

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**DIVISION OF FINANCIAL ASSISTANCE**

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June 5, 2018

MEMORANDUM FOR: ALL POTENTIAL APPLICANTS

A handwritten signature in blue ink that reads "Lisa Bates".

FROM: Lisa Bates, Deputy Director
Division of Financial Assistance**SUBJECT: NATIONAL HOUSING TRUST FUND PROGRAM
NOTICE OF FUNDING AVAILABILITY**

The Department of Housing and Community Development (HCD) is pleased to announce the release of this Notice of Funding Availability (NOFA) for approximately \$30 million in funds for the National Housing Trust Fund (NHTF) Program. Entitlement jurisdictions, non-entitlement jurisdictions, developers including Native American Entities, and Community Housing Development Organizations are eligible to apply for NHTF Program funding for multifamily new construction projects. A NHTF applicant must be the owner or developer of the NHTF-assisted project that meets the requirements identified in the recipient definition of 24 CFR 93.2. This NOFA is subject to [federal NHTF regulations](#) and the [state NHTF allocation plan](#). Please note, this NOFA makes funding available to eligible NHTF applicants serving only extremely low-income households at or below 30 percent of area median income (AMI). Projects must meet a July 31, 2019 construction loan-closing deadline and a July 31, 2022 permanent loan-closing deadline or funding will be forfeited.

Funding under this NOFA will be awarded on a competitive basis. A complete, original application and electronic copies on CD or USB flash drive with all applicable information must be received by HCD no later than **5:00 p.m. Pacific Standard Time on August 6, 2018**. HCD will only accept applications through a postal carrier service such as the U.S. Postal Service, UPS, Fed EX, or other carrier services that provide date stamp verification confirming delivery to HCD's office. **Personal deliveries will not be accepted.**

Application forms, regulations, and Program information are available at <http://www.hcd.ca.gov/grants-funding/nofas.shtml>. To receive NHTF NOFA FAQs and other Program information and updates, please [subscribe](#) to the NHTF listserv.

HCD will hold two workshops for projects to review the NHTF NOFA and application. For workshop dates, times, and locations please go to HCD's website at <http://www.hcd.ca.gov/grants-funding/active-funding/nhtf.shtml>. To register for a workshop, please sign up through Eventbrite (link on HCD's NHTF webpage).

If you have any questions, please contact NOFA Manager, Nicole McCay at (916) 263-0422 or Nicole.McCay@hcd.ca.gov.

Attachment

NATIONAL HOUSING TRUST FUND PROGRAM

Notice of Funding Availability



**Edmund G. Brown Jr., Governor
State of California**

**Alexis Podesta, Secretary
Business, Consumer Services and Housing Agency**

**Ben Metcalf, Director
Department of Housing and Community Development**

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June 2018

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NATIONAL HOUSING TRUST FUND PROGRAM NOTICE OF FUNDING AVAILABILITY

I. Overview

A. Notice of Funding Availability

The Department of Housing and Community Development (HCD) is pleased to announce the release of this Notice of Funding Availability (NOFA) for approximately \$30 million for the National Housing Trust Fund (NHTF) Program.

These funds will be used to increase the supply of affordable rental housing for extremely low-income households at or below 30 percent of area median income (AMI).

B. Timeline

NOFA release	June 5, 2018
Application due date	August 6, 2018 by 5:00 p.m.
Award announcements	December 2018
Required construction loan closing	July 31, 2019
Required permanent loan closing	July 31, 2022

C. Authorizing legislation and regulation authority

This NOFA should be read in conjunction with the following regulations and allocation plan, which establish state and federal NHTF requirements:

- Federal National Housing Trust Fund regulations
https://www.ecfr.gov/cgi-bin/text-idx?SID=222584118d192eb177d111b97b45cda8&mc=true&tpl=/ecfrbrowse/Title24/24cfr93_main_02.tpl
- State National Housing Trust Fund allocation plan
<http://www.hcd.ca.gov/grants-funding/active-funding/docs/National-Housing-Trust-Fund-Allocation-Plan-2017.pdf>
- State Home Investment Partnerships Program (HOME) regulations
<http://www.hcd.ca.gov/grants-funding/active-funding/home.shtml>

Note: Various elements of the state HOME regulations have been incorporated into the state NHTF allocation plan. Generally, state NHTF allocation plans operate under Federal NHTF regulations, 24 CFR section 93.

- State Uniform Multifamily regulations
<http://www.hcd.ca.gov/grants-funding/already-have-funding/uniform-multifamily-regulations/docs/Uniform-Multifamily-Regulations-2017.pdf>

All regulatory references are to the federal NHTF regulations and the state NHTF allocation plan unless otherwise noted.

Note: Any inconsistencies between the NOFA and state or federal regulations will be resolved in favor of the regulations.

This NOFA does not include the text of all applicable regulations that may be important to particular projects. For proper completion of the application, HCD encourages potential applicants to consult the regulations and allocation plan linked above and other cross-cutting regulations such as, but not limited to, those referred to in 2 CFR 200.512, which apply to all NHTF-funded rental projects.

If state or federal statutes or regulations, or other laws, governing NHTF or its funding are modified by Congress, the Department of Housing and Urban Development (HUD), the State Legislature, or HCD prior to completion of work to be done pursuant to awards made in connection with this NOFA, the changes may become effective immediately and apply to funded activities.

HCD reserves the right, at its sole discretion, to suspend or amend the provisions of this NOFA. If such action occurs, HCD will notify interested parties through HCD's NHTF [listserv](#).

D. Definitions

Special needs populations

“Special Needs Populations” means the same as defined under section 7301(r) that is referenced in section 8314(e)(2) of the UMRs: Disabled households, agricultural workers, single-parent households, survivors of physical abuse, homeless persons or persons at risk of becoming homeless, chronically ill persons including those with HIV and mental illness, displaced teenage parents (or expectant teenage parents), homeless youth as defined in Government Code section 11139.5, individuals exiting from institutional settings, chronic substance abusers, or other specific groups with unique housing needs as determined by HCD. “Special needs Populations” do not include seniors or the frail elderly unless they otherwise qualify as a Special Needs Population.

Homeless

“Homeless” means the same as defined under the federal Continuum of Care Program, 24 CFR 578.3, as may be amended and renumbered from time to time. “Homeless” includes “chronically homeless” and “homeless with a disability”.

II. Program requirements

The following is provided as a summary and is not to be considered a complete representation of the entirety of the eligibility, threshold, or other requirements or terms and conditions of the NHTF Program.

