

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

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May 13, 2019

MEMORANDUM FOR: All Potential Applicants

FROM: Mark Stivers, Acting Deputy Director
Division of Financial Assistance

SUBJECT: **2019 Notice of Funding Availability
Housing for a Healthy California Program
Article I - National Housing Trust Fund Allocation
Funds**

The Department of Housing and Community Development (Department) is pleased to announce the release of this Notice of Funding Availability (NOFA) for approximately \$33 million in National Housing Trust Fund (NHTF) Allocation funds for the Housing for a Healthy California (HHC) program. This funding furthers the goal of [AB 74](#) (Chapter 777, Statutes of 2017) by providing capital loans and operating reserve grants to developers for permanent Supportive housing for individuals who are Chronically homeless, or Homeless and a High-cost health user.

The intent of this pilot program is to allow individuals experiencing significant barriers to housing stability to benefit from Supportive housing opportunities while decreasing their utilization of emergency departments, inpatient care, and nursing home stays.

This NOFA is subject to state and federal NHTF regulations and makes funding available competitively to developers in all jurisdictions of California. The Department will reserve at least 20 percent of the funding for projects located in Rural Areas.

A complete original application and electronic copies on CD or flash drive with all applicable information must be received by the Department no later than **5:00 p.m. on Tuesday, August 13, 2019**. The Department will only accept applications through a postal carrier service such as U.S. Postal Service, UPS, FedEx, or other carrier services that provide date stamp verification confirming delivery to the Department's office. Please contact the Department if delivery is not completed by fault of the carrier service. The delivery address is:

HOUSING FOR A HEALTHY CALIFORNIA PROGRAM
Department of Housing and Community Development
Division of Financial Assistance, NOFA Section
2020 West El Camino Avenue, Suite 500
Sacramento, CA 95833

Personal deliveries will not be accepted. No facsimiles, incomplete applications, application revisions, electronically transmitted, or walk-in application packages will be accepted.

To receive information on workshops and other updates, please subscribe to the Department's [listserv](#). Questions about this NOFA and application process can be directed to the HHC email box at HHCNOFA@hcd.ca.gov.

Attachment

**Housing for a Healthy California
2019 Notice of Funding Availability**

**Article I (Developers) - National Housing
Trust Fund Allocation**



**State of California
Gavin Newsom, Governor**

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

**Ben Metcalf, Director
Department of Housing and Community Development
2020 W. El Camino Avenue, Suite 500, Sacramento, CA 95833
(916) 263-2771**

[HHC Webpage](#)

HHC Email: **HHCNOFA@hcd.ca.gov**

May 13, 2019

Table of Contents

I.	Overview	1
	A. Notice of Funding Availability	1
	B. Timeline	1
	C. Authorizing Legislation, Regulations, and Guidelines	1
II.	Program Requirements	2
	A. Eligible Applicants	2
	B. Eligible Activities	2
	C. Allocation of Funding and Loan Limits	2
	D. Occupancy and Income Requirements	3
	E. Rent Limits	3
	F. Minimum Requirements	3
	G. Rating and Ranking.....	3
	H. Appeals	4
	I. State and Federal Requirements	5
III.	Application, Submission and Workshops	8
	A. Application Forms	8
	B. Application Submission Process	8
	C. Application Workshops.....	9
	D. Disclosure of Application	9
IV.	Award Announcements and Contracts	9
	A. Award Announcements	9
	B. Contracts.....	9
V.	Program Overlays	10
	A. Federal Overlays.....	10
	B. State Overlays.....	13
	C. State Prevailing Wages	14
VI.	Other Terms and Conditions	14
	A. Right to Modify or Suspend.....	14
	B. Conflicts	13

**HOUSING FOR A HEALTHY CALIFORNIA PROGRAM
ARTICLE I – NHTF ALLOCATION
NOTICE OF FUNDING AVAILABILITY**

I. Overview

A. Notice of Funding Availability

The Department of Housing and Community Development (Department) is pleased to announce the availability of approximately \$33 million in National Housing Trust Fund (NHTF) Allocation funds for the Housing for a Healthy California (HHC) program.

Funding for this Notice of Funding Availability (NOFA) is provided pursuant to [AB 74](#), signed into law in September of 2017. The intent of the bill is to create permanent Supportive housing opportunities for those that are Chronically homeless or Homeless and a High-cost health user.

