
THE HFA INSTITUTE

Strategic Approaches to HOME, Housing Trust Fund, & the Housing Credit

January 9, 2018



National Council of
State Housing Agencies



Welcome & Introductions

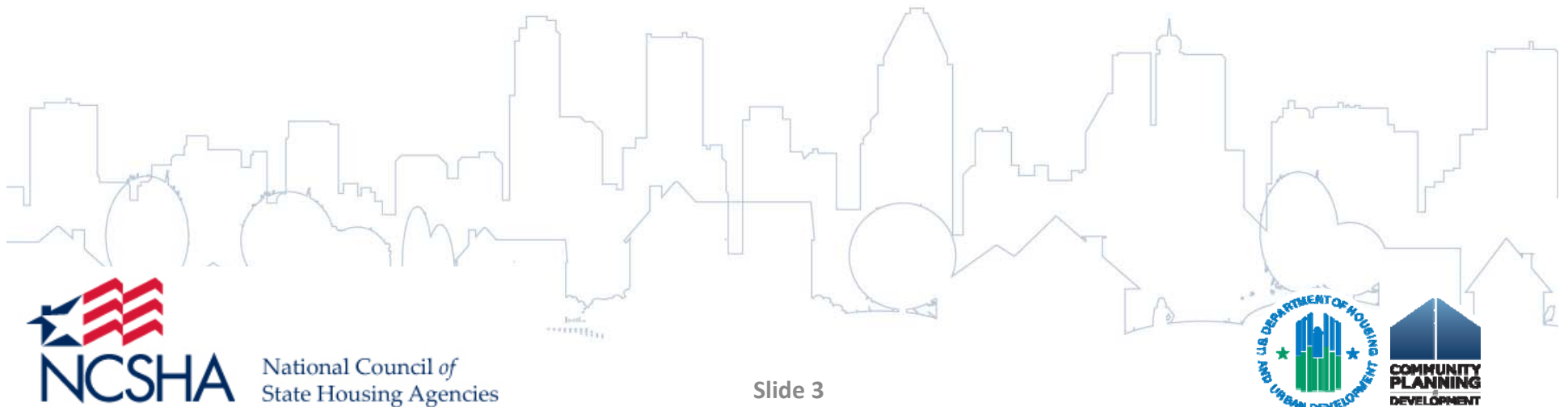
- Sponsored by:
 - HUD's Office of Affordable Housing Programs
 - NCSHA
- Trainer:
 - Steve Lathom, TDA Consulting

slathom@tdainc.org

517-203-4130

Topic Overview

- High level comparisons, critical distinctions
 - State role, income/rent targeting, compliance period
- Implications for deal/transactional terms
- Regulatory differences btw HTF & HOME
 - May affect “best fit” resource for specific projects



Critical Distinction – State Role

- We all want
 - Good deals, max, production, strong mission
- BUT...
- LIHTC Allocator
 - Failed deal = opportunity cost
- HOME PJ/HTF Grantee
 - **Failed deal = State must repay HUD**



Critical Distinctions - Income

- Income
 - HTF: **30% AMI** (not less than poverty)
 - Some at 50% if over HTF \$1B
 - HOME: 50%, 60%, and 80%
 - Often PJs limit to 60% AMI
 - LIHTC: 50% or 60% AMI
 - Deeper targeting often encouraged by QAP scoring
- Limits change differently
 - Timing and hold harmless

Critical Distinctions - Period

- HTF: **30 years**
- HOME: 15* (rehab) or 20 years (new)
- LIHTC: 15 federal (+ 15 state-enforced)
 - Planned investor exit



Distinctions Drive Transactional Approach

- HOME/HTF v. Credits: More accountability for longer with less revenue **WITH GREAT RESPONSIBILITY**
- In turn, drives deal points
 - 1st mortgage considerations
 - Control over reserves
 - Expectations for owners
 - Agreement provisions*
 - *Consult your own counsel!*



