and functionality, and all inspected items with an observed deficiency must be corrected.
- Each major system of the housing must have a useful life for a minimum of 15 years.
- The housing must meet the lead-based paint requirements at 24 CFR part 35.
- Housing must meet the accessibility requirements at 24 CFR part 8, which implements section 504 of the Rehabilitation Act of 1973. If the rehabilitation includes an addition, covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act.
- The housing must meet energy and water efficiency requirements. ENERGY STAR labeled and WaterSense labeled products must be installed when older obsolete products are replaced as part of the approved rehabilitation work and as appropriate for achieving energy efficiency.
- Where relevant, the housing must be improved to mitigate the impact of potential disasters, in accordance with applicable State and local codes, ordinances, and requirements, or other requirements established by HUD.
- Discretionary housing improvements beyond those described in this section may include modest amenities and aesthetic features similar to types of housing in the surrounding community and must avoid luxury improvements.

### **Property Standards: Acquisition of Standard Housing**

Existing housing that is acquired with HTF assistance must meet the property standards at § 92.741 for new construction and gut rehabilitation projects or § 92.742 for other rehabilitation projects, as applicable. If the property does not meet these standards, the property must be rehabilitated to meet the standards in these sections.

### **Property Standards: Manufactured Housing**

Construction of all manufactured housing must meet the Manufactured Home Construction and Safety Standards of 24 CFR part 3280.

#### **Installation**

Grantees providing HTF assistance to install manufactured housing units must comply with all applicable state and local laws or codes, or the manufacturer's written instructions for installation in absence of such laws or codes. HTF-assisted manufactured housing must be on a permanent foundation.

Manufactured housing that is newly constructed or has undergone gut rehabilitation must meet the

energy and water efficiency standards in § 92.741, and must be ENERGY STAR qualified, as certified by an EPA-designated Quality Assurance Provider.

#### *Rehabilitation*

HTF-assisted rehabilitated (other than gut) manufactured housing must meet the property standards requirements of § 92.742, as applicable.

#### **Property Inspections**

For all new construction, gut rehabilitation and rehabilitation of projects, the grantee must establish written procedures for and conduct initial, progress, and final inspections during construction to identify any deficiencies that must be addressed and ensure that all work is in accordance with approved standards, as applicable. The grantee must also comply with ongoing responsibilities for on-site inspections for rental housing during the affordability period as specified in the regulation.

#### **Work Write-Ups and Cost Estimates**

The grantee must ensure that work write-ups are in compliance with State and local codes, ordinances, requirements, and the grantee's standards; and review and approve written cost estimates.

#### **Payment Schedule**

The grantee must ensure that progress payments are consistent with the amount of work performed and that final payment does not occur until all punch list items are completed.

#### **Environmental Review**

The project activities must meet the applicable environmental review requirements for historic preservation, archaeological resources, farmland, airport zones, Coastal Barrier Resource System, coastal zone management, floodplains, wetlands, explosives and hazards, contamination, noise, endangered species, wild and scenic rivers, safe drinking water, and sole source aquifers.

Note: Because the HTF was originally to be funded by sources other than federal appropriations, requirements of the National Environmental Protection Act (NEPA) were not included in the HTF statute. Now that the funding for the HTF may come from federal appropriations, NEPA requirements would apply. However, until legislation is enacted to make NEPA requirements applicable to the HTF as they are in the HOME program, HUD cannot delegate its authority to HTF grantees to conduct the environmental reviews.

Consequently, alternative environmental review standards were included in the property standards section of the proposed rule. HUD has proposed legislation that would establish the same NEPA requirements for the HTF; should that legislation be enacted, the property standards sections of the HTF rule would be changed and the environmental review standards would be removed from these sections.

#### **Ongoing Property Standards: Rental Housing**

The grantee must establish property standards for rental housing that apply throughout the affordability period and describe these standards in its Consolidated Plan. At a minimum, these standards must include all inspectable items included in HUD's most recent Uniform Physical Condition Standards (UPCS) Comprehensive Listing of Inspectable Areas or other requirements established by HUD. The

ongoing property standards must address: compliance with state and local codes, ordinances, and requirements; health and safety; habitability and functionality; and lead-based paint.

#### Corrective and Remedial Actions

The grantee must have procedures for ensuring that timely corrective and remedial actions are taken by the project owner to address identified deficiencies.

### **QUALIFICATION AS AFFORDABLE HOUSING**

#### **Rental Housing**

##### Rents

The maximum HTF rent plus utilities for units is the greater of 30% of the federal poverty line or 30% of the income of a family whose annual income equals 30% of the area median income, with adjustments for the number of bedrooms in the unit. If the unit receives federal or state project-based rental subsidy, the maximum rent is the rent allowable under the rental subsidy program.