A. Eligible applicants

Eligible NHTF applicants include entitlement jurisdictions, non-entitlement jurisdictions, developers, including Native American Entities (NAE), and nonprofit corporations that have been certified as a Community Housing Development Organization (CHDO) by HCD. Pursuant to 24 CFR 93.2, a NHTF recipient must be the owner or developer of the NHTF-assisted project that meets the requirements identified in the recipient definition in 24 CFR 93.2.

Projects being applied for by cities and counties must be located in the city's incorporated area or the county's unincorporated area.

CHDOs must meet the following criteria:

- Certification requirements

New CHDO applicants and currently certified CHDOs with certifications that will expire before August 6, 2018 must submit a complete CHDO Certification application with all exhibits and attachments by **June 29, 2018**.

If the applicant is an existing CHDO under the HOME Program, the applicant must submit the HCD CHDO approval letter with the NHTF application.

The application for CHDO Certification is available at <http://www.hcd.ca.gov/grants-funding/active-funding/home.shtml>.

For assistance with the CHDO Certification Process, please contact Muri Christine Bartkovsky at (916) 263-1176 or mbartkovsky@hcd.ca.gov.

- Projects being applied for are required to be owned or developed by an eligible CHDO;

“Owned and developed” are defined at section 92.300 of the HOME Final Rule as:

Owner: The CHDO is required to own (in fee simple absolute or long-term ground lease meeting the requirements of UMR section 8316) the project during development and throughout the period of affordability. As owner, the CHDO is required to oversee all aspects of the development process. In instances where the CHDO lacks developer capacity, the CHDO may own the project and hire a qualified project manager or contract with a development contractor to oversee all aspects of development. This option is available to CHDOs having experience and capacity to own and operate affordable rental housing, but lack the experience or capacity to

develop the project. This option is NOT available where the project is owned by a limited partnership entity.

Developer: The CHDO may act as developer if the CHDO owns (in fee simple absolute or long-term ground lease) the project. As developer, the CHDO must be in sole charge of all aspects of the development process, including obtaining zoning and other approvals, securing financing, selecting contractors, overseeing work progress and determining reasonableness of costs. The CHDO must own the project during development and for multifamily rental projects, throughout the period of affordability. This option is NOT available where the project is owned by a limited partnership entity.

CHDOs are not allowed to act as developer in projects where the CHDO does not have a long-term ownership interest and contractual relationship with the project owner (i.e. a Development Services Agreement) to develop the project.

Additional NHTF eligibility criteria:

1. Compliance with 2 CFR 200.512 Single Audit Report Submission requirements (excluding CHDOs and developers)

To be eligible for funding, the applicant must be in compliance with the submission requirements of the 2 CFR 200.512 Single Audit report. Single Audit reporting packages are due to the California State Controller's Office (SCO) nine months after the entity's fiscal year end under 2 CFR 200.512. For most California entities, the reporting package is due March 31 of each fiscal year. Entities with approved extensions on file must submit their reporting package by the due date indicated in their approved extension letter. HCD will make the determination on the status of 2 CFR 200.512 Single Audit reporting compliance as of August 6, 2018 by consultation with SCO. Jurisdictions that are exempt from filing a 2 CFR 200.512 Single Audit report because the level of federal funds is below the federal threshold must submit a copy of the letter notifying SCO of their exempt status with their NHTF application, in addition to notifying SCO. For additional information, see section VII. A. 3. on page 25 of this NOFA.

2. All applicants must be in good standing with the State of California and all agencies and departments thereof. By way of example and not limitation, if an applicant is a business entity, such entity must be qualified to do business in California and currently in good standing with the California Secretary of State and the California Franchise Tax Board.

B. Eligible activities

NHTF funds shall be used for multifamily new construction projects. Funding may be provided for:

- A specific multifamily project on a specific site by a specific developer; or
- A multifamily new construction project with multiple sites with common ownership, management and financing, to be operated as one project that only uses NHTF

funds for the multifamily new construction. Applicants requesting project funding for a rental project consisting of multiple sites must be in conformance with UMR section 8303(b).

Note: For ineligible uses of NHTF funds, refer to 24 CFR 93.204 of the federal regulations.

C. Allocation of funding

Funding made available by this NOFA will be allocated as follows:

Table 2 – Allocation of Funding	
Eligibility Requirements	
• 100% multifamily new construction	
Selection Criteria	
➤ A minimum of 20% will be reserved for rural areas as defined in section 50199.21 of the California Health & Safety Code.	

The over-the-counter (OTC) NHTF funding availability is possible only if the amount requested by all applicants is lower than the amount available under this NOFA. HCD will notify all parties through the “HCD Listserv” process, if there will be an OTC project funding opportunity.

D. Loan limits

Multifamily new construction project loan limits: \$10,000,000

Prior to the issuance of the award letter, HCD will evaluate the financial feasibility of each project and may decrease the NHTF loan amount, as necessary to prevent over-subsidizing a project per the UMRs.

Deep affordability targeting: Multifamily new construction projects requesting funds for Deep Targeting, serving Special Needs and/or homelessness populations, or in an area of opportunity, can request up to \$1,000,000 in addition to the maximum application amount for their activity shown above. See section II.E., on page 6, for additional application requirements.

Minimum and maximum amount of funds per project

1. The minimum amount NHTF funds that must be invested in a project involving multifamily new construction is \$1,000 for each NHTF-assisted unit in the project (# of units x \$1,000 = minimum amount of NHTF funds).
2. The maximum amount NHTF funds invested in a project shall not exceed the lower of:
 - a) Per-unit subsidy limits, established by HUD (updated annually) and the state's NHTF allocation plan; or
 - b) The development cost of NHTF-assisted units compared to all units in the project and the square footage of NHTF units compared to all other units in the project.
3. The maximum amount of NHTF funds invested in a project (when combined with other financing and assistance) must accomplish the following:
 - a) Enable the project as proposed to be developed and to operate in compliance with all NHTF requirements, including the subsidy-layering requirement at 24 CFR 93.300.
 - b) Achieve a debt-service coverage ratio and adequate cash flow to ensure long-term financial feasibility as required by UMR section 8310.

The current HUD per-unit subsidy limits are located on the HCD website at <http://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits.shtml>.

Pursuant to federal regulations, any one project may receive only one NHTF award. This prohibits the combination of awards from more than one NHTF NOFA on the same project.

Please also note that pursuant to 24 CFR 93.300 and the state NHTF allocation plan, before committing NHTF funds to a project, HCD must evaluate the project in accordance with the UMRs and will not invest any more NHTF funds, in combination with other governmental assistance, than is necessary to provide affordable housing.

