

# **National Housing Trust Fund**

## **Program Guidelines**



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## Table of Contents

<b>Section 1 - Introduction</b> .....	<b>3</b>
1.1 - Statutory Authority and Applicable Law .....	3
1.2 - Overview .....	3
1.3 - Local, State, and Federal Laws.....	4
1.4 - Purpose and Scope .....	4
<b>Section 2 – Definitions</b> .....	<b>5</b>
<b>Section 3 – Eligible Recipients (Applicants)</b> .....	<b>16</b>
<b>Section 4 – Eligible Uses, Terms and Limits of NHTF Funds</b> .....	<b>17</b>
<b>Section 5 – Project Requirements</b> .....	<b>18</b>
<b>Section 6 – Underwriting</b> .....	<b>23</b>
<b>Section 7 – Management and Maintenance</b> .....	<b>24</b>
<b>Section 8 – Application and Award Process</b> .....	<b>28</b>
<b>Section 9 – Application Minimum Requirements</b> .....	<b>31</b>
<b>Section 10 – Selection Criteria (Rating, Ranking, and Eligibility for Funding for Competitive Allocations)</b> .....	<b>42</b>
<b>Section 11 – Legal Documents</b> .....	<b>43</b>
<b>Section 12 – Project Set Up and Disbursement of Funds</b> .....	<b>48</b>
<b>Section 13 – Reporting and Recordkeeping</b> .....	<b>50</b>
<b>Section 14 – Annual Operating Budget and Schedule of Rental Income</b> .....	<b>51</b>
<b>Section 15 – Project Deadlines</b> .....	<b>53</b>
<b>Section 16 – Sales, Transfers, Encumbrances, and Loan Payoff</b> .....	<b>53</b>
<b>Section 17 – Program Income and Repayments</b> .....	<b>55</b>
<b>Section 18 – Cancellation and Defaults</b> .....	<b>55</b>

## **Section 1 - Introduction**

### **1.1 - Statutory Authority and Applicable Law**

The National Housing Trust Fund (“NHTF”) was established under Title I of the Housing and Economic Recovery Act of 2008 Section 1131 (Public Law 110-289). It is funded outside the congressional appropriations process. On January 30, 2015, the U.S. Department of Housing and Urban Development (“HUD”) published an Interim Rule, 24 C.F.R. Parts 91 and 93, which provides the requirements for states to implement the NHTF Program (FR-5246-I-03). The Interim Rule is still in use. In California, the NHTF Program is administered by the California Department of Housing and Community Development (Department), and the state NHTF Program is also governed by Assembly Bill no. 816, Chapter 396, statutes of 2021 (“AB 816”), which amended Health and Safety Code § 50676.

### **1.2 - Overview**

The NHTF is a federal formula grant that provides annual allocations to states to increase and preserve the supply of decent, safe, and sanitary affordable housing specifically for Extremely Low-Income and Very Low-Income Families. In any fiscal year, the total amount of funds allocated to the NHTF Program funds determines the criteria for income targeting. If the total amount of funds available for NHTF nationwide is less than \$1 billion, the statute requires that 100 percent (100%) of the grant benefit Extremely Low-Income Families, defined as those with incomes at or below 30 percent (30%) of the Area Median Income (“AMI”), or families with incomes at or below the federal poverty line (whichever is greater). If the total amount of funds available for NHTF nationwide in any fiscal year is more than \$1 billion, the statute requires that at least 75 percent (75%) of the grant benefit Extremely Low-Income households (30 percent (30%) AMI) or those with incomes at or below the federal poverty line. The remaining 25 percent (25%) of the grant must benefit Very Low-Income Families, those with incomes at or below 50 percent (50%) of AMI.

Furthermore, the federal statute requires at least 80 percent (80%) of the NHTF funds be used for the production, Rehabilitation, preservation, or operation of rental housing. Up to 10 percent (10%) of the NHTF funds may be used for homeownership activities for first-time homebuyers and up to 10 percent (10%) of the NHTF funds can be used for administration. The Department uses all of its non-administrative designated NHTF funds exclusively for rental housing. The Department does not offer a NHTF first-time homebuyer program.

The Department awards NHTF funds to eligible Recipients on either a competitive or over-the-counter (first-come-first-served) basis, at the Department’s sole discretion, and does not distribute NHTF funds through subgrantees. Consistent with the NHTF Interim Rule and AB 816, the regulations at 24 C.F.R. Part 91 governing HUD’s Consolidated Planning requirements apply to the NHTF Program. As a result, the Department annually submits its NHTF allocation plan for HUD’s approval, which describes how funds will be distributed, which activities will be undertaken to address priority housing needs, and how Recipients and Projects will be selected.

On September 29, 2021, the Governor signed into law AB 816, which amended Health and

Safety Code § 50676. In accordance with Section 50676(d) of Health and Safety Code and 24 C.F.R. § 91.220(l)(5)(A), the allocation plan and Guidelines must give priority to Projects based on: (1) geographic diversity; (2) the extent to which rents are affordable, especially to Extremely Low-Income households; (3) the merits of a Project; (4) Applicant's readiness; and (5) the extent to which Projects will use nonfederal funds. The Department must award funds to Projects serving people experiencing Homelessness, to the extent that a sufficient number of Projects exist to receive available funding. The Department may alter priority for funding to align eligibility with possible benefits, including Medi-Cal benefits intended to fund services for people experiencing Homelessness.

The state requirements set forth in the NHTF Guidelines and/or NOFA are subject to AB 1010 (Chapter 660, Statutes of 2019) which is set forth in Health and Safety Code § 50406(p), **(a)** where the provisions of tribal law, tribal governance, tribal charter, or difference in tribal entity or legal structure would cause a violation or not satisfy the requirements of the NHTF Guidelines and/or NOFA, said requirements may be modified as necessary to ensure program compatibility; and **(b)** where the provisions of tribal law, tribal governance, tribal charter, or difference in tribal entity or legal structure or agency create minor inconsistencies (as determined by the Director of the Department or a duly authorized designee thereof) with the requirements set forth in the NHTF Guidelines and/or NOFA, the Department may waive said requirements, as deemed necessary, to avoid an unnecessary administrative burden. Matters set forth or otherwise provided for in the NHTF Guidelines and/or NOFA that may be modified or waived include, without limitation, threshold scoring requirements and any other matter set forth in Health and Safety Code § 50406(p)(2). Native American Entity Applicants are accordingly encouraged to discuss any such potential modifications or waivers and their option in that regard with the Department prior to application submission. Native American Entity Applicants must be aware that AB 1010 cannot be used to modify or waive federal and state NHTF statutory requirements or federal NHTF regulatory requirements. There may be other federal law(s) that could provide a basis for possible modification or waiver of some federal requirements for Native American Entity Applicants.

### **1.3 - Local, State, and Federal Laws**

Recipients must abide by local, state, or federal laws as are applicable to the Project. These may include, but are not limited to, the following: zoning ordinances, building and housing codes; planning; historical preservation, environmental, tenant occupancy and relocation; and applicable federal requirements.

NOTE: Authority cited: Sections 50406(n), 50676.1(b), and 50676, Health and Safety Code. Reference: 4501 et seq., Title 12 of the United States Code; Part 93, Title 24 of the Code of Federal Regulations.

### **1.4 - Purpose and Scope**

Under Health and Safety Code § 50676.1(b), "the [D]epartment may adopt, amend, or repeal Guidelines to implement this chapter. Any Guidelines adopted to implement this chapter must not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of

Division 3 of Title 2 of the Government Code.” These Guidelines establish the rules, terms, conditions, forms, procedures, and other mechanisms that the Department deems necessary to exercise its powers and to perform its duties pursuant to the National Housing Trust Fund Program. The matters set forth herein are regulatory mandates and are adopted as regulations that have the dignity of statutes. *Ramirez v. Yosemite Water Company, Inc.*, 20 Cal.4th 785, 799 (1999).

NOTE: Authority cited: Sections 50406(n), 50676.1, and 50676, Health and Safety Code. Reference: 4501 et seq., Title 12 of the United States Code; Part 93, Title 24 of the Code of Federal Regulations.

## **Section 2 – Definitions**

The definitions found in 24 C.F.R. § 93.2 and 25 C.C.R. § 8301 apply to these Guidelines, regardless of whether these authorities capitalize these terms. In addition, the following definitions apply to these Guidelines and prevail if they conflict with the definitions in 24 C.F.R. § 93.2 and 25 C.C.R. § 8301.

- (a) “Accessible Housing Unit(s)” means, collectively, “Housing Units with Mobility Features” and “Housing Units with Hearing/Vision Features” as defined below:
- 1) A “Housing Unit with Mobility Features” means and refers to a housing unit that is located on an accessible route and complies with the requirements of 24 C.F.R. § 8.22 and all applicable provisions of Uniform Federal Accessibility Standards (“UFAS”) or the comparable provisions of the Alternative Accessibility Standard, including but not limited to § 809.2 through §809.4 of the 2010 Standards for Accessible Design. A Housing Unit with Mobility Features can be approached, entered, and used by persons with mobility Disabilities, including individuals who use wheelchairs. Such units must also comply with California Building Code (“CBC”) Chapter 11B.
  - 2) A “Housing Unit with Hearing/Vision Features” means and refers to a housing unit that complies with 24 C.F.R. § 8.22, and all applicable provisions of UFAS or the comparable provisions of the Alternative Accessibility Standard, including but not limited to § 809.5 of the 2010 Standards for Accessible Design. Such units must also comply with CBC Chapter 11B.
- (b) “Acquisition” means acquiring improved or unimproved real property and must comply with 24 C.F.R. § 93.200.
- (c) “Administrative Subcontractor” means any entity or individual which contracts with a Recipient of NHTF funds to provide any portion of administrative services to a Project. Individuals or groups that are acting in the capacity of developer or owner of a Project must not act as an Administrative Subcontractor for the Project.

- (d) “Alternative Accessibility Standard,” also referred to as the HUD Deeming Notice (HUD-2014-0042-0001), means the alternative accessibility standard for accessibility set out in HUD’s notice at 79 Federal Register 29671 (May 23, 2014), when used in conjunction with the requirements of 24 C.F.R. § 8.22, and the requirements of Part 35, 28 C.F.R., including 28 C.F.R. § 35.151 and the 2010 Standards for Accessible Design as defined in 28 C.F.R. § 35.104.
- (e) “Applicant” means an organization, agency, or other entity (including a public housing agency, Native American Entity, for-profit entity, or nonprofit entity) that applies to receive NHTF assistance from the Department as an owner or developer to carry out a NHTF-assisted Project. The Applicant must also be a “Recipient” under 25 C.C.R. § 8301(s).
- (f) “Area Median Income” (“AMI”) means the most recent applicable county median family income as determined by HUD. For Native American Applicants, if the HUD income for a county/parish located within a Native American Entity’s service area is lower than the United States median, the Native American Entity may use the United States median income limit.
- (g) “At Risk of Homelessness” has the same meaning as in 24 C.F.R. § 578.3.
- (h) “Award Letter” means a commitment letter (preliminary award letter) signed by the Director of the Department and Recipient indicating that the Department has reserved NHTF funds from an NHTF Grant Agreement for a Project. Disbursement of NHTF funds under an Award Letter for a Project is subject to meeting the requirements of these Guidelines, all pre-disbursement conditions in the Award Letter, all pre-disbursement conditions in the Department’s legal documents for the Project, and all requirements of state and federal law.
- (i) “Chronic Homelessness” means the condition experienced by people defined as “Chronically Homeless” under the federal Continuum of Care Program, at 24 C.F.R. § 578.3. It also includes the condition of individuals and families:
- (1) Residing in a place not meant for human habitation, emergency shelter, or safe haven, after experiencing Chronic Homelessness, as defined in 24 C.F.R. § 578.3, and subsequently residing in a permanent housing project within the last year.
  - (2) Residing in transitional housing who were experiencing Chronic Homelessness as defined in 24 C.F.R. § 578.3 prior to entering the transitional housing; or
  - (3) Residing in an existing Supportive Housing Project receiving NHTF funding for a Rehabilitation Project or being replaced by an NHTF-funded Project, provided that, upon initial occupancy, the individuals were experiencing Chronic

Homelessness as defined in 24 C.F.R. § 578.3.