##### Periods of Affordability

HTF-assisted units must meet the affordability requirements for not less than 30 years, beginning after project completion. The grantee may impose longer periods. The affordability requirements must be imposed by deed restriction, covenants running with the land, use restrictions, or other mechanisms approved by HUD under which the grantee and beneficiaries may require specific performance.

The affordability requirements may terminate upon foreclosure or transfer in lieu of foreclosure, in accordance with the requirements in this section. However, if a project is terminated, the grantee is obligated to repay all HTF funds invested in the project. The termination of the affordability restrictions on the project in foreclosure does not terminate the grantee's repayment obligation.

##### Nondiscrimination Against Rental Subsidy Holders

The owner cannot refuse to lease HTF-assisted units to a voucher holder under 24 CFR part 982, or to the holder of a comparable document evidencing participation in a HOME tenant-based rental assistance program.

##### Tenant Protections and Selection

There must be a written lease between the tenant and owner of HTF-assisted rental housing for a period of not less than 1 year, unless a shorter period is mutually agreed upon. Renewal of the tenancy also requires a written lease.

##### Prohibited Lease Terms

The lease may not contain any of the following provisions:

- Agreement to be sued,
- Treatment of property,
- Excusing owner from responsibility,
- Waiver of notice,
- Waiver of legal proceedings,
- Waiver of a jury trial,
- Waiver of right to appeal court decision,
- Tenant chargeable with cost of legal actions regardless of outcome, and

- Mandatory supportive services.

#### Termination of Tenancy

An owner may not terminate the tenancy or refuse to renew the lease of a tenant of HTF-assisted rental housing, except for the reasons described in this section and in these cases, only in compliance with state or local law.

#### Tenant Selection

An owner of HTF-assisted rental housing must comply with the affirmative marketing requirements established by the grantee pursuant to § 92.760, and follow written tenant selection policies and criteria that:

- Limit the housing to income-eligible families;
- Are reasonably related to the applicant's ability to perform the obligations of the lease;
- Limit eligibility or give preference to a particular segment of the population if permitted in its written agreement with the grantee (and only if described in the grantee's consolidated plan), in accordance with the requirements further detailed in this section;
- Do not reject an applicant with a voucher under the Section 8: Housing Choice Voucher Program;
- Provide for the selection of tenants from a written waiting list in the chronological order of their applications, as feasible; and
- Give prompt written notification to any rejected applicant describing the grounds for any rejection.

### **Homeownership**

#### First-Time Homebuyer and Income Requirements

The housing must be acquired by a first-time homebuyer whose family qualifies as income-eligible and the housing must be the principal residence of the family throughout the affordability period.

#### Required Homeownership Counseling

Prior to purchase, the family must have completed a program of independent financial education and homeownership counseling from an eligible organization.

#### Period of Affordability

HTF-assisted housing must meet the affordability requirements for at least 30 years.

#### Resale During the Period of Affordability

The grantee may apply its HOME program resale restrictions, as amended to accommodate subsequent purchasers who are income-eligible families, to HTF-assisted units or develop and adopt resale restrictions for the HTF program. These resale provisions must be included in the grantee's consolidated plan and must comply with requirements for resale restrictions set forth in the HTF and HOME regulations.

#### Lease-Purchase

HTF funds may be used to assist homebuyers through lease-purchase programs for existing housing and new construction housing, subject to the requirements in this section.

#### Preserving Affordability

To preserve the affordability of HTF-assisted housing, a grantee may use additional HTF funds to acquire the housing before foreclosure or at the foreclosure sale, undertake any necessary rehabilitation, and

provide assistance to another first-time homebuyer, in accordance with the requirements of this section. Additional HTF funds may not be used if the mortgage in default was funded with HTF funds.

#### Agreements with Lending Institutions

In accordance with the HTF regulatory requirements, the grantee may provide homeownership assistance through written agreements with for-profit or non-profit lending institutions that are providing the first mortgage loan to a family.

#### Written Policies for Underwriting

The grantee must have and follow written policies for underwriting standards for homeownership assistance, anti-predatory lending, and refinancing loans to which HTF loans are subordinated to ensure that the terms of the new loan are reasonable.

#### Modest Housing Requirements for Homeownership

Housing that is for homeownership must be modest in accordance with this section.

New construction must have an appraised value that does not exceed 95% of the median purchase price for the type of single-family housing for the area. For acquisition with rehabilitation, the estimated value of the housing after rehabilitation may not exceed 95% of the median purchase price for the area.

### **OTHER FEDERAL REQUIREMENTS**

#### Other Federal Requirements and Nondiscrimination; Affirmative Marketing

The federal requirements in 24 CFR part 5, subpart A, are applicable to the HTF program. The affirmative marketing requirements in 24 CFR 92.351(a) apply to the HTF program.