Defined terms within the HHC Program Guidelines (“Guidelines”) are capitalized in this NOFA. Definitions of capitalized terms can be found in Guidelines Section 101, Definitions.

B. Timeline

NOFA Release	May 13, 2019
Application Due Date	August 13, 2019
Award Announcements	December 2019

C. Authorizing Legislation, Regulations, and Guidelines

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

- [Assembly Bill 74, \(Chapter 777, Statutes of 2017\)](#)
- [Housing for a Healthy California Program Guidelines](#)
- [Federal Housing Trust Fund regulations](#)
- [State Uniform Multifamily Regulations \(UMRs\)](#)

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

This NOFA does not include the text of all applicable requirements that may be important to projects. For proper completion of the application, the Department encourages applicants to consult the guidelines, regulations, statute linked above, and other cross-cutting regulations such as, but not limited to, those referred to in 2 Code of Federal Regulations (CFR) Part 200, which may apply to HHC-funded rental projects.

If state or federal statutes or regulations, or other laws governing HHC and the National Housing Trust Fund or its funding are modified by Congress, the U.S. Department of

Housing and Urban Development (HUD), the State Legislature, or the Department 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. The Department reserves the right, at its sole discretion, to suspend or amend the provisions of this NOFA. If such action occurs, the Department will notify interested parties through the [listserv](#).

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, minimum requirements, or other terms and conditions of the HHC program.

A. Eligible Applicants

Applicants must be owners or developers that meet the requirements set forth in Guidelines Section 102, Minimum Requirements.

All Applicants must be in good standing with the laws, regulations, guidelines, and programs of the Department, 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

Proposed projects must be eligible pursuant to Guidelines Section 103, Uses and Terms. Eligible uses include:

1. Loans for acquisition and/or new construction.
2. Grants for project-based operating assistance in the form of a Capitalized Operating Subsidy Reserve (COSR).

C. Allocation of Funding and Loan Limits

This NOFA makes funding available competitively to developers in all jurisdictions of California. The Department will reserve at least 20 percent of the funding for projects located in Rural Areas.

NHTF loans shall be used in accordance with Guidelines Section 103, Uses and Terms, and 24 CFR Part 93, Subpart E. HHC assistance provided as post-construction, permanent loans shall have an initial term of 55 years or longer to match the period of affordability restrictions under the tax credit program, commencing on the date of recordation of the HHC loan documents.

Award Limits: The maximum loan limit per Applicant is \$20 million. The limit on the amount that can be used for the COSR will be one-third of the total loan amount in accordance with 24 CFR 93.200(a)(1). Additional loan limits, including maximum per-unit

loan amounts, are set forth in Guidelines Section 103, Uses and Terms and Section 108, Capitalized Operating Subsidy Reserves (COSR).

Applicants should consult the capital per-unit subsidy limits on the Department’s [webpage](#) for 9 percent tax credits projects and projects without 9 percent tax credits for the current per-unit subsidy limits for projects based on the Area Median Income (AMI) levels being targeted and the number of bedrooms per unit.

D. Occupancy and Income Requirements

Household income shall be determined in accordance with the rules in 24 CFR Part 93.151. At the time of move-in, the household income shall not exceed the established Extremely Low Income (ELI) limits or the limit for families with incomes at or below the poverty line (whichever is greater) pursuant to 24 CFR Part 93.250(a). Income levels shall be expressed in 5 percent increments as a percentage of AMI. The income limits are posted on the Department’s website. Assisted Units will be restricted per the income limits set forth in the project Regulatory Agreement.

E. Rent Limits

Assisted Unit rent will be restricted in accordance with the NHTF rent and income limits in 24 CFR Part 93.302.

1. The rent plus utilities of an ELI tenant shall not exceed the greater of 30 percent of the federal poverty line or 30 percent of the income of a family whose annual income equals 30 percent of the median income for the area, as determined by HUD, with adjustments for the number of bedrooms in the unit. HUD will publish the NHTF rent limits on an annual basis. Rents will be further restricted in accordance with rent and income limits submitted by the Applicant in its application for the Program loan, approved by the Department, and set forth in the project Regulatory Agreement.

F. Minimum Requirements

Applicants and projects are required to meet the Program minimum requirements found in Guidelines Section 102, Minimum Requirements and Section 110, Application Process.