- (j) “Continuum of Care” has the same meaning as 24 C.F.R. § 578.3.
- (k) “Declaration of Restrictive Covenants” is a legal document that the Department may use for Projects located on Native American Lands that restricts the use of a Project’s land for the development of affordable multifamily housing Units in a manner consistent with these Guidelines, 24 C.F.R. Part 93, and 25 C.C.R. § 8301 *et seq.* A Declaration of Restrictive Covenants runs with the land and is binding on the parties and their successors and assigns throughout the Project’s 50-year period of affordability.
- (l) “Department” means the California Department of Housing and Community Development.
- (m) “Developmental Disability” means a Disability that is covered under the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 USC Sections 15001 and 15002(8) and implementing regulations at 45 C.F.R. § 1325.3) or California Code, Welfare and Institution Code (“WIC”) § 4512(a), and Disabilities that make a person eligible for services from the California Regional Center System. It includes a severe, chronic Disability that:
  - 1) is attributable to a mental or physical impairment or combination of mental and physical impairments;
  - 2) manifests before the age of 22;
  - 3) is likely to continue indefinitely;
  - 4) results in substantial functional limitations in three or more of the following areas of major life activity:
    - i. self-care,
    - ii. receptive and expressive language,
    - iii. learning,
    - iv. mobility,
    - v. self-direction,
    - vi. capacity for independent living, or
    - vii. economic self-sufficiency; and

- 5) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

The definition includes Intellectual Disabilities, cerebral palsy, epilepsy, and autism spectrum disorder. It also includes conditions that are closely related to Intellectual Disability or that require similar treatment (WIC § 4512(a)).

(n) "Disability" or "Persons with Disabilities" has the same meaning as in 24 C.F.R. § 5.403. In addition to this definition, Disability means meeting the definitions of disability in the Americans with Disabilities Act ("ADA") (42 USC §12102) or the California Fair Employment and Housing Act (Part 2.8 (commencing with §12900) of Division 3 of Title 2 of the Government Code) and shall be broadly construed to include:

- (1) individuals with a Mental or Physical Disability that limits a major life activity;
- (2) individuals regarded or perceived as having a Mental or Physical Disability that limits a major life activity. This includes being perceived as having or having had a disorder or condition that has no present disabling effect but may become a Mental or Physical Disability;
- (3) individuals having a record of a Mental or Physical disability that limits a major life activity. A "record" of Mental or Physical Disability includes previously having, or being misclassified as having, a record or history of a Mental or Physical Disability; and/or
- (4) individuals who are, or are perceived as, associated with a person who has, or is perceived to have, a Mental or Physical Disability.
- (5) For purposes of this definition:
  - a. "Mental Disability" includes, but is not limited to, having any mental or psychological disorder or condition, Intellectual Disability, organic brain syndrome, emotional or mental illness, or specific learning Disabilities, and chronic or episodic conditions that limits a major life activity. This includes Disabilities such as autism spectrum disorders, schizophrenia, clinical depression, bipolar disorder, post-traumatic stress disorder, and obsessive-compulsive disorder.
  - b. "Physical Disability" includes, but is not limited to, having any physiological disease, disorder, condition, cosmetic disfigurement, anatomical loss that affects one or more of the following body systems or the operation of an individual organ within a body



system: neurological; immunological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; circulatory; skin; endocrine; brain; and normal cell growth; and that limits a major life activity.

- c. "Major life activity" shall be construed broadly and includes, but is not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, working, and social activities.
  - d. "Limits" shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity. A Mental or Physical Disability "limits" a major life activity if it makes the achievement of the major life activity difficult.
  - e. Disabilities also include Intellectual/Developmental Disabilities as defined in these Guidelines and acquired brain injuries (which have both a Physical and Mental Disability component); chronic and recurring Disabilities, and medical conditions as defined in Government Code §§ 12926(i) and 12926(j), such as cancer.
- (o) "Disabled Family" has the same meaning given that term in 24 C.F.R. § 5.403. In addition to this definition, Disabled Family means a Family in which at least one member, or the sole member, has a Disability.
- (p) "Efficiency Unit" means a Unit consisting of one habitable room. A room in a structure that is a single-family house will not be considered an Efficiency Unit eligible for program funds.
- (q) "Environmental Provisions" has the same meaning given that term in 24 C.F.R. § 93.301(f).
- (r) "Extremely Low-Income Families" means families whose annual incomes do not exceed 30 percent (30%) of the median family income of a geographic area, as determined by HUD with adjustments for smaller and larger families.
- (s) "Family" has the same meaning given that term in 24 C.F.R. § 5.403 and includes, but is not limited to, the following, regardless of actual or perceived sexual orientation, gender identity, or marital status:

- (1) A single person, who may be an elderly person, displaced person, disabled person, near-elderly person, or any other single person; or

(2) A group of persons residing together, and such group includes, but is not limited to:

(i) A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family);

(ii) An elderly family;

(iii) A near-elderly family;

(iv) A Disabled Family;

(v) A displaced family; and

(vi) The remaining member of a tenant family.

(t) “Federal Disbursement and Information System” is the computerized system operated by HUD which manages, disburses, collects data and reports on the use of NHTF funds.

(u) “Fiscal Integrity” means that the total amount of the Operating Income plus funds released pursuant to the Regulatory Agreement from the operating reserve account is sufficient to:

(1) Pay all current Operating Expenses;

(2) Pay all current debt service (excluding deferred interest);

(3) Fully fund all reserve accounts (other than the operating reserve account) established pursuant to the Regulatory Agreement; and

(4) Pay other extraordinary costs permitted by the Regulatory Agreement. The ability to pay any or all of the permitted annual Distributions must not be considered in determining Fiscal Integrity.

(v) “Funding Cycle” means the annual period of time during which HUD makes NHTF funds available to the Department for funding Projects under these Guidelines and includes the period of time during which the Department solicits applications and makes awards of funds.

(w) “Homeless” or “Homelessness” means the condition of individuals and households who meet the definition of “homeless” in 24 C.F.R. § 578.3. Homelessness includes At Risk of Homelessness and Chronic Homelessness. Occupants of a development

undergoing Rehabilitation with Department funds, or being replaced by an NHTF-funded Project, are deemed to qualify under this definition if they qualified upon initial occupancy.

- (x) “Housing First” has the same meaning given that term defined in accordance with California Code, (“WIC”) § 8255.
- (y) “Initial Operating Year” means the initial period of operation of the Rental Housing Development, beginning at the time of the permanent conversion of the completed Project and ending on the last day of the fiscal year, as determined by the Department for the Project.
- (z) “Intellectual Disability” means a condition characterized by either significant limitations in intellectual functioning (reasoning, learning, problem-solving) or adaptive behavior (everyday social and practical skills).
- (aa) “Limited Waiver of Sovereign Immunity” means a limited waiver of the tribe’s sovereign immunity to unconsented suit to permit suit against the waiving tribe in any forum of competent jurisdiction over the subject matter. Tribes as sovereign nations possess the powers of self-government and self-determination to govern and make their own laws and be ruled by them. Tribes may waive their immunity on a case-by-case basis and negotiate limited waivers suitable to all contracting parties.
- (bb) “Local Account” is an account maintained by the Department pursuant to 24 C.F.R. § 93.400(c), which must include repayments of NHTF funds from Recipients and any payment of interest or other return on the investment of NHTF funds.
- (cc) “Native American Entity” means an “Indian Tribe” or a “Tribally Designated Housing Entity” that is any of the following: a) Applicant meets the definition of Indian Tribe under Section 4103(13)(B) of Title 25 of the United States Code; b) Applicant meets the definition of Tribally Designated Housing Entity under 25 USC 4103(22); or c) If Applicant is not a federally recognized tribe as identified above, Applicant is either: (1) Listed in the Bureau of Indian Affairs Office of Federal Acknowledgment Petitioner List, pursuant to 25 C.F.R. part 83.1, and has formed and controls a special purpose entity in compliance with 25 C.C.R. § 8313.2; or (2) An Indian Tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of consultation pursuant to GC Section 65352.3, and that has formed and controls a special purpose entity in compliance with 25 C.C.R. § 8313.2.
- (dd) “Native American Lands”: means real property located within the State of California that meets the following criteria:
  - (a) All land located in "Indian Country" as defined by 18 U.S. Code (USC) 1151;
  - (b) All land within the limits of a Rancheria under the jurisdiction of the United States Government.
  - (c) All land held in trust by the United States for an Indian Tribe or individual; or

- (d) All land held by an Indian Tribe or individual, and that is subject to a restriction by the United States against alienation.
- (ee) “Native American Fee Lands” means “fee lands” located within the State of California and outside the jurisdiction of a Native American government Entity, owned or co-owned by a Native American Entity, and located outside of Native American Lands.
- (ff) “New Construction” means all new construction that is performed using NHTF funds. New Construction Projects must meet the Site and Neighborhood Standards requirements in 24 C.F.R. § 93.150(b), Property Standards requirements in 24 C.F.R. § 93.301(a) and the following for accessibility:
- 1) A minimum of 15 percent (15%) of the NHTF Assisted Units with mobility features, and a minimum of 10 percent (10%) of the NHTF Assisted Units with hearing and vision features.
  - 2) Senior New Construction Projects must provide a minimum of 50 percent (50%) of all NHTF Assisted Units with mobility features.
  - 3) The Department’s Director may approve a partial or full exemption to the requirements for the number of accessible units in excess of those required by the ADA, Section 504, or CBC Chapter 11B.
- (gg) “NHTF Assisted Unit” means an assisted unit subject to these Guidelines as a result of financial assistance provided by the NHTF funds, as specified in the Regulatory Agreement.
- (hh) “NHTF Fund” means the account established in the U.S. Treasury to which funds for the Department's use in the NHTF Program are allocated.
- (ii) “NHTF Grant Agreement” means the agreement between the Department and HUD pursuant to 24 C.F.R. § 93.401 granting the Department NHTF funds that the Department makes available under a NOFA.
- (jj) “NOFA” is the acronym used for Notice of Funding Availability. The NOFA announces that NHTF funds are available and describes the terms and conditions of awards and requirements for applications that may be submitted.
- (kk) “Principal” means employees of the Recipient who are in a position responsible for the oversight and management of development activities.
- (ll) “Project” has the same meaning as defined by 24 C.F.R. § 93.2 and is further defined as a “Project” under 25 C.C.R. § 8301(n), except the Rental Housing Development may contain less than five Units and may be located on non-tribal land, Native American Lands or Native American Fee Lands.

- (mm) “Project Owner” means the legal entity that owns the Project.
- (nn) “Recipient” means an organization, agency, or other entity (including a public housing agency, Native American Entity, for-profit entity, or nonprofit entity) that receives NHTF assistance from the Department as an owner or developer to carry out a NHTF-assisted Project. The Recipient must also be a “Sponsor” under 25 C.C.R. § 8301(s). Any reference to a Sponsor in the provisions of 25 C.C.R. § 8300 *et seq.* that these Guidelines incorporate is hereby applicable to Recipients. A Recipient must:
- (1) Make acceptable assurances to the Department that it will comply with the requirements of the NHTF Program during the entire period that begins upon selection of the Recipient to receive NHTF funds, and ending upon the conclusion of all NHTF-funded activities and affordability period;
  - (2) Demonstrate the ability and financial capacity to undertake, comply, and manage the eligible activity by showing it has adequate staff that it pays directly, capital, assets, and other resources to:
    - (A) Efficiently meet the operational needs of a Project;
    - (B) Maintain Fiscal Integrity of a Project;
    - (C) Satisfy all legal requirements and obligations in connection with the Project; and
    - (D) Is not under the control of another entity, such as, but not limited to, sharing a board of directors with another corporation, sharing the same Principal officers, providing staff, or otherwise involved in an arrangement through which an outside entity, business, or corporation directly controls the Recipient and its maintenance of the Project.
  - (3) Demonstrate its familiarity with the requirements of other federal, state, or local housing programs that may be used in conjunction with NHTF funds to ensure compliance with all applicable requirements and regulations of such programs; and
  - (4) Have demonstrated experience and capacity to conduct an eligible NHTF activity as evidenced by its ability to:
    - (A) Own, construct, or rehabilitate, and manage and operate, an affordable multifamily Rental Housing Development; and
    - (B) Provide forms of assistance, such as down payments, closing costs, or interest rate buydowns for purchasers.

(5) A Recipient must demonstrate compliance with these requirements at the time of its application for funding.

(oo) “Rehabilitation” means all substantial repairs and improvements that are performed using NHTF funds. Rehabilitation Projects must meet the requirements of 24 C.F.R. § 93.301(b) and the Department’s HOME Investment Partnerships (HOME) Program and National Housing Trust Fund (NHTF) Combined Multifamily Rehabilitation Standards dated January 1, 2023, as may be amended from time to time. Additionally, the following are required for accessibility:

All Rehabilitation Projects must provide a minimum of 10 percent (10%) of the NHTF Assisted Units with mobility features, and a minimum of 4 percent (4%) of the NHTF Assisted Units with hearing and vision features. At least one of each common area facility type and amenity, as well as paths of travel between Accessible Housing Units and such facilities and amenities, the building entry and public right of way, and the leasing office or area shall also be made accessible utilizing CBC Chapter 11(B) as a design standard. In all other respects, applicable building codes will apply. The Department’s Director may approve a partial or full exemption to the requirements for the number of Accessible Housing Units in excess of those required by the ADA, Section 504, or CBC Chapter 11B provided:

- (A) The exemption does not pertain to any accessibility features required by applicable building codes, the CBC Chapter 11B, or federal law, including the required minimum 5 percent (5%) Units with mobility features and 2 percent (2%) Units with hearing and vision features. These CBC Chapter 11B and federal law minimums are calculated on all units in the Project, not just NHTF Assisted Units, and
- (B) The Recipient’s and Project’s architect demonstrate that full compliance with requirements that exceed those otherwise required by building codes or state or federal law would be infeasible or create an undue financial and administrative burden. Accessibility must be provided to the maximum extent feasible.
- (C) Senior Rehabilitation Projects must provide a minimum of 25 percent (25%) of all NHTF Assisted Units.

