

## **Housing Trust Fund Proposed Rule NCSHA Summary**

(The Proposed Rule was published in the *Federal Register* on October 29, 2010.)

### General Requirements

- HUD proposes to codify the Housing Trust Fund (HTF) regulations in a new subpart N of 24 CFR part 92 (which contains regulations for the HOME program).
- HUD states that the HOME program is similar in most aspects to the proposed HTF.
  - The grant activities in both programs require the same grantee administration and HUD oversight functions.
  - HUD believes that many grantees will use HTF funds in combination with HOME funds to develop mixed-income housing, and many of the applicable requirements are the same for both programs.
- HUD views the HTF as primarily a production program meant to add units to the supply of affordable housing for extremely low-income (ELI) (with incomes not greater than 30 percent of area median income (AMI)) and very low-income (VLI) (with incomes not greater than 50 percent of AMI) households.
- Grantees will report on their progress and performance in meeting the requirements of the HTF in HUD's Integrated Disbursement and Information System (IDIS) and the consolidated plan.
- Any reallocation of funds must be made only among all participating States, except those States from which the funds were recaptured or reduced.
  - Any amounts that become available for reallocation shall be added to amounts for formula allocation in the succeeding fiscal year.

### Eligible Activities

- For the first year in which HTF funds are made available, , grantees must spend 100 percent of HTF funds made available for rental and homeownership housing for ELI families or families with incomes at or below the poverty line, whichever is greater.
  - HUD will advise in future years the percentage of funds to be used for ELI families or families with incomes at or below the poverty line, if such percentage is to be greater than 75 percent.
  - In each fiscal year, all assistance must be used to benefit VLI families and at least 75 percent of assistance received must be used to benefit ELI families.
  - In each fiscal year, not less than 75 percent of HTF grant amounts provided to homeownership projects under each grant must be used for the benefit of ELI families or families with incomes at or below the poverty line, whichever is greater.
- HTF funds may be used for the production, preservation, and rehabilitation of affordable rental housing.

- Not less than 80 percent of HTF funds may be used for rental housing.
- HTF funds may be used for affordable housing for first-time homebuyers through the acquisition (including assistance to homebuyers), new construction, reconstruction, or rehabilitation of non-luxury housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, and other expenses, including financing costs, relocation expenses of displaced persons, families, businesses, or organizations.
  - Not more than 10 percent of the annual grant shall be used for housing for homeownership.
- HTF-assisted housing must be permanent or transitional housing.
- Not more than 20 percent of the annual grant may be used for operating cost assistance.
  - Operating cost assistance may be provided only to rental housing acquired, rehabilitated, or newly constructed with HTF funds.
- Grantees will have discretion in how they allocate funds to each project's development and operating costs.
- Administrative costs cannot exceed 10 percent of the annual grant.
  - A grantee may also expend, for payment of reasonable administrative and planning costs, a sum of up to 10 percent of the program income deposited into its local account or received and reported by its subgrantees during the program year.
- Acquisition of vacant land or demolition must be undertaken only with respect to a particular housing project intended to provide affordable housing within the time frames established in the definition of commitment.
- A unit of general local government may purchase improved or unimproved land for use for HTF-assisted units that will be part of a transit-oriented development.
- HTF funds may be used to purchase and/or rehabilitate a manufactured housing unit, or purchase the land upon which a manufactured housing unit is located.
- A grantee may invest HTF funds as equity investments, interest-bearing or non-interest bearing loans or advances, interest subsidies consistent with the HTF purposes, deferred payment loans, grants, or other forms of assistance that HUD determines to be consistent with HTF purposes.

### Eligible Project Costs

- HTF funds may be used to pay the following: development hard costs, refinancing costs, acquisition costs, related soft costs, operating cost assistance and operating cost assistance reserves, relocation costs, costs relating to payment of loans, and construction undertaken before the HTF funds are committed to the project.

## Rent

- Maximum rent (including utilities) is established at 30 percent of the annual income of a family whose income equals 30 percent of AMI or 30 percent of the poverty line, whichever is greater.
  - HUD will publish the HTF rent limits on an annual basis.
- Income from all family members must be included when determining income eligibility.
  - Grantees may use the definition of annual income in 24 CFR 5.609 (Section 8 definitions) or the IRS definition of annual income from IRS Form 1040.
- HUD notes it is necessary to establish fixed rents for underwriting purposes and required subsidy layering analyses.
- If the HTF-assisted unit receives Federal or State project-based rental subsidy, the maximum rent is the rent allowable under the Federal or State project-based subsidy program.
- The grantee must establish maximum monthly allowances for utilities and services.
- The grantee must annually review and approve rents proposed by the owner for HTF units.
- In a project containing HTF-assisted and other units, the grantee may designate fixed or floating HTF units. This designation must be made at the time of project commitment in the written agreement between the grantee and the recipient, and the HTF units must be identified not later than the time of project completion.
  - Fixed units must remain the same throughout the affordability period.
  - Floating units must be changed to maintain conformity with HTF requirements during the affordability period so that the total number of housing units meeting the requirements remains the same.

