HHFDC
HAWAII HOUSING FINANCE &
DEVELOPMENT CORPORATION

National Housing Trust Fund Rental Program Guidelines

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1. Program Summary

The State of Hawaii, acting through the Hawaii Housing Finance and Development Corporation ("HHFDC"), receives funding each year from the U.S. Department of Housing and Urban Development ("HUD") under the national Housing Trust Fund (HTF) program.

HTF was established under Title I of the Housing and Economic Recovery Act of 2008, and its implementing regulations are found at 24 CFR Part 93. HTF's primary purpose is "to increase and preserve the supply of rental housing for extremely low- and very low-income families, including homeless families." As such, it focuses on the production of housing for extremely low-income households, which is defined by HTF to be households with incomes below the greater of 30% AMI or the federal poverty rate as adjusted to household size.

In general, HHFDC does not directly implement the State's HTF programs. Rather, HHFDC initially distributed half of the State's HTF funding each year to Honolulu with the other half awarded on a three-year rotating cycle to the Counties of Hawaii, Kauai, and Maui. Under their agreements with HHFDC, the four county recipients of HTF funding are responsible for the day-to-day implementation of their HTF subawards. However, HHFDC, as the designated HTF "Grantee" (the term used in the HTF regulations), is required to oversee the counties' HTF efforts as "subgrantees" and is the party that HUD holds directly accountable for compliance concerns or failures.

In order to ensure that the State receives full benefit of the HTF, HHFDC reserves the right to re-allocate funds between the counties when there are delays in identifying and/or committing funds to eligible projects. Further, HHFDC reserves the right to directly implement the program – by issuing requests for proposals or notices of funding availability, either independently or in conjunction with its administration of the federal Low Income Housing Tax Credit (LIHTC) program, the state Rental Housing Revolving Fund, or other such financing sources and entering into direct funding agreements with developers of qualifying affordable housing.

Subgrantee Implementation

While it may seem that HHFDC simply passes HTF funds through to its county subgrantees, allowing them broad discretion to design County-specific programs within the confines of the regulations at 24 CFR 93; this is a mischaracterization of HHFDC's role in the program. The regulation, at §93.101(d), describes the overall responsibility of the Grantee (i.e. HHFDC) as follows:

> *If the HTF grantee subgrants HTF funds to subgrantees, the grantee must ensure that its subgrantees comply with the requirements of this part and carry out the responsibilities of the grantee. The grantee must annually review the performance of subgrantees in accordance with 24 CFR 93.404(a).*

Consequently, while HHFDC does provide substantial flexibility for county subgrantees to customize implementation to their specific needs and circumstances, it is required to maintain a level of control and oversight over the Counties' performance.

As a Subgrantee, the County must include its HTF allocation plan in its annual action plan. The allocation plan must be consistent with the HHFDC's HTF requirements. It must also describe the distribution of HTF funds and establish the application requirements and the criteria for selection of applications that meet the County's priority housing needs in accordance with 24 CFR 91.220(l)(5).

HHFDC Monitoring and Oversight

Insomuch as possible, HHFDC's approach to overseeing the County subgrantees will be in a collaborative manner. HHFDC will use both informal and formal approaches ranging from facilitating periodic meetings with subgrantees both individually and as a group to formal monitoring of both program management and project compliance.

2. Project Selection & Commitment

A. Application Process

Applications for the HTF are issued, accepted, and selected by the applicable county housing agencies (Subgrantees) annually for funding consideration, subject to availability of funds. Applications are reviewed for eligibility and rated, using the selection criteria. Each application must describe the eligible activity, in accordance with 24 CFR 93.200, that is to be conducted with HTF funds. The application must also contain a certification by each eligible recipient that housing units assisted with HTF will comply with the HTF requirements.

In addition, applications must include performance goals and benchmarks that the Subgrantees/HHFDC will use to monitor efforts to accomplish the rental housing objectives.

STATE OF HAWAII SUBGRANTEES

City and County of Honolulu	**County of Kauai**
Department of Community Services	Kauai County Housing Agency
Kapalama Hale, Suite 200	Pi`ikoi Building
925 Dillingham Boulevard	4444 Rice Street, Suite 330
Honolulu, Hawaii 96817	Lihue, Hawaii 96766
County of Hawai`i	**County of Maui**
Office of Housing and Community Development	Department of Housing and Human Concerns
1990 Kinoole Street, Suite 102	2065 Main Street, Suite 108
Hilo, Hawaii 96720	Wailuku, Hawaii 96793

B. Initial Review and Preliminary Awards

The County will conduct its review and analysis of the project and applicant and, in all instances, award HTF funds consistent with sound and reasonable judgment, prudent business practices, and the exercise of its inherent discretion.

