

# National Housing Trust Fund (NHTF) Guidelines FAQs



This document contains responses to questions from potential applicants for the Department of Housing and Community Development's ("HCD" or "Department") National Housing Trust Fund ("NHTF") Program.

The questions in this document were received during the Draft NHTF Guidelines webinars on April 26, 2023 and April 27, 2023. To submit additional questions and inquiries regarding the NHTF Program, please email [NHTFNOFA@hcd.ca.gov](mailto:NHTFNOFA@hcd.ca.gov).

	<b>QUESTIONS</b> <i>Note: Questions appear as submitted.</i>	<b>ANSWERS</b>
1	<b>Q.</b> Regarding the 14% limitation on GC overhead/profit/general requirements, does site work and structures include demolition, environmental remediation, and offsite improvements?	<b>A.</b> Development costs, such as builder overhead, profit, and general requirements, are limited in accordance with <a href="#">25 C.C.R. Subsection 8311(c)</a> and <a href="#">California Code of Regulations, Title 4, Section 10327</a> .
2	<b>Q.</b> Is this for families only?	<b>A.</b> <a href="#">24 C.F.R. Subsection 5.403</a> defines family as follows: <i>"Family" includes, but is not limited to, the following, regardless of actual or perceived sexual orientation, gender identity, or marital status:</i> <i>(1) A single person, who may be an elderly person, displaced person, disabled person, near-elderly person, or any other single person; or</i> <i>(2) A group of persons residing together, and such group includes, but is not limited to:</i> <i>(i) A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family);</i> <i>(ii) An elderly family;</i> <i>(iii) A near-elderly family;</i> <i>(iv) A disabled family;</i> <i>(v) A displaced family;</i> <i>(vi) The remaining member of a tenant family.</i>
3	<b>Q.</b> Hi there, thanks for all this information. Regarding the COSR, do y'all have a sense of when you'd know whether or not NHTF will be eligible to award COSRs or not? If it's included, will it be for 15 years like how HHC structured COSRs or will it be longer given the requirement to show positive cash flow for 30 years?	<b>A.</b> Grants for Capitalized Operating Subsidy Reserves (COSRs) are no longer available, pending the U.S. Department of Housing and Urban Development's (HUD) Final HTF Rule and further guidance on eligible operating costs. While initially HUD indicated the NHTF Final Rule would be released in 2023, at a conference this March, HUD officials explained that other rule making has taken priority and the NHTF Final Rule may be

## National Housing Trust Fund (NHTF) Guidelines FAQs



		delayed until 2024 and possibly thereafter. HUD has not provided a timeline on issuing further guidance regarding using NHTF funds for capitalized operating assistance reserves.
4	<b>Q.</b> It is clear that this program is focused on rental housing projects. Does that mean that homeownership programs are discouraged to apply?	<b>A.</b> Given the 30% AMI income limits of the program, NHTF funds will be used exclusively for rental housing; however, other HCD programs are available for homeownership. Please submit your interest in homeownership programs to the Department at <a href="mailto:NHTFNOFA@hcd.ca.gov">NHTFNOFA@hcd.ca.gov</a> . We will forward your contact information to the homeownership programs the Department has to offer your organization.
5	<b>Q.</b> Will NHTF funds under this upcoming NOFA fund during construction or only as permanent loans funding at permanent closing?	<b>A.</b> NHTF funds will be provided as permanent financing for acquisition, new construction, rehabilitation, and related costs, and may be disbursed for eligible costs at construction closing, during the construction period, and at permanent closing. Additionally, grants will be made available for Native American Entities in the FY22-FY23 NOFA.
6	<b>Q</b> Can small business apply?	<b>A.</b> We encourage you to review the definition of “ <i>Recipient</i> ” located in the Final NHTF Guidelines, Section 3 - Eligible Recipients (Applicants).
7	<b>Q.</b> Are there supportive services requirements beyond what is required by CTCAC regulations?	<b>A.</b> The Final NHTF Guidelines indicate the following Supportive Services (case management led services) are required for Projects serving people experiencing Homelessness: <ol style="list-style-type: none"> <li>1. Applicant must provide evidence of an agreement or memorandum of understanding with, or commitment letter from, a lead Supportive Services provider regarding the proposed Supportive Services scope of work, staffing and budget.</li> <li>2. The lead Supportive Services provider for the Project must submit evidence of successfully participating in at least two projects equivalent to the proposed Project in size, scale, amenity, and Target Population, subject to a recorded Regulatory Agreement (and any amendments) for at least three years prior to the submission of the NHTF funding application.</li> <li>3. The Supportive Services plan must have a case management ratio of one FTE case manager for every 20 individuals (1:20), information adequate to determine the feasibility of the Supportive Services during the</li> </ol>