(pp) “Rent” means all charges, other than deposits, paid by the tenant for the use and occupancy of a Unit in a Project, including tenant paid utilities. Rent must be reduced by any federal or state government project-based rental assistance paid on behalf of the tenant.

(qq) “Resident Services” means instructor-led programs such as, and not limited to, after school programs for school age children, financial literacy, computer training, home-buyer education, General Education Development (“GED”) classes, and resume building classes, English as a Second Language (“ESL”), nutrition classes, exercise

classes, health and wellness services and programs, art classes, parenting classes, and on-site food cultivation and preparation classes. Drop-in computer labs do not qualify.

- (rr) "Rural Area" has the same meaning as in Health and Safety Code § 50199.21.
- (ss) "Schedule of Rental Income" ("SRI") is submitted to and approved by the Department prior to permanent financing closing and as required by the Regulatory Agreement. The SRI sets forth the rent roll, which identifies each tenant household in a form and manner that is reasonably acceptable to the Department; includes information requested by the Department (e.g., tenant household size, income, current rent, Department-approved utility schedule, proposed rent adjustments, distribution and occupancy of accessible Units in accordance with 24 C.F.R. §§ 8.26 and 8.27); and provides estimated income for NHTF Assisted Units, non-NHTF Assisted Units, and Commercial Space or use.
- (tt) "Set Up" means all of the funding conditions required by HUD and the Department have been met, and the Recipient is ready to establish a Project-specific account in the Federal Disbursement and Information System.
- (uu) "Standard Agreement" means the written agreement between the Department and Recipient to formally commit NHTF funds to a Project, in accordance with HUD's definition of commitment at 24 C.F.R. § 93.2 and HUD's requirements for written agreements under 24 C.F.R. § 93.404(c)(2).
- (vv) "Supportive Housing" means housing with no limit on length of stay, that is occupied by the Target Population, and that is linked to onsite or offsite services that assist the Supportive Housing resident in retaining the housing, improving their health status, and maximizing their ability to live and, when possible, work in the community.
- (ww) "Supportive Services" has the same meaning as in 25 C.C.R. § 8301(t).
- (xx) "Target Population" means Extremely Low-Income Families, and when applicable, Very Low-Income Families.
- (yy) "Very Low-Income Families" means families whose annual incomes are in excess of 30 percent (30%) but not greater than 50 percent (50%) of the AMI of a geographic area, as determined by HUD with adjustments for smaller and larger families. "Very Low-Income Family" also includes any Family that resides in a nonmetropolitan area that does not exceed the poverty line applicable to the Family size involved.

NOTE: Authority cited: Sections 50406(n), 50676.1(b), and 50676, Health and Safety Code. Reference: 4501 et seq., Title 12 of the United States Code; Section 93.2, Title 24 of the Code of Federal Regulations; Sections 8300 et seq., Title 25 of the California Code of

Regulations.

### **Section 3 – Eligible Recipients (Applicants)**

The Department may provide NHTF funds only to Applicant entities which:

- (a) Meet the definition of a Recipient;
- (b) Have site control of the Project subject to the NHTF funding award as required by 25 C.C.R. § 8303, including but not limited to, demonstrating site control by one of the following:
  - (1) Fee Title evidenced by a current title report (within 90 days of application) showing the Applicant holds fee title;
  - (2) For tribal trust land, a title status report (“TSR”) and an attorney’s opinion regarding chain of title and current title status is required at time of application; and prior to construction closing, a certified TSR is required;
  - (3) A leasehold interest on the Project property with provisions that enable the lessee to make improvements on and encumber the property provided that the terms and conditions of any proposed lease must permit, prior to loan closing, compliance with all Program requirements, including compliance with 25 C.C.R. § 8316; and
    - (A) The Department will require the execution and recordation of the Department’s form lease rider. For more information on the lease rider, please reference Section 11(b)(5) and(6) of these Guidelines; or a leasehold interest held by a Native American Entity in Native American Lands created through a ground lease, that contains terms and conditions that authorize the Native American Entity to make improvements on and encumber the property, and is approved (or will be approved) by the U.S. Department of Interior’s Bureau of Indian Affairs (“BIA”), for the BIA region where the Project property is to be located.
- (c) Have resolved any open audit finding(s), for any state or federally funded housing or community development Projects or programs to the satisfaction of the Department or federal agency by which the finding was made;
- (d) Are not debarred or suspended from participation in federal or state housing or community development Projects or programs;
- (e) Have resolved compliance monitoring issues/findings, current on compliance monitoring fee payments, and/or current on loan payments for any Department funded housing or community development Projects; and



- (f) Cities, counties, and local public housing authorities must comply with the submittal requirements of cost principles and audit requirements at 2 C.F.R. Part 200.

NOTE: Authority cited: Sections 50406(n), 50676.1(b), and 50676, Health and Safety Code. Reference: 4501 et seq., Title 12 of the United States Code; Sections 93.2 and 93.101(c), Title 24 of the Code of Federal Regulations; Part 200, Title 2 of the Code of Federal Regulations; Section 8303, Title 25 of the California Code of Regulations.

#### **Section 4 – Eligible Uses, Terms and Limits of NHTF Funds**

A Recipient's use of NHTF funds is subject to 24 C.F.R. Part 93, Subpart E. Pursuant to 24 C.F.R. § 93.200(a)(1), activities and costs are eligible only if the housing, upon Project Completion, meets the Property Standards in 24 C.F.R. § 93.301, including compliance with accessibility requirements. Where a Native American Entity Recipient Project is located on Native American Lands it may be exempt from specific accessibility requirements where otherwise exempted by the Native American Housing and Self Determination Act or other federal or tribal laws as set forth at 24 C.F.R. § 1000.12. A Recipient's use of NHTF funds is also subject to the requirements below:

- (a) Permanent loans for Acquisition, Rehabilitation and/or New Construction, or solely a permanent loan for a Project, are available as specified in the NOFA. Loans may also be forgivable as specified in the NOFA.
- (b) Grants may be available for Acquisition, Rehabilitation and/or New Construction as specified in the NOFA. Grants are made specifically for the Project and must go directly to the Project. Grant funds are not provided to Recipients to make loans of grant funds to the Project.
- (c) All Loans must include terms that are consistent with the following:
  - (1) Loans must not exceed the maximum per Unit subsidy as published in the NOFA under which the Applicant applied for NHTF funding;
  - (2) The loan will not bear interest unless the Department increases this rate pursuant to Health and Safety Code § 50406.7. Interest must accrue from the date funds are disbursed to, or on behalf of, the borrower. Such modification of the interest rate will be approved by the Department on an individual Project basis;
  - (3) Loans must have an initial term of 55 years or more. For Projects on Native American Lands, loans must have an initial term of 50 years or more; and
- (d) The Recipient must pay fees to the Department to cover the costs of ongoing monitoring and physical inspection of the Project as determined in the NOFA during the state period of affordability;

- (e) Subject to a NOFA, the Department may authorize operating cost assistance in accordance with 24 C.F.R. § 93.201(e) in the form of a Capitalized Operating Subsidy Reserve (“COSR”), but only for a Project that is awarded a loan/grant of NHTF funds for capital costs.
- (f) The Department must only disburse NHTF funds to the Project Owner directly for the Project.
  - (3) “Department Funding Sources” do not include:
    - (A) Offsite infrastructure funds; or
    - (B) Existing loans or grants under any Department funding source listed above that are at least 14 years old and that will be assumed or recast as part of an acquisition and Rehabilitation Project.
  - (4) Additional limitations on use of multiple Department funding sources may be specified in the NOFA.
  - (5) Limits on Department funding, including loan or grant funds, on a per Unit, per Project, and/or per Recipient basis, may be further specified in the NOFA.

NOTE: Authority cited: Sections 50406(n), 50676.1(b), and 50676, Health and Safety Code. Reference: 4501 et seq., Title 12 of the United States Code; Subpart E of Part 93, Title 24 of the Code of Federal Regulations.

## **Section 5 – Project Requirements**

A Recipient is responsible for its Project’s compliance with this Section.

- (a) All Projects must comply with the Conflict-of-Interest provisions in 24 C.F.R. § 93.353. No Recipient assisted with NHTF funds may occupy an NHTF Assisted Unit during the affordability period.
- (b) All Projects that receive NHTF funds are subject to 24 C.F.R. § 93.302 Subparts G for a minimum of 30 years. This 30-year term is referred to in these Guidelines as the “Federal Affordability Period” and includes the federal affordability requirements under 24 C.F.R. § 93.302. The requirements of this Subsection run concurrently with requirements of the Subsection below.
- (c) All Projects that receive NHTF funds must meet the requirements of this Subsection for a minimum of 55 years, referred to by these Guidelines as the “State Affordability Period,” except for Projects on Native American Lands that require a 50-year affordability period.

- (1) Projects must restrict Rent for NHTF Assisted Units consistently with 24

C.F.R. § 93.302. In addition:

- (A) The Rent and utilities for Extremely Low-Income Families must comply with 24 C.F.R. § 93.302(b)(1)(i) and (b)(2).
  - (B) The Rent and utilities of Very Low-Income Families must comply with 24 C.F.R. § 93.302(b)(1)(ii) and (b)(2).
  - (C) If an NHTF Assisted Unit receives a federal or state project-based rental subsidy, and the tenant pays not more than 30 percent (30%) of the tenant's adjusted income as a contribution toward Rent, then the maximum Rent is the Rent allowable under the federal or state project-based rental subsidy program. In the event the project-based rental assistance is terminated, the NHTF Assisted Units' Rents must not exceed the Rent restriction in the Project's Regulatory Agreement.
  - (D) Projects using other Department financing must use the most restrictive program rents.
  - (E) Projects located on Native American Lands must be duly encumbered with a Declaration of Restrictive Covenants or Regulatory Agreement that make the Project comply with the above subsections (A)-(D) for an initial affordability term of 50 years.
- (2) Projects must comply with 25 C.C.R. § 8300 *et seq.*, except for the following:
- (A) Under 25 C.C.R. § 8313.1(a), surplus NHTF funds must be returned to the Department;
  - (B) Under 25 C.C.R. § 8313.2(a)(3), there may be only one corporate entity between the Recipient and the special purpose entity; and
  - (C) In the event of a conflict between 25 C.C.R. § 8300 *et seq.*, and 24 C.F.R. Part 93, 24 C.F.R., Part 93 prevails.
- (3) Projects must be located in the State of California.
- (4) Projects owned or developed by a city, county, or local housing authority must be located within the geographic boundaries of their jurisdiction.
- (5) All Projects must follow the "Core components of Housing First" under Welfare and Institutions Code § 8255(b).
- (6) Projects may contain fixed or floating NHTF Assisted Units, not a

combination of both. The Recipient must identify if its Project will have all fixed or all floating NHTF Assisted Units in its application for NHTF funds it submits pursuant to a NOFA. The Department must formalize the Recipient's designation of a Project's NHTF Assisted Units as fixed or floating in the Standard Agreement and the Regulatory Agreement between the Department and Recipient.

- (A) If the Recipient designates a Project's NHTF Assisted Units as fixed, then the Recipient must identify the fixed NHTF Assisted Units prior to occupancy and the fixed NHTF Assisted Units must remain the same throughout the Project's period of affordability.
- (B) If the Recipient designates a Project's NHTF Assisted Units as floating, then the Recipient may only change the floating NHTF Assisted Units in such a way that the number of total NHTF Assisted Units remains the same and they continue to comply with these Guidelines. Each floating NHTF Assisted Unit must be comparable in terms of size, features, amenities and number of bedrooms and bathrooms to the originally designated NHTF Assisted Unit.

(7) Project's must comply with any applicable state and federal law.

(8) Projects are subject to the inspections and financial oversight requirements under 24 C.F.R. §§ 93.404(d) and (e).