E. Deep affordability targeting

A total of \$2 million in NHTF funds are available as part of the rental project allocation to assist multifamily new construction projects to reduce or eliminate permanent conventional debt requiring mandatory debt service for the purpose of lowering rents on the project's units. Eligible applicants may apply for up to an additional \$1 million in NHTF funds.

Eligible projects must set a portion of the NHTF-assisted unit rents below the 30 percent AMI limit for the entire regulatory term. Projects also must meet the periods of affordability specified in Table 3, below.

Table 3 – Period of Affordability	
Number of Years	Applicant Type
55 years	developers and CHDOs
50 years	development on Native American lands

Applicants for deep affordability targeting funds must submit two sets of application documents as set forth in the Deep Targeting Documentation Checklist of the NHTF Supplement to the Universal Rental application. This additional documentation must illustrate any differences in proposed project rent levels, conventional permanent financing commitments, and other financials when funded at the targeting funding level versus the regular maximum NHTF funding level. The additional documentation must also include another Financial Feasibility Self Evaluation form.

HCD must see a reduction in rents, debt service, operating reserve, and conventional permanent financing commitments resulting from the higher NHTF loan amount. However, there must be no difference in total development cost under the regular NHTF funding scenario versus the deep affordability targeting funding scenario. The total operating expenses may change based on the population served; however, the amount budgeted for Supportive Services Costs must be consistent with the UMR section 8314(e). Any differences in total operating expenses and required replacement reserve deposits between the two scenarios must be explained in the application.

Although the project rent schedule may change with deep affordability targeting funds, the total number of units and the size of units in the project may not change. In putting together the unit mix under both scenarios, among the NHTF-assisted units, no more than four different rent AMI levels shall be used for each bedroom size.

Deep affordability targeting rating factors

1. The available funds will be allocated to projects that rank high enough to be funded through the normal rating and ranking process and based on the deep affordability targeting rating factor below as long as Article XXXIV of the California Constitution is complied with:
 - a. The higher the percentage of NHTF units restricted below 30 percent AMI, the more deep affordability targeting points that will be awarded; and
 - b. The lower the average rent of NHTF units in the project expressed as a percentage of AMI, the more deep affordability targeting points that will be awarded.

2. Fifty percent of NHTF deep affordability targeting funds will be made available to projects in counties in which the NHTF 30 percent AMI limit for a household of four is below \$20,150. The remaining fifty percent of the funds will be made available to Projects in counties whose NHTF 30 percent AMI limit for a household of four is

\$20,150 or more. Unused funds in one group will be made available for the other group.

3. If a project does not score high enough on the Targeting factors to receive deep affordability targeting funds, it will be evaluated for overall NHTF rating purposes using the rents that are proposed in the non-Targeting NHTF financials.

For assistance on deep affordability targeting applications, please submit questions to NHTFNOFA@hcd.ca.gov.

F. Forms of assistance

NHTF Program funds are provided as post-construction permanent loans. Program loans shall have an initial term of fifty-five years or longer to match the period of affordability restrictions under the Low-Income Housing Tax Credit Program. Permanent loans shall be secured by the project's real property and improvements, which may be subject only to liens, encumbrances, and other matters of record approved by HCD, and which are consistent with 25 CCR Section 8316 of the UMRs.

Project-related expenses for NEPA environmental review, architectural and engineering, and other professional services incurred within the 24 months prior to the commitment of funds may be reimbursed at the sole discretion of HCD after the project's loan closes. HCD may, in writing, permit reimbursement for other expenses incurred after the date of the award letter and prior to the effective date of the Standard Agreement upon the request of the applicant, on a case-by-case basis.

G. Property standards

The NHTF recipient shall ensure that all NHTF-assisted units meet all applicable state and federal property standards. All NHTF-assisted units shall be maintained in compliance with 24 CFR 93.301 (a)(1) and (2) for the duration of the affordability period.

III. State and federal requirements

A. Timeframes for use of funds

Recipients of NHTF funds are subject to progress deadlines and expenditure deadlines as defined in the federal NHTF regulations and the state NHTF allocation plan and specified in the Standard Agreement. Projects must meet a July 31, 2019 construction loan-closing deadline and a July 31, 2022 permanent loan closing deadline or funding will be lost.

If a NHTF project fails to meet one or more of the deadlines outlined in the state NHTF allocation plan, the applicant (developer or CHDO), as well as the project's owner and managing general partner, may receive a performance points penalty on the next project application in which they are involved. If a project fails to meet three or more deadlines, the applicant shall be held out of future NHTF project funding rounds until that project is completed, occupancy is obtained, all expenditures are made, and all

necessary NHTF funds are drawn. The applicant and the project's developer, owner, and managing general partner may also receive a performance points penalty on the next project application in which they are involved.

B. Affordability requirements

Rent levels shall be restricted for the periods of affordability set forth at the lesser of the rent levels permitted pursuant to the federal NHTF regulations in section 93.302(b), or other rent levels not in conflict with the NHTF regulations with prior HCD approval.

At initial occupancy by each household, household income levels must be restricted at the same AMI level as the proposed rent level for each unit. State objective rent levels will be restricted for the entire NHTF affordability period. The manager's unit may be excluded from this restriction.

Applicants proposing the use of Low Income Housing Tax Credits must apply to the Tax Credit Allocation Committee for the exact rent structure identified in the NHTF project report. It is the applicant's responsibility to ensure any tax credit obtained can be used in conjunction with NHTF funds.

Multifamily new construction housing projects shall have affordability periods of 55 years, except projects developed on Indian reservations or Native American Lands will be for at least 50 years (if the project is built on leased property).

C. Income eligibility

NHTF funds must be used for the benefit of extremely low-income families. Please refer to the Income Calculation and Determination Guide for Federal Programs, at <http://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits.shtml>.

D. Annual monitoring fees for multifamily Projects

Pursuant to 24 CFR section 93.204(b)(1), HCD will charge fees to cover the cost of ongoing monitoring and physical inspection of NHTF rental projects during the state period of affordability. HCD will charge these fees as described in this NOFA.

HCD charges an annual monitoring fee:

Number of Units	2018
12 or fewer	\$5,460
13 to 60	\$10,920
More than 60	\$16,375

To cover inflation, this fee shall increase by 3 percent per year unless HCD determines that its monitoring costs are increasing at a lower rate. Financial assumptions in the NHTF application shall be based on the rate that will be effective at the time of initial occupancy.

Annual monitoring fees are mandatory payments. The first payment shall be prorated based upon the total number of days from permanent loan closing to the last day of the first fiscal year.