## National Housing Trust Fund (NHTF) Guidelines FAQs



		<p>term of the Regulatory Agreement, and programs such as, and not limited to: Supportive Services, case management, peer support activities, counseling and advocacy, and basic housing retention skills (e.g., Unit maintenance and upkeep, cooking, laundry, working with a landlord, getting along with neighbors, and money management).</p> <p>4. The Supportive Services plan must have a budget demonstrating adequate operating funding for staffing and service delivery. The Supportive Services budget must match the operating budget.</p>
8	<p><b>Q.</b> Can you explain why we need to demonstrate 30 years of positive cash flow? That is much longer than any other funding source requirement.</p>	<p><b>A.</b> The required federal affordability period for NHTF is 30 years, and staff must determine the project is financially feasible through that period, at a minimum. Please refer to the details located in <a href="#">24 C.F.R. 93.302(d)</a> and <a href="#">24 CFR 93.300(b)</a></p>
9	<p><b>Q.</b> Do we know what would be the maximum funding per applicant?</p>	<p><b>A.</b> Details on loan limits will be published in the Notice of Funding Availability (NOFA) that will be released this fall.</p>
10	<p><b>Q.</b> Can you clarify if the funds will be available during construction? I understand that they are available for new construction, acquisition, and rehab, but will they be available to draw during the construction period?</p>	<p><b>A.</b> See question 5 above and as long as projects meet all construction closing requirements as outlined in Section 5 – Project Requirements, Section 6 – Underwriting and Section 7 – Management and Maintenance, funds may be drawn during the construction period.</p>
11	<p><b>Q.</b> Can rental assistance be used with these funds?</p>	<p><b>A.</b> Rental assistance (i.e., project-based vouchers and tenant-based vouchers) may be used with NHTF funds and is strongly encouraged to be used with NHTF projects to create greater affordability for the target population. However, NHTF funds cannot be used for rental or operating assistance.</p>
12	<p><b>Q.</b> Just want to make sure that homeless persons without any income cannot be served by a property funded by this initiative?</p>	<p><b>A.</b> People experiencing homelessness, including those without income, are eligible to be served by projects assisted with NHTF funding. In accordance with <a href="#">AB816</a>, projects that serve people experiencing homelessness will be prioritized over projects that serve other populations. Project- and tenant-based rental assistance is encouraged to be used with NHTF restricted units to ensure affordability for tenants.</p>

# National Housing Trust Fund (NHTF) Guidelines FAQs



13	<p><b>Q.</b> What is the date of the NHTF Grant Agreement? Many of the deadlines and milestones listed in the guidelines are based off the NHTF Grant Agreement date.</p>	<p><b>A.</b> The date of the NHTF Grant Agreement between HCD and HUD varies for each annual allocation. Details on the timeline/deadline will be released in the NOFA, scheduled to be published this summer.</p>
14	<p><b>Q.</b> My last question - can you provide further clarification on what it means to have a floating Assisted NHTF unit vs fixed Assisted Unit?</p>	<p><b>A.</b> A fixed unit is an NHTF restricted unit of a specific size in a fixed location within the project and must remain the same through the affordability period specified in the executed Standard Agreement and the recorded Regulatory Agreement. A floating unit is an NHTF restricted unit of a specific size, also specified in those agreements, however, the NHTF designation may "float" from the specific unit identified at the time of initial occupancy to other units of the same size or larger, as long as they are comparable to the original NHTF unit. For more details, please refer to <a href="#">24 CFR 93.302(g)</a> of the federal NHTF regulations.</p>
15	<p><b>Q.</b> If you're using NPLH funds and MHP funds for a new construction project would those already count as your two funding sources and you wouldn't be able to get NHTF?</p>	<p><b>A.</b> Yes, No Place Like Home (NPLH) and Multifamily Housing Program (MHP) would be considered development loans. Federal funds are no longer considered to count against the two loan and two grant limitations.</p>
16	<p><b>Q.</b> Could an eligible recipient be a "sponsored" non-profit 501c3 developer - sponsored meaning a city or county has taken action by resolution adoption indicating that non-profit as the official sponsored eligible entity? Some cities do not have the local staff available/capacity to make the application but have a certified housing element.</p>	<p><b>A.</b> The Recipient must meet the requirements found in the Final NHTF Guidelines Section 2, and "Sponsor" definition found under <a href="#">25 C.C.R. § 8301(s)</a> and any reference to a Sponsor in the provisions of <a href="#">25 C.C.R. § 8300 et seq.</a></p>
17	<p><b>Q.</b> Does a City/County need to have a compliant Housing element in order to qualify for this grant?</p>	<p><b>A.</b> In the Final NHTF Guidelines, the Housing Element has been addressed. Applicants that meet the definition of a local public entity (cities and counties) are required to be in substantive compliance with state Housing Element Law as of the NOFA application due date. Newly incorporated cities are exempt from this factor, until which time the city is required to submit the housing element to the Department for approval. It is the responsibility of the cities and counties to know their reporting requirements. If unsure, please send an email inquiry to the NHTF NOFA Unit at <a href="mailto:NHTFNOFA@hcd.ca.gov">NHTFNOFA@hcd.ca.gov</a>. Developers and projects to be developed on Native American Lands are exempt from this requirement; these</p>