1st Mortgage Considerations

- Recording position v. covenant/use restriction
 - Non-foreclosable covenant
 - FHA allows covenant senior to security instrument
 - Lenders regularly allowing
 - Key: Explicitly establish expectations up front
- 1st Mortgage term
 - Risk with balloon w/in affordability period
 - Will credit conditions allow refi?
 - Consider requiring term => affordability period



Reserve Considerations

- State control of reserves
 - Hold & disburse ↔ dual signature account ↔ report & default
- Maintain reserves w/in project at investor exit
 - Don't allow use for exit taxes, etc.
- If drawn, require reserves be replenished prior to distribution of cash flow
- Provide for periodic CNAs, reset RR deposits



Idea – Preservation Reserve

- Cannot provide additional HOME/HTF funds during affordability period
- In lieu of cash-flow contingent HOME/HTF payment, consider deposit to “Preservation Reserve”
 - e.g. 50% of annual cash flow to preservation reserve
 - Available if deemed necessary by state to preserve ongoing economic/physical viability within the affordability period, requires workout MOU
 - Upon maturity, available to repay HOME/HTF loan



Ownership Expectations

- Control changes in underlying ownership
 - Expect investor exit w/in affordability period
 - Remember 20 yrs HOME new/30 yrs HTF
- Seek guarantees of performance from underlying owners
 - Can require personal guarantees within non-recourse loan constraints
 - “Repayment” guarantee and RR deposits



Agreement Provisions – Pending Guidance

- Pending policy requirements
 - e.g. Treatment of over-income in-place tenants

As of the date of this Agreement, HUD has not issued guidance specifying the actions an owner must take to correct such temporary noncompliance. Owner agrees that, upon notice by the State following issuance of such guidance by HUD, it will be bound by those requirements as if they were included in this Agreement as of its execution.



National Council of
State Housing Agencies

Slide 12



Agreement Provisions – Future Changes

- Rules may change, or we may get it wrong

Notwithstanding any terms within this Agreement, in the event that (i) HUD imposes new or modified requirements on existing HTF-assisted projects through regulation, administrative notice, publication, or other notice, or (ii) HUD specifically identifies violations of HTF program requirements pertaining to this Agreement or the Project, Owner agrees to comply with any new or modified requirements to ensure the Project remains in or is brought into compliance with such requirements.

Agreement Provisions – Standard Oversight

- State’s oversight approach may change, standardize across portfolio when possible and appropriate

Project shall, at all times during the term of this Agreement, be operated in compliance with the State’s Rental Management Handbook, or successor publications, which may be updated from time to time to reflect new, revised, or clarified administrative procedures and practices. Owner agrees to be bound by such updates...

Regulatory Distinctions

- LIHTC does not trigger cross-cutting regs
- HOME/HTF do trigger cross-cutting regs

	HOME	HTF
Environmental Review	✓	✓*
Uniform Relocation Act	✓	✓
Sec. 104(d) 1:1 Replacement	✓	⊘
Accessibility (Sec. 504, etc.)	✓	✓
Lead Based Paint (24 CFR Part 35)	✓	✓
Sec. 3	✓	✓
Davis Bacon & Related Acts	✓	⊘
24 CFR Part 5, Subpart A	✓	✓
Affirmative Marketing	✓	✓

HOME v. HTF

- Exactly the same, except when they're different
 - May affect project selection
- HTF v. HOME
 - No Davis Bacon
 - Environmental review path
 - Requires annual project audit
 - Utility allowance options



Predictions for 2018 and beyond

- *Are you kidding me?*
- *[Placeholder for news since printing slides]*
- LIHTC market uncertainty following tax bill
 - Pricing and deal terms/structuring
- HUD guidance
 - Operating Assistance/Reserves
 - Allocation levels/Action Plan timing



National Council of
State Housing Agencies

Slide 17



HOW WHY WHEN WHERE WHY
WHERE WHO WHEN WHY
WHAT WHO WHEN WHAT
WHAT WHEN WHAT
WHO WHERE WHEN HOW
WHY