Projects seeking HTF funds prior to the receipt of all other funding sources, including federal Low Income Housing Tax Credit (LIHTC) reservations from HHFDC, may be provided with non-binding Preliminary Awards. These Preliminary Awards may be contingent upon the: 1) approval of the State and County's Annual Action Plan (including its HTF Allocation Plan); 2) the receipt of HTF funds from HUD; 3) the applicant's receipt of a LIHTC award/other sources of funds; 4) documentation that the project meets the HTF environmental provisions, following completion of the Environmental Review process (as applicable); and 5) other items noted in the project-specific Preliminary Award.

Projects receiving a Preliminary Award will be identified and included in both the HHFDC and the County annual action plans for HUD review and approval.

C. Contracting/Commitment Process

HHFDC and the County will enter into the HTF Subgrantee Agreement upon HUD's approval of the Annual Action Plan and execution of the HTF grant agreement.

The County will be responsible for shepherding projects to formal commitment (i.e., execution of binding legal agreements obligating HTF funding). County staff will be responsible for: 1) managing final underwriting of the project, 2) ensuring any general or special conditions of the Preliminary Award are met, 3) negotiating project-specific transaction terms, and 4) coordinating with assigned legal counsel on any modifications to standard form legal documents.

Following commitment, County staff will: 1) set up the activity in HUD's IDIS system, 2) process draw requests for HHFDC approval, 3) review (or coordinate with County contractors to review) construction progress and compliance with labor standards, 4) negotiate and seek internal approvals on any proposed contract changes, and 5) coordinate with County staff responsible for compliance and asset management staff (if different from the initial contact) on the handoff of the project as it approaches construction completion, the start of marketing, and being placed in service.

D. Ongoing Compliance & Asset Management

Once a project is completed, the County will maintain an ongoing relationship throughout the period of affordability or the life of the HTF loan, whichever is longer.

The County is responsible for overseeing annual and periodic on-site monitoring of the project (which may be completed by County contractors), reviewing financial performance and ensuring that any payments due have been properly collected, and otherwise managing the County's relationship with the project and owner over time.

3. Project Funding Requirements

A. Eligibility Criteria

Eligible Applicants

Developers and owners of affordable rental housing – including for-profit developers, nonprofit developers, public housing authorities, are eligible to apply for HTF funding as noted below:

- HTF can be awarded to assist in the development of public housing units under limited circumstances as outlined in 24 CFR 93.203. This includes:
  - HTF funds may be used for new construction or rehabilitation of public housing as part of the Choice Neighborhoods (Choice) program under a HUD appropriation act or for new public housing units that have been allocated and will receive low-income housing tax credits under section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42);
  - HTF funds may be used for the rehabilitation of existing public housing units in which the public housing assistance will be converted and used at the properties under the Rental Assistance Demonstration (RAD) program under HUD's 2012 Appropriations Act (Pub. L. 112-55, 125 Stat. 552, approved November 18, 2011) or subsequent statutes;
  - Constructing public housing units using HTF funds to replace units that were removed from a public housing agency's public housing inventory as part of a Choice program grant or as part of a mixed-financed development under section 35 of the 1937 Act. The number of replacement units cannot be more than the number of units removed from the public housing agency's inventory. The public housing units constructed or rehabilitated using HTF funds must receive Public Housing Operating Fund assistance (and may receive Public Housing Capital Fund assistance) under section 9 of the 1937 Act. These units cannot receive operating cost assistance or operating cost assistance reserves from HTF.

Debarment: Projects owned, developed, or otherwise sponsored by any individual, corporation, or other entity that is suspended, debarred, or otherwise precluded from receiving federal awards, will not be funded with HTF. In addition, the owner may not contract with any other entity (including but not limited to builders/general contractors, property management companies, or other members of the development team) that is suspended, debarred, or otherwise so precluded. Similarly, the general contractor will be required to determine that subcontractors are not so precluded.

The System for Award Management (SAM) database should be used by applicants to confirm that development team members are not excluded. The SAM database is available at www.sam.gov.