#### Lead-Based Paint

Housing assisted with HTF funds is subject to the regulations at 24 CFR part 35, subparts A, B, J, K, and R.

#### Accessibility

The housing must meet the accessibility requirements at 24 CFR Part 8, which implements section 504 of the Rehabilitation Act of 1973. Covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act.

#### Displacement, Relocation, and Acquisition

The displacement, relocation, and acquisition requirements of 24 CFR 92.353 apply to the HTF program.

#### Conflict of Interest

The conflict of interest requirements in § 92.356 apply to the HTF.

#### Funding Accountability and Transparency

The HTF grant shall be considered a federal award for purposes of the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note).

#### Faith-Based Organizations

Faith-based organizations are eligible to participate in the HTF program as provided in 24 CFR 92.257.

## **PROGRAM ADMINISTRATION**

### HTF Grant Agreement

Allocated and reallocated formula funds will be made available pursuant to an HTF Grant Agreement.

### Program Income and Repayments

Program income must be treated as HTF funds and must be used in accordance with the requirements of this subpart. The grantee must report any program income received and its use in IDIS.

Any HTF funds invested in housing that does not meet the affordability requirements or invested in a project that is terminated before completion, either voluntarily or otherwise, must be repaid by the grantee.

### Grantee Responsibilities; Written Agreements; On-Site Inspections; Financial Oversight

The grantee is responsible for managing the day to day operations of its HTF program and ensuring that HTF funds are use in accordance with all program requirements. The use of sub-grantees or contractors does not relieve the grantee of this responsibility.

### Written Agreements

Before disbursing any HTF funds to any entity, the grantee must enter into a written agreement with that entity to ensure compliance with HTF requirements. The contents of the agreement may vary depending upon the entity's program functions and types of projects undertaken, but must include the basic requirements and minimum provisions outlined in this section for each of the following entities: sub-grantee, eligible recipient, and first-time homebuyer.

### Financial Oversight

The grantee must examine regularly, at least annually, the financial condition of HTF-assisted rental housing to determine the continued financial viability of the housing and take actions to correct problems.

### On-Site Inspections

The grantee or subgrantee must perform on-site inspections of each HTF-assisted project at project completion and for rental housing, during the period of affordability, to determine that the housing complies with the applicable property standards and to verify the information submitted by project owners. The rule specifies the frequency of inspections and inspection procedures. life-threatening health and safety deficiencies must be corrected immediately and all other observed deficiencies must be corrected within a reasonable timeframe established by the grantee, depending on the severity of the deficiency.

### Applicability of Uniform Administrative Requirements

The uniform administrative requirements in § 92.505 apply to the HTF.

### Audit

Audits of the grantee and sub-grantees must be conducted in accordance with 24 CFR Part 84.26 and 85.26. The use of HTF grant funds by the grantee must be audited not less than annually to ensure compliance with this subpart.

### Recordkeeping

Each grantee must establish and maintain sufficient records to enable HUD to determine whether the grantee has met the requirements of this subpart. At a minimum, the following records are required:

- Program records,
- Project records,
- Financial records,
- Program administration records, and
- Records concerning other federal requirements.

All records pertaining to each fiscal year of HTF funds must be retained in a secure location for the most recent five-year period, except as provided in this section.

#### Performance Reports

Each grantee must develop and maintain a system to track the use of its HTF funds and submit annual performance and management reports on its HTF program.

### **Performance Reviews and Sanctions**

#### Accountability of Recipients

The grantee must review each recipient to determine compliance with the requirements of this subpart and the terms of the written agreement.

#### Misuse of Funds

Reimbursement is required if any recipient of HTF assistance is determined to have misused HTF funds. The grantee must require that, within 12 months after the determination of misuse, the recipient reimburse the grantee for such misused amounts and return any amounts that remain unused or uncommitted for use.

#### Reduction for Failure to Obtain Return of Misused Funds

Grant reduction is required if in any year a grantee fails to obtain reimbursement or return of the full amount required to be reimbursed or returned.

#### Performance Reviews

HUD will comprehensively review the performance of each grantee in carrying out its HTF responsibilities and meeting the requirements of this subpart whenever necessary, but at least annually.

#### Corrective and Remedial Actions

The corrective and remedial actions in § 92.551 of the HOME program apply to the HTF, except paragraph (c)(1)(viii).

#### Notice and Opportunity for Hearing: Sanctions

If HUD finds, after reasonable notice and opportunity for hearing, that a grantee has substantially failed to comply with any provision of this subpart, HUD shall reduce the funds in the grantee's HTF account to repay to HUD any amount of the HTF grant which was not used in accordance with the applicable requirements. In addition, HUD may prevent withdrawals from the grantee's HTF account, restrict the grantee's activities, or remove the state from participation in allocations or reallocations of funds, or terminate any HTF assistance to the grantee.