(9) Physical Design Accessibility Requirements

- (A) Recipient must comply with all applicable state and federal building codes and standards, as well as with all design and accessibility laws.
- (B) Recipient must adopt written policies for providing reasonable accommodations, reasonable modifications, and auxiliary aids and services for effective communications with residents and applicants with Disabilities.
- (C) Recipient must ensure that the Project is in compliance with the following housing and building accessibility requirements:
  - i. CBC Chapters 11A and 11B;
  - ii. the Fair Housing Act (42 U.S.C. § 3601 et seq.) and its implementing regulations at 24 C.F.R. Part 100, and the American National Standards Institute A117.1 - 1986 design and construction standard incorporated by

reference at 24 C.F.R. § 100.201(a);

- iii. the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) and its implementing regulations at 28 C.F.R. Part 35 (Title 11) and Part 36 (Title III);
  - iv. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) and its implementing regulations at 24 C.F.R. Part 8; and
  - v. the UFAS at 24 C.F.R. Part 40, or, in the alternative, the 2010 ADA Standards for Accessible Design.
- (D) All Projects with elevators must comply with CBC Chapter 11B accessibility requirements for elevators.
- (E) All Project owners with adaptable dwelling Units must provide adequate and visible notice to tenants of their ability to request conversion of adaptable features in their units to more accessible versions.
- (F) Percentage requirements must be calculated based on the number of NHTF Assisted Units in the building and rounded up to the nearest whole number. However, CBC Chapter 11B and federal laws requiring a minimum 5 percent (5%) units with Mobility Features and two percent (2%) units with Hearing and Vision Features are calculated on all units in the Project, not just NHTF Assisted Units. The required number of units must be the higher of these two calculations.
- (G) Accessible Housing Units must, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout the Project and be available in a sufficient range of sizes and amenities so that an individual with Disabilities' choice of living arrangements is, as a whole, comparable to that of other persons eligible for housing assistance under the same Project consistent with 24 C.F.R. § 8.26.
- (H) Compliance and Verification: Prior to loan closing but after construction completion, the Recipient must provide a certification of compliance, signed by the borrowing entity and the Project architect as well as third party documentation confirming compliance (by a Certified Access Specialist) with demonstrated experience meeting federal accessibility standards, or by an

architect with demonstrated experience meeting federal accessibility standards.

- (I) Accessible Housing Units: All new and existing Projects with fully Accessible Housing Units must adopt suitable means to assure that information regarding the availability of Accessible Housing Units reaches eligible individuals with Disabilities and must take reasonable nondiscriminatory steps to maximize the utilization of such units by eligible individuals whose Disability requires the accessibility features of the particular unit. Such information must be included in marketing plans. To this end, when an Accessible Housing Unit becomes vacant, before offering such unit to an Applicant who does not need the features of the unit, the Project must offer such unit:

i. First, to a current occupant of another unit of the same Project having a Disability requiring the accessibility features of the vacant unit and occupying a unit not having such features, or if no such occupant exists, then,

ii. Second, to an eligible qualified Applicant on the waiting list having a Disability requiring the accessibility features of the vacant unit.

iii. If no Applicant meeting the criteria in subsections (A) or (B) is available, the Accessible Housing Unit may be offered to a tenant or Applicant who does not need the unit's accessibility features.

iv. When offering an Accessible Housing Unit to an Applicant not having a Disability requiring the accessibility features of the unit, the owner or manager must require the Applicant to agree to move to a non-accessible unit when a comparable unit is available. This agreement must be incorporated in the lease or a lease addendum.

- (10) NHTF Program funds awarded under these Guidelines may be subject to state prevailing wage law, as set forth in Labor Code § 1720 et seq. and require the payment of prevailing wages unless the Project meets one of the exceptions of Labor Code § 1720(c) as determined by the Department of Industrial Relations ("DIR"). The DIR can be contacted directly via their website. Applicants are urged to seek professional advice as to how to comply with state prevailing wage law.

NOTE: Authority cited: Sections 50406(n), 50676.1(b), and 50676, Health and Safety Code. Reference: 4501 et seq., Title 12 of the United States Code; Section 8255(b), Welfare and Institutions Code; Subparts G and H of Part 93, Title 24 of the Code of Federal Regulations.

## **Section 6 – Underwriting**

(a) The Department must underwrite all Projects that receive NHTF funds to determine if:

- (1) Projects will have Fiscal Integrity and will maintain Fiscal Integrity for a minimum of 30 years to meet the requirements in 24 C.F.R. § 93.300(b);
- (2) Projects will be feasible under 25 C.C.R. § 8310 for a minimum of 30 years;
- (3) Projects' development costs will be reasonable under 25 C.C.R. § 8311;
- (4) Projects will be in compliance with the Department's Pooled Transition Reserve Policy Administrative Memorandum dated January 3, 2023, (Administrative Notice Number 22-08) and amended on August 8, 2023, (Administrative Notice Number 23-01), that implements statutory changes made under Senate Bill 948 (Chapter 667, Statutes 2022) applicable to Health and Safety Code § 60468, as may be amended from time to time, and any other related Department Transition Reserve Policy administrative memoranda that the Department may adopt, as applicable;
- (5) Projects will return a reasonable level of profit for the Recipient; and
- (6) The Department will provide only enough NHTF funds for the Project, alone or in combination with other governmental assistance, that is necessary to provide quality affordable housing.

(b) When the Department makes its determinations in Section 6(a), it must:

- (1) Examine all the sources and uses of funds for the Project (including any operating cost assistance, operating cost assistance reserve, or project-based rental assistance that will be provided to the Project); and
- (2) Assess the current market demand in the neighborhood the Project will be located, the experience of the Recipient, the amount and quality of the Recipient's employees, the financial capacity of the Recipient, and firm written financial commitments for the Project.

NOTE: Authority cited: Sections 50406(n), 50676.1(b), and 50676, Health and Safety Code. Reference: 4501 et seq., Title 12 of the United States Code; Section 93.300, Title

24 of the Code of Federal Regulations; and Sections 8300 et seq., Title 25 of the California Code of Regulations.

### **Section 7 – Management and Maintenance**

- (a) The Recipient is responsible for all management functions of the Project including selection of the tenants, annual recertification of household income and size, evictions, and collection of Rent.
- (b) Recipient must rent vacant Units to households with no less than the number of people specified in the following schedule:

<i>Unit Size</i>	<i>Minimum Number of Persons in Household</i>
SRO	1
0-BR	1
1-BR	1
2-BR	2
3-BR	4
4-BR	6
5-BR	8

Recipient may assign tenant households to Units of sizes other than those indicated as appropriate in the table above if the Recipient reasonably determines that special circumstances warrant such an assignment, and the reasons are documented in the tenant’s file and there is no violation of any occupancy law or fire law. The Recipient’s determination is subject to approval by the Department. Through the tenant selection plan, Recipient may receive advance Department approval of categorical exceptions to the above schedule. Residential occupancy limits must comply with applicable laws.

- (c) Recipient must make reasonable accommodations and modifications for people with disabilities under California Fair Employment and Housing Act (“FEHA”), Fair Housing Act (“FHA”), and Section 504 of the Rehabilitation Act of 1973, where applicable.
- (d) The Recipient is responsible for all repair and maintenance functions of the Project, including ordinary and routine maintenance, replacement of capital items, repair and maintenance of accessibility features, provision and maintenance of accessibility features provided as a reasonable modification to a resident with a Disability, and extraordinary and/or unforeseen repairs and replacement necessary to maintain the health and safety of the Project and residents. The Recipient must ensure maintenance of the Units, Commercial Space, and common areas in accordance with local health, building, and housing codes, and the management plan.
- (e) The Recipient must develop a management plan subject to Department approval



prior to permanent loan closing. The Recipient must demonstrate the capacity to manage either directly or by a management entity with capacity to manage the Project. The Department reserves the right to require an outside management entity in the event the Department determines the Recipient does not have the internal capacity to manage the Project. Any change to the management plan must be subject to the approval of the Department. The Department may review and request updates to the management plan as necessary and appropriate. The management plan must be developed consistent with Housing First best practices, these Guidelines, and any applicable state and federal law and must include the following:

- (1) The role and responsibility of the Recipient and its delegation of authority, if any, to the managing agent;
- (2) Personnel policy and staffing arrangements;
- (3) Plans and procedures for publicizing and achieving early and continued occupancy, including marketing plans and application intake;
- (4) The Recipient's management plan must include a policy with a tenant selection that complies with 24 C.F.R. § 93.303 and include Applicant screening criteria, recertification procedures, eligibility documentation forms, record-keeping procedures, criminal background check and Applicant screening procedure. The management plan must also include a policy for marketing and leasing NHTF Assisted Units, including an affirmative marketing plan, that complies with 24 C.F.R. § 93.350 and 24 C.F.R. Part 8, and that ensures outreach to Persons with Disabilities in order to maximize the utilization of accessible housing by people who need the accessibility features of those units (24 C.F.R. § 8.27);
- (5) Procedures for determining tenant eligibility and selecting tenants and for certifying and annually recertifying household income and size;
- (6) The Recipient's tenant protections and selection policy must comply with 24 C.F.R. § 93.303 and 25 C.C.R. § 8305, as well as HUD's regulations on the marketing, matching, and occupancy of accessible dwelling units at 24 C.F.R. § 8.27;
- (7) Implements policies and practices that comply with the Violence Against Women Act ("VAWA"), 24 C.F.R. § 93.356 (Title VI-Safe Homes for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking – Section 601 – 603 and 81 C.F.R. § 80724);
- (8) Plans for carrying out an effective maintenance and repair program;
- (9) Rent collection policies and procedures that include Department approval of proposed rent and utility schedules annually;

- (10) A program for maintaining adequate accounting records and handling necessary forms and vouchers;
- (11) Plans for enhancing tenant-management relations;
- (12) Pets:
  - (A) Pet Friendly Housing Act. Where applicable, Recipient must certify that residents of the housing development will be authorized to own or otherwise maintain one or more common household pets pursuant to the Pet Friendly Housing Act of 2017 (Health and Safety Code § 50466); and
  - (A) Pet owner policies must not include charging tenants pet rent;
- (13) The management agreement, if any;
- (14) Provisions for periodic update of the management plan;
- (15) Appeal and grievance procedures for rental agreements that comply with 25 C.C.R. § 8307;
- (16) Plans for collections for tenant-caused damages, processing evictions and terminations; and
- (17) There must be a signed and dated lease agreement between the tenant and the owner that is for a period of not less than one year, unless a written agreement is signed and dated by the tenant and the owner confirming a one-year lease was offered and a shorter period was agreed upon. An owner may not terminate the tenancy or refuse to renew the lease except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable federal, state, or local law; or for other good cause. Good cause does not include an increase in the tenant's income. To terminate or refuse to renew tenancy, the owner must serve written notice specifying the grounds, and supporting facts, for termination or refusal to renew and provide the tenant with a specific period for vacating that is consistent with the state or local law. The lease agreement must not contain any of the prohibited lease terms specified in 24 C.F.R. § 93.303(b).
- (18) Procedures for providing reasonable accommodations, reasonable modifications, and auxiliary aids and services for Persons with Disabilities. These procedures must comply with Article 18 of the Fair Employment and Housing Act regulations (2 C.C.R. § 12176-12185), Section 504 of the Rehabilitation Act of 1973, and the ADA regulations on effective communications (35 C.F.R. § 25.160 and 28 C.F.R. § 36.303).

- (f) Fair Housing and Tenants' Rights Protections. The Recipient must comply with all applicable local, state, and federal laws, constitutions, codes, standards, rules, guidelines, and regulations, including, without limitation, those that pertain to accessibility, construction, health and safety, labor, fair housing, fair employment practices, affirmatively furthering fair housing, nondiscrimination, and equal opportunity, where applicable.

(1) Nondiscrimination and Fair Housing Requirements

- (A) To the furthest extent applicable and subject to federal preemption, the Recipient must comply with all relevant laws, including, without limitation, the California Fair Employment and Housing Act (Gov. Code, § 12900 et seq.); the Unruh Civil Rights Act (Civ. Code, § 51); Government Code § 11135 (the prohibition of discrimination in state-funded programs); Government Code § 8899.50 (the duty to affirmatively further fair housing); California's Housing Element Law (Gov. Code, § 65583 et seq.); California Code of Regulations, Title 2, §§12264 – 12271 (legally permissible consideration of criminal history information in housing); Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq.); the ADA of 1990 (42 USC § 12101 et seq.); the Fair Housing Act (FHA) and amendments (42 USC § 3601 et seq.); the Fair Housing Amendments Act of 1988; Section 504 of the Rehabilitation Act of 1973 (29 USC § 794); the Architectural Barriers Act of 1968 (42 USC § 4151 et seq.); the Age Discrimination Act of 1975 (42 USC §§ 6101 – 6107); and all federal and state regulations implementing these laws.

(2) Recipient must do the following:

- (A) Adopt a written nondiscrimination policy requiring that no person shall, on the grounds of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, Disability, age, medical condition, genetic information, citizenship, primary language, immigration status (except where explicitly prohibited by federal law), criminal history, arbitrary characteristics, and all other classes of individuals protected from discrimination under federal or state fair housing laws, individuals perceived to be a member of any protected class, or any individual or person associated with any protected class be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with Program funds. Pursuant to Section 7 of these Guidelines, the nondiscrimination policy is part of the Recipient's management plan, and it is therefore subject to Department approval prior to loan closing. In addition, upon Department request, the Recipient must promptly submit a copy of

its nondiscrimination policy to the Department.