G. Rating and Ranking

After meeting the minimum requirements, applications will be scored according to Guidelines Section 111, Application Selection Criteria. HHC program funds will be allocated through a competitive process, based on the merits of the application.

	Maximum Applicable Points
Development Team Experience	35
Supportive Housing Units	25
Supportive Services Plan	25
Utilization of Funds to Offset Requests	10

Leverage of Rent/Op Subsidies	15
Readiness to Proceed	30
Confirmation of Local Need	5
Location Efficiency and Access to Destinations	5
TOTAL APPLICABLE POINTS	150

Additionally, within Guidelines Section 111, Application Selection Criteria, applications must achieve the following minimum scores:

- Development Team Experience – 18 points
- Supportive Services Plan – 10 points
- Readiness to Proceed – 15 points

In the event of tied point scores, the following tiebreakers shall be used to determine which project is selected for funding, in the order listed:

- Readiness to Proceed
- Supportive Services Plan

Confirmation of local need is demonstrated by having more than 400 individuals that are Homeless in the Applicant’s geographic jurisdiction (Continuum of Care (CoC) service area) using the latest Point in Time (PIT) count. Applicant’s documentation of the PIT count must be certified by the CoC.

H. Appeals

1. Basis of Appeals

- a. Upon receipt of the Department’s notice that an application has been determined to be incomplete, ineligible, fail minimum requirements, or have a reduction to the initial point score, Applicants under this NOFA may appeal such decision(s) to the Department pursuant to this section.
- b. No Applicant shall have the right to appeal a decision of the Department relating to another Applicant’s eligibility, point score, award, denial of award, or any other matter related thereto.
- c. The appeal process provided herein applies solely to decisions of the Department 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. To lodge an appeal, Applicants must submit to the Department 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 considered if this information would result in a competitive advantage to an Applicant. Once the written appeal is submitted to the Department, no further information or materials will be accepted or considered thereafter.

The Department will accept appeals through a carrier service that provide date stamp verification of delivery such as the U.S. Postal Service, UPS, FedEx, or other carrier services. Deliveries must be received during the Department's 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 below will be accepted as long as the email time stamp is prior to the appeal deadline.

- i. Appeals are to be submitted to the Department at HHCNOFA@hcd.ca.gov according to the deadline set forth in Department review letters.
- b. Appeals must be received by the Department no later than five business days from the date of the Department's minimum requirements review or initial score letters representing the Department's decision made in response to the application.

3. Decision

- a. Any request to amend the Department's decision shall be reviewed for compliance with the state NHTF allocation plan, state Guidelines, and UMR (if applicable), this NOFA, and application for funding. It is the Department's intent to render its decision in writing within 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 the Department with respect to the appeal.
- b. In the event that the statute, regulations, and/or guidelines governing this program contain an existing process for appealing decisions of the Department with respect to NOFA awards made under such programs, then this section shall be inapplicable and such existing authority shall govern all appeals.

I. **State and Federal Requirements**

All state and federal requirements are found in the Guidelines.

1. Timeframes for Using 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 February 1, 2021 project commitment deadline and a February 1, 2024 permanent loan closing deadline, or funding will be lost.

If a project fails to meet one or more of the deadlines outlined in the state NHTF allocation plan, the Applicant, 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.

2. Monitoring Fees

Pursuant to 24 CFR Part 93.204(b)(1), the Department will charge fees to cover the cost of ongoing monitoring and physical inspection of rental projects during the state period of affordability.

The Department charges an annual monitoring fee, as follows:

Number of Units	2019
12 or fewer	\$5,623
13 to 60	\$11,247
More than 60	\$16,866

To cover inflation, this fee shall increase by 3 percent per year unless the Department determines that its monitoring costs are increasing at a lower rate. Financial assumptions in the 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 projects. Payments made must be pursuant to the regulatory agreement.

3. Forms of Assistance

NHTF funds are provided as post-construction permanent loans. Program loans shall have an initial term of 55 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 the Department, and which are consistent with 25 California Code of Regulations, Section 8316 of the UMRs.

Project-related expenses for National Environmental Policy Act (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

the Department after the project's loan closes. The Department 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 Recipient, on a case-by-case basis.

4. Reporting Requirements

The Recipient must collect and report data, as described in the Health & Safety Code (HSC), Section 53593 and pursuant to the Standard Agreement provisions, to the Department at annual and midyear intervals.