Lump sum payment made from development funds is not allowed for NHTF projects. Payments made must be pursuant to the regulatory agreement.

E. Reporting requirements

Awardee(s) must file regular monthly project status reports and an annual performance report. Awardees are responsible for disclosing all changes to the project since submitting the NHTF application. Such changes could include, but are not limited to, higher costs, the need for additional funds, the intent to apply for additional funds, changes in project financing, cost savings, environmental issues, project timeline changes, development team member changes, applicant Authorized Representative and/or applicant contact changes, and changes in relationship among members of the development team. HCD may request documentation of the change, as necessary, to analyze the significance of the change. Failure to report accurately may result in a loss of points in future NHTF funding rounds.

Note: Project awardees must file monthly reports starting the month the Standard Agreement begins and are due no later than the tenth day of the following month and the tenth day of each month thereafter until the project is completed. If the due date falls on a non-traditional business day, the report is due the next traditional business day. Annual performance reports are due the last traditional working day of July, following the end of the fiscal year ending June 30.

F. Pet Friendly Housing Act of 2017

NHTF Program funding is subject to the Pet Friendly Housing Act of 2017 (California Health & Safety Code, § 50466).

Each applicant for a rental project is required to submit a signed and dated certification that residents of the housing development will be authorized to own or otherwise maintain one or more common household pets. Pursuant to this statute, “common household pet” means a domesticated animal, such as a dog or cat, commonly kept in

the home for pleasure rather than for commercial purposes. Include the certification with the application. Submission of the certification is a prerequisite to the granting of an award under this NOFA.

G. Climate adaptation

Executive Order B-30-15 addressed the need for climate adaptation and ordered that:

1. All state agencies with jurisdiction over sources of greenhouse gas emissions shall implement measures, pursuant to statutory authority, to achieve reductions of greenhouse gas emissions to meet the 2030 and 2050 greenhouse gas emissions reductions targets; and
2. State agencies shall take climate change into account in their planning and investment decisions and employ full life-cycle cost accounting to evaluate and compare infrastructure investments and alternatives.

In response to the Governor's Executive Order, HCD strongly encourages NHTF recipients to implement projects in a manner that reduces greenhouse gas emissions and adapts to climate change.

H. Compliance with the Violence Against Women Act

Pursuant to Title VI – Safe Homes for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking – section 601-603 and 81 CFR 80724, the Violence Against Women Act (VAWA) provides housing protections for survivors of domestic and dating violence, sexual assault, and stalking when it comes to finding and keeping a home they can feel safe.

VAWA applies to all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation, and must be applied consistently with all nondiscrimination and fair housing requirements. VAWA now expands housing protections to HUD programs beyond HUD's public housing program and HUD's tenant-based and project-based Section 8 programs. VAWA now provides enhanced protections and options for victims of domestic violence, dating violence, sexual assault, and stalking.

NHTF recipients shall assure that all requirements of VAWA are complied with, including but not limited to, the following:

1. Domestic violence survivors are not denied assistance as an applicant, or evicted or have assistance terminated as a tenant, because the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, and stalking;
2. Implement an 'emergency transfer plan', which allows for domestic violence survivors to move to another safe and available unit if they fear for their life and safety;

3. Provide “protections against denials, terminations, and evictions that directly result from being a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy;” and
4. Implement a ‘Low-barrier certification process’ where a domestic violence survivor need only to self-certify in order to document the domestic violence, dating violence, sexual assault, or stalking, ensuring third party documentation does not cause a barrier in a survivor expressing their rights and receiving the protections needed to keep themselves safe.

IV. Application review

A. Rating and ranking

HCD will rate, rank, and fund applications based on review of the project. The application must be submitted using HCD forms. The application must contain all information required pursuant to the federal NHTF regulations and the state NHTF allocation plan.

All scores for projects are subject to the appeal process described in the rental project scoring, notification, and appeal process section.

Except as noted, if at the time the NHTF rating and ranking process is underway and an application has been submitted for the same project for any California Housing Finance Agency (CalHFA) or HCD financing source, and is being recommended for funding, HCD will count that financing as committed for NHTF rating purposes. For how CalHFA and HCD financing will be considered for that factor, see the state objectives factor for special needs housing in Table 6 - State Objectives Table: Special Needs Populations. Please consult with CalHFA or the other HCD Programs regarding their rating methodologies. HCD requires full disclosure in each HCD application of all pending and proposed applications to other HCD Programs for the same project regardless of who is applying for funding (e.g., city, county, developer, etc.).

NHTF project application must meet the application requirements listed in the state NHTF allocation plan.

In the case of a tie score, the application from the jurisdiction with the highest poverty level will be funded first. If the application is from the same jurisdiction, the application with the higher number of NHTF-assisted units will be funded first. HCD’s Director will make the final funding decisions.

Minimum requirements: Applications for the NHTF Program are not considered for funding unless the application demonstrates that the following minimum requirements have been met pursuant to the federal NHTF regulations and the state NHTF allocation plan:

1. HCD receives the application by the deadline specified in this NOFA.
2. The applicant is eligible pursuant to the federal regulations and state's NHTF allocation plan.
3. The applicant proposes one multifamily rental new construction project.
4. The application is complete pursuant to the state's NHTF allocation plan and this NOFA.
5. There are no unresolved audit findings for the applicant or any member of its project team.
6. The applicant has provided documentation satisfactory to HCD that it complies with the submittal requirements of 2 CFR Part 200.512 Single Audit Reporting. (For more information, see section VII.A.3).
7. The applicant, and any member of its project team, is not on the list of debarred Contractors at <https://www.sam.gov/portal/public/SAM/> pursuant to sections 8204(a)(1)(D)(iii) and (2)(C)(ii).
8. The application form provided by HCD has not been altered or modified except to accommodate computer software.
9. CHDO applications must contain procedures for ensuring effective project control pursuant to 24 CFR 92.300(a)(1) and the state NHTF allocation plan.
10. The project is financially feasible. 24 CFR section 93.300(b) and the state's NHTF allocation plan requires that the state's underwriting and/or subsidy layering must demonstrate that it is not investing any more NHTF 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 (at minimum, the period of affordability). Pursuant to the state's NHTF allocation plan, HCD must determine the project is financially feasible to consider it for funding. Site development issues, local government approvals, development costs, project timing, project market, and other development factors will be evaluated in order to make this determination. Projects may not be deemed feasible if information presented in the application results in unknown or uncertain project costs and/or timelines. Therefore, the sources and uses form must contain line items for any project costs related to determining the feasibility of the project, including, but not limited to, prevailing wages, environmental remediation (including mitigation of any Recognized Environmental Conditions and other environmental hazards), elevation above a flood plain, and relocation. Applicants proposing projects on sites that were formerly orchards and/or vineyards may be required to submit an analysis of

soil testing for pesticides remaining in the soil. If the proposed project site borders a railroad, whether currently operating or abandoned, HCD may require soil testing for metals, including, but not limited to, arsenic (arsenic has been commonly used along railroad lines for weed control). HCD recommends this testing be performed prior to submitting the NHTF application so the applicant can determine whether pesticide or arsenic remediation is required and include the cost for such remediation in the development budget.