- (B) Adopt a written tenant selection policy that complies with state and federal law. Such policy must include the criteria, prohibitions, and procedures specified at 24 C.C.R. § 8305(a). All screening criteria must be written in clear, intelligible, and unambiguous language. Pursuant to Section 7 of the Guidelines, the tenant selection policy is part of the Recipient's management plan, and it is therefore subject to Department approval prior to loan closing. In addition, upon Department request, the Recipient must promptly submit a copy of its tenant selection policy to the Department.
- (C) Adopt a written reasonable accommodation and reasonable modification policy that complies with state and federal law, including California Code of Regulations, title 2, §§ 12176 – 12185. Recipient must maintain a copy of the policy at the Project and must ensure that its relevant employees and contractors are aware of and abide by the policy. Pursuant to Section 7 of the Guidelines, a written reasonable accommodation policy is part of the Recipient's management plan, and it is therefore subject to Department approval prior to loan closing. In addition, upon Department request, the Recipient must promptly submit a copy of its reasonable accommodation policy to the Department.
- (D) Develop and implement an affirmative marketing plan that is consistent with 24 C.F.R. § 93.350(b).

NOTE: Authority cited: Sections 50406(n), 50676.1(b), and 50676, Health and Safety Code. Reference: 4501 et seq., Title 12 of the United States Code; Sections 93.303, 93.303(b), and 93.350, Title 24 of the Code of Federal Regulations; Section 8305 and 8307, Title 25 of the California Code of Regulations.

## **Section 8 – Application and Award Process**

- (a) Within a Funding Cycle, the Department must make NHTF funds available for Projects that serve people experiencing Homelessness. If the Department has sufficiently funded Projects serving people experiencing Homelessness, the Department may make funds available for the following purposes:
  - (1) For Projects that do not serve people experiencing Homelessness; or
  - (2) For a specific purpose, to include but not limited to, over-the-counter funding for particular Projects or a target for Projects designed to serve particular populations.
- (b) The Department may deviate from the requirements in the above Subsection to comply with any special targets or allocations made by HUD.

- (c) Within a Funding Cycle, the Department may issue one or more NOFAs to announce that it is making NHTF funds available. A NOFA must contain the following:
- (1) The purpose(s) of NHTF funds the Department makes available and the rating and ranking criteria the Department will use pursuant to Section 10 – Selection Criteria (Rating, Ranking, and Eligibility for Funding for Competitive Allocations) to evaluate applications if there is an over subscription of applications for a particular purpose;
  - (2) How the Department may adjust its NHTF funds for particular purposes;
  - (3) The maximum amount of NHTF funds the Department may award to an Applicant for a particular purpose;
  - (4) The activities eligible for NHTF funds for a particular purpose;
  - (5) The procedures for how an Applicant must submit an application for an award of NHTF funds for a particular purpose;
  - (6) The deadline(s) for submitting an application; and
  - (7) The monitoring fee schedule.
- (d) Applicants must follow the application procedures and requirements outlined in the NOFA when submitting an application to the Department for an award of NHTF funds.
- (e) The Department may award NHTF funds only to an Applicant that the Department determines, based on the Applicant's application, meets the following:
- (1) The Applicant's application meets the requirements of Section 9 – Application Minimum Requirements;
  - (2) The Applicant meets the requirements of Section 3 – Eligible Recipients (Applicants);
  - (3) The Applicant's use of funds will meet the requirements of Section 4 – Eligible Uses, Terms and Limits of NHTF Funds;
  - (4) The Applicant's Project will meet the requirements of Section 5 – Project Requirements;
  - (5) Consistent with Section 6(a) – Underwriting of these Guidelines, the Project will:
    - (A) Have and maintain Fiscal Integrity for 30 years;

- (B) Be feasible under 25 C.C.R. § 8310 for 30 years;
  - (C) Have development costs that are reasonable under 25 C.C.R. § 8311;
  - (D) Be in compliance with the Department's Pooled Transition Reserve Policy Administrative Memorandum dated January 3, 2023, amended on August 8, 2023, and as may be amended from time to time, and any other related Department Transition Reserve Policy administrative memoranda that the Department may adopt, as applicable;
  - (E) Return a reasonable level of profit for the Recipient; and
  - (F) Receive only enough NHTF funds, alone or in combination with other governmental assistance, that are necessary to provide quality affordable housing.
- (6) The Applicant's Project will meet the requirements of Section 15 – Project Deadlines; and
- (f) In the event that there is an over subscription for a particular purpose, the Department assigns the application a numeric score that makes it eligible for NHTF funds under Section 10 – Selection Criteria (Rating, Ranking, and Eligibility for Funding for Competitive Allocations). The Department may rely on information extrinsic to an Applicant's application when making the determinations in Subsection (e) above.
  - (g) In the event there are insufficient NHTF funds for an application's full requested amount, the Department may offer an award amount that is sufficient to complete a portion of the Applicant's Project, if the portion of the Project, evaluated separately, would be eligible to receive an award of funds by the Department under the above requirements.
  - (h) The Department may increase a Recipient's award of NHTF with any disencumbered NHTF funds available to meet a commitment deadline under 24 C.F.R. 93.400(d)(1), and if the Recipient's use of funds and the Project comply with these Guidelines.
  - (h) The Department must only award NHTF funds in an amount that does not exceed the maximum per Unit subsidy as specified in the NOFA. The Department must also limit the award of NHTF funds to the amount necessary to enable the Project to be developed and operate in compliance with these Guidelines when considering other financing and assistance the Project may receive.
  - (i) All awards of NHTF funds are subject to the availability of NHTF funds and the Department's disbursement of NHTF funds is conditioned on the Applicant who receives an award of NHTF funds meeting the requirements of these Guidelines and the Standard Agreement executed with the Department.

- (j) The Department will notify Applicants who receive an award of NHTF funds with an Award Letter.
- (k) Appeals. If the Recipient/Applicant is subject to negative points assessment, the Department shall notify the Recipient in writing within the point score letter and will provide opportunity to appeal negative points assessment, or any disagreed points assessment, pursuant to the appeals process as set forth in the NOFA. Disqualifying threshold determinations shall also follow a similar process, which shall be set forth in greater detail in the NOFA. For reference, all such appeals must be received by the Department no later than five (5) business days from the date of the Department's threshold review, or initial score letters, as applicable, representing the Department's decision made in response to the application. Any request to appeal the Department's decision regarding an application shall be reviewed for compliance with the Guidelines and the NOFA. All decisions rendered shall be final, binding, and conclusive, and shall constitute the final action of the Department.

NOTE: Authority cited: Sections 50406(n), 50676.1(b), and 50676, Health and Safety Code. Reference: 4501 et seq., Title 12 of the United States Code; Sections 93.303, 93.303(b), and 93.350, Title 24 of the Code of Federal Regulations; Section 8305 and 8307, Title 25 of the California Code of Regulations.

## **Section 9 – Application Minimum Requirements**

- (a) An Applicant must electronically submit its application in a format made available by the Department that requests the information required by these Guidelines.
- (b) An Applicant must submit its application by the deadline specified in the NOFA.
- (c) Housing Element. Applicants that meet the definition of a local public entity (cities and counties) are required to be in substantial compliance with state Housing Element Law as of the NOFA application due date. Newly incorporated cities are exempt from this factor, until which time the city is required to submit the housing element to the Department for approval. It is the responsibility of the cities and counties to know their reporting requirements. If unsure, please send an email inquiry to the NHTF NOFA Unit at [NHTFNOFA@hcd.ca.gov](mailto:NHTFNOFA@hcd.ca.gov). Developers and Projects to be developed on Native American Lands are exempt from this requirement; these entities must receive full points for this scoring factor.
- (d) All applications must clearly contain the following:
  - (1) Project Narrative/Details, Construction Scope of Work and Financing. The narrative must provide a brief summary of the proposed Project, and must include, but not be limited to, the following:
    - (A) Name of the Applicant and development team.

- (B) Name and location.
- (C) Specify if Project is located in a Rural Area or on Native American tribal trust or restricted lands.
- (D) Assessor's Parcel Number(s).
- (E) Assembly Member, State Senator, U.S. Senators and Congressional Representative. This subsection does not apply to a Project located on Native American tribal trust or restricted lands.
- (F) Zoning details.
- (G) Site Acreage.
- (H) Construction Scope of Work:
  - i. Type of construction: New Construction or Rehabilitation.
  - ii. Design and architectural features of the buildings, including the accessibility requirements for New Construction and/or Rehabilitation Projects.
  - iii. Landscape plan.
  - iv. Number of buildings and elevators.
  - v. Number of parking spaces for vehicles, motorcycles, and bicycles (detailed information of the number of accessible open and covered spaces, and garages).
  - vi. Confirm Project is on a permanent foundation.
 

Federal, state, and local requirements. All NHTF Assisted Units and other Units of the Project must be on a permanent foundation and must meet all applicable federal, state, and local requirements pertaining to rental housing, including, but not limited to, requirements for minimum square footage and requirements related to maintaining the property in a safe and sanitary condition.
  - vii. Gross residential square feet of building (Units, leasing office, and common areas).
  - viii. Gross commercial square feet for mixed used buildings and plans for commercial tenants.
    - a. Borrower must assure that the Project's Commercial Space is not used, in whole or in part, for any Disapproved Use. A



“Disapproved Use” of the Project includes, but is not limited to, a liquor store/bar, adult store/film, veterinarian office/kennel, funeral home, video arcade/pool hall, bowling alley, music, dancing, manufacturing, repair facility, vehicle related, service stations, hazardous materials, storage or warehousing facilities, tattoo and/or piercing establishment, pawn shop, check cashing or paycheck advance business, passive activity (e.g., switching station), nuisances, medical marijuana, and/or other Disapproved Use determined by the Department.

- ix. Number of Units, their size (number of bedrooms, number of bathrooms, Unit square footage), and a calculation of the number of Units with Mobility Features and the number of Housing Units with Hearing/Vision Features and their size (number of bedrooms, number of bathrooms, and Unit square footage).
  - x. Detailed Unit mix, including affordability levels, funding sources, layering, and if any, market rate Units.
  - xi. List of amenities and services offered at the Project’s site.
    - a. Playground for school aged children (up to age 12) is required at multifamily sites.
  - xii. List and map of amenities and services offered within 1.5 miles of the Project (specify current and proposed). For Native American Entity Applicants, list and map of amenities and services offered within 15 miles of the Project (specify current and proposed).
    - a. Details on the Project site(s) location to access public transportation, shopping, medical services, recreation, schools, and employment in relation to the needs of the Project’s tenants.
  - xiii. Exceptional circumstances affecting the Project’s development, site, or funding (e.g., environmental, community response, etc.).
- (I) Project milestones.
  - (J) Construction costs supported by third party cost estimates must be prepared no earlier than 180 days of the application due date specified in the NOFA. The cost estimate must be consistent with the development budget tab of the application, or an explanation must be provided to support any differences.

- (K) Information adequate to determine if the Project and Applicant will meet the requirements of Section 3 – Eligible Recipients (Applicants), Section 4 – Eligible Uses, Terms and Limits of NHTF Funds, Section 5 – Project Requirements, Section 6 – Underwriting, Section 7 – Management and Maintenance, Section 8 – Application and Award Process Section 9 – Application Minimum Requirements and Section 10 – Selection Criteria (Rating, Ranking, and Eligibility for Funding for Competitive Allocations).
  - (L) Copies of all firm written financial commitments which includes all terms (i.e., amount of loan or grant, interest rate of loan, loan repayment terms, and full execution) for the Project. For Projects with project-based vouchers, the written financial commitment must be from the housing authority or HUD detailing the number of units, unit size, utility allowance for each unit size and contract amount for each unit size.
  - (M) The Fair Housing Act requires HUD, the Department, and Recipients of federal financial assistance to affirmatively further fair housing by doing more than simply not discriminate; they must take meaningful actions to overcome patterns of segregation and foster inclusive communities. Applicants are required to demonstrate compliance with HUD's Site and Neighborhood Standards by completing and submitting the Site and Neighborhood Standards checklist in the application and provide supporting documentation such as a market study, appraisal, and/or housing element. In addition, Applicants must describe how, and the extent to which, the Applicant and/or the Project affirmatively furthers fair housing by providing a complete narrative in the application workbook in response to questions associated with affirmatively furthering fair housing.
- (2) Detailed information of the Applicant adequate to determine the experience and capacity of the Applicant with other federal, state, or local housing or community development programs, including but not limited to:
- (A) Identification of all members of the Project team.
  - (B) Identification of any Administrative Subcontractor.
  - (C) A description of the roles, financial structure and all legal relationships of the Applicant, developer, owner(s), managing general partner, Administrative Subcontractor, and all other partners in the construction of the Project.
  - (D) Description of ownership entity, including an organizational chart that includes the percentage ownership interest of each party in the borrower.