The County shall review and maintain its record of all debarment checks in the project file.

Project Location

The County will entertain applications for projects within the County. However, any additional geographic targeting, potentially including scoring incentives, must be included in the County's HTF Allocation Plan.

All HTF projects involving new construction are also subject to the Site and Neighborhood Standards at 24 CFR 983.57(e)(2) and (3). In general, these standards limit the new construction of rental housing in neighborhoods exhibiting high levels of racial segregation and concentration of poverty unless the projects meaningfully contribute to the area's revitalization as part of a larger series of public and/or private investments.

Project Types

Funds will be provided for acquisition, new construction, and rehabilitation of multifamily residential rental projects. While the County will entertain any proposals meeting its criteria; in practice, most projects will also require other public investment to be economically feasible. This may include projects also funded with other federally regulated affordable housing programs such as, but not limited to, LIHTC, HUD Section 202, Section 811, RAD, Choice Neighborhoods, or United States Department of Agriculture Rural Development (USDA-RD). Other State resources, such as state tax credits, HHFDC's Rental Housing Revolving Fund, and the like are also common sources of leveraged funding.

Property Standards

To meet HTF regulations and County goals, all projects must meet certain physical standards intended to provide quality affordable housing that is durable and energy efficient.

- Construction must meet all applicable state and local building and fire codes (including related electrical, mechanical, and plumbing codes).
- All projects must meet applicable Section 504/UFAS requirements. New construction or substantial rehabilitation projects with five or more total units must provide 5% of the project's units (but not less than one) for physically disabled occupants and another 2% of units (but not less than one) designed to be accessible to those with visual or hearing impairments. Other rehabilitation projects will be required, to the maximum extent feasible, to provide physically and sensory accessible units in the same percentage. Additionally, covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements required by the Fair Housing Act as outlined in 24 CFR 100.205.
- All buildings of five or more residential units in new construction or substantial rehabilitation HTF projects must include the installation of "broadband infrastructure" as defined by 24 CFR 5.100. In practice, this requires the developer to provide the wiring for high-speed internet but does not require the project to provide the internet service itself.[1]

[1] In limited circumstances, the regulations allow the HHFDC to waive this requirement if the project's location makes such installation infeasible or creates an undue financial burden. However, the HHFDC does not anticipate

B. Key Federal Requirements

HTF projects are subject to a range of "cross-cutting" federal requirements broadly applicable to federal funding in general or HUD programs. Applicants must be aware of these requirements which affect the planning and design of a project, contracting for construction, and ongoing operations.

Environmental Review Requirements

Federally assisted projects are subject to a variety of environmental requirements. Applicants should be familiar with these requirements and are strongly encouraged to discuss any questions they have with the County ***prior to*** entering into a purchase agreement or submitting an application.

HTF funding is not specifically subject to NEPA or to HUD's environmental review regulations at 24 CFR 58. However, the HTF regulations at 24 CFR 93.301 impose substantially similar provisions to the detailed requirements under NEPA and Part 58. In many cases, the difference between the two regulatory approaches is largely administrative. Unless HTF funds are combined with other HUD funding sources, HTF funds are not subject to publication requirements; nor is the County required to seek a formal release of funds from HUD prior to committing funds to a project.

Notwithstanding the technical differences in the regulatory requirements; generally speaking, project-specific funding commitments will not be made until there is satisfactory evidence that all appropriate requirements have been met.

Despite their similarities, there are also ways in which the HTF environmental standards are more restrictive than those applied by the Part 58 process. In particular, the HTF process does not allow for a project that may have a small environmental impact, to proceed based on including mitigating actions in the project plan (e.g., on a project site with wetlands, the Part 58 process could still result in an authorization to proceed based on protection of the identified wetland and potential restoration of additional wetland space; while, in contrast, HTF funds simply cannot be invested on a site containing wetlands).

The HTF environmental provisions are found at 24 CFR 93.301 and explained in more detail in HUD CPD Notice 16-14: Requirements for Housing Trust Fund Environmental Provisions.

Uniform Relocation Act (URA)

All Rental Housing projects fall under the requirements of the URA. Applicants must further document that any purchase of property meets the requirements of URA, including provision of notices to the seller identifying the transaction as a voluntary sale not under the threat of eminent domain.

circumstances under which it would waive this requirement.