# National Housing Trust Fund (NHTF) Guidelines FAQs



		<p>entities must receive full points for this scoring factor. For more information on housing element compliance, please visit <a href="https://www.hcd.ca.gov/planning-and-community-development/housing-elements">https://www.hcd.ca.gov/planning-and-community-development/housing-elements</a>.</p>
18	<p><b>Q.</b> Is there a readiness/start construction deadline, if the project receives an award?</p>	<p><b>A.</b> In accordance with the definition of commitment in the federal regulations at <a href="#">24 CFR 93.2</a>, construction must start within 12 months of signing the NHTF Standard Agreement. More details on the timeline/deadline will be released in the NOFA, scheduled to be published in the fall.</p>
19	<p><b>Q.</b> For the requirement to have construction costs supported by third party cost estimates, how recent does the cost estimate needs to be?</p>	<p><b>A.</b> The Final NHTF Guidelines address the timing of construction cost estimates. Construction Costs supported by third party cost estimates must be prepared no earlier than 180 days of the application due date specified in the NOFA. The cost estimate must be consistent with the development budget tab of the application, or an explanation must be provided to support any differences.</p>
20	<p><b>Q.</b> Does the Resident Services Plan need to be a third-party commitment? Or can an owner/applicant employed resident services coordinator provide these services? Will you have a description of the scope of Resident Services as well as Supportive Services?</p>	<p><b>A.</b> Please refer to <a href="#">Section 9 – Application Minimum Requirements of the Final NHTF Guidelines states:</a> <i>(6) Applicant must provide evidence of an agreement or memorandum of understanding with, or commitment letter from a Resident Services provider regarding the proposed Supportive Services scope of work, staffing and budget.</i></p> <p>While not stated explicitly, this draft language implies that an agreement must be made with a third-party provider. If you are interested in seeing this requirement expanded to include owner/applicant employed resident services providers, please submit comments or suggestions to <a href="mailto:NHTFNOFA@hcd.ca.gov">NHTFNOFA@hcd.ca.gov</a>. The Department may consider the addition of in-house service providers to the final guidelines.</p>
21	<p><b>Q.</b> Besides complying with Article 34, is there a maximum or minimum amount of NHTF units a project can assist? (I.e. how VHHP has a min amount of units you have to assist)</p>	<p><b>A.</b> The Final NHTF Guidelines do not specify a maximum or minimum number of NHTF-assisted units in a project. Details regarding the project loan and unit loan limits will be released in the NOFA, scheduled to be published in the fall.</p>
22	<p><b>Q.</b> Would the department consider changing the requirement of the appraisal so that it can be dated within 120 days of the purchase and sale agreement? 1) this is consistent with TCAC regs</p>	<p><b>A.</b> The Final NHTF Guidelines will accept an appraisal dated within 120 days of the site control document.</p>