- (E) Audited financial statements for the previous two years and information indicating if the Applicant or any member of its Project team has any unresolved audit findings.
  - i. Applicant's audited financial statements must comply with 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.
- (F) Tax documents to include Form 990 (nonprofits) or Form 941 (for-profits) and other related tax information as may be requested by the Department.
- (G) Information indicating if the Applicant and any member of its program or Project team is or has been suspended or debarred from participation in any federal or state housing or community development program.
- (H) Information on any pending litigation affecting the Applicant's ability to carry out the activity.
- (I) Information adequate to determine the experience of the Applicant in developing the same type of subsidized Project as proposed by the application.
  - i. Applicants are required to submit evidence of having successfully developed, owned, and operated at least one affordable housing project subject to a recorded Regulatory Agreement for at least three years prior to the application.
- (J) Information adequate to determine if the Applicant is eligible, in accordance with Section 3 – Eligible Recipients (Applicants), of these Guidelines.
- (K) Governing board resolution(s), including any resolution for the formation of a special purpose entity in compliance with 25 C.C.R. § 8313.2.
- (L) Tribal Constitution and/or Charter, and its Tribe or Tribal Council Resolution(s) that identify and designate the Tribal official authorized to bind the Tribe and execute a limited waiver of sovereign immunity.
- (M) If Applicant intends to create a limited partnership, then a Limited Partnership Agreement (including any amendments) must be fully executed and submitted with a limited partnership federal ID number at the time of application.
- (N) Organizational documents for all ownership interests, including but not limited to:

- i. OD-Form 1 (loan authorization of limited or general partnership).
- ii. Borrower certificate of status.
- iii. Borrower certification and legal disclosure (Department form).
- iv. Borrower certificate of limited partnership.
- v. Borrower Payee Data Record Form (Department STD-204 form).
- vi. OD-Form 2 (loan authorization of limited liability company general partner).
- vii. Limited liability company operating agreement.
- viii. Limited liability company articles of organization.
- ix. Limited liability company certification and legal disclosure (Department form).
- x. Limited liability company statement of no change.
- xi. Limited liability company Payee Data Record Form (Department STD-204 form).
- xii. OD-Form 3 (application and loan authorization of recipient).
- xiii. Recipient articles of incorporation.
- xiv. Recipient bylaws.
- xv. Recipient certification and legal disclosure (Department form).
- xvi. Recipient certificate of status.
- xvii. Recipient statement of information.
- xviii. Tax exempt status.

(3) Site Information

- (A) Evidence of site control, as required by 25 C.C.R. § 8303. This includes compliance (if applicable) with 25 C.C.R. § 8316 for a leasehold interest in the property. Site control agreements must be effective for a minimum of 12 months with at least two options to extend for a minimum of six months for each extension. An exclusive negotiation agreement will not be accepted as evidence of site control.

- (B) Voluntary Acquisition Letter Form (provided by the Department).
  - (C) Information adequate to determine the readiness of the Project to proceed, (evidence of land use entitlement, or status of city/county application, including design review status).
  - (D) Preliminary title report, not more than 90 days old.
  - (E) Flood plain status, including back-up documentation.
  - (F) Map and photos of the Project's location.
  - (G) Utility allowance analysis or letter from local housing authority.
- (4) Property management plan that meets the requirements of Section 7 – Management and Maintenance of these Guidelines.
- (5) The Recipient must ensure that the Project is managed by an entity approved in writing by the Department that is actively in the business of managing low-income housing.

Any management contract or management activities entered into for this purpose must be subject to Department approval and contain a provision allowing the Recipient to terminate the contract with 90-days' notice, or less as required by other Department programs. The Recipient must terminate said contract as directed by the Department upon determination that management does not comply with these Guidelines, the Project Regulatory Agreement and any applicable state and federal law.

- (6) All Projects must have Resident Services.
- (A) Applicant must provide evidence of an agreement or memorandum of understanding with, or commitment letter from, a Resident Services provider regarding the proposed scope of work, staffing and budget.
  - (B) The Resident Services provider for the Project must submit evidence of successfully participating in at least two projects equivalent to the proposed Project in size, scale, amenity, and Target Population, subject to a recorded Regulatory Agreement (and any amendments) for at least three years prior to the submission of the NHTF funding application.
  - (C) Resident Services plan that includes a 0.25 full-time equivalent ("FTE") dedicated on-site services coordinator or staff for every 50 Units in the Project (0.25:50), and information adequate to determine the feasibility of the Resident Services during the term of the Regulatory Agreement.
  - (D) The Resident Services plan must have a budget demonstrating adequate

operating funding for staffing and service delivery. The Resident Services budget must match the operating budget.

(7) For Projects serving people experiencing Homelessness, the following Supportive Services (case management led services) are required:

- (A) Applicant must provide evidence of an agreement or memorandum of understanding with, or commitment letter from, a lead Supportive Services provider regarding the proposed Supportive Services scope of work, staffing and budget.
- (B) The lead Supportive Services provider for the Project must submit evidence of successfully participating in at least two projects equivalent to the proposed Project in size, scale, amenity, and Target Population, subject to a recorded Regulatory Agreement (and any amendments) for at least three years prior to the submission of the NHTF funding application.
- (C) The Supportive Services plan must have a case management ratio of one FTE case manager for every 20 individuals (1:20), information adequate to determine the feasibility of the Supportive Services during the term of the Regulatory Agreement, and programs such as, and not limited to: Supportive Services, case management, peer support activities, counseling and advocacy, and basic housing retention skills (e.g., Unit maintenance and upkeep, cooking, laundry, working with a landlord, getting along with neighbors, and money management).
- (D) The Supportive Services plan must have a budget demonstrating adequate operating funding for staffing and service delivery. The Supportive Services budget must match the operating budget.

(8) Environmental Documentation:

- (A) A completed NHTF Environmental Provisions Checklist.
  - i. All Project sites must be free from severe adverse environmental conditions, such as the presence of toxic waste that is economically infeasible to remove and that cannot be mitigated. See Property Standards at 24 C.F.R. § 93.301(f)(1) and (2) and HUD-Notice: CPD-16-14 and the NHTF Environmental Provisions Checklists for more information. All Projects require submittal of an Environmental Site Assessment Phase I (Phase I).
- (B) The Phase I environmental site assessment documentation will be in the American Society for Testing and Materials standard format. There

may be additional required environmental conditions added to the report as needed.

- i. If the Phase I environmental site assessment identifies any potential onsite toxic or Recognized Environmental Conditions, a Phase II environmental site assessment, additional studies, and a Corrective Action Plan are required.
  - ii. Environmental Provision compliance documentation must be submitted using the Department NHTF Environmental Provisions Checklist(s) issued during the NOFA.
  - iii. National Environmental Policy Act (NEPA) documentation (e.g., clearance or Notice of Exemption) is required in the event there is another federal funding source to finance the Project. NEPA documents will not be accepted by the Department to satisfy NHTF Environmental Provisions. However, the NEPA sections that are the same as NHTF Environmental Provision requirements may submit NEPA analysis and back up documentation as evidence of compliance with those parts.
  - iv. California Environmental Quality Act (CEQA) clearance or exemption documentation. For a Project located on Native American tribal trust or restricted fee lands, the Department will be the lead agency and will prepare any exemption documentation for all other Projects subject to CEQA. The lead agency shall document Project compliance.
- (9) All Projects must provide a market study and a property appraisal (or updated property appraisal) and the Applicant must comply with the following:
- (A) The market study must be dated within one year of the NHTF application submission deadline and demonstrate whether sufficient demand exists in the market area to support the proposed Project at the projected rents 24 C.F.R. § 93.300(b)(2). In the event, a sufficient demand for extremely low-income units is not met, the Project will not be awarded;
  - (B) The property appraisal must be dated within 120 days of the site control document and determine the value of the land and/or improvements upon which the proposed Project will be developed and, if the land is leased, the appraisal must include the fair market value of the lease payments; this includes Native American Lands as applicable; and

- (C) For Projects located on Native American Lands, a Phase I environmental site assessment will be provided based on the data available.
- (10) For applications proposing Rehabilitation or the Acquisition of a Project, a market study, property appraisal, and asbestos and mold assessments are required, and, if an application proposes the Rehabilitation or Acquisition of a building constructed prior to January 1, 1978, a lead-based paint risk assessment must be submitted, and the Applicant must comply with the following:
- (A) The market study must demonstrate whether sufficient demand exists in the market area to support the proposed Project at the projected rents.
  - (B) The property appraisal must determine the value of the existing Project. If the land is leased, the appraisal must include the fair market value of the lease payments. For Projects located on Native American Lands, appraisals will be provided based on the data available.
  - (C) The asbestos, mold, and lead-based paint assessments must demonstrate whether the Project is free from severe adverse environmental conditions.
  - (D) Projects with lead-based paint hazards must provide procedures to eliminate as far as practicable lead-based paint hazards and comply with the applicable requirements of 24 C.F.R. Part 35.
  - (E) The Physical Needs Assessment for Rehabilitation Projects only.
  - (F) Relocation.
    - i. The Applicant of any Project resulting in displacement of tenants must be solely responsible for providing the assistance and benefits set forth in this subsection, and in applicable federal, state, and local law, whichever is more stringent.
      - a. All tenants of a property who are displaced as a direct result of the development of an NHTF Project must be entitled to relocation benefits and assistance as provided in 24 C.F.R. § 93.352.
      - b. The Applicant must prepare a relocation plan conforming with the provisions of 24 C.F.R. § 93.352. The relocation plan must also include executed General Information Notices (“GIN”) and include confirmation of receipt by the residents of the Project,



pursuant to 24 C.F.R. § 93.352. For loans underwritten by the Department, the relocation plan or other relocation documentation must be subject to the review and approval by the Department prior to the beginning of construction.

- c. Relocation costs must be paid by the Applicant if individuals or businesses will be temporarily or permanently displaced as a result of an NHTF assisted Project under 24 C.F.R. §§ 93.201(f) and 93.352. This requirement applies to all Projects. An accurate determination is critical, because relocation costs may be higher if an earlier relocation date is necessary.
- d. The sources and uses submitted with the application must adequately budget for relocation costs. Relocation costs may be reimbursed with NHTF funds.
  - ii. Commercial tenants' relocation plan.
  - iii. Objects relocation plan with pictures (e.g., signs, parking lots, meters, etc.).
  - iv. Self-certification on company letterhead providing a narrative and certification that relocation is not applicable and pictures of the site (i.e., high overview map with property lines subject to the property).
- (e) Any third-party documents, including but not limited to, market study; appraisal; relocation plan; and environmental, asbestos, mold, and lead-based paint assessments must be prepared by an individual or firm which:
  - (1) Has the appropriate license, when deemed necessary by the Department or by regulation, and knowledge and experience necessary to competently prepare the document;
  - (2) Is aware of, understands, and correctly employs those recognized methods and techniques that are necessary to produce a credible and complete document;
  - (3) Communicates each analysis, opinion and conclusion in a manner that is not misleading as to the true market needs for low-income residential property, and the value and condition of the subject property; and
  - (4) 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.
- (f) The Department must not make an award of NHTF funds to any Applicant unless the application is received by the deadline(s) specified in the NOFA and clearly

demonstrates that all the following conditions exist:

- (1) The Applicant and Project are eligible to receive NHTF funds from the Department under Section 3 – Eligible Recipients (Applicants) and Section 4 – Eligible Uses, Terms and Limits of NHTF Funds;
- (2) The Applicant and Project meet the requirements of Section 5 – Project Requirements, Section 6 – Underwriting, and Section 7 – Management and Maintenance, before the Department will disburse NHTF funds;
- (3) The application is complete pursuant to Section 9 – Application Minimum Requirements;
- (4) The total amount of NHTF funds requested by the Applicant does not exceed maximum per Unit subsidy and award limits in the NOFA;
- (5) There are no pending lawsuits that will prevent implementation of the Project; and
- (6) 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.

#### **Section 10 – Selection Criteria (Rating, Ranking, and Eligibility for Funding for Competitive Allocations)**

If there is an over subscription for a particular purpose as specified in a NOFA, the Department must evaluate applications under this Section 10.

- (a) The Department must rate the applications using a numeric point scoring system specified in the NOFA based on the following criteria:
  - (1) The numeric point scoring system must make the greatest number of points available to an application based on:
    - (A) The Project’s geographic diversity;
    - (B) The extent to which the Project’s Rents are affordable, especially to Extremely Low-Income Households;
    - (C) The merits of the Project in meeting the objectives in the Department’s Consolidated Plan and HTF Allocation Plan;
    - (D) The Applicant’s readiness to proceed with the Project’s milestones;
    - (E) The extent to which the Project will use nonfederal funds; and

- (F) The development team's experience, ability and financial capacity measured amongst the developer, Applicant ownership and operations, property manager, lead Supportive Services provider, and Resident Services provider, if any.
- (2) In addition to the above Subsection, the numeric point scoring system may also make points available to an application based on other criteria the Department determines will meet the objectives of the Department's Consolidated Plan and HTF Allocation Plan.
- (b) The Department may alter the above criteria to align eligibility for possible benefits, including Medi-Cal benefits intended to fund services for people experiencing Homelessness federally and/or state declared disaster areas.
- (c) In the event of a tie amongst applications, the Department will specify tiebreakers in the NOFA.
- (d) After the Department rates and ranks all the applications under the Subsections above for a purpose specified in a NOFA, the Department will award funds to Projects beginning with the highest rated and ranked applications and proceeding to each immediately lesser ranked application until all the available NHFT funds have been awarded.