Additionally, for properties occupied by commercial or residential tenants at the time of application, URA requires certain notices to tenants in place as of the date of the application for federal funds. Failure to provide such notices may result in substantial compliance costs or render a project ineligible. To ensure compliance with URA, ***applicants should consult the County prior to the submission of any application involving an occupied property to understand the requirements of URA***.

Labor Standards

HTF funding does not trigger federal labor standards.

Minority Business Enterprise and Women Business Enterprise (MBE/WBE) Plan

Developers must maintain an MBE/WBE plan that demonstrates marketing and solicitation of MBE/WBE businesses and contractors for the construction of the project.

Section 3

Developers must maintain a Section 3 plan that includes the required labor reporting for its Section 3 contractors and all tiers of subcontractors in the construction of the project.

Nondiscrimination and Equal Opportunity

The following federal nondiscrimination and equal opportunity guidelines apply to all Rental Housing projects and affect both development and operation of assisted housing:

- The requirements of the Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR Part 100; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959-1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;

- The prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing Regulations at 24 CFR Part 146,

- The requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8;

- The requirements of Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964-1965 Comp., p. 339) (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR Chapter 60;

- The requirements of 24 CFR 5.105(a)(2) requiring that HUD-assisted housing be made available without regard to actual or perceived sexual orientation, gender identity, or marital status and prohibiting subrecipients, owners, developers, or their agents from inquiring about the sexual orientation or gender identity of an applicant for, or occupant of, HUD-assisted housing for the purpose of determining eligibility for the housing or otherwise making such housing available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity.

C. Underwriting & Subsidy Layering Reviews

Project Underwriting

For all HTF applications, a market assessment of the housing needs of extremely low-income individuals to be served by the project must be submitted. Proposed rent levels must be supported by the applicant's market study and fall within HTF regulatory limits.

All HTF applications must include personal financial statements (audited if available) and the three most recent tax returns from all underlying developers, owners, and guarantors. The applications will be subject to the County's evaluation of fiscal soundness as required by 24 CFR 93.300(b)(2).

Project Underwriting will also include:

- Vacancy factor of at least 5%, unless the market study indicates a higher vacancy factor is needed.
- County staff will use a maximum of 2% inflation factor for all sources of income.
- All operating expenses will be underwritten with an inflation factor of at least 3%.
- All HTF projects must maintain a total project Debt Coverage Ratio (DCR) of at least 1.15 for the affordability period. Properties with a DCR that exceeds 1.25 may have rent increases reduced or denied. In projects with no hard debt, projects must demonstrate cash flow positive operations for the entire affordability period.
- At a minimum, projects must make replacement reserve deposits of $300 per unit per year. The Replacement Reserve must be funded and maintained for the full affordability period and reflected in the operating expenses for the 30-year projection of cash flows.

Proforma Requirements

A project proforma in a format specified in the application instructions is required to meet the period of affordability.

If not otherwise itemized, applicants must be able to separate the hard costs of any stand-alone accessory buildings, including leasing offices, community buildings, laundry facilities, free-standing garages or carports, or maintenance buildings so that a preliminary HTF cost allocation calculation can be completed.

If applicable, applicants must include, as part of the operating budget, an allowance for the ongoing monitoring fees as specified in the County RFP.

Cost Limitations

Per the requirements of 24 CFR 93.300(b) for HTF, all project costs must be reasonable, whether or not paid directly with HTF funds. The County will review all project costs, including hard and soft costs, to evaluate their reasonableness and may, at its option, require applicants to obtain additional quotes, bids, or estimates of costs. The County may also require an applicant, at its own cost, to obtain a third-party cost review from a professional provider acceptable to the County. The County's staff, or its agents, must be allowed access to the property as necessary to evaluate the cost projections associated with a project's plans and specifications. Applications may be determined ineligible if access is not granted or costs are determined to be unreasonable.

Additionally, the County may impose further cost limitations on Developer Fees, Contractor's Profit, Overhead, General Requirements, Architectural and Engineering Fees, Acquisition Costs, etc.

Identity of Interest

Applicants must disclose any identity of interest situations that may occur when contracting with related companies during either the development or the ongoing operation of the project. County approval of identity of interest relationships is required and will be in the County's sole discretion. Considerations will include the capacity and track record of the related party and whether pricing is equivalent to that which could be expected from an arms-length relationship.