## National Housing Trust Fund (NHTF) Guidelines FAQs



	and 2) currently the NHTF guidelines require the appraisal be dated within 1 year of the application. But if the site was purchased by the sponsor more than 1 year ago then the project would have to pay for another appraisal.	
23	<b>Q.</b> Approximately when will the NOFA be release and application due?	<b>A.</b> We anticipate the release of the NOFA in October 2023. Projects applying for the Rural Area Target and the non-rural general pool of funds will have 60 days following the release of the NOFA to submit applications. Projects applying for the Native American Entities Target and Federally Declared Disaster Area Target will have 90 days following the release of the NOFA to submit applications.
24	<b>Q.</b> Please let us know who to contact for environmental questions again.	<b>A.</b> Questions may be submitted to <a href="mailto:NEPA@hcd.ca.gov">NEPA@hcd.ca.gov</a> and <a href="mailto:Kirsten.Larsen@hcd.ca.gov">Kirsten.Larsen@hcd.ca.gov</a>
25	<b>Q.</b> Is NEPA/CEQA clearance a threshold item to apply or only needed for the disbursement of funds?	<b>A.</b> Per the federal regulations, HUD's NEPA requirements do not apply in the same way to NHTF projects as they do for other HUD sources, e.g., HOME and CDBG. The NHTF environmental requirements are outlined in detail in the NHTF property standards at <a href="#">24 CFR 93.301(f)</a> . Projects must meet the requirements at the time of project completion, however, in order to ensure compliance and avoid any issues when the project is complete, documentation of environmental compliance is required with the application, and must be fully cleared before construction closing (with some exceptions, i.e., if work is required to be done before clearance, a special condition will be included in the Standard Agreement to address this). More details on application requirements and thresholds will be released in the NOFA and Final NHTF Guidelines.
26	<b>Q.</b> Can the property audits be due 120 days after each fiscal year? Most property audits cannot be completed within 90 days.	<b>A.</b> The Department must be consistent across its funding programs and 90 day audits has been the standard requirement as confirmed by our Asset Management and Compliance (AMC) Branch. If a Recipient has concerns about meeting a specific Project deadline, please reach out to the AMC Branch at HCD via email at <a href="mailto:AMCBranch@hcd.ca.gov">AMCBranch@hcd.ca.gov</a> .
27	<b>Q.</b> What month will the NOFA be released? What month will it be due? And what month awards anticipated to be released?	<b>A.</b> We anticipate the release of the NOFA in October 2023 and awards will be announced no later than summer 2024..

# National Housing Trust Fund (NHTF) Guidelines FAQs



28	<p><b>Q.</b> I've attended other tribal focused overviews and they were set up to be directed to tribal concerns. Is this going to be the same presentation for tomorrow's session?</p>	<p><b>A.</b> For consistency, the Department used the same slides and same narrative for both sessions.</p>
29	<p><b>Q.</b> I'd be interested in hearing if there are any provisions for tribes that may not be able to meet the requirements of this program due to their tribal status. There are many issues for tribes that can come up during guideline development that HCD staff has explored historically failed to recognize. Are you able to discuss AB 1010 waivers?</p>	<p><b>A.</b> Through HCD's commitment generally, and NHTF program specifically, in order to provide a balanced set of Guidelines that satisfies both Tribal and Federal Indian law, and, basic California state finance security transaction law, the Guidelines have been reviewed and evaluated with a Tribal and Federal Indian law lens to remove or ameliorate specific program requirements to fit the needs of the Tribal Applicant where to do so is lawful under California and Federal law.</p> <p>Where tribal law, tribal governance, tribal charter, or difference in tribal entity or agency legal structure, may cause a violation or not satisfy the requirements of the state finance requirements set forth in the Guidelines, a Tribal Entity Applicant may make an AB 1010 request to the Department for either modification or waiver of the Guideline or Regulation requirement. The Tribal applicant must present in its AB 1010 request specific facts and Tribal law that cause the conflict so that HCD can properly assess whether AB 1010 relief is available. Please note that AB 1010 relief is not available to modify or waive federal statutes or regulations or state statutes.</p> <p>Where a Project is located on Tribal trust or restricted land, and the Tribal applicant will use or mix their Indian Housing Block (IHBG) grant funds with the HCD program funds, some of the state finance requirements may not be applicable where they conflict with Federal Indian law including, but not limited to, the Native American Housing and Self Determination Act (NAHASDA). NHTF program staff and HCD's Tribal Team/ Tribal Legal Affairs Division will assist in the assessments of conflicts and possible resolutions. Program staff is glad to receive tribal law conflict information from the Tribal applicant for HCD to evaluate.</p>