11. The project has site control pursuant to UMR, section 8303. Note: Projects must also meet HUD requirements regarding acceptable forms of site control (for more information, see section VII.A.1).
12. There is no pending litigation that could affect implementation of the project as proposed.
13. The project either complies with or is exempt from Article XXXIV of the California Constitution pursuant to section 8212(a)(7) (for more information on Article XXXIV, see section VII.B).
14. The applicant demonstrates that applicable relocation requirements will be met. A relocation certification is required even if the project site is vacant land. However, no relocation plan is required if the land is vacant and the applicant can support its vacancy claim by credible evidence.

An applicant that asserts that their project involves no relocation must submit with their application a detailed explanation supporting their claim as to why no relocation (of tenants, farms, business etc.) is required.

Supporting documentation can include background information, project information, purchasing information, current situation, etc. HCD's Legal Affairs Division makes a legal determination as to whether a relocation plan is needed.

Examples of supporting documentation can be in the form of any of the following examples:

- a) Mini Relocation Plan with pictures
- b) Summary Relocation Report
- c) Scope of Work
- d) Renovated Work Report
- e) Letter from the engineer stating the Scope of Work
- f) Sales contract evidencing purchase of vacant land
- g) Alta survey of (purchased) vacant land
- h) Property tax assessment for vacant land
- i) Photographic evidence of vacant land

Once HCD receives, reviews, and finds the documentation(s) is acceptable, HCD will create a *Certification Regarding Non-application of Relocation Benefits and Indemnification Agreement* that must be executed by the applicant/Borrower prior to the execution of HCD Standard Agreement. This document is used by the applicant/Borrower of a housing project to show and certify that due to the activities

of the project, there is no displacement (including displacement of tenants, business, and farm), and therefore, no relocation is necessary;

Note: Truly vacant land is not developed land or agricultural land. If the property was vacated for the project, then relocation applies. A tenant is defined as someone who is living or storing his or her belongings on the property with the owner’s consent (not squatters), whether or not the “tenant” is paying rent.

Thorough and clear supporting information will lead to a more efficient review and creation of the Non-Relocation Certification.

15. The applicant demonstrates compliance with HOME regulation section 8217 Deadline requirements

Pursuant to state HOME regulation section 8217, state recipients, developers and CHDOs that may be held out from applying in a particular funding round because they have a HOME project that has missed three deadlines may request that this penalty be waived if it can be demonstrated that one or more missed deadlines were clearly beyond the control of all of the following parties: applicant, developer, owner, and managing general partner.

Note: Waiver requests may be submitted with the NHTF application package.

B. Application scoring and evaluation

Table 5 -- NHTF Multifamily New Construction Project Scoring		
Factor	Sub-factor (if any)	Points
Housing Element:		
Identified in the state’s NHTF allocation plan, the applicant local public entity’s adopted housing element is in substantive compliance with State Housing Element Law as of August 6, 2018.		50
Newly formed cities are not required to be in compliance. Projects developed on Native American lands as defined in section 8201(y)(1), developers and CHDOs shall receive full points in this category. For more information, see http://www.hcd.ca.gov/hpd/hrc/plan/he/status.pdf .		
Direct HOME Allocation Declined:		
Activities proposed within a jurisdiction eligible for a direct HOME allocation from the U.S. Department of Housing and Urban Development (HUD) wherein the jurisdiction declined the allocation to preserve eligibility for this NOFA. All NHTF applicants will receive these points.		50
Activities proposed in a rural community.		50
Prior applicant experience in the implementation of local, state or federal affordable housing or community development projects in the last seven years (calendar years 2011 – 2017).		50
Prior development team experience in developing the same type of subsidized project as proposed in the application in the last five years (calendar years 2013 – 2017).		200
All applicants start with 200 points. Performance Points noted are deductions from these points. The maximum point deduction for Performance is 200 points.		200

Table 5 -- NHTF Multifamily New Construction Project Scoring		
Factor	Sub-factor (if any)	Points
Applicants may submit a waiver for prior performance factors in their NHTF application package.		
Prior performance of the applicant, developer, owner, and managing general partner (if the project has one) in all HOME project contracts (rental and FTHB) which were awarded between 2013 – 2017	Performance factor #1: Missed project deadlines of the applicant, developer, owner, and managing general partner, for deadlines occurring by the NHTF application deadline of August 6, 2018. Points will be deducted for missed deadlines as follows: 5 points for the permanent financing deadline, 10 points for the project set-up deadline, 10 points for the construction loan-closing deadline, 80 points for the completion deadline, and 20 points for the expenditure deadline. Applicants may submit a request for a waiver of these point deductions in their applications.	Maximum deduction of 200 points
	Performance factor #2: Late reports of the applicant. Up to 50 points may be deducted for late monthly reports, late Quarterly Program Income reports due for both project and program contracts between January 1, 2013–December 31, 2017, late Project Completion Reports due during this time period and for the Annual Performance Report due in 2017. HCD reserves the right to deduct points even if the Annual Report is on time but prepared inaccurately. Applicants may submit a request for a waiver of these point deductions in their applications.	Maximum deduction of 50 points
	Performance factor #3: Up to 200 points will be deducted if applicants, developers, owners, and managing general partners, between January 1, 2013 – December 31, 2017, have made a material misrepresentation of any requirement or fact in an application, project report or other document submitted to HCD including, but not limited to, that which jeopardizes HCD’s investment in a project or places HCD at risk of a monitoring finding.	Maximum deduction of 200 points
	Performance factor #4: Noncompliance with monitoring requirements identified in the last five years (January 1, 2013 – December 31, 2017). There are two distinct sub-categories: First, applicants, owners, and managing general partners who have not complied with monitoring requirements identified by HCD in the last five years will lose up to 100 points; and Second, points will also be deducted for the following late reports associated with occupied HOME rental projects (HCD will calculate these deductions for only applicants, owners, and managing general partners involved in 2018 project applications, so advance notice will not be provided on the status of these reports).	Maximum deduction of 100 points