## Project Requirements

- Grantees must establish maximum limitations on the amount of HTF funds the grantee may invest on a per-unit basis.
  - The grantee must include these limits in its consolidated plan and update these limits annually.
- Grantees are required to perform subsidy layering analysis before committing HTF funds to a project.
- An HTF-assisted unit that has a Section 8 project-based voucher attached to it may not also receive HTF operating cost assistance.
- HUD has determined that the HTF funds may not be used for public housing.
  - HTF funds may be used for affordable housing in a project that also contains public housing units.
- The site and neighborhood standards for the HOME program apply to the HTF.
  - If Section 8 project-based vouchers are made available, Section 8 requirements related to site and neighborhood standards will apply to an HTF-assisted unit that has a Section 8 project-based voucher attached to it.

- Before disbursing any HTF funds to any entity, the grantee must enter into a written agreement with that entity.
  - Where HOME funds are used with the HTF funds, a single written agreement may be used to enforce requirements for both programs.
- Before committing funds to a project, the grantee must evaluate the project in accordance with guidelines that it has adopted for this purpose and make a determination that it will not invest any more HTF funds, alone or in combination with other governmental assistance, than is necessary to provide quality affordable housing that is financially viable for a reasonable period and will not provide undue return or profit.

#### Affordability Period

- The affordability period is not less than 30 years for rental housing and homeownership units assisted with HTF funds, beginning after project completion.
- The affordability period is designed to work in conjunction with the 30-year affordability period for Low Income Housing Tax Credit (Housing Credit) projects.
- Grantees may establish longer affordability periods in their HTF allocation plans.

#### Action Plan

- The action plan must include the HTF allocation plan.
- The plan must establish the State's maximum per-unit subsidy limit for housing assisted with HTF funds.
- If HTF funds will be used for first-time homebuyers, the plan must include resale restrictions.
- The plan must reflect the State's decision to distribute HTF funds through grants to subgrantees and/or to select applications submitted by eligible recipients.
  - An HTF grantee may choose to directly fund projects by eligible recipients in accordance with the grantee's HTF allocation plan or to fund projects by eligible recipients through one or more subgrantees.
  - If the HTF grantee subgrants HTF funds to subgrantees, the grantee must ensure that its subgrantees comply with the requirements of this subpart and carry out the responsibilities of the grantee.
    - The grantee must annually review the performance of subgrantees.
- If the State is selecting applications submitted by eligible recipients, the plan must:
  - Include identification of priority factors for funding which must include: geographic diversity, the applicant's ability to obligate HTF funds and undertake eligible activities in a timely manner; for rental projects, the extent to which rents for units in the project are affordable to ELI families and the duration of the units' affordability period; the merits of the application in meeting the priority housing needs of the jurisdiction; and the extent to which the application makes use of non-federal funding sources;

- Include the requirement that the application contain a description of the eligible activities to be conducted with the HTF funds and contain a certification by each eligible recipient that housing units assisted with the HTF will comply with HTF requirements;
- Describe eligibility requirements for recipients;
- Provide the jurisdiction's rehabilitation standards; and
- Describe under which conditions the grantee will refinance existing debt.
- For a jurisdiction receiving HTF funds from the State, the action plan must include the HTF allocation plan (consistent with the State's HTF requirements).

### Allocation Plan

- States are required to notify HUD in writing within 30 days of receiving notice of its formula allocation amount of intent to participate in the HTF program and to have a consolidated plan that contains the HTF allocation plan.
- The HTF allocation plan must:
  - Describe the distribution of the grant;
  - Establish the application requirements and the criteria for selection of applications submitted by eligible recipients that meet the State's priority housing needs;
  - Be based on priority housing needs;
  - Comply with the statutory requirements regarding activities eligible for HTF funding; and
  - Include performance goals that comply with HUD's HTF regulations.
- In establishing the allocation plan, States must:
  - Notify the public of the establishment of the plan;
  - Provide an opportunity for public comments regarding the plan;
  - Consider any public comments received on the plan; and
  - Make the completed plan available to the public.
- The allocation plan must disclose the requirements that the State will impose on eligible recipients that apply for grants under the State's formula allocation. Requirements must include:
  - A description of the eligible activities to be conducted using such assistance and
  - A certification from the eligible recipient that any housing units assisted will comply with HTF requirements.
- For HTF-assisted rental housing projects, the plan must provide priority to projects that have Federal, State, or local project-based rental assistance, and take into consideration the duration of the HTF-assisted units' affordability period.
- Grantees may include incentives and priorities in its HTF allocation plan that are appropriate to the communities where housing developed with HTF funds will be located.

## Energy-Efficiency

- Energy and water-efficiency features are required in all HTF-assisted units.
- All HTF-assisted units that are newly constructed or undergoing gut rehabilitation must, at a minimum, be certified that they meet the guidelines for ENERGY STAR-Qualified New Homes (for residential buildings up to 3 stories) or exceed, by 20 percent, the energy efficiency requirements of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) as defined in section 92.741.
- A Home Energy Rater (HER) must inspect the units to certify that the units meet the ENERGY STAR guidelines.
  - The requirement for ENERGY STAR certification will become effective 6 months from the effective date of the HTF Rule.

## Definitions

- Commitment means the grantee has executed a legally binding written agreement with an eligible recipient for a project that meets the definition of “commit to a specific local project” or with a unit of general local government for a project that meets the definition of “commit to a transit-oriented development.”
- Recipient means an organization, agency, or other entity that receives HTF assistance from a grantee as an owner or developer to carry out an HTF-assisted project.
- State-designated entity means a State Housing Finance Agency, Tribally designated housing entity, or any other qualified instrumentality of the State that is designated by the State to be the grantee.
- Subgrantee means a unit of general local government or State public agency selected by the grantee to administer all or a portion of its HTF program.