Other Public Funding Sources

Applicants must disclose all other firm commitments for funding at the time of application and upon receiving any additional commitments of funding. The County will conduct a subsidy layering review as part of the underwriting process for any project that includes other public subsidies. Using its underwriting criteria, the County will assess the project and may require changes to the transaction to ensure that cash flows to the owner/developer are not excessive. Changes may include a reduction in HTF funds awarded, reductions in the rents being charged to tenants, requirements that excess cash is deposited to an operating reserve, or increases in annual payments on the HTF loan.

The County will consider adjusting its underwriting in consultation with other funders to the project. The County retains, at its sole discretion, the power to decide whether to accept alternative standards.

4. Structure of Transaction

A. HTF Funding Limits

The County may also establish a maximum cap on its investment in a single development, which may vary by project location and characteristics. Such limits will be based on the availability of funding and other County priorities and will be addressed in applications issued by the County. To qualify for HTF funding, a project must demonstrate the need for an investment of no less than $1,000 in HTF funding per HTF-assisted unit.

Every year, HHFDC must establish maximum limitations on the total amount of HTF funds that may be invested per-unit for development of non-luxury rental housing projects. The Public Housing Total Development Cost Limits (TDCs) for elevator structures, as published by HUD, have been adopted for the HTF program. HUD's data is based on construction cost indices for the area and is published annually by HUD's Office of Capital Improvements. The development costs of affordable rental housing across the state are generally higher in comparison; but the TDCs provide a reliable maximum subsidy limit which will produce a greater number of HTF-assisted units throughout the state. The limits are applicable statewide and are included in the HTF Allocation Plan each year.

In no case will the HTF investment exceed the limits established in the HTF Allocation Plan as approved by HUD. The applicable limits for any given year will generally be included as part of the application.

If HTF funds are awarded, the investment in HTF-funded operating cost assistance or operating deficit reserves is not counted against the maximum per unit subsidy required by 24 CFR 93.300.

B. HTF Agreement

In addition to any financing documents (e.g., note, mortgage, etc.), owners of HTF-financed projects must sign a HTF Agreement with the County. The Agreement will identify requirements for compliance with both the HTF regulations and the County's Rental Housing Program. The Agreement will remain in effect in the event of any prepayment of the HTF loan. In the event a project is receiving HTF and other funding, separate Agreements are required for each funding source.

C. Declaration of Restrictive Covenants

Each HTF-funded project must maintain restrictions and covenants running with the land and enforcing HTF and County guidelines, as applicable. The Declaration of Restrictive Covenants will be separately recorded and will remain in place for the affordability period even if the HTF loan is prepaid. Among other items, the Declaration of Restrictive Covenants will address:

- Restrictions on the transfer of title to the property or underlying ownership interest of the property owner;
- Restrictions on further encumbrances on the Property without the County's prior permission;
- Provisions to enforce ongoing requirements for project compliance through the HTF Affordability period, including:
    - The length of the period of affordability;
    - Income and rent restrictions on HTF-assisted units;
    - Property standards to be enforced;
    - Marketing and leasing requirements; and
    - Recordkeeping and reporting requirements.

While the County's HTF loan will generally be subordinate to conventional debt, HHFDC strongly encourages Counties to require that the HTF covenant be recorded senior to all liens and encumbrances associated with the project financing, including any loans senior to the County's HTF loan. The County should also structure the HTF loan to survive any foreclosure by a senior lien.

The HTF covenant will be recorded separately from any other required covenant(s) associated with other project financing (e.g., LIHTC, HOME, etc.).

D. Forms of assistance to projects

HTF funds must be provided to the entity that owns the property which may be in various forms pursuant to 24 CFR 93.200(b), such as interest-bearing loans or advances, non-interest-bearing loans or advances, deferred payment loans or grants.

E. Reserves and Surplus Cash Distributions

To preserve the ongoing viability of projects, the County may require the establishment and maintenance of various reserves with the information on each account reported to the County annually. Reserves will include:

- An operating reserve intended to protect against unexpected operating deficits.
- For projects where the County's underwriting anticipates operating deficits during the affordability period, an additional operating deficit reserve must be capitalized.
- A replacement reserve intended to fund future capital and rehabilitation needs. Initial reserve deposit requirements are noted in the underwriting standards below. However, the County may modify reserve requirements during the affordability period based on periodic capital needs assessments.
- For projects with specific or unique features, additional specialty reserves may be required, such as for tenant services, abnormal security costs, etc.