Table 5 -- NHTF Multifamily New Construction Project Scoring		
Factor	Sub-factor (if any)	Points
	<p><u>CHDOs</u> 5 points will be deducted for each late annual operating budget and each late Annual Report due to HCD between January 1, 2013 and December 31, 2017.</p> <p>Applicants may submit a request for a waiver of these point deductions in their application.</p>	
Community need: See Appendix H of this NOFA for community need point scoring by activity type (located on the NHTF NOFA webpage underneath the NOFA).		250
Project readiness	<p>For detailed project readiness factors for rental projects please see the NHTF Supplement.</p> <p>Rating points for the Project Development Plan (PDP) will be awarded if the <u>required</u>* item has been submitted, was prepared within the applicable timeframes, and meets the basic requirements specified in the NHTF Supplement. PDP items will be reviewed to make a feasibility determination for the applications scoring high enough to be funded.</p> <p>*Under this NOFA, the Geotechnical Report is not required with the application and will not be considered for scoring purposes. See NHTF Supplement for details.</p>	300
Project Feasibility	Compliance with state and federal requirements (including UMRs for rental projects).	195
	Highest percentage of NHTF-assisted units.	5
State objectives (no more 200 points total)	100 Percent Financing Committed or Noncompetitive: 85 points will be awarded for projects that have 100 percent of their non-state NHTF permanent financing committed by August 6, 2018.	85
	Projects proposing 4 percent tax credits qualify for these points if all commitments other than tax-exempt bonds, 4 percent tax credit proceeds, AHP, and deferred developer fees are in place.	
	Overcoming Impediments to Fair Housing: 35 points will be awarded to rental projects proposed in census tracts where total minorities are not overrepresented by more than 20 percentage points compared to the percentage of total minorities in the county.	35

State objectives (continued)	<p>Special Needs Populations: Up to 80 points will be awarded to rental projects with funding commitments from programs restricted to special needs populations, including farmworkers, through the use of any of the following financing sources: HUD 811, HUD Supportive Housing Program, or State Mental Health Services Act (MHSA). Projects applying for other HCD Special Needs Population funding also qualify if HCD determines the project will receive funding under these programs. Points will also be awarded to projects that provide project-based rental assistance under the terms of an MHSA or Veterans Affairs Supportive Housing Voucher (HUD-VASH) contract that has already been committed to this project. See State Objectives Table 6.</p> <p style="text-align: center;">Or</p> <p>Up to 80 points shall be awarded to projects serving people experiencing homelessness, see State Objectives Table 6.</p> <p style="text-align: center;">Or</p> <p>Access to Opportunity: 80 points will be awarded for projects located in areas of opportunity within the TCAC Opportunity Map.</p> <p>http://www.treasurer.ca.gov/ctcac/opportunity.asp</p>	80
TOTAL POINTS RENTAL PROJECTS		1,550

Table 6 – State Objectives	
Percent of Units Designated by the Funding Source as Special Needs	Points
30% or more	80
25%	65
20%	52
15%	39
10%	26
5%	13

Rental project scoring, notification, and appeal process:

Rental project application scoring will be completed by December 2018. E-mails will be sent to the authorized representative and contact person listed in the application describing the scores and specific facts upon which those scores were determined.

Appeals

1. Basis of appeals

- a) Upon receipt of HCD's notice that an application has been determined to be incomplete, failed the threshold, or has a reduction to the preliminary point score, applicants under this NOFA may appeal such decision(s) to HCD pursuant to this section.
- b) No applicant shall have the right to appeal a decision of HCD relating to another applicant's eligibility, point score, award, denial of award, or any other matter related thereto.
- c) Prior Program NOFAs. The appeal process provided herein applies solely to decisions of HCD made in this Program NOFA and does not apply to any decisions made with respect to any previously issued NOFAs or decisions to be made pursuant to future Program NOFAs.

2. Appeal process and deadlines

- a) Process. In order to lodge an appeal, applicants must submit to HCD by the deadline set forth in subsection b) below, a written appeal which states all relevant facts, arguments, and evidence upon which the appeal is based. Furthermore, the applicant must provide a detailed reference to the area or areas of the application that provide clarification and substantiation for the basis of the appeal. No new or additional information will be accepted if this information would result in a competitive advantage to an applicant. Once the written appeal is submitted to HCD, no further information or materials will be accepted or considered thereafter. Appeals are to be submitted to HCD either via email at NHTFNOFA@hcd.ca.gov or at the following address:

Nicole' McCay, Section Chief
NHTF Program Appeals
Department of Housing and Community Development
2020 W. El Camino Avenue, Suite 500
Sacramento, California 95833

HCD will accept appeals through a carrier service that provide date stamp verification of delivery such as the U.S. Postal Service, UPS, Fed Ex, or other carrier services. Deliveries must be received during HCD weekday (non-state holiday) business hours of 9:00 a.m. to 5:00 p.m. Pacific Standard Time. Emails to the email address listed above will be accepted as long as the email time stamp is prior to the appeal deadline.

- b) Filing Deadline. Appeals must be received by HCD no later than five (5) business days from the date of HCD's eligibility, threshold review or preliminary point score determination letters, representing HCD's decision made in response to the application.

3. Decision

Any request to amend HCD's decision shall be reviewed for compliance with the state NHTF allocation plan, and UMR (if applicable), the June 5, 2018 NHTF NOFA, application for funding, and any subsequent clarifying documents such as the NHTF Program's responses to "Frequently Asked Questions." It is HCD's intent to render its decision in writing within fifteen (15) business days of receipt of the applicant's written appeal. All decisions rendered shall be final, binding, and conclusive and shall constitute the final action of HCD with respect to the appeal.

4. Effectiveness

In the event that the statute, regulation, and/or guidelines governing this Program contain an existing process for appealing decisions of HCD with respect to NOFA awards made under such programs, this section shall be inapplicable and all appeals shall be governed by such existing authority.

V. Application submittal procedures and deadline

A. Applications

The application materials are available on HCD's website:

Required application forms include:

- Universal Rental Project Application Form (XLS)
- NHTF Supplement to Universal Application (DOC)
- Developer Capacity Form (XLS)
- Developer Fee Calculation Worksheets (XLS)

Note: Applicants for deep affordability targeting funds must submit two sets of application documents as set forth in the Targeting Documentation Checklist of the NHTF Supplement to the Universal Rental Application. For more information, please see section II. E.