## **Section 11 – Legal Documents**

- (a) The Recipient must execute a Standard Agreement with the Department. The Department has no obligation to execute a Standard Agreement with a Recipient if the Department cancels the Recipient's award.
  - (1) This Standard Agreement must meet the requirements of 24 C.F.R. § 93.404(c)(2).
  - (2) The Standard Agreement must require compliance with these Guidelines and any applicable state and federal laws.
  - (3) The Recipient must provide the Department with copies of all firm written financial commitments for the Project before the Recipient executes a Standard Agreement with the Department.
  - (4) Before executing a Standard Agreement, the Department must determine the following consistent with Section 6 – Underwriting:
    - (A) The Project will have and maintain Fiscal Integrity for 30 years;
    - (B) The Project will be feasible under 25 C.C.R. § 8310 for 30 years;

- (C) The Project will have development costs that are reasonable under 25 C.C.R. § 8311;
- (D) The Project will be in compliance with the Department's Pooled Transition Reserve Policy Administrative Memorandum dated January 3, 2023, amended on August 8, 2023, and as may be amended from time to time, and any other related Department Transition Reserve Policy administrative memoranda that the Department may adopt, as applicable;
- (E) The Project will return a reasonable level of profit for the Recipient; and
- (F) The Project will receive only enough NHTF funds, alone or in combination with other governmental assistance, that is necessary to provide quality affordable housing.

(b) The Recipient and the Department must also comply with the following:

- (1) All loans must be evidenced by a promissory note ("Note") and secured by a deed of trust and assignment of rents with power of sale ("Deed of Trust"), executed by the owner of the fee estate of the real property the Project occupies, naming the Department as beneficiary. The Deed of Trust must encumber the fee estate of the real property the Project occupies and must be recorded in the county the Project is located and must have priority over other liens, encumbrances, and other matters of record on the fee estate except as may be approved by the Department under 25 C.C.R. §§ 8310(f) and 8315.
- (2) 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, executed by the owner of the leasehold the Project occupies, naming the Department as beneficiary instead of the landlord. This Deed of Trust must encumber the leasehold and must be recorded in the county in which the Project is located, and must have priority over other liens, encumbrances, and other matters of record on the leasehold except as may be approved by the Department under 25 C.C.R. §§ 8310(f) and 8315.
- (3) The owner of the fee estate in real property the Project occupies must enter into a Regulatory Agreement with the Department governing the ownership, occupancy, management, maintenance, and operation of the Project for a period not less than the minimum period of affordability required under these Guidelines ("Regulatory Agreement"). The Regulatory Agreement must encumber the fee estate in the real property the Project occupies as a lien running with the land and must be binding on all successors-in-interest, assignees, and transferees of the Recipient. The Regulatory Agreement must be recorded against the fee estate in the real property the Project

occupies. The Regulatory Agreement must have priority over other liens, encumbrances, and other matters of record on the fee estate in the real property the Project occupies except as may be approved by the Department under 25 C.C.R. §§ 8310(f) and 8315.

- (4) 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. This Regulatory Agreement must be a lien running with the land and must be binding on all successors-in-interest, assignees, and transferees of the Recipient. This Regulatory Agreement may be recorded against the leasehold the Project occupies. The Regulatory Agreement must have priority over other liens, encumbrances, and other matters of record on the leasehold the Project occupies except as may be approved by the Department under 25 C.C.R. §§ 8310(f) and 8315.
- (5) If the Department authorizes the Deed of Trust and Regulatory Agreement to encumber a leasehold, then 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. The Department must use a lease rider to ensure the lease complies with this Subsection, and the lease rider must amend the lease and be recorded on the fee estate from which the lease is derived. The lease rider must encumber the fee estate from which the lease is derived from, and the fee owner of the real property must execute the Department's form template lease rider without modification.
- (6) For Projects located on Native American Lands that are subject to a leasehold interest created through a long-term ground lease that is approved (or will be approved) by the BIA pursuant to 25 C.F.R. Part 162, the ground lease must conform to the requirements of 25 C.C.R. § 8316(a) and all of the following:
  - (A) Landlord, lessee, and the Department must execute a lease rider that encumbers the Native American Lands, and such lease rider must have superior rights to any other instrument(s) that may encumber the Project's leasehold interest; and such lease rider must be approved (or will be approved) by BIA prior to disbursement of funds.
  - (B) Landlord, lessee, and the Department must execute a Declaration of Restrictive Covenants or a Regulatory Agreement that runs with the land so that the Department may enforce the requirements of these Guidelines; and
  - (C) Landlord and lessee must record the lease, lease rider, Declaration

of Restrictive Covenants (or Regulatory Agreement) against the Native American Lands with the BIA Land Title and Records Office that has the appropriate jurisdiction, and in the appropriate official records in the county of which the Project is located, as may be applicable.

- (D) The Department reserves the right to require any other documents or provisions to secure the Department's interest, which may include the granting of third-party beneficiary rights to the Department.
- (7) Native American Entities that are Recipients must provide the Department with a limited waiver of sovereign immunity in the Department's Standard Agreement, and all other Department loan and transaction documents, including but not limited to, a lease rider and a Declaration of Restrictive Covenant (or Regulatory Agreement). The Native American Entity may accomplish this by executing and referencing a separate instrument that provides the Department and the State of California with a limited waiver of sovereign immunity.
- (8) If the Department disburses NHTF funds during construction, then the Recipient must enter into a construction loan agreement with the Department that governs the disbursement of NHTF funds based on criteria established by § 93.201.
- (9) 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.
  - (10) The Recipient must execute the Department's sponsor operating guaranty to provide assurance that the Recipient has the resources and experience to develop, own and manage the Project.
- (11) The Recipient or Project Owner must execute and enter into additional agreements and documents as the Department may require. These additional agreements and documents are subject to the approval of the Department.
- (12) Notwithstanding 25 C.C.R. § 8315(c)(2), a deed of trust securing a loan from tax exempt affordable housing bonds, and any Regulatory Agreement associated with it, is not a lien of a local government entity.
- (13) For Projects located on Native American Lands, a Restrictive Covenant or Regulatory Agreement must provide a 50-year period of affordability. For Projects located on Native American Fee Lands, a Regulatory Agreement

must provide a 55-year period of affordability.

(c) The Regulatory Agreement must include, but is not limited to, the following:

- (1) The Unit number, Unit quantity, Unit size, type, and income level of NHTF Assisted Units and non-NHTF Assisted Units that comply with 25 C.C.R. § 8304, whether the NHTF Assisted Units are designated fixed or floating, and the Unit numbers of Accessible Housing Units with Mobility Features and/or Accessible Housing Units with Hearing/Vision Features;
- (2) Standards for tenant selection that comply with these Guidelines;
- (3) Provisions regulating the terms of the rental agreement pursuant to 25 C.C.R. § 8307;
- (4) Provisions related to an annual operating budget approved by the Department pursuant to Section 14 – Annual Operating Budget and Schedule of Rental Income of these Guidelines;
- (5) Annual Monitoring Fee is set by the Department for the NHTF Assisted Units. This includes a 3 percent (3%) annual increase and will be detailed in the Department’s Regulatory Agreement for the Project.
- (6) Provisions related to a management plan pursuant to Section 7 – Management and Maintenance of these Guidelines;
- (7) Provisions related to a Rent schedule, including initial Rent levels for NHTF Assisted Units and non-NHTF Assisted Units;
- (8) Conditions and procedures for permitting Rent increases;
- (9) Provisions for limitations on Distributions under 25 C.C.R. § 8314; and on Developer Fees under 25 C.C.R. § 8312;
- (10) Provisions relating to annual reports, inspections, and independent audits pursuant to Section 13 – Reporting and Recordkeeping of these Guidelines;
- (11) Provisions regarding the deposit and withdrawal of funds to and from reserve accounts in accordance with 25 C.C.R. §§ 8308 and 8309;
- (12) Assurances that the Project will be maintained in a safe and sanitary condition in compliance with state and local housing codes and the management plan under Section 7 – Management and Maintenance, of these Guidelines;
- (13) Description of the condition(s) constituting breach of the Regulatory

Agreement and remedies available to the parties thereto;

- (14) Provisions governing use and operation of non-NHTF Assisted Units and common areas to the extent necessary to ensure compliance with these Guidelines and any applicable state and federal laws;
  - (15) Provisions relating to enforcement of these Guidelines and any applicable state and federal laws by tenants;
  - (16) Special conditions of loan approval imposed by the Department;
  - (17) Provisions specifying that the Regulatory Agreement must be binding on all assigns and successors in interest of the Recipient and that all sales, transfers, and encumbrances must be subject to Section 16 – Sales, Transfers, Encumbrances, and Loan Payoff, of these Guidelines;
  - (18) Other provisions necessary to assure compliance with the requirements of these Guidelines and any applicable state and federal law; and
  - (19) Provisions identifying the modification or waiver of state housing finance requirements for Tribal Entities pursuant to Health and Safety Code § 50406(p).
- (d) A Declaration of Restrictive Covenants must restrict the use of a Project's land for the development of affordable multifamily housing Units in a manner consistent with these Guidelines, 24 C.F.R. Part 93, and 25 C.C.R. § 8300 et seq. A Declaration of Restrictive Covenants runs with the land and is binding on the parties and their successors and assigns throughout the Project's period of affordability.
- (e) The loan and/or grant documents will be made on the Department's Standard Agreement, standard loan and/or grant documents. The Department may modify its requirements and terms on the Department's Standard Agreement, standard loan and/or grant documents upon written notice to and cooperation from the Recipient for the Project. Modifications may be required due to HUD publishing new program regulations and/or program guidance that apply to the Recipient for the Project.

## **Section 12 – Project Set Up and Disbursement of Funds**

- (a) Upon notification from the Department to the Recipient that the Department is ready to Set Up the Project in the Federal Disbursement and Information System:
- (1) The Recipient must submit to the Department the Project Set Up report required by 24 C.F.R. § 93.402(b) prior to the first disbursement request.
  - (2) The Department must verify that the Project complies with the applicable conditions contained in the Standard Agreement.



- (3) Upon the Department's verification of Subsections 12(a)(1) and 12(a)(2) above, the Department must Set Up the Project in the Federal Disbursement and Information System.
- (b) The Department must draw down NHTF funds by electronic fund transfer from the NHTF Fund for a Project that it has Set Up pursuant to Subsection (a) above.
- (1) The Department must make requests for disbursement directly to the Federal Disbursement and Information System after receipt of a certification of the payment request. The original certification must remain in the permanent Project file.
  - (2) The Department must withhold disbursements in the event the Recipient fails to comply with the terms of the Standard Agreement, these Guidelines, 24 C.F.R. Part 93, or any other applicable federal and state law.
  - (3) Monthly construction draws in compliance with 24 C.F.R. § 93.201.
  - (4) Loan Retention. Loan Retention is 10 percent (10%) of the development hard costs and will be retained and released after the Department approves the Project Completion and loan closing requirements in the Standard Agreement, including but not limited to the following: the final audited cost certification completed by an independent certified public accountant, project completion report with the final sources and uses and tenant demographics, recorded notice of completion, final certificate of occupancy, and clearance of environmental conditions remedial work on any recognized environmental conditions. The Department reserves the right to release the Loan Retention after approving permanent loan closing.
- (c) The Recipient must expend NHTF funds drawn from the NHTF Fund for eligible costs within seven days.
- (1) Interest earned on NHTF funds drawn from the Federal Disbursement and Information System and remaining in the Local Account no more than 15 days must be retained in the Local Account and used for eligible NHTF costs.
  - (2) Unused funds, including interest earned on funds beyond the 15 days, must be returned the Department for repayment to HUD.
- (d) All NHTF funds in the Local Account must be disbursed in accordance with 24 C.F.R. § 93.402(c)
- (e) To comply with HUD's 120-day deadline to close Projects out in the Federal Disbursement and Information System after final disbursement, the Recipient must provide to the Department the Project Completion report required by 24 C.F.R. § 93.402(d) within 90 days of receipt of the final drawdown request for a Project. If the Recipient does not comply with this requirement within the 90-day

time period, the Department must suspend further Project Set Up or disbursements for the Recipient until the Project Completion report is received and accepted by the Federal Disbursement and Information System.

### **Section 13 – Reporting and Recordkeeping**

#### **(a) Reporting Requirements:**

- (1) Upon the Department's date of award, and no later than 10 days following the last day of the month, Recipients must submit a monthly status report to the Department and, for Projects currently under construction, a monthly labor compliance certification, if applicable. For Projects located on Native American Land, Project owners may implement duly adopted Tribally determined prevailing wages in accordance with Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA) in lieu of State of California prevailing wages. It is encouraged that the Recipient seek counsel on prevailing wage determinations on a Project-by-Project basis.