The County may also reserve the right to approve any distributions of surplus cash, which among other items, should require that all reserves be fully funded, that the project be in compliance with all federal requirements, that the project not be in default, and that the project retain sufficient liquidity following the distribution.

5. Drawing Funds

HTF funds will only be released as reimbursement for actually incurred HTF eligible project costs.

A. Limitation on Draw Requests

- In all cases, requests for disbursement of HTF funds may not be submitted until funds are needed for the payment of eligible costs. All disbursement requests must be limited to the amount needed at the time of the request.

B. Eligible Costs

In addition to the underwriting considerations surrounding the reasonableness of all project costs, costs directly funded with HTF funds must be eligible according to 24 CFR 93.201. The following additional limitations also apply:

- HTF funds shall not be used for luxury improvements according to 24 CFR 93.200.
- HTF funds may be used to cover an initial operating deficit reserve to meet any shortfall in project income during the period of project rent-up (not to exceed 18 months) allowed under 24 CFR 93.201(d)(5).[2]
- HTF funds shall not be used for free-standing non-residential accessory structures such as free-standing community/leasing buildings, garages, carports, or maintenance structures.[3] HTF funds may be used for community space or common laundry facilities included in residential buildings.
- HTF funds shall not be used for off-site infrastructure costs, including any costs associated with extending infrastructure to the project site. The cost of *connecting* to public infrastructure located in an adjacent right-of-way (e.g., a water or sewer tap) **is** an eligible cost.
- HTF funds shall not be used for organizational costs such as partnership formation or syndication costs associated with transactions using equity from LIHTC, historic tax credits, or other similar tax incentives.
- HTF funds may not be used for furniture, fixtures, and equipment (aka FFE) which are personal rather than real property.

County Project-Related Soft Costs

The HTF program allows the County to include, as project costs, its internal soft costs specifically attributable to an HTF project. These may include consulting, legal, inspection, and staff costs associated with reviewing, underwriting, processing, and overseeing the award of funds to the project. In its Notice of Funding Availability (NOFA), the County may provide a budget allowance for "County Due Diligence & Legal Costs" to be included in the project's total development costs. The project's estimated annual expense information will include any annual monitoring fee as specified by the County in its NOFA.

6. Ongoing Project Requirements

HTF projects must, at all times during the term of the HTF Loan or the applicable affordability period whichever is longer, be operated in compliance with the HTF requirements. The County shall provide procedures for obtaining annual rent or utility allowance approvals, reporting and

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[2] For projects without project based rental assistance, HTF may, subject to the County's approval and the requirements of 24 CFR 93.201(e), technically be used to establish operating cost reserves specifically for anticipated deficits related to the HTF-assisted units in a project. However, at this time, the HHFDC does not anticipate using this option as there are other regulatory oddities that make it impractical.

[3] Note that attached garages or carports (e.g., those structurally attached to and integrated into a residential structure) are eligible.

document submission requirements, insurance requirements, use of updated form documents provided by the County, and the like.

A. Project Completion Deadline and Period of Affordability

The period of affordability will be based on the date of project completion as defined by 24 CFR 93.2, which, among other things, requires that all construction activity be complete, all HTF funds drawn from the U.S. Treasury, and project completion information be entered into HUD's IDIS reporting system. For rental projects, project completion occurs upon completion of construction and before occupancy; and units may be marked vacant in IDIS until complete beneficiary data is received. In accordance with the minimum requirements of 24 CFR 93.302(d), rehabilitated and new construction rental projects funded with HTF shall maintain HTF affordability requirements for a period of 30 years as regulated by 24 CFR 93.302.

B. Extended Commitment Period

In addition to the federally required HTF period of affordability, the County may impose an Extended Commitment Period during which most income and rent restrictions, tenant protections, and transactional requirements will continue to apply.

C. Unit Allocation

In general, HTF units will be "floating units" and evenly distributed among the unit types in the development based upon a cost allocation review. If the project's units are not comparable, "fixed units" must be designated. In the case of projects with comparable units, the County will designate units as HTF-assisted in proportion to the percentage of HTF investment in the transaction. For example, if HTF represents 10% of the project's total HTF-eligible cost, at least 10% of each unit type will be designated as HTF-assisted units.