Applicants seeking deep affordability targeting funds and/or Minority Concentration state objective points must also complete and submit the worksheet linked below with the application package.

- Deep Affordability Targeting and Minority Concentration State Objective Worksheets (XLS)

NHTF applicants must submit one copy of their completed Universal Application Form (Excel format), NHTF Supplement, and all PDP attachments on one PC-compatible compact disc (CD) or USB flash drive that includes a copy of the

application with signatures. Please unprotect electronic worksheets for HCD use. The application, attachments, and major sections of an application binder must contain tabbed dividers.

Applicants not requesting NHTF funds for deep affordability targeting must submit one binder and one CD or USB flash drive as follows:

1. The original Universal Application, the NHTF Supplement, and all attachments for the rental project (binder); and
2. One copy of the Universal Application, the NHTF Supplement, and all PDP Attachments on one CD or USB flash drive.

Applicants requesting NHTF funds for “targeting” are also required to submit a second set of documents pertaining to their project (for more information, see section II.E., on page 6).

B. Application packaging and submittal

A complete original application, and electronic copies on CD or USB flash drive with all applicable information must be received by HCD no later than **5:00 p.m. Pacific Standard Time on August 6, 2018**. HCD will only accept applications delivered through a postal carrier service that provide date stamp verification confirming delivery to HCD such as U.S. Postal Service, UPS, Fed Ex, or other carrier services. Please contact HCD if delivery is not completed by fault of the private courier/U.S. Mail. Personal deliveries are not accepted. The delivery address is:

NHTF Program
Division of Financial Assistance
Department of Housing and Community Development
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833

Applications that do not meet the filing deadline requirements will not be eligible for funding. Applications must be on HCD forms and cannot be altered or modified by the applicant. Excel forms must be submitted as an Excel document, not a PDF document.

Applications must meet all eligibility requirements upon submission. Applications having material internal inconsistencies will not be rated and ranked. It is the applicant’s responsibility to ensure that the application is clear, complete, and accurate.

After the application deadline, HCD staff may contact applicants for assistance in locating specific information in the application. In the event an applicant’s completed NHTF application form or exhibit is incomplete or incorrect, HCD will consider all information within the application to determine if there is sufficient information to assign the score.

C. Application workshop

Applicants are strongly encouraged to attend a NHTF workshop to gain information critical for preparing a competitive application, which will be discussed at the workshop. NHTF workshop dates, times, and locations are located on HCD's NHTF webpage at <http://www.hcd.ca.gov/grants-funding/active-funding/nhtf.shtml>. These in-person workshops will cover the NOFA and application. To register for a workshop, please sign up through Eventbrite.

If you have questions regarding any of these workshops, send an e-mail to NHTFNOFA@hcd.ca.gov.

D. Disclosure of application

Information provided in the application will become a public record available for review by the public, pursuant to the California Public Records Act (Chapter 1473, Statutes of 1968). As such, any materials provided will be disclosed to any person making a request under this Act. HCD cautions applicants to use discretion in providing information not specifically requested, including but not limited to, bank account numbers, personal phone numbers and home addresses. By providing this information to HCD, the applicant is waiving any claim of confidentiality and consents to the disclosure of submitted material upon request.

VI. Award announcements and contracts

A. Award announcement

HCD intends to send award letters in December 2018 for all successful applicants. If a standard agreement is not ready for a construction loan closing, then the borrower and other construction lenders or any other party associated with the project must rely on the issuance of an estoppel letter that will be issued (if requested) at the construction loan closing stage.

HCD will provide updates on planned awards through the HCD Listserv system. To be added to this list, go to <http://www.hcd.ca.gov/hcd-subscribe.html>, scroll down to the NHTF Program and select the email alert lists you wish to receive.

B. Contracts

Awardee(s) will enter into a Standard Agreement with HCD. The Standard Agreement contains all the relevant state and federal requirements, as well as specific information about the award and the work to be performed. Projects must meet a July 31, 2019 construction loan closing deadline and a July 31, 2022 permanent loan closing or funding will no longer be available. There will be no exceptions. The Standard Agreement will contain deadlines that are consistent with federal requirements; failure to meet these deadlines will be considered a material breach of the Standard Agreement.

A condition of award will be that a Standard Agreement must be executed by the awardee(s) within 90 days (contracting period) of HCD's issuance of the award letter. Failure to execute the Standard Agreement(s) within the contracting period may result in award cancellation. The awardee(s) shall remain a party to the Standard Agreement for the entire term of the Standard Agreement; removal of the awardee(s) shall be prohibited.

VII. Overlays

A. Federal overlays

Activities funded with NHTF funds are required to comply with 24 CFR Part 93.350. Compliance with these requirements include, but are not limited to, the National Environmental Policy Act (NEPA), federal Davis-Bacon Wage requirements and state prevailing wage laws, relocation, Equal Opportunity and Fair Housing, Affirmative Marketing, section 504 and the Americans with Disabilities Act, section 3 (employment of low-income persons), and Single Audit report 2 CFR Part 200. Failure to comply with federal overlays could result in significant project cost increases, rejection of the NHTF application, or loss of points in current or future NHTF funding rounds.

1. National Environmental Policy Act (NEPA)

Once the NHTF application has been submitted to HCD, and before the NEPA Authority to Use Grant Funds (AUGF) has been issued, the applicant and any participant in the development process cannot take any "choice-limiting actions" as defined in the next paragraph.

Any action on the site or on behalf of the project by anyone is a choice-limiting action if it occurs after the NHTF has been submitted to HCD and before the AUGF is issued.

"Choice-limiting actions" include the execution of any agreements (such as loan documents) for any funds (not just NHTF funds), the purchase of the site, any construction loan closing (not just the NHTF loan), any payment of local fees, and any demolition or any site work, other than annual weed control.

Note: Pursuant to NEPA regulations, certain activities are not considered choice-limiting actions regardless of when they are carried out. These activities include, but are not limited to, such things as: environmental and other studies; resource identification and development of plans and strategies; submitting funding applications and tax credit applications, inspections and testing for hazards or defects; purchase of insurance; payment of principal and interest on loans made or obligations guaranteed by HUD; and assistance for improvements that do not alter environmental conditions and are necessary to address the effects from disasters or imminent threats to public safety. For more information on activities not considered choice-limiting actions, see [24 CFR 58.34](#).