The Recipient must continue to submit the monthly status report to the Department until the final Project Completion report is accepted in the Federal Disbursement and Information System. The monthly status report must include the following:

- (A) Information to determine the progress of efforts to comply with environmental and labor standards requirements, as applicable;
  - (B) Information to determine the progress of efforts to obtain all necessary Project financing;
  - (C) Information to determine the progress of efforts to obtain required local government approvals for the Project;
  - (D) Information to determine whether there have been any changes in Project site control;
  - (E) Information to determine the timeline for completion of the Project;
  - (F) Current contact information for individuals or firms overseeing the development of the Project.
- (2) Upon the Department's execution of the Standard Agreement and, at a minimum, no later than 30 calendar days after the end of each calendar quarter until the final Project Completion report is accepted in the Federal Disbursement and Information System, Recipients must submit to the Department a performance report which must include the following information:

- (A) Activities undertaken to implement the Project and to meet milestones contained in the Standard Agreement;
  - (B) Anticipated activities in the next quarter to implement the Project and to meet milestones contained in the Standard Agreement;
  - (C) Problems in implementing the Project or complaints received during the reporting period and actions taken to resolve such problems and complaints;
  - (D) Financial information related to expenditures of NHTF funds;
  - (E) Any additional information which may be requested by the Department to ensure compliance with these Guidelines and any applicable state and federal laws.
- (3) Recipients must submit to the Department a cost certification performed by a certified public accountant for each Project assisted with NHTF funds.
- (4) No later than 90 days after the end of each Project fiscal year, and until the final Project fiscal year during the State Affordability Period, the Recipient must submit to the Department the following:
- (A) An independent audit of the Project prepared by a certified public accountant in accordance with Department audit requirements, as periodically updated and incorporated by reference; and
  - (B) A complete annual compliance report, including tenant demographics pursuant to Department defined reporting requirements.
- (5) No later than 60 days prior to the end of each Project fiscal year, the Recipient must submit the proposed financing as detailed in Section 14 – Annual Operating Budget and Schedule of Rental Income.
- (b) Recipients must report annually to the Department on the services provided to residents of these Units, the qualifying characteristic of each resident, and similar information. Recipients must maintain records as described in 24 C.F.R. § 93.407(a)(1)-(5). Recipients must retain these records for the periods of time specified in 24 C.F.R. § 93.407(b). Recipients must make all records available to the Department for inspection and review and must provide all records to the Department upon request.
- (c) The Department may require a Recipient to provide it with any report the Department deems necessary for it to assess whether the Recipient or Project will comply with these Guidelines or any applicable state and federal law.

## **Section 14 – Annual Operating Budget and Schedule of Rental Income**

The Recipient must submit proposed operating budgets and Schedule of Rental Income (“SRI”) to the Department prior to occupancy and annually thereafter. These operating budgets and SRI must be subject to Department approval, be consistent with related and supporting documentation, and comply with the following requirements:

- (a) Before closing the NHTF loan, the Recipient must submit an initial operating budget, SRI, and other documents as requested to the Department. Such budget and SRI must show all anticipated income; expenses for management, operations, and maintenance; debt service; and reserve deposits for the Initial Operating Year. The initial SRI must show proposed rents for individual Units, gross rent floor date, rental and operating subsidy amounts, and similar information on both individual Units and the Project as a whole.
- (b) For the Initial Operating Year, the borrowing entity must operate the Project in accordance with the initial operating budget and SRI which were approved by the Department prior to loan closing. Such budget must show all anticipated Operating Income, debt service, Operating Expenses and amount payable to reserves for the Initial Operating Year. Such SRI must set forth the rent roll, which will identify each tenant household (by Unit number or other method of household identification that is acceptable to the Department), as well as the following information in connection with each tenant household: size, income, current rent, and proposed rent adjustments (including utility allowances, if applicable). Such SRI must provide estimated income for NHTF Assisted Units, non-NHTF Assisted Units, and Commercial Space or use.
- (c) For as long as deemed necessary by the Department to ensure compliance with these Guidelines and any applicable state and federal law, but for no less than the full-term of the Regulatory Agreement, the Recipient must submit to the Department for its approval, 60 days prior to the end of each Project fiscal year, a proposed operating budget and SRI on forms provided by the Department. The proposed annual operating budget and SRI, together, must set forth the borrowing entity’s estimates for the upcoming year of Operating Income, Operating Expenses, debt service, amounts payable to reserves, and proposed rent adjustments. The Department, at its sole discretion, may request in situations, such as, but not limited to, re-syndication, change of ownership, or change of Project fiscal year, submission of limited budget information, such as a proposed rent schedule, proposed management fees, and reserve deposit amounts. The Department may re-impose the requirement for submission of complete operating budgets where necessary to ensure compliance with these Guidelines and any applicable state and federal law.
- (d) The initial and subsequent proposed operating budgets must be subject to the approval of the Department based on its determination that the budget line items are reasonable and necessary, considering costs for comparable Projects and prior year budgets. Actual expenditures in excess of the approved budget amount must be subject to Department approval.

- (e) The initial and subsequent proposed SRI must be subject to approval of the Department based on its determination that the proposed rents are in accordance with these Guidelines and any applicable state and federal law.
- (f) For Projects with non-NHTF Assisted Units or Commercial Space, all budgets submitted pursuant to this Section must show income and uses of the income allocated among NHTF Assisted Units, non-NHTF Assisted Units, and Commercial Space. The allocation method used for each budget line item must be subject to Department approval and must apportion income and expenses in a manner that accurately reflects the particular physical, operational, and economic characteristics of the Project.

### **Section 15 – Project Deadlines**

- (a) A Recipient is not entitled to NHTF funds under an award if:
  - (1) The Project does not begin construction within 12 months of the executed Standard Agreement, unless an extension is granted by the Department;
  - (2) The Department does not execute a Standard Agreement with the Recipient within 24 months from the date HUD executes the NHTF Grant Agreement; or
  - (3) The Recipient does not satisfy all the applicable terms and conditions under the Standard Agreement necessary for the Department to disburse the NHTF funds within five years from the date HUD executes the NHTF Grant Agreement.
- (b) Upon receipt of an award, the Recipient must secure all permanent financing for the Project before it executes a Standard Agreement with the Department.
- (c) 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.

### **Section 16 – Sales, Transfers, Encumbrances, and Loan Payoff**

- (a) A Recipient must not directly or indirectly sell, assign, transfer, or convey a Project receiving NHTF funds, or any interest therein or portion thereof, without the express prior written approval of the Department. The Department may approve a sale, transfer, or conveyance only if:
  - (1) The existing Recipient complies with the Regulatory Agreement and other loan documents, or the sale, transfer or conveyance will result in the cure of any existing violations;

- (2) The successor-in-interest to the Recipient agrees to assume all obligations of the existing Recipient under the Regulatory Agreement and other loan documents and the program;
  - (3) The successor-in-interest is an eligible Recipient and demonstrates to the Department's satisfaction that it can successfully own and operate the Project and comply with these Guidelines and any applicable state and federal law; and
  - (4) No terms of the sale, transfer, or conveyance jeopardize either the Department's security or the successor's ability to comply with these Guidelines and any applicable state and federal law.
- (b) 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, or cause or permit the general partner to amend, modify, or add to the organizational documents of the general partner, without the prior written approval of the Department.
- (c) The Recipient may not transfer Limited Partnership interests without the prior written approval of the Department.
- (d) If the Department approves a sale, assignment, transfer, or conveyance under the provisions of Subsection (a) above, the Department must grant its approval subject to such terms and conditions as may be necessary to preserve or establish the Fiscal Integrity of the Project. Such conditions may include, but are not limited to:
- (1) The deposit of sales proceeds, or a portion thereof, to maintain required reserves, or to offset negative cash flow;
  - (2) The recapture of syndication proceeds or other funds in accordance with special conditions included in any agreement executed by the Recipient; and/or
  - (3) Such conditions as may be necessary to ensure compliance with these Guidelines and any applicable state and federal law.
- (e) The Recipient must not encumber, pledge, or hypothecate the Project, or any interest therein or portion thereof, or allow any lien, charge, or assessment against the Project without the prior written approval of the Department. The Department must not permit refinancing of existing liens or additional financing secured by the Project except to the extent necessary to 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, repayment of general partner loans or of limited partner loans, or for limited partner buyouts. Notwithstanding the general provisions in 25 C.C.R. § 8308(g), no Project reserve balance can fund a limited partner buyout or exit.

- (f) No loan may be paid off prior to maturity without the prior written consent of the Department in its sole discretion. The Department's consent is subject to conditions deemed necessary to ensure compliance with these Guidelines and any applicable state and federal law. All loan documents, including the Regulatory Agreement and Deed of Trust, must continue in full force and effect notwithstanding any prepayment, in whole or in part, of the loan.

## **Section 17 – Program Income and Repayments**

- (a) Monitoring fee. The Department must establish and charge the Recipient an annual monitoring fee throughout the term of a Project's Regulatory Agreement or Declaration of Restrictive Covenants. This monitoring fee is projected to increase annually at 3 percent (3%) following the Department's analysis of actual costs for monitoring.
- (b) The requirements of 24 C.F.R. § 93.403 apply to these Guidelines. The Recipient must repay to the Department any NHTF funds the Recipient invested in a Project that is not completed and that does not comply with the affordability requirements under these Guidelines.
- (c) All program income and recaptured funds must be remitted directly to the Department for deposit into the Local Account. The Department must report the program income received as well as the use of the program income in the Federal Disbursement and Information System.

## **Section 18 – Cancellation and Defaults**

- (a) In the event of a breach or violation by the Recipient of any of the provisions of the Regulatory Agreement, a Declaration of Restrictive Covenants, the Note, the Deed of Trust, the Standard Agreement, or any other agreement between the Department and the Recipient pertaining to the Project, the Department may give written notice to the Recipient to cure the breach or violation within a period of not less than 15 days. If the Recipient does not cure the breach or violation to the satisfaction of the Department within the specified time, the Department, at its option, may declare a default under the relevant document(s) and may seek legal remedies for the default including the following:
  - (1) The Department may accelerate all amounts due under the loan and demand immediate repayment thereof. Upon the Recipient's failure to repay such accelerated amounts in full, the Department may proceed with a foreclosure in accordance with the provisions of the Deed of Trust and state law regarding foreclosures;
  - (2) The Department may seek, in a court of competent jurisdiction, an order for specific performance of the defaulted obligation or the appointment of a receiver to operate the Project;

- (3) The Department may terminate the document(s) the Recipient breached or violated; or
  - (4) Any other remedy available under law.
- (b) The Department may require the Recipient to amend any agreement between the Department and the Recipient if the Department determines that it is necessary for the Recipient or Project to comply with these Guidelines or all applicable state and federal law.
- (c) The Department may cancel or reduce an award to a Recipient under any one of the following conditions:
- (1) The Recipient or Project is not in compliance or will not comply with the NHTF Guidelines, NOFA, or any applicable state and federal law;
  - (2) The Department terminates the Standard Agreement with the Recipient;
  - (3) Implementation of the Project does not, or will not, comply with the Project deadlines, time frames, and goals stated in the Recipient's application or the NHTF Guidelines, or NOFA. This includes any failure, whether it be on behalf of the Department or the Recipient, to meet the requirements of Section 15 – Project Deadlines. Failure to meet the Department's HTF Environmental Provision clearance will result in cancelling the NHTF award;
  - (4) The Recipient has not fulfilled the special conditions specified in its Project report or Standard Agreement;
  - (5) The Recipient requests to have its award cancelled;
  - (6) There has been a material change, not approved by the Department, in the Project, the Principals or management of the Recipient or Project;
  - (7) If any permanent financing is withdrawn from the Project;
  - (8) If the Recipient made any misrepresentation of any material fact to the Department in connection with its application or concealed any material fact to the Department; or
  - (9) HUD reduces or eliminates the Department's NHTF funds under a NHTF Grant Agreement and there are not enough funds available for the Project.
- (d) At least 15 days before the effective date of the Department's cancellation or reduction of an award, the Department must provide written notice to the Recipient of the Department's intent to cancel or reduce the award. The Recipient may appeal the Department's decision to cancel or reduce an award to the Deputy Director of the Division of Federal Financial Assistance or his/her designee.



- (e) Upon the Department's written notification to the Recipient that the Recipient's NHTF funding has been terminated, reduced, or cancelled, the Recipient must:
  - (1) Complete all work affected by the Department's termination, reduction, or cancellation that is in progress; and
  - (2) Terminate any other activities that were to be paid for with NHTF funds affected by the Department's termination, reduction, or cancellation of the Recipient's NHTF funds.
- (f) If the Department terminates an agreement or cancels an award under this Section, the Department may penalize the Recipient, such as assigning it negative points to future applications for NHTF funds and/or any other funding program offered by the Department or barring it from applying for NHTF funds and/or any other Department loan program funds under future NOFAs.
- (g) All required repayments must be returned to the Department within 30 calendar days.
- (h) Once a Project is awarded Department funds, the Recipient's acceptance of these Department funds is acknowledging that the Project as submitted to and approved by the Department is the Project that is to be funded and built. Any bifurcation of the Project would make that award null and void, as the awarded Project is no longer feasible as originally submitted and approved and because the awarded funds are unable to be assumed or assigned.