D. Initial Occupancy Deadlines

HUD does not currently impose specific lease-up deadlines on HTF-funded projects, but the projects should generally meet the timelines below:

- Within 6 months from the date of project completion, if a rental unit remains unoccupied, the Owner will provide information about current marketing efforts and, if appropriate, an enhanced plan for marketing the unit so that it is leased as quickly as possible.
- Within 18 months from the date of project completion, if efforts to market the units are unsuccessful and units remain unoccupied by an eligible tenant, the project may be at risk of repayment of all HTF funds invested in each vacant unit.

E. Marketing, Tenant Selection, and Leasing

The owner must establish a written tenant selection plan consistent with the requirements of 24 CFR 93.303 for HTF. Among other requirements, the tenant selection plan must, insofar as is practical, provide for the selection of tenants from a project's waiting list in chronological order of their applications and provide written notification to any rejected applicant of the reason for their rejection.

As part of the application for funding, an owner/developer, may propose to restrict units to or provide preferences for identifiable portions of the income-eligible population, e.g., elderly/senior only projects, preferences for homeless and/or special needs populations, etc. Any such restriction or preference must be authorized in the State and County's Consolidated Plan and may not be in violation of any Fair Housing or similar requirements.

All HTF-funded projects must establish an Affirmative Fair Housing Marketing Plan (AFHMP) detailing procedures to attract eligible occupants without regard to race, color, national origin, sex, religion, familial status, disability, or sexual orientation. AFHMPs shall include all required aspects as stated in 24 CFR 93.350 for HTF.

Leases between the tenant and owner shall be for one year, unless by mutual agreement between the tenant and the owner a shorter period is specified. Owners may not terminate the tenancy or refuse to renew the lease, except for violations of lease terms, applicable laws, or other good cause. Owners are required to provide written notice prior to terminating or refusing to renew the lease. Written notice must be served on the occupants of HTF-assisted units at least 45 days prior to the termination or non-renewal of the lease.[4]

Owners are prohibited from including unfair provisions in HTF project leases. In 24 CFR 93.303 for HTF, specific impermissible conduct under the following headings, is identified. Provisions that allow such impermissible conduct, are deemed unfair to the tenant and therefore, they are prohibited from being included in HTF project leases:

- Agreement to be sued;
- Treatment of personal property;
- Excusing owner from responsibility;
- Waiver of notice;
- Waiver of legal proceedings;
- Waiver of a jury trial;
- Waiver of right to appeal court decision;
- Tenant chargeable with cost of legal actions regardless of outcome; and
- Mandatory participation in supportive services.[5]

Finally, projects must comply with the requirements of the Violence Against Women Act (VAWA) as required by 24 CFR 93.356 for HTF. VAWA provides certain additional tenant protections to applicants and tenants who are victims of domestic violence, sexual assault, and/or stalking. In general, owners must provide notices to all tenants of the VAWA provisions, may not deny an

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[4] Pursuant to state law.

[5] Note, transitional housing projects funded with HOME may be permitted to require service participation under limited circumstances. Contact Department staff for more detail. HTF does not allow for transitional housing.

application or terminate or refuse to renew a lease as a result of a person's status as a victim or on the basis of criminal activity related to such status, and must allow for the bifurcation of a lease in order to evict the perpetrator of such criminal activity while allowing the victim to maintain occupancy.

Conflict of Interest

To comply with HTF requirements and to maintain a high standard of accountability to the public, conflicts of interest and perceived conflicts of interest must be avoided.

- Owners shall maintain compliance with all HUD conflict of interest provisions as stated in 24 CFR 93.353(f) for HTF.

F. Income and Rent Restrictions

Income Limits

To qualify as affordable housing, HTF-assisted units must be rented exclusively to tenants with household incomes at or below HUD-published limits for extremely low-income families both at initial occupancy and thereafter. While calculated by HUD, the limit is 30% AMI for the County in which the project is located or the poverty rate, whichever is higher.

Note that HUD releases updated specific income and rent limits annually for the HTF program, which the County will provide to owners. Until HUD releases the HTF-specific income and rent limits, owners must continue to use the current HTF limits as applicable.

Rent Limits

For all projects, the County must specifically approve the project's rent schedule annually, including utility allowances and any tenant fees as described in the sections below.