If a Recipient is a local government, they must comply with 2 CFR Part 200.512 Single Audit Report Submission requirements. 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 Part 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. The Department will make the determination on the status of 2 CFR Part 200.512 Single Audit reporting compliance as of June 4, 2019 by consultation with SCO. Jurisdictions that are exempt from filing a 2 CFR Part 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 application, in addition to notifying SCO. For additional information, see Section [V, A, Federal Overlays](#).

Recipient(s) must file regular monthly project status reports and an annual performance report. Recipient(s) are responsible for disclosing all changes to the project since submitting the 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. The Department 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 recipients must file monthly reports, starting the month after the Standard Agreement is executed, which 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.

III. Application, Submission and Workshops

A. Application Forms

Project applications submitted under this NOFA will be funded on a competitive basis, as set forth in the Guidelines. Application forms, Program Guidelines, and application training information are available on the HHC program [website](#).

1. Universal Rental Project Application Form – This form contains information needed to evaluate project financial feasibility for projects underwritten by the Department.
2. HHC Program Supplement Application Form – This form contains information needed to evaluate application threshold compliance for projects underwritten by the Department. The Program Supplement Application Form also contains information Applicants must submit in order to utilize their NHTF allocation funds.

The application forms are available on the Department's [website](#).

B. Application Submission Process

A complete original application, and electronic copies on CD or flash drive with all applicable information must be received by the Department no later than **5:00 p.m. on August 13, 2019**. The Department will only accept applications through a postal carrier service such as U.S. Postal Service, UPS, FedEx, or other carrier services that provide date stamp verification confirming delivery to the Department's office. Please contact the Department if delivery is not completed by fault of the carrier service. The delivery address is:

HOUSING FOR A HEALTHY CALIFORNIA PROGRAM
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Personal deliveries will not be accepted. No facsimiles, incomplete applications, application revisions, electronically transmitted, or walk-in application packages will be accepted.

Applications that do not meet the filing deadline requirements will not be eligible for funding. Applications must be on the Department's forms and cannot be altered or modified by the Applicant. Excel forms must be in Excel format, 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, Department staff may request clarifying information, and/or inquire as to where in the application specific information is located, provided that such information does not affect the competitive rating of the application. No information, whether written or oral, will be solicited or accepted if this information would result in a

competitive advantage to an Applicant or a competitive disadvantage to other Applicants. No Applicant may appeal the Department's evaluation of another Applicant's application.

C. Application Workshops

Applicants are strongly encouraged to attend an HHC workshop to gain information critical for preparing a competitive application, which will be discussed at the workshop. HHC workshop dates, times, and locations are located on the Department's HHC [website](#). 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 email to HHCNOFA@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 disclosable to any person making a request under this Act. The Department 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 the Department, the Applicant is waiving any claim of confidentiality and consents to the disclosure of submitted material upon request.

IV. Award Announcements and Contracts

A. Award Announcements

Upon ranking and rating of applications, recommended projects will be presented to the Internal Loan Committee for review and approval. The Department intends to send award letters by December 2019 for all successful Applicants.

B. Contracts

Recipient(s) will enter into a Standard Agreement with the Department. 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 February 1, 2021 project commitment deadline and a February 1, 2024 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.

The Recipient(s) shall remain a party to the Standard Agreement for the entire term of the Standard Agreement; removal of the Recipient(s) shall be prohibited.

V. Program Overlays

A. Federal Overlays

Activities funded with HHC funds are required to comply with 24 CFR Part 93.350 and 24 CFR Part 93.301. Compliance with these requirements include, but are not limited to, environmental provisions, federal Davis-Bacon Wage requirements, relocation, Equal Opportunity and Fair Housing, Fair Housing Amendments Act, Affirmative Marketing, Section 504 of the Rehabilitation Act and its implementing regulations, the Americans with Disabilities Act and its implementing regulations, Section 3 (employment of low-income persons), Violence Against Women Act, and Single Audit report 2 CFR Part 200.512. Failure to comply with federal overlays could result in significant project cost increases, and rejection of the HHC application.