There are four acceptable forms of site control that avoid “choice-limiting” NEPA problems:

- a) The site may be purchased or a long-term lease may be entered into consistent with the UMR requirements, prior to submitting the NHTF application;
- b) An option to purchase may be obtained, conditioned on the responsible entity's determination to proceed with, modify, or cancel the project based on the results of a subsequent environmental review, and the receipt of an AUGF from HUD for developer and CHDO projects and NHTF projects. The cost to secure the site control document can only be a nominal portion of the purchase price. For more details on required and prohibited provisions of agreements consistent with NEPA, see HUD's CPD Notice 98-1 and Assistant Secretary Mercedes Marquez' August 26, 2011 memo on HCD's HOME webpage under Resources;
- c) A Purchase Agreement, Disposition and Development Agreement (DDA), Option to Lease, or Exclusive Right to Negotiate may be obtained but this agreement cannot be conditioned on NEPA clearance or any other federal requirement. General HUD rules state that purchase agreements are acceptable if federal funds are not contemplated. Applicants are cautioned to make sure that the Purchase Agreement, Lease Agreement or DDA is open-ended or is of sufficient duration that it does not need to be extended after the NHTF application is submitted; and
- d) HUD has ruled that if a Purchase Agreement/DDA expires after the NHTF application is submitted, and before the AUGF is executed, the execution of an extension would be a choice-limiting action (renewal prior to expiration is acceptable). The application also should ensure the Purchase Agreement/DDA has other contingencies such as a permanent financing contingency so that the seller cannot legally compel an individual to purchase the site prior to receiving the AUGF.

A conditional purchase contract may also be used for an existing single-family home (1 to 4 units) or an existing multifamily residential project in some limited circumstances even when federal funds have already been contemplated. For more information, see Assistant Secretary Mercedes Marquez' August 26, 2011 memo on HCD's HOME webpage under Resources.

For all new construction projects, compliance with NEPA is evidenced by an AUGF. HUD issues the AUGF for NHTF projects. For a thorough explanation of the NEPA process, see HOME Contract Management Manual, Chapter V - <http://www.hcd.ca.gov/grants-funding/active-funding/home/cmm.shtml> .

HCD encourages starting the preparation of the NEPA environmental assessment (EA) as soon as possible, but no later than receipt of an award letter.

Project reports will frequently have conditions requiring additional analysis of environmental impacts.

Please submit any questions regarding choice-limiting actions, or the level of environmental clearance required of your project or program, to NHTFNOFA@hcd.ca.gov prior to taking any action concerning your proposed NHTF project.

The application must disclose all environmental hazards, and, if awarded funding, HCD must be kept fully informed regarding all environmental issues that arise. Failure to do so will be considered a material misrepresentation and result in a performance point penalty for all members of the development team.

Please note that HCD is unable to give legal advice to applicants regarding a specific project; therefore, if you have specific questions regarding what constitutes a “choice-limiting action” or the environmental laws affecting your project or program, you will need to consult with a legal advisor or other professional consultant for advice prior to taking actions on your project or program.

2. Relocation

Relocation costs must be paid if individuals or businesses will be temporarily or permanently displaced as a result of an NHTF-assisted project pursuant to federal NHTF regulations, section 93.201(f). Please submit questions regarding relocation to NHTFNOFA@hcd.ca.gov. This recommendation applies to all rental projects involving any relocation activities. An accurate determination is critical, because relocation costs may be higher if an earlier relocation date is necessary.

The sources and uses submitted with the application must adequately budget for relocation costs.

3. 2 CFR 200.512 Single Audit Report documentation

Local governments that expend in excess of \$750,000 in federal funds during the fiscal year are required to submit a Single Audit Report package to the California SCO. The 2016-17 audit package was due by March 31, 2018.

HCD will make the determination on the status compliance as of August 6, 2018 by consultation with SCO only. Jurisdictions that are exempt from filing a Single Audit Report package because the level of federal funds is below the threshold must also submit a copy of the letter to SCO notifying their exempt status with their NHTF application. For more information on the required content of the letter, see http://sco.ca.gov/aud_exempt_entities.html.

Note: It is strongly recommended that each applicant check with SCO to confirm receipt of a complete Single Audit Report package submission by the NOFA application due date, and that the submission is properly reflected on SCO’s status list.

You may check your jurisdiction’s compliance status at <http://sco.ca.gov/Files-AUD/SingleAud/statusreport.pdf>.

Questions regarding compliance with the submittal requirements can be directed to NHTFNOFA@hcd.ca.gov. HCD will only be able to indicate whether a jurisdiction is in compliance according to SCO's Single Audit Report Status report. Technical questions related to why the jurisdiction is deemed not in compliance must be directed to SCO.

B. State overlays

Article XXXIV of the California Constitution requires local voter approval before any state public body can develop, construct, or acquire a low-rent housing project in any manner. However, the Public Housing Election Implementation Law (Health & Safety Code, §§ 37000 – 37002) provides clarification as to when Article XXXIV is applicable. Health and Safety Code section 37001, for example, lists a number of project types that are not considered “low-rent housing projects.”

Applicants must submit documentation that shows the project's compliance with or exemption from Article XXXIV.

If a project is subject to Article XXXIV, the application must include an allocation letter from the locality, which shows that there is Article XXXIV authority for the project. A local government official with authority shall prepare the allocation letter and it shall include the following:

1. The name and date of the proposition, and the number of units that were approved;
2. A copy of the referendum and a certified vote tally;
3. The number of units that remain in the locality's “bank” of Article XXXIV authority (i.e., the number of units that are still available for allocation); and
4. The number of units that the locality will commit to this project.

If a project is statutorily exempt from Article XXXIV, the application must include an Article XXXIV opinion letter from the applicant's counsel. The Article XXXIV opinion letter must demonstrate that the applicant has considered both the legal requirements of Article XXXIV and the relevant facts of the project (e.g., the level of participation by all state public bodies, the number of low-income restricted units, and the general content of any regulatory restrictions). Any conclusion that a project is exempt from Article XXXIV must be supported by specific facts and a specific legal theory for exemption that itself is supported by the Constitution, statute, and/or case law.

VIII. Other terms and conditions

A. Right to modify or suspend

HCD reserves the right, at its sole discretion, to suspend, amend, or modify the provisions of this NOFA at any time, including without limitation, the amount of funds available hereunder. If such an action occurs, HCD will notify all interested parties via listserv and will post the revisions to the HCD website. Please be sure and [subscribe](#).

B. Conflicts

In the event of any conflict between the terms of this NOFA and either applicable state or federal law or regulation, the terms of the applicable state or federal law or regulation shall control. Applicants are deemed to have fully read and understand all applicable state and federal laws and regulations pertaining to the NHTF Program, and understand and agree that HCD shall not be responsible for any errors or omissions in the preparation of this NOFA.