- HTF-assisted units must be rented at or below the HUD-published Housing Trust Fund rent for extremely low-income units. In general, HUD calculates the HTF rent to be 30% of the HTF income limit for the County in which the project is located, adjusted for unit size.
- If the HTF unit receives Federal or State project-based rental subsidy and the tenant pays as a contribution toward rent not more than 30% of the tenant's adjusted income, the maximum rent is the rent allowable under the Federal or State project-based rental subsidy program.

Utility Allowances

The HTF rent limits are gross rent limits. The actual rent collected from a tenant must be adjusted, taking into account an allowance for tenant paid utilities. The County must approve the project's utility allowance (UA) annually.

The following methodologies, used in other Federal housing programs, will meet HTF regulatory requirements and are generally acceptable to HHFDC. The County must approve the methodology selected by an applicant. The same methodology must be used for all HTF units within a single project and must thereafter be approved annually by the County.

- HUD Utility Schedule Model (HUSM): The HUSM enables users to calculate utility schedules by housing type, after entering utility rate information (tariffs). This model is based on climate and survey information from the U.S. Energy Information Administration of the Department of Energy and it incorporates energy efficiency and Energy Star data. This model is allowed for LIHTC projects per IRS regulations at 26 CFR 1.42-10(b)(4)(D). The HUSM and use instructions can be accessed on HUD User at https://www.huduser.gov/portal/resources/utilallowance.html. The HUSM is available as either a spreadsheet model in MS EXCEL or a web-based model on HUD User at https://www.huduser.gov/portal/datasets/husm/uam.html.
- Multifamily Housing Utility Analysis: In 2015, HUD published Multifamily Notice H-2015-4 to provide instructions to owners and management agents for completing the required utility analysis. This analysis is also used for the USDA Rural Housing Service program and is allowed for LIHTC projects per IRS regulations at 26 CFR 1.42-10(b)(3). This method is applicable for the following programs: Project-based Section 8, Section 101, Section 202/162, Section 811, Section 236, and Section 221(d)(3).
- Energy Consumption Model (Engineer Model) (26 CFR 1.42-10(b)(4)(ii)(E)): The UA is calculated using an energy and water and sewage consumption and analysis model (energy consumption model) prepared by a properly licensed engineer or a qualified professional. IRS regulations require that such professionals be independent from the property owner and they specify the building factors that must be included in the model.
- ***For HTF projects only***, the utility allowance used by the local public housing authority for its Section 8 Housing Choice Voucher program.

G. Reporting and Recordkeeping

To allow effective oversight of funded projects and document compliance with applicable HTF requirements, all projects must submit various periodic reports which include but are not limited to:

- Each HTF-assisted project must submit a cost certification performed by a certified public accountant within 180 days after project completion.
- Annual Reports shall be required for all HTF projects, and shall include an Annual Occupancy Report, utility allowance documentation, and Owner's Certification that all HTF-assisted units are suitable for occupancy.
- All HTF projects will be required to submit an audit prepared by an independent Certified Public Accountant within 180 days of the end of its fiscal year.
- Owners must annually (if applicable) submit any updates to their Tenant Selection Policy and AFHMP and must maintain records of annual efforts to affirmatively further fair

housing in accordance with 24 CFR 93.350 for HTF. Updates must clearly detail all changes.

- Owners must annually report to the County on compliance with the provisions of the Violence Against Women Act (VAWA) as applied through 24 CFR 93.356 for HTF, including records related to any emergency transfer requests and their disposition.

The County may require more frequent reporting due to findings identified during annual monitoring or findings identified during quarterly reports submitted during the development and lease-up phases.

7. Monitoring During Affordability Period

Following project completion, the County will monitor the project for ongoing compliance with HTF requirements, including but not limited to, income and rent restrictions, property standards, tenant protections, and marketing and fair housing requirements. In addition to requiring periodic reporting as outlined in Section 6.G above, the County will conduct on-site monitoring visits as required by HTF regulations at 24 CFR 93.404. The purpose of these visits will include, at minimum, reviews of project records and inspections of the premises including common areas and residential units.

Owners and developers shall allow the County, HHFDC, HUD, the Comptroller General of the United States (aka the GAO), and all other pertinent federal or State agencies or their designated representative the right to inspect records and property.

In most cases, the County conducts such reviews annually. However, the County must reserve the right to conduct site visits more or less frequently based on changes to HTF regulations or County policy or based on evidence of compliance deficiencies in a prior monitoring visit.