



June 25, 2021

Regulations Division, Office of Community Planning and Development  
U.S. Department of Housing and Urban Development  
451 Seventh Street, SW  
Washington, DC 20410-8000

RE: Docket No FR-5246-N-04, RIN 2506-AC30  
Housing Trust Fund: Request for Public Comment on Prior Interim Rule

To Whom It May Concern:

The National Council of State Housing Agencies (NCSHA)<sup>1</sup> and our state Housing Finance Agency (HFA) members appreciate the opportunity to comment on the Department of Housing and Urban Development's (HUD) Housing Trust Fund (HTF) interim final rule, published in the Federal Register on January 30, 2015.

[43 state HFAs and NCSHA Associate Members](#) administer HTF in their respective states, District of Columbia, Puerto Rico, or Insular Area. Drawing from the experience and insight they have gained since the first allocation in fiscal year 2016, we offer the following comments:

### **Income Targeting Requirements**

NCSHA encourages HUD to provide the maximum amount of income targeting flexibility allowed by the Housing Trust Fund statute, regardless of the HTF funding level. This would mean HTF funds could support some tenants with incomes up to 50 percent of area median income (AMI).

Restricting the use of HTF funds exclusively for extremely low-income households exacerbates difficulties in designing and financing HTF developments and addressing the significant affordable housing needs among very low-income families, many of whom are people of color. Allowing a limited number of very low-income tenants would allow some income-mixing, creating stronger communities and promoting different financing options.

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<sup>1</sup> NCSHA is a nonprofit, nonpartisan organization. None of NCSHA's activities related to federal legislation or regulation are funded by organizations that are prohibited by law from engaging in lobbying or related activities.

## **Rent Limitations**

NCSHA supports the rent limitations as currently written.

## **Affordability Periods**

HFAs are committed to maximizing affordability terms and consistently exceed federal program minimum affordability requirements. However, it can be a challenge to maintain the deep targeting required under the Housing Trust Fund program for 30 years, especially for properties that do not have the benefit of some form of rental assistance. While HFAs and affordable housing developers do their best to anticipate the needs of properties over the long term, challenges may arise that were not anticipated during underwriting.

The HOME Investment Partnerships program, which may also be used to provide capital financing for affordable housing developments, is not as deeply targeted as HTF, yet requires that properties maintain affordability for no more than 20 years.

NCSHA recommends that the required affordability period for HTF be no more than 20 years, consistent with HOME program rules, and that properties be eligible for recapitalization using HTF after 15 years. Recapitalization would restart the affordability period, preserving the affordable housing units past the initial affordability period.

## **Property Standards, Including Environmental Standards Established at 24 CFR 93.301**

HTF environmental standards have strict prohibitions on the development of projects on certain types of sites. In particular, the prohibition against development on farmland is challenging in states where farmland comprises a significant amount of the state's geography. In fact, some states have land that, while characterized as farmland, actually is within city limits. Developers in these states have struggled to identify potential sites for HTF properties.

We urge HUD to provide some flexibility so that more sites could be available for HTF developments. HUD's 24 CFR Part 58 on environmental review procedures, applicable to other HUD programs but not HTF, allows for certain exemptions to prohibitions against building on these types of sites, so long as there is consultation with the appropriate environmental agencies, State, Federal, and non-Federal entities and the public (24 CFR 93.301 (f)), and the appropriate agency approves the development. A similar process would provide greater flexibility and make HTF a more useful resource in states with significant geographies categorized as farmland or other currently prohibited areas.

## Operating Cost Assistance

§93.200(a)(1) and §92.730(a)(1) both establish strict limits on the use of HTF for operating cost assistance; the former by requiring that any operating cost assistance be tied specifically to units that are also receiving capital funding and the latter by limiting operating costs to one-third of each grantee's grant. While we understand HUD's interest in ensuring that HTF maintains its character as primarily a capital assistance program, NCSHA urges HUD to provide greater discretion to state grantees in their underwriting process to determine how best to serve HTF-eligible households and the needs of the properties they are underwriting in the context of the various sources of financing available to those properties. The current rules may unnecessarily complicate project financing and go beyond the requirements of the statute.

In addition, we urge HUD to expand the definition of operating costs eligible under HTF. Currently HUD restricts operating expenses to "insurance, utilities, real property taxes, and maintenance and scheduled payments to a reserve for replacement of major systems." This definition should be extended to include property management, front desk staffing, building security, and other expenses that underwriters typically consider operating expenses. Restricting what costs count as operating expenses significantly reduces the effectiveness of HTF as an operating assistance tool.

### **Additional Changes to Improve HTF Program Administration and More Effectively Address the Housing Needs of the Population It Is Intended to Serve**

#### Repayment in Cases of Noncompliance

§93.403(b) requires the total repayment by the grantee of HTF funds if the property in which those funds are invested no longer meets the program's affordability requirements. The full repayment requirement increases the risk that the developer takes on in financing a project with HTF, creating a disincentive for using HTF. Further, since state grantees are liable for repaying HTF funds if they are unable to recoup payment from the property owners in the case of noncompliance, this creates a liability for the grantee. It also could force the grantee to find another source of funds to repay the HTF funds, reducing its capacity to finance affordable housing. We thus encourage HUD to modify its repayment rules by requiring full repayment only for the first half of the affordability period, and prorated repayment thereafter.

#### Compliance Monitoring

§93.404(c)(2)(iii) requires grantees to audit each project assisted with HTF funds annually, even though HTF may comprise only a small part of the overall project's financing. This is a far more burdensome monitoring requirement than many other programs have. For example, state allocating agencies must monitor Low Income Housing Tax Credit properties at least once every three years. NCSHA recommends that HUD relax its HTF audit requirement and instead obligate

grantees to conduct annual audits only of projects where HTF makes up more than 50 percent of the capital provided in the project financing.

We appreciate your consideration of these recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Garth Rieman". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Garth Rieman  
Director, Housing Advocacy and Strategic Initiatives