1. NHTF Environmental Provisions

The NHTF regulations establish specific property standards for housing that receives NHTF funds. These standards include Environmental Provisions for projects involving new construction and rehabilitation. The NHTF Environmental Provisions for new construction and rehabilitation under the Property Standards at 24 CFR § 93.301(f)(1) and (2) are similar to HUD's Environmental Regulations at 24 CFR Parts 50 and 58. NHTF projects are subject to the same environmental concerns that HUD-assisted projects are subject to. The main difference is that the NHTF Environmental Provisions are outcome based, and exclude consultation procedures that would be applicable if NHTF project selection was a federal action. Parts 50 and 58 are process based, and include consultation procedures for several laws and authorities where there may be environmental impacts. Due to the outcome based nature of the NHTF Environmental Provisions and lack of a federal action, compliance with some environmental property standards is streamlined because consultation is not required.

Timing - NHTF housing projects must meet the applicable Property Standards, including the NHTF Environmental Provisions at 24 CFR § 93.301(f)(1) or (2) at project completion [§ 93.407(a)(2)(iv)]. Project completion as defined at 24 CFR § 93.2 requires, among other things, that the project complies with the requirements of Part 93 (including the property standards under 24 CFR § 93.301). However, it should be determined prior to construction if a project will meet the NHTF Environmental Provisions. If a project cannot meet the NHTF Environmental Provisions, the project cannot be funded by NHTF. For example, if a project will impact a wetland, it cannot be funded by NHTF. It is possible to fund projects that do not meet the Environmental Provisions with other HUD funds after completion of a Part 50 or Part 58 environmental review.

Recordkeeping and Resources - The state, state-designated entity, or subgrantee administering NHTF must maintain documentation demonstrating that each project meets the NHTF Environmental Provisions at project completion [§ 93.407(a)(2)(iv)]. Appendices B and C of the CPD Notice-CPD-16-14, layout the NHTF Environmental Provisions for new construction and rehabilitation, and provide resources for each of the environmental requirements and how to document compliance.

Due to the streamlined NHTF Environmental Provisions, the HUD Environmental Review Online System (HEROS) may not be used to document the Environmental Provisions for projects funded by NHTF.

Combining with Other HUD Funding Sources - In order to effectively assist low- and very-low income families it is likely that State Agencies and NHTF subgrantees will combine NHTF funding with other HUD funding sources. Other HUD funding sources include, but are not limited to, HOME Investment Partnerships (HOME), Rental Assistance Demonstration (RAD), or Public Housing Capital Funds that are subject to environmental review under 24 CFR Part 50 or Part 58.

When combining NHTF with these funding sources a Part 50 or Part 58 environmental review must be done, and the review must meet the NHTF Environmental Provisions. Depending on the type of HUD funding that is being used for the project an environmental review will be completed by HUD staff under Part 50, or a Responsible Entity under Part 58. The HUD grantee must be informed early on that the NHTF Environmental Provisions must also be met as part of the environmental review.

For more information, please refer to the [Notice: CPD-16-14](#).

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, 24 CFR Part 93.201(f). This requirement 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 Part 200.512, Single Audit Report

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 SCO. The 2017-18 audit package was due by March 31, 2019.

For local government Applicants, the Department will make the determination on the status compliance as of June 4, 2019 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 application. For more information on the required content of the letter, see the SCO [website](#).

Note: It is strongly recommended that each local government 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 on the SCO [website](#).

Questions regarding compliance with the submittal requirements can be directed to HHCNOFA@hcd.ca.gov.

The Department 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

1. Article XXXIV of the California Constitution

Article XXXIV 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 (HSC Section 37000 – 37002) provides clarification as to when Article XXXIV is applicable. HSC Section 37001, for example, lists several 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:

- a. The name and date of the proposition and the number of units that were approved.
- b. A copy of the referendum and a certified vote tally.
- c. 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).
- d. 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.

C. State Prevailing Wages

Program funds awarded under this NOFA may be subject to state prevailing wage law, as set forth in Labor Code Section 1720 et seq., and require the payment of prevailing wages unless the project meets one of the exceptions of Labor Code 1720(c) as determined by the Department of Industrial Relations (DIR). The DIR can be contacted directly via its [website](#). Applicants are urged to seek professional advice as to how to comply with state prevailing wage law.

VI. Other Terms and Conditions

A. Right to Modify or Suspend

The Department 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, the Department will notify all interested parties via [listserv](#) and will post the revisions to the Department's website.

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.