## National Housing Trust Fund (NHTF) Guidelines FAQs



		<p>Some state finance requirements may be preempted or not applicable, by Tribal or Federal Indian law, where a Project is located on Tribal Trust or Restricted land, including but not limited to the following:</p> <ul style="list-style-type: none"> <li>• Affirmatively Furthering Fair Housing; and</li> <li>• Area Median Income under NAHASDA.</li> </ul>
30	<p><b>Q.</b> There is a question about the <a href="#">AB1010</a> waivers and thank you for bringing that up</p>	<p><b>A.</b> <a href="#">AB 1010</a> refers to California legislation, Assembly Bill 1010, passed in 2019 that added Section 50406 subdivisions (p)(1) and (2) to the California Health and Safety Code. Through this legislation, HCD's Director is authorized to exercise discretion to modify or waive specified state financing requirements that are set forth as regulations or guidelines under specified conditions. This discretion does not extend to federal statutes or regulations or state statutory funding requirements.</p> <p>An AB 1010 request can occur either where a Tribe asserts via a written letter submitted to HCD identifying the conflict between Tribal law, governance, charter, legal structure or agency (Tribal Distinctives) and HCD funding requirements supported by a statement of facts and supporting documents accompanying the AB 1010 Request; or 2) Program staff identifies that a conflict as identified above exists which may be a barrier for a Tribe, and such NHTF program staff , will elevate the question/issue to the Tribal LAD for review, and TLAD will evaluate and present possible solutions to the NHTF staff for their consideration and decision. Upon Program Staff's determination, the AB 1010 Request will then be submitted to the Director with Program's input, for a final determination of the resolution of the specific AB 1010 request.</p> <p>When evaluating a conflict between Tribal Distinctives and HCD funding requirements, HCD will include evaluation of NAHASDA, the Indian Self Determination Education and Assistance Act, Tribal Law as provided, and other applicable Federal Indian laws and regulations.</p>



## National Housing Trust Fund (NHTF) Guidelines FAQs



		<p>AB 1010 has been applied successfully over the last two (2) years and has modified or waived specific state HCD funding programs requirements upon a Tribal Entity meeting the specified requirements, which include, but are not limited to, site control, tenant selection, target populations, tribal preference and use of Tribal Admissions and Occupancy Standards, Area Median Income determination, capital match requirements, Davis Bacon-prevailing wage and Tribally Determined Wage application, use of necessary security documents acceptable by Bureau of Indian Affairs (BIA), and Environmental Clearances.</p> <p>Please submit any other possible or anticipated barriers that the Tribal partners have concerns to put on NHTF and California Indian Assistance Program (CIAP) team radars via <a href="mailto:NHTFNOFA@hcd.ca.gov">NHTFNOFA@hcd.ca.gov</a>.</p>
31	<p><b>Q.</b> Is there a waiver to seek 50% Area Median Income (AMI) for Tribes?</p>	<p><b>A.</b> The Department acknowledges that the 30% AMI restrictions for the National Housing Trust Fund Program can be a barrier for tribes, but because this is a federal statutory requirement, a HUD waiver is not possible. However, the Department is working closely with HUD and the Department's Tribal Technical Assistance (TA) provider to seek approval from HUD to use the median income definition from the Indian Housing Block Grant Program (IHBG), authorized by the Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA), so that 30% AMI for NHTF projects that also have IHBG funding can be calculated based on National median, rather than County median income. If approved by HUD, this would result in higher income limits for these projects than <a href="#">HUD's published NHTF income limits</a>. The Department is working diligently to address this concern and will notify tribes and other stakeholders when more information is available. To learn more about NAHASDA and IHBG, visit HUD's website: <a href="https://www.hud.gov/program_offices/public_indian_housing/ih/codetalk/nahasda">https://www.hud.gov/program_offices/public_indian_housing/ih/codetalk/nahasda</a></p>

## National Housing Trust Fund (NHTF) Guidelines FAQs



32	<p><b>Q.</b> During the webinar this morning it was expressed that the proposed project needed to have a positive cash flow for 30 years. Can you clarify whether this is with or without COSR? So, if you have a negative cash flow but use your COSR to offset it, would that be acceptable?</p>	<p><b>A.</b> A COSR that offsets the proforma from having a negative cash flow for the minimum 30 years would be acceptable. Also, please reference <a href="#">24 CFR § 93.300(b)</a>.</p>
33	<p><b>Q.</b> What is the difference between Tribal Entities and Native American Entities</p>	<p><b>A.</b> The Department uses the term, “Native American Entities,” to be consistent with federal regulations and HUD’s Indian Housing’s Office of Native American Programs (ONAP). The definition of Tribal Entities and Native American Entities are the same.</p>